

Fairness Framework
Ofcom
Riverside House
2A Southwark Bridge Road
London SE1 9HA

24 July 2019

By email only to: fairness.framework@ofcom.org.uk

Dear Sir/Madam

Fairness Framework

Thank you for the opportunity to respond to Ofcom's discussion paper on fairness¹.

Telefonica UK Ltd ("Telefonica UK") believes that Ofcom must comply with its statutory duties in regulating the electronic communications sector. The regulatory regime is, essentially, a permissive one, in circumstances where markets are effectively competitive; Ofcom must demonstrate good reason to intervene in such conditions.

It is also worth noting Ofcom's own guidelines on impact assessments², in which Ofcom acknowledges that:

*"The decisions which Ofcom makes can impose significant costs on our stakeholders and it is important for us to think very carefully before adding to the burden of regulation. One of our key regulatory principles is that we have a bias against intervention. This means that a high hurdle must be overcome before we regulate. If intervention is justified, we aim to choose the least intrusive means of achieving our objectives, recognising the potential for regulation to reduce competition."*³

Telefonica UK's strategy is "Customer led, mobile first". We have signed up to Ofcom's Fairness for Customer commitments⁴. These should be considered in the broader context of the statutory regulatory regime and Ofcom's approach to better policy making.

Finally, we would refer Ofcom to the Communications Chambers paper, "The importance of differential pricing for good consumer outcomes in telecom", commissioned by communication providers, including Telefonica UK⁵. The authors comment that:

¹ Making communications markets work well for customers: A framework for assessing fairness in broadband, mobile, home phone and pay-TV. 17 June 2019. https://www.ofcom.org.uk/_data/assets/pdf_file/0022/152482/discussion-paper-making-communications-markets-work-well-for-customers.pdf

² Better Policy Making: Ofcom's approach to Impact Assessment, 21 July 2005. https://www.ofcom.org.uk/_data/assets/pdf_file/0026/57194/better_policy_making.pdf

³ §1.1 refers

⁴ §3.15 of the discussion paper refers

⁵ May 2019.

<http://static1.1.sqspcdn.com/static/f/1321365/28145679/1560928074137/Consumer+Outcomes+2.01.pdf?token=yNm%2BGgDCXcCRjoDnfgxgimTAwBc%3D>

"It is reasonable to consider whether pricing is aligned with both efficiency and fairness, and to discourage conduct that harms vulnerable customers. However, it is important to allow differentiation that benefits investment and customers, and in particular benefits those disadvantaged groups who are late adopters."

Telefonica UK concurs with this view and we would urge Ofcom to consider the issue of fairness in the broader context.

I hope you find this response helpful.

Yours faithfully

Lawrence Wardle
Director of Regulatory Affairs