Price rises in fixed term contracts

Response from the Mobile Broadband Group

1. The Mobile Broadband Group ('MBG', whose members are EE, Telefonica UK, Three and Vodafone) welcomes the opportunity to respond to Ofcom's consultation on 'Price rises in fixed term contracts.'

2. Member companies are making individual submissions about how the proposals would directly affect them.

3. The MBG's response is focusing on one particular aspect of Ofcom's consultation and that is whether the scope of the proposed intervention is proportionate and fully thought through.

4. The context for the consultation is that the average price of mobile voice calls has fallen by 42% in real terms in the 5 year period from 2006 to 2011, according to data derived from Ofcom's 2012 Communications Market Report. The fall in charges for mobile data has been even more dramatic. In the round, competition through innovation and falling prices in the mobile sector has really delivered for consumers. By international benchmarks, the UK consumer receives very good value. It would not be possible to achieve 130% penetration per head of population if the mobile market was not functioning well.

Background

5. Ofcom derives its authority from both sector regulation and general law applicable throughout the economy. The former is rooted in the EU telecommunications package, whose overarching principles can be summed up in an extract from its text:

   "The aim [of the Framework Directive] is to ensure the availability throughout the Community of good-quality publicly available services through effective competition and choice and to deal with circumstances in which the needs of end users are not satisfactorily met by the market."

6. The proposal to fix ALL prices in fixed term contracts, including those where the supplier has no control over or ability to foresee some relevant input costs, (and that is the case with many out of bundle charges) is not a proportionate response to the issue.

7. The communications market is very dynamic. A mobile contract gives a customer the ability to call billions of people. An operator's price list runs to many pages, listing, as is required, the price of calling every conceivable number. The price list is in fairly regular need of

adjustment, as the termination costs of various numbers change (up and down) on a fairly frequent basis.

8. The proposed intervention therefore risks a market distortion, particularly in relation to call charges that are not generally included in bundles (e.g. international calls, special rate services, directory inquiries). The input costs (termination charges) for such charges are generally completely out of the control of the originating operator and not predictable. Often, the charges are levied via a transit operator and so there is no direct relationship between the originating operator and the terminating operator.

9. Ofcom is effectively creating a situation where there is no window for re-balancing the price list, if no prices can be increased during a fixed term contract. The millions of existing mobile contracts are not co-terminus and so there would never be an opportunity to amend price lists other than downwards.

10. Ofcom must consider the risk that providers will not be able to provide term contracts with no up-front cost (or heavily subsidised) mobile devices as a result of the measures they are suggesting. Ofcom cannot create a situation where all customers could terminate their contracts just because the cost of calls to Azerbaijan (for example) can have gone up. Nor can they create a situation where operators cannot put any prices up without jeopardising the 'no up-front cost'/heavily subsidised handset market. The absence of such contracts from the market could be very detrimental to consumers who use such contracts to go on-line with little or no initial investment.

11. It is hard to understand why Ofcom has not carried out an impact assessment that considers all possible impacts. Ofcom should not be proposing such a significant market intervention without publishing a thorough impact assessment, in line with standard regulatory practice. Ofcom has not demonstrated the link between complaints received on this topic and any potential decrease in consumer surplus.

12. The proposals made by Ofcom, as result of the complaints received, are a disproportionate over-reaction to the situation – particularly in relation to call charges that are not generally included in bundles (e.g. international calls, special rate services, directory inquiries) and other additional charges (such as non-direct debit payment processing fees that may be subject to change by the banks). The escalation clauses prevalent in the market today are not arbitrary; they give the customer a fair opportunity to review charges that are generally not included in bundle and to assess any downside risk from taking out a fixed term contract that also includes early termination charges (in accordance with the transparency requirements set out in GC23).

13. Ofcom is not there to micro-manage the market. If providers adjust their prices and those adjustments have a disproportionate impact on particular customers (for example those that regularly call Azerbaijan), then the contracts in place allow for that. The clauses are deliberately designed to be specific to individual customer circumstance.

14. The MBG does not agree with Ofcom's speculative argument in paragraphs 4.16 to 4.19 that such price increases will become habitual and that this will diffuse reputational damage or that consumers will start to favour pay as you go contracts. This latter point is not a matter for the regulator, in any event. If that's how consumers react, that is a risk that providers should be allowed to take.

15. In summary, the MBG argues that the proposals, with their very broad scope, are not proportionate, particularly as they relate to the wider price list. Nor has Ofcom fully thought through the potential impact of the proposals, which could have a detrimental, and unintended, impact on consumers. We urge Ofcom to reconsider.