# Price rises in fixed term contracts

# Options to address consumer harm

## UKCTA Response to Ofcom Consultation

**Submitted to Ofcom: 14th March 2013**

## Introduction

UKCTA is a trade association promoting the interests of competitive fixed-line telecommunications companies competing against BT, as well as each other, in the residential and business markets. Its role is to develop and promote the interests of its members to Ofcom and the Government. Details of membership of UKCTA can be found at www.ukcta.com.[1]

UKCTA welcomes the opportunity to comment on Ofcom's consultation concerning price rises in fixed term contracts and the associated options to address consumer harm.

## Response to the consultation

UKCTA agrees with Ofcom that it is an important principle that the price agreed between a consumer and a communications provider should generally be fixed during any period in which the customer is unable to switch provider without incurring an early termination charge ("ETC"). More broadly, UKCTA is of the view that where prices increase, consumers should be able to avoid their effects. In a competitive retail market, it is reasonable to assume that an operator would be constrained from increasing its retail prices in an excessive manner and essentially would only increase its retail price when its relevant marginal cost increases for whatever reason. In these circumstances, we believe that the "material detriment" threshold in General Condition (GC) 9.6 generally strikes a very reasonable balance.[2]

We note that Ofcom considers that the current wording of GC 9.6 is insufficient to ensure a high level of consumer protection and that this analysis is based on the volume of customer complaints into Ofcom and the research/campaign carried out by the Which consumer organisation. UKCTA would be inclined to agree that the current provision may not be achieving its intended objective and that some changes may therefore be necessary.

[1] Everything Everywhere and KCOM are responding separately to Ofcom's consultation and their views are not covered by this UKCTA response.

[2] We agree that the "material detriment" threshold is subject to a risk of inconsistent interpretation across different providers although would also note in this regard that Ofcom has never issued any interpretative guidelines that may have assisted in achieving a more uniform application over time.

Ofcom believes that GC9.6 should be amended to allow consumers to withdraw from a contract without penalty for any increase in the price for services applicable at the time the contract is entered into by the consumer (including changes to the level of service provide). This is called Option 4 in Ofcom's consultation document.

UKCTA does not believe Option 4 as outlined is proportionate or necessary to achieve the intended objective, i.e. a high level of consumer protection. It appears to us that the main concern here is to ensure that the fixed price agreed by the customer at the start of the contract should not increase during the period in which a customer would be subject to an ETC if he or she were to terminate their contract. If an increase is proposed during that period, the customer should have the right to leave without penalty.

Most of the evidence that Ofcom relies on its consultation document pertains to mobile contracts which tend to be advertised very much with reference to a fixed monthly price. We would argue that most of customer concerns and complaints are linked to an operator's choice to increase the fixed monthly price. At the meeting between UKCTA and Ofcom, Ofcom seemed to acknowledge this fact (although also pointed out that complaints have been registered in relation to other price increases, e.g. mobile roaming prices).

Although consumer pricing in the fixed line sector tend to be based on fixed monthly charges, there are important distinctions. For instance, fixed operators tend to make a very clear distinction between the monthly line rental charge and the monthly call and/or broadband package charge. In addition, the "trade-off" in consumers' minds between obtaining the latest attractive mobile handset against a monthly fixed fee does not feature in the fixed market. That is not to say that consumers do not attach importance to the fixed monthly charge in the fixed line market but we would argue that the evidence in Ofcom's consultation document quite clearly shows that potential for consumer harm is much less in the fixed line market, i.e. consumers seemingly tend to complain about mobile price increases but not so much about fixed line price increases although the latter do take place quite regularly (most often in relation to the line rental price).

On the above basis, UKCTA believes that there are good arguments for applying Ofcom's Option 4 in relation to fixed monthly charges on the basis of which the customer agrees to take service from a communications provider. If the communications provider chooses to increase those fixed charges during the minimum term of the contract, it would be fair to allow the customer to leave without paying any early termination charges.[3]

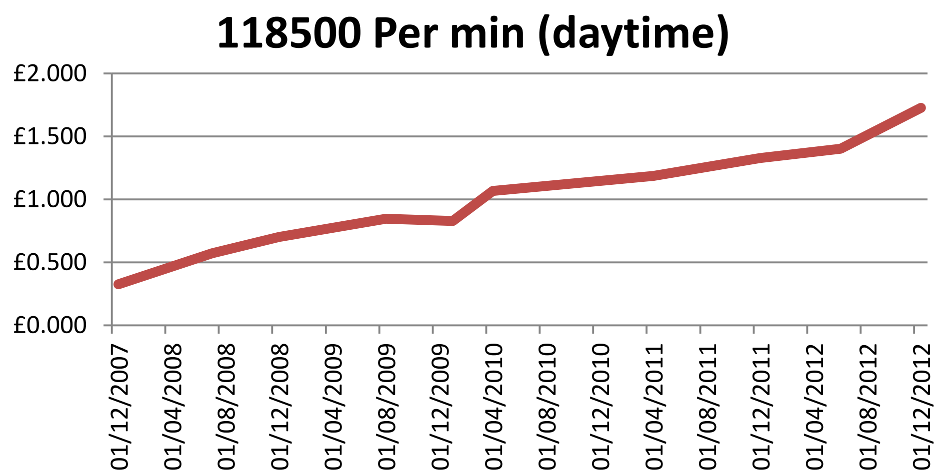
That said, we believe it is possible and indeed necessary to draw a sharp distinction between fixed monthly charges and other charges (e.g. out-of-bundle call charges) for the following reasons:

(i) Unlike fixed monthly charges, we do not believe consumers generally enter into a contract with a provider on the understanding, implicit or explicit, that e.g out-of-bundle call charges would remain fixed throughout the minimum term contract period. Any consumer harm associated with increases to such charges would therefore arguably be much smaller compared to increases to fixed monthly charges.

(ii) Unlike fixed monthly charges, a customer arguably has a choice as to whether they continue incurring other call charges that are not included in the call bundle. By way of example, if a customer believes a price increase for a 118 DQ service makes the service too expensive to use, they are able to use another DQ service in a competitive market. Furthermore, in an ever-converging market, customers may be able to use to other means of communication such as Skype or the Internet. The customer therefore has several means to avoid a particular charge increase and thus effectively mitigate any significant detriment to them.

(iii) From a fixed provider's perspective, it is very important to note that they normally have very little choice in so far as many call charge increases are the direct result of wholesale price increases. For example, the wholesale pence per minute rate for calls to the 118500 DQ service has been increased 9 times in the last 5 years and in total by over 500% in that period (see graph below.

[3] We believe it would be reasonable to adopt the same approach in relation to any increases in the early termination charge since this is a charge that the customer would not be able to avoid if they wanted to leave during the minimum contractual term.




(Source: BT Carrier Price List)

It is generally accepted that providers would continue to allow its customers to dial all telephone numbers irrespective of any charge increases (perhaps with the exception of concerns around fraud and bad debt). Ofcom also expects all providers to offer end-to-end connectivity and has stated that it would seek to resort to formal regulation if markets concerns in this regard ever emerged.[4] On this basis, UKCTA believes it would be unfair and disproportionate to require providers to apply Option 4 to this type of charge increases since (i) providers have no control over when and by how much the wholesale price increases; and (ii) providers are effectively forced to increase their retail price.

(iv) Customers would still be able to exercise their right to leave without penalty if the charge increase was to their material detriment in line with the current wording of GC 9.6.

In conclusion therefore UKCTA agrees that Option 4 should be adopted with regard to fixed monthly charges since this would target the regulatory change at the area where specific consumer harm has been identified. In contrast, we believe it would be unfair and disproportionate to adopt the same approach with regard to other charge increases since those are not likely to cause consumer harm that could not be remedied by continuing to adopt the existing material detriment approach in GC 9.6.

[4] End-to-end connectivity, Ofcom Statement, 13 September 2006, paragraph 3.25.