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NON-CONFIDENTIAL VERSION

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Dear Gavin,

Protecting consumers from mis-selling of fixed-line telecommunications services

TalkTalk Group is pleased to provide the following comments on the above-captioned consultation from Ofcom.

We agree that tackling mis-selling of fixed-line telecommunications services should remain an important objective for Ofcom. Ofcom's enforcement programme has had a significant impact on some providers in terms of improving the quality of sales and marketing activities. As a result, the overall level of mis-selling across the industry has indeed reduced. Ofcom also acknowledges that Cancel Other (slam) cases have fallen significantly since 2005 (paragraph 3.19 of the consultation document).

It is important to analyse the mis-selling data in its proper context to understand the reasons behind any trends and consequently where to focus future policy efforts. We do not believe that the evidence presented by Ofcom is strong and robust enough to justify new regulation. We suspect that the reason why mis-selling may still be a problem is more likely to lie with shortcomings in Ofcom's own enforcement programme and that new regulation may not actually be necessary to reduce mis-selling further.

First of all, we would argue that the mis-selling data actually shows a remarkably positive trend but that Ofcom seeks to discredit this to serve its own objective. Ofcom's data shows that monthly Cancel Other complaints have fallen from over

30,000 to under 9,000 in three years and overall OAT volumes have remained stable at 800 per month. Ofcom, however, suggests that the recent trend in overall Cancel Other volumes “shows relatively little progress over the last 14 months” (paragraph 3.24 of the consultation document). Actually the data shows that even during this most recent period Cancel Other volumes have fallen from above 12,000 to 8,300. How can a fall by nearly a third be described as “relatively little progress”?

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Essentially, Ofcom is proposing four key changes to the current rules:

- i. simplifying the regulations by moving away from an approach requiring all CPs to establish, and comply with, Codes of Practice, to one of prohibiting inappropriate sales and marketing activity;
- ii. better information for consumers on the potential consequences of switching by requiring CPs to alert consumers at the point of sale, and through letters, that they may have existing contractual liabilities with their existing CP;
- iii. extending Cancel Other rules to cover all CPs providing fixed-line telecommunications services – at present the rules that are in place apply only to BT; and
- iv. clarifying existing general record-keeping requirements, together with a proposal requiring CPs to make, and retain, voice recordings of all relevant telephone contact.

In the following, we comment on each of Ofcom’s key proposals in more detail.

Prohibition on inappropriate sales and marketing activity

We would generally support Ofcom's proposals to move away from detailed mandatory codes of practice in this area towards more high-level obligations supported by non-mandatory guidelines. It is important that Ofcom is able to take swift action to curb and prevent mis-selling in the fixed-line industry and this change will give Ofcom more effective tools to do so.

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Obligation to remind customers of potential contractual liabilities with their current provider

Whilst we naturally support the notion that customers need to be made aware of their contractual obligations, we have reservations about imposing a specific requirement on the gaining provider on remind customers on what they effectively should have been told by their existing provider. The precise circumstances of imposing such a requirement would have to be carefully considered to ensure that it does not result in an overall reduction in customer switching. We would have three specific concerns that we would be happy to discuss further with Ofcom:

1. Ofcom has recently issued specific guidelines that are intended to increase the transparency and general fairness of additional charges on customers’ bills. It is the legal obligation of any provider to ensure that their consumer terms and

conditions are fair in compliance with the Unfair Terms in Consumer Contract Regulations. This actually includes an obligation to ensure that any charges are sufficiently transparent to customers. Ofcom should ensure that these guidelines are properly enforced which should go some way of addressing concerns that customers are not aware of their contractual liabilities at the point of switching.

2. The gaining provider would only be in a position to provide a blanket warning to customers about potential contract liabilities. It would never be able to provide any more detailed information particularly since the emergence of “rolling contracts” by at least one large fixed operator has added to general customer confusion whether they are “in contract or not”. If a customer would then need to go to their current provider to ask about their current contractual liability, they should not be exposed to attempts by the provider to retain the customer. Otherwise Ofcom’s proposal could have a distinct chilling effect on customer switching.

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Extending Cancel Other rules to all CPs

We would generally support the extension of Cancel Other rules to all CPs although there would clearly be system and cost implications for TalkTalk Group to implement such a requirement. We would also qualify this support with the reservation that such obligations should not be of a stand-alone nature but rather be linked to the ultimate objective of tackling mis-selling. It would in our view be disproportionate to impose rules that required observation of Cancel Other rules regardless of whether the CP in question was engaged in mis-selling (or at least could reasonably be suspected to engage in such activities). Any enforcement activities by Ofcom should focus on the objective of tackling mis-selling and not making sure that a CPs classifies Cancel Other in the correct manner.

Requirement to make, and retain, call recordings

We would cautiously support Ofcom’s proposal to require CPs to make and retain call recordings with customers. Indeed TalkTalk Group already record all sales and marketing calls as part of its existing quality improvement programme. We agree that such a requirement may assist Ofcom in its enforcement activities. We would, however, have concerns if the obligation were to record 100% of all calls and that this was a stand-alone enforceable obligation. We would regard such rules to be entirely disproportionate.

First, it would be extremely expensive (if not technically impossible) to design a system that guaranteed 100% recording of calls with a 100% retrieval success. As such it would be virtually impossible to comply with an obligation as currently proposed by Ofcom. We do not object to having to do some call recording (larger providers do this anyway) but would like Ofcom to reduce its recording requirement from 100% to a more “reasonable” level and the storage requirement from 6 months to a month or so. We note Ofcom's cost benefit for this on its own (table 11 of Impact assessment p120 of the doc, plus commentary at para A5.146 p 92) shows a negative

NPV. We do not believe there is therefore any justification for Ofcom to impose the stringent level of 100% recording.

Second, in line with our comments regarding cancel other above, we do not believe it would be reasonable or proportionate to require all calls to be recorded as legal obligation in itself. The objective of such an obligation is to assist Ofcom in enforcement activities, which should be reflected in how the obligation is worded. In other words, the failing by a CP to record calls in the absence of mis-selling should not lead to enforcement by Ofcom.

Yours sincerely,

Rickard Granberg