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## THUS Response to the Ofcom consultation “Protecting consumers from mis-selling of fixed-line telecommunications services”

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### Introduction

As part of the Cable&Wireless family of businesses, THUS offers high quality products, services and communications solutions to a broad range of organisations across all sectors of the mid market business arena.

We deliver easy to use voice, data, internet and mobile communication solutions and offer all the advantages and savings of a one stop supplier, with a product range that exceeds expectations. Our proven solutions enable office based, and mobile or flexible workers to integrate fully and securely with scalable, robust networks to deliver communication systems that work

THUS provides solutions to small companies as well as medium sized organisations. We welcome the proposed wording of General Condition 24 which clearly differentiates between domestic and small companies and those larger enterprises which have other avenues available to them to protect their interests.. Our comments as a reseller of Cable&Wireless services also reflect the position of the many other resellers on Cable&Wireless' network directly impacted by Ofcom's proposals.

We have opted to respond to the four main issues set out in the consultation paper rather than the specific questions:

### Options on clarifying and simplifying the regulations

THUS supports Ofcom's proposals to switch from a Code of Practice regime to a higher level enforcement regime supported by a specific General Condition. We can see how taking this approach will benefit consumers and Ofcom in enforcing the requirements. It is also beneficial to Communication Providers by clearly defining the obligations under which they are expected to operate.

### Options on information to consumers of the potential consequences of switching

THUS is happy to support the proposal that requires the gaining provider to give information to consumers on the contractual liabilities for switching providers. However, we point out that this can only be a generic note to the consumer as the actual terms and conditions of their existing contract are between them and the provider. However, we see no issue with including this within our sales “scripts”, although it should be noted that we would estimate that we would need at least 6 months to fully implement the proposals within our sales processes.

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We do however have concerns about the impact the introduction of these measures will have on the reseller market in general, particularly with regards to the onus placed upon the gaining provider. The reseller market includes a number of operators which we would term 'brand-extenders'. These are companies where telecoms is not their primary source of business but a bolt on service. These companies have in recent years enhanced the marketplace by offering increased levels of choice to the consumer. In many cases these brands do not use telephone based sales methods, but rely on sales methods such as in-store sign up activity. It is these operators that will be particularly affected by requirements to give general, non-specific warnings to potential customers about their existing contract terms.

Thus fully supports increased transparency in the marketplace, but we are concerned that the impact of Ofcom's proposals may actually be a reduction in the number of consumers switching as a lack of precise information will only prove to be a deterrent to potential switchers (plus the losing provider gets a second chance of persuading the consumer not to switch when they go back to check about any liability on their part). We believe that a balance is needed between the regulatory obligations of gaining providers and the transparency obligations of existing operators. In particular we are concerned about the increasing number of 'rolling contracts' within the marketplace and their associated early termination charges. For Ofcom's proposals to be effective across the entire market it needs to address the lack of transparency caused by these contractual terms. A consumer will be more inclined to switch where they have a clear understanding of their existing obligations. A rolling contract obscures the extent of this obligation and consequently Ofcom's proposals threaten to be a barrier to competition by stifling the ability of OLO's to win customers.

## Options on Cancel Other rules

THUS supports the proposals for extending the Cancel Other rules.

## Options on record keeping for sales and Cancel Other

Although THUS understands Ofcom's reasons for wanting CSPs to record sales calls, we cannot support the recommendation.

THUS does not currently record sales calls, so to be able to comply with an obligation to do so will incur cost to our business. On first inspection these costs do not necessarily appear to be prohibitive to Thus (as we would only need to record calls for those sales people who deal with small businesses), however there will be additional costs associated with being able to distinguish only the relevant sales and in particular cancel other calls, not to mention those for actually retrieving this information which we have not fully quantified. We are however concerned that the requirement to record 100% of calls (and without due justification never less than 90%) is disproportionate for the benefit it brings in comparison to Ofcom's considered option to mandate a 75% recording level.

It is the impact of these additional costs on 'non-telecoms brand-extenders' which is of particular concern. In this particular marketplace margins are so tight that any increase in costs may well cause a number of these communications providers to simply leave the market and thereby cause consumer detriment by reducing choice within the market.

Thus questions whether the proposed level of call recording is proportionate and suggests that where mis-selling exists it is likely to be an endemic issue within an organisation which would require nothing more than a sample of calls to investigate rather than each individual case. Furthermore, for some cases of mis-selling the audit trail caused by order forms and signed orders may actually provide a better understanding of what the customer has been told than necessarily what he may have been told over the phone.

With these points in mind, if call recording was to become a specific requirement, we would recommend that (i) the requirement is dropped to a more proportionate level (say two thirds of all calls should be recorded) and (ii) the lack of a recording of a specific call is not considered a breach or indeed an indication that mis-selling has taken place.

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Furthermore we would expect a six month period for implementation – any less than this and we would not be able to meet the regulatory requirements

We also have one other issue to raise:

## Enforcement

Regulation of this sort requires strong enforcement in order for it to succeed. By enshrining the requirements within a General Condition Ofcom has gone some of the way to facilitating such enforcement. The proposed Guidelines to GC24 are clear that the obligations lie with the communications provider that has the contract with the End-User. Thus welcomes the clarity provided.

However to actively police mis-selling Ofcom needs to be able to quickly identify the reseller or network involved. This can only be achieved through a strong enforceable mechanism for identifying the communications providers involved. Such a mechanism for this is in place through the RID process, but our experience has shown it to be unreliable and weakly enforced at present. If operators are unable to trust the RID code then we question how industry is able to pro-actively identify instances of mis-selling. We believe that the application and enforcement of an industry wide (not just CPS) RID code would be beneficial. Use of the gaining RID codes within the CPS market demonstrated what can be achieved. Were the RID of the gaining provider made available to the losing provider it would facilitate assisting any consumer that may be a victim of mis-selling, for example prior to the use of RID for CPS Reseller A would place a CPS order; BT Retail would immediately send a losing letter to the customer. The customer calls BT as he doesn't remember / realise that he's signed up for TV, broadband AND calls and all BT could tell him was that Network A placed the order. "Never heard of them" responds the consumer and the transfer was cancelled. Now BT Retail says "Reseller A placed the order" and the customer is able to directly approach the reseller to confirm the service for which he has contracted.

We believe that industry wide use of the RID code is a complementary underpinning of Ofcom's mis-selling proposals which should be encouraged across all products.

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