



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

### **Tiscali UK response to Ofcom consultation**

Tiscali is a member of UKCTA and supports the submission that has been made to Ofcom by UKCTA covering this consultation document.

Tiscali welcomes Ofcom's aim of protecting consumers from mis-selling of fixed-line telecommunications services and agrees that mis-selling works against the interests of consumers and undermines confidence in the industry as a whole. It is important that combating inappropriate sales and marketing activity remains a priority for Ofcom and that it is approached in a manner that is effective and most likely to bring about long-term change and a reduction in complaints. Tiscali, however, has significant concerns about Ofcom's approach, the validity and limitations of the analysis and the proportionality of the proposed obligations.

Ofcom's proposals fall into four key areas dealt with in turn below.

#### **Moving to a specific obligation prohibiting inappropriate sales and marketing activity**

Tiscali agrees with Ofcom's preferred option to simplify the regulations by moving away from the existing approach requiring CPs to establish and comply with a code of practice to one which prohibits inappropriate sales and marketing activity through the creation of a new general condition. Whilst the existing approach was well-intentioned it resulted in guidelines that were unnecessarily prescriptive and codes of practice which varied widely between CPs. This approach lacks the certainty and clarity that a general condition containing correctly re-drafted text will provide. An appropriate new general condition will serve as a deterrent to mis-selling and provide Ofcom with the necessary tool to ensure that it can act swiftly to enforce regulation against inappropriate sales and marketing activity.

Tiscali disagrees with the proposal contained within section 24.5 (a), which would require CPs to publish comprehensive summaries of their obligations under the general condition on their websites. This would result in varying summaries being published by CPs and only perpetuate the existing, unsatisfactory, situation where different codes of practice are published by CPs. This lack of consistency would confuse consumers. We believe the most appropriate solution would be an obligation for CPs to publish a link to the general condition on their website; alternatively Ofcom could issue a summary that all providers would be obliged to publish. This would ensure consistency across all CPs and succeed in providing clear consumer-friendly information.

#### **Alerting consumers of existing contractual liabilities at point of sale**

Tiscali agrees with Ofcom that it is important consumers are well-informed on all relevant aspects of a new sale or switch from one provider to another. Although there may be a beneficial effect for consumers from a reminder of their potential existing contractual obligations prior to agreeing to a sale, the responsibility for knowing the obligations and acting in accordance with them rests entirely with the consumer. This responsibility has been established in law and Tiscali is not aware of any other industry where there is an obligation on the gaining provider in a switching situation to alert consumers to the possibility of their own contractual commitments. Such an obligation would not follow principles of the least intrusive regulatory mechanism and would be an unnecessary intervention, even if CPs might mention such issues in the course of conversations with consumers regardless of obligations.

The issue of existing contractual liabilities is quite separate from most aspects of mis-selling and slamming and it is therefore not appropriate or proportionate to impose specific regulation on gaining CPs to alert customers to potential contractual obligations to another supplier. Ofcom is already dealing with this subject matter through its extensive work and guidance on transparency and fairness in relation to early termination charges as part of the review of additional charges. Ofcom's current own initiative enforcement programme will investigate compliance and serve as an incentive to providers to adhere to the rules by providing the appropriate information at the point of sale and within their contracts. Providers who are found not to be compliant will be dealt with as part of that enforcement programme and not in relation to existing or future sales and marketing obligations related to mis-selling.

Ofcom should be mindful that there is already a legal obligation under the Unfair Terms in Consumer Contracts Regulations 1999 for providers to ensure that terms and conditions are sufficiently transparent to consumers. Imposing an additional regulatory obligation upon gaining providers is disproportionate and inconsistent with Ofcom's principle of a bias against intervention. Such intervention could have a detrimental effect on the competitive market place and Tiscali therefore urges Ofcom to reconsider this approach.

### **Extending cancel other rules to cover all CPs**

Tiscali agrees with Ofcom's preferred option, which is to withdraw the July 2005 Direction concerning BT's use of cancel other (or remove any savings provision keeping it in effect) and incorporate reduced requirements as part of a general condition, applicable to all CPs of fixed-line telecommunications services. However, Tiscali does not agree that this option should also include an obligation for CPs to make and retain recordings of all telephone interactions relevant to cancel other.

Option 3 (without call recording obligations) provides a significant step change to the existing situation and will mean that for the first time it will be all CPs, as opposed to just BT, who have to comply with the cancel other rules. Tiscali believes that this change would significantly improve on the current position and provide a rigid set of obligations, which CPs could not avoid. Ofcom would have the ability to initiate an investigation into any CP suspected of failing to comply with the general condition using the appropriate powers. In addition, Ofcom continues to monitor this area through the ongoing own initiative enforcement programme and the extension of this in tandem with a new general condition will act as a weighty deterrent and provide Ofcom with the necessary tools to act swiftly and effectively in cases of non-compliance.

In relation to call recording, Tiscali notes that the NPV for Ofcom's preferred option spans a negative range, which suggests that this option is not likely to be cost-effective or financially justifiable. Tiscali does not believe that there are sufficient grounds to implement this option and a far more sensible and proportionate solution is to implement option 3 without call recording obligations as stated above.

Tiscali agrees that cancel other should primarily be used in cases of alleged slamming, however also supports its use where the customer has been unable to establish communication with the gaining provider after reasonable attempts or where the gaining provider has not actioned the cancellation of the order.

In addition, Tiscali strongly believes reason codes should be used appropriately. Experience has shown that they are not used correctly by the losing CP, for example use of the code "customer has never been contacted" in cases where following subsequent investigation it is proven that the customer initiated the sale themselves by signing up on-line. Tiscali therefore also supports Ofcom's initiatives to ensure that CPs are adhering to rules on the correct use of cancel other codes.

### **Requiring CPs to make and retain call recordings**

Tiscali does not agree with Ofcom's preferred option on record keeping for sales.

In implementing such an approach Ofcom would be financially penalising the majority of operators who do not engage in poor behaviour and in particular operators who do not use

outbound telesales as a key sales channel. Introducing such onerous regulatory obligations across the board, to combat a minority of rogue operators who represent the core of the problem is not an effective or proportionate solution.

[§]

It is not appropriate for Ofcom to proceed with the preferred option and Tiscali believes that Ofcom should instead conduct further and more detailed analysis on mis-selling complaints in order to properly assess the root causes. [§]

Introducing a more reasonable level of call recording would quickly root out the rogue operators who currently record few or no sales calls and are most likely to represent the systemic problem which generates the majority of the genuinely inappropriate sales activity and valid complaints. It would bring all CPs up to a reasonable standard and provide Ofcom with sufficient call recordings to conduct an investigation. CPs who did not meet the minimum level of call recording would be in breach of the regulations and Ofcom would be able to take appropriate enforcement action without needing to go down the route of investigating individual cases of alleged mis-selling. Any higher level of call recording would not produce an incremental gain worth the cost of achieving it.

Ofcom should investigate the potential for targeting call recording obligations at CPs who engage in a level of outbound sales calling above a particular threshold and then be able to review and adjust tolerances in accordance with conditions in the market. This would allow Ofcom to avoid disproportionate obligations and ensure that any growth in or reduction of sales calling would be properly dealt with by the regulatory system. Call recording obligations should only cover relevant telephone contact made up to the point of sale. All calls post-sale including queries, order checking, amendments etc should fall out of scope as these are not directly related to the selling activity.

Individual CPs can assess the economic effects of different solutions that Ofcom may consider in a manner similar to that already employed to respond to information requests. Tiscali would be happy to help further with this, but current assessments are flawed in presenting very large numbers as acceptable when they may entail significant financial difficulty for individual CPs. Ofcom must be prepared to work through another phase in the review of possible regulatory changes and examine proposals with individual CPs (on a bilateral basis) to gain an accurate view of what the consequences may be and what is proportionate.