



The Mobile Broadband Group

PO Box 34586, London SE15 5YA

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Sarah Evans
Consumer Policy Manager
Ofcom
Riverside House
2A Southwark Bridge Road
London SE1 9HA

Dear Sarah,

Ofcom review of additional charges

The Mobile Broadband Group ("MBG", whose members are O2, Orange, T-Mobile, Virgin Mobile, Vodafone and 3) welcomes the opportunity to respond to Ofcom's review of additional charges.

The MBG understands that individual mobile network operators have prepared their own responses to the consultation, addressing the detailed potential impact of the guidelines. This letter focuses on just two aspects where Ofcom's proposals could have a significant impact on the mobile industry and where the MBG strongly disagrees with the proposals made by Ofcom. The first topic is the measures relating to transparency and the second are the guidelines for early termination charges.

Transparency requirements

The MBG completely agrees with Ofcom that a customer must be able to obtain the information about all the terms and conditions that relate to a contract subsisting between him/her and the supplier. It is unacceptable for charges to be hidden or for services to be marketed in a misleading and deceptive manner. We also agree that terms and conditions should always be set out in clear and intelligible language.

However, Ofcom must recognise that a mobile service today represents a fairly complex product offering. The mobile operator therefore faces the constant challenge of presenting all the information that is relevant to a rational decision without

confusing customers with too much detail. There is a diminishing return from the over supply of information: the more information that is displayed 'prominently', the less prominent is each individual piece of information. The more information marginal to a customer's rational decision that is required by Ofcom to be displayed prominently, the less likely customers are to read the key information.

Furthermore, the MBG draws Ofcom's attention to research conducted by the Better Regulation Executive and the National Consumer Council in 2007¹, which *"found much regulated information was not reaching its target audience – because there was too much of it, because the font was tiny or the language impenetrable, or because it was provided at a time or place that didn't make it useful to consumers. The research found consumers didn't take in many common examples of regulated information, let alone act on them. As behavioural economics research has shown, people do not always follow expected "rational" behaviours."*

Information itself may lessen consumers' ability to process and act on the messages they receive.....

...Recent studies have shown that providing too much information may also damage competitiveness. An assessment exercise conducted by the Better Regulation Executive estimated the cost to business of government information requirements at more than £1.5 billion per year. Much of this may be accounted for by the legal advice and monitoring systems companies has to put in place to ensure they comply with the law. Information requirements can also conflict with companies' communication with their customers, damaging their brand.

The MBG acknowledges that in this instance Ofcom is not mandating 'regulated information' but is providing guidance. Nevertheless, Ofcom would not be proposing to introduce guidance if it did not intend to monitor adherence to the guidance and to open enquiries under the Unfair Terms Regulations where it was felt a communications provider's additional charges were not in line with the guidance. Therefore the principles are the same and the MBG fears that Ofcom's proposals in the guidance have not been reviewed against the BRE/NCC recommendations. Ofcom must provide more information as to what processes it has undertaken to assess the potential impact of its guidance and to assess whether there will be a beneficial effect for consumers and competition.

The MBG would also like reassurance that Ofcom have taken proper account of the upcoming Unfair Trading Regulations. It is widely acknowledged that these regulations are the most important reform in general consumer regulations for a generation. They set a new benchmark for fair and proper treatment of customers, particularly in relation to the provision of information prior to a commercial transaction, whereby a customer must be given *"the information which the average consumer needs, according to the context, to take an informed transactional decision"*.

The MBG requests that Ofcom fully explains how it sees its guidance to be compatible with these aspects of Unfair Trading Regulations.

¹ <http://www.berr.gov.uk/files/file44372.pdf>

Early Termination Charges (ETCs)

The second aspect on which the MBG would like to focus is Ofcom's proposals for dealing with early termination charges. It appears to the MBG that the proposals run counter to the views of operators, consumers and academia.

First, the operators do not agree with Ofcom's analysis that early termination charges are separate to minimum contract terms and therefore deemed "non core" and subject to the test of "fairness". These so-called "early termination charges" are in fact standard retail charges. Furthermore Ofcom seems to take no account of the cost of subscriber acquisition. A free (or heavily subsidised, if the customer wants a high-end phone) is available with pretty much any pay monthly contract). A prepaid option is always available for those that don't want heavily subsidised phones. By artificially differentiating between MCPs and ETCs, Ofcom is making a fundamental intervention into the mobile market.

Secondly, from the information presented to Ofcom, it would seem that the customer would expect to honour his or her contract and has no expectation of cancellation charges that are lower than are currently offered by the mobile operators. Figure 2.2 shows a very high awareness of the minimum contract term (70%). In paragraph 5.32 Ofcom states: *"The vast majority felt that once signed the contract should be honoured and ETCs were, by and large, accepted if the provider had kept up their side of the contracts."*

However, if the provider did not provide the service as originally agreed, then consumers felt they should have a right to leave the contract without penalty."

Moreover, Ofcom seems to be receiving about 60 complaints a month in relation to MCPs and ETCs on mobile. Ofcom highlights the main sources of complaints across all platforms as:

- consumers dispute the termination charge because, for example, they have received poor (or no) service from their provider;
- consumers claim they were not informed they were signing up to a contract which had a minimum contract period;
- consumers complaining about the unreasonableness of the length of the MCP.

Although Ofcom does not give a break down, it is fair to deduce from these statements that the number of customers that leave a contract early (for reasons other than poor service) and who believe the absolute levels of ETCs are unfair, must be tiny.

They certainly do not provide adequate evidence for the radical shake-up of ETCs - and therefore the entire structure of the retail market - being proposed in the Guidelines.

Thirdly, the MBG believes that recent academic research (published under the auspices the Office of Fair Trading's Economic Discussion Papers) would not support Ofcom's approach on ETCs:

"Likewise, excessively onerous notice periods or early contract termination payments seem a fairly clear cut area for intervention, unless the supplier has made specific durable investments which need to be recovered via a long-term

contract (such as offering a free mobile handset in return for twelve months guaranteed service).²

In conclusion, there does not appear to be any expectation among customers or economic justification for changing the arrangements existing in the markets to deal with customers that voluntarily leave contracts early. There is a clear understanding among customers that the justification for minimum contract periods is to allow time for the pay back of the operator's initial investment. There is no compulsion, coercion or misleadingness involved. The arrangements for early termination are clearly set out in customer terms and conditions. Furthermore, we would stress that customers always have the choice to take out prepaid services with no minimum contract periods.

The MBG requests that Ofcom amend its guidance to make it clear that there is no intention to make an intervention into the conditions that prevail in the market for contract mobile phone services.

Yours sincerely,

Hamish MacLeod

Hamish MacLeod
Mobile Broadband Group

² http://www.ofcom.gov.uk/shared_ofcom/economic_research/ofcom991.pdf