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Dear Sarah

**Ofcom review of additional charges**

I am writing to provide SSE's comments on the above consultation. Whilst primarily an energy company, SSE entered the retail market for the provision of fixed-line telephony services a few years ago and is now preparing to launch a retail broadband product – all based on use of the underlying regulated wholesale products.

Our general comments are set out below, with more detailed comments on the wording of the draft guidance set out in an appendix.

General Comments

We welcome Ofcom's approach in developing and issuing guidance on the application of the Unfair Terms in Consumer Contracts Regulations 1999 on detailed matters specific to the communications market. From the evidence that Ofcom has gathered, there does generally seem to be some confusion amongst customers on the types of retail charges that might apply to them. In particular, our experience of entering the market has been that many customers do not realise they are "tied in" to a contract, still less that they would be subject to termination charges on transferring their service to another supplier and we agree with Ofcom that there can be an adverse effect on competition if these charges are not clear to customers at the outset

We believe that the proposed guidance will clarify the obligations and behaviours that Ofcom expects of suppliers in the market in a helpful manner and we support Ofcom's intended approach to enforcement action in the identified priority areas that most affect customers and/or competition. In general, we support approaches to policy issues where Ofcom sets out guidance rather than seeks to impose prescriptive detailed obligations in General Conditions, which tend to drive regulatory and compliance costs across the whole industry.

In our detailed comments, we have highlighted an issue where an element of the best practice guidance being proposed (notification of termination charges etc) interacts with another initiative to promote competition in the communications market – the development of a single migration process. We mention this so that consistency can be maintained across both initiatives in terms of best practice in how losing providers make contact with customers after they have decided to switch.

Finally, we support Ofcom's intention to develop a "customer checklist" to help customers assess contracts that they are being offered.

We hope these comments and the attached appendix of detailed comments are useful and would be happy to discuss any of them further.

Yours sincerely

Aileen Boyd
Regulation Manager

Appendix 1

Detailed Comments on Draft Guidance

We have set out below some further detailed comments on the proposed wording of the draft guidance set out in Annex 5 of the consultation document.

General Points

- Direct Costs
  We note that some parts of the guidance on non-core terms require only the "direct costs incurred" to be included in charges (e.g. A5.49) and some similar parts of the guidance refer to "actual, specific direct costs incurred" (A5.106). We wonder if there is intended to be any difference in what charges are effectively felt to be fair in these two cases and if so, it would be helpful to have some explanation of this in the guidance.

- Use of term "supplier"
  We support the use of term "supplier", introduced at paragraph A5.11 to describe communications providers who provide retail services to end customers. We believe that this term is a good description of the role and would be a helpful term to use more widely in the communications market - for example in the current re-wording of the General Conditions. More general terms such as "service provider" tend to mean different things in different contexts and do not necessarily signal the end customer relationship in the way that the term "supplier" does.

- Making Customers aware of termination type charges at point that customer is considering a switch of supplier
  There are a number of types of charges in Ofcom's review that would only come into play when a customer is, or might be, considering switching to a new supplier. These are early termination charges, those associated with any minimum notice period and cease charges. In all these cases, Ofcom includes proposed best practice guidance that "suppliers make it very clear to consumers [what the charge is] at the point at which the consumer is considering terminating their contract."

  However, in fixed line telephony, there is a history of Ofcom being concerned that customers were being called during the transfer period by some losing suppliers to dissuade them from switching supplier. As a consequence, this activity was ruled by Ofcom in various cases to be inconsistent with the provisions of General Condition 1.2.

  The proposed new guidance therefore appears to be at odds with existing rules on customer contact. The question of what sort of contact with a customer a losing supplier should have has also been discussed as part of the development of a single migration process for transferable products in the mass market such as fixed line telephony. We support the requirement on losing suppliers to set out clearly for customers what the financial implications of terminating their contracts will be. However, we believe that this should be done clearly at the start of the contract and, in the context of the current rules on customer contact, not specifically at the time that a customer is considering switching unless by some neutral means such as a standard letter.

It would therefore be helpful if the proposed guidance addressed this point by clarifying in the best practice comments what ways of making customers aware of the relevant charges would be acceptable.

Specific Sections of Guidance

- Non DD charges
  We understand Ofcom's wish to promote clarity on what charges apply for a particular method of payment. We have one comment on the position of suppliers like ourselves who wish to provide their service for a direct debit payment only, but who do accept other payments if the original direct debit mandate is not maintained by the customer. In these circumstances, the supplier would wish to make an additional charge to cover the additional payment processing costs but would not wish to highlight these particularly at point of sale, although we accept that they would be non-core terms and therefore subject to the test of fairness.

  Paragraph A5.34 of the proposed guidance acknowledges that some suppliers only accept a limited range of payment methods. To reflect the discussion above, we suggest that it would be helpful for this paragraph to include a comment similar to that made at paragraph 4.18 of the document in the discussion of late payment charges that "it would not generally be expected that suppliers highlight these type of charges as part of their general marketing" and indeed, there is a similarity between default charges and those which a supplier would wish to apply where the payment method that forms part of the contract is not adhered to by the customer. Thus we would propose changing paragraph A5.34 of the guidance to read:

  *A5.34 Some suppliers only accept payments by a limited range of methods, typically direct debit and/or credit card. Where these suppliers make an additional charge when a consumer fails to adhere to the offered payment method, it would not generally be expected that these charges would be highlighted as part of general marketing.*

- Default charges - no comment.

- Minimum Contract Period (MCP)/Early Termination Charges (ETC)
  We support Ofcom's guidance in this area and that of subsequent MCPs and ETCs and agree with Ofcom's assessment at paragraph 5.61 of the document that these features of the market have the effect of dampening competition in the market. On entering the fixed line market in recent years, we have found that a significant proportion of customers are unaware of an MCP they were subject to and the ETC they were subsequently charged on deciding to switch. We believe that the discovery of this fact leads to many customers deciding to change their mind about switching supplier and, if they happen to contact their current provider first, these cases can end up as a significant portion of the

Cancel Other statistics and thus muddled with potential mis-selling levels.

We understand and accept that MCPs are appropriate where customers are provided with equipment and the proportionate costs are recovered evenly over the MCP with an ETC covering the outstanding cost if the customer terminates the contract before the minimum term. This is generally the case in the broadband market although we have found it hard to find out information on termination charges in this market in recent months. Greater clarity of charges should remove a perception that the customer is being penalised for switching and therefore place the customer in a better position to choose whether a new deal is worth accepting reasonable losses from previous arrangements.

These considerations seem less relevant in the fixed line telephony market and here, we agree with Ofcom that it is important to consider the effect on competition that MCPs and ETCs have. We believe widespread existence of MCPs/ETCs in this market dampens customers' willingness to switch, leads to customers changing their mind about switching and reduces the incentives on new firms to enter the market due to the perceived barrier to entry that this situation (of many customers being "locked in") represents.

We note that Ofcom's discussion on ETCs brings in the differing position of vertically integrated suppliers and suppliers using wholesale products in terms of assessing the relevant costs which are saved if a customer stops taking a service. The difference relates primarily to the network costs, which in the case of the latter type of supplier is a transparent wholesale charge that can be terminated according to the terms of the relevant wholesale contract. In the case of a vertically integrated supplier, that charge is not necessarily transparent, although we welcome Ofcom's clarification at paragraph 5.84 that BT Retail would be expected to assess discount levels on access network charges on similar levels to other wholesale-based suppliers. We support Ofcom's intention to make further assessments of the appropriate avoided costs to consider in the case of the vertically integrated suppliers of fixed voice and broadband services as part of the consultation process. We agree that Ofcom should satisfy itself that a similar approach to calculation of ETC is adopted across all suppliers, to the extent consistent with the competitive market and the regulatory background.

We would also comment on a point of detail in paragraph A5.70 of the guidance that currently states that the period of notice from BT Wholesale is "never more than seven days". Our understanding is that in the case of broadband, BT Wholesale does require payment for about one month's notice when a customer is ceasing broadband service entirely (i.e. there is no migration to another DSL-based broadband supplier). While this does not affect Ofcom's analysis of considerations for the retail minimum notice period considered in a later section, we believe it does affect what it is reasonable to include in an ETC.

On a minor point, we believe that the reference to paragraph A5.46 in paragraph A5.61 may not be correct.

- Subsequent Minimum Contract Period
  We agree with Ofcom's proposed approach in this section, particularly that it is expected that changes to call packages that do not entail material costs for the supplier would not result in a further minimum contract period. We support Ofcom's intended focus on this area in future enforcement activity.

- Minimum Notice Period (MNP)
  We agree with Ofcom's analysis that unduly long MNPs that make it complex for a customer to coordinate start and leaving dates can deter customer switching and thereby adversely affect competition. We support Ofcom's proposal that, where industry migration processes are in place, MNPs should not be longer than the migration period and should otherwise not be longer than one month.

- Itemised Billing - no comment.

- Cease Charges
  We understand from the document that it is in broadband services that a "cease charge" is most common and we support this being based on wholesale costs to the supplier.