



Sarah Evans
Ofcom
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Dear Sarah

Ofcom review of additional charges

Following our recent meeting on the subject of this consultation, I am writing this short letter in response to it and will expect to engage with you as Tiscali and as an UKCTA member during the process of finalising the guidance. Tiscali regards this exercise as a useful and timely one that will help clarify legal and regulatory requirements in the market and assist compliance across the industry.

Comments that I have at this stage are organised below in categories of charges and terms.

Non-direct debit charges

Tiscali agrees that such charges can be core terms, but only when standards of prominence and transparency are met. Non-core term charges should be fair and based on legitimate cost recovery principles.

Default charges

Tiscali agrees with Ofcom's conclusions on non-core terms, transparency and fairness.

Initial minimum contract periods (MCPs) and early termination charges (ETCs)

Tiscali agrees that MCPs are core terms and that they should be very transparent to consumers. ETCs are non-core terms and should be subject to fairness rules.

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Regarding cost mitigation and ways to calculate reductions in ETCs, it may be that some of Ofcom's conclusions are not safe and this area should be investigated more fully with industry before final conclusions are made. Elements of network cost downstream of the local access network tend to be fixed in nature, or 'lumpy' at best (large steps in cost increments). It is not true to say that such costs are easily avoidable when single connections are terminated and it would be very difficult to calculate any such increments anyway. It should also be acknowledged that different CP networks have different cost profiles and this fact may have a significant impact on the potential mitigation of costs.

It is potentially wrong to assume behaviour on calls (see 5.78 'average customer') and therefore draw conclusions on costs saved by capacity not used. This error derives from the nature of network costs as mentioned above, as well as from the fact that there is no average customer and is certainly as much of an error as basing ETCs on assumed profits and behaviour (reference 5.70).

A reasonable way of dealing with this issue and accurately reflecting cost mitigation factors is to focus on access costs and ensure clarity in guidelines and rules. Ofcom sets out an initial view of 'discount' rates based on access methods and it will be very important to ensure a good engagement with industry in finalising benchmarks before final positions are taken. Issues that should be addressed will include systems implications and any possibility for deriving average mitigation rates (for example, where a CP has millions of customers across several different network platforms) and the need for accuracy in assessing the fair starting point for any mitigated period (because the speed with which liabilities to network suppliers can be ceased must be reflected in the new regime to avoid penalty to CPs).

Customer connection, set-up and acquisition costs should also be dealt with fairly and consistently in this review of obligations. Ofcom acknowledges recovery of start up costs as relevant to MCPs and ETCs but more should be done to assess these and ensure that CPs are not prevented from recovering fairly when consumers decide to terminate early. These cost elements include equipment, installation and connection costs (third party and internal) and allocated marketing costs (costs of acquisition). If ETCs must be reduced to reflect avoidable network costs, they may also need to be increased to reflect unavoidable set-up costs.

Subsequent MCPs/ETCs

Tiscali agrees with Ofcom's conclusions and approach.

Minimum notice periods

Tiscali generally agrees with Ofcom's conclusions, but would seek acknowledgement that there may be issues with migrations processes controlled by wholesale suppliers and that alignment with such suppliers must always be explicitly covered in guidelines adopted.

Itemised billing

Tiscali agrees with Ofcom's conclusions and approach.

Cease charges

Tiscali agrees with Ofcom's conclusions and approach.

I hope comments given here are useful and that Tiscali can help further during the post-consultation period in addressing key issues such as cost fairness and network effects.

regards

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