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Which? response to Ofcom's consultation helping consumers get better deals in communications markets: Mobile handsets.

Summary

Which? supports the measures set out by Ofcom to ensure that customers are treated fairly when their mobile contracts end and do not face barriers to fully engaging in the market.

- We support the proposals for the swift implementation of relevant European Electronic Communications Code (EECC) provisions removing the linking of split contracts. This will help reduce barriers to switching mobile provider.
- Which? believes that the current practice of continuing to charge for the handset after it has been paid off must come to an end. While we welcome the work that Ofcom has undertaken to reach voluntary agreements with some providers, we are disappointed that up to 20% of out of contract consumers with bundled contracts will be unable to benefit from these measures. We are concerned that this is inconsistent with Ofcom's fairness commitments that all mobile network operators signed up to.
- We support Ofcom's plans to further explore what information would be useful to consumers to receive at the end of the minimum contract period, beyond End of Contract Notifications (ECNs). Ofcom should monitor the information provided to consumers and ensure that it is successfully delivering the desired outcomes.

Introduction

Which? believes that it is essential that communications providers treat customers fairly. Unfair practices can undermine consumer trust in the market. Since 2014, Which? has been calling for transparent mobile handset charges on customer bills and for these charges to be dropped automatically when the handset is paid off.

Therefore, we support measures set out by Ofcom to ensure that customers are treated fairly when their mobile contracts end and do not face barriers to fully engaging in the market. However, we do have concerns about the voluntary nature of the "discounts" for out-of-contract bundled customers. We set out our response to Ofcom's proposals in detail below.

Measures to address concerns about linked split contracts

Split contracts are increasingly popular and can offer benefits to consumers, such as clearer pricing structures. Given their growing prevalence, it is important that the contractual terms do not cause harm by creating a barrier to consumers switching.

Linked split contracts can create a barrier to switching when the consumer is forced to pay-off remaining charges on their handset contract, even if they are out of contract on the airtime element. While some providers already offer split contracts which are not linked, we believe that all consumers with split contracts should be free to switch airtime provider without being faced with substantial one-off payments for the handset.

We therefore welcome the proposal to ensure that customers are not bound by obligations in respect of their airtime or their handset for a minimum contract period of more than 24-months and the ambition to quickly implement this. While we recognise the risk of unintended consequences, the proposed approach is fairer than the existing practice. Ofcom should keep these changes under review as more customers move to split contracts.

Measures to address concerns about bundled contracts

We welcome the work that Ofcom has undertaken to accurately assess the total level of overpayment by out-of-contract bundled customers. Whilst this is lower than previously estimated, it is still a significant level of consumer detriment and we welcome measures to reduce this.

On an individual level, consumers need to understand and be informed of how much they are paying for their handset, airtime and other cost elements of their mobile package. This will help them make informed decisions when engaging in the market. We believe that consumers should receive this clear breakdown of cost elements as part of their monthly bill, not just at the beginning and end of their contract as stated in our response to Ofcom's 'Helping consumers to get better deals in communications markets: mobile handsets' consultation' in November 2018.¹

We welcome the voluntary commitments Ofcom has obtained from some of the industry to apply discounts, or migrate customers on bundled contracts to SIM-only tariffs when their contracts end. However, we are concerned that by their very nature, 100% of the market is not covered, with up to 20% of out-of-contract bundled customers not benefiting from these voluntary agreements, and continuing to overpay.

We note that in particular, the level of overpayment among Three's out of contract customers is considerable and above average according to Ofcom. However, they are a provider who has not agreed to a voluntary commitment for out of contract bundled customers. This is inconsistent with Ofcom's fairness commitments which it has signed up to.² In particular commitment six:

Customers can be confident that fair treatment is a central part of their provider's culture. Companies can demonstrate that they have the right procedures in place to ensure customers are treated well. They keep these effective and up-to-date.

As part of its Fairness for Customers Programme Ofcom has pledged to 'monitoring companies' practices closely and step in where we see firms falling short.' This is a clear example of where this pledge should be applied and Ofcom should be clear about the implications with those companies who fall short of meeting the fairness commitments.

Whilst we are pleased to see that some providers have clarified the specific remedies they will introduce, there should be transparency across the market and Vodafone and EE should confirm the amount of discount they will apply to their out-of-contract customers as soon as

¹ <https://www.which.co.uk/policy/utilities/3076/telecoms-consultation-responses>

² <https://www.ofcom.org.uk/about-ofcom/latest/media/media-releases/2019/broadband-and-phone-firms-put-fairness-first>

possible.

Ofcom should monitor how effective the voluntary agreements are at reducing the number of bundled customers who continue to overpay at the end of their minimum contract. If necessary Ofcom should consider the need for further legislation in line with the recommendations from the Competitions and Markets Authority³ and also reflected in the Governments' 'Statement of Strategic Priorities for telecommunications, the management of radio spectrum and postal service'⁴.

Greater transparency measures

As we argued in our response to Ofcom's discussion paper on its proposed fairness framework, tackling unfairness in this market requires addressing the exploitation of behavioural biases.⁵ We welcome the recognition that a lack of transparency can lead to the exploitation of behavioural biases. Consumers need transparency about the different elements of the bundle they are buying. They also need transparency at the point of sale (and during) their contract, as noted above. We support Ofcom's proposal that:

Before customers enter into bundled mobile contracts, providers must give them information about (i) the prices for which they could buy the handset and airtime from the provider separately; and (ii) the price of their bundle and their alternative options at the end of the minimum contract period.

We agree with Ofcom that further information would not confuse or overwhelm consumers. Given that providers responded that 'there were already high levels of engagement and satisfaction in the mobile market' increasing information should not be an issue. Ofcom should undertake research/monitoring to ensure that the information consumers receive is working for them.

We support Ofcom's plans to further explore what information would be useful to consumers to receive at the end of the minimum contract period. We agree that ENCs will go some way to address transparency but agree with Ofcom that further action is needed. There is also a risk that consumers might not fully respond to ECNs. It is important that Ofcom keeps these under review to ensure that they are working effectively and delivering the desired outcomes.

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/766795/Loyalty_Penalty.pdf

4 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/779226/SSP_Consultation_-_Publication_Version_2_.pdf

5 <https://www.which.co.uk/policy/utilities>