

PROTECTING CONSUMERS FROM MIS-SELLING OF FIXED-LINE TELECOMS SERVICES:

SUBMISSION FROM OFCOM CONSUMER PANEL

1. The Ofcom Consumer Panel has been established to provide independent advice to Ofcom, and any other body the Panel thinks fit, on the interests and opinions of domestic and small business consumers in the communications market place. This response to Ofcom relates only to the interests of consumers, not “citizen-consumers”.

2. Even at this early stage of our work, we are taking the view that a genuinely competitive market cannot be defined simply in terms of the existence in the marketplace of a range of different suppliers. For competitive markets to work in the interests of consumers, those consumers have to be able to make informed choices with a clear understanding of the consequences and appropriate opportunities for redress.

3. The Consumer Panel has concerns about mis-selling in the fixed-line telecoms marketplace and therefore welcomes the current Ofcom review. Our general position is that there is already a more serious problem than seems to be appreciated by Ofcom and that, without appropriate action now by Ofcom, that problem will become significantly worse to the detriment of consumers.

4. The current position essentially concerns the consumer’s right to choose what is called **carrier pre-selection (CPS)** – the facility for the customer to opt for certain defined classes of call to be carried by an operator selected in advance without any special or additional procedures. The new situation relates to the recent availability of a new version of what is called **wholesale line rental (WLR)** – (a regulatory instrument requiring the operator of local access lines to make this service available to competing providers at a wholesale price). Against the background of any concerns we address below the seven questions specifically posed by Ofcom in its consultation document.

5. Question 1: What is your view on whether or not mis-selling of fixed-line telecoms services is a serious problem?

i) We believe that there is already a serious problem and that, in current circumstances, that problem will become markedly worse. The basis for this view is as follows:

ii) We note that paragraph 56 of the consultation document contains a table showing that the total number of complaints made to the regulator in the calendar year 2003 was only 1,322. For the period, 29 December 2003 to 10 March 2004, the Ofcom Contact Centre (OCC) recorded 304 complaints of mis-selling of telecoms service. For the period 1 March 2004 to 17 May 2004, the OCC recorded 366 cases of what it calls ‘slamming’.

iii) The latest data, therefore, suggests that – on the basis of complaints to Ofcom – we are looking at an annualised rate of complaints of around 2,000, so the problem *is* worsening.

iv) The same table in paragraph 56 shows BT records of unfair trading incidents (UTIs). From this, one can see that the number of UTIs involving customers cancelling CPS orders within the 10 day transfer period has risen from 0.08% of total orders in January 2003 to 3.4% in January 2004.

v) However, we are aware that BT each month supplies Ofcom, its Consumer Interest Group and the industry with data relating to cancellations in respect of carrier pre- selection (CPS) and we are surprised that use was not made of this data to quantify the problem for the consultation document.

vi) The latest data of this kind suggests that cancellations are running at a rate equivalent to around half a million a year or almost 10% of the total. Of course, not all of these cancellations represent mis-selling. However, the data suggests that around half of cancellations – representing around a quarter of a million cases a year – are the result of inappropriate or confused transfers or straightforward mis-selling.

vii) Since the absolute number of cancellations and the percentage of all transfers resulting in cancellation are both on a pronounced upwards trend, we believe that it is necessary and timely to introduce stronger methods of consumer protection.

viii) The experience quoted above is based on the availability of CPS; now that the Wholesale Line Rental 2 (WLR 2) product is available (it was soft-launched by BT in March 2004), the incidence of mis-selling may well increase. Ofcom should act now to minimise the risk of this.

ix) Mis-selling in the fixed telecoms market should not surprise us:

- the transfer of telephone service provider is a process invisible to the customer unlike changing a physical product
- the American experience shows us that the Federal Communications Commission had to intervene to introduce compulsory verification of orders and appropriate financial penalties
- the UK experience of energy competition shows the risk of mis-selling (Energywatch had over 50,000 complaints in 2002/03)
- the March 2004 study by the Office of Fair Trading on “Doorstep Selling” suggested that further remedies were necessary to combat sharp practice.

x) It might be argued that the actual harm to consumers is relatively small compared to – for instance – mis-selling of some financial products, but all the evidence from the energy industry and the OFT is that such malpractice conducted on the consumer’s doorstep or in the consumer’s home is often deeply upsetting. It tarnishes the industry and – as this unpleasant consumer experience becomes better known to other consumers - undermines the prospects for successful competition and genuine consumer choice.

xi) The final point that we would make here is the need for Ofcom to monitor the consumer experience closely, to pool together all the available data on mis-selling to guide its thinking and to make that data publicly available.

6 Question 2: Which of the two regulatory options listed in section 5 do you support, and why?

i) We are quite clear that the current arrangements and procedures, based fundamentally on a voluntary code of practice, are inadequate to protect the consumer and that, without a significant change in these arrangements and procedures, more consumers will suffer detriment as mis-selling becomes more extensive. Consequently we favour guidelines on sales and marketing being made mandatory and we would welcome a further debate about the adequacy of such guidelines and the provisions for enforcement.

ii) We would not expect any reputable and responsible supplier of telecoms services to oppose the application of such guidelines and we do not see why the costs involved should be unreasonable. Those companies already complying with the voluntary code will experience no additional costs and those who have not already adopted it should regard the minor costs as part of the cost of doing good business and offering a good consumer experience.

iii) We support making the voluntary code of practice mandatory, but the current code is far from a perfect document. We would want to see it revised to incorporate all the elements needed to make it comprehensive and effective and would suggest careful revision using the best advice of the Office of Fair Trading (OFT) on such consumer codes.

iv) Among those elements which need to be addressed are provision of clear and accessible pre-contractual information, provision of clear terms & conditions in the actual contract, clear information on cancellation rights, information on additional assistance for vulnerable consumers, establishment of compliance audits, establishment of an appropriate range of sanctions, and independent disciplinary procedures in the event of non-compliance.

v) Furthermore, although we support the idea of a mandatory code of practice, we were surprised and disappointed that the consultation document only offered two options (one of which was no change). We suspect that further improvements could be made to the customer experience of CPS/WLR. We will look at other submissions to see what suggestions are forthcoming and we encourage Ofcom to be open-minded about further changes.

7 Question 3: Should Ofcom's policy on 'no cost' cancellation relating to WLR be extended to CPS?

It should. This is partly a matter of equitable treatment of customers for a particular service and partly a matter of providing fair treatment of consumers of all services.

8 Question 4: What is your understanding of the term ‘no cost’ cancellation?

The consultation document states: *“Ofcom notes that there has been significant debate at industry meetings in relation to what is meant by ‘no cost cancellation’”*. This is an unhelpful statement without further detail. Our understanding is ‘no cost’ cancellation means that consumers changing their mind should not incur penalty charges or any administration costs from the ‘losing’ company. This is no more than standard practice in most consumer markets. We fail to understand why there needs to be much debate about this basic proposal.

9. Question 5: Does anything need to be done in relation to the availability of the Consumer Guide?

We welcome the development of the combined consumer guide for CPS and WLR, but we are quite clear that simply putting this information on the Ofcom web site will be far from sufficient. The provisions of the guide should be available to consumers as part of the sales process, so that consumers have the information they need at the time and place where they need it. The cost of this practice should be minimal for any responsible company.

10 Question 6: Is there a need for further material to be made available for consumers as part of providers’ sales process?

Information about the nature of the transfer and the consumer’s cancellations rights should be provided in writing at the point of sale, before the transaction actually takes place. This information could be included in the Advice of Transfer letter but, by then, the transaction is already underway. It is therefore too late in the process.

Another possibility might be the provision of a small laminated card notifying the consumer of the web site of Ofcom and the telephone number of the Ofcom Contact Centre in the event that any problems occur.

11 Question 7: What is your view on the benefits of establishing an industry-wide initiative and/or guidelines on particular areas of concern to run along side the published guidelines on sales and marketing codes of practice?

We believe that the mis-selling issue should be seen as part of a wider problem of unwanted sales and transfers. This has the potential to confuse consumers. Therefore, while we would not want to give blanket approval in advance of a co-regulatory model, we would welcome the proposed initiative which would be in the spirit of Ofcom’s promotion of co-regulatory remedies. However, it is essential that the consumer interest be built into the initiative, including full use of Ofcom’s CPS/WLR Consumer Interest Task Group, and that it has real focus.

June 2004