

## A6. Proposed guidance on Contract Information and the Contract Summary

A6.1 This Annex sets out proposed guidance on conditions C1.3-C1.7 which we discuss in section 4. We are proposing to add this guidance to the existing guidance on Condition C1.1

### Guidance on Conditions C1.3-C1.7 – Contract Information and Summary

A6.2 Conditions C1.3 to C1.7 set out requirements on providers with respect to the information that they must provide to consumers and other relevant customers<sup>2</sup> before they are bound by a contract for electronic communication services. This information should become an integral part of the contract, along with the Contract Summary required under Conditions C1.5-C1.6. These conditions apply to all providers of ECSs, except in so far as they provide Machine-to-Machine Transmission Services, as defined in the GCs. Additional information requirements also apply to providers of certain types of services, such as Internet Access Services (as specified in the Annex to Condition C1).

A6.3 This part of the guidance outlines Ofcom's expectations as to when and how the information in the Annex to Condition C1 and the contract summary should be provided and further specifics on the information that should be provided in compliance with those conditions. This guidance is not exhaustive, and the full list of information which needs to be provided before a customer is bound by a contract is set out in the Annex to Condition C1.

### How the Contract Information and Contract Summary is provided

A6.4 Conditions C1.3 and C1.4 require providers to provide the specified contract information in the Annex to Condition C1 *"before the customer is bound by a contract"* and *"at a time that reasonably allows the customer to make an informed decision"*. This information is required to be provided in a clear and comprehensible manner and on a Durable Medium. Where provision on a Durable Medium is not feasible, it has to be made available *"in an easily downloadable document"* and the provider shall *"expressly draw the attention of the Relevant Customer to the availability and importance of downloading that document."*

A6.5 Conditions C1.5 and C1.6 also require CPs to provide the Contract Summary within the same time frame as the contract information.

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<sup>1</sup> This guidance is currently available here: [https://www.ofcom.org.uk/data/assets/pdf\\_file/0016/112282/guidance-under-general-conditions-c1-contract-requirements.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0016/112282/guidance-under-general-conditions-c1-contract-requirements.pdf). We are also proposing amendments to this guidance as part of this document as set out in Annex 7 and discussed in section 6.

<sup>2</sup> These conditions apply to consumers, microenterprise and small enterprise customers, and not for profit organisations. We refer to these customers throughout this guidance as 'relevant customers'.

- A6.6 The purpose of these requirements is that consumers should be able to make comparisons between offers and informed choices about what to buy. To help fulfil that purpose, the European Commission has prepared a template for the Contract Summary which providers must use.<sup>3</sup> With the purpose of the requirements in mind, in complying with them we expect providers to supply customers with clear and understandable Contract Information and the Contract Summary at a point in the sales process where a customer has made an initial selection of services. For example, for offers made online, the appropriate point in the sales process might be the webpage displaying the basket of services the customer has selected, i.e. before the customer reaches a stage of entering their payment details.
- A6.7 A Durable Medium is defined in the GCs as: “*paper or email, or any other medium that: (a) allows information to be addressed personally to the recipient; (b) enables the recipient to store the information in a way accessible for future reference for a period that is long enough for the purposes of the information; and (c) allows the unchanged reproduction of the information to be stored;*”
- A6.8 Examples of a Durable Medium could therefore include a print-out of the information (for customers’ purchasing services in-stores), an email, letter, or a personalised downloadable pdf (e.g. available via an online account or sent via SMS). Of particular importance is that it is a format that allows the customer to store the information so that it can be reproduced in an unchanged format at a later point in time.
- A6.9 Where the CP decides to make the contract information available via a downloadable document (e.g. a non-personalised pdf), they should expressly draw this document to the customer’s attention with a message which makes clear that the document needs to be downloaded for the customer’s future records.

## Details of Contract Information

- A6.10 The Annex to Condition C1 sets out the full list of Contract Information providers are required to set out before a customer is bound by their contract. Below we provide guidance on certain elements of that list of Contract Information.

### Core subscription prices

- A6.11 In all cases, the Contract Information must include the core subscription price.<sup>4</sup> In some contracts, that core subscription price is structured so that it is £X for part of the contract period and £X + a measure determined by an inflation index (e.g. £X + the retail price index (‘RPI’) or £X + the consumer price index (‘CPI’)) for a later part of that period. In accordance with the guidance on contract modifications,<sup>5</sup> specifying the price this way in their contracts, and at the point of sale, means that providers are not required to give customers a right to exit their contract without additional charge when the price uplift takes effect in the later part of the contract period. The following guidance sets out how Ofcom expects

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<sup>3</sup> [link to EC Contract Summary Implementing Act to be added once published]

<sup>4</sup> Core Subscription Price’ is defined in the GCs as: “*the sum (however expressed in the contract) that the Subscriber is bound to pay to a Communications Provider at regular intervals for services and/or facilities the Communications Provider is bound to provide in return for that sum. It does not include sums payable for additional services or facilities (or the additional use of services or facilities) that the Subscriber is only liable to pay for if the additional service or facility is used*”;

<sup>5</sup> Annex 7, paragraph A7.54.

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providers to tell consumers about these sorts of prices in the Contract Information for the purposes of Condition C1.3.

A6.12 Table A, clause 3(a)(i) in the Annex to Condition C1 requires providers to set out “*the Core Subscription Price*”. In complying with this requirement, where a CP is offering a package in which the Core Subscription Price is set out on the basis described in the paragraph above, the different prices that apply at different points during the contract period need to be set out clearly, and in an accessible way, such that the customer has an indication of how the relevant inflation index might affect the price they will pay.

A6.13 This means that stating that there will be an (unspecified) uplift to the core subscription price in line with a particular inflation index is unlikely to be sufficient. For example, text which states “*In April 2020 your price will increase by an amount equal to the RPI rate published in March of that year*” does not make clear to the customer what the impact on their core subscription price will be.

A6.14 Instead, we expect providers to provide an indication to the customer of how such a price term would affect the price they will pay. If the increase is by reference to an inflation index, then providers should use the most recent value of that index by way of example.

A6.15 As an example, this additional clarification could read:

*“For example, using last year’s RPI value of 2%, this would mean your monthly price of £40 would increase to £40.80 from April 2020”.*

A6.16 In setting out the Core Subscription Price (however structured), as well as stating the price the customer will pay during any Commitment Period, we also expect providers to set out:

- a) the expected price (or a cross-reference to the relevant ‘list’ price) the customer would pay after the end of the Commitment Period (where there is a change); or
- b) that the customer will continue to pay the same Core Subscription Price after the Commitment Period has ended.

### The price of individual elements of the bundle

A6.17 Table B, clause 3(a) in the Annex to Condition C1 requires CPs to set out “*the price of individual elements of a bundle, to the extent they are marketed separately*”.

A6.18 In complying with this requirement, a provider should set out these prices where it makes individual elements of a particular bundle (including any terminal equipment) available for separate, stand-alone, purchase. The provider need only set out these prices for those parts of the bundle it sells separately. If the provider does not sell individual elements of the bundle on a stand-alone basis, it does not need to set out the price of those particular elements.

A6.19 For example, where a provider sells a bundled contract comprising a handset and airtime contract, but also makes handsets and/or airtime contracts (SIM-only) available for individual purchase, it must set out:

- a) the total price of the handset if it were to be purchased separately from that provider; and

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- b) the monthly price of the airtime contract if it were to be purchased separately from the handset as a SIM-only deal.

A6.20 Providers should use a SIM-only deal which is as closely equivalent as possible to the airtime service included as part of the bundled mobile contract. In adopting a method for identifying this equivalent service, CPs should ensure they take a reasonable, and objectively justifiable approach. In particular, providers could:

- a) where possible, use a package with at least the same amount of minutes, text and data;
- b) where an exact match is not possible, match to the closest available allowance. This could either mean increasing or decreasing one or more elements of the package to whatever is the nearest closest allowance available.

*Separately to the above, and in addition to complying with the relevant obligations in consumer law, we consider it **good practice** for providers to include the information described in paragraph [A6.19] at an earlier stage in the customer's purchasing journey than outlined in paragraphs [A6.6]. For example, on online platforms it could be listed on the relevant webpage setting out the main elements of a particular offer (without necessarily requiring the customer to click through to an additional separate page or pop-up box to access it).*

### Contract duration and conditions for renewal / termination for bundles

A6.21 This requirement is particularly relevant for non-coterminous linked contracts i.e. linked contracts with commitment periods that do not align. Linked contracts refers to two or more contracts which contain dependencies such that termination of one contract triggers an impact on the other. We refer to linked contracts because this is the most common form of non-coterminous bundles. We would also, however, apply the same approach in this part of the guidance to bundles of services and equipment that are on the same contract but where the commitment periods do not align.

A6.22 In complying with their obligations, we would expect providers of non-coterminous linked contracts to:

- a) make clear to customers that the linked contracts have commitment periods that will end on different dates; and
- b) set out what would happen to the different contracts if one contract expired, or was cancelled or renewed by customers. Specifically, we would expect providers to explain whether cancelling one contract will affect the functionality, price or contract terms of a linked contract.

A6.23 We would expect providers to provide the above information to customers:

- a) when they enter into non-coterminous linked contracts at the same point in time; and

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- b) when they enter a contract for the provision of an additional service or terminal equipment with a different end date to their existing contract with the same provider, such that they become bound by non-coterminous linked contracts.<sup>6</sup>

### Information on conditions on terminal equipment

A6.24 Table B, 2(a) in Annex 1 to Condition C1 requires providers to give the customer information on *“any conditions, including fees, imposed by the Regulated Provider on the use of Terminal Equipment, such as any Handset Locking restrictions”*. In complying with this requirement, if a provider sells or provides a locked handset so that it cannot be used on another mobile network, then the CP would be required to tell the customer that their device is locked before they purchase it. We would also expect the provider to clearly set out what this means, when the customer can unlock the device (or when it will be automatically unlocked), and any fees that would need to be paid to unlock it.<sup>7</sup>

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<sup>6</sup> We note that proposed Condition C1.12 specifies that providers shall not extend the duration of a contract for the provision of a service where the customer subsequently purchases an additional service or terminal equipment from the same provider, unless that provider has obtained the customer’s express consent. In these circumstances, in order to comply with their obligation, providers will have to ensure that they have adequately informed the customer about the extension of the duration of the original contract and that the customer has agreed to it.

<sup>7</sup> [In the event we proceed with our proposal to stop providers selling locked devices, as discussed in section 8, this paragraph of the guidance will apply from 21 December 2020 until the ban comes into effect.]