

A9. Proposed new guidance on non-coterminous linked contracts

A9.1 [Condition C1.8, says:

"Without prejudice to any Commitment Period, Regulated Providers shall ensure that conditions or procedures for contract termination do not act as disincentives for Relevant Customers against changing their Communications Provider".

A9.2 For the purposes of Condition C1.8, "Relevant Customers" are residential customers, microenterprise and small enterprise customers and not for profit organisations. We refer to these as "customers" in this guidance. "Regulated Providers" are providers of public electronic communications services.

A9.3 The rules in Condition C1.8 also applies to bundles with at least an internet access service or number-based interpersonal communications service.]

A9.4 This [draft] guidance outlines the approach that Ofcom would expect to take when assessing certain types of bundled contracts with commitment periods that do not align under this Condition.¹ Any decision to open an investigation, and the outcome of any investigation, would depend on the specific circumstances of each case.

A9.5 Specifically, this [draft] guidance is concerned with bundled contracts that have the following characteristics (we refer to these as '**non-coterminous linked contracts**')²:

- the contracts concerned are linked contracts, i.e. they present dependencies such that termination of one contract triggers an impact on another contract;
- the commitment periods for the relevant contracts do not align, (regardless of whether the contracts were taken up at the same or at different points in time); and
- the contracts include the provision of at least one Internet Access Service or publicly available Number-Based Interpersonal Communications Service and the relevant dependency exists between one of these services and another element of the bundle.

A9.6 We focus on contracts that are separate but linked, because this is the most common form of non-coterminous bundles that we see. But we would apply the same approach to

¹ Condition C1.8 applies to providers of Public Electronic Communications Services (other than Number-independent Interpersonal Communications Services and Machine to Machine Transmission Services). In this guidance we refer to them as "providers".

² Our [proposed] definition of a bundle in [section 3 of our consultation on [Fair treatment and easier switching for broadband and mobile customers: proposals to implement the new European Electronic Communications Code](#)] refers to public electronic communications services and other services and/or terminal equipment sold or provided by the same CP under the same or closely related or linked contracts. Nothing in this guidance should be understood as seeking to define the term bundle in an exhaustive way. There may be other relationships between services and/or terminal equipment that mean that non-coterminous contracts fall within the definition of a bundle. However, non-coterminous contracts that are not linked are not captured by this guidance.

bundles of services and equipment that are on the same contract, where the commitment periods do not align.

- A9.7 The following are examples of dependencies between different elements of a bundle:
- **A technical dependency** where a customer would lose, or be impaired in using, one element of the bundle when terminating a contract for another. For example, if a customer has a broadband service which only works if they also take a landline service from the same provider. This would mean that if the customer cancelled their landline service, they would no longer be able to use the broadband service.
 - **A contractual dependency** where there are links between the rights or obligations for the provision of different elements of the bundle. For example, a customer might purchase both airtime and a mobile handset at the same time from the same provider under two different contracts but with terms that link those contracts.³ We refer to these as 'linked split mobile contracts'.
 - **A financial dependency** where any prices, tariffs or charges for the provision of one element of the bundle are contingent on taking another element, e.g. a monthly discount for mobile customers who also take fixed broadband from the same provider, which is then removed if the broadband contract is cancelled.⁴
- A9.8 These examples are non-exhaustive. There might be other types of dependencies that exist; and new types of dependencies may appear in the future as communications markets evolve.
- A9.9 This [draft] guidance applies to non-coterminous linked contracts for residential customers. It also applies in relation to other groups of customers who are likely to have similar bargaining positions, such as micro enterprises, small businesses and not for profit organisations.
- A9.10 This [draft] guidance should be read in conjunction with [section 9 of our consultation document on [*Fair treatment and easier switching for broadband and mobile customers: proposals to implement the new European Electronic Communications Code*](#)] which provides further background to this guidance.

Some non-coterminous linked contracts may act as a disincentive to switch

- A9.11 Non-coterminous linked contracts can take many different forms and the likely impact of these contracts will vary. Some consumers might value the flexibility of having different elements of a bundle with commitment periods that end at different points in time. Under some circumstances however, non-coterminous linked contracts may result in harm by acting as a disincentive for customers to switch provider.

³ These terms may include a requirement that if the customer ends their airtime contract, they must also pay the remaining balance due under their handset contract in full as a lump-sum. There would also be a financial interdependency here too.

⁴ More than one dependency might exist in the same bundle.

A9.12 The likelihood and extent to which harm might arise will depend on the specific circumstances in question. We set out below some of the key factors that we would be likely to take into account in any assessment, alongside any other considerations which may be relevant in the circumstances.

Assessing the overall impact on customers

A9.13 To understand whether, in practice, customers are adversely affected by non-coterminous linked contracts, and if so, the scale of the impact, we would consider both the scope for harm and any potential mitigating factors, and make an assessment in the round.

A9.14 We would assess the scope for harm by considering a number of factors in combination. These would include:

- The **strength of dependencies**. Examples of strong dependencies include if the customer is:
 - not able to use one element of the of the bundle without the other because of a technical dependency; and/or
 - faced with a material financial impact, such as losing a discount, if they switched to another provider for one of the elements in their bundle before the end of the commitment period for another element of the bundle.
- The **differences in the end of the commitment periods** between different elements of the bundle. A significant difference between the end of the commitment periods for different elements of a bundle is more likely to cause harm because it is likely to raise switching costs.

A9.15 If non-coterminous linked contracts do not have strong dependencies and significant differences between the end of the commitment periods, they are less likely to result in a disincentive to switch.

A9.16 Where these factors apply, we would further consider:

- the conditions that arise when the customer reached the end of the first commitment period. For example, whether they would be subject to higher out-of-contract prices or be 'locked-in' to their current provider for a material length of time if they sign up to a new contract; and
- whether the complexity of the non-coterminous linked contracts makes it harder for customers to compare deals adding costs to the process of searching for a deal and increasing the risk that customers select a deal that is not good for them.

A9.17 We would also consider any mitigating factors which would lessen our concerns. Mitigating factors could include:

- The potential for efficiencies or other benefits from non-coterminous linked contracts and the risk of unintended consequences from intervening. We would need to establish that both the link between the contracts along with the non-coterminous commitment periods produced benefits for customers.

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- Additional steps taken by the provider at the point of sale to help customers understand the implications of entering into non-coterminous linked contracts. This will depend upon how complex the non-coterminous linked contracts are and what level of support providers gave consumers to help them understand the implications of entering into these agreements, including what happens at the end of the commitment periods.

A9.18 We would be more likely to consider opening an investigation where a number of factors suggest that the circumstances relating to the non-coterminous linked contracts are likely to act as a disincentive to switch.