

Focus Group: - Response to Ofcom's Consultation on Proposals to implement the new European Electronic Communications Code

Focus Group are pleased to have the opportunity to respond to this consultation.

The EU regulatory framework and the subsequent introduction of the General Authorisation Regime has created a diverse and competitive market place in the UK.

We believe it is important to protect consumers and business customers, whilst keeping a fair balance to allow competition and innovation.

With this in mind, we have a number of concerns about certain aspects of the new regulation, particularly as it applies to business customers.

Customer Switching

We strongly support gaining provider led, known as option Y. We believe contacting the losing provider in the option X would be a backward turn. This would be harder to implement, since industry has been more gaining led in the fixed access and broadband market of later years. It also supports ease of switching for consumers and business customers.

Customer Definitions and Scope of Regulation

We are very concerned about the definitions in the new regulations and the adverse effect it will have on competition in the business market.

Furthermore, keeping the existing definitions of Small Business Customer (no more than 10 employees) alongside the new definitions of Small Enterprise Customer and Microenterprise Customer (fewer than 10 employees and turnover to £1.7 million), will cause confusion.

The definitions of Small Business Customer and Microenterprise Customer are not identical which also creates discrepancies and difficulties in interpretation and therefore confusion.

In this case, we ask that these definitions be thought through carefully and with collaborations from industry, and in particular business Communications Providers.

We believe the definitions for microenterprise and small enterprise in the Consultation are directly from the *ceilings* in Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (the "**Recommendation**"). Therefore, for Ofcom to determine.

We would like industry to have the opportunity to explore the need for the ceiling definitions to be used, as it seems there is not a disproportionate amount of complaints in the business market.

We suggest a proper impact assessment should be conducted to include a fully specified cost-benefit analysis and input from relevant experts and those likely to be affected.

Many communication providers themselves fall into the below 49 employee's definition. This should also be seriously considered.

In terms of 'Not For Profit Customers', which covers charities and other organisations which are prohibited from distributing profits or assets other than "for public and charitable purposes". The concern here is that the proposed definition does not limit the size of organisations in scope and, as currently drafted, also includes central and local government and, for example, doctors surgeries, schools and hospitals.

Contract Information and Contract Summary

The new regulation requires that CPs provide the customer with certain Contract Information and a Contract Summary in a format prescribed by Ofcom (and separately to the CPs normal Terms & Conditions). This will apply to Small Enterprise and Not For Profit Customers.

We do not think this position is appropriate, or of value, to business customers and will be difficult for providers to provide, particularly smaller Communication Providers.

Customer Right to Exit Contracts Without Penalty

Ofcom is proposing to change the detail of existing regulation under General Condition C1.6 - so that customers have the right to exit their contract without penalty unless the change(s) exclusively benefit(s) the customer.

It is proposed that this right will also be extended to Small Enterprise and Not For Profit Customers.

We believe that this level of protection is far too broad and is not appropriate or necessary for these larger organisations. We also believe that the approach set out in the current version of the General Conditions, which effectively limits these protections to changes to the Core Subscription Price is a far more practical and proportionate way to provide appropriate protection for smaller business customers and consumers.

It does not seem appropriate that Wholesalers are able to increase prices on non core subscriptions to CPs, but CPs cannot pass this on to end users without fear of losing their customers. This could eventually lead to less smaller providers in the market. A good proportion of the SME market prefer to buy from smaller business Communication Providers because of the bespoke solutions and more flexible products and service. We believe this could have an adverse effect on this area of the market and even lead to end user harm.

Also the right to exit would not work in the business market, where financial leasing agreements are in place with third party leasing companies, at business customers requests. This would need some close consideration and understanding as could cause further confusion.

Non-coterminous Contracts

General Condition C1.8 prohibits "conditions or procedures for contract termination (which may) act as disincentives for Relevant Customers against changing their Communications Provider".

Ofcom has indicated that, in certain circumstances, it would consider the operation of "Non co-terminous contracts", (agreements which are linked but which have different commitment periods) to constitute such a disincentive.

In our experience, these type of arrangements are very often beneficial to business customers, who change their requirements frequently and add and subtract products on a regular basis, and that these protections should, therefore, be limited to Consumers.

Many businesses, and their investors insist on these types of contracts. We feel the timing of this is particularly concerning because most of the business market will be changing some of their services before 2025 and may already be in contracts for other services.

Conclusion

We hope that this response is helpful to Ofcom in its considerations and we would be very keen to discuss our response in further detail.