# Price rises in fixed term contracts.

## Everything Everywhere Limited response to the Ofcom consultation document dated 3 January 2013

14 March 2013

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# Introduction

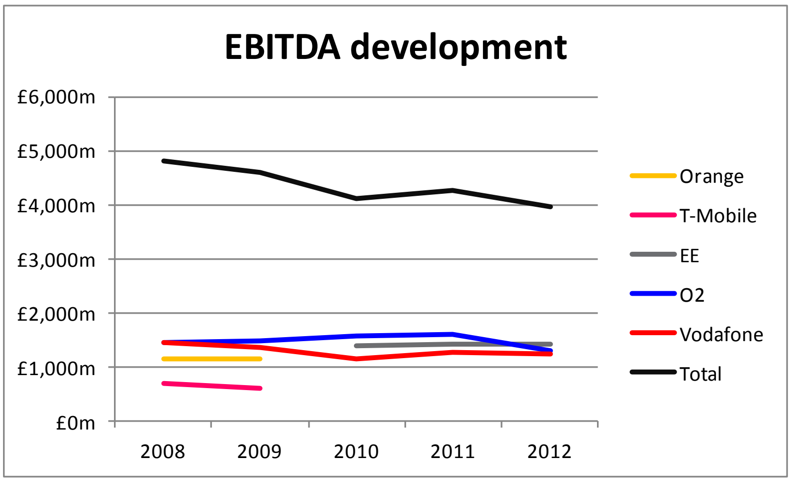
EE welcomes the opportunity to comment on Ofcom's consultation. The mobile market is highly competitive, with high levels of customer satisfaction.

Revenues are declining. The 3G and recent 4G spectrum auctions have seen operators spending around £25 bn to cater for the increasing demand for data services.

A number of quotations taken from Ofcom's latest Communications Market Research[1] and Consumer Experience[2] reports describe the mobile market:

- Ninety-five per cent of mobile users were satisfied with their service in Q1 2012. The average cost of making a mobile voice call fell to broadly the same level as a fixed voice call in 2011;
- For a basket of mobile services, Ofcom's research indicates prices have almost halved in real terms 2006-2011;
- Total mobile revenues declined by 1.9% from 2010 to 2011;
- Over 90% of adults own a mobile phone, while smartphone ownership continues to rise. Ninety-two per cent of UK adults stated that they personally owned a mobile phone, of which 45% said their mobile phone was a smartphone; this is a significant increase in ownership since 2011 (34%);
- Growth in smartphone take-up resulted in increasing use of mobile data services in the year to Q1 2012.

From 2008 onwards, industry EBITDA levels have show a downward trend due to regulatory pressure, competitive pressure and increased costs as evidenced in the graph below.

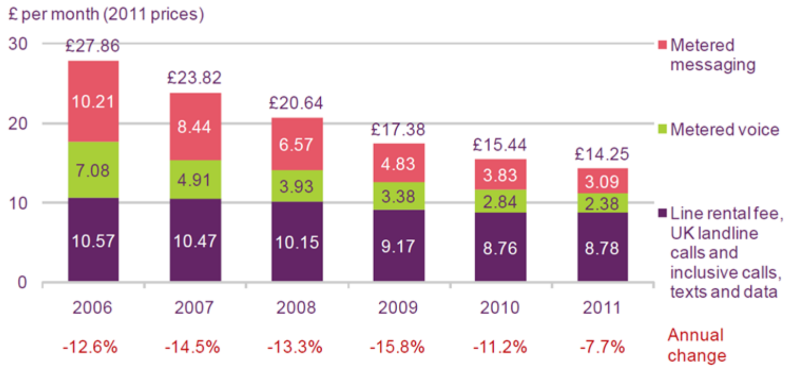



*Source: Internal EE analysis based on publicly available data*

[1] http://stakeholders.ofcom.org.uk/market-data-research/market-data/communications-market-reports/cmr12/
[2] http://stakeholders.ofcom.org.uk/market-data-research/market-data/consumer-experience-reports/consumer-experience/

Yet, competition in the mobile telecoms market has been very effective in driving down the cost of a basket of mobile services, as evidenced by the graph below from Ofcom's Communications Market Research report 2012.

**Figure 5.72 Real cost of a basket of mobile services**




*Source: Ofcom / operators*
*Note: Includes estimates where Ofcom does not receive data from operators; excludes non-geographic voice calls; adjusted for RPI; includes VAT*

Despite the acknowledged competitive nature of the mobile market operators are subject to extensive regulation restricting their ability to recover their efficiently incurred costs and to seek to make a profit.

## Harm

Ofcom fails to quantify the alleged harm related to price increases in fixed term contracts. They solely rely on complaint numbers and high level qualitative observations of the mobile market. A quantitative impact assessment of the options is lacking and the implications, especially of Ofcom's preferred option 4, are touched on very superficially.

## Costs and revenues

Like all consumers and businesses, EE is subject to price increases. Cost categories which have gone up significantly over the past year include:

- Energy costs;
- Costs of sites;
- Rent for our retail shops; and
- Commercial rates.

In addition, there are a number of cost categories which are even further outside our control and which we therefore cannot accurately forecast. These include roaming costs outside the EU, wholesale cost of calls to non-geographic numbers (08 numbers) and wholesale costs related to Premium Rate Numbers. It would be commercially unviable to fix the costs for these services since they could become loss making.

Mobile operators are not only subject to cost increases, but also to revenue reductions. Despite the competitive nature of the market operators are subject to increasing regulation. The regulation by Ofcom and the EU of roaming and wholesale call termination has reduced our revenue, our ability to recover costs from the services which incur such costs and thus profitability and operators have to increase prices elsewhere to continue to recover their efficiently incurred costs and continue to provide innovative services to customers.

## Information

Ofcom makes a number of assertions regarding consumer information and the limited consumer benefits of increased transparency. EE disagrees and believes that relevant information, in the right amount and the right format and medium, should enable customers to make informed transaction decisions. We would like to reiterate, as in our response to Ofcom's draft Annual Plan, that Ofcom should take a more holistic approach to consumer information requirements. We question whether the current information requirements on operators satisfy the needs of consumers. There is duplication between Ofcom's General Conditions as well as an overlap with Consumer Law regarding information requirements. Previously, Ofcom committed to carrying out a review of the General Conditions. We would urge Ofcom to progress this review and start with the General Conditions covering the provision of consumer information.

## Summary view on options

**Option 1: Make no changes to the current regulatory framework**

EE considers that there are two issues with option 1. As set out above under 'Information' we believe that customers are currently faced with too much information which they are unable to absorb. In addition, we question the relevance of some of the information we have to provide. Option 1 would not address the different ways in which operators have interpreted material detriment and implemented that concept in their processes and terms and conditions.

**Option 2: Require greater transparency of price variation terms by CPs and publish Ofcom guidance on application of GC9.6 and the UTCCRs to price rises and relevant contract terms.**

EE believes that greater transparency will be effective in this area, but only if the general issues around the quantity and the relevance of consumer information are resolved. If information about price changes is clear, transparent and easy to find in marketing material and terms and conditions, consumers will be well informed and able to make a transactional decision. Any guidance on material detriment should take place in consultation with industry, and should possibly be in the form of a set of principles, allowing operators sufficient flexibility to implement the guidance, since material detriment is such a subjective issue and can vary widely from one customer to another. Ofcom also needs to acknowledge the marketing expertise of operators, which constantly seek to understand their customers.

**Option 3: Modify GC9.6 so that consumers have to expressly opt-in to any variable price contract offered.**

From April onwards EE will start offering a new, “fix your monthly plan” option for Orange and T-Mobile customers, allowing new and existing customers to choose to ‘fix’ their monthly recurring charge by paying a small uplift. We believe this option, combined with greater transparency (under option 2) should give the customer clear information regarding the different price plans and price variation terms on the one hand and a choice whether or not to fix their monthly charge on the other hand. We do not believe customers should be required to expressly opt-in to a variable contract. With clear and transparent information from the outset, customers will be able to choose between price plans, comparable to the situation in the energy and finance sectors.

**Option 4: Modify GC9.6 so that consumers are able to withdraw from a contract without penalty for any increase in the price for services applicable at the time a contract is entered into by the consumer.**

We consider option 4 to be highly disproportionate especially in light of the lack of evidence and impact assessment put forward by Ofcom. This option could have a serious negative impact on operators’ ability to generate competitively sustainable levels of profitability, as operators may be unable to recover their costs if this option is adopted. In addition, it would not be technically feasible to for EE to support different rate plans for a large number of cohorts for customers. Technical constraints notwithstanding, it may also not be commercially viable to offer some call types at all to customers under Option 4.

If customers can terminate their contracts following any price increase, churn across the industry will increase and we expect operators will forward price, factoring in future cost increases for new and upgrading customers and set those at a higher price level from the outset, reflecting the impact of cost increases during the contract and leading to higher tariffs across the board for customers.

We note that uSwitch highlights the challenges of fixed contracts:

*“However, while clarity and transparency are vital, it’s important that customers aren’t made to pay for them through higher handset costs or more expensive tariffs. Tesco has to maintain the value it currently offers, and not pass on any potential price increases to customers at the start of the contract. Customers also have to be protected from facing a hefty increase in their monthly bill if they want to stick with their plan when their contract ends.”*[3]

Furthermore, Option 4 increases the risk that handset costs, which are recovered over the duration of the contract, may not be recovered. This could have a number of implications.

3 http://phone-shop.tesco.com/tesco-mobile/about-us/press-releases.aspx

- Operators may have to reduce handset subsidies which may make handsets, and especially smartphones, unaffordable for certain customers and which could ultimately have an impact on the digital divide and the productivity of the UK;
- Operators may have to offer completely separate handset and airtime contracts, where handset contracts are likely to fall within the Consumer Credit regime (due to the handset contract having a lease or financing component). As a result customers would need to be provided with and digest additional complex information at the point of sale. The implications for operators in complying with a different, overlapping legal and regulatory regime could be substantial and would result in additional costs, potentially leading to higher retail prices.
- If it is not commercially viable to increase prices for contract customers, prices for pay-as-you-go customers may go up, which could be undesirable in terms of the customer groups most likely to use pay-as-you-go, such as older customers and customers on low incomes, reducing the overall penetration of mobile services.

**Summarising our view of the options, we believe a combination of increased transparency in the form of guidance and the option to offer customers a form of fixed price plan will be sufficient to address the issues set out by Ofcom in the consultation, although we do not agree with Ofcom's assessment of the harm.**

# Response to specific consultation questions

Q4.26: *Do you agree with the consumer harm identified from Communications Operators' ability to raise prices in fixed term contracts without the automatic right to terminate without penalty on the part of consumers?*

## Regulatory and legal assessment

According to Ofcom, consumer harm arises in the following respects:

- Current rules do not meet consumers' expectations;
- Rules leave consumers exposed to unfair surprise;
- Rules do not give consumers the ability to avoid surprises.

Consumers' expectations are driven by the information provided to them about price changes, and the specifics of the information. Provision of information to consumers about prices, price changes and termination procedures is required under several General Conditions (GCs):

- GC9: Requirement to offer contracts with minimum terms;
- GC10: Transparency and publication of information;
- GC13: Non-payment of bills;
- GC14: Codes of Practice and dispute resolution;
- GC 23: Sales and marketing of mobile telephony services; and
- GC24: Sales and marketing of fixed telephony services.

In addition to the extensive regulatory framework, legislation governs how businesses may or may not raise prices to protect consumers from harm:

- Under the Unfair Terms in Consumer Contracts Regulations 1999 a price escalation clause is not de facto an unfair term, but is assessable for fairness. For it to be judged (by a court) as unfair, a price escalation clause would have to cause a significant imbalance in the parties' rights and obligations arising under the contract, to the detriment of the consumer. It is not the case that using a price escalation clause always satisfies these two criteria. Therefore it cannot be that a price escalation clause is de facto unfair. EE would argue that our price rise clause is fair as customers are able to leave without penalty where an increase is greater than RPI. An RPI increase is proportionate as the basket of goods and services to which it relates is of general application and unlikely to generate consumer harm. The term is clear and legible and is not misleading. It is worth noting in advertising and marketing materials that we don't describe our plans as 'fixed term' and rather use the expression 'minimum term' and we don't imply anywhere that the contract price will not go up.
- The Consumer Protection from Unfair Trading Regulations 2008 (CPUTRs) also protects consumers. A commercial practice is unfair if it is not professionally diligent, and it materially distorts, or is likely to materially distort, the economic behaviour of the average consumer. EE does not believe its price rise clauses are in breach of these provisions of the CPUTRs and does not think there is any harm to consumers as a result.

Given consumers already have substantial protection from harm by virtue of existing legislation and regulation in this area, we do not feel that in the majority of cases consumers are in fact harmed by such price increase clauses. In this context, we do not believe that the word 'surprise' as used by Ofcom is either correct or appropriate.

## Information

Whereas most specifics of the required information for consumers are defined, there is currently some uncertainty about what constitutes material detriment. Guidance on material detriment would provide consumers and industry with clarity. This would help consumers to understand which price increase could result in them being materially impacted. We consider that the ability to avoid 'surprises' is already included in the current framework since a right to terminate a contract on the basis of material detriment is part of it.

Rather than changing existing rules, Ofcom should use the existing framework, monitor adherence to that framework and clarify where there is confusion in the market, for either consumers or operators. As a general point, requirements about providing information (including price information) to consumers are included in ten different GCs. The amount of information to be provided to customers is substantial and there is duplication regarding requirements in a number of places in the GCs. Consumer law also has a number of requirements regarding the provision of consumer information, some of which is replicated in the GCs.

Previously, Ofcom committed to a review of the GCs. We are disappointed to see that this commitment has disappeared from the draft Ofcom Annual Plan. EE would recommend a thorough review of the GCs including an assessment of overlaps with consumer law. In particular in this context we would prefer using a more holistic approach to consumer information and an assessment of what type of information should be provided to consumers, at what point in time and in which form. The current approach, where increasing amounts of information are simply added to the already long list clearly does not deliver for consumers. It risks creating an information overload for consumers at the point-of-sale, meaning that information which is truly material to their purchase decision is lost amongst the detailed information being provided on other issues. Perhaps Ofcom should consider an approach based on behavioural economics to provide consumers with the right information in the right form at the right point in time. Traditional economics assumes that individuals make decisions in a rational way. Behavioural economics relaxes this assumption and highlights that individuals are subject to cognitive limitations, impulses and emotions, which can lead to apparent “errors” or “biases” in decision-making. Ofcom have used behavioural economics on a number of occasions, where the issues could be considered to be similar to those arising from this consultation, for instance in research into providing price information to customers.[4]

## Terms and Conditions

Across our brands, our network terms are placed prominently on a customer’s contract. Whether a customer is joining EE, Orange or T-Mobile they will receive a hard copy and be made aware of our network terms at the point of sale. Examples include our retail stores, where the network terms are on the back of the form customers sign up to and our websites, where a link to the network terms is prominent as part of the online sales experience and customers explicitly have to agree to those terms before they can proceed to purchase. Across our brands our terms and conditions provide that:

- If we make changes to customers’ contracts, we will notify customers 30 days before the change;
- Customers can terminate their contract without penalty if price increases are above RPI or if changes are of material detriment to them; and
- Any price change below or up to the level of RPI would not constitute material detriment and would not give the customer the right to terminate their contract without paying a cancellation charge (unless that customer could clearly show they will suffer material detriment even if the increase is not greater than RPI).

Appendix 1 contains extracts of our consumer, small business and Home contract forms and the relevant links to our website.

[4] http://stakeholders.ofcom.org.uk/binaries/research/telecoms-research/experiments.pdf

## Harm

Ofcom's assessment of the scale of consumer harm (4.13 – 4.19) is very high level and qualitative only. We would expect a far more detailed and evidenced approach to assessing the scale of the consumer harm, especially in light of Ofcom's preferred option 4, which we consider to be extremely interventionist. Ofcom's own regulatory principles[5] set out, among other things, that:

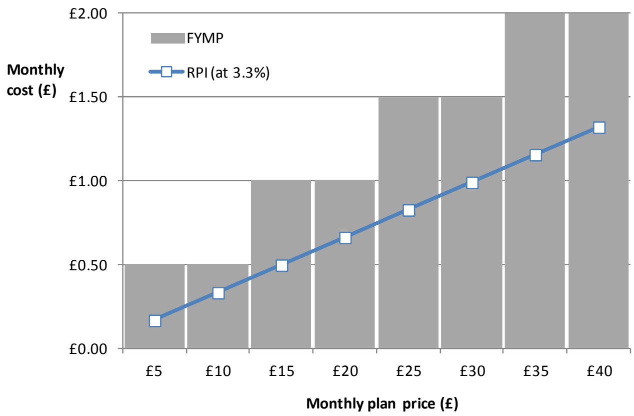
- Ofcom will strive to ensure its interventions will be evidence-based, proportionate, consistent, accountable and transparent in both deliberation and outcome.
- Ofcom will always seek the least intrusive regulatory mechanisms to achieve its policy objectives.

Ofcom appears not to have adhered to their own principles; the proposed intervention is based on a small sample of complaints information alone. Whilst we appreciate that complaints to Ofcom and the Which? campaign may indicate a level of discontent in the market regarding price increases, Ofcom fails to demonstrate the link between these complaints and a decrease in aggregate consumer surplus. An intervention by Ofcom would only be justified if this could be demonstrated. Any such assessment would need to take account of the impacts of operators not being able effectively to recover efficiently incurred costs from customers currently in contract, or raise overall prices to such customers to take account of the risk of this over the life of the contract. This impact on overall contract prices and prices for other customer groups (such as pay-as-you-go) would need to be balanced against quantified benefits of Ofcom's proposed option. No such cost benefit analysis or appropriate impact assessment of Ofcom's preferred option has been undertaken.

One element of such an assessment would be the impact on customers on variable contracts of possible price increases compared with the impact on customers on fixed price contracts. It is rational that operators will charge more to offset the profitability risk of fixed contracts as uSwitch highlight. While we acknowledge that operators will make their own pricing decisions, EE's fix your monthly plan option illustrates the forward pricing and fixed priced premium impact on customers' total cost of ownership.

[5] http://www.ofcom.org.uk/about/what-is-ofcom/statutory-duties-and-regulatory-principles/.

Illustration of monthly cost of RPI increase versus fixed option:




*Source: EE pricing*

As an example, we take a typical customer, 10 months into their contract, with a monthly line rental of £27. An RPI increase under a variable contract would add £0.87 to their monthly line rental, resulting in a total additional cost of £12.17 over the remaining contract duration.

Should the same customer opt for a fixed plan, there would be an uplift of for example £1.50 per month to their contract. Over the life time of the contract, this would amount to £36.

Entering into a fixed term contract would leave the customer almost £24 worse off.

The table below illustrates the impact for a typical 24 month contract.

| Type of contract | Months into contract | Months remaining | Monthly line rental | Cost per month remaining | Cost per customer |
|---|---|---|---|---|---|
| Variable monthly plan subject to RPI | 10 | 14 | £27 | £0.87 | £12.17 |
| Fixed (with an uplift) | 0 | 24 | £27 | £1.50 | £36 |

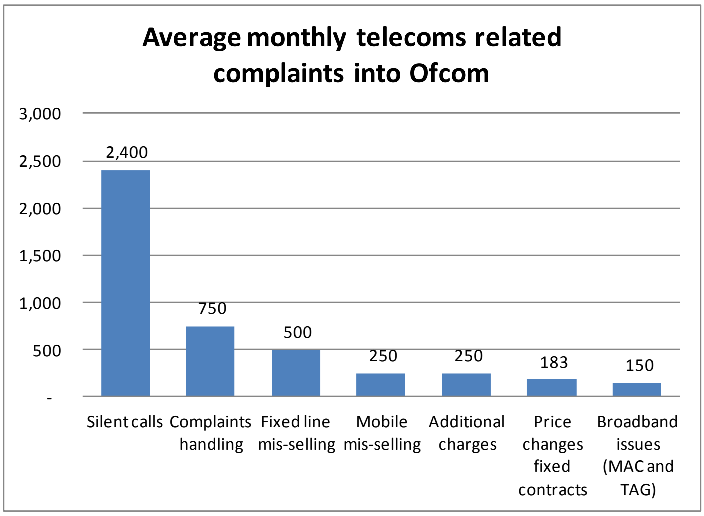
Apart from the lack of quantification of costs and benefits, Ofcom has failed to provide any context regarding the complaints data. We believe complaints data should be considered in the context of:

- the size of the market; and
- other complaints categories.

In terms of the size of the market, Ofcom's Communications Market Research report[6] provides, among other things, numbers of users for different telecoms services. According to section 5.1.1, the total number of mobile users in the UK is 81.6m and the number of fixed line users (including broadband connections) is 33.2m. Over the time period September 2011 – May 2012 Ofcom received 1,644 complaints regarding price increases in "fixed term" contracts. On a yearly basis this would amount to 2,192 complaints. Taking into account that all mobile operators and most fixed line and broadband operators increased their tariffs we believe it is reasonable to assume that around 110m fixed and mobile customers would have been subject to a price increase of some sort over the past year. Based on this, the percentage of customers who complained about the price increase (on an annual basis) is 0.002% which we believe is very small.

Ofcom also publishes details about complaints categories and data in their Consumer Experience report.[7] Section 8 of this report provides an overview of numbers and types of complaints received by Ofcom. The graph below uses the numbers from this section to develop a monthly average number of complaints per category. The total number of telecoms related complaints into Ofcom on a monthly basis is approximately 7,000. In the graph below we have included the main categories as described by Ofcom in their report and have added a monthly number for price rise increases. The 'other' category has not been included in the graph.

[6] http://stakeholders.ofcom.org.uk/market-data-research/market-data/communications-market-reports/cmr12/
[7] http://stakeholders.ofcom.org.uk/market-data-research/market-data/consumer-experience-reports/consumer-experience/




*Source: Ofcom Consumer Experience Report 2012*

The graph shows that on a monthly basis, the number of complaints about price changes in "fixed term" contracts is small compared to most other categories.

The issue, therefore, does not appear to be as substantial as Ofcom suggests, and, in our opinion does not justify the interventionist approach proposed by Ofcom's option 4. For these reasons, we believe that Ofcom's qualitative assessment of the scale of harm is flawed.

The consultation also lacks a comprehensive and quantitative assessment of the impact of the options. Importantly the costs of the different options (and the ultimate impact on consumers as a whole) have not been considered and balanced against any perceived benefits of introducing particular changes. Furthermore, we do not believe Ofcom has sought the least intrusive regulatory mechanism, instead favouring the most interventionist option amongst the ones considered. For these reasons we do not agree with what Ofcom describes as consumer harm, nor its favoured proposal.

*Q4.55 Do you agree with the consumer harm identified from Communications Providers' inconsistent application of the material detriment" test in GC9.6 and the uncertainties associated with the UTCCRs?*

We disagree that in the mobile sector, interpretation of material detriment is inconsistent. In recent years, EE, Vodafone, O2 and 3 have all implemented price rises up to the prevailing level of RPI. EE believes increases up to RPI are consistently considered not to be materially detrimental to consumers in general. Some exceptional circumstances may require individual consideration. EE has consistently applied this approach across its brands and is of the view our competitors do the same.

In EE's case, the threshold for a price increase that triggers a consumer's right to terminate their contract without penalty is explained clearly in the terms and conditions, an extract of which is included in Appendix 1. In any event, as set out above, EE does not agree that there has been consumer harm of the type described by Ofcom. Nor does EE consider that the approaches described above fail to allow termination for material detriment.

*What are your views on whether guidance would provide an adequate remedy for the consumer harm identified? Do you have a view as to how guidance could remedy the harm?*

Guidance as to what constitutes material detriment would give clarity to consumers as to when they would be able to terminate their contract without paying early termination charges. Guidance on the frequency with which prices can be changed would add further transparency for customers. Additional clarification could be provided regarding the classification of costs into cost within an operator's control and costs outside an operator's control and to link these cost categories to services. For instance, the costs of on-net calls are within an operator's control whereas the costs related to Premium Rate services cannot be controlled by an operator. In our response to Q4.71 we expand on the importance of this distinction. We therefore believe this would lead to a significant improvement of the current situation, where different operators use a different approach. We would like to reiterate our general point on consumer information set out above under Q.4.26.

*Should Communications Providers be allowed (in the first instance) to provide guidance?*

In terms of clarity to customers and industry, we believe Ofcom should consult with industry on an approach for developing a definition of material detriment. Since material detriment is a subjective concept (price rises for certain services could lead to material detriment for certain customers, whereas other customer, on a similar price plan, may not be materially affected) guidance should allow for a certain level of flexibility. EE considers that developing a set of principles as to what guidance should look like could be a way to take this forward. Once such principles have been established, operators could produce their own guidance for their customers. Any new guidance will also apply to our partners in the indirect channel and will have to be communicated to and implemented by them. It is therefore important for operators to produce their own guidance. Operators are able to assess the impact on the indirect channel in terms of resources, current selling practices and possible compliance issues.

*Q4.71 Do you agree with the consumer harm identified from the lack of transparency of price variation terms?*

We have already expressed our more general concerns in respect of customer information under Q4.26. We consider that if relevant information is communicated to customers in a comprehensible way and at the right point in time, transparency combined with guidance on material detriment should prevent consumers from being faced with 'surprises' and should give them information on how and when they can terminate their contract.

Across our brands we continuously look for ways to increase transparency for our customers. In our latest marketing materials we specifically refer in the legal footnotes to the fact that 'prices may go up during your plan', increasing transparency at point of sale.

Throughout the consultation and especially in this section Ofcom comments on the headline price being one of the most important factors in the purchase decision. Whilst we agree headline price is important, we consider Ofcom's analysis is too simplified. The upfront handset costs are an important factor in the decision as well. A monthly headline tariff could be very low, but looking at it in isolation would not make much sense for customers. Other parts of the proposition which customers take into account when choosing a provider are underemphasised in Ofcom's analysis. Based on our own research[8], drivers for customers to decide on a certain provider and a certain price plan are:

- ✂
- ✂
- ✂
- ✂
- ✂
- ✂
- ✂

In addition, availability of services such as 4G and devices are important drivers for a customer's decision. Operators also differentiate themselves by creating additional propositions which will appeal to their customers. An example would be 'Orange Wednesdays'. In its recent Call for Input, 'Measuring mobile quality of experience'[9], Ofcom appears to take a more rounded view and aims to find out what network and / or service performance information Ofcom could gather that would assist consumers in making informed choices about the mobile services they purchase.

*Do you agree that transparency alone would not provide adequate protection for consumers against the harm caused by price rises in fixed term contracts?*

No, see above.

*Should consumers share the risk of Communications Providers' costs increasing or should Communications Providers bear that risk because they are better placed to assess the risks and take steps to mitigate them?*

We agree that operators are able to forecast a number of cost categories related to their own network and operations reasonably accurately. However, a number of cost categories are outside operators' control and subject to fluctuation. Below we provide an overview of the cost categories outside our control:

- Wholesale costs related to calls to non-geographical numbers (08, 09); and
- Non-EU Roaming costs.

In our response to Q5.19 we discuss these categories and implications in further detail.

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[8] EE internal brand research.
[9] http://stakeholders.ofcom.org.uk/consultations/mobile-voice-data-experience/

Furthermore, like other customers and businesses, EE is subject to price increases. We are able to reasonably forecast price increases in other cost categories. Estimated cost increases will be reflected in our tariff pricing structure ahead of time. For instance, an expected increase in energy costs will be factored in our pricing for the coming year. However, certain costs may increase more than our forecast, leaving us with a shortfall if we are unable to recover them through price increases. One of the cost categories that have increased more than our forecast are utility costs.

- EE is, like other operators, a heavy user of energy. The price of gas and electricity has generally increased over the past eight years. Last autumn five of the big six energy suppliers increased gas and electricity prices by between 6% and 11%. The Office for Budget Responsibility is predicting above-inflation rises in energy prices for 2013.
- The rental of cell sites has gone up considerably over the past years; and
- Rental costs for property are expected to go up in 2013; property rates are expected to increase by ✂%, retail rent by ✂% and corporate rent by ✂%

But cost uncertainty is only one concern. The other concern is around revenue uncertainty. Wholesale Mobile Termination Rates are currently on a glide path to pure Long Run Incremental Costs, which does not include any allowance for recovery of common costs. Therefore, all common costs need to be recovered through retail prices as Ofcom itself has indicated.[10] The glide path for Wholesale Mobile Termination Rates has been RPI-X with an X in excess of 40% over the last couple of years. It therefore seems completely proportionate to increase retail prices by at least RPI.

Recent price increases have therefore not only been driven by greater than expected costs but also by recovery of known common costs which can no longer be recovered from other revenue streams.

Currently, operators are effectively constrained from increasing monthly plan costs by more than RPI, since, depending on the interpretation of material detriment, this could generate an unacceptable commercial risk of customers terminating their contracts. Option 4 would exacerbate this constraint since under this option any price change would give the customer the right to terminate their contract. This could have a serious negative impact on operators' ability to generate competitively sustainable levels of profitability, as operators may be unable to recover their costs. This could also lead to an increase in prices on pay-as-you-go contracts, which we will discuss in more detail under our assessment of option 4.

EE considers that Ofcom's analysis of how risk neutral firms would factor in the expected weighted average cost to headline prices is overly simplistic. If, for instance, actual costs lie above the expected weighted average cost in a single

[10] See paragraphs 2.584 and 2.627 of the CC MCT Appeal Final Determination. http://www.competition-commission.org.uk/assets/competitioncommission/docs/appeals/telecommunications-price-control-appeals/final_determination.pdf

year (and above the RPI commercial constraint) this cost could not be fully recovered in that year, potentially leading to free cash flow problems in that year. This could critically reduce the availability of free cash flow (e.g. for making business critical customer investments and retention, as well as in areas such as customer sales and services). We therefore consider RPI increases to be part of a well defined, broader strategy for restoring profitability to competitively sustainable levels.

We note that despite the acknowledged competitive nature of the mobile market operators are subject to extensive regulation restricting their ability to recover their costs and make a profit. This includes regulation of Wholesale Mobile Termination Rates and EU roaming rates. The net impact of different parts of regulation becomes increasingly uncertain and Ofcom appears to be lacking a joined up approach across its work streams, which is worrying. In this regard we would remind Ofcom of its statutory duty to encourage both investment and innovation, both of which require operators to recover common costs and more.[11] The mobile market is going through extensive change at present and requires some regulatory certainty, as well as return on capital employed.

*Q5.19 Do you agree that any regulatory intervention should protect consumers in respect of any increase in the price for services provided under a contract applicable at the time that contract is entered into by the consumer?*

As set out under Q4.26, we do not consider consumers should be protected in respect of any increase in price if this is the basis they have contracted on. We simply do not have control over our entire cost base, such that we could definitively avoid raising prices during the lifetime of all consumer contracts. As set out in our terms and conditions, it is our view that price increases which do not exceed RPI should be acceptable within the lifetime of a consumer contract.

On 1 March 2013, we informed our T-Mobile and Orange pay monthly customers that we will be increasing our line rental prices by RPI. We used the January 2013 RPI of 3.3%, as computed by the Office for National Statistics.[12] Looking at the RPIs of the underlying categories, we can observe that for a number of them, the price increase has been higher than the average 3.3% applied to our customers. For instance, housing and household expenditure, seasonal and non-seasonal food, personal expenditure and consumer durables have higher price indices than the overall RPI. Consumers are therefore familiar with price increases in their daily lives, and for many categories, with increases which are higher than the percentage we used for our recent increases.

On a different note, it would be helpful if Ofcom could provide more clarity regarding the definition of a price increase. Would it be a price increase to remove certain number ranges from bundles or add others to it? How about problems relating to Artificially Inflated Traffic where we sometimes decide to

[11] S3(4)(d) of the Communications Act 2003. Other section 3 duties are also relevant and must be taken into account by Ofcom.
[12] http://www.ons.gov.uk/ons/datasets-and-tables/index.html?pageSize=50&sortBy=none&sortDirection=none&newquery=RPI&content-type=Reference+table&content-type=Dataset

remove certain numbers or ranges from the bundle? It would be our view that this would not constitute a standard price increase.

*Do you agree that any regulatory intervention should apply to price increases in relation to all services or do you think that there are particular services which should be treated differently, for example, increases to the service charge for calls to non-geographical numbers?*

We would like to note that the GCs only cover Electronic Communication Services (ECS) and Electronic Communications Networks (ECN) and that any Regulatory intervention involving GC9 can therefore only be applicable to an ECN or ECS.[13]

We consider certain services for which the costs are outside of EE's control such as calls to non-geographic numbers, international roaming or PRS should be treated differently. Our confidential Appendix 2 contains a number of examples of the impact of an increase in these cost categories and the commercial risk we would run should we be prevented from changing these prices.

*Q5.27 Do you agree that the harm identified from price rises in fixed term contracts applies to small business customers (as well as residential customers) but not larger businesses?*

As set out above, we do not agree with the harm identified. However, we do believe that some of the issues set out in our response at Q4.26 can be similar for small business customers. In terms of defining small business customers, we consider only small business customers on consumer price plans should be included because of the similarity with consumers in respect of their bargaining power. Larger business customers tend to have considerably more bargaining power and are therefore less comparable with small business customers and consumers.

*Do you agree that any regulatory intervention that we may take to protect customers from price rises in fixed term contracts should apply to residential and small business customers alike?*

Only where small business customers are on consumer price plans.

*Do you agree that our definition of small business customers in the context of this consultation and any subsequent regulatory intervention should be consistent with the definition in section 52(6) of the Communications Act and in other parts of the General Conditions?*

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[13] Ofcom define them as follows in their introduction to the GCs: An Electronic Communications Network is a transmission system for conveying messages ("Signals") of any kind. An Electronic Communications Service is a service, the principal feature of which is the conveyance of messages by means of an Electronic Communications Network - however the definition of an Electronic Communications Service excludes services which are Content Services (ie the provision of material, such as information or entertainment, which is to be conveyed by the Electronic Communications Service).

As we set out above, we consider only small business customers on consumer price plans should be included.

*Q5.33 Do you agree that price rises due to the reasons referred to in paragraph 5.29 are outside a Communications Provider's control or ability to manage and therefore they should not be required to let consumers withdraw from the contract without penalty where price rises are as a result of one these factors?*

Yes.

*Except for the reasons referred to in paragraph 5.29, are there any other reasons for price increases that you would consider to be fully outside the control of Communications Providers or their ability to manage and therefore should not trigger the obligation on providers to allow consumers to exit the contract without penalty?*

The example given by Ofcom in paragraph 5.32 of the Consultation is as follows: 'But, we agree that GC9.6 should allow operators to pass on to consumers increases in costs imposed directly and specifically by changes in mandatory provisions laid down by Government or regulators, compliance with which by the provider is compulsory. Any changes to GC9.6 would also reflect this.' We believe it is not particularly clear what Ofcom is proposing here. We believe that operators should be able to pass on to customers any costs or revenues they are unable to accurately plan. An example would be the regulatory decrease of certain revenue streams (e.g. wholesale mobile termination rates) or changes in planning laws which could lead to an increase in the costs of cell sites. In general, we believe Ofcom, in consultation with industry, should provide further clarification and examples of costs and revenues outside a provider's control and the circumstances under which they would be able to pass them on to consumers.

*Q5.46 Do you agree that Communications Providers are best placed to decide how they can communicate contract variations effectively with its consumers?*

Yes.

*Do you agree with Ofcom's approach to liaise with providers informally at this stage, where appropriate, with suggestions for better practice where we identify that notifications could be improved?*

Yes.

*What are your views on Ofcom's additional suggestions for best practice in relation to the notification of contractual variations as set out above? Do you have any further suggestions for best practice in relation to contract variation notifications to consumers?*

We note Ofcom's best practice examples. Across our brands we already use a number of these best practice examples. For our recently announced price increases we have sent letters to all affected Orange and T-Mobile customers for whom we have a valid postal address and sent text messages to all others.

- The notification is in hard copy;
- The subject says 'Important change to your account' , clearly attracting the customer's attention; and
- Both the price increase and the new monthly recurring charge are stated clearly and prominently in the notification letter.

Our approach, combined with greater customer awareness that prices may increase during fixed term contracts, has substantially reduced negative reaction from customers. Less than ✂% of affected Orange or T-Mobile customers made a written complaint in response to 2012 price increases. Early indications based on comparable figures for 2012 and 2013 price increases suggest an approximate halving of the rate of written complaints received.

The confidential Appendix 7 contains further information regarding reactions to our recent RPI increase.

*Q5.49 What are your views on the length of time that consumers should be given to cancel a contract without penalty in order to avoid a price rise? For consistency, should there be a set timescale to apply to all Communications Providers?*

If Ofcom decides that consumers should be able to cancel contracts to avoid price rises then a notice period of 30 days seems reasonable and reciprocal. It also reflects billing arrangements.

*What are your views on whether there should be guidance which sets out the length of time that Communications Providers should allow consumers to exit the contract without penalty to avoid a price rise?*

We believe it would be helpful to put this into a guidance document, which would make a recommendation but would still allow operators some discretion.

# Options

Q6.9 *Do you agree that this option to make no changes to the current regulatory framework is not a suitable option in light of the consumer harm identified in section 4 above?*

Ofcom sets out the four principles in Section 4 of the consultation document. Principle 1 sets out that consumers should have information that enables them to know what bargain they are striking, so they can make informed transactional decisions. Whilst it is hard to argue against such a principle, the problem is the amount of information operators are currently required by Ofcom to provide. As set out in our response to Q4.26 EE questions whether the current information requirements satisfy the needs of customers, both in terms of content and in form.

On principle 4, consistency with the express requirements of Article 20(2) of the Universal Services Directive, Ofcom decided only in February 2011 that the material detriment threshold was still relevant and likely to reflect current consumer protection in this area. Ofcom's current proposals are a substantial move away from the 2011 position, and apart from a small number of complaints, we believe there is little in the document that would justify such a change in position. In addition, regulatory certainty is important in providing an incentive to operators to invest and innovate.

We agree that lack of guidance on what constitutes material detriment may have led to different interpretations among operators, and that a no change option would not address this result. However, there is in fact little difference in operators' observed interpretation, and definitely not sufficient to justify the change Ofcom is advocating. On the other hand, as set out above, the harm has only been described in a qualitative way, with the number of complaints being the main indicator, without any robust evaluation.

*Q6.22 Do you agree with Ofcom's analysis of option 2? If not, please explain your reasons.*

As set out above, EE consider that the current approach in respect of providing information to consumers needs to be reviewed. A review of information to be provided could remove duplication of information under the GCs and consumer law, and a more behavioural approach would give insight into how consumers use information, what they consider to be relevant and how information should be communicated. In this context Ofcom should take note of new ways in which consumers use information, for instance through apps and links sent to their devices. However, we believe that a revised approach to consumer information, combined with guidance on what constitutes material detriment and possibly frequency of price increases would considerably improve the situation.

In section 6.11 Ofcom note that GC23 and GC24 do not appear to be working effectively in terms of providing price variation information to consumers. This could be related to the information issue we have set out above. In any event, we do expect Ofcom to ensure their regulatory interventions work effectively and are being adhered to or reviewed and updated if necessary.

*Q6.31 Do you agree with Ofcom's analysis of option 3? If not, please explain your reasons.*

From April onwards, we will start offering new and existing customers the option to 'fix your monthly plan' (FYMP). This option will be available for existing and new plans at any time during a customer's contract allowing them to opt out of increases on their monthly recurring charges. As with examples in the utility and finance sectors, this option will cost between 50p and £2.00 per month. This uplift aims to take account of uncertainty around covering our aggregate costs over the duration of the contract.

Our fixed plans are fixed in respect of the price for the fixed allowance of minutes, texts and data. For technical reasons we are unable to fix the amount of so called 'out of bundle' tariffs at this stage. However, we have not increased these charges as part of our most recent price increase. In any event, should we at some point in the future decide to increase these prices, we will not increase them by more than the RPI. As set out before, it would not be commercially viable to fix the charges for calls to non-geographic numbers and non-EU roaming. Our FYMP option has been described by uSwitch as follows:

*"This innovative alternative will not only give customers a way to avoid these increases, but will also shelter them from any future rises,"*

*"Even small increases can be a big burden to cash-strapped consumers. The option to fix the line rental element of a mobile contract for a small premium is a victory for both consumer protection and clarity."* [14]

We do not believe that there is a need for customers to expressly opt in to a variable plan. EE believes there is a risk such opt-in requirements are interpreted in different ways by different operators and that they are relatively easy to manipulate at point-of sale. If both types of plan are presented in a clear and transparent manner, customers can make an informed decision as to which type to choose. In addition, an express opt-in for one type of plan sets the expectation that such a plan must be inferior to the other option, which we believe is not true in the case of fixed and variable plans. Fixed contracts are well known in the utility sector and do not seem to require detailed additional requirements and processes.

Ofcom is concerned that this option may lead to fixed price plans being unattractive. This is not the case in the utility sector. In any event, if, when given the choice and when provided with clear information, customers prefer to accept the possibility of price rises and pay a lower initial headline price, this is not a problem Ofcom should try to address. It is simply customers expressing a preference for one type of price plan over the other.

We believe that offering both fixed and variable price plans will to a large extent resolve the price variation issue. In our marketing material and terms and conditions for our variable price plans, it is transparent to customers that our prices may change, and when price changes give customers the right to terminate their contract. For our FYMP option, it is transparent in our marketing material and terms and conditions that the monthly rental charge will not change over the lifetime of a contract. The rules are transparent, customers cannot be surprised, and more importantly, customers can choose between variable and fixed contracts. This, combined with more transparency as set out under Q6.22, would give customers clear information to make informed decisions and would give them the choice between a fixed or a variable plan.

*Q6.50 What are your views on option 4 to modify the General Condition to require Communications Providers to notify consumers of their ability to withdraw from the contract without penalty for any price increases?*

First of all, we would like to reiterate that option 4 is highly disproportionate, especially in light of the lack of quantitative evidence and impact assessment put forward by Ofcom.

[14] http://www.digitalspy.co.uk/tech/news/a462632/orange-and-t-mobile-customers-set-for-contract-price-rise.html

Under option 4 we see a number of consequences which have either been overlooked by Ofcom, or are only superficially touched upon.

## Recovering the handset costs

Currently all mobile operators are faced with the impact of cuts in wholesale mobile termination and roaming rates. Therefore, all mobile operators are going through substantial revenue repair from Wholesale Mobile Termination Rates regulation and, under the waterbed effect, will have to raise prices to the extent that they are able in such a competitive market. In a situation where customers can terminate their contracts upon any price increase, churn across the industry will be much higher. Handset costs are generally recovered over the duration of the contract. If operators cannot recover these costs a number of things can happen.

1. **Reduced handset subsidies make smart phones unaffordable for certain customer groups.**

Operators may have to reduce the subsidy on the handset which will lead to customers facing higher upfront costs, especially for smartphones. Internal EE analysis has demonstrated that handset prices are highly elastic. An increase in handset price will have a serious impact in demand for mobile contracts with handsets. Decreasing the subsidies may result in smart phones becoming unaffordable for certain customer groups. Fewer people will be able to use data services and participate in the digital economy. The digital divide will increase which could ultimately have an impact on the productivity of the UK. As noted above, Ofcom has a duty, under section 4(4) of the Act to have regard, amongst other things, to:

(*d) the desirability of encouraging investment and innovation in relevant markets;*

*(e) the desirability of encouraging the availability and use of high speed data transfer services throughout the United Kingdom;*

Reducing handset subsidies would sit at odds with (e) encouraging the use of high speed data transfer services. A decrease in usage of data services would adversely impact network operators who have made huge investments in spectrum and infrastructure to cater for the exponential growth in demand for high speed data services.

The other alternative would be a substantial increase in the headline rates of contracts.

2. **Operators may offer separate handset and airtime contracts leading to decreased transparency for customers**

Ofcom lightly touch on this in section 6.41. We believe such an option would seriously impact transparency and add a layer of confusion for customers. A customer would have to enter into multiple contracts, with different terms and conditions in order to satisfy the requirements of both Ofcom and the Consumer Credit Act (CCA) regime. This would result in even more information for customers to absorb and understand before buying a phone and plan. Contract terms for devices and airtime may become misaligned if customers choose to exit their airtime agreement, but remain with their device agreement. As a result, upgrade decisions will become even more complex.

A variation on the separate handset contract would be to have a lease contract for the handset. This would still require EE to comply with the CCA and would limit the consumer's ability to continue to enjoy the handset. ✂ Such an arrangement would also in EE's view increase costs for consumers. Further implications of EE separating the handset from the airtime contract and entering into lease or finance constructions are set out in the confidential Appendix 5.

A recent example shows the possible negative consequences of changing the handset subsidy structure. In April 2012 Vodafone Spain moved away from the traditional handset subsidy for new customers, instead offering handset financing with a separate monthly handset fee. Telefonica Spain had done a similar thing and the 4th operator followed, but Orange were still offering the bundled handset and network contract. Both Telefonica Spain and Vodafone Spain have done very poorly since the change, Orange Spain have continued to do well. The change in handset subsidy led to a substantial decline in revenues and new customers for Vodafone Spain and Telefonica Spain. Vodafone Spain reinstated handset subsidies at the end of July 2012. Number porting statistics show that Vodafone's performance has improved markedly since then. From this example we can learn that where customers have a choice between handset subsidy and no subsidy, they clearly choose the subsidy. Furthermore, the complexity of a financing deal may put consumers off when shopping around for a mobile phone.

In 6.42 Ofcom state they 'have considered these points and that their provisional view is that any disadvantages arising from changes in the way that handsets are obtained by customers would be outweighed by the protection offered by this option. This is on the basis in particular that handset manufacturers and handset / communication services retailers will continue to have a strong incentive to ensure that consumers are offered competitive and attractive deals for handsets.' EE are interested to see Ofcom's analysis or evidence to reach this conclusion, and what strategies Ofcom would envisage manufacturers and retailers would use to ensure handset deals remain competitive and attractive. The confidential Appendix 4 contains information on EE's handset costs and an assessment of the handset market.

**3. Prices of pay-as-you-go may go up**

We have already set out in our response to Q4.71 the fact that the glide path towards pure LRIC on Mobile Termination Rates prevents us from recovering any common costs associated with the termination service through our termination rates. Under option 4, recovering costs through an increase in monthly retail charges could become commercially unacceptable. We may therefore have to further increase pay-as-you-go charges. According to

Ofcom's Consumer Experience research[15], pay-as-you-go packages are particular popular with people in socio-economic classes D and E (61% having a prepay mobile) and older people (75% of consumers aged between 65 and 74 have a prepay contract, and 84% of people aged over 75). An increase could have a material impact on these customers, who may already be financially stretched. This would also involve Ofcom not having regard to its duties in relation to vulnerable consumers as set out in section 4(i) of the Act:

(4) OFCOM must also have regard, in performing those duties, to such of the following as appear to them to be relevant in the circumstances—(i) the needs of persons with disabilities, of the elderly and of those on low incomes;

*Q6.53 Do you agree with Ofcom's assessment that option 4 is the most suitable option to address the consumer harm from price rises in fixed term contracts?*

No, we believe option 4 is highly interventionist and, as set out in our response to Q6.50, may have severe negative consequences for both consumers and operators, which Ofcom have failed to take into account in their impact assessment.

*Do you agree that Ofcom's proposed modifications of GC9.6 would give the intended effect to option 4?*

Whilst the drafting may give effect to option 4, EE consider this option is highly interventionist and runs contrary to Ofcom's own principles. Again, as set out above in our response to Q6.50, we believe there are severe negative consequences for both consumers and operators should Ofcom go ahead with this option.

*Q6.55 What are your views on the material detriment test in GC9.6 still applying to any non-price variations in the contract?*

As noted above this simply raises the question as to the meaning of 'material detriment'.

*Q6.59 For our preferred option 4, do you agree that a three month implementation period for Communications Providers would be appropriate to comply with any new arrangements?*

A three month implementation period would be too short. The implications regarding new contract structures and lease and financing solutions will take 24 months to implement. Apart from operational activities, EE would have to put in place processes to comply with a whole new set of regulations around financing and lease constructions.

In addition, under option 4, we will have serious issues in respect of the capacity of our billing platforms to cater for the number of tariffs we have to introduce. Every time we carry out a tariff refresh, we would have to introduce a

[15] http://stakeholders.ofcom.org.uk/market-data-research/market-data/consumer-experience-reports/consumer-experience/

new tariff, and keep the 'previous' tariff alive. This would lead to a multiplication of tariffs over time and a substantial increase in the number of so called 'configuration points' we have to implement in our billing systems.

An example could clarify this. At the moment, across our three brands we have a number of universal tariffs, which are price plan independent. Examples of services using these tariffs are non-EU roaming, Premium Rate Services, DQ services and IDD.  These tariffs will be refreshed for instance when the wholesale costs for these services change.

For PRS, across our brands, we currently have 28 different tariffs. If we would have to refresh these tariffs four times per year, after a year the number would have gone up to 112 tariffs. The same for roaming, where we currently have 72 tariffs across our brands (a tariff being a combination of a zone and a service type, such as calls, SMS or MMS). Again, tariff refreshes would lead to multiplications of the number of tariffs currently used.

Our current billing platform has a maximum capacity in terms of the number of changes that can be implemented on a monthly and yearly basis. We are currently close to the maximum capacity. If Ofcom were to mandate Option 4, we would have to invest in a new billing platform, resulting in substantial costs which would have to be recovered through our retail tariffs. In the confidential Appendix 6 we have included more background information regarding our billing platform and capex and opex related to such a new platform.

*What are your views on any new regulatory requirement only applying to new contracts?*

We agree that any new regulatory requirements should only apply to new contracts, entered into after the expiry of an appropriate implementation period.

# Appendix 1: EE's Terms and Conditions

### The link to the T-Mobile Terms and Conditions:

http://support.t-mobile.co.uk/resources/sites/TMOBILE/content/live/DOCUMENTS/0/DO117/en_GB/T-Mobile%20Pay%20monthly%20Terms%20v59.pdf

### Extract from the T-Mobile Pay Monthly Terms and Conditions regarding price changes:

2.11.1. If You are a Consumer and the change of terms and conditions is not of material detriment to You or You are not a Consumer, We will send You Written Notice 30 days before the terms and conditions are due to change. The new terms and conditions will automatically apply to You once that notice has run out.

2.11.2. If You are a Consumer and the change is of material detriment to You, We will send You Written Notice 30 days before the terms and conditions are due to change. The new terms and conditions will apply to You once that notice has run out, unless You terminate Your Agreement with Us within that notice period. If You do this You won't have to pay any Cancellation Charge that would otherwise apply, see point 7.2.3.2.

7.1.4. We can increase any Price Plan Charge. We will give You Written Notice 30 days before We do so. The change will then apply to You once that notice has run out.

A Cancellation Charge won't apply if You are within the Minimum Term and:

7.2.3.1. Our entitlement to operate the Network ends at any time; or

7.2.3.2. You are a Consumer and the change that We gave You Written Notice of in point 2.11.2 or 7.1.4 above is of material detriment to You and You give Us notice to immediately cancel this Agreement before the change takes effect; or

7.2.3.3. The change that We gave You Written Notice of in point 7.1.4 is:

> (i) an increase in Your Price Plan Charge (as a percentage) higher than any increase in the retail price index (also calculated as a percentage) or any other statistical measure of inflation published by any government body authorised to publish measures of inflation from time to time, and published on a date as close as reasonably possible before the date on which We send You Written Notice; and
>
> (ii) You give Us notice to immediately cancel this Agreement before the change takes effect.

### The link to Orange Terms and Conditions:

http://shop.orange.co.uk/mobile-phones/terms#oranetser

### Extract from the Orange Pay Monthly Terms and Conditions regarding price changes:

**Terminating your Contract because Orange has changed its terms:**

4.3 You may also terminate your Contract if we give you written notice to vary its terms, resulting in an increase in the Charges or changes that alter your rights under this Contract to your material detriment. In such cases you would need to give us at least 14 days written notice prior to your Billing Date (and within one month of us giving you written notice about the changes). However this option does not apply if:

4.3.1 we give you written notice to increase the Charges (as a percentage) by an amount equal to or less than the percentage increase in the All Items Index of Retail Prices or any other statistical measure of inflation published by any government body authorised to publish measures of inflation from time to time, and published on a date as close as reasonably possible before the date on which we send you written notice; or

4.3.2 the variations we have made have been imposed on us as a direct result of new legislation, statutory instrument, government regulation or licence; or

4.3.3 the variation relates solely to an Orange Additional Service, in which case you may cancel that Orange Additional Service.

## The link to Home (Broadband) Terms and Conditions:

http://help.ee.co.uk/system/selfservice.controller?CONFIGURATION=1016&PARTITION_ID=1&secureFlag=false&segment=Consumer&TIMEZONE_OFFSET=&CMD=VIEW_ARTICLE&ARTICLE_ID=20003

## Extract from the Home Terms and Conditions regarding price changes:

**2.14. Changes to Our Agreement**
2.14.1. We will make a copy of Our current version of these terms and conditions available on Our website. We can change these terms and conditions for any good reason, for instance, if We want all customers on the same conditions. We will tell You about the change beforehand, explained as follows:
2.14.1.1. if You are a Consumer and the change of terms and conditions is not of material detriment to You, or You are not a Consumer, We will send You Written Notice 30 days before the terms and conditions are due to change. The new terms and conditions will automatically apply to You once that notice has run out;
2.14.1.2. if You are a Consumer and the change is of material detriment to You, We will send You Written Notice 30 days before the terms and conditions are due to change. The new terms and conditions will apply to You once that notice has run out, unless You terminate this Agreement with Us within that notice period. If You do this You won't have to pay any Cancellation Charge that would otherwise apply, see point 9.3.3; or

**8. Changing Charges**
8.3. We can suspend, change or withdraw Your Price Plan or Allowances. We will give You Written Notice 30 days before We do so. The change will then apply to You once that notice has run out.
8.4. We can increase any Price Plan Charge. We will give You Written Notice 30 days before We do so. The change will then apply to You once that notice has run out.
8.5. We can increase Your Price Plan Charge if We have accepted Your request for an Upgrade or if We move you to a higher Price Plan in accordance with point 4.5.

**9. Termination Rights**
9.1. You can give Us notice to terminate this Agreement, to take effect on or after the end of the Minimum Term. However (except as set out in point 9.3) if, in Our total discretion, We accept notice from You to terminate this Agreement within the Minimum Term, You will have to pay Us a Cancellation Charge. You can terminate this Agreement without having to pay Us a Cancellation Charge after the Minimum Term has ended upon 30 days notice.
9.2. You can only give Us notice to terminate this Agreement by calling Customer Support. Your Agreement will terminate 30 days from when We receive Your call, although You are free to change Your mind and call Us to withdraw Your notice of termination at any time during that period. You will be responsible for all Charges up to and including the date that this Agreement terminates.
9.3. A Cancellation Charge won't apply if You are within the Minimum Term and:
9.3.1. Our entitlement to operate the Network ends at any time;
9.3.2. We terminate the Agreement immediately by giving You Written Notice because Your telephone line is not technically capable of receiving a Service to which You have subscribed and You have complied with Our reasonable instructions to try and fix the problem;
9.3.3. You are a Consumer and the change that We gave You Written Notice of in point 2.14.1.2 or 8.4 is of material detriment to You and You give Us notice to immediately cancel this Agreement before the change takes effect; or
9.3.4. The change We gave You Written Notice of in point 8.4 is:
9.3.4.1. an increase to Your Price Plan Charge (as a percentage) higher than any increase in the retail price index (also calculated as a percentage) or any other statistical measure of inflation published by any government body authorised to publish measures of inflation from time to time, and published on a date as close as reasonably possible before the date on which We send You Written Notice; and
9.3.4.2. You give Us notice to immediately cancel this Agreement before the change takes effect.

## The link to Small Business Terms and Conditions:

http://files.ee.co.uk/business/terms-and-conditions/network/EE-Pay-Monthly-Terms-for-Small-Business-effective-from-30-10-2012.pdf

## Extract from the Small BusinessTerms and Conditions regarding price changes:

**2.11. Changes to Our Agreement**

2.11.1 We will make a copy of Our current version of these terms and conditions available on Our website. We can change these terms and conditions for any good reason, for instance, if We want all customers on the same conditions. We will tell You about the change beforehand, as explained here:

2.11.2. If You are a Consumer and the change of terms and conditions is not of material detriment to You or You are not a Consumer, We will send You Written Notice 30 days before the terms and conditions are due to change. The new terms and conditions will automatically apply to You once that notice has run out.

2.11.3. If You are a Consumer and the change is of material detriment to You, We will send You Written Notice 30 days before the terms and conditions are due to change. The new terms and conditions will apply to You once that notice has run out, unless You terminate Your Agreement with Us within that notice period. If You do this You won't have to pay any Cancellation Charge that would otherwise apply, see point 7.2.3.2.

**7. Changing Charges and terminating this Agreement**

7.1. Changes to Services and Charges

7.1.1. We can lower any Charge at any time without telling You beforehand, although We will try to tell You if We can.7.1.2. We can suspend, change, increase the price of or withdraw part or all of the Additional Services or Additional Commitment Services on giving active users of the Service a reasonable period of Written Notice. The change will then apply to You once that notice has run out.

7.1.3. We can suspend, change or withdraw Your Price Plan or Price Plan Services. We will give You Written Notice 30 days before We do so. The change will then apply to You once that notice has run out.

7.1.4. We can increase any Price Plan Charge. We will give You Written Notice 30 days before We do so. The change will then apply to You once that notice has run out.

7.2. Your termination rights

7.2.1. You can give Us notice to terminate this Agreement, to take effect on or after the end of the Minimum Term. However (except as set out in point 7.2.3 and 7.2.4) if, in our total discretion, We accept notice from You to terminate this Agreement within the Minimum Term, You will have to pay Us a Cancellation Charge and, if applicable, the Additional Commitment Service Cancellation Charge. You can terminate this Agreement without having to pay Us a Cancellation Charge after the Minimum Term has ended. If You are not a Consumer, You are not entitled to any discounts on the Cancellation Charge or the Additional Commitment Service Charge other than prepaid Charges.

7.2.2. You can only give Us notice to terminate this Agreement or the Additional Commitment Service by calling customer services.Your Agreement or the Additional Commitment Service will terminate 30 days from when We receive Your call, although You are free to change Your mind and call Us to withdraw Your notice of termination at any time during that period. You will be responsible for all Charges up to and including the date that this Agreement terminates. If Your Price Plan Service or the Agreement is terminated, the Additional Commitment Service will automatically terminate.

7.2.3. A Cancellation Charge won't apply if You are within the Minimum Term and:

7.2.3.1. Our entitlement to operate the Network ends at any time; or

7.2.3.2. You are a Consumer and the change that We gave You Written Notice of in point 2.11.3 or 7.1.4 above is of material detriment to You and You give Us notice to immediately cancel this Agreement before the change takes effect; or

7.2.3.3. The change that We gave You Written Notice of in point 7.1.4 is: (i) an increase in Your Price Plan Charge (as a percentage) higher than any increase in the retail price index (also calculated as a percentage) or any other statistical measure of inflation published by any government body authorised to publish measures of inflation from time to time, and published on a date as close as reasonably possible before the date on which We send You Written Notice; and

(ii) You give Us notice to immediately cancel this Agreement before the change takes effect.

7.2.4. An Additional Commitment Service Cancellation Charge won't apply if You are within the minimum period of the Additional Commitment Service and:

7.2.4.1. Point 7.2.3.1 applies; or

7.2.4.2. You are a Consumer and the change that We gave You Written Notice of in point 7.1.2 above is of material detriment to You and You give Us notice to immediately cancel the Additional Commitment Service before the change takes effect; or

7.2.4.3. The change that We gave You Written Notice of in point 7.1.2 is:

(i) an increase in the Additional Commitment Service Charge (as a percentage) higher than any increase in the retail price index (also calculated as a percentage) or any other statistical measure of inflation published by any government body authorised to publish measures of inflation from time to time, and published on a date as close as reasonably possible before the date on which We send You Written Notice; and (ii) You give Us notice to immediately cancel the Additional Commitment Service before the change takes effect.

7.2.5. If You are terminating this Agreement and a Cancellation Charge doesn't apply because the circumstances outlined in point 7.2.3 have occurred, You can then ask for a refund of any unused Pay As You Go Account balance that You may have.

# Appendix 2: –Confidential- Examples of the impact of wholesale cost fluctuations

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# Appendix 3: Notification letter

Below we have included the letter with the price rise notification we sent to Orange pay monthly customers to notify them of the price increase.

orange™

DM30122/01/00001880

Customer Relations
PO Box 10
Patchway
Bristol
BS32 4BQ
orange.co.uk

167001

March 2013
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## important change to your Orange account

Hello ,

From 10 April 2013 we're changing some of our prices because of inflation. We know that price rises are never great news, but we're still committed to giving you the best service on the UK's biggest network.

**the price change and what this means to you**

The price of your Orange monthly plan will increase by £0.51. The bills you recieve from 10 April 2013 will show the new price for your plan, £16.01 a month.

The price rise will only affect the amount you pay each month for your plan. All other charges, such as call costs, texts and bundles that aren't included in your allowance will stay the same. And don't forget, you can also still enjoy benefits like 2 for 1 cinema tickets every Wednesday with Orange.

**you'll still get your discount**

Don't worry, the discount you get each month will not change.

**more information**

Take a look at the back of this letter for answers to some questions you might have or visit us online at orange.co.uk/pricechanges.

Yours sincerely

Scott Anderson
Orange Customer Services

## answers to questions you might have

### why are you increasing your prices?

Due to inflation, which directly impacts the costs of running our business, we've had to re-evaluate our prices and introduce an increase from 10 April 2013.

### where did this increase come from?

We've used the Retail Price Index (RPI) which is currently at 3.3%. This is a measure of the increase in prices for consumers and businesses on average across the country over the last 12 months.

### how have you calculated the rate of increase on my plan?

The increase is calculated on the price of your monthly plan alone. All other charges outside your allowance, such as call costs, texts and bundles, stay the same.

### can I cancel my contract?

Yes. If you want to cancel your contract early, you'll need to pay any cancellation charges that may apply.

**For further questions and answers, please visit orange.co.uk/pricechanges**

# Appendix 4: – Confidential- Handset information

# Appendix 5: – Confidential- Implications of offering separate services and handset contracts

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# Appendix 6: – Confidential- Implications for EE billing platform

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# Appendix 7 – Confidential – Reactions to our recent RPI increase

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