Comments from the Guernsey Trading Standards Service relating to CICRA – "Variations to fixed-term telecommunications contracts" – Document No. CICRA 13/27

The Guernsey Trading Standards Service notes that the variation in fixed-term telecommunication contracts is not subject to any specific consumer protection legislation in Guernsey yet the same is not the case in the UK (or Jersey). Because of Trading Standard's experience in consumer protection matters, and its role in relation to complaints by consumers against the licensed utility providers, the Service feels it is appropriate to comment on the consultation document. Our comments relate specifically to the Bailiwick of Guernsey.

It should be mentioned that it might well be possible to introduce legislation under the Trading Standards (Enabling Provisions) (Guernsey) Law, 2009 to address the issues described in the consultation document although to do so would require a debate in the Guernsey States of Deliberation. If approved, such measures would only have effect in Guernsey, but not necessarily the other islands of the Bailiwick. It appears that the proposals put forward by CICRA could be implemented in a more straightforward manner and importantly would have effect in all the islands.

The example given in the CICRA document of an apparent unfair variation of a business's product offering only related to Jersey based customers of one communications provider (CP) and this may explain why the Guernsey Trading Standards Service has received no complaints relating to variations in fixed term contracts.

Our general observations are:

- Where a CP is offering to provide services for a specified time period of 12 or 24 months it is suggested that notwithstanding the existing wording of the terms and conditions a reasonable consumer would assume that the terms of such a contract would be fixed for that period. If the trader wished to enter into a contract where they could change terms as and when they wished this would seem to be in conflict with the principle of a fixed term contract.

- The CP might argue that the timeframe is not the *maximum* length of the contract but the *minimum* length of the contract. The purpose, presumably, is to lock the contract in for that length of time so that a consumer cannot, say, 6 months into the contract give notice and end the contract without penalty. The CP has therefore created the contract to protect themselves from consumers leaving before 12 or 24 months is up. It is a key term that the consumer is not able to vary the time limit of the contract. If this argument is made for the timeframe then the price and the services provided should equally be regarded as key terms so it seems inappropriate provision should be made for the trader to vary those.

- The CP has the opportunity to vary price tariffs when creating new contracts for customers to sign up to. There should be no need for them to have an opportunity to vary terms within the contract period as they have the opportunity to calculate appropriate price levels at the start of a contract. As an example, insurance contracts normally run on a 12 month basis. At the time of contract renewal a consumer is given a price at which the trader is willing to offer the service. The insurance company cannot come back after 6 months and ask for additional payment because prices have increased. When it is time to renew the contract, the trader is quite within their right to only offer consumers that service at a higher price than previously.

  - The Service poses the question: Should a mobile phone contract be considered in a special way?

- The consultation document describes a situation which initiated investigations: the reason for the change in the CP's contracts was that they "misjudged" the degree to which the data allowance might be used. The data allowance was a clear term of the contract when a consumer signed on. Consumers had not breached the contract themselves by making use of the allowance, in fact by using the allowance they would be making use of the contract exactly as agreed. The initial cost of the data must have been calculated by the CP and it is not the consumer's fault that the company under estimated the levels of data usage.

- The Service notes that *"Airtel and CWJ [Cable & Wireless (Jersey) Ltd] have informed CICRA that they do not consider it appropriate to implement price changes or product changes for existing customers on fixed-term contracts until the contract ends."*. The Service is unsure as to why JT has not followed the same practice.

With regards to the proposal to implement option 1 or 2, the Trading Standards Service wishes to make the following comments:

<u>Option 1</u>

- We note that " *Where an operator proposes to vary the terms and conditions of a contract, or to change the price payable by the customer, or to remove or alter a component of the product/package being supplied, affected customers would need to be contacted directly, at least one calendar month in advance, and provided with an explanation of the proposed change. Customers could be contacted by letter, e-mail or SMS, depending on the particular customer contact details held by the operator".*
  We believe that mobile phone users may not necessarily regularly use e-mail and that such a medium may not be a certain way of contacting consumers, unlike letter (or SMS messaging for those with mobile contracts).

- We also note *" If the operator seeks to change the price payable by the customer, or to remove or alter a component of the product/package being supplied (regardless of whether the operator is entitled to do this under the existing terms and conditions), or where a variation to the terms and conditions of the contract is likely to be of material detriment to the customer, then at the same time as giving the notice in a) above, the licensee would be required to inform the customer of his/her right to terminate the contract by giving verbal notice to the operator within one calendar month of receiving the notice of variation or suspension. ....".*

Use of the term "material detriment to the consumer" could give rise to challenges from both consumer and trader and this term may need initial explanation to help reduce such challenges and to bring some clarity to the direction.

- CICRA would also need to recognise that changes in the rate of government-imposed taxes could lead to a price change (in such cases beyond the control of the CP) and such changes should probably not give rise to a right to cancel the contract.

- The consultation document goes on to mention subsidised equipment (handsets, routers, etc) and it is mentioned that the calculation of the subsidy in cases of cancellation would need to be explained to the consumer before the contract was entered into. It must be recognised that under these new proposals, if a consumer were to cancel a contract which contains a "handset subsidy" they would be required to pay any remainder of this subsidy. Thus;
    - it would not be possible for a consumer to cancel the contract without penalty as they would be required to pay to cancel; and
    - if it is made clear to consumers that such subsidies are payable, then the Service is unsure as to whether handsets should be advertised as "free".
    - it should also be made clear to customers when title of the goods pass and what rights and responsibilities the consumer has with regards to the goods at any time.

<u>Option 2</u>

- This option would appear to provide more certainty and protection for consumers than option 1 as CICRA would have powers to act if companies breached their licensing conditions, whereas option 1 would entail the consumer arguing breach of contract perhaps leading to more complaints being brought forward under the formal complaints process.

- Our comments set out above under option 1 in relation to "material detriment" and "without penalty" are also relevant to option 2.

Whilst the Service understands the need for a certain degree of commercial freedom for CPs to design offers and deals, that commercial freedom should not negatively affect consumers rights to be supplied with the appropriate and accurate pre-contract information enabling them to make an informed choice to fulfill their needs and that contracts should not be constructed in such a way as to detrimentally affect a consumers rights to cancel without penalty if significant changes are made to the contract.

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