

ACS

Telecommunication Consultants

Response to Consultation on Variations to fixed-term telecommunications contracts

June 2013

Introduction

Consumer protection is one of the key aims of competition and regulatory authorities and this is carried out either by application of the relevant competition law or by ex-ante regulation of sectors for which the jurisdiction has enacted. Normally, however, this is a high level solution that ensures that companies act within the law and do not abuse dominant positions.

In most jurisdictions there is also enacted laws that deal directly with consumer issues, such as ensuring fair trading conditions and other protective measures to ensure companies provide equitable goods and services. However, in the Channel Islands at present there are no such laws and thus in the regulated market sectors the only recourse for the authority is to apply ex-ante regulation through the powers that it exercises via the relevant sectoral laws.

Response to the Consultation

Contract are used by telecommunications providers to ensure that they have a long-term commitment from their customers. This is a bilateral arrangement that should provide benefits for both parties:

- For the provider they have a customer for a period in which they may be able to recover some of their acquisition costs
- For the consumer there is a reasonable expectation that the offer accepted will be honoured through the term.

In recent times, however, telecommunications providers have been requiring consumers to commit for longer periods in order that the contract term will enable recovery of acquisition costs. In these cases the terms of the offer are usually made more generous. Given this level of commitment from consumers it is not unreasonable, therefore, for the consumer to expect that the contract terms will remain substantially unchanged throughout the period.

Historically, the cost of providing telecommunications products tends to fall in real terms over time. This generally means relative price stability over a reasonable period, for instance, the JT local call fee has remained the same for nearly 20 years despite the costs of labour and inflation over time. The majority of costs are within the control of

the operator, for example wage inflation, maintenance costs and reinvestment. Given this position, telecom operators are able to structure products such that there is a continuing margin despite changes in overall costs. However, in markets where there is more competition, for example mobile, it is possible that over aggressive price cutting offers can erode profit margins. This is, nevertheless, within the control of the operator and it should understand the variables to ensure that there is no loss of profit. It is therefore an indication of a desire to increase existing margins on captive consumers that a mid-contract price increase would be deployed. Customers in a long term contract currently have no recourse in the event of an operator invoking a contract clause that is effectively on-sided. Operators, on their side, should honour offers for the full term.

Circumstances outside the control of the operator are therefore few. Changes in taxation or other States imposed surcharges is a prime example and in this case it is entirely fair that this government levy be passed on to consumers. Other costs that are uncontrollable include off-island connection and IP charges. However, in recent history call connection charges and IP access have been falling year on year¹. Coupling this with asset depreciation there seems to be little reason for increasing mid-contract costs. Certainly, the reasoning offered by JT for its mid-term increase seems to be weak in the extreme. Marketing departments of large incumbent operators should never have developed a product that was so sensitive to minor changes in consumer behaviour. Most consumers over-estimate their mobile package² and thus heavier users tend to be subsidized by average users.

As stated in the consultation, other operators wait until the contract term before passing new charges onto customers. While these operators also have contract terms that enable them to vary charges, it is clear indication that these operators respect offers and contract terms. Although it may not seem necessary to enact ex-ante regulatory changes to these operators' licenses, it is nevertheless regulatory prudence to do so.

Consumers are attracted to offers made by operators and better offers require longer term commitments. In these circumstances, if the operator then makes material changes to the terms of the contract the consumer is greatly disadvantaged, being locked-in for up to 2 years without the opportunity to change provider without cost. This could be construed as misrepresentation or false advertising. In this respect JT has already had a complaint against it upheld by the Advertising Standards Association (ASA) concerning its definition of "unlimited" on mobile contract offers³.

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¹ See Telegeography Research <http://www.telegeography.com/research-services/global-internet-geography/index.html>

² See various reports at www.billmonitor.com

³ ASA Adjudication on JT (Jersey) Ltd 5 December 2012:

http://www.asa.org.uk/Rulings/Adjudications/2012/12/JT-Jersey-Ltd/SHP_ADJ_205186.aspx

In this case, the contract itself was not changed but additional charges were “hidden” from the consumer until after the event. Unfortunately, ASA decisions are not legally enforceable in Jersey.

It would therefore seem prudent at this stage to include in the telecommunications licences a similar condition to that in the Jersey Post Licence⁴ which states in condition 16.10:

The Licensee shall not promote any or all of its services in such a way as may be misleading to Users or contain unverifiable information and such promotions shall not contain information that is not independently verifiable.

This condition together with the proposed changes to the licenses would enable CICRA to ensure that consumers can be sure that product offers that are accurate and contain no misleading clauses or claims.

In order to ensure that there is no confusion or possible dispute, ACS would recommend that the term “one month” in the proposed new condition be amended to read “28 days”. ACS would further recommend that any increase in prices within existing contracts that exceeds the prevailing RPI, should be first authorized by the Authority.

ACS is fully supportive of the proposed licence change and would also urge the Authority to consider the introduction of a Licence Condition similar to that of Jersey Post Limited’s licence as a matter of urgency.

NOTE:

For the avoidance of doubt, this document may be published in its entirety.

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⁴ Public Postal Operator’s Licence Class II Licence for Jersey Post Limited:
http://www.cicra.gg/_files/081021%20JP%20Licence%20amended.pdf