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Ofcom's Approach and Priorities for Consumer Protection & Empowerment

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This paper discusses Ofcom's current activities related to consumer protection and empowerment. It describes our approach and framework for analysis, and goes on to examine those areas we currently treat as our top priorities. We do so by exploring the following questions:

- What is the role of consumer policy?
- What do we mean by consumer protection and empowerment?
- What issues have given rise to concerns in our recent experience?
- What tools do we have to improve consumer outcomes, taking account of the impact of market mechanisms and the role of incentives?
- What is the evidence of the effectiveness of our approach to date?

We also briefly discuss our proposed intervention against the sale of automatically renewable contracts to purchasers of fixed voice and fixed broadband services.

Our protection and empowerment work complements our competition work as it addresses areas where markets without dominant providers are not functioning perfectly for consumers in terms of their ability to compare and switch providers easily as well as to negotiate, understand, and enforce contracts. As the OFT

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states “markets work well when there are efficient interactions on both the demand (consumer) and supply (firm) side. On the demand side, confident consumers activate competition by making well-informed and well-reasoned decisions which reward those firms which best satisfy their needs.”¹

In addition to our powers using regulations and our work with industry, we also discuss the scope for incorporating greater use of comparative information and behavioral economics to improve market outcomes and reduce consumer harm.

I. What Is the Role of Consumer Policy?

Competition policy seeks to use regulatory instruments mainly to address supply-side market failures, especially as regards number of suppliers, market shares, and barriers to entry and exit, which, if left unchecked, could lead to one or more suppliers being in a position to exploit a dominant position. This, in turn, can result in poor consumer outcomes such as excessive or inefficient charges, and insufficient incentives to innovate and invest in new product offerings.

By contrast, consumer policy has often been referred to as the “demand side” of competition policy.² Standard economic theory suggests a number of conditions need to be satisfied if markets are to deliver efficient outcomes for consumers. Where these conditions are not present, this can give rise to market failures—where the market fails to secure efficient outcomes for consumers. While supply-side failures can result from barriers to entry and exit, for example, demand-side failures can result from imperfect information or high search (or switching) costs. Equally, sub-optimal outcomes are possible wherever consumers’ actual ability to engage with markets falls short of complete rationality. So a lack of information can result in consumers not getting the best from markets,

but so can consumers’ inability to absorb and process the information that does exist.

BY CONTRAST, CONSUMER POLICY HAS OFTEN BEEN REFERRED TO AS THE “DEMAND SIDE” OF COMPETITION POLICY.

The identification of a demand-side market failure does not, of itself, imply a need for regulatory action. Just as there are instances of market failure, there is also the possibility of regulatory

failure. A regulatory action intended to correct a market failure can create a burden, ultimately passed on to consumers, which exceeds the cost the intervention is seeking to address. It can also occur where the necessary imperfections of the analysis mean that the regulatory interventions result in unintended consequences that lead to harm that is greater than that which we, as the regulator, are seeking to correct. We need to set the bar for regulation, particularly for costly or risky interventions, at a relatively high level. In many cases, that is underlined by the legal framework and by the scrutiny our decisions receive from the relevant courts.

In addition, the market itself can be quite adept at finding market-based solutions to apparent market failures. For example, providers of low quality services have little incentive to reveal the quality of their services and this can give rise to insufficient or asymmetric information in the market. But the market has developed a number of remedies and proxies for this problem. For example, brands can provide consumers with a recognisable and easy-to-process proxy for quality. And, intermediaries have made it their business to step in to help fill informational gaps.

On a similar theme, we need to consider whether any demand-side market failure is an enduring feature or is transitory as this, too, will influence the desirabil-

ity of regulatory remedies. For example, a bad outcome resulting from complexity of products could merely be the feature that encourages learning by consumers and allows them to “catch up.”³ But if the nature of products continues to change, then it becomes less likely that consumers will “catch up” in this way. Again, behavioral economics provides valuable insights in this area.⁴ Finally, it is important to bear in mind that regulatory intervention is, at least to some extent, a substitute for consumer learning so the expected outcome absent intervention would be expected to change over time.

So in some cases Ofcom has decided not to act even where it accepts that there is evidence of sub-optimal outcomes for consumers. We will choose to do so when all the actions available either will not address the harm or will do so subject to adverse consequences which are in excess of the likely benefits. And this will always be a difficult choice for a regulator to make when facing demands for intervention by consumer groups or industry participants.

SO IN SOME CASES OFCOM HAS DECIDED THAT THE RISK OF REGULATORY FAILURE IS TOO HIGH EVEN WHERE IT ACCEPTS THAT THERE IS EVIDENCE OF SUB-OPTIMAL OUTCOMES FOR CONSUMERS.

The key features of the communications sector that can result in demand-side market failure include:

- **The relatively recent history of liberalisation**, which means some consumers are not familiar with the need, or do not have the skills, to shop around for the products and prices that most suit their preferences. This is reflected, for example, by low awareness of competitors in some segments of the population, particularly in fixed-voice telephony.
- The **complexity of services** and the rate of change in offerings, which means that consumers may find it difficult to understand and compare the attributes of the services they are considering buying in order to reach a suitable decision.⁵ This could, in turn, mean that individual consumers are not making the decisions they would make if they had access to, and could process, information perfectly. It also means that some consumers could find themselves locked into contracts that differ markedly from the product they thought they were purchasing. In the extreme, this feature can give rise to a particular risk of scams.
- **Pricing complexity** can also create difficulty for consumers. For example, in purchasing a mobile contract a consumer needs to be aware of their future consumption of the various attributes of the service, including different call types and the various “additional charges” they are faced with. This can make choosing the best deal very difficult.⁶
- **Switching (and number porting) processes**, left to industry, have led to very poor consumer experiences in some instances.⁷ These can

result in direct harm to those consumers that have attempted to switch, and can lead to a reduction in competitive intensity in the market if the result is a lowering in the propensity to switch. This has been a particular feature in fixed-voice and broadband markets. This is because these services often share the same infrastructure (Openreach's local loop). Coordination is needed for purely technical reasons and there are low and asymmetric incentives for providers to agree to processes that are good for consumers, either due to coordination failure or because some providers have low incentives to work towards lower switching barriers. That is, each change in switching processes will generate likely commercial "winners" and "losers."

- We are also seeing an increasing trend towards providers seeking to introduce **contractual restrictions** on customers' ability to switch. Some of these are clearly matched by corresponding consumer benefits. For example, where a provider absorbs an upfront cost (such as a handset subsidy) it appears appropriate to then bind the consumer into a proportionate minimum contract period. However, we have concerns that some restrictions to switching may not be justified by the corresponding customer benefit. Behavioral economics plays an important role in the analysis. If consumers were perfectly rational and there was perfect transparency, consumers could make an informed choice based on their assessment of the downside of future restrictions to switching relative to the benefits being offered in return. However, if consumers do not properly understand or evaluate the cost of future switching restrictions, then concerns may arise. We discuss in detail one such example in section VI below.
- In situations where both parties to a contract have equal information and resources, they will also have equal ability to negotiate terms and to enforce. However, in consumer-to-business contracts this is not the case. **Terms are standard** and it is often **difficult for consumers to understand** the implications of **small print**. Standard court routes for enforcement may be prohibitively costly where disputed values are small. Absent regulatory action, the results can be that providers slip in terms that perfectly rational and informed consumers would not have consented to, or that breaches to terms go unchallenged.
- The growth of **bundles** can generate significant benefits for consumers, but can also serve to exacerbate many of the issues identified above.⁸

II. What Do We Mean by Consumer Protection and Empowerment?

Our starting point is that competition is the best means of delivering good outcomes for consumers. This is at the heart of Ofcom's regulatory principles and is derived from the statutes.⁹ Regulatory action designed to improve consumer out-

comes does so by seeking to enhance the ability of the market to deliver good outcomes for consumers. Only where that is not possible, we will look for mechanisms that deliver those outcomes that the market will not deliver. For example, we have resisted pressure to introduce detailed regulation of competitive providers' customer service standards, looking instead at informational remedies that would encourage providers to invest in the quality of their customer services where there is a consumer demand for such improvements.

We use the term “consumer protection” to describe those actions we take that lead to consumers being more directly protected from scams and unfair practices. The term relates to those things we consider providers can and cannot “do” to consumers. For example, in response to a growth in public concern and evidence of harm from silent calls we introduced new rules to limit the behavior of call centers. We fell short of banning the dialling equipment that gives rise to abandoned calls, but we did specify rules that were intended to dramatically reduce the harm resulting from their use.¹⁰

WE USE THE TERM “CONSUMER PROTECTION” TO DESCRIBE THOSE ACTIONS WE TAKE THAT LEAD TO CONSUMERS BEING MORE DIRECTLY PROTECTED FROM SCAMS AND UNFAIR PRACTICES.

The critical categories of consumer protection concerns are:

- Practices that lure consumers into contracts or services they have not consented to;
- Harm from process problems, and those that occur once service is being provided; and
- Practices which make it hard for consumers to exit the contract.

We use the term “consumer empowerment” to refer to those actions we take that can lead to consumers being better able to act for themselves to secure benefits from the market. This is all about consumers having the skills, confidence, and tools to better engage and benefit. Many of these sit well outside what a regulator can achieve. But some appear to be within our gift and within our remit.

The critical issues that might benefit from measures to strengthen consumer empowerment are:

- Making choices (information and tools to allow consumers to choose supplier and product);
- Exercising choices (switching); and
- Managing relationships with suppliers (e.g. knowing how to exercise rights).

Consumer protection and empowerment can impact on consumer outcomes, both through the effect on the individual consumer and through the impact on the effectiveness of the competitive process.

So a consumer who has been mis-sold a fixed-line telecommunications service will suffer harm directly through inconvenience, distress, and financial loss. But if the result of a prevalence of mis-selling is that the market acquires an unsavory reputation, then others who may benefit from switching may be put off from doing so, and they too will suffer harm as they will fail to benefit from a supplier

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or package that better suits their needs. And if, as a result of this bad reputation for the sector, consumers as a whole desist from switching, then all consumers will ultimately suffer as competitive pressure on suppliers is diminished and the ability of new entrants to disrupt the market is also reduced.

And the same is true for empowerment. A consumer who does not switch because of high informational, process, or contractual barriers to switching will potentially miss out on a superior deal. But if the market result is a lowering of competitive intensity due to reduced switching, then all consumers will eventually suffer.

III. What Issues Have Given Rise to Concerns in Our Recent Experience?

It is not always straightforward to perfectly classify issues that have given rise to harm into one category or another as sometimes consumer difficulties, and possible remedies, will span a number of categories. For example, we were faced with a particular issue of harm in our sector that came to be described as “mobile cash backs.” Consumers would purchase a mobile contract from an independent retailer. Because of complex incentives schemes, retailers were not able to undercut each other by lowering the network tariff, as this was not in their control. Instead, they competed by offering “cash back” to the consumer which, when done as a legitimate business practice, involves sharing with the consumer some of the commission that the network provider has paid to the retailer. However, over time the cash back promised became higher and sustainable only because some retailers had business models which involved actually paying the cash back only to a small number of consumers. One way they did this was to secure a low “redemption” rate for cash backs by putting terms in contracts that placed very onerous (and unreasonable) conditions on consumers to qualify for cash back—for example, requiring them to send the mobile bill to the retailer within an impossible timeframe.

Ofcom intervened to address this issue.¹¹ However, in our evaluation we considered both “consumer empowerment” and “consumer protection” remedies. Empowerment options included “educating” consumers as to the nature of the restrictive terms for receiving cash backs so that they could make informed decisions as to whether the restrictions justified the quantum of the cash back. Protection options involved prohibiting terms that did not appear reasonable.

We list below our main regulatory interventions in the telecoms industry over the last few years and whether we view them as mainly related to consumer protection or consumer empowerment.

A. CONSUMER PROTECTION

1. Luring Consumers Into Contracts or Services They Have Not Consented To

- **Fixed line mis-selling and slamming:** Consumers are mis-sold a service based on false information or aggressive and intimidating sales techniques, or are simply transferred to another supplier without their consent.
- **Mobile mis-selling:** Consumers are mis-sold a service based on false information or aggressive and intimidating sales tactics, or are misled into thinking that they are simply agreeing to an upgrade with their existing service provider when, in fact, they are being signed to a new contract with a different service provider.

2. Harm From Process Problems and Those That Occur Once Service is Being Provided

- **Silent calls:** An individual picks up the telephone and there is silence on the line. This problem is typically caused by features of automatic dialling equipment used by call centers—perhaps where the equipment has been configured irresponsibly. However, individuals have, in the past, been driven to believe that the silence is caused by something more sinister, such as a stalker or someone that is waiting to burgle the individual’s home.¹²
- **Mobile cash backs:** A consumer purchases a mobile contract from a retailer who promises to refund part of the line rental payable to the network provider during the life of the contract. But the consumer does not receive some or all of the cash back.¹³

3. Making it Hard for Consumers to Exit the Contract

- **Abuse of MAC process:** The broadband switching process often means the consumer needs a special code or a migration authorisation code (“MAC”) from their existing supplier that they must then give to their new supplier in order for the switch to take place. Abuse of

MAC process involves the existing supplier deliberately refusing to give the MAC out to prevent customers from leaving, or failing to invest in systems that allow for MACs to be given to customers.

- **Early termination charges:** These occur where customers leave within their contract period and are forced to pay an early termination charge. Customers sometimes are unaware that they are liable to such a charge, and sometimes the level of the charge is higher than could be considered to be “fair.”¹⁴

B. CONSUMER EMPOWERMENT

1. Making Choices

- **Broadband speeds:** Customers purchasing a broadband service advertised as e.g. “up to 8 mb/s” expect something close to that number but receive much less.¹⁵
- **Quality of service consumer information:** Customers find it difficult to make purchasing decisions as they have little reliable information on quality. Options that could assist to some degree include the publication of complaints to Ofcom on a provider-specific basis, market research, or publication of relevant provider data suitably audited to ensure reliability and comparability.
- **Accreditation of price comparison services:** Complexity of pricing has led consumers to be increasingly reliant on price comparison services (such as uSwitch and moneysupermarket.com). But these services make their money from commissions from those companies that consumers switch to, and this might create an incentive for the comparison service to present information that drives consumers to those that pay the highest commissions, rather than display accurate information presented with appropriate prominence.¹⁶

2. Exercising Choice

- **Strategic approach to consumer switching:** Existing product-specific processes for switching can be very difficult for consumers to navigate. The existence of bundles exacerbates the problems as product-specific processes can clash. But providers are often divided as to what new processes are appropriate for bundles given their different commercial incentives.
- **Rollover contracts:** Defined as a relatively new type of contract where consumers opt in to a fixed-term contract in return for a discount. With rollover contracts, at the end of the initial contract the customer is “rolled over” into a new fixed-term contract with an early termination charge. The result, if these contract types catch on, is that the market could feature a state where most consumers are locked into contracts that have only small windows in which they can change

providers. Behavioral economics plays an important role in our analysis. (See Section VI for a further description of these issues).

3. Managing Relationships With the Supplier

- **Complaints handling/ ADR:** Our sectors are complex and things will sometimes go wrong, often for technical or network reasons. However, consumers want to be with a provider that will be responsive when there is a problem and will take ownership of that problem. And, because consumers will find it expensive and intimidating to seek redress through the courts, the Communications Act allows us to require all providers to belong to an alternative resolution scheme approved by Ofcom which is free to the consumer and binding on the provider. However, if consumers are not made aware that they have this right, it will be of little value.¹⁷

IV. What Tools Do We Have to Improve Consumer Outcomes, Taking Account of the Impact of Market Mechanisms and the Role of Incentives?

A. WORKING WITH INDUSTRY

When competition appears not to be delivering effective outcomes for consumers in terms of information, switching, or protection, we will assess the extent to which we can work with industry to address the issues. This can involve a range of initiatives from reaching a shared understanding and objective with individual providers, to working with the industry to establish voluntary codes, or engaging the Office of the Telecoms Adjudicator (“OTA”) to develop and implement industry processes. The likely success of these routes can depend on the incentives for providers to address the problem and the credible threat of further intervention if progress is not made. Our work on co- and self-regulation has provided us with a toolkit to determine when the incentives for individual providers are likely to be sufficient to secure improvements through voluntary means.¹⁸

B. CONSUMER INFORMATION

We can sometimes use consumer information to address problems that emerge; for example, by alerting consumers to scams or explaining how to switch suppliers or make use of cooling-off periods. The information can take various forms, including items on our website, Ofcom consumer guides, information passed through consumer stakeholders such as Citizens Advice and Age Concern, and media articles.

We are also considering the extent to which comparative information to consumers might support the market by providing transparency and incentives to

address problems. Options here include publishing provider-specific research data and details of the number of complaints received by Ofcom about providers on particular issues.

In developing our approach in this area, we use behavioral economics to help us understand and test the role of such information and how consumers use information in markets.

C. INTRODUCING AND AMENDING "GENERAL CONDITIONS" ("GCs")

Proposing and introducing new GCs, or modifying existing GCs, allows Ofcom to set rules for communications providers and enables us to monitor and enforce those rules.¹⁹ This is a significant intervention. The Communications Act sets out tests for setting or modifying GCs, including requirements to ensure the change is objectively justifiable and proportionate. We have to focus very heavily on developing impact assessments of the costs and benefits of intervention. These can be challenging and time-consuming to establish. We are heavily reliant on providers to give estimates of costs, where they may well have an incentive to exaggerate estimates. Benefits, on the other hand, may be difficult to quantify.

This challenge may potentially be greater in our sector than in finance or energy, given relatively low spending by consumers on communications services and the complexity of networks and systems. Relatively modest interventions risk having a much larger impact on businesses (and therefore consumers), and solutions seem costly because of complex systems, with costs harder to absorb because of low average monthly consumer spending.

When considering options for new or amended GCs, we look at the scope for incorporating behavioral economics into our analysis of remedies and also for using experimental research techniques.²⁰ Potential areas where these approaches are particularly relevant include the quality of consumer information regarding service and broadband speeds; for example, where we consider how consumers actually acquire, absorb, process, and use information in their decision making rather than how they might have traditionally been assumed to respond as "rational consumers."

D. ENFORCING REGULATIONS

Although our powers under the Act in enforcing GCs are in theory considerable (with fines up to 10 percent of relevant turnover), in practice they are more limited. We must give operators the chance to remedy a breach or violation before issuing a fine, meaning that they could breach a GC but not face any sanction. As part of the Framework Review, the European Commission has proposed tougher enforcement powers for national regulators and these will need to be transposed into the relevant national legislation. The new powers would enable

us to fine an operator, even if they have subsequently remedied the breach. Tougher powers would provide stronger deterrents.

In addition to our powers under the Act to enforce GCs, we are empowered by the Enterprise Act 2002 (“EA”) to take enforcement action to stop infringements of certain consumer protection legislation, including the Unfair Terms in Consumer Contracts Regulations 1999 (“UTCCRs”), the Distance Selling Regulations 2000, and the Consumer Protection from Unfair Trading Regulations 2008 (“CPRs”).

Regulators have sometimes issued guidance on how they might interpret particular pieces of horizontal consumer law in particular sectors. The OFT has pioneered this approach with its various guidance on the UTCCRs, which has led to the high profile bank charges litigation.²¹ In 2008 Ofcom carried out a review of UTCCR guidance for our sectors. Entitled the “Additional Charges Review,” the review sought to give industry and consumers clarity on how we would interpret the UTCCRs when taking enforcement action on particular “additional” charges—those beyond the normal charge for the main service, such as early termination charges, fees for not paying by direct debit, or charges for paper bills.²²

Ofcom is obliged to consider complaints under the UTCCRs, so having guidance can be helpful to setting the boundaries of our likely actions. But while Ofcom can directly enforce breaches in the GCs, it can only enforce the UTCCRs (and similarly other consumer law) through the courts. Following the issuing of its guidance, Ofcom launched an enforcement and monitoring program. We have prioritized early termination charges with the result that fixed-voice providers have offered to make changes to their policies because of our intervention.²³

V. What Is the Evidence of the Effectiveness of Our Approach to Date?

Evaluating the effectiveness of our approach is not straightforward as there is rarely a single key performance indicator (“KPI”) that will measure the change in outcomes for consumers and link these outcomes causally to the actions we have taken. To address this, we seek to monitor a range of metrics and relate these, as best we can, to the actions that Ofcom has taken.

Each year, to facilitate accountability and discussion with stakeholders, we produce the Consumer Experience report as well as a number of research reports. Under a number of relevant headings, the Consumer Experience report contains all the metrics we have access to that help describe the consumer experience in our sectors. The reports are used to ensure we publicly evaluate our priorities going forward, that they are the right ones, and that the actions we are taking are well designed to achieve the desired outcomes. At the end of 2009 we also pub-

lished a Business Consumer Experience report²⁴ alongside the yearly Consumer Experience report.²⁵

VI. An Example—Analysis of British Telecom's Rollover Contracts

Many Communications Providers ("CPs") offer fixed-term contracts that require customers to commit to paying for a service for a minimum contract period ("MCP") in return for an incentive, such as an equipment subsidy—for example, a mobile handset or a set-top box—or a price discount. In order to exit these fixed-term contracts before the end of a MCP, customers usually have to pay an early termination charge.

Automatically Renewable Contracts ("ARCs") in communications markets are contracts where, at the end of a MCP (whether this is an initial or subsequent period), the contract rolls forward to a new MCP by default, unless customers proactively inform their CP that they do not wish this to happen.

ARCs are a feature in residential fixed-voice markets, and in business markets. Currently approximately 15 percent of U.K. residential fixed-voice consumers are on ARCs. British Telecom ("BT") has also introduced ARCs in the residential broadband sector. ARCs are not currently a feature of the mobile market. Since their introduction in the residential sector, Ofcom has had serious concerns about the potential harm that ARCs may cause, particularly if they become a widespread feature of this market.²⁶

We initially looked at ARCs in the context of our Review of Additional Charges published in December 2008.²⁷ The Review set out guidance on how we would enforce the UTCCR in the communications sector. Ofcom's current guidance states the conditions under which Ofcom believes ARC terms are more likely to be judged as "fair" under the UTCCR,²⁸ such as where the ARC term is transparent and a clear reminder is sent to the customer.

However, the test of fairness under the UTCCR is a legal test specific to those regulations and does not necessarily capture the full economic effects of a contract term. Consequently, our concerns about the effect of ARCs remained and we commissioned market research to better understand their effects and determine whether some form of intervention is appropriate.

Our initial market research, conducted in 2009, focussed on transparency and customer awareness in relation to BT's ARCs propositions, and included a mystery shopping exercise and a customer survey. This focus reflected the fact that, at the time, only a relatively small proportion of BT's ARC customers had rolled forward to a new contract (most contracts were sold in the second half of 2008) and the impact of ARCs on the switching process was not yet clear.²⁹

We are concerned that ARCs are damaging to consumers and competition in communications markets. We have identified two types of harm to consumers: a *direct effect* coming from the potential for ARCs to increase individual consumers' exposure to switching costs (in the form of an early termination charge) and an *indirect effect* coming from the potential for ARCs to lessen competition in the market, thereby reducing the pressure on firms to lower prices, and improve quality for all consumers.

While we recognise that ARCs may also have beneficial effects for some consumers—e.g. those who expect to remain with their supplier and who value the convenience of not having to renew their contract proactively—we believe these benefits are relatively limited and are outweighed by the costs.

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Towards the end of 2009 Ofcom commissioned Professor Gregory S. Crawford and ESMT Competition Analysis to conduct an econometric analysis of BT customer data in order to identify whether BT's ARC term had an impact on customer switching. An econometric approach was necessary in order to isolate the impact of the ARC term itself, as separate from other factors such as the price discount associated with the offer, and changes in the competitive dynamics in the market.³⁰

The econometric analysis indicated a clear causal link between ARCs and reduced levels of consumer switching. Furthermore, it showed that the effect was separate from the impact on switching levels of other factors such as price discounts. We believe this effect stems from the opt-out nature of the process for contract renewal, rather than a lack of transparency surrounding ARC terms or the complexity of the process for opting out. Because it stems from such a core aspect of ARCs, this indicates that any example of such a contract is likely to be harmful to consumers and to effective competition.

We therefore proposed in our March 2011 consultation an amendment to General Condition 9 that will prohibit “opt-out” processes for MCP renewal (processes where end users automatically enter a new MCP by default unless they proactively inform their CP that they do not wish this to happen) in any form in the fixed voice and broadband sectors.³¹ ▼

1 OFT, *What does Behavioural Economics mean for Competition Policy*, available at http://www.of.gov.uk/shared_of/economic_research/of1224.pdf.

2 John Fingleton, *Joining Up Competition and Consumer Policy. The OFT's Approach to Building an Integrated Agency*, available at http://www.of.gov.uk/shared_of/speeches/2009/spe-1209.pdf. This has also recently been discussed by Eliana Garces, *The Impact of Behavioral Economics on Consumer and Competition Policies*, 6(1) COMPETITION POL'Y INT'L, pp. 145-152 (Spring 2010) and Michael Salinger, *Behavioral Economics, Consumer Protection, and Antitrust*, 6(1)COMPETITION POL'Y INT'L, 65-86 (Spring 2010).

- 3 See, for instance, Mark Armstrong, *Interactions between Competition and Consumer Policy*, OFT Discussion paper available at http://www.ofcom.gov.uk/shared_ofcom/economic_research/ofcom991.pdf or Stefano Della Vigna, *Psychology and Economics: Evidence from the Field*, (47) J. ECON. LIT, pp. 315-372 (June 2009).
- 4 See, for instance, the recent Mountain View Learning and OFT study, *Pricing Practices: Their Effects on Consumer Behaviour and Welfare*, available at http://www.ofcom.gov.uk/shared_ofcom/business_leaflets/659703/Advertising-of-prices/Pricing-Practices.pdf.
- 5 Ofgem has recently proposed to require electricity and gas providers to offer at least one simple standard tariff to enable consumers to compare the competing offers, see their recent proposals for the retail markets at <http://www.ofgem.gov.uk/Markets/RetMkts/rmr/Pages/rmr.aspx>.
- 6 Behavioral economics suggests consumers have particular difficulty making forward-looking assessments. Grubb finds evidence that mobile customers are overconfident about not exceeding usage allowances, and choose wrong tariffs as a result. See Grubb, *Selling to Overconfident Consumers*, 99(5) AMER. ECON. REV, pp. 1770-1807 (2009).
- 7 See, for instance, the discussion in Section 2 of Ofcom's Strategic Review of Consumer Switching, available at <http://stakeholders.ofcom.org.uk/binaries/consultations/consumer-switching/summary/switching.pdf>.
- 8 See, for instance OECD (2011), *Broadband Bundling: Trends and Policy Implications*, OECD DIGITAL ECONOMY PAPERS, No. 175, available at <http://www.oecd-ilibrary.org/docserver/download/fulltext/5kghtc8znnbx.pdf?expires=1301393287&id=0000&accname=guest&checksum=E2C8B1987461-BA79B14CC61404CA0101>.
- 9 Section 3(4) of the Communications Act 2003 states that, in performing its duties, Ofcom must also have regard to a number of matters as appears to be relevant in the circumstances; in particular, the desirability of promoting competition in relevant markets.
- 10 Ofcom Statement, *Tackling Abandoned and Silent Calls*, (October 1, 2010), available at <http://stakeholders.ofcom.org.uk/binaries/consultations/silentcalls/statement/silentcalls.pdf>.
- 11 Ofcom Statement, *Protecting consumers from mis-selling of mobile telecommunications services*, (March 17, 2009), available at <http://stakeholders.ofcom.org.uk/binaries/consultations/mobmisselling/statement/statement.pdf>.
- 12 *Supra* note 10.
- 13 *Supra* note 11.
- 14 The main UK landline providers significantly reduced their early termination charges following discussions with Ofcom in 2010, (<http://consumers.ofcom.org.uk/2010/06/cheaper-charges-for-uk-consumers-to-end-phone-contracts/>).
- 15 Ofcom has published research into the broadband speeds actually offered by fixed broadband providers. See a recent example at <http://media.ofcom.org.uk/2011/03/02/average-broadband-speed-is-still-less-than-half-advertised-speed/>.
- 16 See a summary of Ofcom's accreditation work at <http://stakeholders.ofcom.org.uk/consultations/ocp/statement/pricescheme/consumerfaq/>.
- 17 Ofcom is currently reviewing the effectiveness of alternative dispute resolution schemes. See the recent call for inputs at <http://stakeholders.ofcom.org.uk/binaries/consultations/alternative-dispute-resolution/summary/adr.pdf>.

- 18 Ofcom Statement, *Identifying appropriate regulatory solutions: principles for analysing self- and co-regulation*, (December 2008), available at <http://stakeholders.ofcom.org.uk/binaries/consultations/coregulation/statement/statement.pdf>.
- 19 When the new EU communications regime was implemented in the United Kingdom on July 25, 2003, individual licenses granted under the Telecommunications Act 1984 were replaced by the General Authorization regime. The effect was that licenses were no longer required for providing communications networks or services in the United Kingdom—everyone is “generally authorized” to do so. However, the General Authorization is subject to the General Conditions of Entitlement; these conditions apply to all persons providing electronic communications networks and services.
- 20 Ofcom has published two laboratory experiments on consumer behavior, see <http://stakeholders.ofcom.org.uk/binaries/consultations/consumer-switching/annexes/economics-research.pdf> and <http://stakeholders.ofcom.org.uk/market-data-research/telecoms-research/experiments/>. See also the more general discussion at <http://stakeholders.ofcom.org.uk/binaries/research/telecoms-research/experiments.pdf>. We are also currently carrying out additional experiments that we plan to publish in the next few months.
- 21 OFT, *Unfair contract terms guidance*, (September 2008), available at http://www.oft.gov.uk/shared_of/reports/unfair_contract_terms/oft311.pdf.
- 22 Ofcom Statement, *Ofcom review of additional charges*, (December 2008), available at <http://stakeholders.ofcom.org.uk/binaries/consultations/addcharges/statement/addchargestatement.pdf>.
- 23 *Supra* note 11.
- 24 Available at <http://stakeholders.ofcom.org.uk/market-data-research/market-data/consumer-experience-reports/bce/>.
- 25 Available at <http://stakeholders.ofcom.org.uk/market-data-research/market-data/consumer-experience-reports/consumer-experience/>
- 26 Ofcom’s consultation on its proposal to ban ARCs is available at <http://stakeholders.ofcom.org.uk/binaries/consultations/arcs/summary/arcs.pdf>.
- 27 See <http://stakeholders.ofcom.org.uk/binaries/consultations/addcharges/statement/addchargestatement.pdf>
- 28 See ¶ 97 onwards in Ofcom’s Guidance, available at <http://stakeholders.ofcom.org.uk/binaries/consultations/addcharges/statement/Guidance.pdf>.
- 29 See Annexes 11, 12, and 13 at <http://stakeholders.ofcom.org.uk/consultations/arcs/>.
- 30 See the report at http://stakeholders.ofcom.org.uk/binaries/consultations/arcs/annexes/Annex_07.pdf.
- 31 The OFT has also recently published a study on consumer contracts where the effect of rollover terms is discussed, see <http://www.oft.gov.uk/OFTwork/markets-work/current/consumer-contracts>.