Representing the Communication Services Industry

Federation of Communication Services

Automatically Renewable contracts
Issued 3 March 2011

FCS response- 20 May 2011

Contact for response:
Michael Eagle

Federation of Communication Services Ltd
Burnhill Business Centre,
Provident House,
Burrell Row,
Beckenham, Kent
BR3 1AT
Tel: 020 8249 6363
E-mail: fcs@fcs.org.uk
Web: www.fcs.org.uk

Introduction

The Federation of Communication Services represents over 300 businesses delivering products and services via wireless, copper and fibre technology. Over 50% FCS members are smaller CPs and new entrants that deliver telephony services into the residential and business markets; this sector is growing. This response has been prepared on behalf of the Fixed Service Providers Group within the Federation.

Overview

We welcome the opportunity of responding to this consultation on Ofcom's proposal to prohibit Automatically Renewable Contracts (ARCs). In general, we agree with Ofcom's view that this type of contract represents a barrier to switching without providing meaningful benefits to customers.

The sector has grown and has delivered innovation and competition in large part due to the low barriers to entry and ease of customer acquisition. For this reason we believe that Ofcom is justified in taking action to intervene and prevent any further growth in the use of this type of contract which restricts a customer's ability to move to a new provider when they wish to do so and without financial penalty.

Ofcom consultation questions

Section 3

Question 1: Do you agree with our assessment of the potential benefits of ARCs for consumers, including the source of the benefits and their magnitude? Please provide evidence to support your response.

We agree with Ofcom's assessment of the potential benefits of ARCs and support Ofcom's view that these are negligible.

Specifically, we do not believe that ARCs enhance the ability of CPs to provide discounts or other benefits such as spreading upfront costs over the life of the contract. This is more likely to derive from an appropriate Minimum Contract Period than from an ARC.

On the question of customer convenience, we agree with Ofcom's view that failure to "opt in" following expiry of an MCP will generally mean that the contract reverts to a month-by-month relationship rather than cessation of service. Given therefore that there is no meaningful detriment to the customer where this occurs, ARCs offer no particular protection in this area.

Question 2: Do you agree with our assessment that ARCs are likely to increase the probability of contract renewal (despite only altering the process for renewal)? Please explain your answer.

We agree with Ofcom's assessment. ARCs clearly reduce the window of opportunity for customers to switch without penalty. Inertia is undoubtedly the major factor in customers

allowing a contract to roll over to a new MCP and most of these customers will not be aware of the restrictions which will arise from moving into the subsequent MCP.

Question 3: Do you agree with our assessment that increased switching costs resulting from ARCs are likely to harm competition, in particular the incentives for new entry and innovation? Please explain your answer.

We agree that the increased cost of switching arising from the Early Termination Charges (ETCs) normally associated with subsequent MCPs will undoubtedly be harmful to competition. We also agree that the ability to attract new customers at launch is undoubtedly a factor in encouraging market entry and innovation and that this is undoubtedly harmed when the ability of significant numbers of customers to switch is restricted or "postponed" by reluctance to pay such ETCs.

Question 4: Do you agree with our analysis that ARCs could survive in a competitive market, despite causing harm to competition. Do you agree that there is a risk of ARCs spreading in the market and that this could be rapid? Please explain your answer.

We agree with Ofcom's analysis of the key factors which may enable ARCs to spread despite restricting consumer choice. This is effectively due to a lack of awareness or understanding of the longer term contractual consequences by customers who, at the point of purchase, will be focused on the immediate benefits offered by the CP.

As CPs grow their customer bases, those with larger market share may be incentivised to use this mechanism as a means to protect their base.

Section 4:

Question 5: Do you agree with our analysis regarding the robustness of the econometric results? In particular, do you agree we have adequately accounted for the effect of the price discount and selection-bias? Please explain your answer.

No comment

Question 6: Do you agree that we have correctly identified the underlying causes of the results of the econometrics? Please explain your answer.

We agree.

Question 7: Do you agree with our assessment that the results of the econometrics can be extrapolated to: a) all providers of fixed voice services to residential consumers and small business users (with ten employees or less); b) the broadband sector? Do you agree that it is inappropriate to extrapolate the results to medium and large businesses? Please explain your answer.

We agree that remedies should be extended to cover both voice and broadband services. We also agree that switching behavior of domestic and small business customers will generally be similar and that the proposed remedies should be applied accordingly.

Question 8: Do you agree that the transparency of terms and conditions in BT's ARC contract is not likely to be the prime driver of the results identified in the econometric research?

We agree. However, it seems that in practice customers do not recognise the significance of the information provided or the possible impact it may have on their ability to switch during a subsequent MCP.

Section 5

Question 9: Do you agree that intervention regarding ARCs is warranted? Do you agree that a General Condition restricting opt-out renewal processes (i.e. option 4) is the most appropriate form of intervention? Do you agree that a GC should cover both residential and small business customers, but not medium or large businesses? Do you agree that mobile communications should be out of scope at this stage? Please explain your answer, and provide details of any alternative intervention you think more appropriate.

We agree that intervention is justified and that option 4 prohibiting ARCs is the most appropriate remedy.

We agree that the revised GC wording should cover both residential and small business customers

We believe that the same prohibition should be applied to the mobile market as a preventative measure.

Question 10: Do you agree that we should require compliance with the proposed GC amendment immediately it comes into effect? Do you agree that a period of 12 months for compliance with our proposed GC for CPs with existing customer subject to ARC terms is sufficient to remove the harm associated with ARCs without imposing disproportionate costs on CPs? If you disagree, please provide evidence to support your view and suggestions for a more appropriate time frame.

We agree that it is appropriate to make compliance immediate for CPs who do not offer ARCs and have no customers on this type of contract.

We believe that those CPs who have customers on ARCs should be able to comply within 12 months without incurring disproportionate costs.

Question 11: Do you agree with the General Condition we propose? If not, what alternative form of GC do you consider more appropriate? Please explain your answer.

We agree that a modification to GC9 is the best route to implementing the necessary prohibition. We agree with the revised wording proposed by Ofcom for GC9.