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## **Which? response to Ofcom's framework for assessing fairness in broadband, mobile, home phone and pay-TV**

Which? believes that it is essential that communications providers treat customers fairly. Unfair practices can undermine consumer trust in markets. Our consumer insight tracker shows that consumer trust of both broadband and mobile services is low (36% in May 2019).<sup>1</sup> This is significantly lower than trust in the water sector (58%) and only just above that of gas and electricity (31%). It is essential that consumers are able to trust that the telecoms market will deliver for them. We hope that Ofcom's work in relation to fairness will help to address the issue of trust in this sector.

Which? supports the work Ofcom and other regulators are doing in developing fairness frameworks that set out criteria to assess unfair practices and the scale of harm to consumers. We agree that 'there are differences between regulated sectors which will need to be reflected in approaches to achieving fairer outcomes.' However, Ofcom should work with other regulators to ensure there is a coherent approach to fairness across markets.

Alongside this, we are supportive of Ofcom's fairness commitments and were pleased to be able to support their launch in June 2019. Ofcom should encourage more communications providers (CPs) to sign up to these commitments as these must be supported across the industry, not just by the largest providers.

### **Questions**

#### **Q1: Do you think our characterisation of what might constitute fair and unfair practices is appropriate?**

We agree with Ofcom's characterisation of fair and unfair practices and the differentiation between procedural unfairness and distributive unfairness. Ofcom must continue to undertake work to address procedural unfairness in this market.

We acknowledge that price discrimination can deliver benefits for consumers. However, some price discrimination can also cause harm and lead to unfairness. For example when it targets vulnerable consumers (including those who are not online and therefore find it harder

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[https://consumerinsight.which.co.uk/tracker/compare/trust?search%5Bdate\\_from%5D=1905&search%5Bdate\\_to%5D=1805&search%5Bsort\\_by%5D=unsorted](https://consumerinsight.which.co.uk/tracker/compare/trust?search%5Bdate_from%5D=1905&search%5Bdate_to%5D=1805&search%5Bsort_by%5D=unsorted)

to 'shop around'), or if consumers are unaware it is occurring and believe they are being offered a competitive price so do not think to 'shop around'.

Research by both Citizens Advice and the Competition and Markets Authority has shown that levels of consumer engagement in the broadband market are lower than in other sectors.<sup>2,3</sup> In the telecoms sector, pricing practices often appear to rely on this lack of engagement. Consumers often seem to be unaware that being a long-standing customer is not always rewarded with lower charges.

Tackling unfairness in this market requires addressing the exploitation of behavioural biases. For example, recent research we have undertaken shows that many people exhibit risk averse behaviour, choosing to stay with their broadband package rather than moving to another where there are uncertainties around cost and service, even if this is more expensive.<sup>4</sup> We also know that there is low consumer awareness of the benefits of switching, availability of alternative packages and prices and knowledge of pricing structures such as when discounts apply. We welcome the introduction of end of contract notifications as a step to address some of the barriers faced by consumers when engaging in this market.

Distributive fairness is a key issue for vulnerable consumers in particular and we welcome the focus on identifying who is being harmed and the extent of the harm. In the absence of procedural unfairness, for example if firms are not exploiting behavioural biases or encouraging disengagement, then we agree that there is less need for concern around distributive fairness. However, a critical exception is the case of vulnerable consumers and we would be concerned if gains in consumer welfare for some consumers lead to harm for vulnerable consumers.

**Q2: Do you agree with the questions set out in our fairness framework? Are there any other questions that should be included? Please set these out in your response.**

Which? agrees with the questions set out in the fairness framework. These appear to logically address both procedural and distributive unfairness. Ofcom must keep these under review to ensure that the questions remain fit for purpose.

In addition, Which? believes that there should be consistency in the frameworks used to assess fairness across the regulated sectors. Ofcom should work with other regulators, both individually and through the UKRN, to share thinking on this key issue whilst recognising the different characteristics that sectors have. For example, the Financial Conduct Authority's 'framework questions to help assess concerns about fairness in price discrimination'<sup>5</sup> includes a question asking 'how are firms price discriminating', Ofcom should consider whether this should also be included as part of its framework. By working together, the

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<sup>2</sup> Citizens Advice (2017) Exploring the loyalty penalty in the broadband market <https://www.citizensadvice.org.uk/Global/CitizensAdvice/Consumer%20publications/CitizensAdvice-Exploringtheloyaltypenaltyinthebroadbandmarket.pdf>

<sup>3</sup> CMA (2018) Tackling the loyalty penalty. Response to a super-complaint made by Citizens Advice <https://www.citizensadvice.org.uk/Global/CitizensAdvice/Consumer%20publications/CitizensAdvice-Exploringtheloyaltypenaltyinthebroadbandmarket.pdf>

<sup>4</sup> Britain Thinks on behalf of Which? ran a longitudinal online community of 120 participants between 27th March 2019 – 23rd April 2019.

<sup>5</sup> Financial Conduct Authority (July 2019) <https://www.fca.org.uk/publication/feedback/fs19-04.pdf>

regulators will help to ensure consistency, providing clarity for consumers and a coherent approach to fairness across markets.

**Q3: What additional information or guidance, if any, would you like to see included in our fairness framework?**

Ofcom should publish the details of how it plans to apply the framework in practice and what kind of action it will take where it deems it necessary. The FCA splits each question into examples of lesser and greater concern which is useful in terms of assessing fairness and harm. Ofcom should consider structuring the final framework to also show this.

There could also be a clearer explanation of how the framework relates to the six fairness commitments. In particular, how Ofcom will hold to account the CPs who have signed up and how it will measure progress against them. Ofcom should also highlight examples of good and bad practice in the market.

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