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OECD Consumer Policy Toolkit Workshop on Communication Services

SUMMARY OF PROCEEDINGS

OECD

FOREWORD

In follow-up to the Consumer Policy Toolkit, the Committee on Consumer Policy (CCP) is conducting a series of multi-stakeholder workshops to see how policies in key markets could be strengthened, using the framework and approaches developed in the Toolkit. Communication services were selected as the topic for the first workshop. It was organised by the CCP, in co-operation with the OECD's Committee for Information, Computer and Communications Policy (ICCP) and its Working Party on Communication Infrastructures and Services Policy (CISP), on 25 October 2011.

This report provides a summary of the workshop proceedings. It was discussed and approved by the CCP and the ICCP on 15 March 2013, under the written procedure.

The document was prepared principally by Maria-Chiara Baldaccini with the assistance of Kayoko Ido, from the OECD Secretariat.

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TOOLKIT WORKSHOP ON COMMUNICATION SERVICES REPORT ON PROCEEDINGS

Summary and key points

Summary

The consumer environment has undergone profound transformations over the past 20 years. Globalisation, new technologies and the increased role of services are driving changes that have brought significant benefits to consumers. Relatively little attention, however, has been paid to the challenges that these developments have posed for both consumers and consumer policy makers. The OECD's Committee on Consumer Policy (CCP) has been examining such challenges over time, leading up to the publication, in 2010, of the *Consumer Policy Toolkit*.

In addition to assessing how markets and consumers have changed, the *Toolkit* provides insights into ways that government agencies responsible for safeguarding consumer interests could improve their policy approaches to ensure that any interventions they make are well-justified, timely and effective. It shows how what is being learned in the fields of information and behavioural economics can be taken into account and used to design more effective policy measures.

In follow-up to this work, the committee is conducting a series of workshops to see how policies in key markets could be strengthened, using the framework and approaches developed in the *Toolkit*. Communication services were selected as the topic for the first workshop, in view of the increasingly important role that they are playing in economies, as well as the opportunities and challenges that they present to consumers. The expansion of high speed Internet networks has provided consumers and other users with an important means, not only for communicating with one another, but also for purchasing products, managing financial accounts and engaging in a growing number of social, economic and cultural activities. Communication services have also significantly helped empower consumers in their daily lives and commercial transactions, by giving rapid access to information which was not easily accessible before. Further, rapid development and diffusion of new technologies have provided consumers with a continuous supply of new products. The benefits of such developments have been considerable and continue to grow.

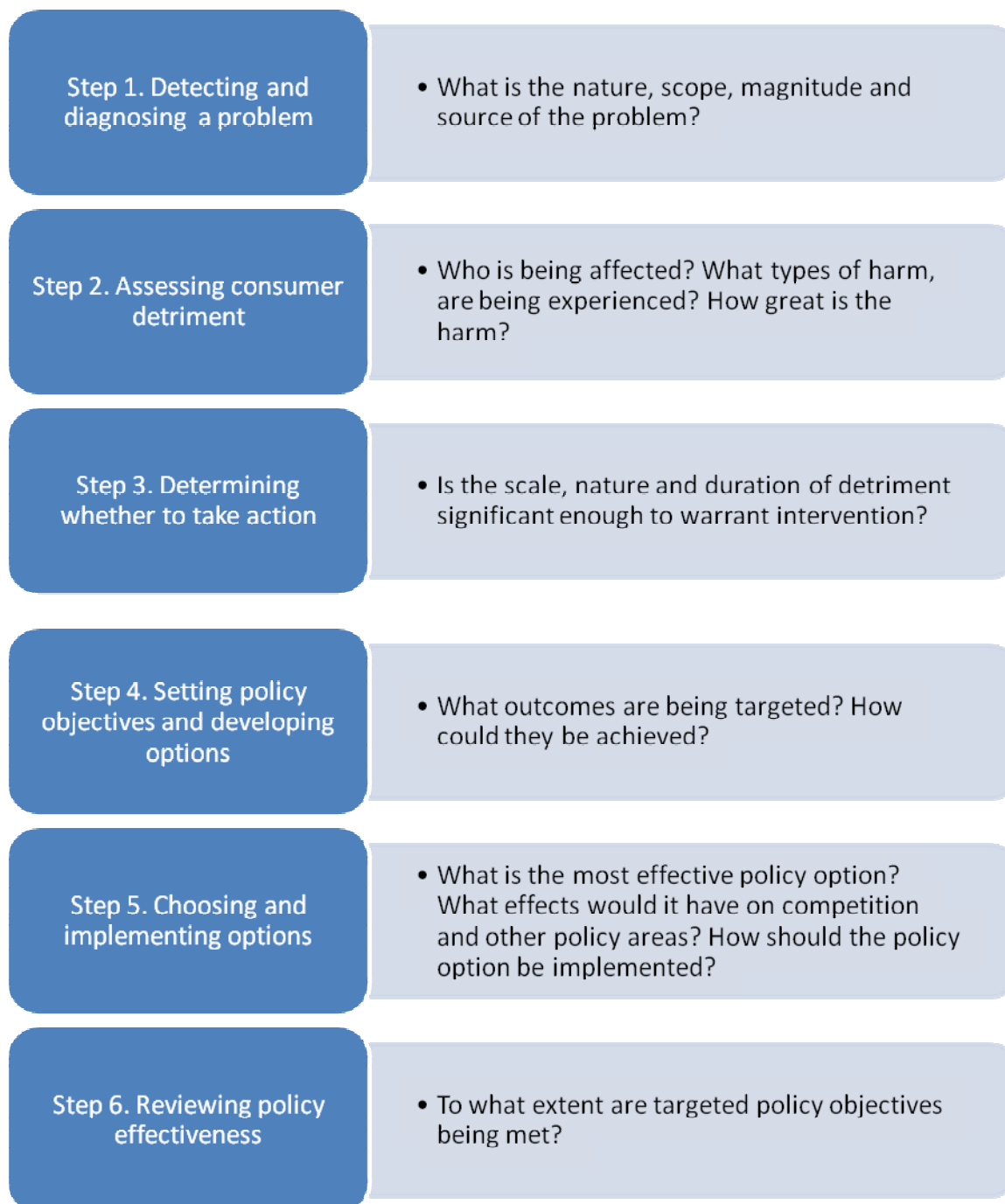
At the same time, communication services have posed challenges for businesses and their customers alike. The pace of change and the increased complexity of communication markets, together with the speed with which technology and applications have developed, have generally made it more difficult for consumers to compare and assess products and to make well-informed decisions. Challenges associated with understanding and comparing telecom packages, the related pricing plans and the terms and conditions contained in contracts are cases in point. Moreover, the regulatory environment has become more complex for businesses, which need to ensure that information disclosure is both clear and complete, while avoiding overloading consumers with excessive information.

The workshop was organised by the CCP, in co-operation with the OECD's Committee for Information, Computer and Communications Policy (ICCP) and its Working Party on Communication

Infrastructures and Services Policy. It covered wired and wireless communication services, including those associated with fixed and mobile telephony and cable.

The discussion focused on three areas where consumer issues have surfaced: *i*) marketing practices; *ii*) contract terms; and *iii*) billing issues. The workshop programme is presented in Annex I. The discussions were structured in each area along the lines presented in the *Toolkit* (Figure 1); Annex II elaborates on the issues considered in each step.

Figure 1. Consumer policy making framework



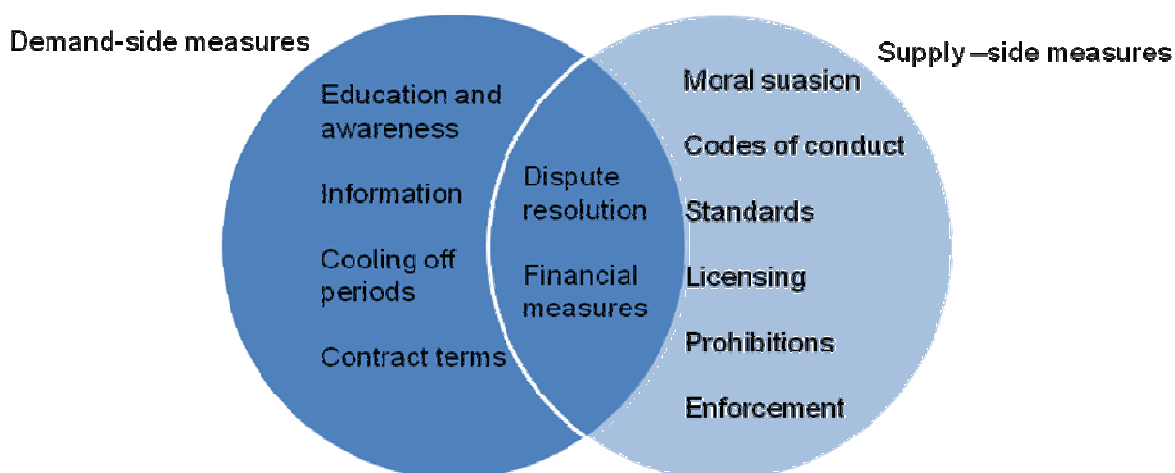
Source: Adapted from the *Consumer Policy Toolkit* (OECD, 2010).

Discussions drew on work that the OECD carried out in this area in recent years on enhancing competition in telecommunications, international mobile roaming, broadband bundling and mobile commerce (see Annex III for a summary of this work). For information, a glossary of key terms used in the consumer policy and communication services areas is provided in Annex IV.

Key points

The one-day workshop provided glimpses into some of the opportunities and challenges facing stakeholders involved with communications services. It revealed how governments are using the 12 basic tools presented in the *Toolkit* (Figure 2), and, in this regard, how enforcement strategies are being pursued (Figure 3).

Figure 2. Policy tools



Source: Adapted from the *Consumer Policy Toolkit* (OECD, 2010).

Figure 3. Enforcement pyramid



Source: OECD (2010), *Consumer Policy Toolkit*. Based on the material that was presented and discussed, the following key points emerged.

Based on the material that was presented and discussed, the following key points emerged.

General

- *Benefits of ICT advances.* Advances in the development of information and communication technology are providing consumers with an expanding variety of devices and services, which are greatly enhancing consumer welfare.
- *Promoting competitive markets that work for consumers.* The dynamism of these markets is highly beneficial, but, at the same time, it creates challenges for stakeholders. Service providers are developing new products to take advantage of equipment advances. The way that these products are formulated, however, sometimes presents difficulties for consumers, as it may be difficult for the consumers to adequately understand and evaluate the products. The situation is complicated by the swift pace of change and the growing complexity of the market. The challenge for policy makers is to balance the interest that all have in supporting the dynamism of the market, while ensuring that consumer interests are adequately supported.

Identification and analysis of problems

- *Reliance on complaints information.* The identification of consumer issues, the measurement of the magnitude and scope of consumer problems and the evaluation of the effectiveness of policy measures rely heavily on the information contained in consumer complaints. An examination by the CCP of the role and use of complaints information in policy making concludes that complaints can provide a preliminary indication of problems being experienced in a market, but that there are significant limitations [DSTI/CP(2011)22/FINAL]. Complaints, for example, may be unfounded and/or reflect significant biases. Moreover, they only concern issues where consumers have noted a problem; therefore, complaints are not suitable for detecting hidden detriment. This point was illustrated in one of the case studies presented at the workshop, where a large number of complaints about a relatively small issue prompted an in-depth analysis of contract terms and conditions, revealed far more serious problems, of which consumers were largely unaware.
- *Use of survey information.* As highlighted at the workshop, surveys were carried out in a number of instances to collect information on the magnitude and scope of telecom-related consumer problems. This proved to be a highly effective way to deepen analyses of issues. However, as discussed in the CCP's study on the role and use of surveys in policy making, the cost and time required to develop, carry out and assess the results of surveys sharply limits their use [DSTI/CP(2011)3/FINAL].
- *Depth of consumer detriment assessment.* Information on the approaches used to assess consumer detriment suggests that this is an area which is difficult for policy makers to address. Beyond complaints information, data which would permit thorough analysis are generally not readily available. Moreover, the use of models for carrying out assessments does not appear to be widespread. Detriment assessments, to the extent that they are carried out, tend to be "light."
- *Sources of problems.* The workshop discussions revealed a range of factors underlying problems in communication services markets:
 - *Complexity and length of contracts,* which have made it difficult for consumers to evaluate and compare offers and, eventually, to understand the terms and conditions that they agreed

to in signing up for a service. Consumers' limited capacity to consider and understand the legal terms being used further exacerbates problems in this regard.

- *Misleading advertising and “fine print,”* which firms have used, have sometimes created false expectations about the cost and performance of products, with disclaimers and subsidiary charges buried in technical terms and conditions.
- *Inadequate disclosure,* which has resulted in consumers not knowing what the complete terms and conditions of their contracts would be, what the charges on their bills would be for, and perhaps not knowing how to have questions or concerns addressed.
- *Oligopolistic competition,* which has enabled service providers to lock in customers for extended periods of time, limit the functionality of equipment and impose other requirements that strongly favoured the provider's interests.
- *Third party fraud,* which occurred when consumers were charged on their telecom bills for products that they did not knowingly purchase or subscribe to.
- *Lack of consumer diligence* in sufficiently reviewing available material on service plans.

Policy making

- *Approaches to policy making.* In the case studies discussed, there appeared to be a preference for addressing problems using an incremental approach. Regulators first sought to resolve problems without resorting to intervention and often took stronger actions once the first approach had proved ineffective. The involvement of industry, civil society and outside experts in helping to craft solutions varied considerably among the cases discussed, ranging from virtually no involvement, to partnerships.
- *Development of options.* Policy objectives seemed to be formulated at a fairly general level, sometimes lacking specificity. Moreover, it was not always clear whether different options were explored prior to an action being taken.
- *Industry self regulation.* Industry self regulation was reported to have been seen by regulators as a preferred approach to deal with problems. Experience, however, indicates that self-regulation only worked when the regulators actively monitored situations and demonstrated a credible threat of action for the case that outcomes would fall short of expectations. In a number of instances regulators, and sometimes civil society, worked closely with industry in developing guidelines and codes.
- *Regulation.* Action taken in the area of disclosure was reported to include regulators' support to the development of simplified formats aiming at enhancing the ability of consumers to: *i)* understand the terms and conditions underlying product offers and *ii)* evaluate and compare different plans. While regulators generally have the power to move against unfair practices, the potential difficulties in successfully withstanding legal challenges were noted.
- *Fines.* Sizable fines were sometimes imposed on telecom firms which engaged in conduct that authorities had deemed as unacceptable. Such fines, besides affecting the firms involved, seemingly are having a broader impact in markets by alerting firms on the seriousness of the possible consequence of business misconduct.

Policy evaluation

- Policy evaluations have taken place in a number of instances. In some, a falling number of complaints and a dramatic reduction in the charges for certain services were seen as evidence of the success of the policies adopted. In other instances, a close review of the impact of the policies adopted has not yet been undertaken, due in part to the recentness of the policies adopted.

Introduction

The workshop brought representatives from governments, business and consumer organisations together to address issues in the three key issue areas (i.e. marketing practices, contract terms and billing issues). The discussion on marketing issues focused on the misleading, deceptive and fraudulent claims that firms sometimes make in promoting their products. The assessment of contract terms addressed the difficulties that consumers can have in understanding and comparing offers, due to: *i*) the length of contracts; *ii*) the presentation of provisions in ways that consumers could not readily identify key information (i.e. in the “fine print”); and *iii*) the use of complex, legal terminology. The discussion of billing issues focused on “bill shock” when users unexpectedly receive a large bill for their use of communication services and “cramming”, which concerns the inclusion of unauthorised charges on consumers’ phone bills. The policy framework presented in the *Toolkit* was used to structure the sessions.

I. Marketing practices

A. Nature and sources of problems

The markets for communication services are in many respects highly competitive, and service providers devote considerable effort to developing marketing approaches aimed at attracting and retaining customers. This has given rise to concerns that the marketing techniques employed by firms may sometimes be misleading, deceptive or fraudulent. The problems discussed during the workshop generally involved: *i*) unsubstantiated performance; *ii*) unclear presentation of pricing information; and *iii*) misleading or fraudulent marketing practices (Box 1).

Box 1. Marketing issues

- Key information has often been “buried” in the terms and conditions of an offer (Australia, Canada, Italy, France and Finland).
- A review of the “fine print” in contracts for services advertised as “free” or “unlimited” revealed that the services were in fact neither in some instances (Australia and France).
- Advertised broadband speeds often reflected hypothetical speeds, rather than speeds that could actually be attained (Australia and Italy).
- The term “cap” was used to describe minimum, as opposed to maximum, charges (Australia).
- Advertising tended to emphasise the minimum cost of a service to consumers, with insufficient attention to additional charges that would likely apply (Australia, Canada and Italy).
- Allegedly false claims have been made about key performance areas (e.g. dropped calls in Canada).
- In the field of mobile premium services, it was often not clear whether the services were free, or, if not, whether charges were one-time or ongoing (Australia, Italy and Portugal); it was also extremely difficult for consumers to withdraw from such contracts.
- Unfair, misleading and sometimes fraudulent telecommunications campaigns have been used in telemarketing schemes, where consumers make decisions under pressure without having complete information available (Italy).

Source: OECD workshop.

The session discussion suggested that the source of the problems could be traced to inappropriate business behaviour and/or the difficulty consumers experience in retaining and critically evaluating complex information, while making purchasing decisions. It was further pointed out that firms could present plans and prices in ways that exploit the asymmetric information advantages that they have, known behavioural biases and the vulnerability of disadvantaged population groups. On the information side, consumers may lack the skills and/or the time needed to fully understand product features, compare alternative packages and pricing schemes, and evaluate marketing claims.

With respect to the presentation of information, it was pointed out that essential information is sometimes omitted in general product presentations that businesses make to consumers, and that, instead, it can be “buried” in the terms and conditions of a sale.

In Australia, information challenges were explored by the Australian Communications Consumer Action Network (ACCAN), a consumer organisation active in the area of telecommunications. This work examined consumer behavioural biases in the market place and used ethnographic research in online experiments to test the effect of marketing communications on consumers. Research findings confirmed the difficulties that consumers encounter when facing information and choice overload.

Mention was also made of an examination carried out by the Australian Communications and Media Authority (ACMA), in September 2011, *Reconnecting the Customer*.¹ The study found that customers often receive contrary and inconsistent advice about services, and that the large number of plans and products available, and the way in which they are promoted, makes it difficult for many consumers to understand the products that they are buying. ACCAN also carried out a project focusing on telecommunication issues for indigenous populations, new migrants and refugees; it found that use of marketing language, especially in connection with complex bundles, was often unnecessarily complicated.

Detection

In the cases discussed at the workshop, detection of advertising issues relied heavily on complaints information. In one instance (Australia), the relatively large number of complaints prompted the Australian Competition and Consumer Commission (ACCC) to initiate a more pro-active market surveillance initiative in the communications services sector. A rising number of complaints also led to policy measures in the mobile premium services area.

In Canada, general surveillance of the telecommunications sector has also proved important in identifying problems in advertising and in other areas. Once issues were detected, a decision on whether to take further action depended on the financial impact of the issue at hand, the volume of commerce involved, the market share of the company concerned, its geographic scope and egregiousness of the conduct. The economic effects on consumers and competition were also considered.

In Finland, complaints from consumers and competitors and media attention promoted action by the office of the Consumer Ombudsman. In analysing the problem, it was concluded that the omission of essential details of offers for mobile subscriptions was misleading consumers; even contract disputes were in large measure the result of misleading representations. Issues included:

- Consumers failing to be adequately informed about the fixed term nature of the contracts and the terms of those contracts.
- Businesses promoting “bargains”, without informing consumers about other key terms of an offer.

- Businesses failing to mention statutory cooling-off periods.
- “Drip pricing”, whereby only partial information on pricing is initially provided to consumers.
- Businesses taking advantage of vulnerable consumers, notably the elderly.
- Contracts concluded without proper authorisation from consumers.
- Use of “fine print” and failure to communicate restrictions clearly.

In Italy, media and web site surveillance were used to identify areas where action might be required, along with complaints received from consumers, consumer associations and competitors. A complaint web form and a call centre have been made available for consumers to file complaints.

Agency responsibilities

Responsibility for addressing the problems is often shared among a number of government agencies. In Australia, three agencies play roles: the Telecommunications Industry Ombudsman (TIO), which collects complaint information, the ACCC, which is responsible for enforcement actions and the ACMA, which licences operators and helps industry to develop codes of conduct. In Austria, consumer protection bodies, such as the Austrian Chamber of Labour and the Association for Consumer Information, take operators engaging in misleading and or fraudulent practices to court, when appropriate. The Association for Consumer Information, moreover, is sometimes charged by the Austrian Federal Ministry of Labour, Social Affairs and Consumer Protection with the task of filing complaints, for which it may also receive funding. This may occur, in particular, when collective actions are involved.

B. Consumer detriment

Workshop discussions revealed that consumer complaints have been used frequently to determine the magnitude and scope of consumer detriment (e.g. in Australia, Finland and France). In the case of Finland, complaints filed by firms were also considered. In addition to complaints, detriment is sometimes being assessed more abstractly. In the case mentioned by Finland, for example, the detriment arising from misleading business practices was seen as the binding of consumers to expensive 24-month contracts that did not necessarily meet their needs.

In Canada, investigations were carried out in two cases to determine the nature and the scope of misleading or false advertising and the potential detriment:

- Advertisements of a major telecom provider were reviewed to determine the clarity of pricing information and the potential detriment that could have been generated, if consumers were misled. The investigation found that general information on pricing was presented in advertisements in 24 words. Detailed pricing information on the cost of TouchTone, modem rental and digital television services were only mentioned in “fine-print disclaimers.” The information was accessible by linking to a page where it was interspersed in a text of over 1 500 words, presented in 8 point font.
- The claims of another telecom provider on its “dropped call” performance were analysed by examining “dropped call” records, to determine whether they were accurate. The effects of misrepresentations on competition and consumer choice were also seen as important in deciding whether to proceed with the case.

It was also pointed out that special attention is being paid to the impact that marketing and advertising practices, including telemarketing campaigns, may have on vulnerable and disadvantaged consumers.

C. Development and selection of policy measures

Workshop discussions focused on the different options that have been available to policy makers and examined some of the actions that were actually taken. The approaches that were discussed included:

- Law and regulation (Portugal).
- Measures aiming at raising business awareness and encouraging business compliance (Australia and Finland).
- Consultation and co-operation with stakeholders (France).
- Warning letters (Portugal).
- Industry codes and other self-regulatory tools (Australia).
- Threats of prohibitions (Finland, on telemarketing for mobile phone subscriptions; Portugal, on marketing for mobile premium services).
- Civil and criminal sanctions, including fines (Canada and Australia).

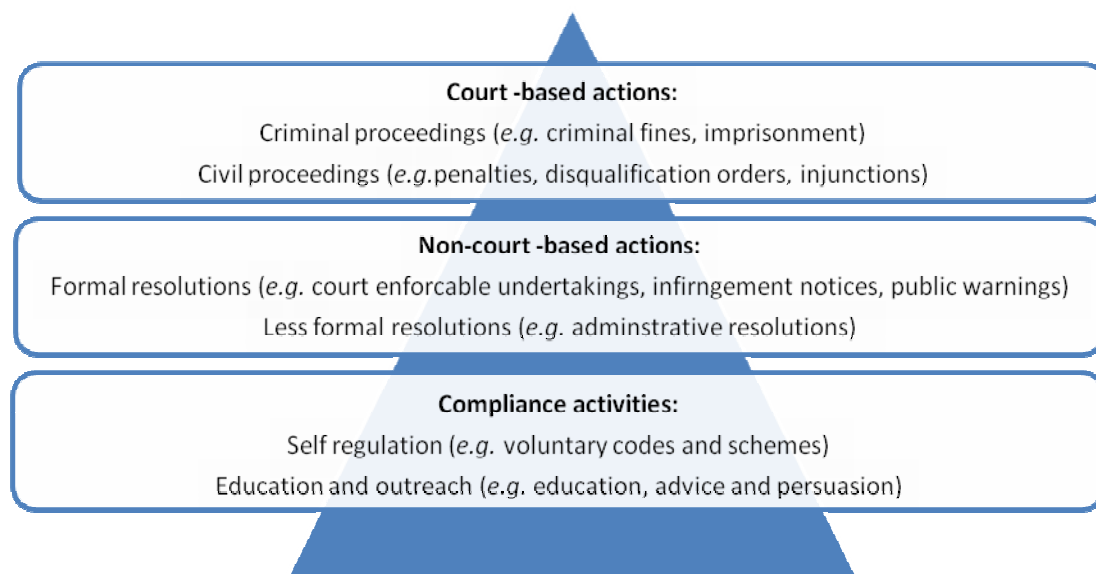
Other tools aimed at empowering consumers, including measures intended to promote consumer education and awareness (e.g. Australia, Finland), use of default options, double-opt in systems for telemarketing (e.g. in the form of confirmation through text message in Norway) and for mobile premium services (e.g. Australia, Finland) are also being used. Double opt-in, it was noted, is also being employed by some business actors to support consumer empowerment.

In this context, inter-agency communication and co-operation was also underlined as important (e.g. Finland, Portugal), as was timeliness of reaction (e.g. Australia, Italy).

Australia

In Australia, the ACCC takes a tiered approach to addressing consumer problems, ranging from compliance activities aimed at improving the ability of consumers to address such problems (through, for example, education and raising awareness) to court-based actions, that could result in criminal and civil penalties (Figure 4).

Figure 4. ACCC tiered approach



Source: ACCC (2011).

In the ACCC's presentation, reference was made to three instances, involving court- and non court-based actions. In September 2009, the ACCC accepted court enforceable undertakings pursuant to section 87B of the Trade Practices Act (TPA) from major telecommunications carriers in Australia and their subsidiaries.² Pursuant to the undertakings, the companies concerned agreed to conditions under which price representations using terms such as "free" and "unlimited" would, or would not, be used, and they agreed on the ways that broadband speeds, network coverage and component pricing would be advertised. A "quick response" mechanism was established, in order to respond to complaints relating to issues covered in the undertaking. Two actions were subsequently taken:

- In February 2011, a service provider was fined AUD 5.62 million for not sufficiently disclosing that high speed broadband transfer rates would be reduced to 64kbps, once consumers had exceeded their peak data allowances.³
- In May 2011, a telecommunications company received a number of infringement notices totalling close to AUD 180 000, in relation to false or misleading representations about the price of its *Max Cap* plans made in various print and online advertisements.⁴ The ACCC deemed the term "max cap" to be misleading, as the price for the plan represented the minimum monthly cost (i.e. not the maximum, as one might assume); moreover, the plan advertised that the credits provided to consumers could be used to call anyone, when in fact certain types of calls were excluded from the plan.

One of the factors underlying the level of the fine that was imposed in the first instance was a conclusion by the judge that the firm involved had not taken its internal compliance responsibility seriously. A small team of lawyers was assigned to vet advertisements. The vetting of an advertisement was expected to be completed within 48 hours. The volume to be reviewed by the lawyers, however, was quite large. Each vetted an average of just under six advertisements per day.

Reference was also made to measures taken to address problems in the advertising of mobile premium services, such as games and ringtones, in 2009. Certain magazines that targeted youth agreed to

an enforceable undertaking under which they would only accept advertisements for services when pricing was clear.⁵ Later in the year, the ACMA responded to problems by requiring a double opt-in procedure, whereby consumers would receive a follow-up text message confirming the financial commitment being made.⁶

Canada

In deciding on a course of action in the two cases mentioned above, the Competition Bureau aimed at: *i*) promoting compliance through a significant monetary penalty and through the media coverage that would be generated; and *ii*) signalling across industries, not just telecom, that the Bureau was prepared to use the enforcement tools under the Competition Act to promote compliance with the legislation.

- In November 2010, the Bureau initiated legal proceedings against a service provider that had allegedly advertised false information about “dropped calls,” with the aim of curbing misleading advertising of discount cell phone and text services.⁷ The Bureau asked the court to order the company to: *i*) immediately stop the advertising campaign and refrain from engaging in similar campaigns; *ii*) pay an administrative monetary penalty of CAD 10 million dollars; *iii*) pay restitution to affected customers; and *iv*) issue a corrective notice to inform the general public about the nature and provisions of the order issued against them.
- A consent agreement was reached in June 2011 with the firm that had allegedly provided misleading representations about the prices offered for its services. The company agreed to: modify its advertising to address concerns, pay an administrative penalty of CAD 10 million and contribute CAD 100 000 to help finance investigative costs.⁸

Finland

In Finland, the Consumer Ombudsman undertook a two-year initiative in 2010 to address mobile subscription problems. This was preceded by the development of a series of guidelines on the distance selling of communication practices (in 2010). The process began with a discussion with stakeholders to develop a sellers’ checklist identifying key information that should be provided to consumers; the checklist is designed to serve as a prototype that would be adapted by operators to meet specific needs.

Additional measures included:

- Securing a commitment by service providers to notify consumers about the duration of their fixed term contracts on invoices.
- Initiating legal proceedings against some clear breaches of the law, (including taking action against a misleading sales campaign aimed at fraudulently encouraging the elderly to replace landline subscriptions with mobile phones).
- Negotiating model contract terms with providers, along with a plain language version, intended for vulnerable consumers.
- Introduction of double opt-in procedures.
- Prohibiting automatic continuation of a fixed term contract, for a new fixed term (automatic roll-over).
- Requiring that broadband speeds be presented as a range, not as a theoretical maximum.

A possible prohibition of using telemarketing to sell mobile services is also being examined.

France

In France, the General Directorate for Competition Policy, Consumer Affairs and Fraud Control (DGCCRF) decided to rely on its administrative body, the *Conseil National de la Consommation* (CNC), to tackle issues related to the use of the words “unlimited” and “24/24” in mobile services. The CNC comprises representatives from civil society as well as professionals.⁹ The body was asked to identify and study problems, and to develop a solution. In the case of “unlimited,” mobile operators were beginning to structure offers that paralleled those offered by non-mobile providers of telephony and Internet services. The term “unlimited,” however, was not being used in the same way; there were in fact important limitations. After studying the problem, the group agreed that the term should only be used in cases where:

- Most consumers would not reach a prescribed limit, and
- The aim of the limit would be to prevent fraud or misuse of the service.

The term “24/24” was viewed as inappropriate, as situations involving service interruption and degradation could be envisioned. The CNC agreed that its use should, therefore, be limited. The recommendation was adopted in November 2011 and was to come into force 6 months thereafter.¹⁰

Italy

In Italy, about 190 investigations were carried out during 2008-12 to examine communication services issues relating largely to misleading price representations and limitations of mobile services, “bill shock” and contracts concluded *via* telemarketing without proper consumer authorisation. Most cases were closed, with an order to stop the infringement and with monetary sanctions.

Portugal

In Portugal, consumers were unknowingly entering into long-term contracts for mobile premium services, with no clear way to cancel or withdraw from the contracts. In response, the Portuguese Consumer Directorate-General (*Direção-Geral do Consumidor*), in co-operation with the National Communications Authority (ANACOM), adopted a decree law, in 2009, that provides consumers with the right to cancel a contract at the service provider’s site. The law also requires that all premium numbers begin with the same number, so as to be easily recognisable by consumers. This initiative was followed by an information campaign, aimed at raising consumer awareness in this respect. Moreover, an amendment to the Electronic Communications Law, introduced in September 2011, forbids unsolicited premium services from being sent to consumers *via* SMS, without their prior expressed consent.

In the area of digital terrestrial television services, in September 2011, following reception of a high number of complaints, the Consumer Directorate-General and ANACOM, warned all service providers of cable TV about fraudulently inducing consumers located in remote rural areas to enter into contracts providing cable TV services, noting the possibility that sanctions could be imposed if appropriate actions were not taken.

D. *Procedures used to review and measure the effectiveness of implemented policies*

Measures of the effectiveness of actions that were taken to address issues include the following:

- In Australia, the significant drop in the number of complaints concerning mobile premium services was seen as a sign of success of the policy measures taken to address problems (some 13 000 complaints per quarter had been filed).
- In Canada, the effectiveness of the policy measures was assessed in part through the media coverage that the measures had received. In this regard, the misleading prices case was a top news item that reached an estimated 14 million consumers, thereby raising their awareness of the issue.
- In Finland, the Consumer Ombudsman has been monitoring how the checklist is being used by operators. It intends to carry out a survey with consumers and consumer advisors to see whether problems that need to be addressed still exist.

Overall, the importance of monitoring and measuring the effectiveness of implemented policies was emphasised, although workshop discussions did not provide much detail as to methods and criteria used. It was noted, however, that some of the implemented policies mentioned in workshop discussions (e.g. Portugal, France), are too recent for a review of their effectiveness to be conducted.

E. Views of stakeholders

Civil society representatives called on government authorities to move against and ban misleading language (like the word *caps* in Australia). They supported the development of mechanisms that would facilitate comparison pricing and recommended that critical information be provided to consumers in a clear and easily understandable fashion, prior to sales being made. Industry self regulatory codes were seen as playing a role in addressing issues, provided that they were widely adopted and included appropriate monitoring and effective compliance frameworks. The importance of raising awareness of such codes among business actors was also highlighted by stakeholders. Further guidance on the circumstances or conditions under which self regulatory measures could be most effective in supporting consumer outcomes was called for. The ongoing need for mandatory, enforceable standards was also stressed. The challenges posed by needlessly complex offers were also mentioned. It appeared that businesses were sometimes being driven to create a *confusopoly*, generating complexity as a marketing strategy, thereby making evaluation of competing offers unnecessarily and overly difficult for consumers. Attention was also called to a report on *Seeking Straight Answers: Consumer Decision-Making in Telecommunications* that provides insights into the challenges consumers are facing.¹¹

Business representatives highlighted the measures they have introduced to improve advertising practices. These include efforts aimed at training point of sale and telemarketing personnel, introduction of a double opt-in system for mobile premium services, as well as information provision on broadband speeds that can more effectively reflect consumer experience in day to day use. On the contract side, one company had sought to enhance customer satisfaction, by discussing pricing and other terms orally by phone (which, with the permission of the customer could be recorded), by providing written materials and by allowing the customer to withdraw from the contract if he/she wished.

The key role and the importance of redress mechanisms and enforcement strategies was also emphasised by business, including “naming and shaming” measures for traders engaging in deceptive and or fraudulent practices; such measures were seen as helpful to inform consumers, while protecting the brand value of sound business actors. The importance of government guidance for and co-operation with industry in identifying marketing and advertising behaviour that should be avoided was also noted. This co-operative approach could be more effective than legislation and prohibitions, as the latter may not always be timely and effective, given the highly dynamic business environment of this sector.

The importance of providing the right incentives for suppliers and sales agents to make accurate representations of the available product and packages/options was supported by all stakeholders. Appropriate training to familiarise sales agents with products' characteristics, pricing, contract terms and conditions, as well as on sound marketing behaviour was also highlighted. Business participants, moreover, pointed out the challenges that industry is facing, noting that misleading advertising and fraudulent marketing practices also have negative effects on responsible firms and distort competition.

In addressing problems, it was suggested that policy makers may need to examine the factors driving the marketing behaviour of firms. In this context, the incentives and aims of firms that are selling directly to consumers might be quite different than those of intermediaries, further complicating what might be done in the policy area. Issues related to business biases and to business behaviour and its drivers, it was noted, would need to be further explored and addressed. In this context, it was pointed out that mobile operators are basically competing on the basis of their data packages, call time, download speeds and reliability; making it easy for consumers to compare offers in a straightforward fashion might not always be in their interest. This, it was noted, could explain the different marketing approaches that firms pursue and the efforts that they make to differentiate their products, thereby making product comparisons difficult in some cases.

II. Contract terms

A. *Nature and sources of problems*

The provision of communication services is based on terms and conditions that are generally provided in legally binding contracts. Making sound decisions requires consumers to carefully examine and compare the contracts offered for different plans and by different providers, prior to making purchasing decisions. Their ability to do so effectively depends on their ability to understand and compare contract terms and conditions. In many instances, service providers have attempted to simplify this task, by providing summaries which highlight the key features of their offers. Even so, fully understanding the offers generally requires that consumers review the entire contracts closely. The discussion at the workshop indicated that the ability of consumers to examine and compare such contracts has been complicated by: *i*) the length of contracts; *ii*) the presentation of provisions in ways that lead to difficulties for consumers to readily identify key information (i.e. in the “fine print”); and *iii*) the use of complex, legal terminology (Box 2).

Box 2. Contract issues

- Contracts for communication services are often lengthy, complex documents which are presented in legal language that many consumers cannot easily understand.
- Information on subsidiary charges is sometimes not clearly disclosed to consumers.
- The duration of contracts is sometimes not clear or considered unfair.
- Use of handsets is sometimes restricted to certain service providers, creating a barrier for consumers who wish to switch to another provider (i.e. SIM lock).
- Service providers have sometimes made unilateral changes in the terms and conditions of contracts without notifying consumers and without providing consumers with the possibility to withdraw from a modified contract.
- Service providers have sometimes failed to provide contract terms and conditions to consumers in written form. This can make it difficult for consumers to know what their rights and obligations are and can complicate their efforts to resolve disputes.

The workshop discussion revealed that the sources of the problems are varied. Lengthy legal contracts reflect a need on the part of service providers to ensure that terms and conditions are presented in a complete and legally sound manner. The expertise required to fully understand such contracts, however, can easily exceed the capabilities of many, if not most, consumers. That said, there are concerns that some firms have structured such contracts in ways that add to the complexity and/or are designed in ways that mislead consumers. Another source of problems relates to the interest that service providers have in retaining customers. This can lead to the inclusion of provisions which lock in customers for lengthy periods and/or complicate the process of withdrawing from contracts without incurring significant financial costs. Issues of fairness have also been raised in this regard.

Detection

The detection of the contract issues discussed at the workshop generally relied, at least in part and in initial stages, on complaints information. In Quebec (Canada), the Consumer Protection Agency uses a number of techniques to identify contract issues in the telecoms area, including consumer complaints, reports in the media, academic research and self-initiated investigations. Some 300 000 calls are processed annually.

In the United Kingdom, one of the country's major operators notified customers of an increase in the discount offered to consumers paying by debit card. The more favourable treatment of this payment method was not well known; the increased awareness that occurred triggered a large number of complaints, resulting in Ofcom undertaking an investigation. The agency decided, however, to conduct a more comprehensive review of contract terms, which raised further questions on the fairness of about 10 other contract terms involving ancillary charges. These included, non-direct debit charges, late payment charges, payment failure charges, charge to restore service, initial minimum contract periods, early termination charges, minimum notice period, cease charges, itemised and paper billing. Research on consumer awareness and perception of these charges was then undertaken to develop further insights into the problematic terms. This work included a survey of 4 000 consumers across 32 common contracts, experiments and case studies.

Agency responsibilities

Responsibility for addressing consumer issues in this area is often shared among a number of government agencies. In the United Kingdom, the Independent Regulator and Competition Authority for the UK Communications Industries (Ofcom) and the Office of Fair Trade (OFT) share powers under the Unfair Terms Regulation; in Israel, the sectoral regulator for communications, the Ministry of Communications, is responsible for overseeing licensing and business behaviour in the telecom sector, while the Fair Trade Authority of Israel covers consumer issues.

B. Consumer detriment

The magnitude and scope of consumer detriment has been an important factor in determining whether action should be taken to address contract issues. The workshop provided insights into some of the areas that were examined in assessing detriment, but did not provide much information on the techniques that were employed to measure it.

In Quebec (Canada), evidence of the level of detriment is generally developed in consultation with stakeholders and through related research. The vulnerability of different socio-economic groups is also taken into account. In this regard, the Consumer Protection Office created a multi-stakeholder working group in 2007 to identify and evaluate detriment in the communication services sector, and to identify remedial actions that could be taken to address it. In the case study presented at the workshop, potential detriment was seen as high, reflecting two factors: *i*) the potential high cost to an individual consumer; and *ii*) the large number of consumers that would likely be entering into telecommunications contracts.

The situation was of particular concern with respect to mobile devices, which, at the time of the conference, were being used by 80% of the population. Significantly, some 90% of young persons, 18-25 year-olds, were using these devices in 2010, up from 75% in 2009. They were seen as particularly vulnerable.

In Israel, the sectoral regulator has focused on the effects of contract terms on competition in assessing detriment. The length of contracts was viewed as a key variable: lengthy contracts were seen as creating detriment in the form of barriers to switching, while also potentially slowing new entrants into the market. An assessment was made which determined that 18 months represented a reasonable maximum length which would provide consumers with opportunities to switch providers, while ensuring an adequate revenue stream for providers.

In the United Kingdom, a more in-depth assessment of the detriment caused by contracts took place after a number of policy initiatives had been taken. The assessment indicated that early termination charges was the largest source of the detriment, particularly in fixed line and broadband: these were the areas which had received the most complaints.

C. Development and selection of policy measures

Approaches that were taken, or could be taken, to address contract issues were discussed and included prohibition of certain practices, warnings, lawsuits and fines and industry self-regulation. In a number of instances, incremental, consultative approaches were used to address issues.

Canada (Québec)

The approach to policy making was described as an incremental, consultative one. After assessing the situation in communication services, the Working Group created in 2007 developed a voluntary undertaking to address issues. If a sufficient number of companies had agreed to the undertaking,

it could have been extended to the entire industry, but this was not the case. In response, the government tabled a bill in June 2009, which prompted the industry to develop a code of conduct. The bill, which was eventually enacted in 2010, contained a number of generic provisions, as well as some provisions specific to communication services (Table 1).

Table 1. Measures enacted in 2010 in Québec

Topic	Issue	Measure
Contracts involving telecom services	A large number of complaints about representations made before the signature of contracts, the contents of contracts, the execution of the warranty and the termination of services.	<ul style="list-style-type: none"> • Mandatory written contract (form and content). • Regulation of termination provisions, including standard calculation of early termination fees. • Prohibition of automatic renewal clause without explicit consumer consent.
Unfair clauses	Judicial procedure too long and complex.	<ul style="list-style-type: none"> • General prohibition of clauses allowing unilateral changes in contracts. • When changes are proposed, consumers can withdraw from a contract, without penalty.
Clauses unenforceable in Quebec	Some contracts included clauses that were unenforceable in Québec.	<ul style="list-style-type: none"> • Merchants must precede all provisions unenforceable in Québec with a statement to that effect.
Hidden costs	It is common practice to announce a price and then add additional fees.	<ul style="list-style-type: none"> • Merchants must advertise the total price of a good or service, unless an additional fee is charged by law.

Source: Passalacqua, (2011).

Israel

After examining the situation, the Ministry of Communications took a number of measures designed to protect consumers while promoting competition, including:

- Limitation of contract duration to 18 months.
- Prohibition of automatic renewal of contracts.
- Prohibiting the practice of restricting the use of mobile devices to certain service providers (through the SIM card used; this is otherwise known as SIM lock).
- Prohibition of early termination penalties. This is designed to prohibit punitive charges for terminating a service. It would not affect fees that might otherwise be due under the contract.
- Provisions regulating the “equivalent equipment subsidy.” The provision aims at decoupling the cost of handsets from the cost of the telecom service. It requires operators to offer services to customers using similar mobile devices on the same terms, whether the devices were provided by the service provider, or not. The purpose of the regulation was to address a tendency of providers to overstate the value of the devices that they would offer to their customers.
- A requirement that operators provide consumers with the main points of contracts in a one-page, standard format highlighting critical information. This includes the monthly fee, per minute rates and bit caps.
- A requirement that consumers sign and initial the one-page contract, to indicate they have seen, understood and agreed on its main points.

With respect to enforcement, the regulator had the power to levy administrative fines in the event rules were not adhered to; this had in fact been done from time to time.

United Kingdom

Based on the research described above, Ofcom in 2008 developed *Guidance under the Unfair Terms in Consumer Contracts Regulation 1999 on “Additional Charges” in Telecoms Contracts with Consumers*, with the aim of ensuring that suppliers were aware of and understood their obligations under the regulations (Box 3). It set out the approach that Ofcom expected to take, in performing its obligations and exercising its powers under the regulation, including the possibility of taking an enforcement action.

Box 3. Types of charges covered by the United Kingdom guidance

- **Non-direct debit (non-DD) charges:** Charges for consumers choosing not to pay by direct debit.
- **Late payment charges:** Charges for consumers who pay late (i.e. beyond the invoice due date).
- **Payment failure charge:** Charges where the payment method fails (e.g. a direct debit payment fails or a cheque bounces).
- **Charge to restore service:** Charges for consumers who have had service restricted due to non payment (for example, having outgoing calls barred), who now wish to resume full service.
- **Initial minimum contract periods (MCPs):** A minimum (fixed term) contractual period set at the start of a contract (often for 12 to 18 months).
- **Early termination charges (ETCs):** Charges for consumers who terminate their contract before the end of the minimum contract period.
- **Minimum notice period (MiNP):** The notice period which a consumer must give their supplier before they can bring their contract to an end.
- **Cease charges:** Charges for consumers ceasing their service (even where they are outside their minimum contract period).
- **Itemised / paper billing:** Charges for consumers wishing to receive a full call-by-call itemisation of the calls made, rather than a summary, or who want to receive a paper rather than an online bill.

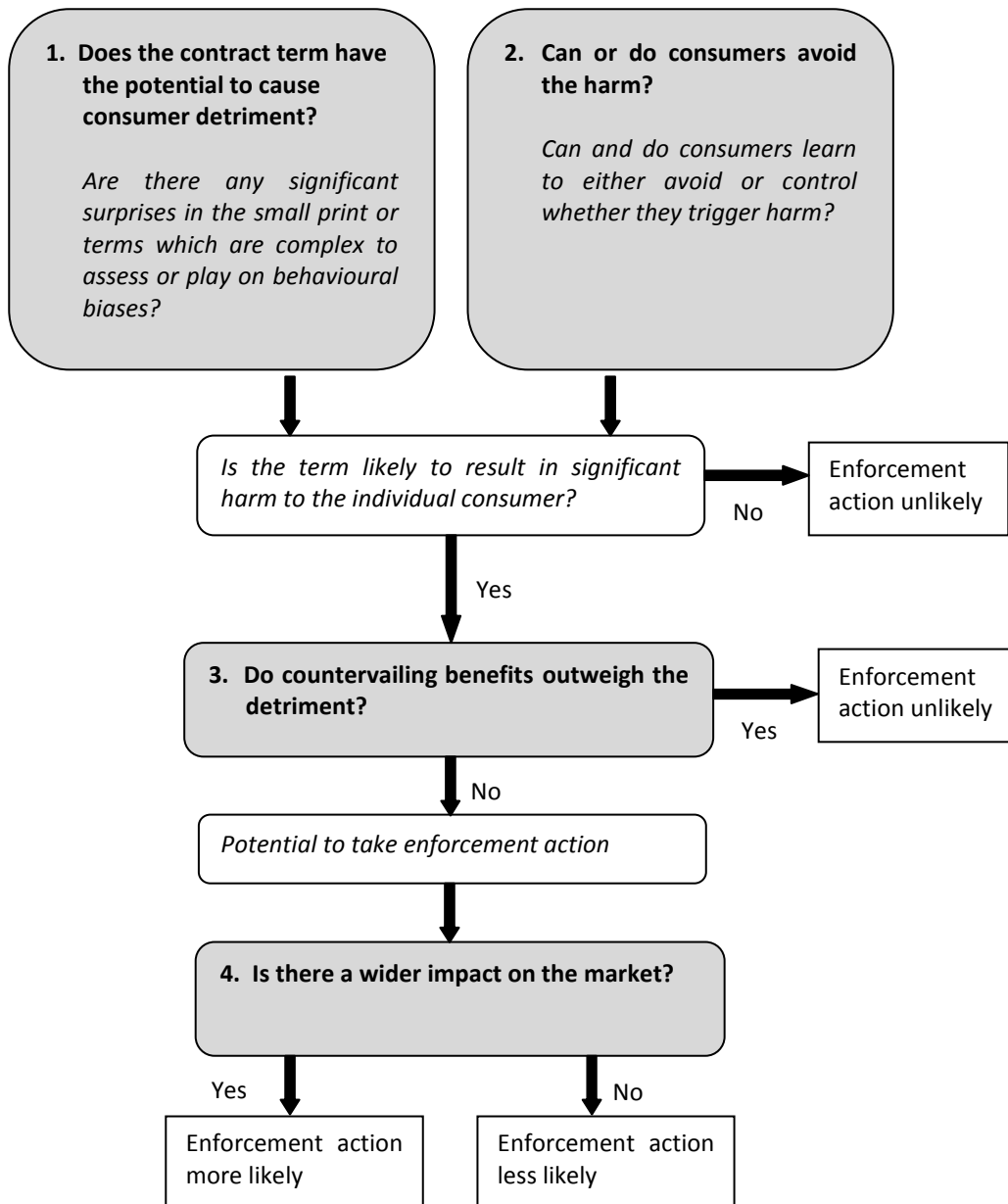
Alongside the guidance, Ofcom published a guide for consumers, offering advice on the type of charges to look for before signing with a new communications service or provider. It includes information on what consumers could do if they think they entered into a contract with an unfair term or charge.

Ofcom monitored the situation, noting that in the months that followed, the situation with respect to service providers had not changed significantly. The agency wrote to the providers, asking whether they were in compliance, noting that Ofcom would pursue enforcement actions if this were not the case. While all providers claimed compliance, there was ample evidence that early termination charges were being applied. Further research was carried out by Ofcom in which it was determined that the highest level of detriment to consumers was in fact being experienced through the early termination charges. A pre-enforcement letter was then sent to service providers, apprising them that legal proceedings would be initiated unless the charges were reduced. The top three service providers were targeted in the action.

Negotiations took place, resulting in an agreement under which the charges were significantly reduced, in return for which Ofcom agreed not to pursue enforcement actions.¹²

A generic framework, that was developed in 2011 by the OFT for assessing consumer contract issues, was also presented at the workshop. The framework, which aims at determining whether enforcement action would be warranted and draws on telecom experiences, comprises a four-step process that relies on the nature and magnitude of consumer detriment as a principal criterion for determining whether action should be taken (Figure 5). The steps parallel the first three steps contained in the OECD *Toolkit*.

Figure 5. Assessment framework for prioritising enforcement action for consumer contracts



Source: OFT (2011) and Freeman (2011).

The generic research on contracts conducted by the OFT revealed a number of important factors to be taken into account by policy makers. One is that consumers generally focus on the upfront terms of an offer, paying relatively little attention to subsidiary terms. Aware of this, firms often focus their competitive strategies on the principal terms, knowing that what they include in the subsidiary terms are not likely to be considered by consumers. As a result, there is limited incentive for firms to compete on the basis of the subsidiary terms. Another factor is that consumers tend to fare worse in face-to-face interactions with service providers than they do when subscribing to services through other means. A third factor is that firms are positioned to exploit behavioural biases, and often do so; inclusion of restrictive lock-in provisions was cited as an example.

The United Kingdom's experience also revealed the challenges that policy makers can have in addressing contract issues when issues concerning fairness are at stake. An enforcement action that was taken in one area to address a fairness concern was challenged in the courts and reversed, as the term in question was deemed to be a legitimate core element. Tackling problems concerning subsidiary terms on the basis of their misleading character was seen as possibly providing a more effective route.

D. *Procedures used to review and measure the effectiveness of implemented policies*

Workshop discussions underscored the difficulty of measuring the effectiveness of actions taken to address contract issues. The importance for regulators to develop new indicators to better monitor developments was also highlighted. Indicators that were discussed included the following:

- In Québec, the government's multi-stakeholder co-operation and consultative approach was seen as a premise for the development of effective indicators, since it allowed regulators to identify and better understand industry constraints and potential consumer detriment.
- In Israel, no variation in complaint trends has, as yet, been noted by the Consumer Protection and Fair Trade Authority; at least from the Consumer Authority's perspective, it was noted, policies are viewed as too recent for review.
- In the United Kingdom, compliance with the Ofcom's guidance on early termination charges by the three major operators (covering 80-85% of the market) and considerable reductions in early termination charges (i.e. of nearly 85%) were seen as indicative of the success of the policy measures taken to address issues.

E. *Views of stakeholders*

A presentation by Telecom Italia pointed out the important role played by alternative dispute resolution (ADR) mechanisms in the country to help ensure that consumer issues in the telecom area are effectively addressed. In Italy, ADR mechanisms are provided through a public body (the *Comitati Regionali per le Comunicazioni* (Co.re.com.)), the chambers of commerce and an industry/consumer mechanism called *Conciliazione Paritetica* ("parity conciliation").

The *Conciliazione Paritetica* has been operating in the country since 1999, following an agreement among telecommunications companies and consumer associations. Over the years, parity conciliation has been modified to comply with new legislation and requirements. It was made available online in 2004 and been made easier to use. In the parity conciliation, the Conciliation Council, composed of a representative of the company and a representative of a consumer association, plays a key role in resolving disputes. This mechanism has been widely used; during 1993-2010, some 97 500 requests for

conciliation were made. Of those discussed (93% of the total requests), agreement was reached in some 92% (79 799) of the cases.

The main characteristics of this mechanism include:

- The wide geographical distribution of conciliation commissions in Italy.
- The low cost of such proceedings for industry, and the fact that they are free of charge for consumers.
- The speed of the process: it needs to be concluded within 45 days.
- The uniformity of solutions, which are based on general guidelines that are uniformly applied.
- The transparency and efficiency of the mechanism.
- The versatility of the system, as consumers can choose either a face-to-face or online procedure.

It was noted, however, that the mechanism does not foresee compensation for damages.

Business representatives underscored the importance of stakeholder co-operation in addressing consumer issues. Their participation in initiatives like the “Parity Conciliation” procedure, it was stressed, not only is key to settle disputes in the consumer area, but also provides a business opportunity for those taking part, as it can help build consumer loyalty.

Representatives from civil society referred to some of the key problems that consumers often face. In the Netherlands, it was noted, the problems were three-fold. Tariffs were often not included in contracts. Instead, consumers were provided with the name of a plan, the tariffs for which could only be accessed on the Internet. Although industry self-regulation called for the centralisation of prices on the website, they were often difficult to locate. A survey had revealed that 46% of consumers did not know what their tariffs were, and that 37% did not know where to look to find them. Further complicating the situation is the fact that only current tariffs appear on the websites, making it difficult for consumers to know what rates they agreed to when they initially concluded a contract.

The situation surrounding contract changes in the Netherlands was seen as working well, due to strict enforcement of regulations requiring service providers to notify customers of any changes at least four weeks in advance of their introduction; consumers would then be free to terminate the contract in light of the changes. Fines and media attention appeared to be helping ensure compliance; complaints had declined significantly.

A third issue concerned contract terms under which providers effectively declined liability for disruptions in service; this was common in the case of the Netherlands. That said, providers would sometimes provide compensation, albeit on their terms and not systematically. Consumer groups were therefore promoting the development of regulations that would ensure compensation, as a matter of principle.

In the discussion that followed, a number of comments were made on the role that information on consumer complaints play in policy making. The procedures for filing complaints, it was noted, were not always clear to consumers, particularly when several agencies were involved; this could limit their utility. In the case of ADR systems that are independent of governments, it may be difficult for governments to detect problems if the information collected by others is not widely shared. Finally, the use of the volume

of complaints as an indicator in the telecommunication sector was questioned; complaints were likely to be significant in light of the dynamic, innovative nature of the business.

Questions were also raised on the effects that excessive regulation could play on innovation in telecommunication services. Limiting contract lengths, prohibiting SIM locks and limiting the conditions under which providers could subsidise different aspects of their business were seen by some as potentially having negative consequences for markets and, ultimately, consumers.

The difficulties that regulators had experienced with respect to the effectiveness of self-regulation were seen in part to be due to the nature of the problems being addressed. Service providers were seen in many instances as relying on “hidden terms” as the means through which they could boost revenue, given the intense competition on the more visible base service costs. In these instances, demonstration that strong enforcement action would be taken was needed, in order to encourage companies to change their approaches.

III. Billing issues

A. Nature and sources of problems

The billing issues addressed at the workshop mainly focused on “bill shock” and “cramming” (Box 4). “Bill shock” occurs when wireless users receive unexpectedly large monthly bills for their use of communications services. This can occur when a consumer unknowingly exceeds plan limits for voice, text or data or incurs unanticipated international roaming charges when travelling abroad. Consumers who are unaware or unfamiliar with pricing mechanisms have sometimes also incurred unexpectedly high charges while travelling across or near international borders.

Box 4. Billing issues

- “Bill shock.” (United States).
- “Cramming.” (Australia, Belgium, United States).
- Lack of clearly written, easily accessible information on billing and charges made available in a timely manner. (Slovenia, United States).

Other types of issues appear as hidden costs in bills (“cramming”). It is the practice of placing unauthorised charges on consumers’ phone bills. Entities engaging in cramming often charge only small amounts of money that escape consumers’ attention. Alternatively, cramming charges can appear in bills in ways that make consumers perceive them as legitimate subscribed services, such as chat lines and horoscopes. As a result, consumers might not question such charges, which, if continued on a monthly basis, could add up to significant sums over time. It was noted that cramming is a well-defined issue for landline services and an emerging one in the wireless domain.

Additional billing-related concerns were raised by Slovenia with respect to bundled services, which are becoming increasingly popular in OECD economies. Bundled services, which can be advantageous to consumers, can, in some instances, raise their costs, as they may include one or more services which the consumers may not wish or use. In addition, sometimes consumers may not be well aware of the services included in their bundles and may thus end up buying products which duplicate what is already included in their package.

Sources of billing problems can include a lack of consumer awareness and/or understanding of the contract terms and conditions relating to the products being purchased. As noted earlier in the discussion on contract terms, the complexity of these terms, in many instances, tends to exacerbate these problems. Further sources include the misleading and fraudulent commercial practices that are sometimes used, in particular, by third parties. These include charging consumers for products that they did not intend to buy and/or are not aware of buying.

Detection

As noted in the workshop's discussions, billing issues have most commonly come to the attention of regulators *via* consumer complaints.

In Belgium, information on complaints was reported to provide a point of departure for examination of consumer problems in the telecom area. Out of the 25 836 complaints filed in 2010, some 48% concerned billing problems. The regulatory body generally begins by examining complaints with the purpose of assessing their validity. If, as a result of the examination, an issue appears to be significant, telecom operators are contacted by the regulatory authority and asked to report on the number of the complaints that they have received and the related turnover involved.

In the United States, issues involving "bill shock" were first detected through the complaints filed by consumers with the Federal Communications Commission (FCC), which is the regulatory authority overseeing the telecom sector in the country. In addition, a number of well-publicised media stories, where consumers had unexpectedly incurred bills, sometimes in the tens of thousands of dollars, attracted the agency's attention. Once bill shock had been identified as a problem, a consumer survey was carried out, with the aim of assessing the scope of the issue. The survey found that one out of six of the mobile users who responded had experienced "wireless" bill shock. Two further related surveys carried out by Consumers Union found an even higher incidence (i.e. that one out of five respondents had been victims of bill shock).

"Cramming" issues, it was noted, have been recognised as a long-standing problem in the United States. Information inferred from complaints, as well as from work undertaken by the Federal Trade Commission (FTC) and the US Senate prompted a decision to develop rules that were adopted in 2012. The scope of the problem was deemed to be significant in light of the outcomes of an expert survey, which revealed that only 5% of cramming victims had realised having incurred losses. Some estimates suggested that some 15 to 20 million US households could be experiencing cramming problems.

B. Consumer detriment

Discussions at the workshop indicated that complaints data are often used to assess the magnitude and scope of consumer detriment, along with survey data. Higher costs were identified as the principal form of detriment. The United States cited an example where a consumer had received a cell phone bill amounting to USD 35 000, for texting and data usage while travelling internationally.¹³ The fact that consumer were often unaware of inaccurate billing further complicated the calculation.

C. Development and selection of policy measures

Policies adopted to address billing issues, it was noted, included: *i*) regulation; *ii*) enforcement actions (including legal proceedings); *iii*) government advice (with incentives to follow the advice); *iv*) self-regulatory initiatives developed by industry (with stakeholder support and government oversight). Sometimes actions to address billing issues were taken unilaterally by a regulatory authority, while, in others, multi-stakeholder dialogues were established to explore options. In discussing the development of options, it was noted that the potential relevance and applicability of available tools commonly considered

in other contexts should be considered, prior to considering the development of new ones. Operators allowing consumers to purchase expensive items *via* their mobile accounts without any credit check could be deemed, for instance, as an example of irresponsible lending or credit abuse; in the United Kingdom, this could be addressed under existing financial regulations. Another issue that surfaced concerned the potential accountability of telecom operators in cases involving cramming. The telecom regulator in Italy filed a case against both a telecom operator and a third party to address cramming issues, basing the telecom operator's accountability on its economic interest in the transactions between the consumer and the third party vendor.

Belgium

In Belgium, it was noted, authorities have adopted a pragmatic approach to addressing billing issues involving third party vendors. If a problem is deemed to be significant, operators are asked to take action to resolve it. If corrective action were not taken, operators could be considered as accomplices to the third parties causing the problem. Operators have generally responded by terminating third party services when problems have arisen. Although taking such action could potentially result in a legal action being taken by the third parties concerned, it was pointed out that no such action has yet been taken. Such approach is seen as particularly effective when applied to cross-border transactions, where direct intervention against third parties by Belgian authorities would be difficult.

Efforts have also been made to raise consumer awareness of the need to exercise caution in engaging in e-commerce. Reference was made at the workshop to a "fake" contest carried out by Belgian authorities, which had been structured so as to resemble the many SMS competitions being run on the Internet. Entrants were reported to have been directed to the contest website through Facebook, Google ads and other similar sites. The prize was a smartphone. In order to win it, consumers had to send an SMS, in return for which they would receive a code that should then be validated on another website which would indicate whether or not they had won. Thousands of people took part in the contest. They all, however, in response to their participation, received a message from the Belgian authorities warning them to be on the lookout for fraudulent SMS services: had they, prior to signing up, carefully read the terms and conditions of the contest, which contained many absurd clauses, they would have realised the fraudulent nature of the contest. In fact, less than 1% of the contest's participants had actually clicked on the link redirecting them to the offer's general terms and conditions.¹⁴

United States

As reported at the workshop, in the United States, the FCC concluded that wireless bill shock issues could best be addressed through improvements in consumer disclosure, with carriers providing their customers with timely information about the level of their wireless usage. In October 2010, a notice of proposed rulemaking was issued, which sought stakeholders' comments on rule proposals that would require mobile service operators to:¹⁵

- Send voice or text alerts to notify consumers when they approach, and again when they reach, their monthly plan limits for voice, data, and text that would result in additional charges.
- Send alerts when consumers are about to incur international roaming charges that are not covered by their monthly plans.
- Clearly and conspicuously disclose any tools that mobile providers offer to let consumers set their own usage limits and monitor their usage balances.

In response, some mobile operators argued that the proposals would be too costly for them to implement, while others maintained that they were already providing their subscribers with the necessary information, making any new rules unnecessary. They proposed, through the industry group *CTIA-The Wireless Association*, to instead revise the *CTIA Consumer Code for Wireless Service* to address the issue.¹⁶ This initiative was favourably received by the FCC and the Code was revised in October 2011, a fact announced jointly by the CTIA, the agency and Consumers Union.¹⁷ The Code, which is binding on certain of the Association's members, includes provisions which closely follow what the FCC had initially proposed. It foresees alerts being provided to consumers automatically, unless they have opted out of such notifications. CTIA has advised that the participating carriers represent more than 97% of US wireless customers.

In light of this, the FCC put its bill shock rulemaking proceedings on hold, reserving the right to take action, should non compliance occur. The FCC, it was noted, expressed its optimism that this approach would be generally effective, as the CTIA and its participating members had committed to providing consumers with the agreed-upon information. In support of the initiative and to assist consumers in monitoring the carriers' performance, the FCC launched a webpage in April 2012, that contains information on bill shock, including a table that indicates, for each participating carrier, the types of alerts provided by the carrier and a link to the place on the carrier's website that describes the carrier's usage alert policies.¹⁸ The FCC will update the table, as the participating carriers introduce new types of alerts. The deadline under the Code for the participating carriers to provide all four of the agreed-upon types of alerts (i.e. voice, text, data and international roaming) is 17 April 2013.

With respect to "cramming", industry self-regulation was viewed as not being sufficiently effective. In response, the FCC adopted rules in 2012, that: *i*) require landline carriers to notify subscribers clearly and conspicuously - at the point of sale, on each bill, and on their websites - of the option to block third-party charges from their telephone bills, if the carrier offered that option; and *ii*) strengthen the FCC's requirement that third-party charges be separated on bills from the telephone company's charges.

In addition, views concerning the possibility of extending the proposed rules to wireless operators were solicited. Views were also solicited as to whether operators should be required to offer subscribers the option to block third-party charges from appearing on their telephone bills. In general, wireless operators opposed extending these rules and all operators opposed the option of blocking third-party charges. Other commenters, including consumer advocacy groups, supported strong measures to prevent cramming, including banning all third party charges.

Further information on actions being taken to address billing issues was provided by a major US telecom provider. In the case of mobile services, its approach had been to ensure that the description of the services provided to consumers was complete, clearly written and easily accessible. They have developed a *Customer Service Summary* aimed at achieving this goal. The *Summary*, it was noted, is being provided to customers in stores, at the time of purchase, and is also being made available *via* e-mail for customers ordering on line. More generally, they noted, most providers in the United States are offering a 30-day trial period, during which customers are free to withdraw from a contract if they are not satisfied.

The company indicated its intent to implement the industry code with respect to the warning alerts mentioned above. Information on consumption would now be provided to consumers automatically (i.e. "pushed"), as opposed to the approach that had been used in the past, when such information would be made available to consumers upon request.

With respect to cramming, the US provider described efforts undertaken to clearly identify third-party charges in subscribers' bills: purchases made from third parties through the operator were reported to be subject to a double opt-in procedure, requiring subscribers to reconfirm the transactions that

they had already authorised. Credits would be provided to consumers who disputed charges, with the third-party vendor to resolve any issues directly with the individual involved. Finally, consumers have been provided with the ability to fully block third party billing on their mobile accounts.

D. Procedures used to review and measure the effectiveness of implemented policies

The workshop discussion confirmed that regulators are relying largely on monitoring industry behaviour and the level and scope of complaints to evaluate the effectiveness of the measures that have been taken to address billing issues.

E. Views of stakeholders

There appeared to be consensus among stakeholders that actions need to be taken to address billing issues. Countries appeared to prefer that industry take the lead in addressing the issues, in consultation with government. In the instances reviewed at the workshop, the possibility that regulatory intervention might occur if appropriate action were not taken by business, had provided incentives for firms to be responsive. Representatives of civil society raised questions about the effectiveness of self-regulation; they noted that the success of self-regulatory initiatives would, in any event, require adequate government monitoring. Business representatives recalled that some companies have taken actions to improve the clarity of billing statements, while also providing consumers with options for cancelling services that they did not wish to maintain.

A number of workshop participants pointed out that governments will need to be vigilant in identifying and addressing shifts in misleading or fraudulent activities as those engaging in such activities were often adept at finding new ways to challenge consumers. In Australia, merchants were reported to be currently focusing on fraudulent activities in the “apps” area, while, in Belgium, such activities seemed to have shifted to fake dating services. The fact that companies could change their names easily, and could effectively remain somewhat invisible by billing through companies which bundled third party charges together and billed consumers (i.e. aggregators) was seen by one participant as further complicating the problem.

**ANNEX I
WORKSHOP PROGRAMME**

**OECD Headquarters, Paris
25 October 2011**

1. Introductory remarks

Workshop Chair: Mr. Michael JENKIN, Director General, Office of Consumer Affairs, Industry Canada; Chairman, Committee on Consumer Policy, OECD

2. Applying the *Consumer Policy Toolkit*

Mr. Andrew WYCKOFF, Director for Science, Technology and Industry, OECD

3. Panel 1: Misleading and fraudulent claims

Chair: Ms. Stacy FEUER, Assistant Director for International Consumer Protection, Federal Trade Commission, United States

Panellists:

- Mr. Tim LEAR, Director, International Unit, Australian Competition & Consumer Commission
- Mr. Brent HOMAN, Assistant Deputy Commissioner of Competition, Competition Bureau of Canada
- Ms. Satu TOEPFER, Senior Legal Adviser, Consumer Agency and Ombudsman, Finland
- Mr. Matthieu DECONINCK, Adjoint au Chef du Bureau Communications électroniques et Médias, Sous-direction des Services, Direction Générale de la Concurrence, de la Consommation et de la Répression des Fraudes, Ministère de l'Économie, des Finances et de l'Industrie, France
- Ms. Elissa FREEMAN, Director, Policy and Campaigns, Australian Communications Consumer Action Network
- Mr. Lars KINDERVATER, Head of Consumer Policy, Service Headquarters, Public and Regulatory Affairs, Deutsche Telecom

Background

A. Issues

In 2008, the CCP and ICCP developed Policy Guidance for Protecting and Empowering Consumers in Communication Services. Such guidance notes that communication service providers can use selling techniques that are misleading or fraudulent. Sales, for example, have been pursued through “slamming” (i.e., unauthorised switching of carrier); contracts can contain restrictive conditions and exemptions (download limits, restrictions to access content) that are otherwise not clearly indicated in promotional literature. It was further noted that advertising and marketing campaigns that exaggerate or distort claims can be particularly harmful to certain categories of consumers, such as children or other disadvantaged or vulnerable consumers who may not have the capability to fully understand the information presented. More recently, concerns have been raised about the overstated claims that some service providers make on broadband speeds. Finally, consumers do not always fully understand the terms and conditions of services that are provided at no cost, but only for a limited period; knowing how to withdraw from such a service can also be challenging.

B. Developments

Penalties/fines: In Canada, an agreement was reached in 2011 with a leading service provider for alleged misleading representations about the prices offered for its services. The advertised prices were found to be unavailable, as additional mandatory fees, such as those related to TouchTone, modem rental and digital television services, were hidden from consumers in fine-print disclaimers. The service provider was required to pay a penalty of CAN 10 million. In Australia, a service provider was fined AUS 5.6 million for not sufficiently disclosing that high speed broadband transfer rates would be reduced to 64kbps once consumers had exceeded their peak data allowances. In Finland, the Supreme Court has confirmed the Ombudsman’s view on the inappropriateness of small print used for providing essential information in a communication services case. By law, the speed of broadband must be indicated in contracts as a range rather than as a theoretical maximum speed.

Discussion questions:

- *Misleading and fraudulent claims have often involved the presentation of information in ways that misled consumers about the price and/or performance of communication services. What criteria are stakeholders using to determine whether claims are misleading or fraudulent? How are they screening markets to detect instances where there are problems in this regard? How widespread are such problems; are they focused in particular areas? In examining the source of problems, to what extent have firm behaviour, information adequacy and consumer behavioural biases been evaluated?*
- *What adverse effects have misleading and fraudulent claims had on consumers? How has the detriment been observed and measured? What societal groups have been most adversely affected? To what extent has hidden detriment been detected? If nothing is done, would detriment tend to remain the same, or would it increase or decrease? What evaluation techniques have proven to be the most effective in assessing detriment? At what point does detriment arising from such claims warrant a policy/regulatory/enforcement response?*
- *In addition to fines and requirements to modify claims, what measures have stakeholders taken to address problems? What options have been evaluated? What criteria have been used to determine the instrument(s) chosen? To what extent were business and civil society involved in examining the options? How clearly were the goals of intervention defined?*

- *How do stakeholders view the effectiveness of the measures that have been taken? In retrospect, how could policy responses have been made more effective? Are there more effective measures that should be explored? To what extent and in what ways is the effectiveness of measures being reviewed? If reviews have already been conducted, what did they find? In what ways will policies be modified as the result of reviews?*

4. Panel 2: Contract terms

Chair: Mr. William MACLEOD, Partner, Kelley Drye & Warren LLP, United States; Vice-chair, Task Force on Consumer Policy, BIAC

Panellists:

- Mr. Jorge PASSALACQUA, Directeur de la Planification et des Communications, Office de la Protection du Consommateur, Gouvernement du Québec, Canada
- Mr. Yair HAKAK, Senior Economist, Economics and Budget Department, Ministry of Communications, Israel
- Ms. Lynn PARKER, Director, Consumer Protection, OFCOM; and Mr. Jason FREEMAN, Legal Director, Consumer Group, Office of Fair Trading, United Kingdom
- Mr. Maurice WESSLING, Policy Adviser Digital, *Consumentenbond*, the Netherlands
- Ms. Monica PLACIDI, Head of Consumer Protection, Public & Regulatory Affairs, Telecom Italia

Background

A. Issues

Consumers subscribe to communication services through contracts that are concluded with providers. The length, language, complexity and presentation of the contracts, and the terms and conditions that accompany them, can be difficult for consumers to comprehend, resulting in an inadequate understanding of what is being agreed to. Certain contract terms might be considered as unfair; they may severely limit the ability of consumers to modify or terminate a contract without incurring significant costs. Other concerns have been raised over the ability of providers to alter the terms and conditions of contracts, sometimes without the knowledge of their customers.

B. Developments

Regulation: In 2010, the province of Québec (Canada) modified its Consumer Protection Act by, chiefly *inter alia*: a) requiring merchants to provide consumers with a written contract and specifying the required content of the contract; b) prohibiting clauses allowing merchants to unilaterally alter the essential elements of the contract, mainly the nature of the good or service, price and contract duration; c) protecting the consumer's discretionary right to terminate the contract without charge, following a unilateral change of contractual clauses by the merchant; and d) prohibiting early termination fees that exceed the economic benefit provided to the consumer and providing merchants with a method to calculate these fees. In early 2004, the state of Victoria (Australia) reviewed contracts from seven service providers, finding that the contracts contained unfair provisions: facing possible court action, the companies modified the contracts to ensure that suppliers could not: i) unilaterally vary prices and other terms and conditions; ii) restrict the liability of the supplier or its employees or agents; iii) penalise consumers for breach or termination of a contract; or iv) prevent or restrict the consumer's dispute resolution options. In 2011 the Finnish Consumer Ombudsman together with the Finnish Communications Regulatory Authority and the Finnish Federation for Communications and Tele-informatics negotiated model contract terms for communication services. Such contract terms begin with an easy-to-read summary of the contents tailored for consumers. A plain language version of the terms for vulnerable consumer groups has also been published. Finally, the duration of fixed-term contracts has been limited to 24 months; automatic continuation by another fixed term has been prohibited.

Discussion questions:

- *Consumers are often not in a good position to know the extent to which the terms and conditions of communication services contracts are unfavourable or unfair, nor are they necessarily well versed in what their rights might be. The burden of detecting problems thus seems to fall on other stakeholders. What have they been doing to identify problems with contracts? What information is being gathered on the magnitude and scope of the problems? To what extent are firm behaviour, information adequacy and consumer behavioural biases contributing to contract problems?*
- *What evidence is there that contracts are structured in ways that are causing consumer detriment? What is the nature and magnitude of the detriment? How is it being measured? To what extent is the detriment hidden? To what extent are the length and complexity of contracts contributing to the detriment? What societal groups have been most adversely affected? At what point does detriment arising from contracts warrant a policy/regulatory/enforcement response?*
- *What measures have stakeholders taken to address contract problems? What options were evaluated? What criteria were used to determine the instrument(s) chosen? To what extent*

were business and civil society involved in examining the options? How clearly were the goals of intervention defined?

- *How do stakeholders view the effectiveness of the measures that have been taken? In retrospect, how could policy responses have been made more effective? Are there more effective measures that should be explored? To what extent and in what ways is the effectiveness of measures being reviewed? If reviews have already been conducted, what did they find? In what ways will policies be modified as the result of reviews?*

5. Panel 3: Billing issues

Chair: Ms. Jill JOHNSTONE, Director, International Policy Advocacy, Consumer Focus, United Kingdom

Panellists:

- Mr. Joel GURIN, Chief, Consumer and Governmental Affairs Bureau, Federal Communications Commission, United States
- Mr. Peter VAN HERCK, Inspector, DG Control and Mediation, Internet Surveillance Unit, Ministry of Economy, Belgium
- Mr. Boštjan OKORN, Product Testing Co-ordinator, Slovene Consumers' Association
- Mr. Richard N. CLARKE, Assistant Vice President, Economic and Regulatory Policy, AT&T

Background

A. Issues

The cost of telecommunications services often includes a fixed component (such as a monthly charge), along with variable costs that are based on how such services are used. In both mobile and fixed platforms, service providers often serve as billing agents for third-party vendors. Although detailed listings of the variable charges are generally provided to consumers, the abbreviated description of each charge can sometimes make it difficult for consumers to easily verify the transactions. Consumer complaints and related investigations have determined that many consumers have been charged for a product that they did not recall having ordered, agreed to or used (a phenomenon known as "cramming"). In addition, charges for premium SMS services and products purchased by children without the knowledge and consent of a parent are proving problematic. Finally, consumers may incur large charges when they unknowingly exceed their service plan limits for voice, text or data, or when they incur large international roaming charges when travelling abroad; this has sometimes resulted in "bill shock".

B. Developments

Regulation: In the United States, the FCC adopted new rules in April 2012 to help landline consumers identify and prevent "mystery fees" on phone bills; non-telecommunication third-party charges will have to be presented separately from telephone charges and possibilities to block third-party charges on their bills will have to be clearly presented at the point of sale, on each bill, and on their websites (see: www.fcc.gov). In Finland, the Consumer Agency/Ombudsman has called for a clear itemisation of charges in telephone bills for years, in a similar vein to the US FCC's recent proposals. Legislation is being considered that would introduce operators' liability as billing agents for third parties; consumers would therefore have the right to withhold payment or to receive a refund, compensation or another money payment from the seller or the service provider. The right would extend to the creditor who financed the purchase or service.

Discussion questions:

- *The extent of billing problems may be difficult to determine as they may go undetected and unreported by consumers. What techniques have stakeholders used to assess the nature, scope and magnitude of billing issues? What kinds of problems have arisen? What is causing the billing problems and who is responsible for them? In examining the sources of problems, to what extent have firm behaviour, information adequacy and consumer behavioural biases been evaluated?*
- *How much harm are billing problems causing consumers? In addition to overcharges, are other forms of detriment, such as the time and expense of rectifying problems, also being evaluated? Have other forms of detriment been observed? In what ways has detriment impacted different societal groups? To what extent is hidden detriment a problem?*
- *Service providers and regulators have taken a number of steps to address billing problems. What options were evaluated prior to taking these steps? What criteria were used to determine the instrument(s) that were ultimately chosen? What other types of measures could be taken to address billing problems? To what extent were business and civil society involved in examining options? How clearly were the goals of intervention defined?*
- *How do stakeholders view the effectiveness of the different measures that have been taken? In retrospect, how could policy responses have been made more effective? To what extent and in what ways is the effectiveness of measures being reviewed? If reviews have already been conducted, what did they find? In what ways will policies be modified as the result of reviews?*

6. Conclusions

**ANNEX II
ASSESSMENT TEMPLATE**

Step 1: Diagnosing the problem

1. What is the nature of the problem from the perspectives of consumers and oversight authorities?
 - a. Terms of purchase (e.g. lack of availability, high prices, unfavourable contract provisions, commercial/selling techniques)
 - b. Product attributes (e.g. low quality, performance does not meet expectations)
 - c. Post-purchase customer service (e.g. inadequate repair/replacement/cancellation/return policies)
 - d. Dispute resolution (e.g. not readily available, high cost, too time-consuming, unsatisfactory results)
2. What are the characteristics of the problem?
 - a. To what extent are consumers aware of the problem?
 - b. If a product is involved, is it a *credence* product or an *experience* product, or are consumers able to evaluate it adequately prior to purchase?
 - c. How frequently do consumers purchase the product concerned? To what extent is consumer experience likely to eliminate the problem when future purchases are made?
3. What are the source(s) of the problem?
 - a. Firm behaviour
 - i) Misleading, deceptive or fraudulent commercial practices.
 - ii) Unfair treatment (e.g. unfair contract terms, price discrimination, unfair selling/marketing practices).
 - iii) Harmful business practices (e.g. collusion, cartels).
 - iv) Exploitation of consumer behavioural biases in marketing or selling products.
 - v) Other.
 - b. Information issues
 - i) Complexity of information.

- ii) Presentation of information.
 - iii) Inaccurate or misleading information.
 - iv) Insufficient information (e.g. to what extent have incidental or variable charges been adequately disclosed?).
 - v) Overload of information.
 - vi) Difficulties in accessing information.
 - vii) High cost of accessing information.
 - viii) Comparability of information.
 - ix) Other.
- c. Consumer behavioural factors: Decisions influenced adversely by:
- i) The way information is framed.
 - ii) Limited research (resulting, for example, in decisions based on “bounded” rationality).
 - iii) Focus on a limited number of “headline” variables (i.e. lack of sufficient attention to secondary variables).
 - iv) Impulsiveness (i.e. making decisions based largely on emotional/psychological factors).
 - v) Overconfidence (i.e. underestimating the likelihood of adverse events/situations in the future).
 - vi) Reliance on “rules of thumb”.
 - vii) Uncritical acceptance of proposed default options.
 - viii) Short-sightedness (i.e. failure to fully evaluate long-term factors into decision making)
 - ix) Inertia (i.e. tendency to stick with the *status quo*).
 - x) Other.
4. To what extent and how effectively is the problem being addressed adequately by suppliers?
 5. Is there scope for effectively addressing the problem?
 6. Would possible solutions conflict in an unacceptable manner with other public policy objectives?
 7. Which authority(ies) have jurisdiction for addressing the problem?
 8. Is there justification for further assessment?

Steps 2 and 3: Assessing consumer detriment

1. What types of financial and non-financial detriment are consumers experiencing?
2. How large/significant is the detriment (in qualitative and quantitative terms)?
3. How does the problem impact on different social/economic groups (e.g. is there a “waterbed” effect)?
4. How is the detriment likely to evolve over time (i.e. is the detriment likely to stay at the same level, increase or decrease over time; how long will it take for any changes to occur?)
5. Is substantial detriment likely to occur to parties other than consumers (e.g. firms)?
6. What are the economic, social and political consequences of taking no action?
7. Is there justification for exploring possible policy measures?

Step 4: Setting the policy objective(s) and identifying the range of policy options available to address the problem

1. What should be the specific desired outcome(s) for consumers of any policy intervention?
2. To what extent could strengthened enforcement of existing measures achieve policy objectives?
3. What other instruments could be used, either singly or in combination, to achieve policy objectives?

Consumer education and awareness?

Information provision and other disclosure measures?

Contract terms regulation?

Cooling-off periods?

Moral suasion?

Codes of conduct and trustmarks?

Standards?

Licensing and accreditation of firms or providers?

Financial instruments?

Prohibitions?

Dispute resolution and redress mechanisms?

Step 5: Evaluating options and selecting a policy action

1. What are the costs and benefits of the options for addressing the problem (for consumers, firms and other stakeholders)?
2. Can sensitivity analysis be carried out to gain insights into the likely effectiveness of taking specific actions?
3. What effects will the options have on other policy areas (e.g. competition, health and the environment)?
4. What could be the unintended consequences of taking particular actions?
5. Have stakeholders been consulted on the options? Have their views been taken into account?

Step 6: Developing a review process to evaluate the effectiveness of a selected policy

1. When would it be reasonable to carry out interim and full reviews of a policy action?
2. How should the review be structured and carried out?

**ANNEX III
SUMMARY OF KEY OECD WORK ON COMMUNICATION SERVICES**

I. Enhancing competition in telecommunications: Protecting and empowering consumers

In 2007, the Committee on Consumer Policy (CCP) and the Information, Computer and Communications Policy (ICCP) carried out joint work on protecting and empowering consumers in communication services (OECD (2008*b*)).

Supply-side issues

The report reviews the types of supply-side policies and regulations that have been introduced in countries to promote competition and combat anti-competitive conduct in communication services (Box 5).

Box 5. Areas often covered by communication service regulation

- The regulation of licensing to permit market entry.
- *Ex ante* regulation to foster sustainable competition, including asymmetric regulation (whereby a dominant operator is subject to more regulation).
- Interconnection.
- Price controls, including 'price-cap' regulation to ensure prices (on average) fall in real terms.
- Price rebalancing – long-term consumer interests (choice) versus short-term (lowering prices).
- Numbering policy.
- Universal service.
- Local loop unbundling.
- Regulation to facilitate the process of new technology and 'convergence'.
- Regulation to facilitate interoperability.
- Initiatives to protect consumers regarding contractual arrangements and unfair trading.
- Quality of service.
- Carrier selection, call-by-call selection and pre-selection.
- Number portability.
- Information provision obligations e.g. relating to price and quality of service.

Demand side issues

Information

It then explores demand-side issues, noting that consumer detriment can arise when there are imperfections in available information:

- The information may be deceptive, too difficult to understand or too difficult for consumers to obtain or evaluate.
- Consumers may not be sufficiently aware of alternatives.
- Access to comparable information on prices and quality may be lacking due in part to the wide range of and variance in pricing structures, as well as the complexity of and frequent changes made to offers.

Switching

The report notes that the ability of consumers to switch suppliers is critical for markets to operate efficiently. Deterrents to such switching were found in the form of:¹⁹

- Lengthy and cumbersome switching procedures which can make it inconvenient for consumers to switch and can outweigh any potential benefits.
- Early exit charges, imposed by an existing provider, which can reduce the benefits of switching.
- Confusing products and non-transparent pricing which can make it difficult or time consuming to compare deals (as in the case of mobile telephony and the Internet).
- Technical incompatibility of equipment which can make it uneconomical for consumers to switch (for example, if they cannot use a blocked mobile phone with their new provider).
- Long-term deals which can lock consumers into lengthy relationships with their providers (as may occur with mobile telephony and Internet contracts) and increase the risk of them being overcharged.

Bundling

Bundling, it is noted, offers a number of benefits to consumers, but it is often difficult for them to compare packages due to the differences in the offers and complicated pricing. Moreover bundling can require consumers to subscribe to elements that they do not need or want. Some research, it is noted, concludes that consumers may not make rational choices/decisions when it comes to switching.²⁰

Recommendations

The report presents a series of recommendations to enhance consumer interests:

- **Bill of rights.** Service providers in the communication sector should be strongly encouraged through self-regulation to develop a consumer bill of rights, to provide adequate and accurate information to consumers so that consumers may exercise effective choices and assert their rights

and to put in place transparent and low cost procedures to facilitate consumers in changing service providers.

- **Vulnerable and disadvantaged consumers.** Policy makers and regulators should develop a better and fuller understanding of the needs and motivations underlying consumer behaviour in telecommunications markets, especially those of vulnerable consumers (such as those in rural areas, the elderly, minors, disabled, those on low incomes, the unemployed). Regulators could use more effective means of targeting information to vulnerable groups to provide them with practical guidance about how they can get the best deal.²¹
- **Education.** Policy makers and regulators, in conjunction with industry, could assist consumer participation in telecommunications markets by educating consumers about their rights, by raising awareness about new services and options offered by the market, and by making the process of switching in the fixed line, mobile and Internet markets easier, cheaper and faster.
- **Information.** Regulators should consider requiring that all major operators provide complete, comparable, appropriate and accurate information to consumers through different channels (e.g. through leaflet, radio, consumer hotline and web-based programmes) to enable consumers, especially vulnerable consumers, to quickly identify the most suitable and best value telecommunications plan.
- **Intermediaries.** Regulators could encourage third parties, including consumer organisations, to provide price/service-comparison facilities and other relevant information through consumer hotlines, websites, etc.
- **Quality of service.** Regulators could work with the fixed line (including Internet service providers) and the mobile network operators to develop and publicise a set of comparable indicators relating to quality of service.
- **Portability.** Regulators should ensure that the shortest possible time is taken to complete number portability for consumers switching between fixed line and between mobile service providers.
- **Switching.** Regulators should require that all Internet service providers ensure a simple, free (or at least low-cost) and quick transfer for consumers who choose to switch provider.
- **Business conduct.** Regulators should require “truth-in-billing”, and prohibit harmful business conduct and practices (e.g. by prohibiting misleading advertising).

II. OECD Policy guidance for protecting and empowering consumers in communication services

Building on the above report, the CCP and the ICCP developed a series of policy recommendations in 2008 (OECD (2008*d*)). The recommendations are defined to cover telecommunication service providers, Internet access and telecommunication services provided by cable TV companies and Internet service providers. The text follows.

Text of recommendations

The complexity of communication services, the plethora of new services and the increasing purchase of bundled services through long-term contracts have made it increasingly difficult to understand and compare services.

- Consumers of communication services should be provided by service providers with clear and accurate information about the terms, conditions and costs associated with those services; the information should be easily accessible and sufficient to enable them to make informed decisions.
- Developing information resources that could help consumers make informed choices and increase awareness of their rights and relevant consumer protection measures would be beneficial. In developing such resources, attention should be given to the special needs that disadvantaged or vulnerable consumers may have.
- Independent third parties and consumer organisations should be encouraged to provide price/service-comparison information that will help consumers make informed choices.

The technical quality of communication services provided to consumers can vary significantly and there is concern in some countries that some operators may degrade the quality of services provided to consumers to low levels and without the knowledge of the consumer.

- In the interest of transparency, operators are encouraged to inform consumers of the quality of services including, where practical, information on the variability in the quality of such service, to enable informed consumer choice and facilitate decisions about switching.

The availability of emergency numbers and emergency hotlines is sometimes limited; certain emergency numbers that may be available via traditional telephone services, for examples, are not available in some countries via VoIP.

- Access to emergency services and to emergency hotlines should be ensured without respect to the type of communication service involved. This provision should take into consideration the technical difficulties of providing such services and the limitation of services not meant to substitute for basic voice products. The provision should not constitute an excessive burden or obstacle to the development of innovative services and applications. Any limitations in the emergency services provided should be clearly and conspicuously disclosed.

The ability of consumers to switch service providers is often discouraged because of the time and costs involved. Lower switching costs may benefit consumers and provide a greater stimulus to operators to charge competitive prices and improve the quality of service.²²

- The time and costs associated with switching services by consumers should be minimised. For example, the notice periods for ending contracts, or the "lock in" period for mobile phone handsets could be limited in order to facilitate switching.

Number portability plays an important role in the promotion of competition by removing the cost and inconvenience of having to change telephone numbers when switching providers. It also reduces barriers for adoption of competitive offerings.

- Number portability should be ensured and be carried out expeditiously when consumers switch providers in accordance with the numbering policy of the country.

An absence of interoperability such that consumers need to buy new equipment to utilise another provider's service can inhibit the switching process.

- Ways to increase interoperability, balancing this need against the need to stimulate business innovation, should be explored by stakeholders.

Bundling can be beneficial to consumers and, indeed, an increasing number of consumers are subscribing to bundled service plans. But bundling can also be restrictive if the consumer wishes to change service provider for one service (e.g. voice or Internet) which would necessitate changing the provider for all services.

- The provision of unbundled services should be considered, when necessary, to protect competition, or to preserve consumer choice, recognising that the differences in price between bundled offerings and stand-alone services are often efficient and beneficial to consumers.
- Access to emergency communication services should be ensured in the event that other bundled services are interrupted for non-payment.

Communication service providers can use sales techniques that are fraudulent and misleading. Sales have, for example, been pursued through slamming; contracts can contain restrictive conditions and exemptions (download limits, restrictions to access content) that are otherwise not clearly indicated in promotional literature. Further, advertising and marketing campaigns that exaggerate or distort claims can be particularly harmful to certain categories of consumers, such as children or other disadvantaged or vulnerable consumers who may not have the capability to fully understand the information presented.

Consistent with the 1999 *OECD Guidelines for Consumer Protection in the Context of Electronic Commerce* (OECD (2000)) and the *OECD Guidelines for protecting Consumers from Fraudulent and Deceptive Commercial Practices Across Borders* (OECD (2003b)):

- Businesses should provide consumers with clear descriptions of the details and costs of contracts.
- Businesses should be prohibited from engaging in any practice that is fraudulent or deceptive.

Consumer contracts are often renewed automatically in a number of OECD countries without the explicit approval of consumers, and sometimes modification of contractual conditions are made without sufficient notice and without informing consumers about their right of withdrawal in such cases.

- Communication service providers should be encouraged to limit initial contracts, after which a reasonable time period of notice to end the contract should be provided.
- The implications for consumers of “opt-in” and “opt-out” default provisions at the time of contract renewal should be further examined by stakeholders.
- Consumers should receive adequate notice of any intention to modify contractual conditions and about their right of withdrawal in such cases.

Despite technological advances, inaccurate billing continues to be a major cause of consumer complaint.

- The use of self-regulation and industry codes of practice concerning billing is encouraged.
- Regulatory monitoring and/or intervention may be required, in appropriate cases, to enforce consumer protections.

Consumers may be reluctant to take legal action when they have serious disputes with their service provider, either because of the time and expense involved and/or because they find the judicial process intimidating.

- As provided for in the *OECD Consumer Dispute Resolution and Redress Recommendation* (OECD, 2007), consumers should have access to fair, easy-to-use, timely, effective and inexpensive dispute resolution and redress mechanisms, including, where possible, alternative dispute resolution services.
- Establishing independent dispute resolution bodies dealing with communication service issues should be encouraged.
- Voluntary consumer representation agencies, whose functions could include assisting consumers with dispute resolution, could be encouraged.
- The role of regulators in dispute settlement should be made clear. The functions of regulators need to be well publicised.

New communication services have also led to increased risks for consumers in terms of privacy and security when using networks and services. Consumers need to be aware of these risks and of the available measures that may be available to protect themselves.

- Communication service providers and governments should inform consumers of both the potential security and privacy challenges they may face when using communication networks and services and the available measures which can be used to limit these risks.
- Communication service providers should implement data security policies and measures to prevent unauthorised transactions and data breaches.
- Security precautions and built-in security features should be developed.

III. Addressing emerging consumer protection and empowerment issues in mobile commerce

1. In 2008, the CCP developed policy guidance on mobile commerce, which covered issues involving mobile service providers (OECD (2008*c*)). Three areas were addressed:

- The problems that could occur as a result of limited information disclosure (due to the small screens and other technical limitations).
- The increased risks of commercial exploitation of minors.
- The heightened vulnerability of mobile devices to unauthorised use and, in particular, to data security and privacy risks.

The role and responsibilities of service providers were raised in the following contexts:

- Dispute resolution and redress.
- Protecting children from inappropriate content, inappropriate marketing and from making uncontrolled purchases.
- Protecting consumers from the consequences of unauthorised use of mobile devices.
- Enhancing the security of mobile devices.

- Use of location-based services.

IV. International roaming services

In 2009, the ICCP carried out an analysis of international roaming services that examined market developments and pricing (Paltridge, Otsuka and Díaz-Pinés (2009)). The report noted the relatively high costs associated with making international calls compared to domestic calls, especially when compared to the underlying wholesale costs of such calls. Lack of consumer awareness of the costs, the often intermittent and low level of international calls and the small share that roaming charges were likely to represent in a bill were cited as factors that allowed operators to maintain the high charges. The fact that consumers would not generally take roaming charges into account when choosing a mobile service provider was also seen as a factor (the services are usually included in a bundle of related services subscribed to by consumers).

The report was followed up in 2009 with a further assessment that looked at ways to address consumer issues (Díaz-Pinés, A. (2010)), including:

- Options for regulating retail and wholesale prices.
- Enhancing the role of alternative calling procedures: these are seen as imperfect substitutes; the main drawbacks are low consumer awareness, lack of brand recognition, reluctance by consumers to have two service providers at the same time and the fact that roaming may be relatively infrequent for most consumers, thus reducing the incentive to look for lower cost providers.
- Ways to raise consumer awareness of the magnitude of roaming charges, which, although not affecting their level directly, nevertheless represent a way to empower consumers.
- Raising consumer awareness of alternative services.
- Raising consumer awareness of dual SIM handsets, which enable users to use a local SIM card while in a foreign country.
- Promoting temporary number portability (TNP), which would enable consumers to switch temporarily to another provider for roaming services, for a limited period of time.

V. Broadband bundling

In 2010, the Working Party on Communication Infrastructures and Services Policy finalised a report on *Broadband bundling: Trends and policy implications* (OECD (2011a)). The report concludes that bundling can provide both benefits and drawbacks to broadband customers. In general, bundled services are less expensive when purchased together and consumer surplus from one good in the bundle can help “subsidise” another less-valued element. Bundling also allows the integration of products in a way that benefits consumers such as by giving them unified billing, a common helpline number or the integration of voice mail message retrieval via the television set.

In other cases bundles can lead to situations where customers are worse off. Consumers may be required to purchase a bundle which contains one product they value and others they do not. Bundling also raises some significant concerns regarding transparency and consumer “lock in”. Bundles may make it difficult or impossible for subscribers to purchase individual, competing services from other providers.

The complexity of communication offers and bundles has made it increasingly difficult to understand and compare service prices and characteristics. A lack of transparent information about services and their prices make consumer price comparisons more difficult and lead to market inefficiencies.

- Regulators and consumer-protection agencies should encourage ISPs to provide more information on the characteristics of the packages they are selling and to make prices clear and understandable for consumers. Some regulators may consider requiring ISPs to include all services, fees and taxes clearly in one total price which is available visibly on the website. Websites and tools that can help users compare bundled offers are beneficial to the market and lead to stronger price and service competition. Regulators may be the best positioned to build these tools.

Bundled services can also lead to consumer lock-in for sub-optimal service choices if subscribers are not able to switch providers easily and with minimal expense. One of the key responsibilities of telecommunication regulators is to ensure that markets function efficiently and that consumers can switch providers when better offers appear – essentially “voting with their feet”.

- Regulators should take steps to ensure that switching is as simple as possible for consumers by addressing any procedural, financial or relational switching barriers. Procedural costs can be addressed by requiring better price information from operators, seamless switching across providers and number portability across services. Ensuring that users can port numbers at any time during a subscription and making porting available to over-the-top providers could also help improve consumer mobility. Telecommunication providers often require minimum contract lengths to cover their fixed costs but consumers should be allowed to move to a month-to-month contract once the initial term is over.

In the field of competition:

- Regulators and competition authorities may need to work together to address lingering problems with market dominance, noting that operators face varying levels of competition in different areas of the country. This may also include examining options for sharing infrastructure either via extended unbundling regulations or by investments in separated/mutualised infrastructure.

Incremental improvements in consumer broadband valuations can lead to higher broadband take-up and its resulting network effects in the economy. Boosting the perceived value of broadband (e.g. willingness to pay) to USD 25 (PPP) would make broadband a part of an optimal service mix in all OECD countries assuming consumers will pay the average OECD price for stand-alone voice and video.

- Governments can work to increase broadband value by making more public-sector information available and reducing any barriers or disincentives to interacting with the government online.
- Governments can also increase the perceived value of broadband connections by helping to promote the adoption of smart-grid technologies for electricity, reducing bureaucratic blocks to effective e-health applications, developing innovative online transportation applications and making more e-learning options available.

ANNEX IV GLOSSARY

I Consumer protection terms:

Asymmetric information – This describes a situation where one party in a transaction is more fully informed about a product than another. Policy makers often use government-mandated information provision and disclosure in this circumstance to rectify the imbalance between traders and consumers on the assumption that well-informed consumers should be in a better position to make decisions that are consistent with their own preferences. For more on asymmetric information, see OECD (2010), Chapters 2 and 4.

Behavioural economics – This is a branch of economics that examines how psychological factors influence the choices that consumers make. The way that information is framed and choices are presented, for example, influences decisions. Self-control problems, difficulties in choosing between large sets of options and the making of inappropriate distinctions between gains and losses are also considered. Understanding how behavioural biases affect decision making can guide policy makers into making more effective interventions to address consumers' problems. For more on behavioural economics, see OECD (2010), Chapter 2.

Choice or information overload – This occurs when consumers have too many products or features to compare, and as a result they may experience increased anxiety about the possibility of making a bad choice. This can lead to random choice, or failure to make any choice, resulting in missed opportunities for buyers and sellers. A type of “analysis paralysis” can take hold when information and choices become very complex. Source: OECD (2008b).

Consumer detriment – Consumer detriment refers to the losses that occur in economic welfare *inter alia* when consumers purchase defective products, are misled into making purchases of goods and services which they would not otherwise have made or when they pay more for purchases than they would if they had been better informed. Such detriment may be apparent immediately or may take time to emerge, and can be present in various forms, including non financial. For more on consumer detriment, see OECD (2010), Chapter 3.

Consumer lock-in – This occurs when a customer becomes dependent on a specific vendor for products and services and is unable to use another vendor without incurring substantial switching costs. In relation to bundling, lock-in may make it difficult or impossible for subscribers to switch providers of certain bundled services and not others.

Consumer welfare – This is the individual benefits derived from the consumption of goods and services. In theory, individual welfare is defined by an individual's own assessment of his/her satisfaction, given prices and income. The exact measurement of consumer welfare, therefore, requires information about individual preferences. For more on consumer welfare, see OECD's (2010), Chapter 2.

Cooling-off period – This is a consumer policy mechanism providing consumers with the ability to cancel a transaction with a firm without penalty during a given period. Cooling-off periods are usually statutory, and are often mandated for significant consumer transactions, such as home purchases, or transactions known to involve high-pressure sales tactics, like used car purchases. For more on cooling-off periods, see OECD (2010), Chapter 4.

Credence goods – These are goods whose attributes or qualities cannot be determined by the purchaser even after purchase and use. For example, based on personal experience, a consumer cannot determine whether a pill claiming to reduce cancer risk actually does so. More on credence goods can be found in OECD (2010), Chapter 2.

Deceptive upselling – This is a practice whereby a company sells additional products or services to a consumer without adequately disclosing what the consumer is buying or how much it costs. More on deceptive upselling and other deceptive business practices can be found in OECD (2010), Chapter 1.

Endowment – This occurs when consumers are reluctant to give up what they have, even though they would not buy such goods or services if they did not already have them (e.g. consumers may stay with the incumbent fixed line provider because of misplaced loyalty, a failure to acknowledge poor choices in the past, or an irrational consideration of sunk costs). Source: OECD (2008b).

Experience goods – These are goods whose attributes or qualities can only be observed after that good or service is used. The quality and speed of an Internet connection subscribed to a consumer is a case in point. More on experience goods can be found in OECD (2010), Chapter 2.

Externalities – This refers to situations when the choices that consumers make have effects (i.e. costs or benefits) on others, which are not reflected in the prices charged for the goods and services being provided. More on externalities can be found in OECD (2010), Chapter 2.

Heuristics – These are experience-based techniques for problem solving, learning, and discovery. Heuristic methods (e.g. using rules of thumb to make decisions) are used to speed up the process of finding a satisfactory solution, where an exhaustive search is impractical. More on heuristics can be found in OECD (2010), Chapter 2.

Hyperbolic discounting – This refers to the tendency for individuals to be short-sighted when making decisions with immediate costs or benefits to be weighed against future costs or benefits. For example, consumers may enter into long-term telecommunications contracts because they place more value on the immediate benefits of the offer, such as a free or heavily subsidised handset or a reduced first month rate, or free local calls, rather than on the long-term costs of a contract. Source: OECD (2008b).

Information economics – This is a branch of economic analysis grounded in the observation that information has economic value because it allows individuals to make choices that yield higher expected payoffs than they would obtain from choices made in the absence of information. This theory acknowledges that seeking information is costly and time consuming, so all information may not be obtained before purchasing a good or service. It also recognises that there may be asymmetries of information, creating an imbalance of power in transactions. For more on information economics, see OECD (2010), Chapter 2.

Intermediaries – These are market actors that facilitate consumer purchases of goods and services by mediating information flows in markets. Intermediaries include mortgage brokers, online referral services, and online auction sites, among others. The combination of competition and the behaviour of

consumers who act on information give intermediaries incentives to provide useful information to consumers. For more on market intermediaries, see OECD (2010), Chapter 2.

Mandatory disclosure – This is a governmental requirement that a company provide specified information to consumers, sometimes including requirements about the time, form, and manner in which information must be disclosed. Mandatory disclosures can be highly prescriptive, for example, specifying the size of font and the exact wording of the information to be disclosed or less prescriptive, for example, specifying only that information must be “clear and conspicuous.” For more on mandatory disclosure, see OECD (2010), Chapter 4.

Moral suasion – This occurs when governments seek to influence firms to meet a specific objective involving consumers, without directly regulating their activities. For more on moral suasion, see OECD (2010), Chapter 4.

Negative options – This is a marketing strategy whereby a trader interprets a customer’s failure to take an affirmative action, either to reject an offer or cancel an agreement, as assent to be charged for goods or services. There are four types of plans that fall into the negative option marketing category pre-notification negative option plans; continuity plans; automatic renewals; and free-to-pay or nominal-fee-to-pay conversion offers. First, in pre-notification negative option plans, such as book or music clubs, sellers send periodic notices offering goods. If consumers take no action, sellers send the goods and charge consumers. Second, in a continuity plan, consumers agree in advance to receive periodic shipments of goods or provision of services, which they continue to receive until they cancel the agreement. Third, in an automatic renewal, a magazine seller, for example, may automatically renew a consumer’s subscription when it expires and charge for it, unless the consumer cancels the subscription. Finally, sellers also structure trial offers as free-to-pay, or nominal-fee-to-pay, conversions. In these plans, consumers receive goods or services for free (or at a nominal fee) for a trial period. After the trial period, sellers automatically begin charging a fee (or higher fee) unless consumers affirmatively cancel or return the goods or services. For more on negative options, see FTC (2009).

Nudge – This refers to default choices. Default preferences can make a strong impact on decision making and the resulting consequences. Default preferences frame how a person is presented with a choice, and is often the most common choice due to both laziness and the perception that the default is an authoritative recommendation. For more on personal detriment, see Lohr (2011).

Personal detriment – This is a subset of consumer detriment that focuses on individuals who have experienced negative outcomes and therefore looks at a subset of consumers rather than all consumers in the aggregate. For more on personal detriment, see of the OECD (2010), Annex 3.A1.

Search goods – These are goods whose attributes and qualities can be observed or verified before purchase. The look and feel of a mobile device, for example, can often be verified by a consumer before purchase. For more on search goods, see OECD (2010), Chapter 2.

Structural detriment – This is a concept that looks at market issues that affect the welfare of consumers in the aggregate, and is often measured in terms of market outcomes such as prices or profits above the competition level. For more on structural detriment, see OECD (2010), Annex 3.A1.

Trustmarks – These are seals, or related symbols, whose use is approved by independent organisations for firms which comply with a grantor’s standards. These can be used by firms to show consumers that they comply with high standards of conduct. For more on the trustmarks, see OECD (2010), Chapter 4.

Waterbed effect – This occurs in markets where better terms or conditions for some consumers result in a worsening of outcomes for others. For more on the waterbed effect, see of the OECD (2010), Chapter 3.

II. Communication terms

Alternative calling – This is a calling procedure whereby a consumer initiates a call in his or her home country, but call set-up and billing data collection take place in the network of a country other than the home country network of the caller.

Bill shock – This is the negative reaction a subscriber can experience if their phone bill has unexpected charges. This is most common in phone bills for mobile services, but can also apply to phone bills and bills for other services. Bill shock can happen domestically if a user grossly overuses their data applications without an appropriate data plan, or internationally by using data without understanding the roaming charges involved. For more on bill shock see Genachowski (2011).

Bundling – This refers to the sale of two or more separate products in one package. The products are considered “separate” items when markets exist for each product and when some purchasers buy or want to buy the products separately. In the telecommunications industry, this can refer to providing phone, Internet, and video services, often at a lower “bundled” rate than buying each of the services separately. For more on bundling, see OECD (2011a).

Convergence – This is a term used to describe the trend of separate technological systems to evolve towards performing similar tasks. Convergence can refer to previously separate technologies such as voice (and telephony features), data (and productivity applications), and video that now share resources and interact with each other synergistically. For more on convergence, see OECD (2008a).

Cramming – This is a deceptive business practice whereby companies falsely describe the purpose and content of documents that consumers were asked to sign, and/or found ways to add charges or services that were not requested by consumers to their subscription. More on cramming and other deceptive business practices can be found in OECD (2010), Chapter 1.

Double opt-in – A process that has been adopted by some MNOs that requires subscribers using their mobile accounts to purchase products from third parties, to re-confirm transactions that they have already authorised, oftentimes through an SMS.

Early termination charge (ETC)/Early termination fee (ETF) – An ETC/ETF is a fee that is paid to a service provider by a customer who chooses to end a service contract before it expires. ETCs/ETFs are included in contracts for a variety of services including wireless telephone service, cable and satellite TV services. Some ETCs/ETFs, especially those charged by wireless telephone service providers vary greatly. Depending on the service plan and type of phone, there may be no ETC/ETF or the ETC/ETF may be significant. While ETCs/ETFs are generally pro-rated over the term of the contract, they do not all decrease at the same rate.

Interconnection – This refers to the physical linking of a carrier's network with equipment or facilities not belonging to that network. The term may refer to a connection between a carrier's facilities and the equipment belonging to its customer, or to a connection between two (or more) carriers. One of the primary tools used by regulators to introduce competition in telecommunications markets has been to impose interconnection requirements on dominant carriers. For more on interconnection, see OECD (2001).

Interoperability – This refers to the ability of systems, units, or forces to provide services to and accept services from other systems, units or forces and to use the services exchanged to enable them to operate effectively together. Interoperability is a property of a product or system, whose interfaces are completely understood, to work with other products or systems, present or future, without any restricted access or implementation. For more on interoperability, see OECD (2008*a*).

Local loop unbundling - This is the regulatory process allowing multiple telecommunications operators to use connections from the telephone exchange to the customer's premises. The physical wire connection between the local exchange and the customer is known as a "local loop", and is owned by the incumbent local exchange carrier. To increase competition, other providers are granted unbundled access. For more on local loop unbundling, see OECD (2003).

Number portability – This refers to the ability to retain an existing phone number when switching telephone service providers. Number portability is more easily facilitated when switching service providers within the same geographic area, while moving to a different geographic area may require changing numbers.

Roaming – This is a term which refers to the extension of connectivity service to a location that is different from the home location where the service was registered. Roaming ensures that the wireless device is kept connected to the network, without losing the connection, by using a visited network. The cost of using the visited network may vary from the consumer's traditional service agreement, based on the roaming agreement between the service providers. For more on roaming, see Paltridge, Otsuka and Díaz-Pinés (2009).

SIM lock – This refers to the restrictions that are placed on the use of mobile devices, generally to limit use of the devices to certain service providers. This is done by limiting the type of SIM cards that can be used to operate a device.

Slamming – This is a deceptive business practice whereby telecommunications companies switch consumers' service providers without their authorisation. More on slamming and other deceptive business practices can be found in OECD (2010), Chapter 1.

Switching – This refers to the process for routing calls from one telephone to another, generally as part of the public switched telephone network. Switching involves the physical act of connecting one telephone line to its desired end location.

Universal service – This refers to the practice of providing a baseline level of services to every resident of a country. The aim is often to promote the availability of quality telecommunications services at reasonable and affordable rates for all consumers, including those in low-income, rural, insular, and high cost areas. For more on universal service policies and practices, see OECD (2006).

VoIP - Voice over Internet Protocol (VoIP) is a family of technologies, methodologies, communication protocols, and transmission techniques for the delivery of voice communications and multimedia sessions over Internet Protocol (IP) networks, such as the Internet. VoIP has grown substantially within the consumer market since 2004 and now permeates most forms of communication. For more on VoIP, see OECD (2008*a*).

REFERENCES

- Australia, Australian Competition and Consumer Commission (ACCC) (2011), “Beyond the line in the sand: Telco advertising and the ACCC Australian Competition & Consumer Commission”, presentation delivered at the Consumer Policy Toolkit Workshop: Communication Services, OECD, Paris, 25 October, www.oecd.org/sti/49260671.pdf, developed from a model developed by John Braithwaite in *To Punish or Persuade, Enforcement of Coal Mine Safety*, 1985.
- Díaz-Pinés, A. (2010), “International Mobile Roaming Services: Analysis and Policy Recommendations”, *OECD Digital Economy Papers*, No. 168, OECD Publishing, <http://dx.doi.org/10.1787/5kmh7b6zs5f5-en>.
- Freeman, J. (2011), “No Nasty Surprises: Unfair Contract Terms Enforcement”, presentation delivered at the Consumer Policy Toolkit Workshop: Communication Services, OECD, Paris, 25 October, www.oecd.org/sti/49260895.pdf.
- Genachowski, J. (2011), remarks delivered at a Bill Shock Event, The Brookings Institutions, Washington, DC, October 17, www.fcc.gov/document/chairman-genachowski-remarks-bill-shock-event.
- Lohr, S. (2011), “The Default Choice, So Hard to Resist,” *The New York Times*, 15 October, www.nytimes.com/2011/10/16/technology/default-choices-are-hard-to-resist-online-or-not.html?_r=3&pagewanted=all.
- OECD (2012a), “Enhancing Consumer Policy Making: the Role of Consumer Complaints”, OECD, Paris, [http://search.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=DSTI/CP\(2011\)22/FINAL&docLanguage=En](http://search.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=DSTI/CP(2011)22/FINAL&docLanguage=En).
- OECD (2012b), “Enhancing Consumer Policy Making: the Role of Consumer Surveys”, OECD, Paris, [http://search.oecd.org/officialdocuments/displaydocumentpdf/?cote=DSTI/CP\(2011\)3/FINAL&docLanguage=En](http://search.oecd.org/officialdocuments/displaydocumentpdf/?cote=DSTI/CP(2011)3/FINAL&docLanguage=En).
- OECD (2011a), “Broadband Bundling: Trends and Policy Implications”, *OECD Digital Economy Papers*, No. 175, OECD Publishing, <http://dx.doi.org/10.1787/5kghtc8znnbx-en>.
- OECD (2011b), “International Mobile Data Roaming”, *OECD Digital Economy Papers*, No. 180, OECD Publishing, doi: [10.1787/5kg9zb6716r3-en](http://dx.doi.org/10.1787/5kg9zb6716r3-en).
- OECD (2010), *Consumer Policy Toolkit*, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264079663-en>; see also www.oecd.org/sti/consumer-policy/toolkit.
- OECD (2009), *Consumer Education – Policy Recommendation of the OECD’s Committee on Consumer Policy*, OECD, Paris, www.oecd.org/sti/consumer/44110333.pdf.
- OECD (2008a), “Convergence and Next Generation Networks”, OECD, Paris, www.oecd.org/internet/ieconomy/40761101.pdf.

- OECD (2008*b*), “Enhancing Competition in Telecommunications: Protecting and Empowering Consumers”, OECD, Paris, www.oecd.org/internet/consumer/40679279.pdf.
- OECD (2008*c*), “OECD Policy Guidance for Addressing Emerging Consumer Protection and Empowerment Issues in Mobile Commerce”, OECD, Paris, www.oecd.org/sti/consumer/40879177.pdf.
- OECD (2008*d*), “OECD Policy Guidance for Protecting and Empowering Consumers in Telecommunication Services”, OECD, Paris, www.oecd.org/sti/consumer/40878993.pdf.
- OECD (2007), *Consumer Dispute Resolution and Redress Recommendation*, OECD, Paris, <http://webnet.oecd.org/OECDACTS/Instruments/ShowInstrumentView.aspx?InstrumentID=185&InstrumentPID=181&Lang=en&Book=False>.
- OECD (2006), "Rethinking Universal Service for a Next Generation Network Environment", *OECD Digital Economy Papers*, No. 113, OECD Publishing. doi: [10.1787/231528858833](https://doi.org/10.1787/231528858833).
- OECD (2003), "Developments in Local Loop Unbundling", *OECD Digital Economy Papers*, No. 74, OECD Publishing. doi: [10.1787/233065827862](https://doi.org/10.1787/233065827862).
- OECD (2003*b*), *OECD Guidelines for Protecting Consumers from Fraudulent and Deceptive Commercial Practices across Borders*, OECD Publishing. doi: [10.1787/9789264103573-en-fr](https://doi.org/10.1787/9789264103573-en-fr).
- OECD (2001), "Interconnection and Local Competition", *OECD Digital Economy Papers*, No. 53, OECD Publishing. doi: [10.1787/234147353518](https://doi.org/10.1787/234147353518).
- OECD (2000), *Guidelines for Consumer Protection in the Context of Electronic Commerce*, OECD Publishing. doi: [10.1787/9789264081109-en-fr](https://doi.org/10.1787/9789264081109-en-fr).
- Passalacqua, J. (2011), “Regulating Telecommunication Services in Québec: an Incremental and Consultative Approach”, presentation delivered at the Consumer Policy Toolkit Workshop: Communication Services, OECD, Paris, 25 October, www.oecd.org/sti/49260922.pdf.
- Paltridge, S., Y. Otsuka and A. Díaz-Pinés (2009), "International Mobile Roaming Charging in the OECD Area", *OECD Digital Economy Papers*, No. 166, OECD Publishing. doi: [10.1787/5kml8rbpw6tk-en](https://doi.org/10.1787/5kml8rbpw6tk-en).
- United Kingdom, Office of Fair Trading (2011), “Consumer Contracts”, February, www.offt.gov.uk/shared_offt/market-studies/consumercontracts/oft1312.pdf.
- United States, Federal Trade Commission (FTC) (2009), “Negative Options: A Report by the Staff of the FTC’s Division of Enforcement,” www.ftc.gov/os/2009/02/P064202negativeoptionreport.pdf.

ENDNOTES

- 1 See www.acma.gov.au/WEB/STANDARD/pc=PC_312222.
- 2 See www.accc.gov.au/content/index.phtml/itemId/892731.
- 3 See www.accc.gov.au/content/index.phtml/itemId/996058/fromItemId/2332. The fine was appealed and subsequently reduced to AUD 3.6 million.
- 4 See www.accc.gov.au/content/index.phtml/itemId/988219. Further information on infringement notices is available at www.accc.gov.au/content/index.phtml/tag/notices.
- 5 See www.accc.gov.au/content/index.phtml/itemId/861083/fromItemId/855279.
- 6 See www.acma.gov.au/WEB/STANDARD/pc=PC_311730.
- 7 See www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03316.html.
- 8 See www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03388.html.
- 9 See www.economie.gouv.fr/cnc.
- 10 See www.economie.gouv.fr/files/directions_services/cnc/avis/2011/illimite24h24h111130.pdf.
- 11 See <http://accan.org.au/files/Reports/Seeking%20Straight%20Answers%20Report.pdf>.
- 12 See http://stakeholders.ofcom.org.uk/enforcement/competition-bulletins/open-cases/all-open-cases/cw_01019/.
- 13 See http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-10-180A1.pdf.
- 14 See <http://economie.fgov.be/fr/consommateurs/arnaques/FraudPreventionMonth/winforphone/>.
- 15 See http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-10-180A1.pdf.
- 16 See www.ctia.org/consumer_info/index.cfm/AID/10352.
- 17 See http://files.ctia.org/pdf/The_Code.pdf and www.ctia.org/media/press/body.cfm/prid/2137.
- 18 See www.fcc.gov/bill-shock-alerts.
- 19 One stakeholder involved with the workshop noted that the concern consumers may have over possible service interruption could deter switching.
- 20 One stakeholder involved with the workshop referred to work that Ofcom has carried out on comparing the prices for bundled services; it suggests that this may not always be problematic (see http://stakeholders.ofcom.org.uk/binaries/research/consumer-experience/tce-11/research_report_of511a.pdf).
- 21 One stakeholder involved with the workshop noted the role that trusted sources of information, such as consumer advisory boards, charities, social media and online discussion forums could play in reaching out to vulnerable and disadvantaged consumers.
- 22 One stakeholder involved with the workshop also noted that differences in content offered by providers and issues related to information retention may influence switching.