



CONSULTATION BY THE DEPARTMENT OF JOBS, ENTERPRISE AND INNOVATION (“DJEI”) ON THE IMPLEMENTATION OF THE CONSUMER RIGHTS DIRECTIVE 2011/83/EU ON CONSUMER RIGHTS (“CRD”)

RESPONSE OF SKY IRELAND

1. INTRODUCTION AND SUMMARY

- 1.1 This is the response by Sky Ireland (“Sky”) to the Consultation by the DJEI on the implementation of the Consumer Rights Directive 2011/83/EU (the “Consultation”). Sky is Ireland’s leading pay TV operator and also began providing broadband and talk services in Ireland in February 2013.
- 1.2 We have not responded to the specific consultation questions, but we have provided our views on some of the DJEI’s proposals which we hope the DJEI will find helpful. We appreciate that the CRD is a maximum harmonisation Directive and that therefore, the Government has little scope for flexibility in implementation. However, there are areas where the Government can use its discretion, or where clarification of the CRD would be advisable and Sky has restricted its comments to those matters.
- 1.3 Some of the issues raised by the implementation of the CRD could have significant impacts for businesses in Ireland. In particular, Sky Ireland uses call centres and we are unclear what definition the DJEI is proposing to use for the “basic rate” for contacting customer services in respect of post-contract enquires. Sky Ireland would welcome confirmation on what the DJEI’s proposed approach is, as this could have very significant impacts for us in practice.

2. PROPOSED GUIDANCE SHOULD BE CONSULTED ON

- 2.1 The consultation states that:

“It is proposed, as far as practicable, to adhere to the wording of the Directive in the Statutory Instrument that will give effect to its provisions and to provide clarification of those provisions in guidance to be issued by the National Consumer Agency.”

- 2.2 Sky agrees with the proposal to provide guidance and there are a number of matters arising from the implementation of the CRD that will need to be clarified. Some implementation issues could have significant and / or unintended consequences if potential problems are not identified and resolved in advance of implementation. Therefore, Sky considers that, it is important for the DJEI and the National Consumer Agency to consult on the draft Statutory Instrument to give effect to the CRD and the proposed accompanying guidance.

3. ARTICLE 21 - PROHIBITION ON CHARGING CONSUMERS MORE THAN THE “BASIC RATE” FOR CONTACTING CUSTOMER SERVICES IN RESPECT OF POST CONTRACT ENQUIRIES

- 3.1 Article 21 of the CRD states that:

“Member states shall ensure that where the trader operates a telephone line for the purpose of contacting him by telephone in relation to the contract concluded, the consumer, when contacting the trader is not bound to pay more than the basic rate.”

- 3.2 As the DJEI is aware, the CRD does not define the term “basic rate.” It is therefore open to DJEI to provide guidance on how “basic rate” is to be interpreted.
- 3.3 While Sky considers that consumers should not be required to dial a premium number to contact a trader, many businesses in Ireland (including Sky) run call centres and they often use “revenue sharing” numbers, where the business and the service provider for the communications service share a portion of the revenue generated from each call. Therefore, Sky would advocate a broad definition of “basic rate” to at least include such calls. Sky urges DJEI to work closely with the Commission for Communications Regulation (“ComReg”) in determining which number ranges could be considered “basic rate” and which would be appropriate for use in the Irish market. This would assist DJEI in arriving at an approach which reflects the practical use of number ranges in Ireland.
- 3.4 Sky considers that consumers should be able to make calls at a reasonable, non-premium rate and in the absence of an established definition of “basic rate” we suggest it would be appropriate for the DJEI to define it as non-premium rate.

4. ARTICLE 22 - REQUIREMENT FOR CUSTOMERS’ EXPRESS CONSENT TO ANCILLARY CHARGES

- 4.1 Article 22 of the CRD provides that customers will be entitled to reimbursement of any additional charges (i.e. payments which are additional to payment for the trader’s main contractual obligation) they have paid to a trader, but to which they did not provide their express consent. This means that traders cannot infer customers’ consent to such charges and, therefore, cannot use pre-ticked consent boxes. In our view, the intention behind Article 22 is to protect customers from hidden, optional extras, which will afford customers important protection.
- 4.2 Sky is concerned that in the online sales environment, there may be some confusion about this requirement and, in particular, what will be considered to be “extra payments.” For example, in the communications sector, customers are often required to take line rental from the provider in order to receive the provider’s talk and/or broadband products. The customer may consider that their “main contractual obligation” is the broadband and talk service and may not appreciate that they must also take line rental from that provider in order to be eligible for the broadband and talk services. Whilst providers make it clear in marketing and at point of sale that the line rental is an additional required service and charge, customers may not realise that they must add the line rental to their basket when ordering. Therefore, providers may populate the “basket” for the customer, albeit clearly stating the price of each component and the total price of the order.
- 4.3 Sky would be concerned if the implementation of Article 22 resulted in customer confusion, as a result of a more complicated ordering process. Sky does not consider that Article 22 is intended to cover such a scenario, but we would be grateful for the DJEI’s clarification of the sorts of additional payments that would be covered by Article 22 in order to ensure that this provision is implemented in a way which reflects the intention behind it, without preventing or hindering legitimate commercial practices and which supports a seamless customer experience.
- 4.4 In Sky’s view, the charge for any product or service that is *obligatory*, such as line rental, a broadband activation fee, or engineer’s visit to activate a line for example, should not be an “extra payment” for the purposes of the CRD, whereas the charges for *optional extras*, such as paper billing and optional call features such a voicemail, would be additional payments. We would welcome clarification from DJEI on what it considers to be “extra payment” and, in particular, where the line between additional payments and other payments will be drawn.

5. ARTICLE 15 - AUTOMATIC CANCELLATION OF "ANCILLARY CONTRACTS" ON CANCELLATION OF THE MAIN CONTRACT

- 5.1 Article 15 of the CRD provides that, on termination of an off-premises or distance contract during the cooling-off period, all "ancillary contracts" (including those between the customer and a third party) will automatically terminate.
- 5.2 "Ancillary contract" is defined by Article 2 (15) of the CRD as: *"a contract by which the customer acquires good or services related to a distance contract or an off-premises contract and where those goods are supplied or those services are provided by the trader or by a third party on the basis of an arrangement between the third party and the trader."*
- 5.3 Sky appreciates that some third party contracts which offer insurance cover for a customer's communications equipment might fall within this definition because such cover would be of little use to a customer if they no longer had such equipment to protect. However, where a customer has taken out Sky Protect (which will protect their television equipment) and they subsequently terminate their Sky TV contract, the insurance policy will still be of benefit to the consumer because their equipment gives them access to free to air channels. Equally, if broadband customers cancel their contract, security protection such as the McAfee anti-virus cover would still offer protection even if the customer's broadband service provider had changed. Sky considers that if a third party contract would still bestow a benefit on the customer it should not automatically terminate. The choice should rest with the customer. Therefore, Sky considers that the test for automatically terminating an "ancillary contract" should be that the ancillary contract is no longer of any benefit to the consumer on a stand-alone basis.
- 5.4 Sky is also concerned that that the definition of "ancillary contract" might impact the provision of services within a bundled package. For example, if a customer subscribing to a triple play package, i.e. TV, Broadband and Talk, cancelled their telephony service, would the CRD require that the TV and broadband contracts be automatically cancelled as well? It would be perverse if customer's bundled contracts were automatically cancelled—thereby requiring that they go through a process of re-ordering services that they had not wished to cancel in the first place. Sky would welcome further guidance from DJEI in respect of the definition of "ancillary contracts" so that any such unintended consequences might be avoided.

6. TIMING FOR IMPLEMENTATION

- 6.1 The changes required by the CRD will require a significant lead time in order for businesses to fully comply with the implementing legislation. The DJEI allow a realistic period of time for implementation, taking into account the process changes, systems developments, staff training and updates that traders will need to undertake and implement in order to ensure timely compliance. Sky suggests that a minimum of six months would be required to make the necessary changes from the date of the implementing legislation and early sight of same would greatly assist organisations to advise the relevant teams within their business to prepare for those changes.