



**Response to Consultation on the
Implementation of Directive 2011/83/EU
on Consumer Rights.**

Telefonica

Telefonica Ireland Ltd ('O2') welcomes the opportunity to respond to the Department of Jobs, Enterprise and Innovation consultation on the Implementation of Directive 2011/83/EU on Consumer Rights.

General Comments

We have responded in relation to specific consultation questions and our comments are focused on discretionary matters and points of clarification. Most of the measures proposed impact our organisation, however, the primary issue of concern relates to the possibility that there would be a requirement for written consent from consumers when contacted by a trader by telephone. This would remove any value we could offer customers through telephone channels and introduce unnecessary administrative complexity to telesales and customer care channels. Specific detail is provided below in response to question 5.

Some clarifications are also requested. On page 5 (bullet 3) there is a reference to one-off contracts with telecoms providers where the application of the Directives provisions would be disproportionate or impractical. We would welcome clarification as to what is within the scope of this exclusion.

In relation to right of withdrawal, Article 11(1)(b) permits a withdrawal right where there is any 'unequivocal statement' setting out the decision to withdraw from contract. Telefonica understands this refers to a definitive verifiable statement in writing or other durable form. Such a statement is a requirement for reasons of contractual certainty and clarification is requested moving forward.

Response to Consultation Questions

Q.1 Should the implementing Regulations avail of the option to exempt off premises contracts with a value less than €50 from the Directives provisions on consumer information and the right of the customer to withdraw from the contract. If not should there be (a) no threshold or (b) a threshold set at an amount less than €50. If the latter please state the threshold that should apply in your view.

A €50 threshold is appropriate.

Q.2 Should the implementing Regulations exempt on-premises contracts of a day to day kind that are performed immediately from the information requirements of Article 5 of the Directive.

Telefonica agrees with this exemption.

Q.3 Please give details of any mandatory pre-contractual information requirements of which you are aware (other than those indicated in paragraph 29 that apply to on-premises transactions and which require traders to provide information additional to that required by Article 5 of the Consumer Rights Directive.

With regard to the adoption of additional pre-contractual information requirements outside the prescribed minimum harmonisation provisions the telecommunications industry are subject to a broad range of additional contractual provisions. Regulation 14 of the Universal Service and Users Rights regulations (SI 337 of 2011) require telecommunications providers

to include specific information including details around service quality, maintenance, pricing, contract duration. Regulation 15 also sets out transparency requirements on telecoms operators and ComReg have established guidance for telecoms operators around pricing through the publication of a Code for Tariff Presentation. It is important to avoid duplication of requirements when establishing new regulations in this area.

Q. 5 Should the implementing Regulations require the consumer's written consent to the traders offer and/or the traders confirmation of that offer on a durable medium?

- **In all distance contracts to be concluded by telephone, or**
- **In distance contracts to be concluded by telephone where the telephone contact leading to the contract was made by the trader, or**
- **In no distance contracts to be conclude by telephone.**

The use of outbound calling, to existing and prospective customers is an effective customer care and sales tool. O2 will often initiate contact to customers to check they are satisfied with their service, to advise of service improvements and to make them aware of new products and services that may be of use. If the customer decides, on any such call, to change their contract with O2 (for example by requesting/accepting a new Price Plan or device offer), then it is in the consumer's interest that they can provide their consent to contract over the phone.

A requirement that the customer should provide written confirmation in respect of agreements for telecoms services would introduce administrative and process complexities. More importantly it would also restrict an operator's ability to deliver value to customers. There are appropriate safeguards in place without introducing a written consent process. Service providers should ensure that the telephone sales process is carefully scripted to ensure consumers are made fully aware in accordance with Distance Selling Regulations. The trader should always provide the required confirmation of the customer contract by email, letter or another durable medium once the contract is concluded. In addition, to the customer impacts the reduced efficiency of telephone as a market channel could have wider impacts in terms of the number of roles retained to provide telephone based customer care and sales services.

Telefonica has no further comments at this time on the questions arising.

We welcome the opportunity to input to this process. Telefonica fully reserves its rights to continue to raise further concerns, comments and objections beyond its responses herein, including at any later stage of consultation, or in the event of Telefonica objecting to any ultimate application of the Directive.

Any failure to comment on specific aspects of this document should not be taken as implicit acceptance of specific assertions in the document or endorsement of the approach of the Department on such matter. Telefonica also fully reserves its rights to raise further concerns or comments, including ones similar to those that may be raised by such other parties in their responses which equally impact upon the position of Telefonica and the industry more generally.