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Gavin Daykin  
Competition and Markets  
Ofcom  
Riverside House  
2a Southwark Bridge Road  
London SE1 9HA

Dear Mr Daykin

## **Protecting citizen-consumers from mis-selling of fixed-line telecoms services**

### **Introduction and Background**

Toucan welcomes the opportunity to participate in this important consultation process. Based on its review of the comments and its own industry experience, Toucan fully supports the adoption of a requirement that Communications Providers establish and comply with codes of practice in conformity with Ofcom's approved guidelines on the sale and marketing of fixed-line telecoms services ("Option 2").

#### *Who are Toucan and IDT Europe?*

IDT Europe was formed in 1998 and now has a presence in many European countries. Headquartered in London and Dublin, with operations in the UK, the Netherlands, Belgium, Ireland, Germany, Spain, Portugal, France, Italy Switzerland and Scandinavia, IDT Europe's business focus is on three main product categories: retail prepaid calling cards, wholesale carrier services, and residential telephone and internet services in the UK.

Toucan is the brand name for IDT Europe's residential CPS and internet services in the UK. The Toucan CPS service was launched early in 2004 and Toucan's customer base now exceeds 100,000 households.

uSwitch features ratings dated 1/11/2004 revealed that Toucan beat BT to the top spot as the first supplier awarded a five-star rating by the **uSwitch.com home telephone features rating**. The impartial 'Features Rating' from uSwitch.com

provided customers for the first time with the opportunity to rate the range of features offered by suppliers, allowing them to assess other factors, beyond price, when considering switching to a new supplier.

#### *Toucan's support for Ofcom decision*

Toucan is firmly of the view that Ofcom's decision to make the voluntary code of practice mandatory will reinforce the general industry practice and help ensure that alternative CPS providers are all operating on the same footing. Toucan has devoted substantial resources towards enhancing its own sales and marketing procedures to help ensure that consumers are in a position to select their telephone service provider based on complete and accurate information. Given the relatively high cost of customer acquisition in the CPS arena, it is important to Toucan's business case that customers are happy with their decision to switch to Toucan and that they remain satisfied with their experience as a Toucan customer. But the general experience that consumers have in the marketplace when exercising their freedom of choice is also important for the overall success of competition in the CPS segment. A mandatory code of practice will help ensure that every alternative provider is living up to the same high standards.

However, Toucan remains concerned that many of the provisions of the mandatory guidelines, though applicable to BT in its sales efforts, provide inadequate protection to customers from BT's winback activities during the 10-day switchover period. Ofcom should continue to monitor BT carefully in this regard. In particular, attention should be paid to the incumbent's communications with customers who call to make inquiries about the switchover process (for example, with regard to the BT charging options that are available for line rental when the BT customer has elected to move to another CPS provider), as well as the scripts and training that BT provides to its employees and agents with respect to these communications.

#### **Comments on the proposed mandatory guidelines**

Toucan's specific comments on the proposed mandatory Guidelines are set forth below.

#### **Clause 1.2**

The focus to be sales and marketing of Fixed-line Telecoms Services to *Customers*, dealing primarily with issues arising before, during and at the point of sale, with particular emphasis on the avoidance of mis-selling and misrepresentation, and ensuring customer understanding of the services offered *and the full terms of any contracts they are entering into*.

Toucan believes that the Guidelines should be revised to make clear that the reference to "sale" includes representations made by operators that are endeavouring to win back customers who have recently agreed to move to another service provider. Accuracy in the provision of information during any win back process is as important as the accuracy of information in an initial sale.

#### **Clause 4.5**

Companies to satisfy themselves that they have taken reasonable steps to ensure that every such person is trained so as to have sufficient understanding that any relevant advice given by such person is not misleading. Topics covered to include: [*inter alia*]... the different telephone options provided by the company and how these differ from competitive telecoms products.

Access to information on the applicable rates and charges in a simple and easily comparable format is essential to a customer's ability to compare rates and make an informed decision about which provider to use. Pricing transparency is a particularly important predicate for full and fair competition during this early phase of its development, as consumers make the transition to a competitive CPS marketplace. As an example, customers need to have clearer information about how BT's various charging options work in combination with alternative CPS providers' call charges. Furthermore, it should be a simple exercise for customers to compare the cost of calls to international destinations, including international mobile numbers.

The direct disadvantage for alternative CPS providers is that customers are unable to make simple comparisons of calling charges due to the poor or misleading representation of the charges. This inhibits the competitive process and means that customers do not benefit from competition in the way that they might otherwise if pricing information were clear and easily comparable.

Ofcom needs to consider whether it should be providing specific directions to operators (particularly BT) to ensure the availability of clear information about rates

and charges associated with calling plans with the underlying purpose of permitting easy comparison by consumers.

#### **Clause 4.7**

Remuneration systems not to be such as to encourage misleading or exploitative sales practices *such as schemes largely based on commission and/or pyramid recruiting structures*. The company to be kept informed of incentive schemes used by any agencies it employs for sales and marketing.

Toucan strongly disagrees with the suggestion that the mere fact that agent remuneration is commission based necessarily encourages misleading or exploitative sales practices. Commission-based compensation systems are commonplace in the industry and there is no reason why they should be demonised in the CPS context.

It is appropriate, however, to ensure that sales agents are not remunerated for sales that have occurred due to misleading or exploitative conduct. That can be achieved by, for example, providing that commission is not paid to agencies (or their staff) in circumstances where a customer does not remain with the new service provider for a specific period (e.g. 1 month) or that remuneration is "clawed back" if a customer reverses their apparent decision to switch within such a time period.

The likelihood that a misled customer will reverse their decision to switch service providers during the first month after switching is so high as to provide a natural deterrent against mis-selling when combined with the knowledge that no remuneration will ultimately be earned in respect of such a sale.

We therefore urge that this provision be qualified to refer generally to compensation schemes that fail to include appropriate disincentives to deter mis-selling behaviour.

#### **Clause 6.8**

Companies to send a mandatory letter to the customer by first class mail within five working days of a contract being agreed informing the customer of the details of the transfer, and the following to be clearly communicated:

- date of notification;

- CLI(s) affected;
- list of services affected/unaffected;
- if relevant, information about IA callbarring;
- date of switchover;
- the sender's contacts details for any queries.

We believe that the “welcome” letter referred to in paragraph 6.8 should be required to include a brief statement explaining that consumers have the ability to freely choose who provides their call services as distinct from their line rental service, subject to any contract that they may have entered with a specific provider. Furthermore, we think the letter should include:

- The process for pursuing a complaint which is not managed to the customer's satisfaction by the service provider.
- Otelo's complaint number
- Ofcom's complaint number

#### **Clause 6.10**

Companies to ensure that the orders they submit do not mature until the switchover period is complete, and that Customers are made aware that they have the right to change their mind before the switchover period. During the switchover period there should be 'no cost' cancellation for Customers where they change their mind.

Toucan does not require its CPS customers to contract with it for any minimum period. Toucan customers are free to cancel their Toucan service and change providers at any time.

Toucan's welcome letter to customers makes this cancellation policy clear, and Toucan recommends that all new service providers be required to explain their cancellation policy in the welcome letter as part of the mandatory guidelines. However, we strongly recommend that the final guidelines be modified to prevent the losing provider's confirmation letter to reference cancellation. During the period envisaged for the applicability of a mandatory code, the losing supplier will most often be BT. The switchover confirmation letter that BT sends to customers who wish to

change to another provider need not and should not contain any reference to cancellation, which is in effect a subtle marketing tool. In Toucan's view, the guidance provided in the Consumer Guide and the explicit information on cancellation contained in the new Service Provider's confirmation letter and welcome package should be sufficient to ensure that consumers are well informed of their rights in this regard.

Thank you again for the opportunity to comment. If you have any questions, do not hesitate Lee Jones, Regulatory and Commercial Counsel, on 020 7549 6445.

Yours faithfully

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Senior European Counsel