REGULATORY AUTHORITY

Consumer Switching and Choice

Proposed Instructions

Version 1.0

Date: 27 August 2019

About these Instructions

These Instructions from the Regulatory Authority of Bermuda (the “Authority”) are in relation to the Consumer Switching and Choice obligation imposed on SMP operators in the electronic communications sector, set forth in [Insert name of GD] on [Date GD was issued].

This document constitutes Version 1.0 of the Consumer Switching and Choice Instructions issued via administrative determination. The Authority is intending to revisit this guidance in the future and, if necessary, update it on the basis of market developments as well as consultation with the SMP operators and industry stakeholders.

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Definitions

Access Network: Relates to the part of the network that connects directly to customers, from a local aggregation/distribution point.

Accounting Separation: An obligation set forth in [name the final GD] to produce financial statements that report the performance of each Product Group of an operator with significant market power ("SMP"). Accounting Separation enables the Authority to monitor whether an operator with SMP is compliant with certain price-based obligations, such as to ensure prices are Cost Orientated.

Activity-based costing ("ABC"): A cost allocation methodology where costs are assigned to the services based on allocation keys presenting a causal link with the costs incurred.

Adjusted equally efficient operator ("AEEO"): One of three possible approaches used to identify the retail costs to be recovered; in this case, the costs to be recovered are the retail costs of the SMP provider, adjusted to the scale of an entrant. See also "EEO" and "REO".

Authority: The Regulatory Authority of Bermuda, or sometimes referred to as "RA".

Average avoidable cost ("AAC"): The average of the costs that could have been avoided if the operator had not produced a discrete amount of (extra) output

Average customer lifetime ("ACL"): The average revenue-generation duration for which a customer stays with a particular service provider.

Average revenue per user ("ARPU"): A measurement used to indicate the average monthly revenue earned from a customer who subscribes to a service.

Average variable cost ("AVC"): The average variable cost for a given unit of output.

Bandwidth: The amount of data that can be transmitted within a fixed amount of time, expressed in bits per second (bps) or bytes per second.

Broadband: An Internet service or connection generally defined as being "always on", providing a bandwidth greater than narrowband.

Bundle: Communications services sold together in a package, in contrast to each service being sold on a stand-alone basis.

Capital expenditure ("CAPEX"): Funds used by a company to acquire, upgrade, and maintain physical assets such as property, industrial buildings, or equipment.

Common costs: Costs that are shared between multiple services supplied by an entity.

Consumer: Someone who purchases an electronic communications service (i.e. a retail product such as broadband). Consumer can also refer to a wholesale consumer, i.e. a supplier in the value chain who buys a service or product and then supplies it to the final consumer (or end-user).

Contract period: The duration of a fixed-term contract, for example a post-pay mobile tariff may have a contract period of 18 months. See also "Fixed-term contract".

Core network: The backbone of a communications network, which carries different services, such as voice or data.

Cost causality: The attribution of costs to components, services and business divisions strictly in accordance with the activities that cause those costs to be incurred.

Cost Orientation: An obligation set forth in [name the final GD] to ensure that prices charged for products or services are reflective of the underlying cost of provision.

Current cost accounting ("CCA"): A form of depreciation in which an operator's asset base is annualized based on the gross replacement cost of the assets.

Customer: Someone who purchases an electronic communications service. Customer and consumer are used interchangeably in this report, but customer usually refers to a customer of a specific service provider (i.e. a OneComm customer).

Customer premises equipment ("CPE"): Electronic equipment that is located in a customer's premises, such as an Internet modem or PayTV set-top box.

Ducts: Existing trenches and pipes in which copper and fiber lines are, or could be, installed.

Discounted cash flow ("DCF"): Approach used to calculate profitability, where revenues and costs are aggregated over time and discounted using an appropriate discount rate.

Earnings before interest, taxes, depreciation and amortization ("EBIT"): An indicator of a company's profitability.

ECA: Electronic Communications Act 2011.

Equally efficient operator ("EEO"): One of three possible standards used to identify the retail costs to be recovered; in this case, the costs to be recovered are the retail costs of the SMP operator. See also "AEEO" and "REO".

Equivalence of inputs ("EOI"): Under the FRAND obligation, the SMP operator must treat all access seekers equally. Under EOI, the downstream access product retailed by the vertically integrated operator with SMP in the wholesale market uses exactly the same physical upstream inputs as the downstream product supplied by competitors. The product development process is therefore the exact equivalent in terms of functionality and price. See also "EOO".

Equivalence of outputs ("EOO"): Under the FRAND obligation, the SMP operator must treat all access seekers equally. Under EEO, the access products offered by the wholesale SMP operator to alternative operators are comparable to the products that the wholesale SMP operator provides to its retail division in terms of functionality and price, but the products may be provided by different systems and using different processes. See also "EOI".

Equi-Proportionate Mark-Up ("EPMU"): A means of recovering fixed and common costs through a mark-up in addition to the incremental costs. The costs to be recovered are allocated across a range of services so that each service is allocated the same mark-up as a percentage of its incremental costs.

***Ex ante* remedy:** A regulatory obligation imposed by the Authority on one or more SMP operators in order to prevent anticompetitive conduct and promote competition.

Financial capital maintenance ("FCM"): An approach under which the financial capital of the company is maintained in current-price terms. Capital is assumed to be maintained if shareholders' funds at the end of the period are maintained in real terms at the same level as at the beginning of the period. This means that the depreciation charge to the profit and loss account includes holding gains or losses due to changes in asset prices.

Fixed-term contract: A contractual relationship between a provider of (electronic communication) services and a consumer that lasts for a specified period, also known as the "Contract period".

FRAND: Fair, reasonable and non-discriminatory.

Fully Allocated Costs ("FAC"): An accounting method for attributing all the costs of a company to defined activities such as products and services. Typically, this method will follow the principle of cost causality.

Generally accepted accounting principles ("GAAP"): A collection of commonly followed accounting rules and standards for financial reporting.

General Determination: A statutory instrument made pursuant to section 62 of the Regulatory Authority Act 2011 ("RAA"). The General Determination is applicable to all operators, or to such sub-category of operators as falls within the scope of the statutory instrument.

Gross book value: The original price paid for an asset, without depreciation deductions.

Historical cost accounting ("HCA"): An approach to accounting whereby the costs that the operator actually incurs are used in the accounting statement.

Holding gains and losses: Annual changes in the value of an asset.

Individual Products: An individual service, product or tariff offered by an operator. Examples include a specific pre-pay mobile tariff, 150 Mbps fiber broadband, or a specific PayTV package.

Individual Product Bundles: A specific bundled product made up of a two or more Individual Products. Examples include a bundle of 150 Mbps fiber broadband and a specific PayTV package. or a triple-play bundle of 150 Mbps fiber broadband, a specific PayTV package and a specific pre-pay mobile tariff.

International financial reporting standards ("IFRS"): A collection of commonly followed accounting rules and standards for financial reporting.

Integrated Communications Operating License ("ICOL"): A license granting the licensee the right to establish, construct and operate one or more electronic communications networks and to provide electronic communications services, on an integrated basis, within the territorial limits of Bermuda, and between Bermuda and other countries.

Internal rate of return ("IRR"): The rate of return for an investment project that sets the net present value ("NPV") of all cash flows (both positive and negative) from the investment equal to zero.

Key performance indicator ("KPI"): A measurable value that demonstrates how effectively a company is achieving its key business objectives.

Leased line: A transmission facility that is leased by a customer from a public carrier and that is dedicated to that customer's traffic.

Long-run incremental costs ("LRIC"): The average of all the (variable and fixed) costs that an operator incurs to produce a particular product.

Margin squeeze test: An assessment of the margin that exists between the wholesale and retail prices set by an entity, in order to understand whether the prices are set such that an efficient entity purchasing the wholesale product would be unable to earn a reasonable return.

Mean capital employed: Total assets less current liabilities, excluding corporate taxes, dividends payable and long-term liabilities, with the mean computed from the start and end values for the financial year.

Mobile virtual network operator ("MVNO"): A provider of mobile telephony services, who does not have an allocation of spectrum or its own wireless network.

Modern equivalent asset ("MEA"): An approach to deriving asset values based on assessing the most efficient available technology that performs the function of the asset in question.

NRA: National Regulatory Authorities

Net present value ("NPV"): The value of all future cash flows (positive and negative) over the lifetime of an investment discounted to the present.

Non-SMP Product Groups: Products that are within a market that are not subject to *ex ante* regulation, i.e. the market is not covered by an SMP determination.

Office of Communications ("Ofcom"): UK regulator responsible for the regulation of the electronic communications sector.

Office of Fair Trading ("OFT"): (Former) UK regulator responsible for ensuring fair trading, and now part of the UK competition authority.

Operating expenditure ("OPEX"): The costs of the day-to-day operation of a company, such as staff costs, repairs and maintenance expenditure, and overheads.

PayTV: Subscription-based television services.

Pure long-run incremental cost ("Pure LRIC"): A cost standard approach that assesses the variable cost to provide service for one additional customer.

Product Bundle Groups: Any combination of two or more Product Groups sold together in a package, i.e. as a bundle. Examples include broadband and PayTV bundles; and broadband and mobile bundles.

Product Groups: Major groups of products offered by an operator, and which include broadband, mobile, fixed voice, subscription television, business connectivity (i.e. leased lines) and off-island connectivity (i.e. submarine capacity). A further distinction is made between SMP Product Groups and non-SMP Product Groups.

Profit and loss statement (“P&L”): A financial statement showing a company’s financial performance in terms of revenues and expenses.

RAA: Regulatory Authority Act 2011.

Reasonably efficient operator (“REO”): one of three possible standards used to identify the retail costs to be recovered; in this case, the costs to be recovered are the retail costs of an entrant (with less scale than the SMP operator). See also “AEEO” and “EEO”.

Regulatory asset value (“RAV”): The value ascribed by the Authority to the capital employed in the SMP operator’s regulated business.

Return on capital employed (“ROCE”): A measure of how efficiently capital is being used. It is calculated as accounting profit divided by the capital employed.

Second Consultation: The document published by the Authority in February 2019, named the “Market review of the electronic communications sector”. The document set out the Authority’s provisional view, at that time, on relevant economic markets, significant market power and requisite remedies.

Service level agreements, or guarantees (“SLAs”, “SLGs”): Commercial agreements under which the SMP operator is obliged to provide access to wholesale services with a specified level of quality.

Significant market power (“SMP”): A position of economic strength in the relevant market or markets that affords an entity, either individually or jointly with others, the power to behave to an appreciable extent independently of competitors and consumers, which may provide a basis for the imposition of *ex ante* remedies.

SMP Product Groups: Groups of products for which the operator has been found to have SMP. The SMP Product Groups have been found to be broadband and mobile services (OneComm and Digicel Group), and fixed voice and high speed leased lines (outside of Hamilton) (Digicel Group).

Sub-groups of Products: A group of Individual Products within a Product Group. Examples of Sub-groups of Products include all pre-pay mobile services; or all fiber broadband products above a certain speed.

Time preference of money: In economics, the principle that people place a greater value on receiving a good or service earlier rather than later.

Virtual unbundled local access (“VULA”): A broadband access remedy that requires a network operator to provide access to its superfast broadband network. VULA provides a connection from the nearest “local” aggregation point to a customer’s premises.

Weighted Average Cost of Capital (“WACC”): The rate that a company is expected to pay on average to all its security holders to finance the company’s assets.

1 INTRODUCTION

1. The Regulatory Authority Act 2011 (“RAA”), section 12, sets out the principal functions of the Regulatory Authority of Bermuda (the “Authority”). These include ensuring that the regulation of the electronic communications sector promotes and preserves competition, promotes the interests of residents and consumers in Bermuda, promotes the development of the Bermudian economy, Bermudian employment and Bermudian ownership and promotes technological innovation.

2. Separately, sections 20-25 of the Electronic Communications Act 2011 (“ECA”) requires the Authority to complete a market review process in order to determine what, if any, *ex ante* regulatory remedies are required to address significant market power (“SMP”) in the supply of electronic communications services.

3. In the most recent market review (completed in 2019), the Authority identified SMP in a number of markets in the electronic communications sector. As a result of this finding of SMP, the Authority imposed remedies to address the competition concerns. For a full list of remedies, see [insert link to GD].

4. A number of SMP remedies are new to the electronic communications sector in Bermuda and span several markets. Specifically, these remedies are the obligations to

    i) comply with Accounting Separation;

    ii) ensure Cost Orientation of prices;

    iii) require SMP operators to provide wholesale access on fair, reasonable and non-discriminatory (FRAND) terms, including by not engaging in a margin squeeze;

    iv) provide key performance indicators and timely information on market data; and

    v) ensure that consumers do not experience unnecessary difficulties when switching providers.

5. The Authority has decided to provide explicit guidance and instructions on these five key remedies, in order to:

    - provide more clarity and certainty on how the Authority will expect the SMP operators to act in order to ensure that they are compliant with their regulatory obligations;

    - provide greater clarity and certainty to the SMP operators on how the Authority will monitor compliance with these obligations; and

    - assist interested stakeholders contemplating making a complaint to the Authority in relation to non-compliance with these obligations in understanding the evidential threshold that needs to be met and the information that the Authority will require.

6. These Instructions sets out guidance in relation to the obligation to ensure that consumers can choose the right products and do not experience unnecessary difficulties when switching. This is referred to as the "***Consumer Switching and Choice***" obligation in parts of these Instructions.

7. Ensuring that consumers can choose the right products and do not experience unnecessary difficulties when switching will support the effective functioning of the market by promoting competition through allowing consumers to switch providers more easily, should they wish to do so.

8. These instructions relates to the regulatory obligation put in place following an SMP designation pursuant to Part 4 of the ECA, and is without prejudice to the application of consumer protection rules currently under consultation or the requirements and obligations established in accordance with sections 55 and 56 of the RAA and Part 5 of the ECA.

9. In these Instructions, the Authority provides information on what the SMP operators will need to do to ensure compliance with the obligation to ensure that consumers can choose the right products and do not experience unnecessary difficulties when switching (i.e. the ***Consumer Switching and Choice*** obligation). The Instructions are structured as follows:

   - **section 2** explains the objectives of the ***Consumer Switching and Choice*** obligation; and

   - **section 3** provides guidance to SMP operators on how they can ensure compliance with the ***Consumer Switching and Choice*** obligation**.**

2 APPROACH TO CONSUMER SWITCHING AND CHOICE

10. The Authority is keen to ensure that consumers are able to exercise choice and take advantage of competition in the electronic communications market. This includes ensuring that consumers are able to easily switch service providers, given that difficulties in switching can give rise to consumer harm, including dampening the incentive for companies to compete on price and quality.

11. In addition, the Authority wants to put sufficient protections in place for consumers more generally, and to ensure that consumers are not forced to pay for a service that does not meet their requirements. This means that in some circumstances (such as in the face of unanticipated price increases), consumers will be able to exit a contract within the contract period without needing to pay cancellation fees or outstanding charges.

12. To achieve these objectives, the Authority will require SMP operators to meet certain obligations in regard to the minimum standards of treatment of consumers. These obligations seek to ensure that consumers can purchase services that best meet their needs, which should help to drive effective competition in the market.

13. The four key pillars to the Authority's approach to ***Consumer Switching and Choice*** are as follows:

- **Having a "right to exit":** consumers should have some protections when entering into a fixed-term contract.[1] This includes allowing consumers to leave a contract before the end of the contract period[2] if unexpected price increases are proposed, or if the service quality has failed to meet the standard promised to the consumer at the time of purchase.

- **Maximum permitted contract period:** consumers should be protected from excessively long fixed-term contracts that seek to "lock" them in for long durations.

- **Automatic renewal of contracts:** consumers should be protected from being automatically rolled into a new fixed-term contract once their old contract period ends.

- **Allowing consumers to choose the most appropriate product:** service providers should not be allowed to discriminate between retail customers on the basis of their intended use (i.e. whether the service is for personal or business use).

14. Each of these four key pillars are discussed in turn below.

2.1 The consumers' rights in regard to exiting a contract

15. The Authority considers it vital that consumers are not unduly locked into contracts and can act swiftly in response to market developments by switching products or providers.

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[1] A fixed-term contract is a contractual relationship between a provider of (electronic communication) services and a customer that lasts for a specified period, also known as the "contract period".

[2] The contract period is the duration of a fixed-term contract. For example, a pre-pay mobile tariff may have a contract period of 18 months.

However, the Authority recognizes the important role that contracts play in providing service providers with clarity and certainty of revenues streams in the short and medium term. This degree of certainty subsequently helps service providers with their organizational and operational planning—for example, in terms of network investment. As such, the Authority has sought to strike a balance between providing sufficient protection to consumers and still allowing service providers to establish contracts that provide clarity on likely future cash-flows.

16. Recognizing the above, the following measures seek to clarify the circumstances in which consumers should have the right to exit a contract, and under what terms.

14-day cooling off period

17. A 14-day "cooling-off" period should apply for all fixed-term contracts, to allow the consumer the right to exit the contract at any point during those 14 days without penalty. This period should start from the date on which the contract is entered into and run for 14 consecutive calendar days.

18. If a customer triggers this provision and seeks to cancel their fixed-term contract within the first 14 days of the fixed-term period, the customer is liable for the cost of any service that they have used prior to termination. This includes the pro-rata cost of the service at the contracted rate,[3] as well as the cost of any subsidized customer premises equipment ("CPE") that was provided to the customer (e.g. a Wi-Fi router with a broadband service, or mobile phone handset with a mobile service).

19. If the customer has used any additional services in the period up until cancellation, they would also need to pay for that usage. For instance, if a customer under a post-pay mobile phone contract had made a number of long-distance phone calls that incurred additional surcharges under the terms of the contract, the customer should make payment for those long-distance calls. Similarly, if a customer had gone above any included data allowance, the customer would be liable to pay surcharges for that additional data usage.[4]

Right to switch provider before the end of a fixed-term contract

20. Beyond the 14-day cooling-off period, the Authority is keen to ensure that consumers still have the option to switch provider should they wish to do so. As such, fixed-term

[3] For example, assume that a customer bought a broadband service 20 days ago and the service was installed and connected 10 days ago. The customer has therefore been able to use the service for 10 days. The broadband tariff costs $100 per month, and there is a minimum 12-month contract commitment. If the customer wished to cancel the service, say after 10 days, they would be liable to pay 10 days' worth of cost for the service that they had for those 10 days. On the basis that the average cost per day for the contract is $3.29 ($100 per month x 12 months = $1,200 per year cost, divided by 365 days = $3.29 per day), then the pro-rata amount due for the 10 days would be $32.90 ($3.29 x 10 days). In addition, the customer would be liable for any other actually incurred costs to the service provider, such as installation and/or equipment costs. The service provider should charge the customer only for the actual cost that it has incurred. For example, if the service installation/connection required one hour of engineer time, then the service provider should bill only for the cost it incurred from that one hour of engineer time and should not include in the charge to the customer any uplift or premium over that actually incurred cost.

[4] For example, if a customer took out a pre-pay mobile tariff that had a 1GB monthly allowance, but used 2GB in the first 10 days and then wanted to cancel, the customer would be required to pay for the additional 1GB of allowance used above the inclusive allowance at the agreed contract surcharge rate. If no such contractually agreed rate exists, the service provider should charge a reasonable (and non-excessive) price for the service used.

contracts should not mean that consumers are unable to switch to another service provider before the end of the contract period.

21. The Authority is keen to ensure that consumers have the option of “buying out” of a contract should they wish to. To achieve this, each contract must include a provision granting consumers the option to terminate their contract early, should they wish to. Under this provision, the consumer will still be required to pay for the remaining outstanding payments due under the contract to ensure that the service provider is no worse off in terms of revenue than it would have been had the contract come to its natural conclusion.[5]

22. As an example, consider that a consumer took up a broadband tariff with a minimum 12-month contract commitment and costs $100 per month in service fees. After six months, the customer has paid $600 in service fees in total.[6] If the customer wished to bring the contract to an early close at that time, the customer should have the right to do so. However, the customer would need to pay off the outstanding amount in service fees that they would otherwise have paid across the remainder of the contract duration, in this case, $600.

23. In addition to the service fees, the customer would also be liable for any other fees or obligations that formed part of the contract. For example, if the contract required that the customer return any equipment the service provider had loaned (a broadband router, for example), the customer would need to return the loaned equipment on or around the point of service contract cancellation.

24. The key point is that the customer has the right to exit the contract before the end of the contract period, and that the customer should be able to do so without incurring any more fees than those that would have been reasonably incurred had the customer kept the service until the end of the contract period. In this regard, the service provider has not lost out in terms of anticipated revenue.[7]

Unexpected contractual changes

25. In cases where a service provider intends to amend the terms of the contract after the customer service contract has come into force, but before the end of the contract period, the customer will have the right to exit the contract without incurring any cancellation charges, and without needing to pay off the remaining period of their contract. This “right to exit” will protect consumers against changes that are not clearly articulated at the start of the contract.

26. To illustrate the customers “right to exit” consider a customer on a 12-month fixed-term broadband contract that costs $100 per month in service fees. After six months, the service provider notifies the customer that the monthly service fee will be increasing to $110 per month. Provided that this price increase was not made clear to the customer at the point when the customer entered into the contract, the customer has the right to

[5] This provision therefore seeks to recognize the importance that fixed-term contracts play in providing clarity and certainty on service providers’ future cash flow.
[6] $100 per month for 6 months = $600.
[7] In fact, the service provider has accelerated its revenue stream from this particular customer in regard to the contract in question.

leave the contract with immediate effect, and is not liable to pay any further service fees or any cancellation fees.[8] Making the future price clear to the customer would require the future price to be shown in customer communications with equal prominence to the headline price information, including contract documentation and marketing materials.

27. In terms of process, no fewer than 30 consecutive calendar days before the proposed change would come into effect, SMP operators must inform customers that they have the right, with immediate effect, to exit from their current contract, should they wish to do so.

Service quality guarantees

28. Similar to the provision above in regard to "unexpected contractual changes", consumers will have the right to exit a contract where the actual, realized service quality is significantly below what the service provider advertised. This mandate seeks to ensure that consumers are provided with the service that the service provider promised to them and allows consumers to leave a fixed-term contract if the service fails to live up to what they were told to expect.

29. This provision will apply most especially to broadband services. For example, consider that a consumer enters into a fixed-term contract for a broadband service with an advertised headline download speed of 100 Mbps, which the consumer was led to believe that they could expect to receive. If, in reality, the customer receives significantly lower speeds, the customer will have the right to exit the contract without incurring any cancellation charges or needing to pay off the remaining period of their contract.

30. The Authority would encourage service providers to be clear with consumers up front about the likely service the consumers can expect. On the basis that consumers are clearly told what service level they will receive (such as broadband download speed), this provision would not apply, unless if the actual service fell significantly below that level.

31. The Authority interprets "significantly" in this context as being a sustained level of quality below that which the customer anticipated based on advertising or what the customer was told at the start of the contract. Furthermore, the Authority proposes that a 20% margin of error be adopted to account for operation variance and factors such as congestion and unexpected traffic.

32. As such, a consumer will have the right to exit a contract without incurring any cancellation charges or needing to pay off the remaining period of their contract only if the quality of the consumer's service is more than 20% below the service quality promised. Additionally, any dip below the expected service quality must last for a non-transitory period of time, which the Authority considers to be more than 10% of the time (e.g. three full days per month).

33. The Authority considers that there could be objective justifications for why services may be below anticipated levels, such as where there are natural disasters or factors outside

[8] However, customers will need to return any equipment that they have been lent, such as a broadband router, provided that the contract would have required the return of such equipment at the end of the original contract period anyway.

the control of the service provider. In such cases, the Authority will assess whether or not the provision here should apply.

34. In terms of process, if a customer complains to an SMP operator about service quality, the SMP operator will have 15 business days to diagnose the problem and remedy the problem. If the SMP operator has not addressed the issue 15 business days after receiving the original complaint, the SMP operator must inform the customer about the customer's right to exit the contract.

35. The right to exit applies to bundles of services. If the service provider does not meet the service quality expected on one element of a bundle, the customer has the right to exit the contract for the entire bundle of services.

36. If the problem causing the dip in service quality is in the customer's premises, but it is not the responsibility of the customer, the service provider should offer advice on how to address the problem.

2.2 Restricting contract lengths to no more than 24 months

37. The Authority is keen to ensure that consumers are not unduly locked into fixed-term contracts for excessively long durations that would prevent consumers from potentially taking advantage of switching to other service providers that could offer a better deal.

38. As a result, the Authority mandates that the maximum permitted fixed-term contract duration for retail electronic communication services such as mobile and broadband services is 24 months.

2.3 Prohibiting automatic renewal of contracts

39. Under an automatic renewal of contract, if a customer does not proactively switch products or providers at the end of the initial contract period, the customer's contract will "roll over", incurring a new minimum period. Automatically renewable contracts are, therefore, a way in which service providers can seek to "lock in" customers for longer than the customers' initial contract periods.

40. The Authority wishes to prevent SMP operators from locking customers into contracts beyond the contract's initial minimum contract period by rolling over unwitting customers to a new contract without the customer's expressed consent. As such, the Authority will not allow SMP operators to have automatically renewable contracts.

41. The prohibition of these automatically renewable contracts means that consumers will face fewer barriers to switching. Lower barriers to switching should promote competition in the market, which should drive consumer benefits.

42. As a result of this provision, when a customer reaches the end of a fixed-term contract period, the SMP operator should place the customer on a one-month rolling contract on the same terms as the customer's existing contract, including the same level of service and the monthly price. Alternatively, the SMP operator should notify the customer that the service contract is coming to an end and that the customer will need to take out a new contract or an alternative service.

2.4 Allowing consumers to choose the most appropriate product

43. The Authority wishes to promote consumer choice and ensure that all consumers can act on information by having the option to choose the most appropriate product or products. As such, the Authority wishes to ensure that no retail customer is discriminated against on the basis of the consumer's intended use of an electronic communications service.

44. SMP operators are therefore required not to discriminate between consumers buying retail services on the basis of their intended use (i.e. whether the consumers are residential or business users).

45. For this specific example, this provision will allow businesses to make use of retail broadband services in circumstances where the businesses consider that this retail service will best suit their requirements, thereby negating the need for them to acquire more expensive leased line services that may not effectively satisfy their requirements.