

Cloud storage consumer law compliance review – summary of undertakings provided to the CMA

DIXONSCARPHONE PLC T/A DIXONS CARPHONE GROUP/KNOWHOW CLOUD/GEEK SQUAD CLOUD¹

As part of the Competition and Markets Authority's (CMA) consumer law compliance review, DixonsCarphone plc trading as Dixons Carphone Group/Knowhow Cloud/Geek Squad Cloud (DixonsCarphone) has voluntarily engaged with the CMA and agreed to provide an undertaking, which is summarised below.

1. DixonsCarphone will ensure that the contract terms applicable to any cloud storage service it provides directly or through a third party will:
 - ensure that any material changes to the service that adversely affects the consumer's use and any increases to the price do not take effect during a consumer's fixed contract term;
 - ensure that, where possible, consumers receive adequate notice of changes to the terms, the service or the price, so that they have sufficient time to consider their position and decide whether to accept the changes or cancel the contract;
 - ensure that consumers who do not wish to accept material changes to the terms, the service or the price can cancel the contract and obtain a pro-rated refund for services not yet provided;
 - limit the circumstances in which the service provider can suspend or terminate the contract to a material breach of the contract by the consumer or as required to comply with laws, regulations, or requirements imposed by governmental authorities or agencies;
 - ensure that consumers receive at least 10 days' notice where the service provider proposes to suspend or terminate the contract and, where possible, consumers are given an opportunity to remedy their breach;

¹ Please note that the undertaking that DixonsCarphone originally provided to the CMA on 27 May 2016, was updated on 3 February 2017 to reflect changes made to the contract terms applicable to its cloud storage service.

- ensure that the service provider does not exclude or limit its liability for breaches of a consumer’s statutory rights under the Consumer Rights Act 2015. In particular the service provider’s liability will not be excluded or limited if it fails to provide the service with reasonable skill and care;
 - ensure that consumers are able to bring legal proceedings in their local courts and under their local laws;
 - ensure that, in the event that it becomes necessary to migrate a consumer to a larger service plan, the consumer will, prior to incurring any additional storage charges, receive prior notice of any additional fees associated with the larger storage plan and be given an opportunity to reduce their usage in order to avoid incurring any such fees;
 - ensure that consumers receive at least 30 days’ notice before their contract is renewed;
 - ensure that consumers can exercise their statutory cancellation rights under the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 whenever they enter into a new contract or renew a fixed term contract; and
 - ensure that consumers are not precluded from pursuing a ‘chargeback’² in the event of a dispute about the service provided.
2. DixonsCarphone will ensure that the structure of the terms and the language used enables consumers to understand their rights and obligations under the contract.
3. DixonsCarphone will ensure that:
- in-store packaging for the service contains clear, prominent and comprehensible information about the service, including:
 - i. the main characteristics of the product, including the identity of the service provider, their contact details and that the service provider is not part of the same corporate group as DixonsCarphone (where this is the case);
 - ii. who consumers should contact in the event of a problem with the service and details about how to do so;
 - iii. that the contract will automatically renew at the end of the initial contract period unless cancelled by the consumer (where this is the case); and

² Under a ‘chargeback’ scheme a bank may reverse a debit card payment and refund money to a consumer’s account.

iv. how to access the full terms and conditions for the service (both in-store and online).

- consumers are able to easily access the full terms and conditions for the service in-store, in good time before making a purchase;
- prior to completing any sale of the service, staff will automatically be prompted to obtain the consumer's confirmation that in good time before making a purchase the consumer has received and had an opportunity to read a copy of the in-store packaging;
- consumers will be able to cancel their cloud storage contract at any time prior to completing the on-line registration process for the service, and obtain a full refund, if they do not wish to be bound by the terms; and
- consumers will, as part of the online registration process for the service, be prompted to review the full terms and conditions and provided with information about how to cancel the contract and obtain a full refund if they do not wish to be bound by the terms.

LIVEDRIVE INTERNET LTD¹

As part of the Competition and Markets Authority's (CMA) consumer law compliance review, Livedrive Internet Ltd (Livedrive) voluntarily engaged with the CMA and agreed to provide an undertaking, which is summarised below.

1. Livedrive will ensure that its contract terms:

- ensure that any material changes to the service that adversely affect the consumer's use and any increases to the price do not take effect during a consumer's fixed contract term;
- ensure that, where possible, consumers receive adequate notice of changes to the terms, the service or the price, so that they have sufficient time to consider their position and decide whether to accept the changes or cancel the contract;
- ensure that consumers who do not wish to accept material changes to the terms, the service or the price can cancel the contract and obtain a pro-rated refund for services not yet provided;
- limit the circumstances in which Livedrive can suspend or terminate the contract to a material breach of the contract by the consumer or as required to comply with laws, regulations, or requirements imposed by governmental authorities or agencies;
- ensure that consumers receive at least 10 days' notice where Livedrive proposes to suspend or terminate the contract and, where possible, consumers are given an opportunity to remedy their breach;
- ensure that Livedrive does not exclude or limit its liability for breaches of a consumer's statutory rights under the Consumer Rights Act 2015;

¹ Please note that the undertaking that Livedrive originally provided to the CMA on 27 May 2016, was updated on 3 February 2017 to reflect changes made to the contract terms applicable to its cloud storage service.

- ensure that Livedrive's liability will not be excluded or limited if it fails to provide the service with reasonable skill and care;
 - ensure that consumers are able to bring legal proceedings in their local courts and under their local laws;
 - ensure that, in the event that it becomes necessary to migrate a consumer to a larger service plan, the consumer will, prior to incurring any additional storage charges, receive prior notice of any additional fees associated with the larger storage plan and be given an opportunity to reduce their usage in order to avoid incurring any such fees;
 - ensure that consumers receive at least 30 days' notice before their contract is renewed;
 - ensure that consumers can exercise their statutory cancellation rights under the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 whenever they enter into a new contract or renew a fixed term contract; and
 - ensure that consumers are not prevented from pursuing a 'chargeback'² in the event of a dispute about the service provided.
2. Livedrive will ensure that the structure of the terms and the language used enables consumers to understand their rights and obligations under the contract.
 3. Livedrive will ensure that prices advertised on a monthly basis reflect the normal cost of a monthly contract rather than the discounted rate, which is only available if a consumer signs up for an annual contract.

² Under a 'chargeback' scheme a bank may reverse a debit card payment and refund money to a consumer's account.

JDI BACKUP LIMITED T/A JUSTCLOUD

As part of the Competition and Markets Authority's (CMA) consumer law compliance review, JDI Backup Limited trading as JustCloud (JustCloud) voluntarily engaged with the CMA and agreed to provide an undertaking, which is summarised below.

1. JustCloud will ensure that its contract terms:

- limit the circumstances in which JustCloud can make changes to the terms or the service to valid reasons clearly set out in the contract;
- ensure that consumers who do not wish to accept changes to the terms or the service can cancel the contract and obtain a pro-rated refund for services not yet provided (including any additional services purchased by the consumer);
- ensure that consumers' contracts cannot be cancelled by JustCloud in the event that the consumer does not accept an update or change to the service for which an additional fee is payable;
- ensure that JustCloud can only suspend or terminate the contract, without notice, where there has been a material breach of contract by the consumer or the consumer's use of the services may damage, disable or impair JustCloud's servers or networks;
- ensure that JustCloud does not exclude or limit a consumers statutory rights and remedies under the Consumer Rights Act 2015;
- ensure that JustCloud's liability will not be excluded or limited if it fails to provide the service with reasonable skill and care;
- ensure that JustCloud's liability will not be excluded if it fails to provide the service in accordance with a statement or description given to the consumer by JustCloud or its employees, distributors, dealers or agents; and
- do not preclude consumers from pursuing a 'chargeback'¹ in the event of a dispute about the service provided.

2. JustCloud will ensure that the structure of the terms and the language used enables consumers to understand their rights and obligations under the contract.

¹ Under a 'chargeback' scheme a bank may reverse a debit card payment and refund money to a consumer's account.

3. JustCloud will:

- include VAT in all prices shown on JustCloud's website; and
- ensure that any buttons on JustCloud's website, which will result in the consumer making a payment are appropriately labelled, so that it is clear to consumers that they will be making a payment if they click on the button.