



Making Switching Easier and More Reliable for Consumers Consultation

Virgin Media's Response

Non- Confidential Response - 25 November 2016

EXECUTIVE SUMMARY

1. Virgin Media welcomes the opportunity to respond to Ofcom's triple play switching proposals, "*Making switching easier and more reliable for consumers*" (the **Consultation**).

2. Virgin Media supports Ofcom's desire to improve the switching process for the benefit of consumers. We believe that switching should be straightforward and reflect the swift implementation of a consumer's informed choice. Overall, switching to and from the cable network is working well. It is efficient as a process and overall consumers are satisfied with their experience. This is evidenced by both Ofcom's and Virgin Media's data¹.

3. To date, Virgin Media has invested more than £13bn on cable infrastructure in the UK and in addition is currently undertaking 'Project Lightning', a programme to expand the cable network to reach four million additional premises, which involves a further investment of £3bn. Easier switching is aligned with Ofcom's objective to see more high speed networks built-out in the UK.

4. Virgin Media supports Gaining Provider Led ('**GPL**') switching processes for triple play bundles. However, we wish to see that Ofcom:

- (i) ensures that any changes to the switching regime do not create a competitive disparity between different networks and different services (or combinations thereof). That is, harmonisation of switching rules must mean full harmonisation of Pay TV, broadband and telephony services. In addition, to ensure that the outcome is future-proof, this principle of harmonisation should also yield a framework to assess whether 'smaller' broadband networks and OTT services should be included.
- (ii) amends General Condition ('**GC**') 1.2 or provides far greater comfort that the Losing Provider ('**LP**') can contact the customer when switching so that the customer can compare properly the LP's offer alongside the Gaining Provider's ('**GP**') offer at the time of the switch²;
- (iii) does not impose a GPL process which causes Virgin Media to incur disproportionate implementation or operational costs (our analysis in this response demonstrates that the Cost Benefit Analysis ('**CBA**') for the introduction for GPL for bundles may only be marginally positive and therefore a strong focus on minimising the cost of implementation is vital);
- (iv) is realistic about the timeframe required to switch services, as a 10 day switching timeline is not feasible in all circumstances³; and

¹ 89% of cross-platform switchers were satisfied with their decision to switch (Slide 71, BDR main findings). 81% of cross-platform switchers (without being prompted) said the process was easy (para 1.3, Consultation) and approx. 78% of cross-platform switchers would recommend switching based on their experience (slide 72, BDR main findings). In addition, Ofcom's complaints data (published 28th September 2016) shows low levels of consumer complaints in relation to Virgin Media across broadband, telco and Pay TV. Overall for industry, the total volume of telecoms and Pay TV complaints made to Ofcom reduced between Q1 2016 and Q2 2016.

² GC 1.2 should be amended to the extent possible to reflect Ofcom's intention that GC 1.2 is not an administrative priority. If not, Ofcom needs to provide confirmation that reactive save activity is not prohibited for triple play bundles or any combination of services

- (v) does not prohibit contractually agreed and legitimate notice periods.

5. Ofcom has not to date provided sufficient comfort on the above five points. Specifically, any GPL solution should not be implemented until the following points have been fully resolved:

Solus and bundled products:

- (i) In order to ensure competitive parity, Ofcom rightly sets out to achieve harmonisation of switching of telephony, fixed broadband and Pay TV (either on an individual basis or as part of a dual or triple play bundle). Virgin Media agrees with the list of services to be included in Ofcom's proposals⁴ to ensure a level playing field.
- (ii) It is also vital that all services (and combinations thereof) which compete with, or are substitutional for each other, are included in the proposals and fall within the scope of harmonisation. There needs to be an analytical framework which would allow Ofcom to consider inclusion or omission of a service. This is not only critical to ensure competitive parity, but also that any regime is future-proof. Whilst we currently agree with Ofcom's decision to exclude *"over-the-top services such as BT Sport, Netflix, Now TV etc"*⁵, Ofcom should consider at what point in the future the prevalence of cord-cutting, number of subscribers or any other factors would indicate that that these services should all fall within scope.
- (iii) Ofcom's proposals also exclude superfast and ultrafast networks provided in specific geographic locations based on the rationale that *"take-up of these services on those networks is low"*⁶. These services are immediately dismissed as out of scope without further consideration. This raises a number of questions, not least at what point would take-up be deemed to be at a level that does warrant inclusion within scope? Given Ofcom's switching proposals will have a significant cost, it is incumbent upon Ofcom to provide a framework for deciding whether, in time, to include these services.

Reactive Save:

- (iv) Ofcom states that *"we do not plan to make enforcement of General Condition 1.2 an administrative priority"*⁷. Ofcom continues that GC 1.2 would *"also likely not apply in some circumstances in which a consumer is switching between platforms, where no network access or interconnection is involved, under Option 2 (GPL)"*⁸. Whilst we note that GC 1.2 will no longer be an enforcement priority, Ofcom statements on reactive save are not sufficiently clear in confirming that providers will be able to undertake a full range of save activities.

³ It is unclear in the consultation whether at the end of the ten day 'Transfer Period', a customer should have received communications from both providers; and/or fully have switched and had their new services activated.

⁴ As listed in para 2.5, Consultation

⁵ Footnote 9, Consultation

⁶ Para 2.6, Consultation

⁷ Para 4.44, Consultation

⁸ Para 4.43, Consultation

- (v) Ofcom seems to be contemplating in its Consultation that the ban on reactive save remains in place but only applies to certain types of switching. If such a scenario arose, we are concerned that there could, ultimately, be a disparity in treatment depending on the underlying technology used to provide the service to the consumer (i.e. whether the service requires network access or interconnection). In strict legal terms, this means that there will be some services that the LP can reactively save (i.e. where there is no network access or interconnection) and those that it cannot. This could mean in practice that reactive save by a LP of a Pay TV customer where the service is provided as part of a bundle over a network is prohibited whereas save activity in relation to that same Pay TV service provided over satellite would not be prohibited. This would create a significant distortion in the market. It is not sufficient comfort in these circumstances that Ofcom may not consider such save activity to be an 'administrative priority'.
- (vi) Ofcom needs clearly to articulate its view (as Virgin Media understands it) that it does not consider reactive save to be problematic as it allows a consumer a proper opportunity under GPL switching to compare the GP and LP's best offer at the time of the switch.

Costs

- (vii) Ofcom's preferred option is to implement a harmonised GPL system for switching across networks⁹. It is incumbent upon Ofcom in fulfilling its remit to consider not only the option that meets its policy objectives but also to implement a future-proof and cost effective solution. The principle of proportionality requires that Ofcom should not go beyond what is appropriate and reasonably necessary to achieve its stated goals¹⁰. Virgin Media is keen to ensure that the regulation required to implement GPL in a fast-moving sector is no more than is strictly necessary, otherwise there is the risk that overregulation will limit scope for innovation in relation to products and services.
- (viii) The Openreach EMP platform is not a suitable back-end system. EMP is not fit for purpose for switching on competitive networks or future-proofed (for example, it is not capable of including quad play switching). EMP is an ageing, complex system, which would require significant reworking to ensure compatibility with our network and other networks. Ofcom therefore should not view the Openreach switching regime as the template. Equally, as the overall cost/benefit case is marginal, Ofcom's alternative approach of an inter-CP direct communication Channel ('DCC') as a back-end system significantly increases the risk of lack of interoperability between systems and greater complexity associated with ongoing upgrades as the solution is not a centralised hub but rather a mesh architecture with multiple interfaces between providers. Based on Ofcom's proposals Virgin Media estimates its capex costs of implementation to be c.£ [X] in year one, this is higher by a factor of [X] than Cartesians' cost estimates.
- (ix) Ofcom should seek to minimise the operational cost and impact of any reform and should ensure any system can adapt to convergence and future market developments. Virgin

⁹ Para 1.10, Consultation

¹⁰ 3(3)(a) Communications Act 2003

Media recommends that a new centralised, purpose built, back-end hub should be developed to support the needs of all CPs for switching. This solution would also align with the proposals for mobile switching to ensure that any back-end solution could be adapted to include quad play and co-ordinated with any proposed changes to mobile switching.

- (x) Virgin Media estimates the timescales for implementing any of the switching proposals are at least [X] months. In addition to this internal implementation timeframe, Virgin Media also anticipates that a prior 6-9 months design period would be required to agree and define the approach between operators (this applies to EMP, DCC and Virgin Media's proposed hub solution), i.e. [X] months in total.

Benefits

- (xi) Virgin Media considers that Ofcom's analysis is subject to errors in both methodology and input assumptions. Ofcom estimates a 10-year NPV of c.£90m to consumers. However, under our assumptions, Virgin Media estimates the 10-year NPV benefit to be between £19m and £56m. For example, Ofcom's estimate of £83 average consumer harm for loss of service does not according with the survey evidence relating to 'willingness to pay' or compensation expectations. Once the benefits estimates are refined, this could make the case for GPL marginal and this emphasises the need for Ofcom to focus on the cost of implementation. We would encourage Ofcom to work with industry to ensure a proportionate solution can be designed.

10 day switch

- (xii) The Consultation documents do not align fully on the timeframe for switching. The GPL specification document implies that only communications to the customer need to be sent by the end of the 10 days and that "*GPs can decide whether to start certain tasks earlier (line of sight visit, cable pull etc.)*"¹¹, whereas the Consultation document states that a switch within 10 days "*would ensure that there is sufficient time for:[...]the new provider to provide any equipment necessary for the provision of the new service(s) and to install and activate those service(s).*"¹² Assuming Ofcom requires the full provision of service to a customer within 10 days, this is impractical from both the consumer's and Virgin Media's standpoint. Ofcom needs to consider the practicalities of switching between networks rather than just between Openreach providers using the same network. The separate cable network means that the existence of Virgin Media's service does not preclude a service delivered over another platform remaining installed into the customer's premises. Moreover, the GP has every incentive to switch customers as soon as possible. Virgin Media's current timeframe to provision and install a new customer is c. [X] days for a two person install. Virgin Media makes every effort to ensure the process is as seamless as possible for the customer and to install as quickly as possible but a 10 day switch process for all switches is unrealistic and any costs that operators would face complying with this requirement have not been reflected in the CBA.

¹¹ Page 11&13, Gaining Provider Led Front-End Process Use Cases

¹² Para 4.29, Consultation

Notice

- (xiii) Ofcom's proposal to prohibit CPs from charging notice beyond 10 days will have the effect of regulating the terms in retail contracts that have been freely entered into in a competitive market, without any compelling evidence of a harmful effect on consumers.

6. This submission is broken down into the following sections:

- (i) Section 1, sets out in more detail the points raised in the Executive Summary;
- (ii) Section 2, sets out Virgin Media's specific comments on Ofcom's CBA and assumptions; and
- (iii) Annex 1, sets out the report Virgin Media has commissioned from Moorhouse to assess Ofcom's costings. *[NB this report is not supplied in the non-confidential version of the response].*

SECTION 1 – Analysis of Ofcom’s Policy

Triple Play bundled and solus products

1.1. Ofcom notes:

“The decisions which Ofcom makes can impose significant costs on our stakeholders and it is important for us to think very carefully before adding to the burden of regulation. One of our key regulatory principles is that we have a bias against intervention. This means that a high hurdle must be overcome before we regulate. If intervention is justified, we aim to choose the least intrusive means of achieving our objectives, recognising the potential for regulation to reduce competition”¹³.

- 1.2. The use of Impact Assessments help Ofcom to apply the above principles in a transparent and rigorous way. This type of detailed analysis undertaken as part of an impact assessment is particularly needed where the market is functioning well and the risks of unintended consequences high.
- 1.3. Overall, the market for solus and bundled triple play products is working for consumers. Ofcom’s 2015 Consumer Experience Report states “[o]n the whole, we found that the UK telecoms market continues to deliver choice and value for consumers, with most people finding services to be affordable. The average household spend on communications services has fallen in real terms (i.e. adjusted for inflation)”¹⁴. The Consumer Experience Report shows an increasing number of consumers switching. Switching of triple play services increased from 6% in 2014 to 10% in 2015 and Pay TV switching increased from 2% in 2014 to 5% in 2015 (excluding homemoves)¹⁵. This accords with Virgin Media’s statistics. Each year, [X] customers switch from the cable network, and more than [X] customers join the cable network¹⁶. Competition for the market is finely balanced between providers. For example, in August 2015, of the [X] customers surveyed joining Virgin Media taking a triple play product, [X]% had been with Sky as their previous Pay TV provider. Conversely, of the [X] surveyed triple play customers leaving Virgin Media, [X]% were moving to Sky as their Pay TV provider.
- 1.4. Ofcom’s own evidence is that most of these consumers have no problems and find the process of switching easy¹⁷. Ofcom identifies only two process related ‘difficulties’ (and Ofcom presupposes there are difficulties in the research questions presented to the consumer) under cross platform switching (i) co-ordinating the switch to avoid a loss of service or double playing; and (ii) contacting the old provider and/or cancelling the old service.
- 1.5. We welcome parity in the scope of services included within the switching proposals being one or more telephony, fixed broadband and Pay TV service(s). To exclude any of these services from scope would significantly affect competition.

¹³ Para 1.1, Ofcom’s Better Policy Making – An approach to impact assessments
https://www.ofcom.org.uk/__data/assets/pdf_file/0026/57194/better_policy_making.pdf

¹⁴ Para 3.1, Ofcom Consumer Experience Report 2015

¹⁵ Page 4, Ofcom Consumer Experience Report 2015

¹⁶ [X].

¹⁷ Para 3.17, Consultation

- 1.6. Going forward, Ofcom needs to have an objectively justifiable method to decide which services fall within scope of the proposals. It is also vital that all services (and combinations thereof) which compete with, or are substitutional for each other, are included in the proposals and fall within the scope of harmonisation. There needs to be an analytical framework which would allow Ofcom to consider inclusion or omission of a service. This is not only critical to ensure competitive parity, but also that any regime is future-proof.
- 1.7. In the Consultation, however, Ofcom without further analysis excludes from its considerations consumers that are switching OTT services and ultrafast networks provided in specific geographic locations. These services are immediately dismissed as out of scope without further consideration. There is a significant risk of unintended consequences by carving out services from scope without a proper assessment framework. As Ofcom's guidelines state "[w]here appropriate, therefore, Impact Assessments need to show the extent to which the options under consideration would have an impact on competition"¹⁸. Ofcom should consider at what point, in the future, would the prevalence of cord-cutting, number of subscribers or any other factors indicate that that these services should be considered for inclusion in the switching regime.

Reactive save

- 1.8. To minimise competitive disparities, Ofcom must have a clear methodology to decide which services fall within the scope of its proposals and this includes in relation to GC 1.2. Any disparity in a provider's ability to undertake reactive save activities is likely to have a significant impact relative to its competitors.
- 1.9. Whilst we welcome Ofcom's statement that GC 1.2 will no longer be an enforcement priority, the wording of the Ofcom Consultation does not clarify whether providers will be able to undertake reactive save activity at the time of switch. The wording in the Consultation infers that only some services will be caught by GC 1.2 and the prohibition on reactive save activity. As Ofcom states GC 1.2 would "*also likely not apply in some circumstances in which a consumer is switching between platforms, where no network access or interconnection is involved, under Option 2 (GPL)*"¹⁹. We remain concerned that unless Ofcom amends GC 1.2 there could be competitive distortion between those services which will be subject to the prohibition on reactive save and those that will not (i.e. where there is no network access or interconnection) based on the underlying technology used to deliver the service to the consumer. This raises a number of practical complexities and also offers opportunities for some providers to 'game' the wording of GC 1.2:
- (i) If a LP could only enter into reactive save activity in relation to some elements of the service, what would happen if a consumer was switching a dual or triple play service? In practice, would the LP be able to save the entire dual or triple play service?

¹⁸ Para 1.10, Ofcom's Better Policy Making – An approach to impact assessments

¹⁹ Para 4.43, Consultation

- (ii) What are the implications if a customer is only informed partially about the implications of switching by way of a reactive save call (i.e. can the LP provide full information and potentially a save offer only in relation to the products not covered by GC 1.2?).
- By way of example, in relation to a customer switching a triple play service from Sky to BT, under GC 1.2, Sky would be permitted to call the customer to save the Pay TV component of the service (as it is not a service for interconnection or network access) but not the broadband or telephony elements. However, this is impracticable as if a customer is interested in the save offer, he/she will want to understand what this means for the overall bundle pricing and discuss all elements of their service with Sky. It would be an arbitrary distinction in the customer's mind for Sky to only be able to talk about the Pay TV component and not an overall deal for all components of their triple play service.

1.10. It is crucial that Ofcom clearly states its position on reactive save. The Consultation is not clear: what does it mean if GC 1.2 is no longer an enforcement priority? Virgin Media would like Ofcom to explain in more detail (i) how it will ensure that reactive save does not become an administrative priority in the future; (ii) how it would determine a dispute between providers over the meaning of GC 1.2; (iii) whether there could be a competitive distortion in the market by the fact that only some types of services are caught by the definition of 'network access' or 'interconnection'. To avoid a significant competitive disparity arising Ofcom must clarify that GC 1.2 does not apply to triple play switching.

1.11. Ofcom should be seeking to understand fully the interaction between the LP and the customer during a reactive save conversation. Information provided by the LP at the time of switch can allow a consumer to avoid unnecessary and/or costly switching. There are benefits to a consumer from speaking to their existing provider to confirm what their current package is, whether it best meets their requirements, the implications of switching (e.g. a change in service standards, quality or characteristics such as broadband speeds, inclusive minutes, free repair of set-top-box) and whether they can alter their package to suit their needs and to then compare both the GP and LP offers alongside before switching. Virgin Media submits that this information is essential to enable the consumer to take an informed decision as to whether to switch. We emphasise that often this information is only available from the existing provider (and any other provider has a strong incentive not to provide it). This will ensure that if the consumer is switching to get a better deal this does in fact turn out to be the case. There can be no benefit to a consumer if they switch without full knowledge of the difference in service they are getting. Ofcom's research supports this point; 87% of survey respondents who decided not to switch were 'satisfied' to remain with their current provider having arranged a new deal²⁰.

1.12. Ofcom's research is not objective on reactive save. Ofcom's evidence indicates that 34% of consumers had a difficulty with 'previous provider trying to convince you to stay'²¹. Virgin Media disputes that 'provider persuasion to stay' is a difficulty and hindrance to switching.

²⁰ Slide 95, BDRC main findings pack

²¹ Para 3.19, Consultation

The survey questions presented to consumers are framed as a 'difficulty'. This immediately leads the consumer to perceive such an interaction as a problem. Ofcom fails to assess properly direct evidence as to consumers' interests and preferences and instead relies on an overly theoretical view of reactive save. The research does not seek to have a detailed understanding of a consumer's relative preference or contrast the advantages and disadvantages of reactive save. Consumers' views should be sought on their relative preferences regarding save activity:

- (i) that important information would be sent by way of letter only;
- (ii) this information would only be limited to ETCs, loss of bundled discounts, notice periods and not the wider benefits of their current service;
- (iii) only those 'savvy' customers would know that to get a better offer, it was necessary to proactively contact their LP; and
- (iv) whether they accept the trade-off between a potentially unwelcome call compared to the likelihood of a customer switching without the full knowledge of what they are losing.

1.13. However, no such comparative or balanced view is presented to the consumer to get an unprompted response of what type of switching process they prefer and whether interaction with their current provider is valuable. Instead, 'provider persuasion' is assumed by Ofcom to be negative in the phrasing of the question²². This approach leads Ofcom to an unclear statement on its views on reactive save.

Process solution and Costs

1.14. Ofcom's switching proposals will have significant capex and ongoing operational costs for Virgin Media (and this excludes any loss of revenue from the proposed changes to the notice period). We refer to Annex 1, a report by Moorhouse Consulting on the costs of GPL. Moorhouse estimates the costs of GPL-DCC be c.£ [X] of capex in year one compared with the £1.6m of capex estimated by Cartesian. Overall Cartesian has underestimated the costs to Virgin Media by a factor of [X].

1.15. Using the Openreach EMP platform is not a suitable back-end system. EMP is not fit for purpose for switching between competing networks or future-proofed (for example, it is not capable of including quad play switching). EMP is an ageing, complex system, which would require significant rework to ensure compatibility with the cable network. Equally, as the overall cost/benefit case is marginal, Ofcom's alternative approach of DCC as a back-end system significantly increases the risk of lack of interoperability between systems and greater complexity associated with ongoing upgrades as the solution is not a centralised hub but rather a mesh architecture with multiple interfaces between providers.

We refer Ofcom to Moorhouse's analysis of EMP versus DCC in its report²³:

²² See for example, Slide 22 QC2A (BDRC main findings) and the question 'And which, if any, of these did you experience difficulty with [...] our previous provider trying to persuade you to stay'.

²³ Paras 3.1.3 and 3.1.4

EMP

1.16. A central theme voiced in response to Ofcom's 10 year Digital Strategic Review ('DCR') is industry's significant and ongoing concerns about the proper functioning of Openreach, its ability to meet its SLAs, installation times, fault repair times and to implement timely and efficient technical improvements. As Ofcom notes in the DCR "[t]he most common concern expressed in submissions to this review was about poor service from the industry as a whole, and Openreach in particular"²⁴.

1.17. As Ofcom's core proposal as part of the DCR is to impose significant changes to the way Openreach is managed and operated, it is surprising that Openreach is being considered for such a strategic and important role in a project which is meant to improve outcomes for consumers. Ofcom is highly critical of Openreach in the DCR:

*We intend to impose a floor for service quality that rises over time, taking account of consumers' expectations. If Openreach fails to meet these standards, it will face substantial fines. Where required, we will establish minimum standards in new areas, such as for faults and incomplete orders, to complement existing requirements for improved repair and installation times*²⁵.

Openreach must become more responsive to the needs of the service providers, people and businesses that depend on its network²⁶.

*In our strategy, we expressed concern that the current model of functional separation **fails to remove sufficiently BT's ability to discriminate against competitors**. This stemmed from the control retained by BT Group over Openreach's strategic decision making and over specific decisions on the budget that is spent on the parts of the network used by competitors*²⁷.

If Openreach is not responsive to the needs of all its customers, this could create risks to competition and investment, and ultimately the service received by UK consumers and business. Without a level playing field between BT and its competitors, consumers and businesses are less likely to see the benefits of competition, which include improvements to the price, choice and quality of communication services. Where major investments in the network favour the interests of BT Group, there is a risk that these investments do not match to the needs of a wider group of UK consumers and businesses²⁸. (emphasis added)

1.18. We also note Ofcom's fine of £800,000 on BT for delays to Next Generation Text Relay²⁹ and draw Ofcom's attention to the fact that the BT Group has had to pass on substantial increases

²⁴ Para 1.9, Ofcom's 'Initial Conclusions from the Strategic Review of Digital Communications'
https://www.ofcom.org.uk/__data/assets/pdf_file/0016/50416/dcr-statement.pdf

²⁵ Para 1.35, *ibid*

²⁶ Para 1.6, Ofcom's consultation on Strengthening Openreach's strategic and operational independence
https://www.ofcom.org.uk/__data/assets/pdf_file/0022/76243/strengthening-openreachs-strategic-and-operational-independence.pdf

²⁷ Para 2.6, *ibid*

²⁸ Para 2.7, *ibid*

²⁹ <https://www.ofcom.org.uk/about-ofcom/latest/media/media-releases/2015/bt-fined-over-relay-text>

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in costs for regulated products which the industry is required to purchase including the Payphone Access Charge, Text Relay and BT Call Handling Services (999). In some years there have been in excess of 100% price increases:

**BT WHOLESALE RATE CHANGES –
Non Confidential (VIRGIN
MEDIA)**

| BT Payphone Access Charge | | | |
|----------------------------------|--------------|------------|-----------------|
| Effective Date | Until | PPM | Increase |
| 01/12/1997 | 07/03/2006 | 8.10 | |
| 08/03/2006 | 26/05/2008 | 10.00 | 23% |
| 27/05/2008 | 31/08/2011 | 12.00 | 20% |
| 01/09/2011 | 31/10/2012 | 18.00 | 50% |
| 01/11/2012 | 31/08/2013 | 23.00 | 28% |
| 01/09/2013 | 31/07/2014 | 49.00 | 113% |
| 01/08/2014 | | 79.00 | 61% |

Since Dec 1997: 875%

| Text Relay Service | | | |
|---------------------------|--------------|------------|-----------------|
| Effective Date | Until | PPM | Increase |
| 01/04/2005 | 30/04/2009 | [X] | |
| 01/05/2009 | 31/03/2010 | 33.00 | 387% |
| 01/04/2010 | 31/05/2012 | 68.79 | 108% |
| 01/06/2012 | 04/06/2013 | 89.43 | 30% |
| 05/06/2013 | | 142.00 | 59% |

Since April 2005: [X]%

| BT Emergency Service | | | |
|-----------------------------|--------------|------------|-----------------|
| Effective Date | Until | PPC | Increase |
| 23/06/2003 | 31/12/2008 | 59.20 | |
| 01/01/2009 | 30/04/2015 | 65.71 | 11% |
| 01/05/2015 | 30/09/2016 | 80.00 | 22% |
| 01/10/2016 | | 95.20 | 19% |

Since June 2003: 61%

1.19. We are concerned that once tied into BT, we could see the same quantum of price increases imposed on Virgin Media. Use of EMP would also tie Virgin Media into the Openreach release cycles and timelines. [X].[X]. There has been no consideration of this point in the Consultation.

Direct Communication Channel

1.20. The DCC has the significant advantage that it is separate to the Openreach network and can be future-proofed to deal with the convergence of services (such as inclusion of mobile quad

play). However, it is the most expensive, complex and time consuming option. A 'mesh' architecture which requires each CP to interact with each other on multiple interfaces is not considered a best practice approach for large scale IT implementations and will raise complex issues of the integration of multiple providers' systems, methodologies, data centres and will have significant implications for connectivity, security and firewalls, ongoing testing and required enhancements when new providers want to join or leave the platform. It is unclear why Cartesian adopted a more expensive, complex proposal than is necessary.

- 1.21. Rather, Virgin Media supports a new centralised, purpose built back-end hub to be developed to support the needs of all CPs for switching of landline, broadband and TV. This new system would also allow for any harmonised mobile GPL switching proposals to be tied into the solution. Moorhouse has indicated that the total cost for Virgin Media could be reduced by approximately [X]% if this alternative centralised back-end hub option is used.

Ofcom's role in the process going forward

- 1.22. Ofcom states that 'the old and new providers would need to be able to share information with each other via some form of communications channel. We currently do not intend to specify exactly what this would look like so as to provide industry with some flexibility on any potential implementation'³⁰. Although there will be many granular details of a new switching system which will need to be agreed by industry, Ofcom needs to set out its preferred option for the back-end system (the only workable solution we see is for a new independent hub and spoke system to be developed). This will avoid unnecessary implementation delay. In addition, we consider that it is vital that Ofcom chairs and manages the process (as it did with the Openreach GPL NoT+ changes) to ensure that costs are minimised and clarity on the process is able to be given at all times.

- 1.23. Ofcom should be seeking as a next step to:

- (i) Gain consensus from providers on the front and back-end option. This requires detailed analysis to derive the requirements and a functional specification;
- (ii) Establish the fundamental high-level design principles. This will ensure that all providers are aligned on scope and design;
- (iii) Review and agree the fundamental high-level design principles with other major providers: to ensure feasibility and compatibility; and
- (iv) Develop a high-level operating model. This will include specific responsibilities for when the process break down, to ensure that these are in line with expectations of other providers and Ofcom.

Implementation timelines

- 1.24. Finally, the Cartesian estimate of 18 months implementation timeline is unrealistic and is referenced solely on the timelines for the implementation of the harmonised GPL switching

³⁰ Para 1.8, Consultation

process on the Openreach network and the discontinuation of the LPL MAC process for broadband switches. The amendments that were required in 2013 to the Openreach switching process are not a reasonable comparison as a timeframe for triple play switching because:

- (i) only 10% of switches on the Openreach network used the MAC process (90% of switches used the GPL process);
- (ii) the changes were far less extensive and harmonisation to GPL was justified on the basis that it is less likely to be disruptive for consumers, industry and competition;³¹
- (iii) the changes involved only the Openreach providers in relation to switching of landline and broadband and the process was already regulated; and
- (iv) The changes only concerned one product only (broadband).

1.25. Currently 100% of Virgin Media's switches for triple play operate on a cease and re-provide basis and therefore we estimate at a minimum the timeline for GPL implementation is at least [X] months. Cartesian will also need to factor in an information gathering exercise (likely to take an additional c.6 - 9 months) between all providers (as all CPs will have different vendor systems and processes) to agree how to best effect and necessary steps required to implement the back-end systems.

Practical problems with 10 day switching

1.26. Ofcom states that 10 day switching is achievable even where this involves sending out an engineer(s) to connect a customer:

'[w]e envisage that for the necessary steps to occur the transfer period would be between two and ten working days³²'.

'[o]ur preliminary assessment is that the steps necessary, and time required, would be similar to those taken by providers using the NOT+ process under General Condition 22, where a ten working day transfer period is in place³³'.

'[d]uring the transfer period, the new provider would be required to provide the customer with any equipment necessary for the operation of the new service(s)³⁴'.

'the ten working day transfer period would be reasonable for the steps necessary to effect a co-ordinated switch, without there being a justification for the old provider to impose a longer contractual notice period³⁵'.

1.27. During this 10 day period, GP would be required to:

- (i) send to the consumer the information that he/she requires to protect them against slamming and to make informed switching choices³⁶;

³¹ See <https://www.ofcom.org.uk/consultations-and-statements/category-2/consumer-switching-review/summary>

³² Para, 4.17, Consultation

³³ Para, 4.19, Consultation

³⁴ Para 4.28, Consultation

³⁵ Para 4.29, Consultation

- (ii) take the necessary steps to stop the old service(s) and for any necessary administration of the end of the old contract; and
- (iii) the new provider to provide any equipment necessary for the provision of the new service(s) and to install and activate those service(s)³⁷

1.28. The Virgin Media network is a separate network to BT's. On a single platform, there is the ability for providers to exclude each other; the LP's service must stop so that the GP's service can commence. The separate cable network means that the existence of Virgin Media's service does not preclude a service delivered over another platform being installed into the customer's premises. A provider cannot stop a consumer from commencing a new customer relationship (that is, their only role is in relation to the ending of the old customer relationship). A customer may therefore choose to have two services running. This shapes the relationship between providers and consumers, shifting the balance of power away from the network to the consumer.

1.29. The Openreach prescriptive rules on switching were formulated in response to failures specific to the Openreach network and derive from circumstances which existed because of that network's former status as a monopoly. The Enhanced GPL NoT+ rules and the requirements thereunder which set out in detail every part of the switching process are entirely unsuited to switching between platforms on different networks. Virgin Media supports GPL switching but this does not extend to supporting Ofcom regulation of every aspect of the process.

1.30. Furthermore, 10 day switching is not happening on the Openreach platform. In the final statement on the enhancements to the Openreach database, Ofcom stated that "[w]e confirmed that we expected a ten-day switching period to be applied to the broadband switches under NoT+, just as they apply to current NoT switches"³⁸, however, the current regulated targets for Openreach to provision a new customer exceed 10 days. Openreach only has to ensure appointment availability within 12 days rather than ensure a new customer install within a 10 day period³⁹. It is unclear how Ofcom can specify 10 day switching between networks when Openreach has significantly lower targets already in place.

³⁶ VM notes the implication of switching letter just contains information about ETCs and loss of bundled discount and not full information about the service the customer is losing

³⁷ Fig 11, Consultation

³⁸ Para 4.27, Ofcom final statement on switching on the Openreach Network, 20 Dec 2013

³⁹ Para 2.3, https://www.ofcom.org.uk/__data/assets/pdf_file/0032/92678/20161017-QoS-Statement_Non-confidential.pdf

Table 1: Openreach minimum service quality standards for WLR and MPF products

| Minimum standard | First Year (2014/15) | Second Year (2015/16) | Final Year (2016/17) |
|---|-------------------------|--------------------------|-------------------------|
| 12-day provision appointment availability | 54% | 67% | 79% |
| Provision completion by contracted date | 89% | 89% | 89% |
| Repair completion within SLA timescales | 67% | 72% | 77% |

Virgin Media is incentivised to provide quick switching to the cable network

- 1.31. To regulate the Virgin Media cable business by mandating 10 day switching is unnecessary. The establishment of a new service is not dependent upon the termination of an existing service – and the provider of the latter cannot frustrate the former. Consumers may want to have two services running concurrently (for example, to ensure that a new service is up and running satisfactorily before agreeing to end an existing service).
- 1.32. Virgin Media makes every effort to ensure the process is as seamless as possible for the customer and to install as quickly as possible. We are commercially incentivised to do so:
- (i) First, competitive pressure by other providers – if we do not offer a good switching experience, our offer to the consumer will not be accepted; and
 - (ii) Second, the power of the consumer – since the consumer is not beholden to any provider, they can always ‘start afresh’ with a new provider.
- 1.33. In theory, a 10 day switch timeframe will work for customers switching to the cable network in the case where a customer’s property is connected (i.e. pre-cabled) to the Virgin Media network and the customer is able to connect the equipment themselves. In which case, the paperwork can be completed within 10 days. This accounts for [X]% of Virgin Media orders today. However, [X]% of switches today require an engineer to visit the property. One engineer is required where the customer’s premise is already cabled and two engineers are usually required where the customer has not been connected to the network previously. Virgin Media’s current install times for a two engineer install for a new customer (this makes up [X]% of new orders today) is [X] depending on the complexity of the install and the customer’s availability.
- 1.34. By way of illustration, there are a number of steps to take place before a customer can join Virgin Media that cannot be achieved without talking to the consumer and without (potentially) several site visits. This is unique to Virgin Media:
- (i) A spotter needs to be sent out to ensure that the premise is serviceable (i.e. is it possible to connect the customer’s home?);

- (ii) A potential customer may need to ensure relevant freeholder wayleaves are signed (this can take weeks);
- (iii) For an entirely new customer, local authority notification (if less than three metres to the premise) may be required (rather than local authority approval) if to connect the customer's premise to the cabinet there is any requirement to dig up a public pavement, green space etc.
- (iv) An engineer (sometimes two engineers for a more involved install) is required to install a customer. This will require co-ordination between Virgin Media and the customer. It may be, for example, that the customer would prefer to wait for a weekend appointment or a particular area sees an unpredicted increase in sales (and therefore a longer wait time is required). This is more likely to happen with an increase in demand for installation due to Project Lightning. The number of engineers we have allocated to a particular area depends on demand and this is sometimes unpredictable.

1.35. Ofcom's proposal for a 10 day install raises a number of problems for both the customer and Virgin Media:

- (i) For Virgin Media, it would be extremely difficult, to install customers within 10 days given the above requirements and would require a complete reworking of the resourcing of the install function. It would add significant cost and complexity to our systems. In addition, it is unclear if there are extra skilled cable installers available. [X].
- (ii) We also do not consider that 10 day switching works for consumers. Many customers will want to test their new service before terminating the old (and indeed this is vital where products are not homogenous), or indeed join a new provider to then only return to their existing provider. Any initiative to co-ordinate the switching process needs to allow consumers (within a window) to change their minds and stay with their existing provider. This is unlikely to be possible with 10 day switching. If a customer changes their mind and wants to stay with their existing provider after their notice period has ended, it is a huge inconvenience and costly for both the customer and Virgin Media as the process is not reversible.
- (iii) If a customer changes his or her mind within 10 days (for example because they only review their implications of switching letter on day 7), it is likely that Virgin Media would have already incurred considerable cost in sending out a spotter and potentially an engineer and therefore the likelihood of wasted costs is extremely high. Engineer installation of a customer's services costs [X] times the amount than if the customer self-installs. This has not been factored into Ofcom's costings of its proposals.

Notice periods

1.36. Ofcom states '*[o]ur provisional view is that the ten working day transfer period would be reasonable for the steps necessary to effect a co-ordinated switch, without there being a justification for the old provider to impose a longer contractual notice period*⁴⁰'. Ofcom's stated

⁴⁰ Para 4.29, Consultation

test for whether intervention is necessary in relation to contractually agreed notice periods is not on the basis of whether there is a legitimate concern with notice periods which meets the regulatory threshold for intervention. Rather, Ofcom states, in its opinion, the test for inclusion of a contractual term is whether there is any justification (in Ofcom's view) for the term. Ofcom seems to have formulated a new test for intervention outside of the statutory framework.

Legal background

1.37. Virgin Media refers to Section 3 of its Mobile Notice period submission which sets out Virgin Media's analysis of Ofcom's legal powers to regulate notice periods. We highlight in this submission (and do not repeat here in detail) three key points limiting Ofcom's powers to regulate notice:

- (i) *Digital Economy Bill*: The Digital Economy Bill⁴¹ sets out additional wording for section 51 Communications Act 2003 ('**CA03**') which will extend Ofcom's statutory powers for introducing conditions to apply to switching processes more generally. The corollary is that the current legislative framework does not grant Ofcom the power to do so now;
- (ii) *Ofcom's powers under the UK statutory framework*: The scope of Ofcom's role to 'protect consumers' is not unbounded, nor does it mean simply intervening in ways that will affect the interests of consumers without a specific element of *protection*. The test in the CA03 is whether any processes act as a 'disincentive' to changing provider, and/or whether intervention is necessary to 'protect' consumers. In a competitive market, regulation is only needed to the extent that there is an identified problem (that is, to protect consumers) or clear evidence of a market failure. Ofcom should not regulate simply to 'improve outcomes' or require notice periods to be only as long as strictly justified; and
- (iii) *Consumer Rights Act 2015*: The Consumer Rights Act (**CRA**) sets out the test for assessing whether terms (imposed on consumers) are fair. The CRA describes a term as being prominent if '*it is brought to the customer's attention in a way that an average consumer would be aware of the term*'. This section also defines an 'average consumer'. In Virgin Media's view, the average customer will, once informed about notice periods, understand the implications.

1.38. We note, as set out in detail in the Mobile Notice period submission, that the statutory test is not whether in Ofcom's view a notice period longer than 10 days is 'justifiable' as this is not an accurate reflection of the legal framework and does not adhere to the statutory language. Therefore, the onus is on Ofcom to demonstrate where the 'consumer protection' concerns arise, the detriment caused and justify its intervention.

1.39. We now turn to comment on Ofcom's policy justification for intervention.

⁴¹ Bill as published on 5 July 2016

Conflating consumer issues of loss of service, co-ordination of switch and double paying

- 1.40. Ofcom conflates three policy goals with its proposals to regulate notice periods to 10 days: (i) address any unnecessary difficulties consumers face in co-ordinating switching dates (ii) avoid loss of service; and (iii) avoid double paying. The policy solution to address all of the above issues is a co-ordinated 10 day switch without the ability of a LP to impose a longer notice period.
- 1.41. Ofcom does not sufficiently distinguish in its research questions or its analysis of the results between consumer difficulties to co-ordinate the switch, avoiding a loss of service and double paying. The BDRC research indicates that 'one in five (22%) cross-platform switchers recall experiencing contract overlap and therefore paying both providers at the same time during the switch'⁴² and that the average period of double paying between platforms is 14 Days. However, this does not explain why consumers sometimes have a contract overlap and which issues should be rightfully dealt with by regulation, (for example, such as increased co-ordination between CPs to stop/start the services where the customer agrees) and which issues are a legitimate part of the consumer's bargain (i.e. a contractually agreed notice period).
- 1.42. In its research questions Ofcom uses 16 different prompts to present to consumers reasons for double paying. Whilst we welcome Ofcom's proposals to help customers co-ordinate the start/stop services (and this will address the 28% of consumers who wanted to ensure continuity of service as a reason for double paying) it is unclear whether it is justifiable (legally and based on the survey evidence) for Ofcom to mandate a notice period and why this notice period should only be 10 days. A mandated notice period will not assist those 58% of consumers who stated they had difficulty co-ordinating the switch or those who wanted to get a better service/deal immediately (29%). Ofcom's proposals for a 10 day switch will not assist (and nor should it) those customers who said they double paid for the following reasons:
- (i) Due to the available engineer appointment dates (15%)
 - (ii) To switch to a better service immediately (14%)
 - (iii) To sign up with my new provider before a deal ran out (11%)
 - (iv) To get faster broadband as soon as possible (6%)
 - (v) To get the channels I wanted as soon as possible (2%)
 - (vi) To get inclusive calls as soon as possible (1%)
 - (vii) To get a channel in time to view a specific event (1%)⁴³.

Is a regulated solution necessary? Why are notice periods not justified?

- 1.43. Restricting a provider's ability to charge for notice is not an appropriate regulatory tool to be used to increase the number of engineers available to help install customers or to allow

⁴² Para 3.33, Consultation

⁴³ Figure 6, Consultation

customers to take advantage immediately of a better deal or subscribe to a popular sports event.

1.44. Ofcom states there is no 'justification' for an old provider to impose a longer than 10 day contractual notice period. Aside from this not being the correct legal test, we have a number of concerns with Ofcom's reasoning:

- (i) The payments are entirely lawful, freely entered into, and consistent with the terms of the contract. Ofcom does not explain in what sense these payments are 'not justified' – merely that they involve paying money. But these terms are voluntarily undertaken by consumers themselves. They were agreed at the time that the contract was entered into (and Ofcom does not suggest otherwise);
- (ii) It is not obvious that being held to a condition that is voluntarily assumed by a consumer, who is not misled or misinformed, is a matter which Ofcom could or should regulate – except in circumstances where there is some clear harmful effect as a result of the clause that gives rise to a problem. There is no basis for taking that approach in consumer law, which is an important reference point for what might constitute 'consumer protection'; and
- (iii) The evidence does not support Ofcom's view that these payments are not justified. As the BDRC research shows, for example, many customers consciously and willingly double-pay in order to bring forward or take advantage of a new offer or obtain the benefit of a new channel immediately. Does the fact that they did not anticipate valuing the new service so highly at the time they entered into the contract, by itself, mean that Ofcom must regulate to prevent the provider obtaining the benefit of the clause, when the rest of the contract has already been fulfilled? The consumer in these scenarios chooses to accept the early commencement of the new contract in order to secure a benefit that they themselves value more than the cost of the double-payment. Other consumers make a different choice.

1.45. In relation to those cable customers, as a result of the high degree of control that consumers enjoy directly in respect of ordering and scheduling the installation and cessation of cable services, there is scope for consumers to make decisions that could result in unwanted overlap or gaps where they receive no service at all. Much of this problem could be managed through better customer education and support during the process. Virgin Media is of the view that Ofcom fails to consider properly and explain why ensuring that consumers are better informed about notice periods would not resolve the concerns it has.

1.46. Finally, Ofcom has failed as part of its CBA to consider the commercial implications of restricting notice beyond 10 days, which could also include price increases for consumers to mitigate this revenue loss.

1.47. To summarise, Virgin Media supports GPL switching processes, but our analysis of Ofcom's CBA indicates that the costs and the benefits are mismatched. Ofcom should therefore seek to minimise the operational cost and impact of any reform and ensure any system can adapt to convergence and future market developments.

1.48. Virgin Media recommends that a new centralised, purpose built, back-end hub should be developed to support the needs of all CPs for switching. This solution would also align with the

proposals for mobile switching. The back-end solution of 'EMP' using Openreach is not fit for purpose as a system for triple play switching. Openreach EMP cannot be future-proofed and raises the likely potential for conflicts of interests and exorbitant costs. Ofcom's alternative approach of DCC as a back-end system significantly increases the risk of lack of interoperability between systems and greater complexity associated.

- 1.49. In addition, Ofcom must ensure that any change to the switching regime does not create a competitive disparity between different networks and different services (or combinations thereof). Ofcom can ensure competitive parity by creating a framework whereby inclusion/omission of services are subject to a rigorous framework and that it clarifies that GC 1.2 does not prohibit the LP contacting their customer so that the customer can compare the LP's offer alongside GPs offer at the time of the switch. Finally, 10 day switching is not feasible in all circumstances and Ofcom has no basis to prohibit contractually agreed notice periods

SECTION 2 - Cost benefit analysis

Overview

- 2.1. In this section we comment on the benefits and costs associated with Ofcom's proposals for EC&R and GPL ('the New Process'). For brevity we focus primarily on Ofcom's preferred option of GPL, with only limited comment on the EC&R option where required.
- 2.2. We broadly agree with the framework for both the assessment of benefits and costs that Ofcom has adopted, but we believe that some of the inputs and assumptions adopted in both assessments are flawed.

Benefits

- 2.3. Ofcom has misapplied the data it has available or not used more granular inputs available to it, which were published alongside the proposals. We first present some broader concerns on the baseline estimates of the number of consumers that would adopt the New Process as well as the survey (which provides the basis for many of Ofcom's inputs) methodology. Following these broader comments, we discuss Ofcom's approach to estimating benefits derived from reductions in loss of service, reductions in double paying and reduced time spent engaging in the switching process.

Costs

- 2.4. At least in relation to Virgin Media, Ofcom has underestimated the complexity and materiality of a fundamental change to a significant part of our ongoing business. Ofcom is well aware of the risk associated with this type of change.⁴⁴

Review of benefits

Survey methodology comments

- 2.5. The questions to survey respondents ask about their experience within the last two years. It appears likely that the responses to these questions could therefore reflect multiple switching events, i.e. multiple 12/18 month contracts. Therefore, it is inaccurate to apply summary statistics from these responses to annual cross-platform impact calculations. Ofcom's survey has identified respondents that have switched/experienced issues in the last 12 months. We believe the analysis should have been undertaken using these statistics. Without correcting this error, the results overestimate the annual benefit by inflating the incidence of switching issues.

Loss of service analysis

- 2.6. Ofcom says that research from BDRC suggests that 21% of switchers on the OR platform experience significant, unwanted loss of service.

⁴⁴ Ofcom, Vodafone fined £4.6 million for failing customers ,<https://www.ofcom.org.uk/about-ofcom/latest/features-and-news/vodafone-fined-4.6-million>

2.7. However, Ofcom notes that the survey sample size is too small to give statistically significant results. In particular, the response rate was too low for switching related loss of service on fixed landline to be able to report on its impact. Note that 53% of all respondents with Fixed Land Line ('FLL') loss of service (i.e. including those that would not be impacted by Ofcom's proposals) reported no effect, no impact or they "did not know" the harm created. The variation in survey responses is something we will return to in the detailed discussion of form of harm below.

Overview of loss of service responses

- 2.8. Of those surveyed that experienced a fixed broadband ('FBB') loss of service during a switch 37% reported "losing the service did not affect my household", "no impact" or "don't know" when asked to identify reasons why the loss of service affected them.
- 2.9. Of those that reported a loss of Pay TV ('PTV') impact, 51% confirmed it did not affect, had no impact or "don't know".
- 2.10. 68% of those with a loss of service due to switching reported no financial loss due to this loss, (74% including "don't know").
- 2.11. Customers reported an average of five hours of work missed, £19 of direct financial loss and four hours of time spent to resolve. This appears odd since only between 0 and 2% of respondents noted that they spent time resolving the issue with the CP when asked unprompted. This likely demonstrates issues with the phrasing of questions (and their ordering).
- 2.12. As a further example, 37% of respondents who had an unwanted loss of PTV services reported direct financial loss of more than £0 (£21 on average), 36% reported hours of work missed (on average seven) and 69% of respondents reported spending time to resolve the loss (three hours on average).⁴⁵
- 2.13. Again, this appears to be at odds with only 49% of respondents noting any impact due to the loss of service and that only 2% of respondents reported they spent time resolving the loss. Equally, it is not clear how "missed TV show" and "frustration" (the 2nd and 3rd most frequent impacts after no impact) translate into either financial loss, hours of work missed or time spent resolving.
- 2.14. Ofcom's questions relating the degree of inconvenience appear to yield counterintuitive results – 17%, 10% and 16%⁴⁶ of switching related loss of service recorded "1" (no inconvenience at all), which again does not appear to accord with the unprompted responses which note that more than 50% of responses confirmed no impact for FLL and PTV. This is likely to reflect a flawed methodology and demonstrate the extent to which the structure and sequencing of survey questions can affect the results.

⁴⁵ Reported statistics exclude outliers.

⁴⁶ For FLL, FBB and Pay TV respectively. Where a breakdown between switching-related and non-switching-related statistics are reported.

2.15. It is therefore not clear to Virgin Media how this research supports Ofcom's proposals. The results of the research indicate that the loss of service impact, when switching, is a relatively isolated incident and one that does not affect customers in a majority of cases.

Ofcom's lack of assessment of previous switching processes changes

2.16. Virgin Media has encouraged Ofcom to consider and analyse the effectiveness of GPL switching on the Openreach network (Openreach Switching, 'ORS'). Not only would this be good practice for evidence-based policymaking; it would provide valuable inputs to assess the costs and benefits of the current proposals.

2.17. Ofcom's consultation document presents limited evidence of any reflection on this matter and a number of our concerns about Ofcom's approach may have been avoided by a better understanding of the outcomes resulting from the implementation of GPL on OR.

Number of switchers using the new process

GPL

2.18. Ofcom has estimated the proportion of customers that have adopted ORS GPL process by assessing various survey responses. Given that these responses may relate to switches up to two years ago, there may be some recollection error. Furthermore, as noted above, the responses to survey questions appear to suffer from contradictory responses that suggest that the respondent may not have had a clear view of the question being asked. Therefore deriving a proportion of respondents that adopted the new process from these survey results could be subject to material estimation error.

2.19. In contrast, collecting volumes and trend data on ORS would have been a more robust and simpler analysis to undertake. This would have the additional (and in our view critical benefit) of allowing Ofcom to assess to what extent there has been a change in customer behaviour resulting from the introduction of GPL.

2.20. Ofcom believes that its estimate of 68% of switchers using the GPL process underestimates those consumers which would use Option 2. Ofcom suggests that:

- (i) Respondents that contacted the LP for the self-reported purpose of "to cancel or give notice" may not have actually done so and called for a reason other than that they reported in the survey or respondents did not understand the process. This would appear to be a problem with the complexity of the survey; marking up the assumed take-up assumption to account for this seems inappropriate.
- (ii) Ofcom also suggests that the propensity to use the New Process would be higher than current OR intra-platform switching due to the intention to develop and promote consistent switching messages i.e. to ensure that operators inform customers of process in a consistent way. As far as we are aware, this is currently the case for OR switches and therefore it is not clear what incremental changes are leading Ofcom to anticipate greater propensity to use the New Process than currently observed.

- 2.21. In contrast, we expect the propensity to speak only to the GP to be lower than currently observed within Openreach platform switches.
- 2.22. Triple play service bundles represent a larger expenditure for consumers than broadband and telephony. It is likely that a customer would spend more time researching their purchase choice before deciding and in many cases this will include a discussion with the LP and GP to understand better the services available from the various providers.
- 2.23. Furthermore, the distinction between the services available when undertaking a GPL switch currently and under the New Process is significantly greater variety. For example, Pay TV offerings from BT, Sky and Virgin Media are significantly more differentiated than TalkTalk's and Sky's broadband and fixed line offerings. A customer may also wish to understand what will happen to their OTT subscriptions or their digital content purchases (if bought from the LP).
- 2.24. For these reasons, we doubt Ofcom's assumption on anticipated take-up of the New Process. This input will significantly affect the results. Given these concerns, Virgin Media believes that Ofcom should re-estimate this input, on the basis of aggregate switching data, rather than using survey responses. Absent this approach, it should apply the same treatment of uncertainty as it has to EC&R estimates: a range. We also think that Ofcom has not presented any compelling reasoning for increasing the estimate of take-up of the New Process from 68% to 70%. Because of our concerns we would suggest that a high, medium and low scenario set of 68%-55%-45% would be more appropriate, with the EC&R scenarios being reduced commensurately.

EC&R

- 2.25. We agree that there is significant uncertainty associated with estimating the potential adoption rates for EC&R. Therefore, we agree with the use of a range, and applying an assumed rate for take-up that is lower than GPL. Absent any evidence from Ofcom on existing GPL intra-platform switching, we believe that a range of 62%-52%-42% should be used instead (i.e. a reduction of 2% for each scenario benchmarked against the high GPL scenario suggested above).

Reduction in loss of service

- 2.26. Virgin Media has concerns regarding Ofcom's estimates of the harm from loss of service. Ofcom generates a, frankly staggering, estimate of £83 as the average harm to consumers that face a loss of service, comprised of direct financial costs, lost time and denial of service. If this estimate were correct it would have surely led to an overall reduction in switching over time as customers sought to avert future harm. Instead, we have observed an increase in propensity to switch (both before and after OR GPL was introduced). When non-switching survey respondents were asked to estimate their willingness to pay to avoid the loss of service they experienced (QA11B), the average response was £24.⁴⁷ When all respondents were asked

⁴⁷ If the top 15% of responses are excluded (the rationale for which we discuss below), the average willingness to pay falls to £10.

what compensation they felt might be appropriate for their loss of service the average response was £34.⁴⁸

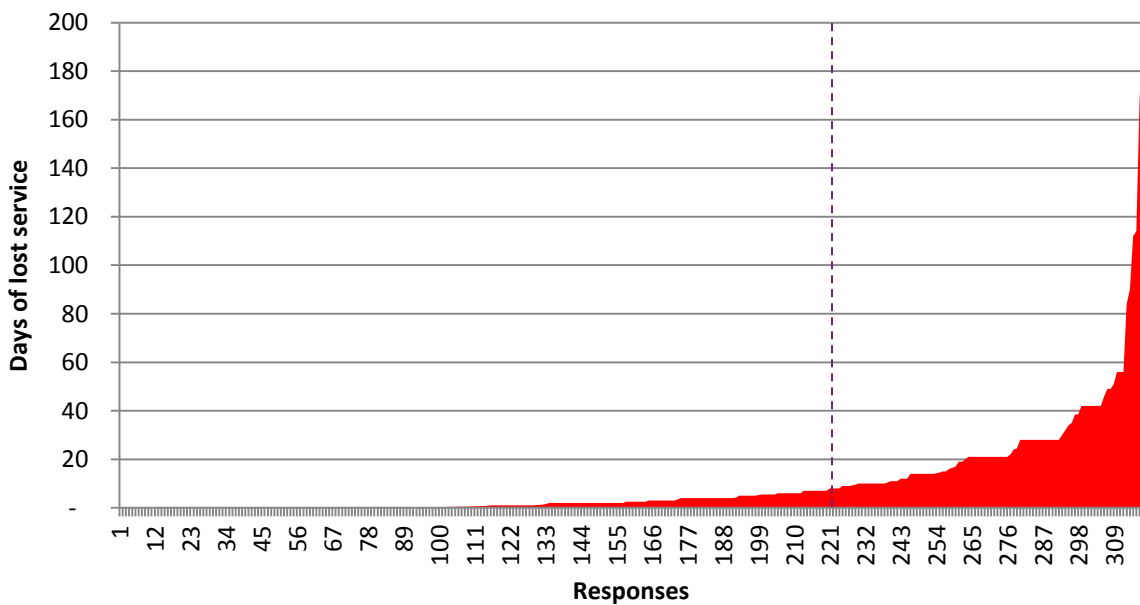
2.27. Our comments below discuss both the calculation methodology and the inputs used to conduct this analysis.

2.28. Ofcom presents evidence that 17% of cross-platform switchers ('CPS') have experienced an unwanted loss of service during the last two years. This is lower than the 21% ORS responses that indicated a loss of service. Ofcom assumes that 15% of unwanted losses of service are due to issues that the New Process may not resolve. Given the detailed survey responses this value appears to reasonable.⁴⁹ The incidents within this 15% are likely to be the most disruptive causes of loss of service and are likely to be the most complex and time consuming to resolve. We agree with Ofcom that an adjustment should be made to exclude those switches that will not benefit from the New Process, but we also believe that survey data from these losses of service must also be excluded.

2.29. A detailed review of individual responses to survey questions suggests that if the 15% of switchers that would not be helped by the New Process were clustered towards the upper end of 'impacts', these responses would be materially skewing the inputs used in Ofcom's benefits analysis.

2.30. For example, the chart below shows the overall responses to questions "QA3AB[x]_Actual" - the number of days of lost service experienced, from BDRC's detailed loss of service survey. An average total across each question variant is taken for illustrative purposes. The chart below plots the responses ordered by the number of days of lost service experienced for each respondent.

Figure 1: Plot of average total responses from QA3A[x]_actual – days of lost services



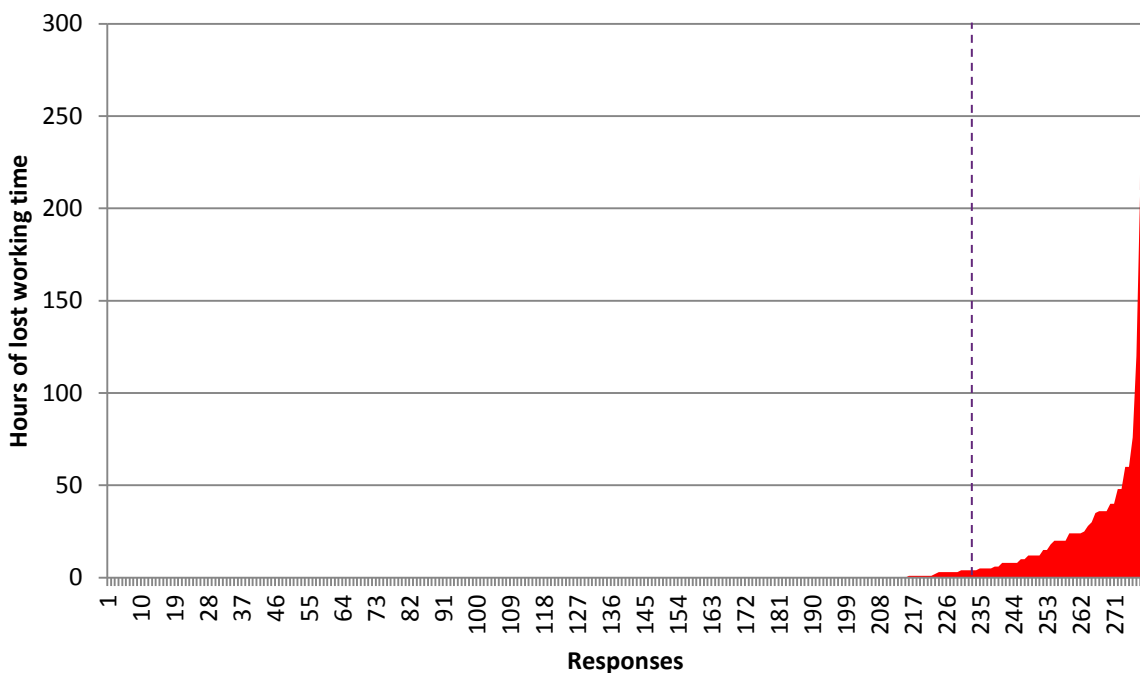
⁴⁸ When the top 15% of responses were removed the average estimated compensation fell to £3.

⁴⁹ For example, slide 40 of BDRC's main findings pack notes that 18% and 12% of CPS respondents identified line fault and CPE faults as the cause respectively.

2.31. Ofcom estimates an average loss of service of eight days based BDRC’s broader research, and excludes three responses from its adjusted average to derive this estimate. To the right of the dotted line on the chart above shows the highest 15% of non-zero responses. The overall average of non-zero responses is 12 days of lost service, on average the top 15% report 50 days⁵⁰ and average of non-zero responses excluding these is 5 days. We believe that it is highly likely that many of these respondents in the top 15% would not have benefitted from any reduced loss of service as a result of the New Process. Excluding these responses results in adjusting the average loss of service that might be avoided by the New Process from eight to approximately three days.

2.32. Similarly, the chart below provides a plot of survey results associated with number of hours of lost working time, qa8b_actual. Ofcom excludes two results (0.72% of responses).

Figure 2: Plot of QA8B_actual – hours of lost working time



2.33. The dotted line on the chart below again identifies the 15% highest responses. Again, we believe these responses are likely to disproportionately include responses from those who suffered a loss of service due to factors that Ofcom acknowledges would not be impacted by the New Process. Excluding these responses would change the average lost working time avoided by the New Process from four hours to approximately 10 minutes.

2.34. Our comments above are predicated on the assumption that those respondents who would have gained no benefit from reduced loss of service from the New Process have disproportionately more complex, time consuming and disruptive loss of service. We have not sought to verify this based on a detailed review of survey responses but we would encourage Ofcom and/or BDRC to do so given their familiarity with the survey data and the contents of

⁵⁰ It seems clear to us that Ofcom’s proposals are not designed to remedy issues associated with losses of service of 50 days on average. Including these inputs in its calculations of reductions in harm would therefore be inappropriate.

the published worksheets. For example, QB1 asks the respondent to identify the reason(s) for the loss of service. Responses that include options 4-12 would indicate the respondents issue would not have been impacted by the change in switching process (for example, ‘fault with the line’ (no.12)). We expect that comparing the estimated impacts in these responses to the remainder of the sample would show significant differences.

Calculation methodology

2.35. Ofcom undertakes a three-step process to calculate the benefit from reduced loss of service, based on assumed numbers of cross-platform switchers.

$$\text{£ avoided harm} = \# \text{ of CPS} * \% \text{ adopt New Process} * \% \text{ reduced LoS} * \text{£ avoided cost}$$

2.36. Ofcom’s research shows that a significant proportion of survey respondents self-reported that despite experiencing a loss of service, it had no impact on them. Ofcom’s three-step process should be corrected to account for the large proportion of customers that do not perceive any harm and therefore would not perceive any benefit from the New Process. We would note that, taking a lower bound across the survey, indicates that 37%⁵¹ of respondents perceived no harm from the loss of service. Therefore, rather than Ofcom’s estimate that 17% of switchers would experience a benefit from the New Process, only 10.7% should be used (i.e. 63%*17%).

2.37. Ofcom’s own analysis provides significantly more granular evidence on the impact of loss of service than Ofcom has chosen to adopt.

2.38. By summing the average valuation of each aspect of harm, Ofcom assumes that each incidence of loss of service means that the switcher experiences each type of harm. In practice, Ofcom has data already available to undertake a more detailed assessment of the reduction in harm. We suggest that Ofcom should the following:

$$\text{£ avoided harm} = \sum_{i=1}^n \# \text{ of CPS} * \% \text{ adopt New Process} * \% \text{ reduced LoS}_i * \text{£ avoided cost}_i$$

Where i, \dots, n = forms of harm

2.39. This equation is equivalent to Ofcom’s if the population that experienced each form of harm is the same. However, Ofcom’s survey data shows, there are forms of harm that some respondents experienced and others did not, some impacts which would not be remedied by the New Process and variations in available data on cross-platform specific and service specific impacts.

2.40. Each form of harm is discussed below. In each case we present a “low” and “high” adjustment to produce a range. This takes into account the uncertainty regarding the magnitude of the impact but also uncertainty about inputs and assumptions that Ofcom has adopted.

⁵¹ Based on unprompted responses for FBB, using FLL the proportion rises to 53% and 51% for PTV.

Denial of service

- 2.41. Ofcom calculates that the average loss of service of eight days results in £12 of harm per affected switch. We note that (and Ofcom recognises)⁵² customers would be refunded for any periods where their service was unavailable, especially when there is a loss of service during a switch.
- 2.42. If the customer was not charged for the service and the harm from inconvenience, direct costs and other factors (discussed below) are separately accounted for, it is not clear what this form of harm is intended to account represent.
- 2.43. We reiterate our previous comments that from a review of the individual responses, it appears that the survey data is significantly skewed by a small number of extreme responses. In our view (and without detailed analysis of the specific cross-section of these responses) these are likely to fall within the category of loss of service that the New Process would not affect. Consequently, we believe the £12 assumption is not appropriate.
- 2.44. Ofcom's calculations indicate that this generates a benefit from avoided harm of c.£1.1m per year. In our "low" adjustment scenario, we reduce benefit to account for the fact that, at a minimum, 37% of respondents indicated they experienced no harm from the unwanted loss of service. In our "high" scenario, we simply remove this form of harm, as it is not clear what impact it is intended to capture and both the value assigned and the number of switchers it is applied to appear to be significantly overestimated.
- 2.45. As a result, under the "low" adjustment scenario we estimate the benefit from avoided harm to be c.£686k per year and zero under the "high" adjustment scenario.

Direct financial costs

- 2.46. Ofcom's current approach applies an average harm reduction benefit of £18 via direct costs, to each customer that uses the New Process and otherwise may have incurred a loss of service. This generates an estimates benefit of c.£1.6m per year.
- 2.47. When unprompted questions were asked:
- (i) For FLL services, taking a broad interpretation of the survey responses, 8% of customers could reasonably be considered to have incurred this cost.⁵³
 - (ii) For FBB services, taking a broad interpretation of the survey responses, 18%⁵⁴ customers could reasonably be considered to have incurred this cost.
 - (iii) For PTV services, 6% of respondents report an "other" impact, which perhaps may be considered to have generated a direct cost.

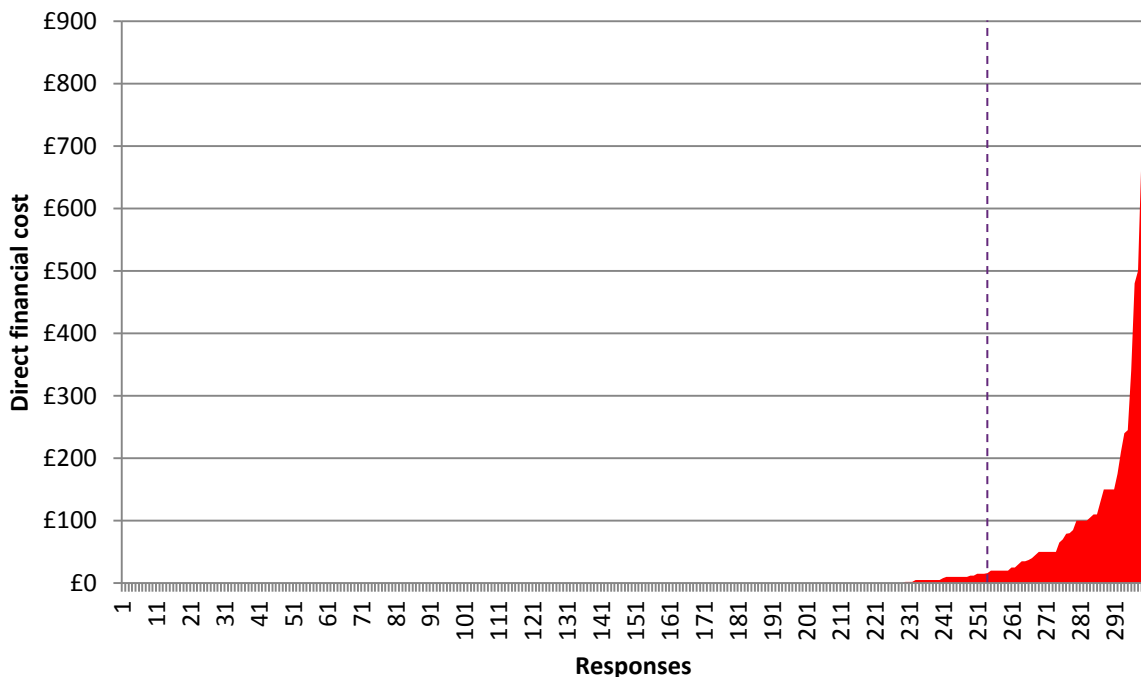
⁵² Footnotes 38 and 43, Consultation Annex

⁵³ Slide 5, BDRC LoS slides. "Increased mobile bill" and "had to use a different location". Note: given the number of respondents incurring a switch-related LoS is too low to report findings on and non-switch LoS are higher than the total sample, we anticipate 8% overestimates the value.

⁵⁴ Slide 6, Research slides. "Unable to complete household tasks", "had to use a different location", "increased mobile bill", "had to buy a mobile dongle".

- 2.48. As the chart below (estimates of direct financial cost associated with the loss of service) shows, when respondents who had experienced an unwanted loss of service were asked to quantify the direct cost to them 76% confirmed zero direct cost.
- 2.49. As noted previously, we believe that of the 15% of customers that Ofcom assumes experience an unwanted loss of service that the New Process will not help to remedy, are at the upper end of estimates of harm experienced. As before, reviewing survey responses in detail shows average results are significantly skewed by a small number of extreme responses.
- 2.50. Excluding the top 15% of results leads to an average direct financial impact of £8.80 for those that provided non-zero responses.

Figure 3: Plot of qa78ab_actual – direct financial cost estimates



- 2.51. Taking these factors into account, for our “high” adjustment scenario, we reduce the average avoided harm from direct financial costs to £8.80 per switcher no longer harmed. We assume that 18% of customers currently experience this harm when switching, based on unprompted FBB responses listed above.
- 2.52. For our “low” estimate, we assume 24% of customers currently experience harm and apply a per person impact of £42.40, based on all non-zero survey responses excluding the top 10 responses.
- 2.53. As a result, under the “low” adjustment scenario we estimate the benefit from avoided harm to be c.£682k per year and c.£189k under the “high” adjustment scenario.

Time unable to work

- 2.54. Ofcom’s current approach applies an average harm reduction benefit of £28 from avoiding being unable to work, to each customer that uses the New Process and otherwise may have incurred a loss of service. This generates an estimates benefit of c.£2.5m per year.

2.55. When unprompted survey questions were asked:

- (i) For FLL services, 3% of respondents incurred a negative impact on work related activities⁵⁵.
- (ii) For FBB services, 9% of respondents incurred a negative impact on work related activities.
- (iii) For PTV services, understandably the survey did not offer this option.

2.56. When prompted, 18% of switchers said there was an impact on their work.

2.57. Of respondents that estimated a non-zero amount of lost working, the average hours lost was 18.2 hours (excluding the two outliers identified by Ofcom), equating to c.£120 of harm, we take this as our “low” adjustment input. In this case we apply the 18% prompted response.

2.58. For our “high” adjustment scenario, we assume that the 15% of respondents that would have had complications as a result of issues unrelated to the New Process sit at the top end of estimated lost working time. For simplicity, we take the highest reported lost working time responses.⁵⁶ Excluding these responses, the subset that estimated a non-zero amount of lost working time reported 2.3 hours on average. We use the 9% FBB unprompted response for those impacted.

2.59. Based on the assumptions above, this would lead to a benefit from reduced harm to being unable to work of c.£1.9m per year in the “low” adjustment scenario and c.£122k in the “high” adjustment scenario.

Time spent to restore service

2.60. Ofcom’s current approach applies an average harm reduction benefit of £25, via the customer no longer spending time to restore service, to each customer that uses the New Process and otherwise may have incurred a loss of service. This is based on an average time spent of 3.6 hours. This generates an estimated benefit of c.£2.3m per year.

2.61. When unprompted questions were asked:

- (i) For FLL services, 0% of respondents incurred time related to resolving the loss of service.⁵⁷
- (ii) For FBB services, 0% of respondents incurred time related to resolving the loss of service.
- (iii) For PTV services, 2% of respondents incurred time related to resolving the loss of service.

2.62. When prompted questions were asked, 29% of switchers said they had to spend time resolving the issue. When respondents were asked to provide a numerical value for the hours lost restoring their service, Ofcom flags that the base of responses was so low that caution is required when using the results. In our view this indicates that the prompted response rate of 29% is likely an overestimate. For our “high” adjustment scenario, we adopt a 1% incidence based on the unprompted responses. Despite our concerns, for the “low” adjustment scenario we use the 29% prompted value.

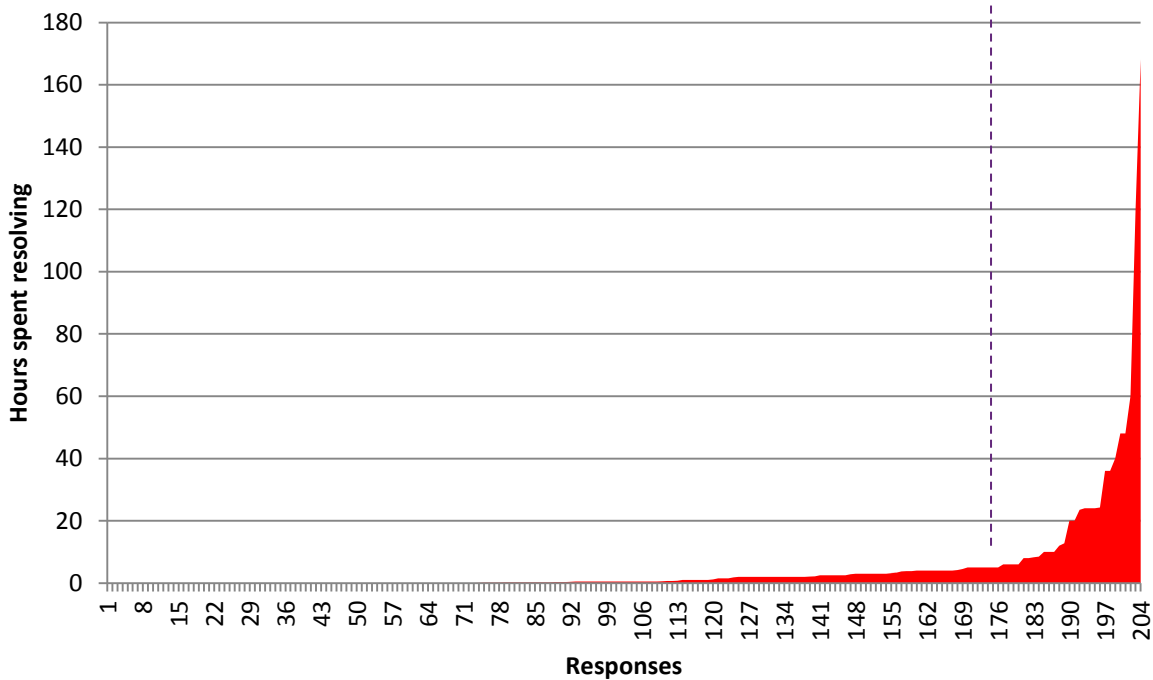
⁵⁵ Based on all FLL losses, as switching related base was too low.

⁵⁶ We recognise that this overestimates the adjustment, but note that Ofcom has the data available to undertake a more accurate adjustment.

⁵⁷ All responses value used as switching-specific responses were too low.

2.63. The chart below plots the actual response (regardless of whether they incurred a switching or non-switching related loss). Similar to our scenarios on lost working hours, for our “high” adjustment scenario we exclude the top 15% of responses (on these basis they are likely to fall into the category of customers which experienced loss of service due to factors that the New Process would not remedy). The remaining subsample of non-zero responses had an average time spent resolving of c.1.8 hours.

Figure 4: Plot of QA10a_actual – time spent resolving



2.64. For the “high” scenario we apply an average time spent of 1.8 hours, based on the subsampling shown above. We use 5.6 hours average based on non-zero responses and excluding the two outliers Ofcom identifies.

2.65. Based on the assumptions above, this leads to a benefit from reduced time spent resolving of c.£1m per year in the “low” adjustment scenario and c.£11k in the “high” adjustment scenario.

Summary

2.66. From the brief analysis above, using more detailed information that Ofcom has published alongside this consultation, the results indicate that GPL would generate between c.£322k to £4.3m of benefit per year (c.£2.7m to c.£37m 10-year NPV) from avoiding loss of service. This is in contrast to Ofcom’s estimate of c.£7.4m (c.£64m 10-year NPV).

2.67. As noted in the introduction to our comments on estimated benefits, we also believe that Ofcom may have overstated the number of impacted cross-platform switchers. For example, asking respondents about the incidence of switching issues over multiple years, yet applying these results to annual analysis and also, in our view, overestimating the number of customers that will adopt the New Process. Furthermore, Ofcom marked-up these estimates for counterintuitive reasons. We have not adjusted these assumptions as part of our analysis.

Taken together, we believe even our own range of estimates may overestimate the potential benefit.

Reduction in double paying

- 2.68. Virgin Media has limited comments on the benefit analysis related to double paying at this time. However, we note that again Ofcom appears to have adopted inputs for the percentage of customers that would benefit from the New Process that its data does not support.
- 2.69. In A8.28 of the Consultation, Ofcom suggests that contract overlap is not desired “*in the vast majority of cases*”. Whilst we do not contend this point, Ofcom therefore acknowledges that some customers do value this option. Ofcom’s survey results indicate that c.18% of respondents that experienced an overlap indicated that this is what they wanted. Furthermore, more detailed questioning indicated that 11% and 18% of respondents, respectively, wanted to ensure they always had a phone and broadband service.⁵⁸ The preferences of this subset of consumers should be taken into account in the analysis.
- 2.70. Therefore, having asked this question, it seems odd that Ofcom would include these respondents in the calculation of customers that would receive reduced harm from no longer having the opportunity to have their contracts overlap.⁵⁹ Some customers may consider it critical that even a temporary outage during the day of a switch does not occur.⁶⁰ In A8.21 Ofcom acknowledges that some ‘early life failure’ occurs on Openreach, which Ofcom indicatively estimates at 15% of cases. Given this, it would not be appropriate to assign a benefit of reduced double payment to customers that desire an overlap to ensure service and therefore either unwittingly lose this benefit or would opt not to use the New Process.
- 2.71. Ofcom’s current estimates lead to a reduction in harm of c.£2.6m (c.£22m 10-year NPV). Conservatively correcting this assumption, using 16% as indicated by survey responses, generates a benefit of c.£2m (c.£17m 10-year NPV).
- 2.72. Ofcom notes⁶¹ that some CPs advise customers to avoid contacting the Virgin Media prior to their services being installed. If customers follow this advice, it is clear that the survey responses regarding double payment for CPS would be inflated; as these CPs are advising customers to incur a longer notice period than is required in all cases.
- 2.73. For completeness, we once again note that the survey results are expected to over-estimate the incidence of double paying as responses may be informed by multiple switching events and we also believe Ofcom’s estimates of the adoption rate of the New Process is likely overstated.

Time saving from an easier switching process

- 2.74. For brevity, we do not provide any specific comments on the estimated benefits of time saving associated with the EC&R option, however many of the comments below are equally

⁵⁸ Slide 44, BDRC main findings pack. Slide 46 indicates that this figure may be as high as 28%.

⁵⁹ We would note, that the survey responses indicate that even on intra-platform switching some customers continue to desire contract overlap.

⁶⁰ For example, this could be for work, safety or health-related concerns.

⁶¹ Para 3.39, Consultation

applicable. Consequently, the section that follows focuses on Ofcom's assessment where the New Process is GPL-based.

Incidence of LP non-contact

- 2.75. Ofcom uses analysis of the Openreach GPL process to identify that approximately 40% of customers that undertake an ORS do not contact the LP. Given that the extension of the GPL to CPS will significantly increase the complexity/diversity of services available via this process, we anticipate that less than 40% of customers will not contact the LP.
- 2.76. The current GPL arrangements allow for the ability/requirement to switch FLL and FBB, all based on services derived from the Openreach service offering. Consequently, the options are significantly more homogenous than CPS and in many ways like-for-like.
- 2.77. In contrast, including CPS brings into consideration VM's FLL and FBB offering as well as PTV. We would contend that not only does our distinctive broadband service offering, but also both Virgin Media's and Sky's PTV offering are likely to lead to more complex decision making by customer and potentially raise the number of questions that customers may have when switching from or to these services. Clearly estimating what effect this will have is challenging, but we would not be surprised if only 20% of customers did not contact the LP, given the context of the switching choice.

Incremental sales agent time

- 2.78. It is feasible for Ofcom to have collected information from the providers on the Openreach platform on the AHT of sales calls before and after the Openreach GPL process was introduced and also to distinguish between ORS and CPS calls. Instead, Ofcom notes, *"the conversation with the new provider would, we reckon, be [...] two minutes longer for those that make use of the GPL process."*⁶²
- 2.79. Given the number of services involved, the need to inform customers of the co-ordination required and the additional questions on process that the sales agent would need to answer in lieu of the conversation with the LP, two minutes appears to be a low estimate for an ORS and certainly for a CPS. 93%⁶³ of survey respondents that called their LP indicated that either their reason for calling (on an ORS) was to find out about the implications of switching or questions related to the switching process. Given these are the reasons given for the purpose of the call, and Ofcom uses an average call time of 13.8 minutes, it seems unlikely that less than 15% of the call duration would relate to this. Therefore, for the proportion of customers assumed not to contact the losing provider, we would expect the GP sales call to be significantly longer.

Use of AHT

- 2.80. As noted in the consultation document, approximately 60% of customers undertaking an ORS still contact the losing provider, with 40% avoiding contact/not finding it necessary. This is,

⁶² Para A8.57, Consultation Annex

⁶³ Slide 59, BDRC main findings pack

broadly, comparable to the 30% of switchers that Ofcom presents as those that desire a cancellation method that avoids agent contact.⁶⁴

2.81. As we noted in response to Ofcom’s mobile switching consultation, it appears to follow logically that customers that desire a communication with the losing provider under EC&R, or to avoid the need to contact the LP under a GPL process, would be customers that otherwise would have short conversations/webchats with the LP agent. As Ofcom’s analysis shows, customers call to cancel their service with a variety of objectives. According to Ofcom’s survey responses between 20-26% of customers call with the expressed intention of either negotiating a better deal with the LP or to talk about their services.⁶⁵ Understandably, these topics for discussion typically take significantly longer on average than, for example, confirming the contract end date. It therefore follows that customers that do not wish to discuss their existing package and would not contact the LP under a GPL process would save significantly less than the overall AHT that Ofcom has currently adopted. A simple analysis of the distribution of call AHTs to Openreach platform operators before and after the introduction of GPL would have identified if such a correlation exists. If Ofcom is not able to collect this information, in our response to Ofcom’s mobile consultation we provided a simple adjustment calculation to reflect this distinction between different types of calls.

Indicative impact of adjustments to time saving

2.82. Ofcom estimates that the introduction of a GPL process for CPS would lead to a net reduction in harm via time savings of c.£460k per year (c.£4m 10-year NPV).

2.83. As noted in the previous sections, a number of the underlying assumptions used in the time saving estimates would be more accurate if a review of OR GPL had been undertaken. In the absence of this, in line with the comments above, Virgin Media has undertaken two alternative scenarios (high and low adjustments) on the GPL process, as follows:

- (i) Reduce the assumed number of switchers that would not contact the LP to 20% (high adjustment) and 30% (low adjustment), to account for the reality that CPS decisions are, by their nature, more complex and diverse.
- (ii) Reduced the assumed cancellation call length and webchat duration by three minutes (high adjustment) and one minute (low adjustment), to reflect the fact that the subset of switchers that would avoid contacting the LP would have had a shorter call/chat duration than the global average in the counterfactual.
- (iii) Increased the assumed incremental sales discussion duration by two minutes (high adjustment) and one minute (low adjustment), to account for the requirement for agents to discuss/explain the switching process with greater complexity than Ofcom allows for.

2.84. Taken together, under the “high” adjustment scenario these changes lead to a net increase in harm via time saving impact of c.-£57k per year (c.-£494k 10-year NPV). Under the “low” scenario we estimate a net reduction in harm of c.£202k per year (c.1.7m 10-year NPV).

⁶⁴ Para A8.47, Consultation Annex

⁶⁵ Slide 59, BDRC main findings pack

Summary of VM-derived benefit scenarios

2.85. Drawing together the various scenarios outlined in the previous sections, the table below summarises the outputs set against Ofcom's estimates.

Table 1: Ofcom/VM comparison of 10-year NPV quantifiable benefit

| Benefit | Ofcom estimate | VM estimate |
|---|----------------|---------------------|
| Reduction in loss of service benefit | £64m | £2.8m to £37m |
| Reduced double payment benefit | £22m | £17m |
| Time saving benefit | £4m | -£0.5m to £1.7m |
| Total estimated quantifiable benefit | £90m | £19m to £56m |

Review of costs

2.86. Ofcom and Cartesian estimate that EC&R may cost industry £29.9m - £31.7m and GPL may cost £23.9m - £25.7m, depending on the back-end system solution. Virgin Media has serious concerns that Ofcom's costings significantly underestimate both the time and resources required to undertake such a significant change to Virgin Media's business operations and customer service functions.

2.87. Virgin Media commissioned Moorhouse to support our technical implementation and operational staff to review and comment on the Cartesian proposals. For brevity, Virgin Media and Moorhouse have analysed one permutation of the proposals, GPL with DCC.

2.88. The remainder of this section summarises the key findings contained in the Moorhouse report and should therefore be read in conjunction with Annex 1.

2.89. We highlight below the key reasons for the cost discrepancies between Cartesian's estimate of £1.69m capex over a 10 year period compared to Moorhouse's estimate of c.£ [X] of capex expenditure in year one alone. Cartesian's estimate of costs are not realistic for changes to systems of this scale and size and fail to consider key costs such as testing and 'unhappy path' scenarios. Virgin Media has based its estimates by benchmarking other projects to ensure the same costs (project management, IT architecture, sales, process training), scalability and potential synergies are accurately captured.

Highly simplified assumptions

- (i) Cartesian has not used any direct input from CPs and has taken a generic view of technical and operational landscapes for the top four providers (for example, by assuming all four providers have the same OSS/ BSS);
- (ii) Cartesian has assumed 'synergies' in delivery that do not apply [X] and has not factored in that other transformation projects will be ongoing on at the same time;
- (iii) Delivery estimates (man-days/ efforts) are based on Cartesian's experience, without real project examples of where similar development has been carried out; and

- (iv) The implementation costs in the model are therefore largely based on Cartesian's own historic cost estimates based on the 10% of MAC switches which needed to adhere to the GPL NoT+ process in 2010. As Cartesian notes its costings "*are informed by our experience in supporting companies implement change to their business operations and our analysis in support of Ofcom's strategic review of consumer switching processes (2010)*"⁶⁶.

Technical naivety versus the reality of the complex architecture

- (i) Both back-end solutions (EMP and DCC) have been presented in a diagrammatical form, which are theory based, rather than actual practical solutions for switching between competitive networks;
- (ii) No design specification has been provided or technical architecture principles to accurately cost the proposals;
- (iii) The lack of design specification has made Cartesian's estimates unreliable particularly given that a harmonised switching process across networks for all broadband, telco and Pay TV services has never been implemented before. Factoring in some contingency costings would have been prudent; and
- (iv) [X].

Multiple factors and costs not explicitly considered

- (i) Cartesian has assumed a very optimistic customer switch where everything is automated, whereas many switch orders may require manual intervention to fulfil;
- (ii) Retention processes and the costs to manage complications arising out of the switching process have not been factored; and
- (iii) Security costs have not been explicitly considered in relation to integrating with multiple providers and the requirement for manual processing for exceptions to the process.

Interaction with mobile switching proposals

2.90. Ofcom notes in 5.87 of the Consultation that there may be cost synergies if triple play switching proposals and timeframes were to be aligned with those contained in the mobile switching consultation. We would agree that there is likely to be value in ensuring consistency of approach across triple play and mobile proposals. It is likely that over time, more consumers will adopt quad play service offers, and therefore avoiding confusion over switching processes would be beneficial to consumers. Equally, assuming this convergence occurs, aligning proposed processes now reduces the risk of inefficient development and implementation costs to change one or both processes in the future.

2.91. [X]. We would therefore encourage consistency of approach and that any back-end system design for either mobile or triple play is completed in the context of anticipating convergence over time.

⁶⁶ Page 13, Cartesian Report on 'Cross-Platform Consumer Switching': Cost assessment

Interaction with benefits assessment

2.92. Cartesian's cost modelling makes use of a number of consistent inputs and assumptions used in Ofcom's benefit assessment, such as the percentage of customers that no longer contact the losing provider under a GPL process and the average time spent by agents serving customers. We reiterate our concerns expressed in our commentary on the benefits analysis that inappropriate assumptions have been used in these cases. When applied in the cost modelling, we believe these overstate the potential time saving for agents. [X].

Comments on implementation capex estimates

2.93. As discussed in section 3.2.2 of the Moorhouse report, the estimates put forward by Ofcom for the expected cost of implementation appear to underestimate significantly the cost and complexity of implementing the proposed changes.

2.94. Whereas Ofcom estimates that the GPL-DCC process will generate £1.69m of capex costs, our implementation teams estimate these costs to be approximately £[X].

2.95. Ofcom estimates front-end systems implementation capex to be £325,344 whereas Virgin Media considers previous projects of comparable scale and the complexity of our existing systems environment, we estimate capex to be c.£ [X].

2.96. Front-end process change costs are estimated to be £[X], approximately [X] Ofcom's estimates. Whilst Virgin Media has reduced the anticipated training effort per agent, we have corrected the number of agents impacted as well as accounted for the cost to procure third party e-learning development.

2.97. Back-end system implementation cost estimates have been increased from Ofcom's value of £211,806 to £[X]. Similar to the front-end system costs; this reflects Virgin Media's prior experience with system changes of this scale and in the context of our existing environment.

2.98. Back-end process changes have been increased from £84,000 to approximately £[X] to reflect the number of agents that will need to be trained as well as the resource backfill, scheduling and preparatory work associated with rolling out training across multiple back-end processing centres.

Additional implementation capex

2.99. In addition to the resourcing requirement, our estimates include for programme-specific management and testing, for a project of this scale Virgin Media would typically include resourcing for end-to-end, stabilisation and validation testing as well as change management, internal communications and engagement resources.

2.100. These two components, in our experience, are critical to ensuring that both the process and systems changes transition from an implementation to live status in an effective manner.

2.101. Our resource requirements for these activities are estimated to add £[X] additional capex to the overall implementation process.

Comments on fixed opex estimates

- 2.102. Virgin Media broadly agrees with the assumed 20% fixed opex ratio applied in Ofcom's cost modelling. Virgin Media has included an additional £[X] to reflect additional handling time in our Sales Order Entry Office and a further £[X] for sales handling time.
- 2.103. When applied to our refined capex estimates, this raises the estimated fixed opex cost from £308,000 to £[X].

Comments on implementation timeframes

- 2.104. As noted above, Virgin Media estimates that the implementation process is significantly more resource intensive and complex than Ofcom's estimates imply. While more detailed timeframe estimates would require greater clarity on scope and requirements, for Virgin Media-specific implementation activities, we estimate that end-to-end implementation would take approximately [X] months, in contrast to Ofcom's estimates of 18 months.
- 2.105. In addition to this internal implementation timeframe, Virgin Media also anticipates that a 6-9 months design period would be required between operators to agree and define all back-end approaches. Virgin Media advocates a hub and spoke approach as the most efficient and futureproof option for CP-CP communication.
- 2.106. Consequently, under Virgin Media's preferred approach, we anticipate a total implementation timeframe of approximately [X] months.