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## Introduction

The Mobile Number Portability Operator Steering Group ('OSG') is the UK's industry forum for agreeing the practical, technological and procedural arrangements to enable consumers to switch mobile provider easily and efficiently, and to ensure that providers can meet their regulatory obligations as set out under General Condition C7.

The OSG welcomes the opportunity to respond to Ofcom's consultation on its *Proposals to implement the new European Electronic Communications Code* ('EECC').

We are concerned at the lack of clarity over how long EECC requirements will apply beyond 2021, and the difficulties this poses for mobile providers who must implement them.

If after the transition period the EECC is not part of a future UK trade relationship with the EU, we note that there may be scope for the UK government and Ofcom to decide either to disapply or remove those parts of the EECC that are not directly relevant to the UK market or have little or no benefit to UK consumers.

In light of this, we would ask that when Ofcom considers EECC requirements, it reviews and identifies, to the extent possible, rules it believes may fall into this category, signalling at the earliest opportunity areas where Ofcom's approach may vary. This will help operators determine how to implement the EECC. On this, we note government policy is to *"implement the EECC with as little impact as possible on businesses, whilst ensuring that they and consumers can make the most of the opportunities the EECC provides."*<sup>1</sup>.

As an example of one key area the UK mobile industry would call for a change on, we challenge the proportionality of the EECC106(3) 'port-after-termination' requirement. Mobile providers see little demand for this in the UK; it appears designed for other EU markets which do not use code-based porting. However, it will be expensive to implement, particularly if Ofcom mandates use of multiple request channels.

We therefore suggest this is a strong candidate for being neither relevant to the UK nor having any significant benefit for UK consumers. Even if Ofcom is required to enforce, we

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<sup>1</sup> DCMS July 2019 *Consultation on Implementing the EECC*.

ask that providers be given the discretion to decide which channels they choose to allow customers to use to make port-after-termination requests.

We also believe that Ofcom has given insufficient time for providers to implement the EECC. We ask that Ofcom carry out further impact assessment work to understand what operators must do to implement the post-termination porting EECC requirements and how long this will take them.

We set out below what is required to implement port-after-termination, and explain why some operators will find the proposed deadline challenging. We consider that post-termination porting should not be an enforcement priority for Ofcom, where operators are able to demonstrate reasonable grounds for finding Ofcom's implementation deadline challenging.

Finally, the new Auto-Switch process took 18 months to implement and is now working well for consumers. We ask that Ofcom confirm that it has no near-term plans to amend this process.

### **Is the EECC106(3) 'Port-after-termination' requirement relevant to the UK?**

In relation to the EECC106(3) requirement for providers to allow customers to port their number up to one month after terminating their contract, we are not aware of any evidence that there is a problem with UK consumers who wish to do this but are unable to do so.

- Unlike most of the other EECC106 portability requirements, the EECC recitals (277-283) do not mention port-after-termination. They give no clue as to what problem exists that 106(3) is trying to address, or its extent and impact, or why a one-month duration was selected.
- In the Switching and Porting section of its consultation, Ofcom says its proposals seek to ensure that *"customers can switch quickly, conveniently and without loss of service, that they are aware of the implications of their decision to switch, are protected throughout the process and are not switched without their consent"*. However, it makes no claim that port-after-termination supports any of these aims.
- The Government makes no mention of port-after-termination in its July 2019 consultation on Implementing the EECC. It gives no clue as to whether this is the sort of rule it would expect Ofcom to review post-Transition.
- As mobile operators, we see very little consumer demand for this facility in the UK. Perhaps this is because most industry players actively promote the availability of number portability when they acquire new customers.
- In most EU countries, a consumer wishing to port, whether in or out of contract, asks their new provider to arrange this under limited power of attorney. In the UK, by contrast, the Auto-Switch process requires *the consumer* to text the *current* provider for a code giving permission to port the number from which the text is sent. Consumers cannot use this process to transfer a number from a *terminated* account;

the code they receive relates to the *current* number, not the old. The new provider will need to advise them to contact the old provider to arrange the transfer. This will create confusion; many consumers will use the wrong process. This confusion will not exist in most EU countries, which do not use code-based porting.

So, with UK operators being unaware of the problem that port-after-termination is supposed to fix, and with neither the EU nor the UK Government nor Ofcom seeking to justify it, and with potential for UK consumer confusion over this process, we conclude that EECC106(3) is neither relevant or appropriate for the UK market and UK consumers. Perhaps it was designed to address issues arising in another EU Member State?

As it would be highly expensive and time-consuming (see below) for operators to implement port-after-termination for little obvious consumer benefit, this must be a strong candidate for regulatory review in the event that Ofcom identifies requirements that might, post-transition, be disappplied or removed as being not directly relevant to the UK and of little or no benefit to UK consumers. In this scenario, we therefore suggest this is a strong candidate for enforcement forbearance, pending regulatory review.

### **How long will it take providers to implement Article 106(3) of the EECC?**

Ofcom states that industry must implement its proposed EECC-driven changes by 21 December 2020. It says that the timing of its consultation will "*still allow UK providers sufficient time to implement those changes by then*"<sup>2</sup>.

We are not clear how Ofcom has arrived at this conclusion. In order to take a view on what is a "sufficient" time for implementation, Ofcom would need to examine the process and system changes that providers must undertake in order to comply with their new obligations. It would need to ask industry players whether they can do this by 21 December 2020, and compare with previous regulatory implementation exercises as a sense check.

We now set out this work a little further. First, we look at the tasks operators must undertake to implement EECC106(3). Then, we consider how long these tasks might take for different provider types, and in the light of previous timetables for implementing new Ofcom regulations. Then we consider the appropriate time for operators to start implementing. Finally, we consider what should happen if it is practically impossible for an operator to meet the deadline.

### **What do operators need to do to implement EECC106(3)?**

In order to comply with the port-after-termination obligations, providers will need to:

- Create a new 'suspended account' state for customers who have terminated their account but not ported their number.

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<sup>2</sup> Ofcom *Proposals to implement the new European Electronic Communications Code* December 2019, para 1.3.

- Store and retrieve personal details for these customers for 30 days.
- Define rules for processing post-termination port requests. (Ofcom's regulated 'Auto-Switch' porting process cannot be used because it relies on the customer sending a text from the number they wish to port).
- Train customer service agents for each of the request channels that Ofcom mandates.
- Verify that any request comes from the legitimate former number holder. (Unlike PAC-based switching, the provider cannot check that the request comes from the number to be switched, so will need to use other forms of identification).
- Explain to customers who have requested a PAC by text using Auto-Switch that this process cannot be used post-termination and advise them to contact their old provider.
- Action the request and recover the relevant number from quarantine.
- Liaise with the new provider to ensure that it provisions the old number at the right time.

All of these tasks will require system changes. Best practice would require that some of these changes are automated.

### **How long will EECC106(3) implementation take?**

Some providers will be able to complete these tasks relatively shortly. Others, particularly those with multiple business stacks and bespoke CRM systems, will take much longer.

To assess how long, let's consider the 2018 Auto-Switch reforms. After examining and consulting on the required provider tasks, Ofcom allowed 18 months for implementation. This turned out to be about right. Providers and third parties were testing the new processes down to the wire, but managed to launch, as required, on 1 July 2019.

While there are obvious differences, the nature of the Auto-Switch and port-after-termination reforms, and the type and scale of the system and process changes required to implement them, are similar. Auto-Switch therefore provides a reasonable benchmark, or at least a good starting point, for assessing port-after-termination implementation. We consider further discussions with industry would be helpful to determine appropriate timing for implementation.

### **How long does Ofcom consider EECC106(3) implementation will take?**

Providers will only start implementing the EECC once enforceable General Conditions ('GC's) are in place. For this, Ofcom must publish the final GCs and a statement setting out its approach. Government must also amend the Communications Act to give Ofcom new powers to implement (for example in relation to EECC107), and to update definitions (for example around electronic communication services).

Ofcom's consultation closes in early March 2020. Assuming that neither the Government nor the Ofcom consultation raises issues which require further consultation, Ofcom might publish its statement by, say, June 2020 at the earliest (although we note that the Government has not yet concluded the EECC implementation consultation that it started on 16 July 2019).

If this is right, providers would then have around six months to implement, from the point at which the GCs become enforceable until the transposition deadline. If our estimate that it could take some providers a time period exceeding 6 months to implement Ofcom's post-termination porting proposals is correct, it will clearly be impossible for them to meet this timetable. Ofcom must take some responsibility for this.

### **Recipient-led switching**

The Auto-Switch process is working well for consumers. It is smooth, efficient, and keeps them well-informed before and during the switching and termination process; porting volumes have risen since it was introduced.

However, Ofcom says "*We believe the existing regulated ... "text-to-switch" process for mobile customers [is] already in line with the EECC and our proposed new rules. Therefore, we are not proposing substantive changes to these processes at this stage.*" (our emphasis).

We are concerned at the words "*at this stage*". Does Ofcom have doubts on Auto-Switch? Does it plan to make substantive changes any time soon? We request that Ofcom confirms its position on this as soon as possible.