



Uswitch response to Ofcom's consultation on fair treatment and easier switching for broadband and mobile customers

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Contact

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1 Executive summary

- 1.1 Uswitch is broadly supportive of Ofcom's overall approach to implementation of the European Electronic Communications Code (EECC) as part of its broader fairness for consumers agenda.
- 1.2 We think many of the measures in the EECC represent an alignment with consumer expectations created in other comparable sectors, many of which are changes that we see as long overdue in communications. We think that Ofcom should be entirely clear that although transposition of the EECC provides a vehicle to implement these improvements, it would in any event seek to implement them under its own powers irrespective of whether the requirement to transpose was in place or not.
- 1.3 We do see there are some elements of Ofcom's proposals where we would encourage a higher level of ambition to increase the chances that meaningful improvements make it through to actual consumer experience.
- 1.4 We would welcome the opportunity to discuss any aspects of our response with Ofcom further, where it is useful.

About Uswitch

- 1.5 Uswitch is the UK's leading comparison website for home services switching.
- 1.6 Launched in September 2000, we help consumers save money on their gas, electricity, broadband, mobile, TV, and financial services products and get more of what matters to them.
- 1.7 Uswitch is part of RVU, a digital marketing business incorporating the Bankrate UK, Money.co.uk and Uswitch businesses.

Cross-platform switching

- 1.8 As broadband access networks become more numerous with a continued rollout of full-fibre, we see it as absolutely critical to future market competition and consumer choice that a genuinely gaining provider led process for cross platform switching is implemented.
- 1.9 Uswitch has been engaged in past Ofcom attempts to make progress in cross-platform switching. It is a complex problem to solve. For real progress to be made we believe that Ofcom will need to demonstrate strong commitment with the appropriate level of engagement.
- 1.10 We consider it would be useful if Ofcom indicated that it would in any event seek to implement a cross-platform gaining provider led switching solution, irrespective of ongoing negotiations regarding the UK's future relationship with the European Union. We see it as critical that Ofcom does not let the complexity of the task delay progress to be point where the project could be 'timed out' after the transposition deadline in December 2020.

Mobile device unlocking

- 1.11 We welcome Ofcom's proposals on mobile device locking. We think the approach that some providers are currently taking increases the perceived (and often actual) switching cost for customers.
- 1.12 However, as Ofcom estimates that there are approximately 20 million customers currently with a locked handset, we do not think it is sufficient just to correct the problem for new handsets issued. We believe that Ofcom should take steps to require providers to remotely unlock any existing locked handsets to the fullest extent technically possible.

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3 Provision of information

Contractual information

Question 2: Do you agree with our proposed changes to the GCs to implement Article 102, as set out at Annexes 11 and 16?

Question 3: Do you agree with our proposed guidance in Annex 6 on our expectations for how providers should comply with the provision of contract information and the contract summary?

- 3.1 Uswitch agrees with the approach Ofcom proposes to take to strengthen the information providers are required to issue before a customer enters into a contract.
- 3.2 We have the following comments on several aspects of the proposals.
- 3.3 **Durable medium:** We agree that provision of core contractual information via a durable medium is important. Customers should be able to easily hold their providers to account with information provided at point of sale.
- 3.4 **Account management services:** While we agree it is important providers issue core start-of-contract information via durable medium, Ofcom should recognise that over the course of a contract lasting up to 24 months consumers will not always be able to easily locate these details.
- 3.5 We think it is more likely that consumers will want to review information such as contract end date and early termination fees towards the end of their contract, where it is more likely that factors have changed and customers begin to consider their future options.
- 3.6 Therefore we suggest that Ofcom goes further in its guidance beyond durable medium information at the start of contract. We think core contractual information should also be prominently and in its entirety available via providers' authenticated online accounts services and linked to by any bill communications issued to customers throughout the duration of the contract.
- 3.7 **Inflation-based price increases:** We support Ofcom's analysis that inflation-linked price increases are often not being explained sufficiently by providers. While we appreciate that issuing guidance to providers to provide worked examples of how these automatic price increases could operate represents an improvement, we expect this will not be sufficient to remove consumer frustration with the practice.
- 3.8 We discuss this further in response to Ofcom's proposals related to contract termination below.
- 3.9 **Usage management:** We agree with Ofcom that with respect to mobile contracts, notifications where a usage limit is hit will be a useful tool for customers to manage costs.
- 3.10 While exceeding usage limits can have significant costs for customers, many consumers also 'overbuy' usage allowances where in practice they never come

close to making full use of the services they are paying for.¹ We think that Ofcom should therefore also explore issuing guidance on proactive notifications providers could make on package utilisation, particularly for mobile contracts that are out-of-contract or approaching the end-of-contract.

Third party data access

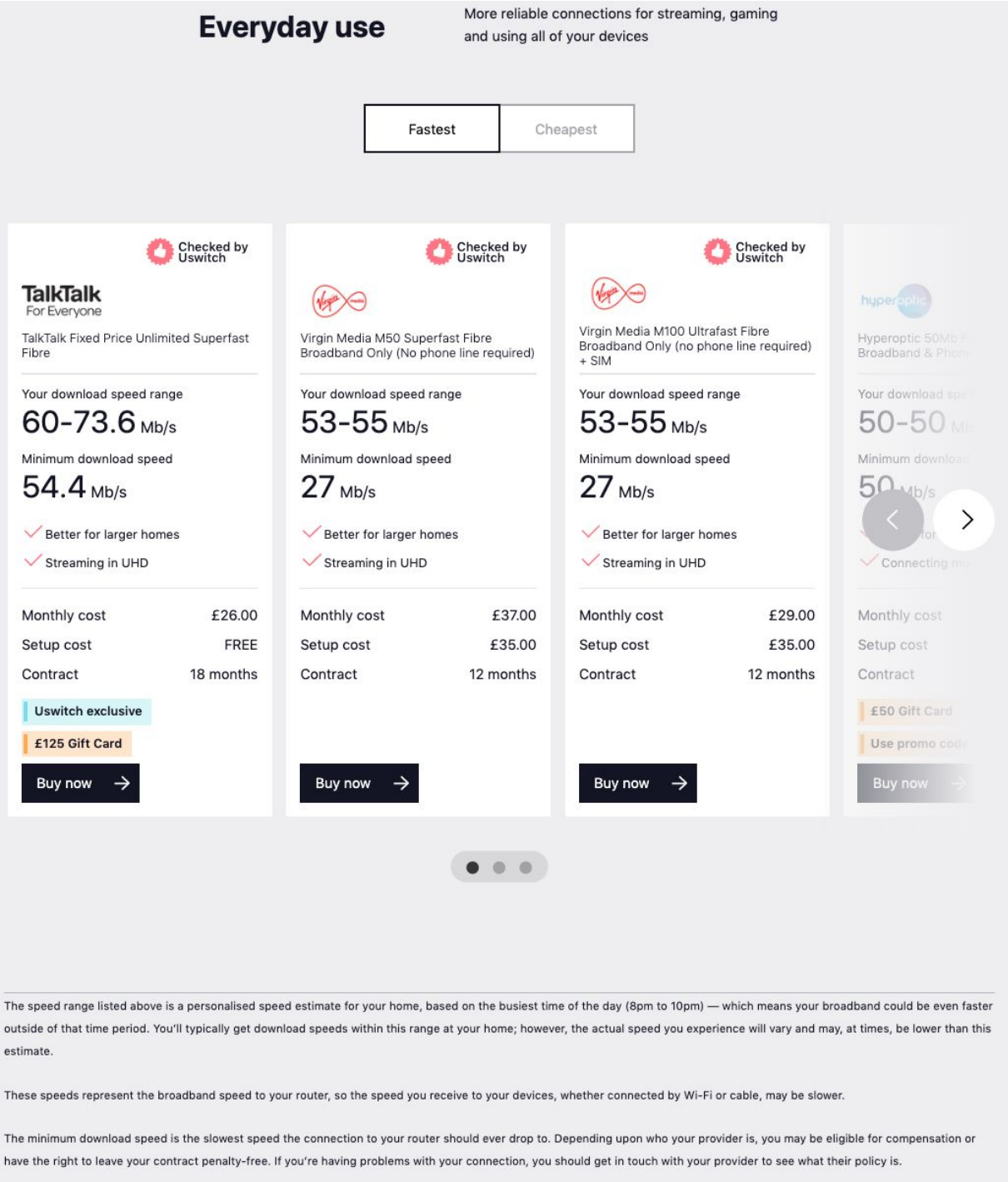
Question 4: Do you agree with our proposed changes to the GCs to implement Article 103 and our proposed approach to implementing Article 104, as set out in Annex 11?

- 3.11 Uswitch welcomes Ofcom's approach to third party data access as an effective means of getting better information to consumers.
- 3.12 We note there has been significant progress within industry towards enabling access to premises-level broadband speeds and availability information.
- 3.13 In February 2020 Uswitch launched an early beta consumer tool designed to surface to address-level speeds and availability to consumers aggregating information from different underlying networks, including Openreach, Virgin Media and Hyperoptic, shown in Figure 1 below.
- 3.14 We note that at time of writing some retail providers have not yet provided the information required for inclusion in this service, including BT and Sky.

¹

<https://uswitch.com/media-centre/2018/02/data-sink-143-million-gigabytes-mobile-data-unused-customers-every-month/>

Figure 1: Screenshot of Uswitch beta network checker tool results, March 2020²



4 While we think it is appropriate for Ofcom to monitor these developments, we think it is probable that a voluntary solution will be sufficient to deliver the desired improvements for consumers. Notwithstanding the voluntary approach taken to date, we think Ofcom should be open to extending the data requirements in draft GC C2.21.

4.1 With respect to price and tariff information, we consider that such information generally flows well to comparison tools in the UK market. This information is primarily pricing of current tariffs available to new customers. We think there may

² <http://uswitch.com/broadband/network-checker>

be room for development in provision of pricing information relating to a customer's current deal as well as greater provision or sharing of retention offers in the market. In the energy market for example, it is commonplace for comparisons to be based on the delta between current deal and new deals available to the customer, requiring pricing information relating to both tariffs.

- 4.2 We caution that draft GC C2.20 may ultimately limit how effective draft GC C2.19 is in giving data access to a wide range of comparison tools. We expect that this GC will create an ability of the provider to itself assess whether it considers a comparison tool seeking data access is meeting the requirements. Should a provider be minded to reduce access to data, the draft GC could be interpreted in a fairly subjective way thereby limiting how widespread data access is.
- 4.3 We appreciate that the Ofcom's PCW accreditation scheme may offer comparison tools a shortcut to demonstrating compliance with these requirements, but we do not think it is appropriate that membership of the accreditation scheme becomes the de facto way to demonstrate these conditions are met for the purposes of data access.

5 Contract duration and termination

Rights to exit

Question 5: Do you agree with our proposed changes to the GCs to implement the requirements in Article 105, as set out in Annex 12?

- 5.1 We welcome the proposed changes to strengthen consumer protections when in seeking to terminate communications contracts.
- 5.2 Uswitch has the following comments on various aspects of these protections.
- 5.3 **Rights to exit following contractual changes:** We welcome Ofcom’s proposed changes to enhance consumer protection where a customer could exit a contract where changes are made not exclusively to the customer’s benefit.
- 5.4 With respect to bundled contracts, we agree with Ofcom that it is appropriate that the right to exit when triggered is applied to the entire bundle rather than just the impacted elements.
- 5.5 We note Ofcom’s proposals on lifting restrictions on terminal equipment on exit with respect to mobile devices. For broadband, some providers will lock provided router equipment to its network and/or make it practically difficult to use it with a different network. We believe that in the event providers allow customers to retain broadband routers on cancellation or switching, routers should be enabled so that they can be used on customer’s new broadband connection. We would reduce the hassle involved in changing WiFi passwords for devices in the home, reducing switching cost.
- 5.6 **Inflation-based increases:** We understand that ‘known’ subscription price changes agreed by the customer at the start of contract will be exempt from a right to terminate for free. While we absolutely see the value of this requirement for short-term discounts (e.g. ‘half price for six months’) we think more should be done to understand the impact of inflation linked increase clauses common across mobile and some broadband contracts.
- 5.7 While we appreciate that inflation-based increases can conceptually be made clearer to a consumer at point of sale so they can take the factor into account, we think two issues potentially arise. Firstly, in the event that the majority of providers all take a similar approach, consumers do not have the ability to avoid such terms even if they are clear. Secondly, we are not sure that consumers can or should be expected to make a prediction on future inflation as part of their assessment of a provider’s offer.
- 5.8 We note at paragraph 4.47 of Ofcom’s consultation, Ofcom raises that price changes under this rule are a frequent source of consumer complaints. We also note Ofcom’s proposed remedy for this is to require greater transparency on how this price changes may work in practice at point of sale.
- 5.9 We are not convinced that it is reasonable to transfer the burden of cost inflation risk from the provider to the consumer. Over the course of an up to 24 months contract, providers should be able to fairly confidently anticipate and model its future cost base over this period and therefore reflect it in a fixed subscription price for the duration of the initial contract period.

- 5.10 **Contract duration:** We agree that Ofcom should retain the requirement to offer contracts of 12 months. We agree with Ofcom’s analysis that these products can be useful particularly for more vulnerable customer groups. With respect to fixed broadband products, these also can prove useful to consumer segments that will not always be considered vulnerable, such as students and private renters more likely to only require services at a property for the duration of a 12 month tenancy.
- 5.11 We highlight that even under this rule, it is rare for providers to actively market 12 month products (save for SIM Only mobile tariffs) with anything close to similar prominence to longer term contracts. We think this limits the effectiveness of the offer addressing consumers for whom it would be useful.
- 5.12 We note Ofcom has proposed to push back its implementation date of its proposals on linked split mobile contracts to the transposition date.

Question 6: Do you agree with our proposed changes to the existing guidance as summarised here and set out in Annex 7?

- 5.13 Broadly Uswitch is supportive of the changes Ofcom has set out.
- 5.14 We note that guidance suggests providers should offer non-real methods to terminate their contract, including “non-real-time options, such as by letter, email or via an online account”.
- 5.15 We think that having an online non-real-time method of terminating a contract is an important device available for customers that is too often unavailable or difficult to access.
- 5.16 We think this is a good opportunity for Ofcom to amend its guidance to make clear that a letter or email would not be sufficient as the sole means of non-real time options for cancellation. We suggest it is clear that for providers that allow consumers to sign-up to a product online with the provider without a real-time interaction, it should also offer an online way for the customer to cease the contract without needing a real-time interaction.

6 Switching processes

- 6.1 Uswitch believes that switching processes being as low friction for consumers as possible is a vital mechanism to support competition. We consider that given the evolution of fibre network investment with more networks becoming available, maintaining the status quo in switching processes would lead to substantial increases in like-for-like switching costs over time.
- 6.2 Ofcom has looked at cross-platform switching on various occasions in the last ten years, since the Strategic Review of Switching in 2010.³ In 2016 Ofcom proposed processes to enable gaining provider switching between broadband networks.⁴ Ofcom ultimately withdrew its proposals. Uswitch is keen that these proposals do not meet the same fate.

Stagnation of switching in communications markets

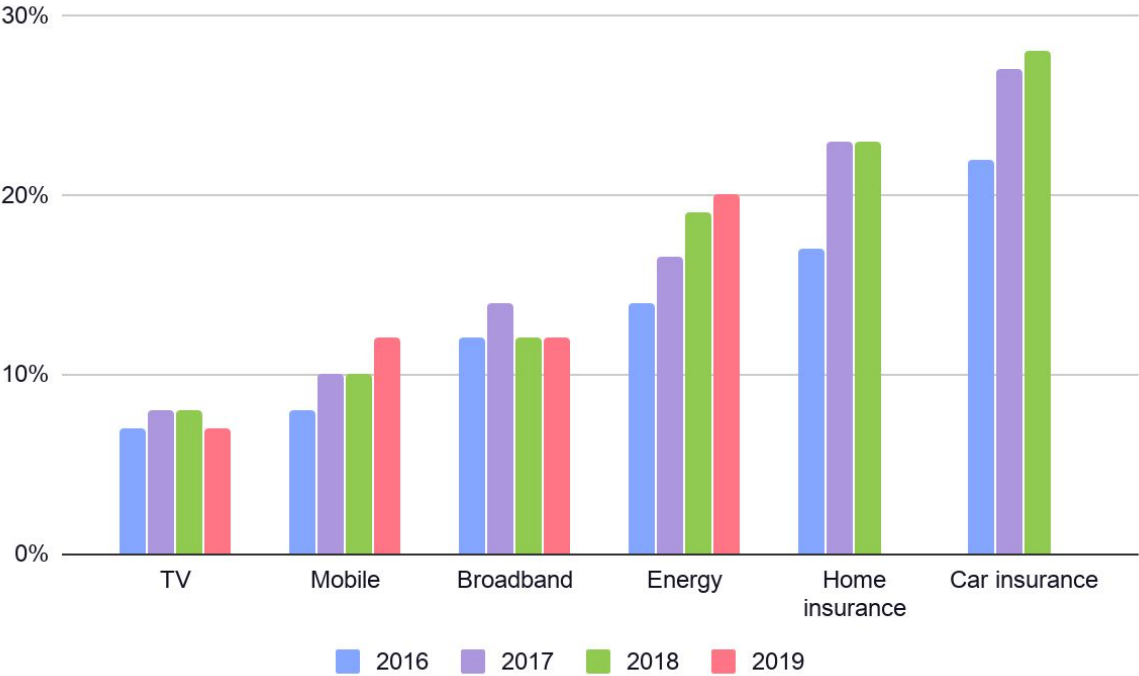
- 6.3 We do not think that higher switching levels in and of themselves should be a measure of success. Consumers seeing switching as easy exercises a competitive constraint on incumbent providers even without the customer switching, as it creates an economic incentive for the provider to make an effort to retain. While high switching levels are not the outcome, low switching levels compared to other markets can highlight that a perceived and/or actual switching cost is too high for customers.
- 6.4 As shown in Figure 2 below, switching in communications markets has been consistently below other comparable sectors, including energy, home insurance and car insurance. Some of the absolute difference in switching between sectors may be explained by product differences (for example, greater use of 18-24 month contracts in communications compared to more common 12 month contractual periods in other sectors). However, if the consumer engagement and switching process was effective in communications, one may have expected the growth trend in switching seen in other sectors to be replicated in communications. We highlight that communications switching has been broadly stagnant in recent years (save for mobiles where it increased in 2019).⁵

³ https://www.ofcom.org.uk/__data/assets/pdf_file/0025/54169/switching.pdf

⁴ https://www.ofcom.org.uk/__data/assets/pdf_file/0030/58845/making-switching-easier.pdf

⁵ We note the fieldwork for Ofcom's 2019 switching tracker was conducted within two months of the implementation of Text-to-Switch.

Figure 2: Annual switching rates by sector, 2016-2019



Sources: Ofcom Switching Tracker 2016-2019, Ofgem State of the Market Report 2019, GoCompare annual switching report 2019

6.5 Other sectors with annual switching rates significantly higher than communications are continuing to iterate and improve switching processes. For example, in the energy market, Ofgem’s faster, more reliable switching programme⁶ is designed to overhaul the entire gaining provider led switching process that will ultimately allow switching to be processed in one working day, compared to a typical 17 days currently. We note this work is a significant programme for Ofgem, involving detailed regulator and industry involvement. The programme is also considering the experience of consumers seeking to switch via comparison services, with a view to ensuring that such intermediaries have access to relevant data points.

6.6 Switching processes can be complex in the back-end, often requiring a significant drive from the industry regulator to drive forward improvements - but the prize is significant. Smooth switching processes reduce switching costs and improve the functioning of a competition market to the benefit of consumers.

Proposed new switching requirements

Question 7: Do you support our proposals to introduce (a) new general switching requirements for all types of switches for residential and business customers and (b) specific switching requirements on information, consent, compensation and notice period charges for residential customers?

6.7 Uswitch agrees that the general switching requirements in the EECC should be transposed into the General Conditions by the transposition deadline. However, we think it is likely to be necessary for Ofcom to take a more prescriptive approach for

⁶ <https://www.ofgem.gov.uk/gas/retail-market/market-review-and-reform/smarter-markets-programme/switching-programme>

residential cross-network broadband switching if we are to achieve gaining provider led switching.

- 6.8 We note that building a switching system that is future proof is a complex task. We believe that Ofcom must approach it with the degree of resourcing and focus it necessitates.
- 6.9 We are concerned that if Ofcom relies on the EECC alone as the regulatory basis for switching reform, it leaves the opportunity to be 'timed out' at the end of 2020. We suggest that Ofcom makes clear that notwithstanding the requirements in the EECC Ofcom will in any event use its powers to pursue these improvements.
- 6.10 We strongly agree that the approach Ofcom has taken with notice periods for mobile network switching and believe this should be extended to fixed services, particularly with a growing number of providers offering both. How and whether notice periods apply when switching can already be confusing to consumers, not aided by the lack of clarity often seen in provider communications talking about that a 'notice period *may* apply'. We also do not see that notice periods as a losing provider action is particularly compatible with gaining provider led switching processes. We strongly favour notice periods not applying when switching.

Compensation for residential customers

Question 8: Do you support our proposed guidance in Annex 8 on compensation for residential customers?

- 6.11 We are generally supportive of Ofcom's proposed approach on compensation. We would prefer the guidance is more explicit about the levels of compensation appropriate, so it is more straightforward to explain to customers what they should expect.
- 6.12 We think it is appropriate to keep under review whether guidance is effective. We believe the providers should treat the amounts set out in the Ofcom's Automatic Compensation Code of Practice as the minimum expected, with more due to consumers if the specific circumstances warrant it.

7 Disincentives to switch

Handset locking

Question 9: Do you agree with our assessment that device locking can deter customers from switching and cause customer harm?

- 7.1 Uswitch agrees that device locking can deter customers from switching and therefore causes customer harm.
- 7.2 Customers having to contact their provider for a device to be unlocked, even when the process does not require payment of fee still adds to the hassle factor involved in switching. As set out at paragraph 8.41 of Ofcom's consultation document, the range of time providers give for an unlocking request to be completed is generally between 48 hours and 10 working days; in all cases longer than it would take to execute a switch under the text-to-switch process.
- 7.3 In addition, the detrimental effect is compounded by the lack of consistency in how networks approach this issue. This limits the effectiveness of marketing of alternative products seeking to encourage a customer to move a better deal.
- 7.4 We do not see any particularly strong reason why in today's market handsets should be sold locked to a particular network. In the case of pay monthly contracts, early termination charges are sufficient protection for providers that need to recover the upfront cost of a handset provided to a consumer as part of a bundled contract. One could argue that is likely the primary reason a provider would seek to lock a device to its network and create a process a customer has to go through to unlock it is to reduce churn on the basis of creating hassle.
- 7.5 We note that some providers have raised concerns about fraud and bad debt that may rise if they were required to sell unlocked handsets. Given that O2, Sky, Three and Virgin Media all sell unlocked devices, Ofcom is in a strong position with its information gathering powers to understand how strong an argument this is. Given there are several providers offering unlocked handsets at scale, it seems unlikely to us that any costs arising from unlocking devices will be significant. In any event we would expect a level playing field among providers on this issue would support the competitive dynamics in the market.

Question 10: Do you agree with our assessment of the effectiveness of Options 1 and 2 in reducing the consumer harm that can result from device locking and the impact on providers of Options 1 and 2?

- 7.6 Uswitch agrees that Option 1 would be more effective in meeting Ofcom's policy aims as it offers the simplest process for consumers and should be the most straightforward for providers to implement.
- 7.7 Option 1 is also the most straightforward to explain to consumers and therefore has a greater chance that those offering consumers better deals to switch to will be able to redress customer perceptions of switching hassle.
- 7.8 As discussed below, we do think that elements of Option 2 should be explored with respect to the existing customers that already have a locked handset.

Question 11: Do you agree with our proposal to prohibit the sale of locked mobile devices?

- 7.9 Uswitch agrees with Ofcom's proposal to prohibit the sale of locked mobile devices.
- 7.10 We do believe that Ofcom should go further in this area to reduce the disincentives to switch for the customers who currently have a locked device. Ofcom estimates that there are around 20 million customers with a locked device. We see this is a concerningly large number of customers currently impacted. For these customers, receiving an end-of-contract notification or annual best tariff information highlighting the value they could unlock by moving to a SIM-only plan could be a wasted opportunity if the locked device creates an undue disincentive.
- 7.11 If Ofcom believes there to be consumer harm arising from the current practice of new handset being sold locked to a network, we think it is reasonable to expect Ofcom to assess the case for addressing the legacy harm for consumers.
- 7.12 We expect many of these customers will have lapsed out of their initial contract period, or in the case of PAYG customers, enough time has elapsed with a provider that any reasonable period of handset cross-subsidisation is concluded.
- 7.13 We suggest that Ofcom mandates providers in the course of the 12 months that follows Statement publication where it is technically possible, remotely unlock all impacted devices that it has provided originally under a pay monthly contract. Providers should with a one-off specific durable medium communication confirm to customers that their device has been unlocked.
- 7.14 Where it is not technically possible to automatically remove device locking, we suggest providers should proactively send the relevant unlocking code (where possible) or where no other option is possible, send a proactive communication with the appropriate instructions.

Non-coterminous linked contracts

Question 12: Do you agree that we should protect customers by issuing guidance on our proposed approach when considering the case for enforcement action against non-coterminous linked contracts?

- 7.15 Uswitch welcomes Ofcom's analysis of the potential for significantly increased switching costs that can arise from interdependent communications contracts with differing contractual end dates.
- 7.16 We agree that Ofcom should issue guidance to support the general requirements that non-coterminous linked contracts should not as a disincentive to switch.

Question 13: Do you agree with our proposed guidance in Annex 9 which sets out our proposed approach to assessing whether certain types of non-coterminous linked contracts are likely to act as a disincentive to switch?

- 7.17 It is correct that often consumers entering a non-coterminous linked contractual arrangement with a provider can unlock initial value compared to unbundled offers from the same provider. However, this may be because providers have structured such deals as the only way to access this value, and as such consumers may enter these arrangements out of necessity rather than representing any inherent demand

for such contractual arrangements. Most consumers can not reasonably be expected to assess future increased switching costs at the time of entering the contract. Given this, we think that in its guidance Ofcom should place less weight on consumer understanding of the implications at the point of sale than as currently drafted.⁷

- 7.18 We think it is reasonable for Ofcom to consider the specific factors in the use of non-coterminous linked contracts. However, we think the strongest mitigating factor should be whether the provider offers a way for a customer to break a cycle of a customer needing to perceptually re-contract different service elements to different periods to avoid higher charges. We think providers should be encouraged to find mechanisms to reduce the financial penalty of ceasing one element of the bundle when the element's initial contract period ends. Alternatively providers could be encouraged to allow the consumer to take steps to align the contractual end dates.
- 7.19 We observe that Ofcom's draft guidance is relatively high-level. As such we think it is likely that as a first-order response most providers engaging in this practice are likely to continue until Ofcom tests its guidance within its enforcement programme. We suggest that Ofcom makes clear it is likely to open an enforcement programme to assess the specific cases against the guidance shortly following implementation of the guidance.

eSIMs

- 7.20 Considering disincentives to switch more broadly in the mobile market, we suggest that Ofcom monitor the growing use of eSIM technology in the handsets, where physical SIM cards are being replaced by a digital counterpart in a growing number of devices.
- 7.21 We understand that eSIMs are currently only available via O2 and EE for smartphones, with Three said to be trialling from the end of 2019. With the current limited choice in eSIM providers, we see a risk that consumers are constrained in choice of provider, purely through technical limitations. We think it is worth considering the likelihood this could have a similar practical effect to handset locking.

⁷ Paragraph A9.17 of Ofcom's consultation document