Consumer switching

A consultation on proposals to change the processes for switching fixed voice and broadband providers on the Openreach copper network

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Consultation

Publication date: 9 February 2012

Closing Date for Responses: 23 April 2012

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- An individual consumer's experience of switching communications services is easy and hassle free.
- Switching processes do not get in the way of providers competing with each other to deliver benefits to all consumers in terms of lower prices, greater choice, innovation and value for money.

1.3 Our review focuses not only on addressing current problems but also on ensuring that switching processes and systems are capable of providing good consumer and competition outcomes in the future.

1.4 In order to benefit from competition, consumers must have the confidence that they are able to exercise choice. This means that consumers should be able to switch between services and providers without undue effort, disruption and anxiety. A lack of confidence in the switching processes may mean consumers choose not to switch. This means consumers will not receive the benefits from competition they should be able to expect.

1.5 Switching processes also need to be robust to accommodate market developments such as increased bundling of services and any future emergence of new technologies and services.

1.6 In this part of the review, we are consulting on specific proposals for switching fixed voice and broadband services delivered over the Openreach copper network. Future parts of the review will consider cable technologies, next generation access (NGA) technologies, mobile and Pay TV services.

Problems with current switching processes

1.7 We have identified a number of problems with switching fixed voice and broadband services delivered over the Openreach copper network. The nature and extent of the problems varies according to the different switching processes currently in use. Some of the problems identified are also likely to get worse in the future as a result of developments in the market.

1.8 The processes that are currently used for switching fixed voice and broadband services over the Openreach copper network are:

- The Notification of Transfer process. This is a Gaining Provider Led process where the consumer only needs to contact their (new) Gaining Provider to switch. The Gaining Provider informs the (current) Losing Provider on behalf of the consumer in order to organise the transfer. The consumer receives letters from both providers confirming the planned switch before it happens. This provides an opportunity for the consumer to stop the order going ahead where they change their mind or in cases

where they have no knowledge or have not given their consent to the attempted switch.

- The Migration Authorisation Code process. This is a Losing Provider Led process which applies to broadband only. It means that if a consumer wishes to change their provider, they need to obtain a code from the Losing Provider and give it to the Gaining Provider. On receiving a request for the code, the Losing Provider carries out checks to confirm that the consumer making the request is the legitimate account holder and has an opportunity to discuss the implications of switching with the consumer. The consumer must supply the code to their Gaining Provider to allow the switch to go ahead.

- The Cease and Re-provide process. Where there are no agreed switching processes in place which enable a seamless transfer of services between providers, we describe the process as Cease and Re-provide. Here, the consumer terminates their contract with the Losing Provider and requests a new service from the Gaining Provider. This process requires the consumer to manage the stopping and starting of their services.

Multiple processes

1.9 Currently there are multiple switching processes for switching the same type of service. The switching process that a consumer should follow depends on a number of factors that are not visible to the consumer such as the technology used by their Losing Provider and by their Gaining Provider. This makes it difficult to give clear general advice to consumers about how to switch their fixed voice and broadband services and may increase consumer perception that switching is difficult.

1.10 The technologies underpinning fixed voice and broadband services are getting more complex and this will make it more difficult in the future for Gaining Providers to reliably and accurately inform the consumer of the correct switching process to follow.

1.11 Consumers switching bundles may need to navigate different switching processes at the same time, adding to the complexity and hassle associated with changing provider. The continuing trend towards bundling suggests that this concern is likely to get worse in the future.

1.12 Multiple switching processes can distort competition between providers. A lack of competitive neutrality arises when it is easier and/or less costly to gain customers under some processes than others. Providers who are more likely to gain customers under the relatively easy process and less likely to lose them under the relatively difficult process are likely to be at a competitive advantage relative to other providers.

Back end system deficiencies

1.13 Our evidence suggests that there are problems with current switching processes behind the scenes (away from the consumer) and these are likely to get worse in the future. This involves providers correctly identifying and validating the services and physical line to be switched and then coordinating the processes to allow the switch to go through seamlessly.

1.14 In certain circumstances the current switching processes cannot reliably identify the correct line to take over which leads to the wrong line being taken over. This affects an estimated 130,000 households per year and can result in households losing

service, telephone number, or both. We expect that, absent changes to the processes, reliability will get worse in the future as new services and technologies are rolled out and it becomes more difficult to identify the right line and service to switch.

1.15 To enable consumers to efficiently switch between providers that are delivering the service over Metallic Path Facility technology, the new provider needs to support some additional system capabilities. However, some of these providers have chosen not to support these capabilities making it more difficult for consumers to switch.

1.16 Because of the deficiencies outlined above, some providers do not follow industry agreed switching processes and instead ask the consumer to 'cease' their existing service and start a 'new provide' with them – this is called Cease and Re-provide. This approach is burdensome to the consumer (e.g. connection and cease charges, more hassle and potential loss of telephone number and/or service) and inefficient for providers. Evidence suggests that 42% of consumers that went through Cease and Re-provide should have gone through the industry agreed processes.

1.17 The industry agreed back end switching processes are intended to ensure continuity of service when the consumer is switching providers. If they are followed, this tends to work well when switching one service. However, many providers' current systems can't easily cope with switching more than one service simultaneously. This means that they sequentially switch services in a bundle with around one in five broadband switchers losing service for an average of one week.

Insufficient consumer consent and slamming

1.18 'Slamming' occurs when a consumer is switched to another provider without their explicit knowledge or consent. Slamming occurs largely due to a lack of upfront checks within the Notification of Transfer process to ensure the correct identification of the customer, together with their authority and agreement to switch. An estimated 520,000 households have their fixed voice and/or broadband services slammed each year.

1.19 Slamming often creates significant harm for consumers affected, whether that is in the form of distress, time and effort trying to resolve the situation, and/or financial harm where consumers are charged an early termination charge (ETC) if they are slammed during a minimum contract period.

1.20 Slamming creates significant costs for providers who need to deal with consumers who have been slammed and take steps to rectify the situation where the customer decides to switch back to their original provider. These costs may ultimately be borne by consumers in the form of higher prices.

1.21 Slamming may also distort competition. Research provides indications that a significant proportion (between 28% and 60%) of consumers who had been slammed were not restored to their original provider. This may be because they did not want to spend time trying to resolve the situation or because they did not want to pay an ETC to the provider who slammed them.

Lack of awareness of the implications of switching

1.22 When consumers switch, they may have contractual liabilities with the Losing Provider (e.g. ETCs) or there may be other service implications (e.g. switching affects prices for other services they may continue to take from the Losing Provider).

1.23 Currently, some consumers receive vague or potentially misleading information about the implications of switching providers, or do not receive the information they need as part of the switching process to allow them to make an informed decision about whether to switch.

1.24 Consumers suffer harm if they find out about the implications of switching later on in the switching process and need to incur costs (time and hassle) cancelling the order as a result of the information. Unwinding orders also imposes costs on providers which may ultimately be borne by consumers.

Other forms of hassle

1.25 Consumers may spend more time than necessary going through the switching processes. This may happen where they find the process difficult and/or where they have to contact multiple Losing Providers in order to form a bundle of services. Switching processes can also lead to increased hassle for the consumer where the Losing Provider tries to frustrate or delay the switching process. Increased hassle is more likely to be an issue under the current Migration Authorisation Code process.

Reactive save and its impact on competition

1.26 Reactive save activity is where the Losing Provider is able to accurately identify, as a result of information it receives through the formal switching process, all those customers intending to switch and to make them a counter offer not to switch. Our concerns specifically relate to reactive save activity and do not apply more generally to save activity outside the formal switching process e.g. when consumers initiate contact with their Losing Provider (not as part of the formal switching process) to discuss better offers and/or other issues.

1.27 Reactive save activity is currently banned under the current Gaining Provider Led Notification of Transfer process i.e. where the consumer only needs to contact the Gaining Provider who can arrange the switch on behalf of the consumer. Losing Providers are prohibited from using information received as a result of the formal switching process to make reactive save offers to potential switchers.

1.28 However, we are concerned about reactive save activity within the Losing Provider Led Migrations Authorisation Code process i.e. where the consumer needs to contact the Losing Provider to obtain a code and then pass it onto the Gaining Provider in order for the switch to proceed. There is currently no specific regulation in place to address reactive save in the Migrations Authorisation Code process and yet there is greater incentive and opportunity to carry out reactive save as compared to the Gaining Provider Led Notification of Transfer processes.

1.29 The concern is that reactive save within the Migration Authorisation Code process is damaging to competition because such a process favours incumbents over new entrants and providers looking to grow. Under this process, new entrants and providers looking to grow are likely to incur higher acquisition costs. This is because many potential customers will not switch due to the Losing Provider's systematic opportunity to make a counter offer to every single potential switcher during the code

request process. These new entrant and growth focussed providers are therefore likely to incur higher marketing and sales costs per customer gained (relative to the Notification of Transfer process) because some potential customers will not go through with the switch due to reactive save activity.

1.30 The higher acquisition costs result, in this case, not from any lack of efficiency on the part of the provider, but simply because of a switching process which requires customers to have a conversation with the Losing Provider. Reactive save activity creates barriers to entry and expansion and undermines the competitive process ultimately harming consumers' long term interests. Most new entrants currently need to use the Migration Authorisation Code process in order to win broadband customers.

1.31 Reactive save activity may also reduce the incentives on incumbents to provide good value to existing customers. If the Losing Provider is able to choose to make selective counteroffers to each and every switching consumer, then its incentives to price competitively to all its customer base is reduced.

Summary

1.32 Based on evidence and analysis of the problems to date, we believe that there is a need for us to move away from the current processes in order to ensure we have a robust switching process that delivers easy, reliable switching and good competition outcomes for consumers.

Option assessment

1.33 We have developed a number of options to address the problems identified above. We set up the Switching Working Group to help develop detailed option specifications and costings to feed into this consultation. The Switching Working Group was a joint industry, Office of the Telecommunications Adjudicator and Ofcom body.

1.34 The options we are consulting on are:

- **Existing processes options (unharmonised)**
  - Do nothing.
  - Incremental enhancements to both the existing Gaining Provider and Losing Provider Led processes.
- **Gaining Provider Led options (harmonised)**
  - Incremental enhancements to the existing Gaining Provider Led process only and expanding the process to cover all switches.
  - Transfer Code option where, from a consumer's point of view, the process is similar to the current Notification of Transfer process but changes are focussed on addressing problems with the back end systems.
  - Unique Service Number process where consumers need to use a code they find on their bill to switch provider.

- Third Party Verification process where consumers need to go through an independent third party to confirm their consent to switch.

- **Losing Provider Led options (harmonised)**

  - Transfer Code option where, from a consumer's point of view, the process is similar to the current Migration Authorisation Code process but changes are focussed on addressing problems with the back end systems, improving the consumer experience of a Losing Provider Led switching process and reactive save activity is banned.

  - A variation of the previous option where reactive save activity is permitted unless the consumer opts out of listening to offers.

1.35 We have considered the extent to which each of the options deal with the problems identified above. Our current view is that doing nothing and options which incrementally improve the existing processes are unlikely to sufficiently address the problems we have identified. We are also concerned that market developments mean that, in the future, the systems will be even less reliable than now in identifying the correct line or service to be taken over or switched. Whilst these options may be cheap to implement because they build on existing processes it is short sighted to invest in processes which are unlikely to be fit for purpose within a few years.

1.36 All of the remaining options are harmonised switching processes which would address back end deficiencies. All of the Gaining Provider Led options would require industry to establish a central system (a database and hub) with which providers would need to interface to provide information and manage switches. The Losing Provider Led options would also require a new body to be established and funded which providers would need to interface with.

1.37 These options perform differently against the other problems identified above with each option having individual pros and cons. Our assessment shows that overall the Third Party Verification option delivers the best in terms of dealing with all of the problems identified. In particular, the Third Party Verification option delivers well in tackling the harm arising due to reactive save, slamming, and hassle. Taking into account estimated costs to providers of implementing each option, we currently believe that the Third Party Verification option delivers the highest net benefit to consumers (considering both our quantitative and qualitative assessment of the costs and benefits of the options).

1.38 We recognise that the Gaining Provider Led Transfer Code option would also deliver well at tackling harm from reactive save and hassle. However, we do not believe that this option would fully address the harm from slamming. Under this option, we are heavily reliant on enforcement activity to tackle harm from slamming. We have considered introducing new slamming protection measures such as a requirement for additional consent validation by the consumer prior to switching, and strengthening record keeping obligations on Gaining Providers. Currently, we do not believe that these measures would enhance our ability to enforce against slamming sufficiently to significantly reduce harm now and in the future. We consider that tackling slamming is an important issue. The extra cost of building upfront protection against slamming into the switching process through the Third Party Verification option is likely to be justified by the additional benefits it would deliver. If consultation responses are able to identify alternative means to effectively protect consumers against slamming within a Gaining Provider Led option then we may reconsider our view.

1.39 The Losing Provider Led Transfer Code option delivers well in tackling the harm arising due to slamming and awareness of the implications of switching. However, we are particularly concerned that the ban on reactive save will not be fully effective resulting in a harmful impact on competition. A Losing Provider Led process will also result in greater hassle for consumers. Through this consultation we are inviting views on whether it is possible to effectively prohibit reactive save and reduce switching hassle under a Losing Provider Led process. If consultation responses convince us that a prohibition of reactive save could be effectively enforced in a Losing Provider Led process, and could be designed in a way that reduces switching hassle, then we may reconsider our view.

1.40 Therefore, our preliminary view, subject to consultation, is that the Third Party Verification option is the most proportionate way of dealing with the problems identified. We recognise that it is more costly than other options. However, based on the evidence currently available to us, we consider that the additional effort and co-ordination required to establish a Third Party Verification system is likely to be justified by the long term consumer benefits that it would bring.

Section 2

Introduction

2.1 In this section, we set out the key aims and objectives of our consumer switching review and the scope of this consultation. We consider the rationale for intervention in the processes for switching fixed voice and broadband providers over the Openreach copper network and we explain the regulatory framework.

2.2 We set out our previous work on switching and outline the evidence we have gathered for and draw on in this consultation. We also set out how the rest of the consultation document is structured.

Background

2.3 Competitive communication markets are more likely to work well for consumers when it is quick and easy to switch between providers. Our review of consumer switching processes is one of the strategic priorities in our Annual Plan 2011-12[1] and lies at the heart of Ofcom's consumer empowerment strategy. It is focussed on ensuring that:

- An individual consumer's experience of switching communications services is easy and hassle free both now and in the future. This seeks to address problems with the existing processes that result in direct consumer harm.

- Switching processes do not get in the way of providers competing with each other to deliver benefits to all consumers through lower prices, greater choice, innovation and value for money. This consultation seeks to address problems with the existing processes that result in indirect consumer harm via a dampening of the competitive process.

2.4 The way consumers switch fixed voice and broadband providers today varies. There are different processes, even for switching the same service, with very different features and experiences for consumers. Some of the features of the processes have been developed by industry and some have been designed with input from Ofcom (or Oftel).

2.5 In order to benefit from competition, consumers must have confidence that they are able to exercise choice. This means that consumers should be able to switch between services and providers without undue effort, disruption and anxiety. A lack of consumer confidence in the switching processes may mean consumers choose not to switch. Reductions in switching of this type dampen the competitive process, and this can have damaging consequences for the market and consumers (e.g. this may lead to reductions in innovation and industry efficiency and pricing above an efficient competitive level). In these circumstances, consumers will not receive the benefits from competition they should be able to expect.

[1] Strategic Purpose 3, paragraphs 3.22 to 3.27 at http://www.ofcom.org.uk/files/2011/04/annplan1112.pdf. We are also consulting on this being a strategic priority in our draft Annual Plan 2012-13 – see paragraphs 4.25 to 4.28 at http://stakeholders.ofcom.org.uk/binaries/consultations/936793/summary/condoc.pdf.

Scope

2.6 We are currently focusing on specific proposals to change the existing processes for switching fixed voice and broadband providers across the Openreach copper network. Openreach is in the process of rolling out network upgrades, including rolling out fibre to the cabinet ('FTTC')[2] and to some premises ('FTTP').[3] Providers can already offer fixed voice and broadband services using FTTC. As this reuses the copper loop from the customer to the street side cabinet, switches involving FTTC should use the Notification of Transfer ('NoT') and Migration Authorisation Code ('MAC') processes. Therefore, the current proposals also cover fixed voice and broadband switching across the Openreach FTTC network. For simplicity, we refer to the Openreach copper network throughout this document.

2.7 The proposals are focused on switching involving only residential consumers and small business consumers (those with up to 10 employees so excluding larger business consumers).[4] We have considered the 'direct effects' on consumers' experiences of switching fixed voice and broadband and the 'indirect effects' on consumers via a dampening of the competitive process.[5] We have also sought to consider how other technologies / infrastructures and other market developments (e.g. increasing trend towards bundling and development of new services) might impact on the switching processes.

2.8 Specific proposals to change the process for switching fixed voice and broadband services to or from the Virgin Media cable network and FTTP are outside the scope of this consultation. We plan to consider cable and FTTP switching in the next part of the review.[6] We are proposing to carry out some initial scoping work on this during the consultation period on the current part of the review. We will provide stakeholders with further information on our plans following our initial scoping work.

2.9 Switching fixed voice and broadband services across the KCOM network in Hull is also outside the scope of this part of the review. We plan to consider possible changes to the KCOM network alongside cable and FTTP.

Rationale for intervention

2.10 Efficient switching processes are an important part of competitive markets.

- For individual consumers, efficient switching processes result in lower barriers to changing providers. This is because efficient processes limit the hassle involved

[2] FTTC is a form of fibre optic communication delivery in which the fibre network reaches the street-side cabinet. The street cabinet is usually located only a few hundred metres from the user's premises. The remaining segment of the access network from the cabinet to the customer is the existing copper pair.
[3] FTTP is a form of fibre optic communication delivery in which the fibre network is installed up to the user's premises. Potential changes to the process for switching involving FTTP are outside the scope of this part of the review. We plan to consider FTTP (along with cable) in the next part of the review.
[4] Whilst our proposals exclude larger business consumers, some providers have indicated that they may apply at least some of the provisions to larger business consumers.
[5] The dampening of competition caused by unnecessary switching costs (e.g. unnecessary hassle) and processes which favour one provider over another will eventually reduce consumer welfare.
[6] See paragraphs 7.11 to 7.14 of the September 2010 consultation at http://stakeholders.ofcom.org.uk/binaries/consultations/consumer-switching/summary/switching.pdf and the note to stakeholders on scope at http://stakeholders.ofcom.org.uk/binaries/telecoms/groups/switching-working-group/papers/Strategic_Review_of_Consume1.pdf.

in switching, making it easier to move to a preferred provider (and consequently, for example, taking advantage of lower prices/better service quality). Efficient switching processes are therefore likely to increase consumers' ability to take advantage of competitive choice in the market.

- For efficient providers, efficient switching processes enable expansion within markets where they already operate and/or successful entry into new markets. In this way, new/innovative providers are able to challenge incumbents, winning consumers that might otherwise stick with an existing service. With markets opened up to potential entry, providers have the incentive to innovate and supply services which offer customers a clear improvement on existing products. Conversely, inefficient switching processes discourage innovation and market entry and also discourage consumers who would otherwise switch from doing so.

2.11 Efficient switching processes may be provided through commercial market driven interactions. In such circumstances, where the interests of consumers are served well, regulatory intervention is unnecessary. However, where the switching processes are not effective and the interests of consumers are not served well, there may be a case for action by regulatory authorities to bring about a more efficient switching process. The existing switching processes are already partly dependent on regulations.

2.12 Stakeholders have asked us a number of times in the past to examine the switching processes for fixed voice and broadband. There was a general consensus at our stakeholder workshop on consumer switching (October 2009) that the current processes do not deliver the best outcomes for consumers and there was a need for change.

2.13 Switching fixed voice and broadband services between communications providers is often complex, and involves steps that must be coordinated between different providers in ways that do not arise in other consumer markets.

2.14 Any change will require a new or revised process. However, the incentives of all fixed voice and broadband providers are not aligned and this makes it difficult for industry to resolve alone. The current processes give rise to 'winners' and 'losers', affecting views on how to change the switching processes. Some of the current processes favour large incumbents and work against new or potential entrants. This makes it difficult for providers to agree on a process.

2.15 We have identified a number of problems with the existing processes for switching fixed voice and broadband providers on the Openreach copper network that can and do result in direct and indirect consumer harm, suggesting there is a need for change. Some of the problems are more likely to occur under one or other of the existing processes and some may get worse in the future due to developments in the market. We discuss the identified problems in sections 4 and 5.

Regulatory framework

2.16 Below, we provide an overview of Ofcom's duties and powers under the Communications Act 2003 ('the Act') and the requirements and procedures to be met before Ofcom can introduce new general conditions or modify any existing conditions.

The legal framework

2.17 Ofcom regulates the communications sector under, and in accordance with, the framework established by the Act and European Community requirements for regulation. This is known as the "European Framework". The European Framework and its associated Directives provide a common framework for the regulation of electronic communications networks and services in the EU. The Framework was revised in 2009, and was required to be implemented by all Member States, including the UK, by 2011. The UK implemented the revisions through the Electronic Communications and Wireless Telegraphy Regulations,[7] which made changes to the Act.

Ofcom's general duties

2.18 Section 3(1) of the Act states that:

> 'it shall be the principal duty of Ofcom, in carrying out their functions:-
>
> - to further the interests of citizens in relation to communication matters; and
> - to further the interests of consumers in relevant markets, where appropriate by promoting competition'.

2.19 Section 3(2) of the Act states that Ofcom is required, when carrying out its functions, amongst other things, to secure the availability throughout the UK of a wide range of electronic communications services.

2.20 Section 3(3) of the Act requires Ofcom, when performing its duties, to have regard to the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed; and any other principles appearing to Ofcom to represent best regulatory practice.[8]

2.21 Section 3(4) of the Act states that in performing its duties, Ofcom must also have regard to a number of matters as appears to be relevant in the circumstances. We consider this includes in the current context:

- the desirability of promoting competition in relevant markets;
- the desirability of promoting and facilitating the development and use of effective forms of self-regulation;
- the desirability of encouraging investment and innovation in relevant markets;
- the desirability of encouraging the availability and use of high speed data transfer services throughout the United Kingdom;
- the needs of persons with disabilities, of the elderly and of those on low incomes; and

[7] SI 2011/1210, see http://www.legislation.gov.uk/uksi/2011/1210/pdfs/uksi_20111210_en.pdf
[8] Ofcom's Regulatory Principles can be found at: http://www.ofcom.org.uk/about/what-is-ofcom/statutory-duties-and-regulatory-principles/.

- the opinions of consumers in relevant markets and of members of the public generally.

2.22 In addition, section 3(5) of the Act requires Ofcom, when performing its duty to further the interests of consumers, to have regard, in particular, to the interests of those consumers in respect of choice, price, quality of service and value for money.

2.23 Consumer is defined in section 405(5) of the Act and includes people acting in their personal capacity or for the purposes of, or in connection with, a business.

European Community requirements for regulation

2.24 Section 4 of the Act requires Ofcom to act in accordance with the six European Community requirements. In summary, these requirements are to:

- promote competition in the provision of electronic communications networks and services, associated facilities and the supply of directories;
- contribute to the development of the European internal market;
- promote the interests of all persons who are citizens of the European Union;
- not favour one form of or means of providing electronic communications networks or services, i.e. to be technologically neutral;
- encourage the provision of network access and service interoperability for the purpose of securing:
- efficient and sustainable competition;
- efficient investment and innovation;
- the maximum benefit for customers of communication providers; and
- encourage compliance with certain standards in order to facilitate service interoperability and secure freedom of choice for the customers of communication providers.

2.25 In doing so, Ofcom has to read these requirements in accordance with the requirements of Article 8 of the Framework Directive.[9]

2.26 Article 6 of the Authorisation Directive allows Ofcom to set conditions containing "consumer protection rules specific to the electronic communications sector, including conditions in conformity with Directive 2002/22/EC (Universal Service Directive)".[10] Ofcom's power to set conditions relating to consumer protection is not limited to the measures set out in that directive.

2.27 In that context, relevant considerations are contained in Article 30 of the Universal Services Directive.[11] Article 30 was subject to substantial changes as part of the

[9] 2002/21/EC as amended by Directive 2009/140/ EC
[10] See paragraph 8 of Annex A of the Authorisation Directive (Directive 2002/20/EC) as amended by Directive 2009/140/EC.
[11] 2002/22/EC as amended by Directive 2009/136/EC

revisions to the European Framework. The Recital 47 to the 2009 Amending Universal Service Directive states:

"***In order to take full advantage of the competitive environment, consumers should be able to make informed choices and to change providers when it is in their interests. It is essential to ensure that they can do so without being hindered by legal, technical or practical obstacles, including contractual conditions, procedures, charges and so on****. This does not preclude the imposition of reasonable minimum contractual periods in consumer contracts, Number portability is a key facilitator of consumer choice and effective competition in competitive markets for electronic communications and should be implemented with the minimum delay, so that the number is functionally activated within one working day and the user does not experience a loss of service lasting longer than one working day. Competent national authorities may prescribe the global process of the porting of numbers, taking into account national provisions on contracts and technological developments.* ***Experience in certain Member States has shown that there is a risk of consumers being switched to another provider without having given their consent. While that is a matter that should primarily be addressed by law enforcement authorities, Member States should be able to impose such minimum proportionate measures regarding the switching process, including appropriate sanctions, as are necessary to minimise such risks, and to ensure that consumers are protected throughout the switching process without making the switching process less attractive for them.****"*
(emphasis added)

2.28 Article 30 of the Universal Service Directive was consequently amended to include new provisions dealing with the porting of numbers as well as the following provisions about switching:

- Competent national authorities shall ... take into account, where necessary, measures ensuring that subscribers are protected throughout the switching process and are not switched to another provider against their will.

- Without prejudice to any minimum contractual period, Member States shall ensure that conditions and procedures for contract termination do not act as a disincentive against changing service provider.

2.29 Article 8 of the Framework Directive requires national authorities to ensure that when they carry out the regulatory tasks specified in the European Framework, they take all reasonable measures which are aimed at achieving a set of objectives set out in paragraphs 2, 3, and 4 and requires that the measures shall be proportionate to those objectives.

2.30 The objectives contained in paragraph 2 of Article 8 include that the national regulatory authorities shall promote competition in the provision of electronic communications networks, electronic communications services, and associated facilities and services by (among others):

- Ensuring that users, including disabled users, elderly users, and users with special social needs derive maximum benefit in terms of choice, price and quality; and

- Ensuring that there is no distortion or restriction of competition in the electronic communications sector, including the transmission of content.

2.31 The objectives contained in paragraph 4 of Article 8 also require national regulatory authorities to promote the interests of the citizens of the EU by (among others):

i) Ensuring a high level of protection for consumers in their dealings with suppliers, in particular by ensuring the availability of dispute resolution procedures;

ii) Promoting the provision of clear information, in particular requiring transparency of tariffs and conditions for using publicly available electronic communications services; and

iii) Addressing the needs of specific social groups, in particular disabled users, elderly users, and users with special social needs.

2.32 Article 6 of the Framework Directive requires national regulatory authorities to give interested parties a reasonable period to comment on any draft of measures they intend to take in accordance with the European Framework which have a significant impact on the relevant market.

Powers and duties in relation to General Conditions

2.33 Ofcom sets General Conditions ('GCs') to which all communication providers in the category specified in that Condition (e.g. providers of publicly available telephone services) must comply, although the specific requirements will depend on the nature of the service and the type of customer.

2.34 Section 45 of the Act gives Ofcom the power to set GCs which can only contain provisions authorised or required by one or more of sections 51, 52, 57, 58 or 64 of the Act.

2.35 Section 47 governs the circumstances in which Ofcom can set or modify a GC. It states:

> (1) Ofcom must not, in exercise or performance of any power or duty under this Chapter:
> (a) set a condition under section 45, or
> (b) modify such a condition,
> unless they are satisfied that the condition (or as the case may be) the modification satisfies the test in subsection (2).
>
> (2) That test is that the condition or modification is:
> (a) objectively justifiable in relation to the networks, services, facilities, apparatus or directories to which it relates (but this paragraph is subject to subsection (3))
> (b) not such as to discriminate unduly against particular persons or against a particular description of persons;
> (c) proportionate to what the condition or modification is intended to achieve; and
> (d) in relation to what it is intended to achieve, transparent.
>
> (3) Subsection (2)(a) does not apply in relation to the setting of a general condition.

2.36 Before setting or modifying conditions, we must decide whether consultation is required in accordance with section 48A, i.e. whether the conditions we propose to set would, in our opinion, "have a significant impact on a market for any of the services, facilities, apparatus or directories in relation to which [we] have functions".

Section 48A would not apply where the proposal is of EU significance, and in our opinion, there are exceptional circumstances, and an urgent need to act in order to safeguard competition and protect the interests of consumers.

2.37 In this case, domestic consultation is required. Implementation of the proposed options would have a significant impact on the provision of fixed voice and broadband services in the UK. This is because they would implement changes to the process for consumers switching fixed voice and broadband services. They would require implementation of a number of new systems both on the consumer facing side and at the back end by providers who offer fixed voice and/or broadband services. A number of options being assessed require coordination by stakeholders to set up and maintain a centralised database. Ofcom does not consider that there are exceptional circumstances or that there is need for urgency which would mean domestic consultation is not required. Depending on the outcome of this consultation, we expect to bring forward specific proposals for general conditions in our next document.

2.38 Under section 51(1)(a) of the Act, Ofcom can set general conditions which make such provision as we consider appropriate for the purpose of protecting the interests of end-users of public electronic communications services. Under section 51(2) this power includes the power to set conditions for that purpose which:

- Ensure that conditions and procedures for the termination of a contract do not act as a disincentive to an end-user changing communications provider.
- Relate to the supply, provision or making available of goods, services or facilities in association with the provision of public electronic communications services
- Give effect to Community obligations to provide protection for such end-users in relation to the supply, provision, or making available of those goods, services or facilities
- Specify requirements in relation to the provision of services to disabled end users
- require the provision, free of charge, of specified information, or information of a specified kind, to end-users
- Impose a limit on the duration of a contract between an end-user and a communications provider

2.39 Ofcom's power to set conditions in order to protect end-users is not limited to the list of purposes set out in 51(2).

Our work on switching

2.40 Over recent years, we have invested significant resource in tackling issues with today's switching processes.[12] This includes our work on fixed-line mis-selling,[13] broadband switching[14] and Mobile Number Portability ('MNP').[15] Through these

[12] An overview of our previous switching work is set out in section 3 of the September 2010 consultation http://stakeholders.ofcom.org.uk/binaries/consultations/consumer-switching/summary/switching.pdf.
[13] http://stakeholders.ofcom.org.uk/binaries/consultations/protecting_consumers_misselling/statement/statement.pdf
[14] http://stakeholders.ofcom.org.uk/binaries/consultations/migration/statement.pdf

areas of work, we sought to tackle specific issues with the switching processes for particular services and technologies.

2.41 Currently, we are engaged in various ongoing initiatives which relate to switching. Our work is focused on tackling the following barriers to switching:

- Any contractual barriers through our additional charges enforcement programme and implementation of new rules prohibiting automatically renewable contracts from 31 December 2012.[16]

- Process barriers to switching fixed voice and broadband providers on the Openreach copper network through this current consultation, our work with the Office of the Telecommunications Adjudicator ('OTA') and our enforcement programmes relating to broadband migrations and fixed-line mis-selling.

- Information barriers through our price accreditation scheme, publication of customer service research[17] and complaints data[18] and our work on net neutrality,[19] broadband speeds[20] and mobile coverage.[21]

September 2010 consultation[22]

2.42 In September 2010, we published a consultation that sought to:

- Identify the key issues and problems with the switching processes across the fixed and mobile telecommunications, broadband and pay TV sectors.

- Set out a view on the type of switching process that would deliver better consumer and competition outcomes assuming we were starting from first principles and there were no existing processes in place ('greenfield').

- Identify deficiencies with the current switching processes and develop a plan to tackle these, prioritising areas where we identified the greatest consumer and/or competitive harm.

2.43 We set out our view that Gaining Provider Led ('GPL') processes are preferable to Losing Provider Led ('LPL') processes on a greenfield basis. We considered GPL processes perform better than LPL processes in terms of both consumer and competition outcomes as:

- GPL processes result in significantly less hassle and are easier for consumers to navigate. The Gaining Provider ('GP') has an incentive to ensure that the switching process is as smooth and easy as possible.

- GPL processes are also more likely to deliver lower prices, greater choice and innovation for consumers as they force providers to compete vigorously for rivals' customers. In LPL processes this incentive for providers to enter and compete for

[15] http://stakeholders.ofcom.org.uk/binaries/consultations/mnp/statement/mnp.pdf
[16] http://stakeholders.ofcom.org.uk/binaries/consultations/arcs/statement/ARCs_statement.pdf
[17] http://media.ofcom.org.uk/2011/11/25/latest-customer-service-satisfaction-levels-revealed/
[18] http://stakeholders.ofcom.org.uk/market-data-research/telecoms-research/complaints/?a=0
[19] http://stakeholders.ofcom.org.uk/consultations/net-neutrality/
[20] http://stakeholders.ofcom.org.uk/market-data-research/telecoms-research/broadband-speeds/
[21] http://stakeholders.ofcom.org.uk/market-data-research/telecoms-research/mobile-not-spots/
[22] http://stakeholders.ofcom.org.uk/binaries/consultations/consumer-switching/summary/switching.pdf

rivals' customers is reduced because of the ability of the Losing Provider ('LP') to identify (via the code request) and retain customers willing to switch through reactive save offers. Compared with a GPL process, such retention offers may be beneficial to some individual consumers who get lower prices. However, the ability to make such offers reduces competitive intensity and so results in reduced innovation and may increase average prices.

2.44 We highlighted that further work would be required to consider whether and how these considerations could be applied to current switching processes. This was because the greenfield assessment did not take into account the costs and benefits of moving from the current processes to any new process for specific services.

2.45 Based on our analysis of the consumer experience and competition evidence in the September 2010 consultation, we identified switching fixed voice and broadband services as the area of highest concern and proposed that we should focus on this first.

2.46 We have reviewed the responses to the September 2010 consultation in detail. We reflect the key points raised in these responses in the analysis and options we present for consultation in this document.[23]

Switching Working Group (SWG)[24]

2.47 Following publication of the September 2010 consultation, we established the Switching Working Group ('SWG') to consider the problems with the existing NoT and MAC processes in more detail and to develop detailed specifications and costs for different switching process options for fixed voice and broadband services on the Openreach copper network.

2.48 We wrote to industry stakeholders to encourage all interested parties to actively contribute to the SWG discussions and, specifically, support Ofcom in narrowing down the switching options for detailed analysis. We explained to industry stakeholders that this was a key opportunity for them to input into this work, and that our view was that industry was best placed to develop the detailed technical specifications and cost estimates of the options.

2.49 The SWG was comprised of representatives from a wide range of fixed voice and broadband providers, the OTA and Ofcom. The SWG was chaired by the OTA and met 7 times between November 2010 and July 2011. A sub-group of the SWG also met a further 12 times to progress more detailed consideration of the technical specifications. Detailed notes were kept of the meetings and actions. These (as well as relevant papers) are available on the SWG website.[25] A summary of the issues discussed at the SWG meetings is set out in Annex 5.

2.50 The three switching process options that the SWG considered in detail are:

- A GPL Unique Service Number ('USN') model.
- A GPL Third Party Validation ('TPV') Gatekeeper model.

[23] http://stakeholders.ofcom.org.uk/consultations/consumer-switching/?showResponses=true
[24] http://stakeholders.ofcom.org.uk/telecoms/groups/switching-working-group/
[25] All of the SWG documentation including the terms of reference, meeting agenda, meeting notes and papers can be accessed at http://stakeholders.ofcom.org.uk/telecoms/groups/switching-working-group/.

- A LPL Transfer Code ('TxC') model.

2.51 To support the work of the SWG, we engaged the consultancy firm CSMG to provide us with expert consultancy support. CSMG was asked to document a set of specifications for each of the switching process models developed by the SWG. The purpose of the specifications was to provide sufficient information to SWG members to be able to effectively conduct their own assessments of the incremental costs and implications of adopting these models.

2.52 CSMG was also asked to develop costings for each of the three models. In addition to the costs for providers, CSMG estimated the central cost elements of each model, and included these in its total industry cost estimates. CSMG produced an independent report setting out its assessment of the costs ('CSMG report').[26] This is published alongside this consultation.

2.53 The discussion and outputs from the SWG including the cost estimates for each of the three models have informed our understanding of the problems with the current processes and the option analysis and assessment that we are consulting on in this document.

Additional industry proposal

2.54 After the SWG meetings had concluded, a subset of SWG members (BT, Sky, Virgin Media and Zen) submitted an additional switching process option to Ofcom for consideration.[27] This is one of the options we are consulting on as part of this document. The materials they provided in support of their proposal and discussions we had with them informed the option analysis and assessment presented in this document.

Research and evidence sources

2.55 We undertook several strands of research to support our fixed voice and broadband switching project, in addition to the regular information-gathering exercises and surveys that we carry out. We set out below a description of and the approach used in the main pieces of research we rely on in this consultation.

2.56 We consider the detailed findings from the research in the remainder of this document.

Bundles research 2008

2.57 In 2008, we commissioned Futuresight to conduct a survey of consumers in order to understand the impact that bundled purchasing might have on consumers' ability to shop around and obtain the best deal through switching (we refer to this as the 'bundles research 2008').[28]

[26] http://stakeholders.ofcom.org.uk/binaries/consultations/switching-fixed-voice-broadband/annexes/csmg_report.pdf. The CSMG model is available at http://stakeholders.ofcom.org.uk/binaries/consultations/switching-fixed-voice-broadband/annexes/csmg_cost_model.xls.
[27] http://stakeholders.ofcom.org.uk/binaries/consultations/switching-fixed-voice-broadband/annexes/option_proposal.pdf
[28] http://stakeholders.ofcom.org.uk/binaries/research/telecoms-research/switching-bundles.pdf

2.58 The research was of a qualitative nature, as the low take-up of bundles at the time would have made it impractical to do a quantitative study on a meaningful scale. Nonetheless, we wished to understand better whether having to use existing single product switching processes to switch bundles might inhibit switching.

2.59 The research was conducted in two phases, the first being to assess consumers' awareness of, and attitudes towards different aspects of their bundle, as well as their understanding and perceptions of the switching process. This was conducted using focus groups. The second phase aimed to understand to what extent current switching processes act as a barrier to consumers' ability to shop around and switch.

2.60 The sample for the second phase consisted of thirty consumers who had two or more services with a single supplier (fixed voice and broadband plus one other service in some cases). Twenty three of these were considering switching within the next two months and seven had switched their supplier within the previous three months. The interviews were conducted between February and April 2008.

Experimental research 2010

2.61 We also undertook some experimental research in 2010 to test the effects of different switching processes on outcomes for consumers in a controlled environment (we refer to this as the 'experimental research 2010').[29] The advantages of this type of research are that it allowed us to look at individual elements of the choices consumers make and isolate the reasons why behaviour changes under different environments.

2.62 The research was designed to investigate the behaviour of consumers and the choices they make when faced with particular switching processes. As a result, our goal was to test whether particular features of the processes tend to lead to more favourable outcomes for consumers and to be able to rank the performance of different switching processes.

2.63 The switching processes in the experiment were designed to approximate actual processes present in communications markets in the UK, such as GPL and LPL processes and tested these with a variety of other elements, including:

- slamming;
- warnings about potential early termination charges (ETCs);
- steps to verify the choices of consumers and prevent slamming; and
- save activity by LPs.

2.64 This allowed us to consider not only the effects on consumers of using GPL or LPL processes in general, but also to investigate the particular effects of additional elements that are often associated with switching processes.

2.65 Subjects were assigned a particular switching process when changing between four different telephone contracts. Outcomes across different switching processes were then compared.

[29] http://www.ofcom.org.uk/binaries/consultations/consumer-switching/annexes/economics-research.pdf

Consumer research 2010

2.66 In 2010, we commissioned Saville Rossiter-Base to conduct quantitative and qualitative research into consumers' switching experiences based on the switching process they went through (we refer to this as the 'consumer research 2010').[30] The research aimed to learn more about consumers' perceptions and purchasing behaviour with regards to single services and bundles, and to investigate the potential barriers to switching that may lead consumers to decide not to switch or to them having a poor experience when they do switch.

2.67 This research investigated the level of consumers' participation in communications markets and the factors that were relevant in determining how actively they participate. This included looking at how participation varied across different segments of the population, across different communications services, over different switching processes and in relation to bundles in comparison to individual services.

2.68 The surveys to gather the quantitative evidence were conducted in-home with 2,008 decision makers and were nationally representative. An additional 863 boost interviews were conducted on-line to boost groups of interest to help reach a minimum sample size for these groups.

2.69 The qualitative evidence was focused on consumers' experience of switching processes across communications services. A group of 32 participants were chosen based on responses given during the quantitative phase of the research and were interviewed by telephone in order to obtain more detailed pictures of their experiences of switching processes and the importance they attached to certain aspects of those processes.

Broadband consumer research 2011

2.70 The findings from our consumer research 2010[31] and the responses to the September 2010 consultation highlighted knowledge gaps in relation to some aspects of the switching processes. Consequently, we decided to carry out additional consumer research to try and understand these issues better.

2.71 The main gaps identified were around ETCs, reactive and proactive save activity, process drop-out, double billing and loss of service while switching providers. In research terms the proportion of consumers experiencing some of these issues is relatively low creating challenges in achieving sufficient sample sizes to provide the required level of analysis. To help achieve the necessary sample sizes, we commissioned YouGov to conduct an online survey (we refer to this as the 'broadband consumer research 2011').[32]

2.72 Before carrying out the quantitative research, YouGov ran two online focus groups in March 2011 to provide some insight into consumers' experiences of switching processes and to feed into the quantitative research questionnaire design.[33] The

[30] http://www.ofcom.org.uk/binaries/consultations/consumer-switching/annexes/switching-bundling.pdf
[31] http://stakeholders.ofcom.org.uk/binaries/consultations/consumer-switching/annexes/switching-bundling.pdf
[32] http://stakeholders.ofcom.org.uk/binaries/consultations/switching-fixed-voice-broadband/annexes/broadband_slidepack.pdf. The data tables are available at http://stakeholders.ofcom.org.uk/binaries/consultations/switching-fixed-voice-broadband/annexes/broadband_datatables.xls.
[33] http://stakeholders.ofcom.org.uk/binaries/consultations/switching-fixed-voice-broadband/annexes/broadband_slidepack2.pdf

online research was carried out in March 2011 with 1,423 consumers that had switched their broadband service (either as a standalone service or as part of a bundle with fixed voice) in the previous 12 months and 593 consumers that had considered doing this.

Slamming research 2011

2.73 We also ran a short survey on the GfK NOP omnibus survey in September 2011 (we refer to this as the 'slamming research 2011').[34] These questions were focussed on identifying the proportion of consumers that had experienced an actual or attempted slam in the previous 12 months. We also tried to identify whether those consumers who had been slammed had incurred any costs (financial and time) and if their service was returned to their original provider.

Billing research 2011

2.74 We also ran a short survey on the TNS Global Market Research weekly face to face omnibus survey in March 2011. This research was to feed into consideration of the USN switching process option. USN would require consumers to get a number from their bill and give this to the GP to allow them to switch. The objective of the research was to understand whether consumers receive paper and/or electronic bills and how easy it is for them to access their bills.

2.75 The research identified that a significant proportion of broadband consumers said they did not receive either a paper or electronic bill. We wanted to test whether this finding was influenced by different consumers' interpretation of what constitutes a bill (e.g. whether an email or text notifying them of a direct debit payment or that their bill is available to view online is considered to be a bill or not) so we ran some further questions on the TNS weekly omnibus survey in June 2011 (we refer to this as the 'billing research 2011').[35] This research found that while some consumers said they did receive other forms of notification of their charges, this did not significantly reduce the proportion of consumers who said they did not receive a bill.

Consumer Experience Report 2011

2.76 Our most recent Consumer Experience Report was published in December 2011 (we refer to this as the 'Consumer Experience Report 2011').[36] The report includes research that tracks consumers' participation and decision making behaviour across the fixed-line, mobile, broadband, multichannel television and bundled sectors through time. It seeks to understand the experiences a consumer goes through when choosing a provider for a new service or switching provider for an existing service. It also seeks to identify barriers to switching.

2.77 This report is based on research carried out with the member of a household that is primarily responsible for making decisions relating to communications services,

[34] http://stakeholders.ofcom.org.uk/binaries/consultations/switching-fixed-voice-broadband/annexes/slamming2011.pdf
[35] http://stakeholders.ofcom.org.uk/binaries/consultations/switching-fixed-voice-broadband/annexes/billing_slidepack.pdf. The data tables are available at http://stakeholders.ofcom.org.uk/binaries/consultations/switching-fixed-voice-broadband/annexes/datatables_March2011.pdf and http://stakeholders.ofcom.org.uk/binaries/consultations/switching-fixed-voice-broadband/annexes/databtables_June2011.pdf.
[36] http://stakeholders.ofcom.org.uk/market-data-research/market-data/consumer-experience-reports/consumer-experience/

making use of a relatively large sample (which varies by the service in question, but always in excess of 100 and in some cases well over 1000). The report also includes data from our separate consumer concerns research which measures and tracks levels of concern as well as investigates consumers' experiences of specific issues (e.g. silent calls and slamming).

OTA NoT and MAC process review 2010

2.78 We asked the OTA to work with industry on an evaluation of current switching processes, including highlighting deficiencies and the costs of fixing current problems. The OTA, in conjunction with fixed-line and broadband providers, undertook a review of the existing NoT and MAC processes, looking to identify weaknesses of these processes and develop actions to address these.[37] It was unable to carry out a detailed cost assessment due to difficulties in obtaining the relevant information from providers.

International and sectoral research

2.79 We carried out research into the switching processes used in other countries and sectors to feed into the development of switching process options including the code on bill model[38] used in the GB energy sector, the Italian code process for fixed and broadband switching, the French number portability model and work by the Canadian regulator relating to reactive save.

Provider information requests

2.80 We requested a range of information from fixed voice and broadband providers using our formal information gathering powers under Section 135 of the Act. We requested information relating to ETCs, confusion around switching processes, asset[39] identification and validation, the use of the anti-slamming cancellations process, issuing bills and data protection provisions.

Outline of the remainder of this document

2.81 The rest of this consultation is divided into the following sections:

- Section 3 explains how the current switching processes work.
- Section 4 considers most of the problems we have identified with the current switching processes and the evidence on each of these.
- Section 5 considers the problem of reactive save activity and the evidence relating to this.
- Section 6 sets out the switching process options that we are consulting on.
- Section 7 analyses how each of the options address the problems that have been identified with the current processes. It assesses how each of the options perform relative to each other and considers whether they meet the relevant legal tests

[37] http://www.offta.org.uk/AOT-MAC.pdf
[38] The current process for validation in the energy sector is facilitated through a unique reference number of each supply point. This is known as the Meter Point Reference Number ('Mnumber') in gas and the Meter Point Administration Number ('MPAN' or 'Supply Number' in electricity).
[39] We are referring here to the physical line that a service is provided over.

(objectively justifiable, non-discriminatory, proportionate and transparent). It also outlines our preferred switching process option.

- Section 8 outlines our planned next steps.
- Annexes 1 to 4 contain information about our consultation process including how to respond to the consultation and sets out the list of consultation questions.
- Annex 5 summarises the key issues discussed at the SWG meetings.
- Annex 6 considers some of the more detailed stakeholder comments relating to switching costs including some recent academic papers.
- Annex 7 sets out the key points that stakeholders raised about our analysis of reactive save activity and our views on these.
- Annex 8 sets out the supporting calculations for the quantified benefits used in the evidence of the current problems and in the option analysis and assessment (sections 4 and 7).
- Annex 9 provides a glossary of the key terms used in this consultation.

Section 3

Current switching processes

Introduction

3.1 This section explains the processes that are currently used for switching fixed voice and broadband services over the Openreach copper network as a standalone service or as part of a bundle, namely:

- Notification of Transfer ('NoT').
- Migration Authorisation Code ('MAC').
- Cease and Re-provide ('C&R').

3.2 It also explains the processes that are currently used when a consumer is moving home and either remaining with their current provider or switching to a new provider, namely:

- Working Line Takeover ('WLTO').
- Linked Orders ('LO').[40]

Notification of Transfer

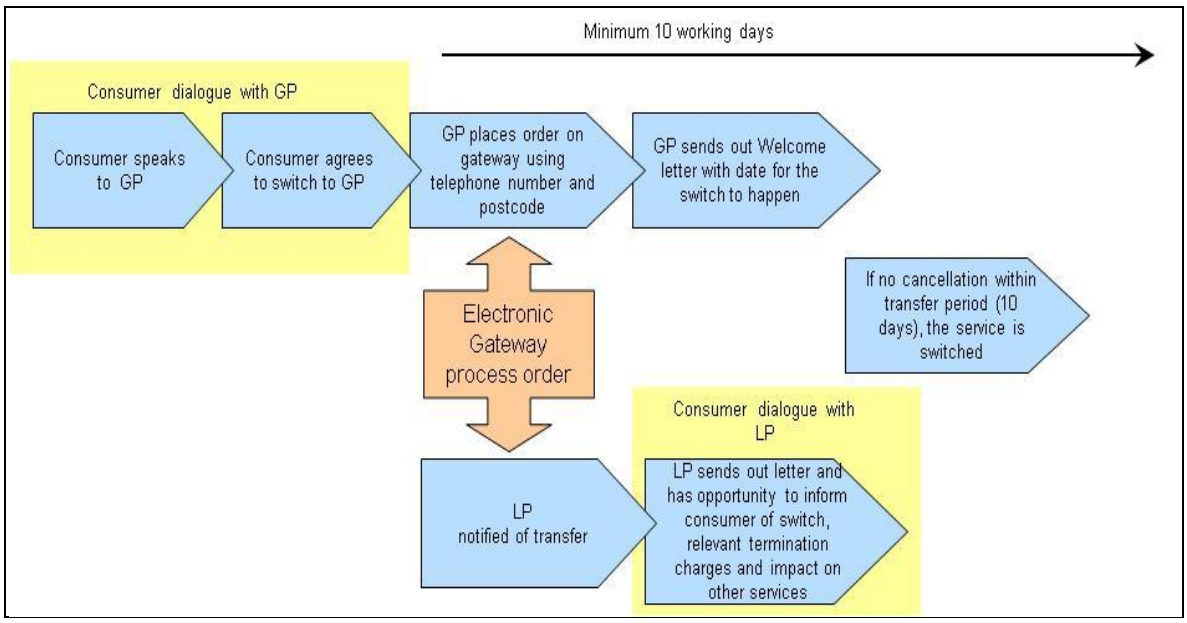
3.3 The NoT is a GPL process where the consumer only needs to contact their GP to switch providers (Figure 1). The GP informs the LP on behalf of the consumer in order to organise the transfer. The consumer receives letters from both their GP and LP confirming the planned switch before it happens. This provides an opportunity for the consumer to stop the order going ahead where they change their mind or in cases where they have no knowledge or have not given their consent to the attempted switch. This notification is associated with a switchover period of 10 working days during which time the switch can be stopped.

3.4 The NoT process is intended to be used for switching:

- fixed voice and broadband services where either the gaining or losing provider uses Metallic Path Facility ('MPF')[41] technology. At the end of December 2011, there were 5.24 million MPF lines;[42] and
- fixed voice services where both gaining and losing providers use Wholesale Line Rental ('WLR')[43] technology. At the end of December 2011, there were 6.32 million WLR lines.[44]

[40] This may also be referred to a simultaneous provide or sim-provide.
[41] MPF is the product sold by Openreach to allow providers to gain full control of the local loop connecting to end users to deliver both voice and broadband to end users.
[42] OTA/Openreach December 2011
[43] WLR is the product offered by Openreach to communications providers to enable them to offer fixed voice services to end users without having to fully manage the line.
[44] http://www.offta.org.uk/updates/otaupdate20120110.htm

Figure 1: The NoT process



3.5 A summary description of the process is set out in Figure 2 below.

Figure 2: NoT model process description

- A customer wishing to switch their service would contact the provider they want to move to and tell them they wish to switch their service(s) to them. The consumer would be required to supply the GP with their calling line identification ('CLI' or telephone number) and billing postcode. Following an agreed sale, the GP would place the order via the service provider gateway using the CLI and postcode.
- The relevant Access Operator ('AO') (BTW/Openreach) would then validate the order against its customer database. If the order is not validated i.e. the AO has not been able to match the data provided against its records, the order is rejected. If the order is validated, the AO confirms the order and sends an electronic notification with details of the impending switch to both GP and the LP.
- This electronic notification acts as the trigger for both the GP and LP to send out letters (welcome/goodbye) to notify the customer of the pending switch.
- Providers often use the consumer communication to provide a general reminder to the customer that they may be liable for ETCs as a result of switching.
- There is a prohibition on marketing statements/ representations in consumer communications to induce them to stay with the LP or cancel their contract with the GP.
- Customers retain the right to cancel the order where they have either changed their mind[45] or not consented or have no knowledge of the switch (the LP then uses the LP initiated 'Cancel Other' process).
- The transfer date is 10 working days from the electronic notification from the AO to the GP/LP.

[45] Where the consumer has changed their mind, the GP then uses the GP initiated 'Cancel Own' process, or where the GP fails to cancel, the consumer can request the LP to cancel the order using the 'Cancel Other' process.

Asset identification

3.6 In the NoT process, information from the consumer about the CLI and address helps the GP to identify the correct asset to switch. Where CLI information is registered on Openreach's Dialogue Services ('DS'), the CLI will accurately identify the asset involved in the switch. The address details are used as a cross check to verify that the correct asset has been identified.

3.7 However, CLI information on Openreach's DS is limited to only WLR services and BT's public switched telecommunications network ('PSTN') lines. Openreach's DS facility does not hold CLI information for those lines that have been fully unbundled to MPF. Therefore, where a GP is switching an MPF service they need to use the Address Matching Dialogue Service to try and locate the correct MPF line. Where there are multiple MPF lines provided to the same premises, the GP may not be able to accurately identify the correct line to be switched and there is a risk that the wrong line may be switched.

3.8 The NoT process is only used for switching WLR or MPF services. This means that providers are able to identify the services which are being switched based on the underlying technology (since WLR only supports a voice service and MPF supports a voice and broadband bundle).

Regulations

3.9 GC24 places obligations on fixed voice providers regarding the way in which they engage in their sales and marketing activity in order to prevent consumers from having their services switched without their express knowledge or consent. GC24 came into force on 18 March 2010 and superseded GC14.5. Amongst other things, GC24:

- explicitly prohibits inappropriate sales and marketing activity;
- confirms the type and level of information that needs to be made available to new customers both at the point of sale and after the sale has been concluded (but before the service has actually been transferred). This includes providing important information about the key terms and conditions of the service, including contractual liabilities and cancellation rights;
- introduced new rules to make clear when providers are allowed to cancel orders placed by others to protect their customers from slamming (known in the industry as 'Cancel Other') – cancelling orders in this way for purposes other than those 'slamming' reasons expressly specified by the regulations is prohibited;
- clarifies existing general record-keeping requirements for sales and marketing activities; and
- prevents LPs from making marketing statements or representations in the communication which may induce the customer to terminate their contract with the GP and/or remain in contract with the LP.

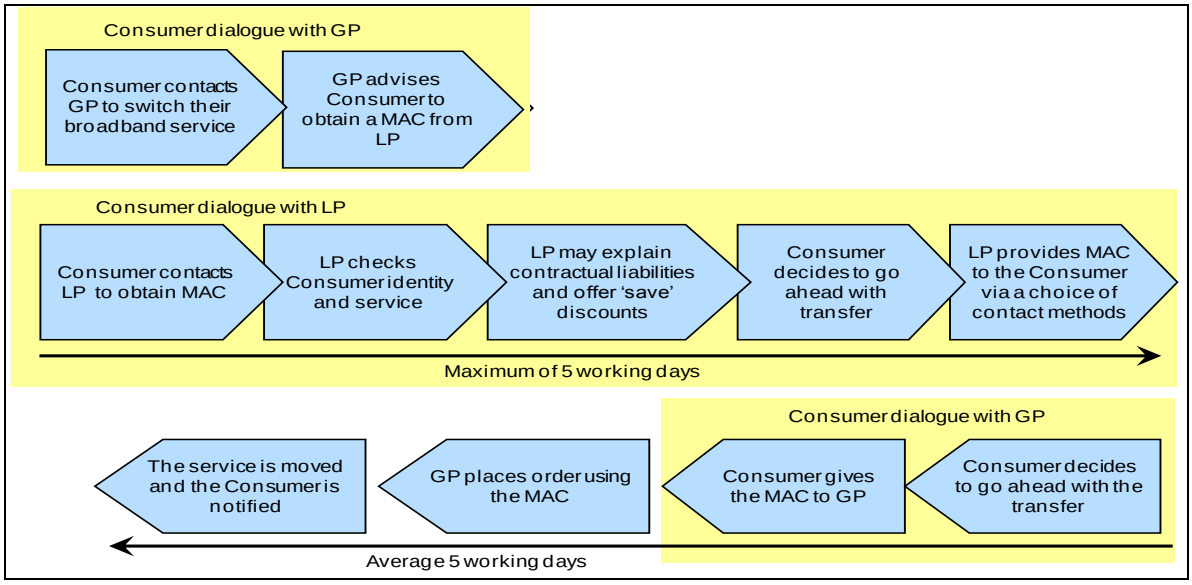
3.10 Ofcom opened an industry-wide monitoring and enforcement programme under GC14.5 on 27 May 2005. The GC24 monitoring and enforcement programme was opened when the new regulations came into force on 18 March 2010. This programme remains open.

Migration Authorisation Code

3.11 The MAC is a LPL process which applies to broadband only. It means that if a consumer wishes to change their provider, they need to obtain a migration authorisation code (MAC) from the LP and provide it to the GP (Figure 3). On receiving a request for a MAC, the LP carries out an authorisation check to confirm that the consumer making the request is the legitimate account holder. Once the consumer has been validated, subject to certain other conditions, the LP is required to issue a MAC to the consumer. The consumer must then supply this MAC to their GP within 30 days to allow the service to be switched.

3.12 The MAC process is intended to be used for switching broadband services where both the GP and LP are using the BT wholesale product IPstream or the Openreach Shared Metallic Path Facility ('SMPF')[46] product.[47] At the end of December 2011, there were 2.7 million SMPF lines;[48]

Figure 3: The MAC process



3.13 A summary description of the process is set out in Figure 4 below.

[46] SMPF is a way for providers to gain partial control of the local loop connecting to end users.
[47] The MAC process is also used where the BT wholesale product Datastream is used but this product is being withdrawn – see https://www.btwholesale.com/pages/static/Products/Broadband/BT_Datastream/index.htm.
[48] OTA/Openreach December 2011

Figure 4: MAC model process description

- A customer wishing to switch their broadband service may contact the provider they want to move to and tell them they wish to switch their service to them. The GP would advise the consumer that they need to contact their existing provider to get a MAC.*
- The customer contacts their LP to request a MAC. The LP is required to provide a MAC to the customer, within five days of the request. The LP obtains the MAC from Openreach's systems and gives the customer the MAC over the phone and/or by e-mail (or by post).
- The customer gives the MAC to the GP. The GP checks the Openreach system to validate the MAC i.e. to confirm that it was issued to that customer, for that particular line.
- Once the MAC is validated, the GP places the broadband order and the transfer process starts.
- The exact time for the transfer to happen depends on the combination of services being switched. The average lead time is five working days.
- The MAC is valid for 30 days.

*Note: This is not an integral part of the MAC process but an initial discussion with the GP may be where the consumer first hears about the MAC process.

Asset identification

3.14 As the LP has access to the records which can accurately identify the line used to provide services to the customer, the MAC process correctly identifies the asset involved in the switching process. The MAC issued by the LP specifically identifies the asset over which the broadband service is provided. The MAC issued by the LP is stored by Openreach against the asset. The switching order subsequently placed by the GP needs to use a MAC which matches the MAC stored by Openreach against the asset for the switching order to progress. The MAC is essentially an identifier that is issued by the LP and used by the GP and LP to ensure that the correct assets are switched.

3.15 The MAC process is not designed to support switching across other access networks and technologies. It currently only works for broadband services delivered over IPStream and SMPF. It does not currently support switching broadband services delivered over MPF. It is also limited to the Openreach copper network and does not work when there are multiple access providers involved in the switch (e.g. cable).

Regulations

3.16 GC22 requires all providers in the value chain (retail and wholesale providers), amongst other requirements, to:

- comply with the MAC process and, in particular, supply MACs to customers wanting to switch providers; and
- ensure a positive experience of migrations for broadband customers (particularly relevant where the MAC process does not apply).

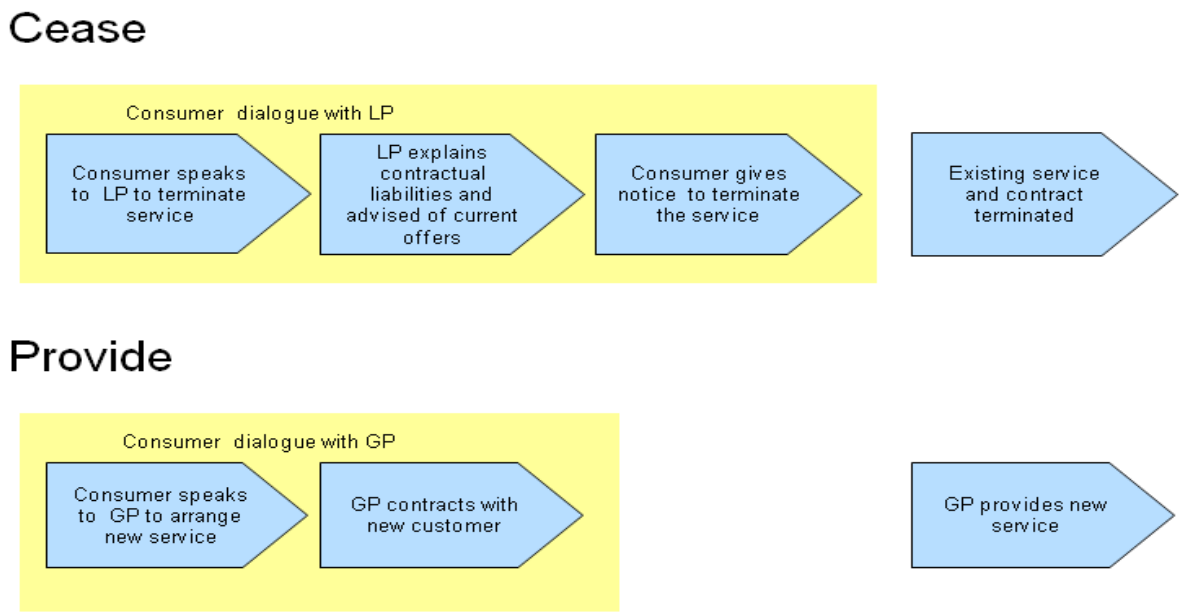
3.17 GC22 came into force on 14 February 2007. On the same day Ofcom opened an industry-wide monitoring and enforcement programme in relation to providers' compliance with GC22. Ofcom closed down this programme in November 2009 in light of significantly reducing complaint levels. Enforcement is now on a case by case basis.

Cease and re-provide

3.18 Where there are no agreed switching processes in place which enable a seamless transfer of services between providers, we describe the process as Cease and Re-provide ('C&R'). Here, the consumer terminates their contract with the LP and requests a new service from the GP (Figure 5). It may not necessarily happen in this order i.e. the consumer may request a new service first before terminating their contract.

3.19 This process requires the consumer to manage the stopping and starting of their services. It is ultimately the decision of the consumer whether they choose to co-ordinate the C&R processes to happen simultaneously (with the risk of a potential loss of service) or to run both services in parallel and only cease the existing service once the new service is up and running (with the result that the consumer may have to pay for two services for a period of time, dependent on the notice period agreed with their LP).

Figure 5: C&R process



3.20 The C&R process is only intended to be used for switching fixed voice and broadband services to or from the Virgin Media cable network. However, as shown in Figure 6 below, providers also appear to be using C&R for fixed voice and broadband switches involving MPF. Based on the industry agreed processes, they should be using the NoT process for these type of switches.

Switching process for bundles of fixed voice and broadband

3.21 Figure 6 provides an overview of processes that are used for switching bundles of fixed voice and broadband depending on the underlying technology the consumer is

switching from and to. In order to be able to follow the industry recommended processes for switching bundles, providers need to support the correct order type process and tactical fixes that have been developed to try and address problems with loss of service.

3.22 Where providers have decided not to support the relevant migration order types the only way for the consumer to switch is to go through the C&R process. In addition, providers may choose to follow a C&R process where they are unable to identify the correct line to transfer – either because of their own system deficiencies or because of difficulties with identifying the right service and asset to switch.

3.23 Further, in order to minimise loss in service when switching bundles of services, providers need to develop their systems to utilise various migration type orders and tactical fixes which have been made available by Openreach on its Equivalence Management Platform ('EMP'), namely:

- The LO process (which may also be referred to as sim-provide). This allows the two separate orders (e.g. (i) MPF to WLR migrate with (ii) simultaneous SMPF provide) to switch the fixed voice and broadband services so that they are delivered at the same time. The current version of LO will allow the fixed voice service to be switched even if there is a problem or delay to the broadband switch. This may result in some loss of the broadband service. The industry is looking to introduce a new version of LO which will only allow the fixed voice and broadband service to be switched together (i.e. as a complete bundle) to prevent loss of the broadband service. This is planned to be introduced during the latter part of 2012.

- Under the Parallel Orders ('POs') process the two orders are not linked (via the systems platform) rather the provider needs to manually manage the sequencing and timing of the two orders. This means there can still be some loss of service where the provider does not get the sequencing and timing of the two orders right.

3.24 Where providers have decided not to support these tactical fixes, the services will be transferred sequentially and the consumer will suffer a loss in one of their services.

Figure 6: Switching processes by technologies used for switching bundles of voice and broadband

Switching from→to*	Processes followed
MPF→MPF (i.e. switching between O2/Sky/TTG)	NoT– if the gaining MPF provider supports the 'MPF to MPF Migrate' order type.
	C&R – if the gaining MPF provider does not support the 'MPF to MPF Migrate' order type or if the correct line cannot be identified.[49]
WLR+SMPF → MPF (i.e. from pretty much any provider to O2/Sky/TTG)	NoT – if the gaining MPF provider supports the 'WLR+SMPF to MPF Migrate' order type.[50]
MPF → WLR+SMPF (i.e. from O2/Sky/TTG to pretty much any provider)	NoT - if the gaining WLR+SMPF provider supports the 'MPF to WLRMigrate with simultaneous SMPF provide' order type.[51] If they also support the LOs process then the consumer should not suffer a loss in service. Data provided by Openreach suggests that only a small number of providers support and use LOs.
	C&R - if the correct line cannot be identified.
WLR+SMPF→WLR+SMPF (i.e. all providers use these technologies)	NoT (for voice) plus MAC (for broadband) If the gaining WLR+SMPF provider supports the use of the 'Parallel Orders' process then loss of service to the consumer will be minimised.

*MPF providers also use WLR+SMPF for some of their customers

Question 1: Do providers support (i) each of the different order type processes (ii) Linked Orders (iii) Parallel Orders processes? Where providers do not support each of these individual processes, please explain why you think this is the case? Please provide evidence to support your view.

Number Porting

3.25 GC18 currently sets out the obligations on providers to allow consumers to retain their telephone number(s) when they change providers. GC18.1 requires providers to provide 'number portability as soon as is reasonably practicable on reasonable terms'.

3.26 Where providers are offering services which are not provided over the Openreach 'managed' network (i.e. MPF), it is necessary for providers to enter into bi-lateral porting agreements with each other in order to be able to provide number portability.

[49] It is our understanding that not all MPF providers are able to support the 'MPF to MPF Migrate' order type and that the C&R process is sometimes used for this type of switch.
[50] It is our understanding that all MPF providers are able to support the 'WLR+SMPF to MPF Migrate' order type.
[51] It is our understanding that most providers are able to support the 'MPF to WLR Migrate' order type.

Currently, where consumers switch between particular providers they may not have the option of taking their number with them. This may either be due to an absence of porting arrangements or due to providers not having undertaken the necessary systems changes required to support number portability.

3.27 We continue to monitor providers' developments in this area and have highlighted that the requirements to provide number portability are clear, and that we will take enforcement action, if we consider this is appropriate.

Homemovers - Working Line Takeover and Linked Orders

3.28 The WLTO and LO processes are followed where a consumer is moving home and either wishes to continue taking their services from their existing provider or switch to a new provider.

3.29 The WLTO process is intended to be used where there is a 'working' fixed voice line at the new address the consumer is moving to.[52] The WLTO process can be followed where the consumer contacts the GP a few days before they plan to move home. This allows the GP to raise an order against the fixed voice line at the new address and for the consumer currently residing at that address and their provider to co-ordinate dates to allow a seamless delivery of service to the consumer moving in.

3.30 As part of the WLTO process, the consumer will need to cancel their contract with the LP at their original address. The WLTO process from a consumer perspective therefore looks similar to the C&R process.

3.31 The LO process is used where there is no 'working' fixed voice line at the new address the consumer is moving to and the new voice and broadband services are delivered via WLR+SMPF wholesale products. This solution is intended to provide a seamless delivery of the fixed voice and broadband service at the same time. Data provided by Openreach suggests that only a small number of providers support and use LOs. Alternatively, the new voice and broadband services could be delivered via a new MPF wholesale product where the MPF provider ensures that the new voice and broadband services are activated at the same time.

Switching processes for NGA based services

3.32 Openreach is beginning to roll out new fibre networks, extending the fibre network to the street side cabinet (Fibre to the Cabinet ('FTTC')) and to the customer's premises (Fibre to the Premises ('FTTP')). Fibre networks can provide much higher upload and download speeds for data services.

[52] The OTA guide covering homemovers is available at http://www.offta.org.uk/IndustryBes%20PracticeGuide-Migrations&HomemoversJan2011.pdf and http://www.offta.org.uk/IndustryBPG%20Appendix%20B%20WLT.pdf.

Fibre to the cabinet ('FTTC')

3.33 The FTTC roll out is underway and FTTC services on the PSTN are currently available to 6 million homes, with 300,000 premises signed up to the services.[53] By 2014, it is expected that 12 million premises across the UK will be within the FTTC footprint. This is around 75% of the 66% of UK homes that are being upgraded to Next Generation Access ('NGA') technology.[54] At the current take up rate of 5%, approximately 600,000 homes could be using FTTC technology.

3.34 Currently, switching involving FTTC follows the same processes as WLR+SMPF technology i.e. could go through the NoT process and MAC process depending on the services being switched, technology of the other provider and upgrades made by the GP. Changes to the processes involving FTTC is being considered as part of this project.

Fibre to the premises ('FTTP')

3.35 At its FTTP trial in Bradwell Abbey, Openreach rolled out the new fibre network to 11,000 premises and around 500 customers have signed up to services on this network.[55] Openreach expects to offer services in another 12 exchanges by the end of 2011, passing 270,000 premises. By 2014, they aim to reach 25% of the 66% of the UK homes which will be upgraded to NGA, meaning that 4 million homes will be passed. At a 5% to 10% take up rate, between 200,000 and 400,000 homes could be using FTTP services.

3.36 Currently, switching to or from FTTP would go through the C&R process. Potential changes to this process are outside the scope of this part of the review. We plan to consider FTTP (along with cable) in the next part of the review.

Conclusions

3.37 There are a number of different switching processes that can be used to switch fixed voice and broadband providers. The switching process consumers need to go through depends on the service they are switching, the underlying technology of both the LP and the GP and the order type processes the GP has chosen to support.

3.38 Continuity of service when switching providers depends on whether the GP has invested in specific processes that allow them to simultaneously switch bundles of services.

[53] http://www.btplc.com/News/ResultsPDF/q211_release.pdf
[54] http://www.bbc.co.uk/news/10111724
[55] http://www.pcadvisor.co.uk/news/internet/3263334/bt-rolls-out-100mbps-broadband-in-milton-keynes/

Section 4

Problems with the current switching processes

Introduction

4.1 In section 2, we set out the legal framework applicable to Ofcom's analysis of switching processes. In this section, we consider the nature of the issues and problems faced by consumers before considering in sections 6 and 7 what action it might be appropriate to take to address the resulting concerns.

4.2 This section starts with some background information on the level and ease of switching fixed voice and broadband services and how this compares to other sectors. It then sets out the problems with the current processes for switching fixed voice and broadband services over the Openreach copper network.

4.3 For each of the identified problems, we provide a high level overview of the issue along with any background information. We then consider what happens under the existing NoT and MAC processes including details of any relevant regulations and associated monitoring and enforcement activity. We set out the available evidence and our analysis of the harm associated with each problem and our conclusions. [56]

4.4 The key problems that are considered in this section are:

- Problem 1: Multiple processes for switching the same service / bundle of services.
- Problem 2: Back end system deficiencies.
- Problem 3: Insufficient customer consent.
- Problem 4: Lack of awareness of the implications of switching.
- Problem 5: Unnecessary switching costs/hassle.

4.5 We consider 'Problem 6: Reactive save activity' in section 5.

Background on switching

Switching levels

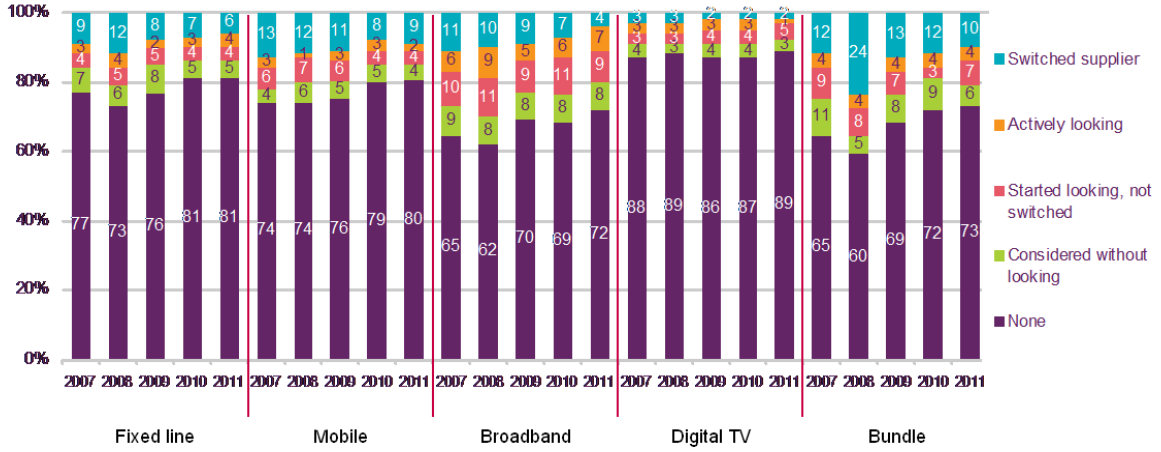
4.6 We look here at switching levels across the UK communications sector and consider how these compare to other sectors. It is worth noting that low switching levels can be consistent with both effective and ineffective competition and the presence of low switching levels alone does not necessarily prove or disprove the existence of a competition problem. However, all else being equal, we would expect switching levels to be higher where switching processes are easy and hassle free as compared to where the processes are difficult and involve unnecessary hassle.

[56] The sources of evidence we draw on are described and referenced in full in section 2.

4.7 The vast majority of consumers in the communication sector are inactive, meaning that they have neither switched nor considered switching in the last year (Figure 7). Switching levels vary across different services and whether services are bought on a standalone basis, or as part of a bundle.[57] Bundles are a growing part of the market with around half of all UK households (53%)[58] now buying two or more communication services as part of a bundle. This is an area with potential for further growth and development. Double play bundles (fixed voice and broadband – 24%) are still the most common form although a significant proportion of households now have triple play bundles (fixed voice, broadband and digital TV – 16%).[59]

4.8 The Consumer Experience Report 2011 (Figure 7) shows the lowest level of switching for services bought on a standalone basis in the past 12 months was in the digital TV sector (2%), followed by the broadband sector (4%) and then the fixed voice sector (6%). The highest levels of switching were around mobile (9%) and bundled services (10%). However, it is likely that the vast majority of switching relating to bundles was by consumers switching single services to form a bundle or a service within their bundle.[60] Only a small proportion of consumers are likely to have switched their complete bundle of services.

Figure 7: Proportion of consumers who have switched communications providers in the past 12 months



QL7/QM7/QI7/QT7 - Have you ever changed the company that provides your home [SERVICE]?/ QB7AA – Have you or your household ever used a different provider for all or some of the services in your current package?/ QL9A/QM9A/QI9A/QT9A/QB9AA/ QB9A – Have you considered changing the company that provides your [SERVICE]/ individual services in your package/ whole package of services?
Source: Ofcom decision making survey carried out by Saville Rossiter-Base in July to August 2008, 2009 and 2010, June to July 2011
Base: All adults aged 16+ who are the decision maker for fixed line** (2007, 1018) (2008, 941) (2009, 781) (2010, 627) (2011, 585), mobile** (2007, 1211) (2008, 1270) (2009, 1231) (2010, 1200) (2011, 1564), broadband** (2007, 403) (2008, 460) (2009, 388) (2010, 226) (2011, 253), digital TV** (2007, 800) (2008, 896) (2009, 837) (2010, 775) (2011, 945), bundled services (2007, 384) (2008, 534) (2009, 631) (2010, 570) (2011, 795). **NB Base amended in 2010 and 2011 to exclude those who receive this service along with another service from the same supplier without receiving a discount. Base for broadband in 2010 and 2011 represents those with fixed broadband rather than fixed or mobile broadband as in previous years. Too few interviews were conducted with those with mobile broadband to report these separately. Trend data may be affected by these changes.

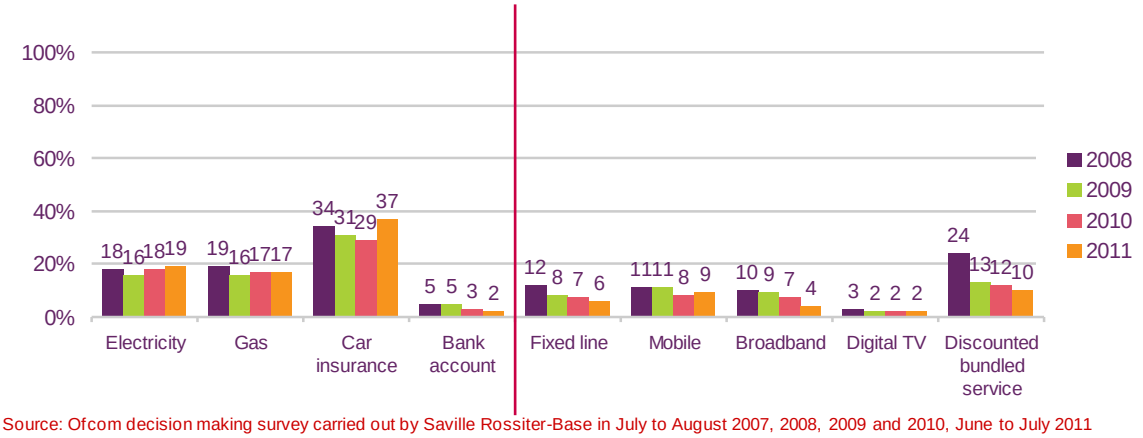
Source: Consumer Experience Report 2011 Figure 117

4.9 Consumers are most likely to have switched car insurance provider followed by electricity and gas than communication services in the last 12 months (Figure 8).

[57] A bundle is where a consumer purchases two or more services from the same provider on a single bill and considers this to be a package of services. The consumer may or may not receive a discount.
[58] Figure 1.5 in Ofcom's Communications Market Review http://stakeholders.ofcom.org.uk/binaries/research/cmr/cmr11/UK_CMR_2011_FINAL.pdf
[59] Figure 1.5 http://stakeholders.ofcom.org.uk/binaries/research/cmr/cmr11/UK_CMR_2011_FINAL.pdf
[60] Our consumer research 2010 found that 13% of bundled switching was by consumers switching single services to form a bundle or within their bundle and 3% switching a complete bundle. Comparable data is not available from the CER 2011.

Consumers were less likely to have switched bank accounts than fixed voice, mobile or broadband services.

Figure 8: Proportion of consumers who have switched communications and utilities providers in the last 12 months



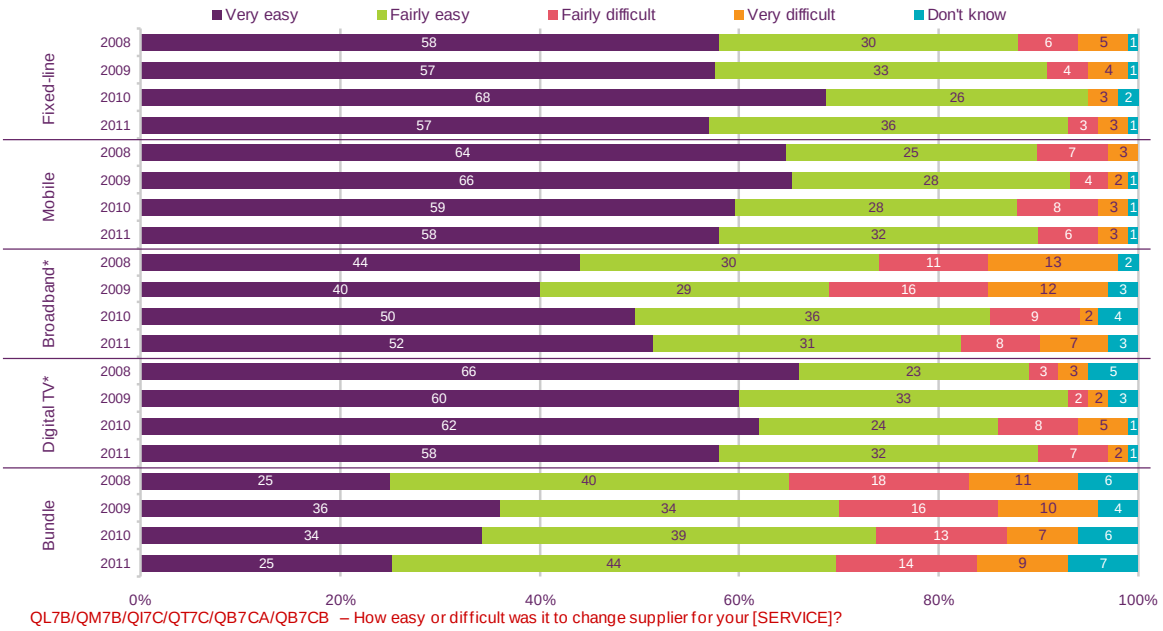
Source: Ofcom decision making survey carried out by Saville Rossiter-Base in July to August 2007, 2008, 2009 and 2010, June to July 2011
Base: All adults aged 16+ who are the decision maker for fixed line** (2008, 941) (2009, 781) (2010, 627) (2011, 585), mobile** (2008, 1270) (2009, 1231) (2010, 1200) (2011, 1564), broadband** (2008, 460) (2009, 388) (2010, 226) (2011, 253), digital TV** (2008, 896) (2009, 837) (2010, 775) (2011, 945),), discounted bundled services (2008, 534), (2009, 631) (2010, 570) (2011,795 electricity (2008, 1309) (2009, 1226) (2010, 1286) (2011, 1624), gas (2008, 1125) (2009, 1069) (2010, 1119) (2011, 1423), car insurance (2008, 1107) (2009, 1019) (2010, 1069) (2011, 1387), bank account (2008, 1418) (2009, 1350) (2010, 1369) (2011, 1746). **NB Base amended in 2010 and 2011 to exclude those who receive this service along with another service from the same supplier without receiving a discount. Base for broadband in 2010 and 2011 represents those with fixed broadband rather than fixed or mobile broadband as in previous years. Too few interviews were conducted with those with mobile broadband to report these separately. Trend data may be affected by these changes.

Source: Consumer Experience Report 2011 Figure 134

Ease and difficulty of switching

4.10 As shown in Figure 9, consumers switching at least some of the services in a bundle were most likely to say switching provider was difficult (23%). They were also the least likely to rate switching as very easy (25%).

Figure 9: Ease or difficulty of switching in last 12 months by communication service

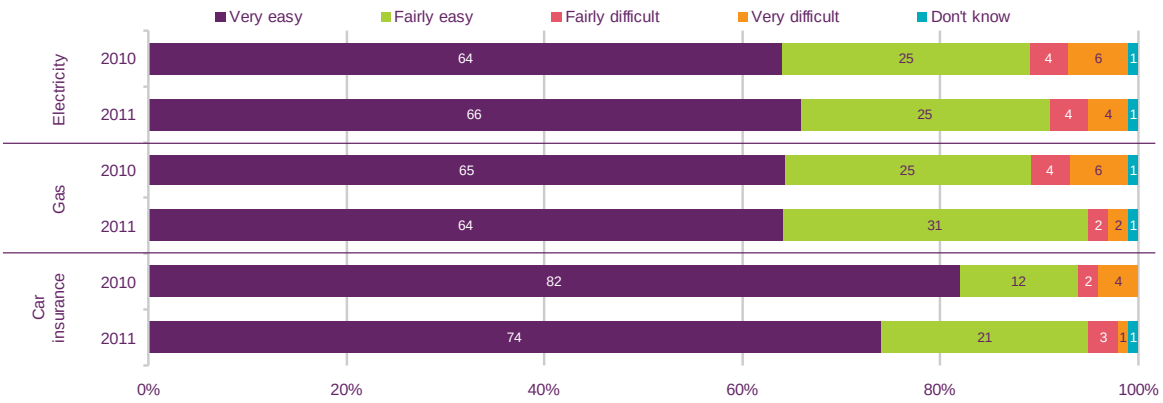


QL7B/QM7B/QI7C/QT7C/QB7CA/QB7CB – How easy or difficult was it to change supplier for your [SERVICE]?
Source: Ofcom decision making survey carried out by Saville Rossiter-Base in July to August 2008, 2009 and 2010, June to July 2011
Base: All adults aged 16+ who are the decision maker and have ever switched provider for fixed line** (2011, 193), mobile** (2011, 607), broadband** (2011, 69), digital TV** (2011, 91), bundled services** (2011, 454). *Caution: Low base. **NB Base amended in 2010 and 2011 for standalone services to exclude those who receive this service along with another service from the same supplier without receiving a discount. *Base for broadband in 2011 represents those with fixed broadband rather than fixed or mobile broadband as in previous years. Too few interviews were conducted with those with mobile broadband to report these separately. Trend data may be affected by these changes.

Source: Consumer Experience Report 2011 Figure 135

4.11 Only 4% of consumers who switched their car insurance or gas supplier in the last 12 months said the process was difficult (Figure 10). This compares to 8% amongst electricity switchers which is broadly comparable to the levels for fixed voice (6%) and mobile (9%). The level of difficulty in switching across other sectors was lower than compared to those switching broadband (15%) and bundles (23%).

Figure 10: Ease or difficulty of switching in last 12 months by utility service



NQA1AC/ NQA1BC/ NQA1CC – How easy or difficult was it to change [SERVICE] supplier?
Source: Ofcom decision making survey carried out by Saville Rossiter-Base in July to August 2010, June to July 2011
Base: All adults aged 16+ who are the decision maker and have switched provider in the last 12 months for electricity (2011, 299), gas (2011, 240), car insurance (2011, 512).

Source: Consumer Experience Report 2011 Figure 138

4.12 We have investigated the problems with the switching processes which we think have contributed to fixed voice and broadband consumers either perceiving there will be difficulties if they switch or having experienced difficulties when they switched – both

of which may deter consumers from switching. The key problems we have identified are set out below.

Problem 1: Multiple switching processes

4.13 As set out in detail in section 2, there are several different switching processes which may apply to consumers switching fixed voice and/or broadband provider. Over time, the communications industry (sometimes with input from Ofcom or Oftel) has developed its own switching processes to enable consumers to switch providers. This has resulted in the existence of multiple switching processes - even for switching the same type of service. Consumers may also need to navigate more than one process simultaneously when moving multiple services or switching a complete bundle.

4.14 The use of multiple processes rather than a single process means that there is:

- A lack of clarity and increased hassle (e.g. additional time spent speaking to providers, additional contact points with providers) for consumers, particularly those who are switching bundles. It can also be challenging for providers to give the correct advice to the consumer on the steps to follow where the provider also lacks clarity. This is likely to get worse in the future with the increasing trend towards bundling, more consumers switching complete bundles and as the bundles offered become more complex.

- Increased costs to providers which may ultimately be borne by consumers.

- A lack of competitive neutrality across providers as firms who mainly gain customers through a GPL process can expect to have lower customer acquisition costs than those who gain customers through a LPL process.

4.15 Stakeholders have been strongly supportive of the harmonisation of switching processes for fixed voice and broadband services and bundles of these two services over the Openreach copper network. [61]

Lack of clarity and level of hassle faced by the consumer

4.16 The process a consumer needs to go through to switch provider depends on the type of service they are switching, the underlying network technology used by the LP and the GP and also whether the GP has made certain investments and upgrades to its systems or has certain agreements in place with other providers. The customer may not know the network technologies used by the LP and the GP to deliver the services. As set out in section 3, some of the larger providers use a mix of different

[61] ACN European Services Limited (Q8-10), BT (Section 2.1 page 6), Citizens' Advice (Q3 page 4), Consumer Panel (Executive summary pages 3-4), Everything Everywhere (Section 5 page 4), Federation of Communication Services ('FCS') (Q7 page 5), Gemserv (Q10 page 16), Hutchison 3G (Executive summary page 1), KCOM (Q2), Scottish and Southern Energy ('SSE') (Cover letter and Q10), Talk Talk (Introduction and Q10), Tesco Telecoms (Key points and Q10), Virgin Media (Q10 page 22), which? (Q3), [✂] and [✂] expressed support for this in response to the September 2010 consultation.
Sky (paragraphs 3.3 to 3.8) opposed harmonisation of switching processes for bundles but did not explicitly support or oppose harmonisation within single services. In more recent communications Sky advocates the introduction of a harmonised process for fixed voice and broadband over the Openreach network, which is one of the options we are now consulting on – see http://stakeholders.ofcom.org.uk/binaries/consultations/switching-fixed-voice-broadband/annexes/option_proposal.pdf.

technologies depending on the location of the customer (e.g. MPF within areas where they have unbundled access to the local loop and wholesale services outside their LLU footprint), which makes this more complex. This creates a lack of clarity for consumers about what they need to do even if they have switched before.

4.17 The lack of clarity is potentially less of a problem if, when a consumer wants to switch, they can easily find out what they need to do.[62] However, given the process the consumer will go through is dependent on so many factors, it is challenging for consumers to access clear and simple information about what they need to do to switch from independent sources such as price comparison services or friends and family. Further, it can also be challenging for providers to give the correct advice to the consumer where the provider also lacks clarity (e.g. the GP may not know at the start of the process what technology the LP is providing the service to the consumer over given that many providers use a range of technologies). Moreover, the GP's ability to correctly advise the consumer of the appropriate switching processes is likely to get worse over time as FTTC and FTTP technologies are rolled out and where other new technologies are introduced.

4.18 The lack of a clear and simple switching process that can easily be understood by and communicated to consumers is likely to increase perceptions about the level of difficulty and hassle involved in switching fixed voice and broadband services. This is a particularly important consideration for consumers that are actively considering switching provider and in a sector where a significant proportion of consumers are inert.

Consumer confusion

4.19 Our consumer research 2010 found that a significant minority of those consumers who had not changed providers expressed confusion about the switching process.

- Around one third of those who had not switched, nor considered switching their provider in the previous 12 months ('inactive consumers') raised concerns about knowing which steps they need to take to switch provider (34%).[63]

- Around one third of those who had considered switching but had not done so in the previous 12 months ('considerers') said they did not know what process they would need to go through to switch to another provider (38% fixed voice and 31% broadband[64]). A small proportion of such consumers (6% for fixed voice and only 1% for broadband[65]) said that not knowing what process they would need to go through

[62] O2 (paragraphs 49 to 53), Sky (paragraph 3.4), Virgin Media (Q2) and Vodafone (Q3) argued in response to the September 2010 consultation that consumers do not need to understand the switching processes until they decide to switch, i.e. that the key issue is not whether consumers have a clear understanding of all processes but rather, whether consumers who want to switch can discover easily how to do so when they need to.

[63] Consumer research 2010 Figure 22 page 30. This was in response to questions about which aspects (if any) of switching they considered to be too much hassle. However, when those consumers were asked why they had not even considered switching in the last year, lack of clarity was not identified as such a significant problem. The vast majority (at least 80%) said the reason they had not even considered switching was that they were happy/satisfied with their current supplier (Figure 24 page 33). Only a small proportion (1%-2%) mentioned lack of clarity about what steps I would need to take to switch.

[64] Consumer research 2010 Figure 26 page 36

[65] Consumer research 2010 Figure 23 page 32 based on an analysis of a subset of the process reasons set out in the table on page 31.

to switch or that the process seems daunting/messy/complicated was a factor in them subsequently deciding not to switch.

- Confusion was lower among those who had actually switched provider in the previous 12 months ('switchers'), less than one in ten had difficulty in knowing what steps they needed to take to switch (8% for fixed voice, 9% broadband and 5% bundles).[66]

4.20 Our broadband consumer research 2011 identified that 8% of those considering switching broadband as a standalone service or as part of a bundle decided not to switch as they were 'worried about the process'.[67]

4.21 SSE[68] and [✂][69] said that they have come across a lack of clarity amongst customers about when, for their broadband service, they need to provide a MAC and when they don't. The lack of clarity and confusion about what they need to do to switch can result in higher switching costs for consumers e.g. in lengthy/multiple conversations with the provider to identify the technology and the correct process. Our broadband consumer research 2011 found that: 1% of broadband switchers said they had contacted the LP to get a MAC when they don't need one under the NoT process; and 65% had spent time contacting the LP to cancel their contract when under the NoT process this is carried out by the GP on behalf of the consumer.[70]

4.22 Consumer research by a price comparison service also found that a significant proportion of broadband consumers who had switched in the previous year (40%[71]) were unaware of the MAC code for switching broadband. However, we note that where the MAC process is appropriate, the GP should (where it knows which technology is being used) have an incentive to inform the consumer about the correct process to follow to help ensure that it wins the consumer's business.

4.23 The evidence therefore suggests to some extent that the confusion generated by the use of multiple processes could lead to a lower proportion of consumers actively thinking about and moving to their preferred provider and the service that best meets their needs. If this were the case, this would reduce the competitiveness of the market and lead to a worse outcome for consumers.

Limitations in provider ability to advise consumer of correct process

4.24 In certain circumstances, it can also be challenging for a provider to give consumers the correct advice on the process they need to follow to switch their services.

Losing providers

4.25 Providers need to know the Calling Line Identification ('CLI') (normally the consumer's phone number) and postcode/full address of the consumer to help them identify the technology the customer is using and therefore the correct process to follow. LPs know the underlying technology the consumer is currently using but may lack the information about what technology a GP will use to supply the customer's service (as most MPF providers use a range of network technologies, depending on

[66] Consumer research 2010 Figure 16 page 24, Figure 14 page 23 and Figure 12 page 22
[67] Broadband consumer research 2011 slide 46
[68] September 2010 consultation response Q2
[69] [✂]
[70] Broadband consumer research 2011 Slide 14
[71] http://www.moneysupermarket.com/c/press-releases/broadband-providers-still-failing-on-mac-codes/0009167/

the location of the customer) which means they cannot advise on the correct switching process to follow. In these circumstances some providers will advise the consumer to contact the GP for advice. However, a few providers [✂[72], ✂[73] and ✂[74]] indicated in their responses to a formal information request in 2011 that, as an LP, they will usually advise broadband consumers to request a MAC and will issue one which the consumer may or may not use. This results in additional costs to consumers and providers from issuing a MAC which may not be needed.

Gaining providers

4.26 Information from providers suggests that, at present, in most circumstances, it should be possible for the GP to provide the correct advice to consumers about the process to follow for switching fixed voice and broadband services. However, SSE said that the variety of different processes underpinning switching for the same type of service means that it may be difficult for the prospective GP to give definite information to the consumer about the next steps – at least until the GP has been able to check the consumer's current supply arrangements. This, in their view, may put some customers off and thus represent a barrier to switching.

4.27 GPs will use the CLI and postcode/address and Openreach DS to identify the right order to place and whether or not a MAC is required for the broadband service. Providers have indicated that the CLI is the initial check and the postcode/address is used as a cross check to help ensure the correct customer and services are identified. The Obtain Installation Details ('OID') checker on DS should allow identification of the line type and features associated with it in the case of WLR lines. The main reasons why the OID check may fail are:

- The CLI is not recognised as the consumer is on MPF (or another network). In this case, the GP would likely infer that a MAC is not required and advise the consumer to follow the NoT (or C&R) process.

- There is a mismatch between the address provided by the customer and the address stored on the Openreach database. In this case, the GP may be able to do further checks with the consumer to ensure they have the correct address details or may decide that an imprecise match on the address is sufficient.

4.28 GPs need to know which technology they will use to supply the services to the consumer to be able to say which process they should follow. Where the agent does not have this information at the point of sale they may provide the wrong information to the consumer which may result in additional costs for the consumer and the GP.

4.29 It is likely to become more difficult for GPs to advise consumers on the right process as new technologies (or new combinations of existing technologies) are rolled out. With the introduction of new superfast broadband services, residential voice and broadband services may be delivered on the Openreach network using MPF with Generic Ethernet Access ('GEA')[75] or with GEA on Openreach's FTTP[76] technology once it is rolled out. It will be unclear to GPs whether the lack of a visible CLI in the Openreach database means the technology is:

[72] [✂]
[73] [✂]
[74] [✂]
[75] GEA is a wholesale product from Openreach which allows operators to provide services on its superfast broadband network.
[76] FTTP is a form of fibre optic communication delivery in which the optical signal reaches the end user's premises.

- MPF where the NoT process needs to be followed;
- MPF+GEA where an NoT and MAC process is likely to be followed; or
- FTTP where currently a C&R needs to be followed.

Question 2: Are gaining providers currently able to correctly advise consumers at the point of sale on the correct switching process to follow (e.g. do agents have access to and the ability to use Dialogue Services and have access to information on which technology will be used to supply the service to the customer)? Please provide any evidence you have to support your views.

Question 3: Do you agree it will become more difficult for Gaining Providers to advise consumers at the point of sale on the correct switching process to follow as new technologies or new combinations of existing technologies are rolled out? Please provide any evidence you have to support your views.

Increased hassle for switching bundles

4.30 Consumers switching to, from and between bundled services for fixed voice and broadband may need to navigate both the NoT and MAC switching processes simultaneously. This increases the complexity of the process and places an additional burden on the consumer (i.e. it increases switching costs).

4.31 It also means that any consumer or competition problems caused by switching one service using one process may have an impact on the other service that is being switched using the other process. If a process provides a built in opportunity for reactive save activity or is associated with higher switching costs, which result in the consumer deciding not to go through with the switch for that service, they may then also decide not to go through with switching the other service.

4.32 Sky[77] and O2[78] have previously argued that where, for example, a consumer switches a bundle of fixed voice and broadband then the two processes the consumer has to navigate effectively become one process only (i.e. the process followed for switching the broadband service). We think it would be difficult to present the NoT and MAC processes as one single process to the consumer given that they would need to understand which parts of the process relate to the different services they are switching (e.g. to explain that the MAC only relates to the broadband service and the NoT letter they receive will relate only to the fixed voice service even though they are switching the broadband service as well). Even if it may be possible to try and present them as one process rather than two processes, it still involves a greater level of complexity and has higher switching costs.

4.33 Many consumers with bundles have not reached the end of their initial contracts yet, and even if they have, they have not switched providers yet, so there is limited empirical evidence on consumers' experiences of moving a complete bundle of services to a new provider and the effect this has on the competitive process. Our bundles research 2008 suggests that many consumers expect switching to be easier in a bundle as they think they will only need to contact one provider and use a single process to switch all their services.[79] As more consumers start to switch complete

[77] Paragraph 3.6
[78] Paragraph 104.d
[79] Section 3.14 and 3.15. Feedback from SRB on the qualitative work undertaken as part of the consumer research 2010 was consistent with these findings from the bundles research 2008.

bundles and realise that it is more complex and involves higher switching costs than they expected this may have a negative impact on the proportion that go through with the switch. It may also increase perception of switching costs more generally.

4.34 O2[80] said that its customers have expectations that broadband and fixed line services (i.e. those that are technologically connected) will be switched together at the same time. This suggests it is not surprising that customers switching bundles are confused when they actually have to navigate multiple processes.

4.35 The development of communication services which use new infrastructure is likely to lead to bundles being offered which include services which are provided over different and new technologies. Consequently, consumers will be switching to and from an increasing set of differing technologies. Given the trend towards bundling services, the lack of having a single clear and simple process for switching bundles is likely to become more of a problem.

Inefficiencies

4.36 Discussions with stakeholders and responses to our formal information requests suggest that the use of multiple switching processes can result in increased costs for providers. We are concerned that these costs may ultimately be borne by consumers. Inefficient industry costs may arise from:

- Additional resources spent by providers:
    - providing MAC codes when they are not required;
    - trying to figure out the correct switching process when advising a consumer as they are unaware of the type of technology the GP will use to provide the service;
    - trying to identify the consumer by CLI and address where there is a mismatch with what is in the Openreach database;
    - responding to additional consumer calls where a consumer has been incorrectly advised by the GP or LP as a result of the issues above, and follow up is required;
    - having to reverse a process which turned out to be incorrect (e.g. agent call handling time and use of DS).
- The costs of running multiple processes instead of one harmonised process. It is likely to be more efficient for all providers to run the same process for all switching customers.

Lack of competitive neutrality

4.37 Multiple switching processes can also distort competition between providers.[81] All else being equal, a firm which mainly gains customers through a GPL process can

[80] Paragraph 108

[81] BT (Section xiii and Q10), KCOM (Q10) and Everything Everywhere (Section 5 and Q10) argued that the multiplicity of switching processes creates an uneven playing field. It was felt this will be the case if certain switching paths are easier than others and, as a result, if one group of providers is able to acquire customers more easily or cheaply than another group – purely as a consequence of the applicable migration process.

expect to have lower customer acquisition costs than one which mainly gains customers through an LPL process. Similarly, firms whose customers switch away under an LPL process can expect a lower customer churn rate than those whose customers switch away under a GPL process when all else is equal.

4.38 A lack of competitive neutrality arises when it is relatively harder or more costly for a particular firm to gain customers (e.g. on average they tend to gain customers under an LPL process[82]), but it is relatively easier for that firm to lose customers (e.g. on average customers tend to switch away under a GPL process).[83] The customer acquisition costs are higher when customers are acquired under a LPL process because a number of customers who are initially prepared to switch end up staying with their current provider (i.e. they are saved). So, all else being equal, for a given marketing spend a broadband provider which tends to gain customers using the LPL MAC process might expect to win fewer customers than a provider who tends to gain customers using the GPL NoT process. A provider which gains customers using LPL processes and whose customers can switch away using GPL processes is likely to be at a particular disadvantage. A lack of competitive neutrality may lead to some firms having a competitive advantage or disadvantage relative to others. It is worth noting that any such impact depends on the competitive position of the different firms and their size.

4.39 In the broadband market, a sample check by one provider [✂] on one week's worth of sales in early April 2010 found that of 45 sales that were keyed in and required a MAC to switch, only 10 became customers. This implies a 78% cancellation rate which should be compared to the 20% cancellation rate the provider [✂] identified for new connections that do not require a MAC. This is consistent with higher customer acquisition costs for firms which acquire customers through an LPL process.

4.40 [✂] has also suggested in bilateral discussions with us that a competitive advantage also arises from the increased switching costs from having multiple processes rather than a single process. We would welcome views from stakeholders on whether this is an issue.

Question 4: Do you agree there is lack of competitive neutrality from having multiple processes? Please provide any evidence you have to support your views.

Conclusion

4.41 The use of multiple processes for switching fixed voice and broadband providers over the Openreach copper network has the following implications:

- General lack of clarity for consumers because the switching process depends on things that are not visible to the consumer.
- Added complexity and hassle for consumers switching bundles because multiple processes may have to be followed simultaneously.
- Providers' ability to correctly advise of the correct switching process will depend on the systems they have in place.

[82] On average, the customer acquisition costs under an LPL process are higher because some customers who indicate they are willing to switch are 'saved'. This is discussed further in section 5.
[83] Our consumer research 2010 found that the LPL MAC process was generally more hassle and harder to navigate than the GPL NoT switching process.

- Providers may not be able to correctly advise consumers of the appropriate switching process in the future as new technologies are rolled out.

- Unnecessary costs are incurred by both GPs and LPs, costs which may ultimately be borne by consumers.

- Lack of competitive neutrality across providers depending on the proportion of customers switching to and from them using the different processes.

Question 5: Do you agree with our assessment of Problem 1: Multiple switching processes? If not, please explain why you disagree.

Problem 2: Back end system deficiencies

4.42 There are effectively two distinct sides to the switching process. There is the consumer facing element which involves authenticating the customer, validating their consent to switch and informing them about the implications of switching. In addition, there is a separate process carried out by the providers which involves correctly identifying and validating the services and assets to be switched and then coordinating the processes that need to take place behind the scenes to allow the switch to go through seamlessly. We refer to these as the back end systems as they largely take place away from the consumer.

4.43 The switching processes were originally designed to switch one service provided over one line using a single technology. Whilst the services offered to consumers and the way in which these services are consumed have changed considerably over time, corresponding changes have not always been made to the back end systems.

4.44 We have identified the following problems with the back end systems which can lead to a number of difficulties for consumers when switching both now and in the future as markets and technologies continue to evolve:

- Lack of reliability meaning the wrong line can be switched.

- Loss of service particularly where consumers are switching broadband services.

- Lack of technological neutrality as it is more difficult to switch away from certain types of technology and as the central back end switching systems are currently limited to the Openreach managed copper network.

Lack of reliability

4.45 The MAC process currently appears to provide a reliable method of ensuring correct service and asset identification at present for broadband switches where both the GP and LP use IPstream or SMPF technologies (i.e. within the Openreach managed copper network). The current NoT process is less reliable and has a number of limitations which we consider below.

4.46 In addition, market and technological developments suggest that both the MAC and the NoT processes are likely to become a less reliable means of identifying the correct service in the future. This means that, in the future, consumers will face a greater risk of the wrong service being switched.

Reliance on CLIs under the current NoT process

4.47 The current approach to identifying and validating services and assets under the NoT process is critically reliant on the GP using the consumer's CLI and address to interrogate Openreach DS[84] to identify the correct line. This works well when the service is managed by Openreach (e.g. WLR and CPS services used by providers), as Openreach maintains the CLI records centrally and providers are able to interrogate this information to identify the assets to switch through Openreach DS.

4.48 However, when the services and assets are not managed by Openreach the CLI is no longer maintained through Openreach DS. This means the CLI and address details entered by the GP will not always return a match in the Openreach system. If this happens the GP may try and identify the correct line using only the address and this may result in the wrong services and assets being switched.

4.49 The Openreach systems do not hold information about services and assets that are managed by MPF providers. There are currently no central systems that provide GPs with visibility of MPF CLIs, which makes it difficult for the GP to correctly identify an MPF line. This means the NoT process is less reliable when consumers are looking to move between or from MPF providers. This is particularly difficult when there are multiple MPF lines in use at a single location (e.g. in a block of flats or a house conversion) because it is hard to pick the correct line to switch based on address matching alone. The OTA is in discussions with the main MPF providers to see whether they would be able to support a MPF CLI helpline facility (e.g. an email or telephone based enquiry service) for providers to check CLIs and help identify the correct services and assets to switch.

4.50 Lack of visibility of MPF CLIs is likely to become more of a problem in the future:

- If more consumers take up MPF services there is a greater likelihood of multiple lines going into one location.
- If households consume services on more than one MPF line.

4.51 Services may have multiple CLIs associated with them, which may lead to confusion. The GP needs the CLI associated with the exchange lines going into the property. However, this may not be visible or at least not easily recognisable to some consumers where they mainly use voice over internet protocol ('VoIP) to make calls, particularly when the VoIP service is presented as a standard fixed voice product.

4.52 In addition to problems matching CLIs in the Openreach system, there can also be problems with mis-matching CLIs held in wholesalers' databases and the associated asset ID.

Reliance on CLIs in the future

4.53 CLIs are not always an effective identifier of services and assets. For example, where consumers are moving home at the same time as changing provider, they may not know or be able to find out the CLI at the property they are moving to.

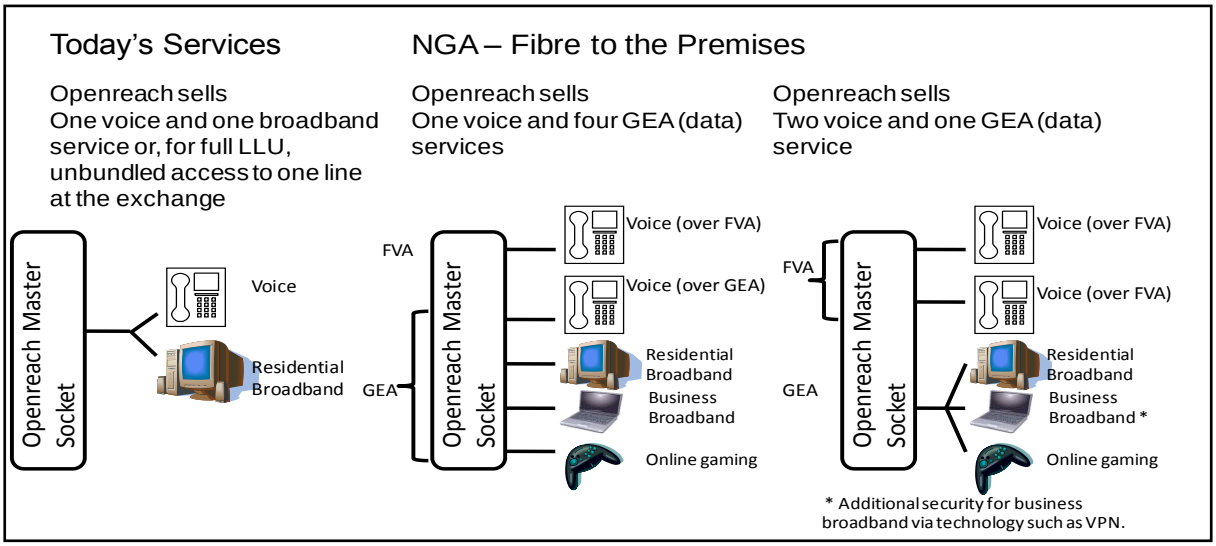
4.54 Under both the current NoT and MAC processes, CLIs are likely to become less effective as an identifier of services and assets in the future as:

[84] Also know as Obtain Installation Details ('OID').

- Not all services/technologies have an associated CLI (or the associated CLI may not be visible on Openreach DS) e.g. FTTC and some limited services on MPF do not always have an associated CLI. The number of services this will affect will increase in the future as FTTC and FTTP are rolled out (see paragraphs 3.32 to 3.36).

- CLIs as a form of asset identification can only really work well under a one service to one asset relationship as a CLI is not able to distinguish between services on the asset. Therefore, using the CLI is likely to cause difficulties where there are multiple services being delivered over shared assets as is the case with MPF and FTTC and FTTP in the future.[85] This shared service model is likely to be increasingly common with the growth of NGA.

Figure 11: Delivery of voice and broadband services over PSTN and FTTP



* GEA is Generic Ethernet Access and FVA is Fibre Voice Access products offered by Openreach.

4.55 Figure 11 illustrates the ways in which multiple services may be provided to consumers over FTTP, compared with the way voice and broadband services are provided over the PSTN today. On the PSTN, the customer has one fixed voice and one broadband service provided by one or two CPs. The CLI can only be associated with one voice and one broadband service. Where they have an additional fixed voice service, the customer will have another line installed to their home, with a different CLI.

4.56 Under both NGA scenarios illustrated above, the consumer receives two fixed voice services and high speed connectivity for their data services. However, under option 1, the consumer will have one voice service provided over a dedicated voice product, whilst their other services (including a second fixed voice service) are provided by individual data services. In option 2, the two voice services are provided on separate dedicated voice lines, and their other data services are delivered via a single data service.

4.57 With the multiple voice and data services, each of which potentially could be offered by a different provider, CLI cannot be used in the same way to identify a unique service. Providers may change the CLI associated with the line without the involvement from Openreach and without interruption to any of the other services

[85] It is our understanding that this is not currently a problem with SMPF as the Openreach systems distinguish between the voice service and the broadband service.

offered to the customer on the same line. Therefore CLI will become even more unreliable as a way to identify a particular customer, as service providers may not hold up to date information about the customer's CLI.

Reliance on addresses

4.58 Where the CLI is not available the provider will turn to address matching to identify the correct asset and service which can lead to some problems.

4.59 The Openreach systems may not have up to date addresses. Openreach uses the Royal Mail Postcode Address File ('PAF') to help keep the address information it holds up to date. The PAF is updated by Royal Mail throughout the year. Licensed PAF users are able to update their PAF data on a six monthly basis by way of regular 'Postcode updates' via Royal Mail's website. This may mean GPs are unable to match the address they have been given by the consumer with the address in the Openreach system. The number of consumers affected is not expected to be significant as in the case of residential consumers (and small businesses), it is unlikely that their postcode would change.[86]

4.60 Openreach has recently carried out work to help resolve problems with address mis-matching. It has updated the information on its system to remove duplicate records and addresses that were incorrectly flagged as being gold addresses.[87] The remaining data issue that Openreach has identified is that of incorrect historic installation information being stored (e.g. when the engineer first installed the asset perhaps 25 years ago, the wrong information was put on the system). Openreach has advised that instances of this are near impossible to identify on a proactive basis and it is resolving each issue when a case arises (e.g. when the consumer wants to change provider or when a new customer wants to take over the line in a property following a homemove).

4.61 Where there is no direct match between the information the consumer provides to the GP and the information accessed through Openreach DS, it will be important for the GP agents to have visibility of the different possible address matches and to be aware of the risks in identifying the right services and assets to be switched.

Erroneous transfers

4.62 The problems outlined above result in a lack of reliability when providers try to identify the correct asset to switch. This can lead to significant negative experiences for consumers, who may be switched in error. We refer to these as Erroneous Transfers ('ETs'). Analysis of complaints and work carried out by the OTA and industry suggest that although ETs can happen in a switching context the vast majority of current ETs are related to the homemovers process and WLTOs. The WLTO process is heavily reliant on address matching.[88]

[86] Circumstances in which the postcode may change include where there was a boundary change by the local authority of where the consumer became a 'large user' (i.e. receiving high volumes of mail) and a unique large user postcode was allocated.
[87] An address which matches the address information held on the Openreach Name and Address Database is called a 'Gold address'.
[88] More information can be found in the OTA WLTO Best Practice Guide http://www.offta.org.uk/IndustryBPG%20Appendix%20B%20WLT.pdf

Consumer harm

4.63 It is difficult to quantify the number of consumers affected by ETs and the harm caused to them as the symptoms described to us in complaints to the Ofcom Customer Contact Team ('CCT') are very similar, if not identical, to those that appear with particular types of behavioural slamming (i.e. the consumer has had no contact with a provider and has experienced an unexpected loss in service and/or a change in service provider). We consider behavioural slamming under Problem 3 (Insufficient consumer consent) below.

4.64 In February 2010, the CCT started collecting information that allows us to track ET complaints over time.[89] The CCT currently receives around 100 complaints per month about actual or attempted ETs. We estimate that around 130,000 households per year are affected by ETs.[90] The associated harm to consumers is estimated to be £0.6 to £1.4m per year including the financial loss and the time taken to try and resolve the issue (see paragraphs A8.40 to A8.42). We estimate ETs cost providers a further £3.7m, costs which may ultimately be borne by consumers (see paragraphs A8.43 to A8.44).

4.65 The level of ETs is likely to increase in the future as more people switch from and between MPF providers (where the CLI is a less reliable method of asset identification). Furthermore, this lack of reliability will increase as infrastructure competition increases such as through the growth of fibre-based services where CLIs are either not centrally held by one operator, do not exist, or where multiple services are provided on one asset and the CLI is unable to identify the individual service to be switched.

Emergency Restore

4.66 There is an Openreach managed 'emergency restore' process which enables consumers to quickly return to their original provider where they have been subjected to an ET. However, use of this process is limited to process failures where providers are not in dispute with each other and only a limited number of providers currently support this process. This process helps to reduce the harm from ETs but it does not eliminate it. For example, it does not restore the consumer on equal terms – the consumer is not necessarily put back on the same contractual terms or at the same point within the contract.

Cease and re-provide

4.67 Where the correct service and asset is difficult to identify, the GP may choose to mitigate the risk of an ET by asking the consumer to follow the C&R process instead. This reduces the risk of the wrong consumer getting their services switched as it places a new provide order instead. However, this creates additional costs for the consumer, for example, potential loss of telephone number, connection and cease charges,[91] additional hassle and potential loss of service. It also creates wasted costs and inefficiencies for Openreach where they have to provision a new line when there is an existing line in place or where there is no spare capacity available at the relevant exchange. These costs may ultimately be passed on and borne by

[89] CCT complaints data – see Figure 16 slamming complaints October 206 to November 2011
[90] This is based on analysis of CCT complaints data and our slamming research 2011. See paragraphs A8.6 to A8.9 and A8.40).
[91] Connection charges are not always levied by the GP but can be in the region of £50. Cease charges may be in the region of £25 to £30.

consumers. Our broadband consumer research 2011 identified that 42% of consumers who went through a C&R process should have actually gone through the NoT process.[92]

Question 6: Do you agree that the current switching processes are likely to become less reliable in the future? Please explain your answer and provide any evidence you have to support your views.

Loss of service

4.68 As industry-established switching processes, both the NoT and MAC processes are intended to be seamless, offering consumers the ability to move between different providers without risk of loss of service.

4.69 These switching processes were originally designed to support switching of a single service across a single technology to avoid breaks in service and disconnection and reconnection fees when customers moved provider but were using the same copper line running into their house. As services became increasingly sold in bundles and as new technologies (e.g. MPF) evolved, tactical fixes and best practice has been developed by industry to address the back end system deficiencies so that providers can continue to use the NoT and MAC systems for seamlessly switching consumers between providers.

4.70 There are two specific enhancements that we believe are important with respect to loss of service:

- MPF migrate order types – these allow providers to use the NoT process to switch consumers.

- LO and POs – these help providers using the NoT/MAC processes to switch a bundle of services together.

4.71 As set out in section 3 Figure 6, GPs need to be able to support 'MPF Migrate' to use the NoT process to switch customers involving a move from and/or to an MPF provider. Supporting MPF Migrate is considered best practice but it is not mandatory. It is a commercial decision for providers whether to use it or not. If providers do not support MPF migrate then the consumer would need to go through the C&R process in order to switch to that provider. As noted above, the C&R process results in greater hassle and costs for consumers.

4.72 Our understanding is that sometimes when the consumer is switching between MPF providers, the consumer may be asked to go through a C&R process. This is because not all MPF providers support the MPF to MPF migrate order type and therefore are unable to use the NoT process to switch the consumer. It is also our understanding that this does not tend to be an issue where the consumer is switching from WLR+SMPF to MPF or where the consumer is switching from MPF to WLR+SMPF as providers tend to support the relevant migration order types.

4.73 In addition to being able to support the NoT/MAC process, providers also need to support LOs / POs to help minimise loss of service when switching bundles of services from MPF to WLR+SMPF / WLR+SMPF to WLR+SMPF. It has been a commercial decision for providers whether or not they should adopt these tactical

[92]Bespoke calculation by Ofcom. Our consumer research 2010 (bespoke calculation by SRB) found that 41% of consumers that went through C&R should have gone through NoT.

fixes and best practice. This approach has not delivered well for consumers, and many providers have not updated and upgraded their systems and processes to be able to support LOs and POs to simultaneously switch a bundle of services and minimise the risk of losing service. Data provided by Openreach suggests that only 7 providers used LOs between October 2010 and September 2011. We do not have comparable data on providers using POs.

4.74 As a result, for switches from MPF to WLR+SMPF and WLR+SMPF to WLR+SMPF, many providers switch the bundled services sequentially rather than simultaneously. Therefore, the consumer can experience a loss of service even when they switch using a NoT and/or MAC process to switch. This results in increased hassle and switching costs for consumers, especially small business consumers. The potential loss of service may also result in fewer customers going through with a switch.

4.75 Loss of service issues also arise in a C&R process as a result of lack of co-ordination of starting and stopping services. Note that, as mentioned above, many switches that should be going through a NoT process actually end up going through a C&R process (in an effort to avoid ETs or because the provider does not support MPF migrate).

4.76 In the future, the effectiveness of the tactical fixes would continue to depend on providers making a commercial decision to make the necessary system and process changes.

Consumer harm

4.77 Consumers are becoming increasingly reliant on their communication services for important functions such as banking and access to government, healthcare and education services. Consequently, breaks in their communication service can result in loss of access to important services which can be inconvenient or even dangerous for affected consumers, but also result in social and economic costs to communities and society more broadly. Expected loss of service is therefore likely to deter some consumers from moving to their provider of choice. For example, our business consumer experience report 2009 showed that fear of losing their service deterred 8% of business considerers from switching their internet/data services.[93]

4.78 Our broadband consumer research 2011 data identified that around a fifth of broadband consumers that switched using the NoT (21%) and MAC (22%) processes suffered a loss of service when switching.[94] The average loss of service was around a week (8 days for the NoT switchers and 7 days for those using the MAC process). However, a significant minority of those that suffered a loss in service had a break lasting more than two weeks (19% for the NoT switchers and 10% for those using the MAC process).[95]

4.79 As noted above, some consumers are encouraged to go through a C&R process rather than the prescribed seamless switching process, to avoid the possibility of ETs. Under the C&R process the consumer may be more likely to incur a longer

[93] http://stakeholders.ofcom.org.uk/binaries/research/consumer-experience/research09.pdf

[94] Broadband consumer research 2011 slide 19. The equivalent figure for those going through C&R is 21%. The data presented seeks to exclude homemovers (by removing those who cited 'moved' house as the reason for this break) where a break in service may occur for reasons unrelated to the switching process.

[95] Broadband consumer research 2011 slide 22

break in service - 12 days on average, with 29% suffering a loss of service of more than two weeks and 16% suffering a loss of service for more than 30 days.[96]

Figure 12: Loss of service case study

A CAB in Sussex reported that their client attempted to switch communications provider as she was offered mobile, landline and broadband at a lower rate. The new provider switched the two phone services but not the broadband. The client had written, phoned and e-mailed the new communications provider as she was without broadband for 7 months. Having to do without broadband made it extremely difficult for the client to access her online bank account. When the broadband was finally connected the provider gave the client just £20 for the inconvenience suffered.

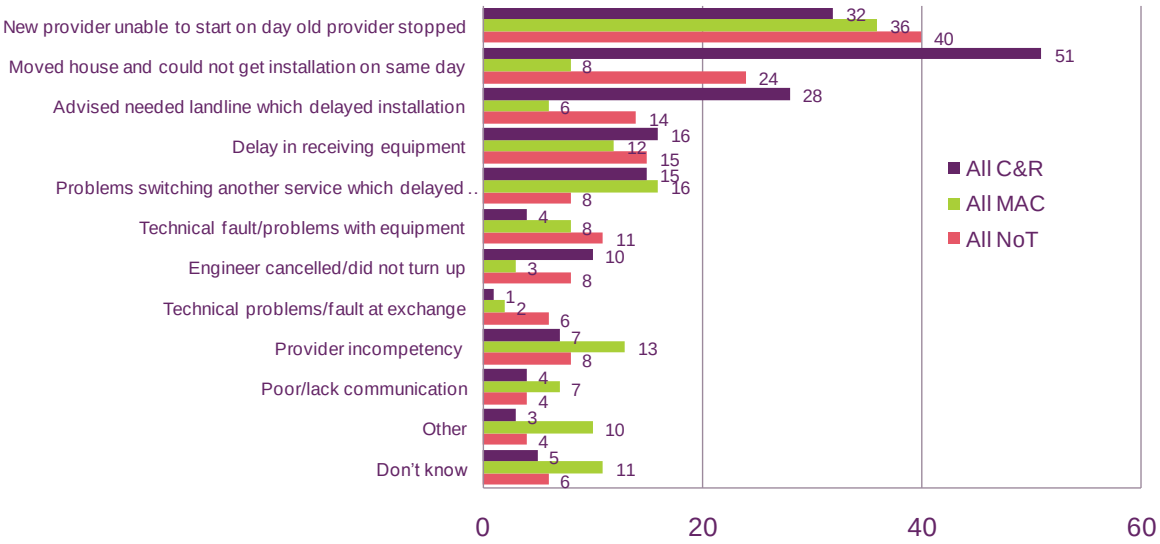
Source: CAB complaint, Citizens' Advice response to the September 2010 consultation (Q10)

4.80 Figure 13 sets out the reasons for the loss of service identified by the broadband switchers involved in our broadband consumer research 2011. The vast majority of the reasons given appear to be related to the switching process. The main reason given appears to be a coordination failure in the NoT and MAC switching processes where the GP and the LP were unable to stop and start service provisioning on the same day. Some of the other reasons given also suggest there were particular problems when consumers were switching more than one service (i.e. problems switching one service had an impact on the other) or where the provision of one service was dependent on another service.

4.81 The research also identified a number of issues which are likely to cause discontinuity in service regardless of the switching processes in place and that the consumer goes through (e.g. delays in receiving equipment, engineer cancelled/ didn't turn up).

[96] Broadband consumer research 2011 slide 22

Figure 13: Reasons for unwanted break in service by process



Source: Broadband consumer research 2011 Slide 23
Base: All fixed broadband switchers that experienced an unwanted break in service NoT (138), MAC (122), C&R (128)
P23Q1: Why did you experience an unwanted break in your broadband service? Prompted/other specify allowed/multiple responses allowed. Data excludes small proportion who stated they had moved and not wanted same day installation.

4.82 Figure 14 sets out common switching scenarios for bundles by technology and the implications for loss of service. It shows that for most types of bundled switches there is a risk of loss of service for the consumer.

Figure 14: Switching processes by technologies used for switching bundles of voice and broadband

Switching from→to*	Processes followed	Continuity of voice and broadband service	Charges
MPF→MPF (i.e. switching between O2/Sky/TTG)	NoT**	Risk of losing service if the wrong MPF line is switched	GP incurs wholesale migration charge of £39.79
	C&R**	Risk of losing service for a longer period of time due to coordination problems	Consumer may be required to pay a cease charge to LP of £25-£30 and pay a connection charge to GP of £50
WLR+SMPF → MPF	NoT	Yes	GP incurs wholesale migration charge of £39.79
MPF → WLR+SMPF (i.e. from O2/Sky/TTG to pretty much any provider***)	NoT**	Loss of broadband service if GP doesn't support LOs Risk of losing service if the wrong MPF line is switched or if problems with LOs	GP incurs a migration charge of £74.86 (which sometimes discourages providers from trying to win MPF customers)
	C&R**	Risk of losing service for a longer period of time due to coordination problems	Consumer may be required to pay a cease charge to LP of £25-£30 and pay a connection charge to GP of £50
WLR+SMPF→ WLR+SMPF (all providers use these technologies***)	NoT (for voice) **and** MAC (for broadband)	Loss of service if the GP doesn't support POs Risk of losing service if problems with timing and sequencing of POs	GP incurs wholesale migration charge of £3.09 for voice and £39.79 for broadband

* MPF providers also use WLR+SMPF for some of their customers.
** Whether the consumer goes through NoT or C&R depends on whether the GP supports the relevant technical process.
***Virgin Media provides services to the vast majority of its customers using its cable network.

4.83 Some consumers say they pay for services from more than one provider at the same time to try and mitigate the risk of losing service when they switch providers. Our broadband consumer research 2011 found that just under a fifth of broadband switchers (17%) said they had paid two providers to help ensure they did not lose their broadband connection during the switchover.[97]

4.84 It remains a concern that so many consumers end up paying for dual running when the NoT and MAC processes are intended to be seamless. This may be due to

[97] Broadband consumer research 2011, slide 26. The average period of dual running was just over two weeks (15 days) across both the NoT and MAC processes with an average cost of £22 and £16 respectively (although the base size for the NoT process was low so should be treated as indicative only).

minimum notice periods. However, as we set out in our Additional Charges Statement[98] the notice period should be no longer than the switchover period where there is an established switching process in place. Therefore, the extent to which minimum notice periods result in consumers paying for two services should be minimal.

4.85 If consumers had more confidence in the reliability of the switching processes then the proportion of consumers that choose to pay to avoid losing service may be reduced.

Lack of technological neutrality

4.86 As mentioned above changes in and the use of different technologies have required systems changes for Openreach and providers in order for customers to be able to follow the industry agreed NoT and MAC processes.

4.87 Different underlying industry capabilities need to be adopted in order to support efficient switching opportunities from new technologies. Whether or not these capabilities are adopted is a commercial decision for the provider. Patchy/low level of adoption by providers can lead to consumers finding it more difficult to switch away from providers using certain technologies.

4.88 Based on our analysis above, the switching processes do not appear to have delivered well for consumers looking to switch between MPF providers as not all MPF providers have chosen to support the relevant MPF migrate order type. Where the MPF provider does not support the relevant MPF migrate order type and the consumer still wishes to go ahead with the switch, there are two options. The provider may choose to deliver services to the consumer over SMPF which could result in a loss of service if the provider does not support LOs. Alternatively the provider may ask the consumer to go through the more costly and cumbersome C&R process.

4.89 Patchy/low level adoption by providers may be more of an issue in the future as other technologies evolve which require further back end system upgrades.

4.90 In addition, the current NoT and MAC switching processes are not capable of being extended to include other technologies and infrastructures e.g. cable, FTTP. Whilst these are not specifically the focus of this consultation, we are planning to look at these areas in future parts of the review. It is therefore important that, at least theoretically, the switching process is capable of being adapted to these technologies and infrastructures.

Conclusion

4.91 Back end system deficiencies can lead to a number of problems.

- We estimate that consumer harm from ETs (i.e. where the wrong line is switched) is between £0.6-1.4m per year. We estimate that providers also incur costs of £3.7m per year. ETs also lead to additional hassle and costs to get these consumers back to their original provider).

- Additional hassle and costs are incurred when consumers are asked to go through the C&R process (e.g. to avoid ETs). Research suggests 42% of

[98] http://stakeholders.ofcom.org.uk/consultations/addcharges/statement/

consumers who went C&R process should have gone through the industry agreed processes. Additional hassle/costs include risk of loss of service and/or telephone number, possibility of cease and/or connection charges, and need to co-ordinate the start and stop of their services to avoid paying two providers. It also results in inefficiencies for Openreach which has to incur extra costs associated with such a process which ultimately feeds through to higher prices for consumers.

- We expect the problems with ETs to get worse in the future. This is because market and technological developments will further limit the reliability of the switching process to correctly identify the right service to switch.

- A significant proportion of consumers suffer a loss in service when switching. Research suggests around one on five broadband switchers suffered a loss in service.

- Not all MPF providers support efficient switching from other MPF providers. This means that some MPF providers may require the consumer to go through the C&R process which as noted above results in additional hassle and costs.

- A lack of technological neutrality as the current processes do not appear capable of being extended to include other technologies and infrastructures e.g. cable, FTTP.

Question 7: Do you agree with our assessment of Problem 2: Back end system deficiencies? If not, please state why you disagree.

Problem 3: Insufficient customer consent

4.92 Where switching processes do not include appropriate customer consent measures, consumers may end up being switched to another provider without their explicit knowledge or consent (this is known as 'slamming').[99]

4.93 Slamming takes many forms and involves issues such as mis-representation or passing off (i.e. where a salesperson claims to represent a different provider), consumers being told they are merely signing up for information rather than entering into a new contract, consumers being sold additional services over and above what they agreed to or a switch being instigated without any contact with the consumer.

4.94 There is general agreement across stakeholders that slamming creates significant harm for those consumers affected including: possible annoyance, distress and anxiety; time and effort trying to resolve the situation; and financial harm where consumers are charged an ETC if they are slammed during their minimum contract period ('MCP'). Consumers switching back to their preferred provider following a slam may also incur an ETC from the provider that slammed them. This may be waived by the slamming provider voluntarily or following the consumer complaints process. Attempted slams can also cause consumer harm including possible annoyance, distress and anxiety and the time and effort of trying to stop it becoming an actual slam.

4.95 Slamming can also have a negative impact on competition where slammed consumers are not restored to their original provider.

[99] Slamming is an extreme form of mis-selling and is defined in GC 24.19 http://stakeholders.ofcom.org.uk/binaries/telecoms/policy/narrowband/statement.pdf

4.96 As well as deliberate slams, process related slams also occur when a consumer is switched in error due to deficiencies in the underlying switching process (ETs), as discussed in detail above.[100]

Overview of current approach to customer consent

4.97 Customer consent involves two key checks:

- Customer authentication: the correct identification of the customer and their authority to switch the service.
- Customer intent validation: confirmation of the customer's agreement to switch a particular service to a specified provider.

Migration Authorisation Code

4.98 LPL processes include strong protections for consumers against slamming as the customer consent checks are carried out upfront by the LP.

4.99 Under the MAC process for switching broadband provider, consumers must contact their LP to get a MAC to give to the GP before the switch can go ahead. The LP carries out the customer authentication checks before providing the consumer with a MAC.[101]

4.100 The provision of the MAC by the consumer to the GP provides confirmation of their agreement to switch their broadband service to the GP.

4.101 This means it is very unlikely that a switch can take place without the express knowledge or consent of the consumer. Only a small proportion of slamming complaints received by Ofcom are from consumers with broadband as a standalone service who are switched using the MAC process.

Notification of Transfer

4.102 The vast majority of slamming complaints we receive are from consumers whose fixed voice service (as a standalone service or combined with broadband) has been slammed. Fixed voices services are usually switched using the NoT process.

4.103 GPL processes carry a greater inherent risk of slamming. Under the current GPL NoT process, there are only limited customer consent checks carried out upfront and so this process is particularly susceptible to slamming.

4.104 Under GC24.6, before entering into a contract for fixed line services with a consumer, GPs are required to take all reasonable steps to ensure the consumers is authorised to do this and intends to enter into the contract. GPs are also under an obligation under GC24.11 to use reasonable endeavours to keep records relating to the sale of

[100] ETs appear to the customer as a 'no contact' slam i.e. a customer who has not had any contact with a provider about switching, is switched away to another provider. However, ETs, as discussed above, are caused due to deficiencies in the underlying process and its ability to reliably identify the correct line to transfer. These are distinct from 'no contact' slams where providers deliberately switch consumers without their knowledge or consent.

[101] The requirement for the LP to take all reasonable steps to validate the identity of the consumer before issuing the MAC is set out in GC 22 Annex 1.4. This is likely to involve confirmation of information which is not in the public domain for example the customer's account number and passwords used when communicating with the LP.

fixed line services. Under GC 24.7, both the LP and GP are required to notify consumers about the switch before it happens. This notification should be sent during a 'switchover period' of 10 working days during which time the switch can be stopped at the request of the consumer. Whether the GP or the LP is able to cancel the order depends on why the consumer wants to cancel.

4.105 Where the consumer suspects they are being slammed, the process enables them to stop an attempted slam becoming an actual slam by contacting their existing provider when they receive the NoT letters, and requesting that the LP cancels the order which the GP has placed to switch the consumer.[102] The use of anti-slamming cancellations in this way (known as the 'Cancel Other' process) provides an important safeguard for consumers against slamming.[103]

4.106 However, these safeguards (notifications and Cancel Other process) rely to some extent on consumers knowing that a slam is in progress and acting to stop it. As a result, they do not stop all attempted slams becoming actual slams. Consequently, there is a critical reliance on enforcement activity to tackle any slamming that occurs under the NoT process.

Consumer harm from slamming

Slamming incidence

4.107 Our consumer research 2010 found that approximately 1.8% of households had experienced an actual fixed voice and/or broadband slam in the previous 12 months.[104] This is equivalent to around 480,000 households. We carried out further research in 2011 to test whether there had been any significant change in the incidence of slamming. The slamming incidence identified in the slamming research 2011 (2.5%[105] or 650,000 households) was similar to 2010. Our slamming research 2011 also identified that a further 1% of (or 260,000) households experienced an attempted slam.[106]

4.108 Figure 15 sets out the relevant margins of error based on the sample sizes in the research. Given these margins of error, we note that it is difficult to be able to precisely measure a change in the incidence of slamming.

[102] GC24.14 sets out the circumstances in which an LP is permitted to use Cancel Other. GC24.14(a) relates to instances of slamming and GC24.14(b) relates to where the GP has failed to do so after a request by the consumer ('Failure to Cancel').
[103] Everything Everywhere (Question 5) suggested that a process which has upfront customer verification would have reduced reliance on the Cancel Other process. It also argued that Ofcom should focus on the requirement for any process to ensure that the customer is properly verified before a switch, and any erroneous switch must be reversible.
[104] Bespoke calculation by SRB based on the data from the consumer research 2010.
[105] Bespoke calculation by Ofcom based on the data from the slamming research 2011.
[106] Slamming research 2011 Q1B page 5. We did not collect data on attempted slams as part of the consumer research 2010.

Figure 15: Fixed voice and broadband slamming incidences – 99% confidence interval

	Mean	Lower 99% CI	Upper 99% CI
2010	1.84% (478,400 households)	1.19% (309,400 households)	2.49% (647,400 households)
2011	2.50%* (650,000 households)	1.58% (410,800 households)	3.42% (889,200 households)

Source: Slamming incidence from the consumer research 2010 and slamming research 2011. UK households data is Office for National Statistics (Social Trends Report page 2) and Northern Ireland Statistics and Research Agency.

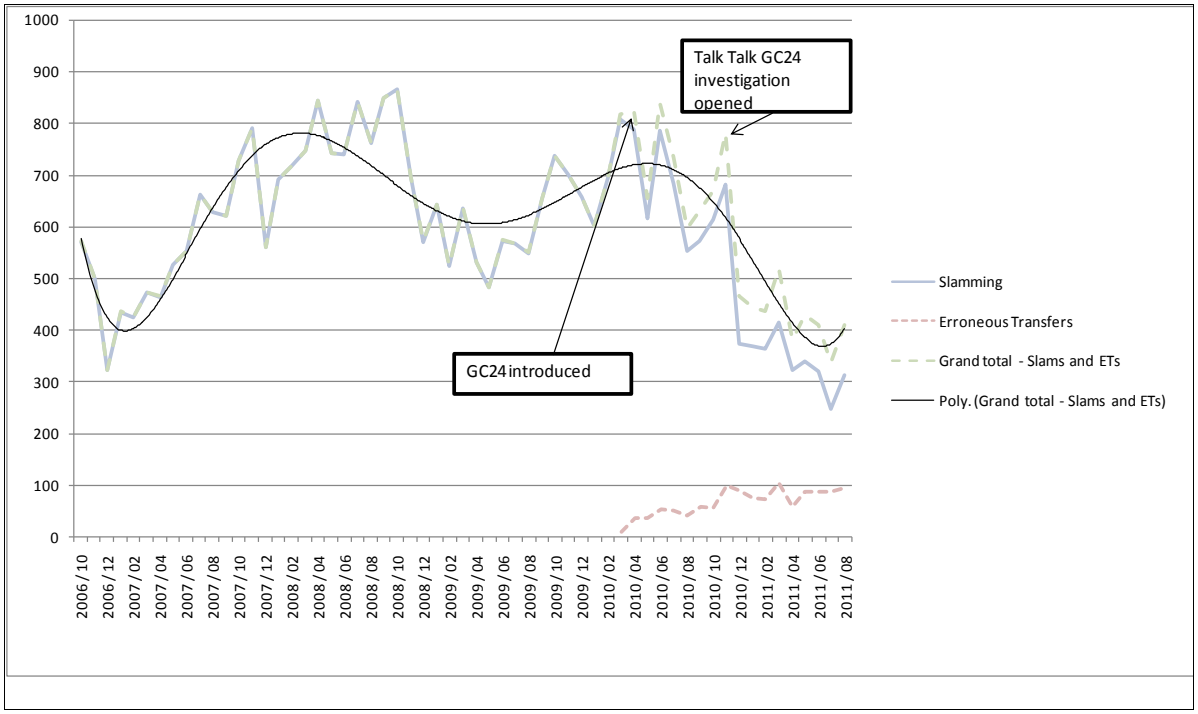
4.109 Our slamming research 2011 also tried to uncover whether the slam was deliberate or the result of an ET (i.e. a problem in the underlying processes often related to the homemovers process).[107] Based on the broadband consumer research 2011 and our analysis of CCT complaints, we estimate that around 20% of slams could be process based ETs rather than deliberate slams (see paragraph A8.8). This suggests that the number of households affected by actual deliberate slams annually is actually around 520,000.

4.110 Whilst the consumer research suggests that the incidence of slamming has not changed significantly in the last year, our complaints data shows there has been a significant decrease in complaints to our CCT about slamming. Figure 16 shows that whilst there has been volatility with slamming complaints over the past few years, slamming complaints have fallen from around 700 to 300 per month since the introduction of the strengthened GC24 mis-selling rules in March 2010 and a targeted enforcement programme including the Talk Talk GC24 investigation opened in November 2010.[108]

[107] The effect of both issues appears similar at face value, but the symptoms are different so we asked consumers who experienced a slam: (i) whether they experienced a welcome letter from another telephone/internet company that was addressed to someone else; and/or (ii) was their phone number changed. If the consumer experienced either of these when their service was changed then it is more likely to be an ET than a slam – although, we recognise this is not a perfect indicator.

[108] GC24 introduced an explicit prohibition on slamming. Ofcom collects industry sales data and monitors complaints of slamming under the GC24 monitoring and enforcement programme. Where necessary, we open investigations to assess providers' compliance with the rules.

Figure 16: Slamming complaints – October 2006 to October 2011



Source: CCT complaints (actual and attempted slamming complaints combined)
Note: (1) We only started collecting information that allows us to track ETs related to homemoves over time in February 2010. (2) Poly – reflects the general trend in complaint volumes over time.

4.111 A breakdown of the types of slamming complaints we receive is set out in Figure 17 below.[109]

4.112 Between November 2010 and October 2011, over half (54%) of slamming complaints to the CCT were related to larger providers.[110] However, there is a long tail of smaller providers that generate a significant proportion of complaints when combined but only a small number individually. Between November 2010 and October 2011, 252 providers each generated 10 or fewer slamming complaints to the CCT each month. These represent 98% of the providers that consumers logged slamming complaints against but only 36% of the volume of slamming complaints.[111] The other

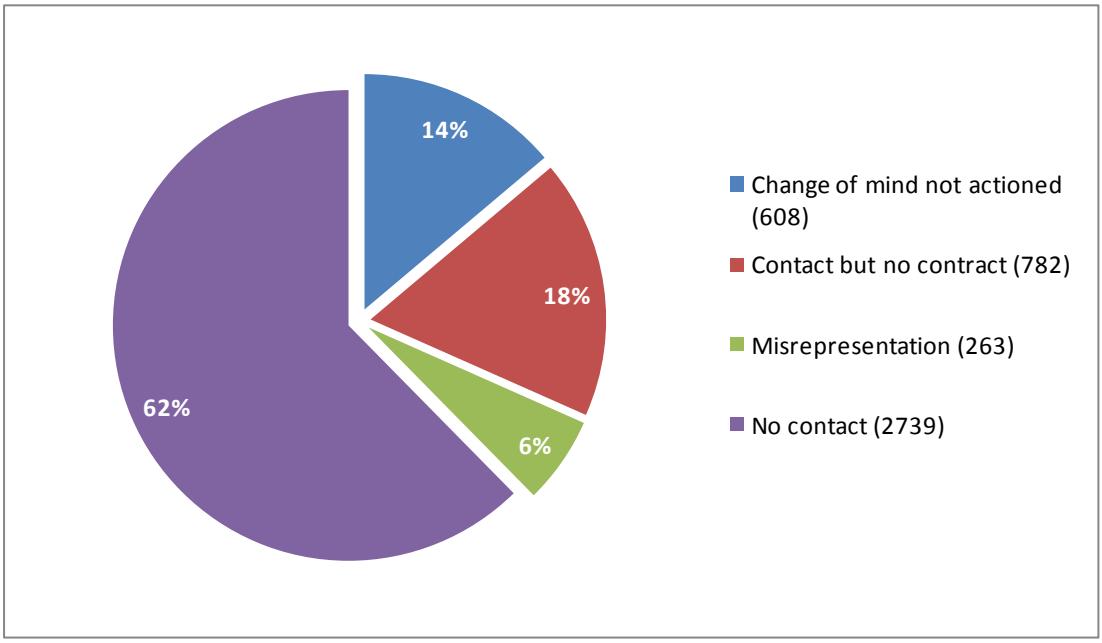
[109] Thus (page 1) raised concerns that a GPL processes can lead to up-slamming where the GP has assumed that all the customer's services are to be switched. Up-slamming is where consumers agree to switch one or more products/services but where additional services are switched without their consent e.g. consumer wishes to switch their line and voice services but broadband service is also switched. It argued there needs to be proper controls in place to prevent the GP assuming all services are migrating leading to disruption for the customer. BT raised similar concerns but noted that this can be deliberate or result from a misunderstanding. This means that the method of verifying intention to switch must be capable of identifying individual services and must not simply apply to all of the services that a consumer takes. We recognise that up-slamming is one of the forms of slamming that the current NoT process is susceptible to. We also note that the potential for harm from up-slamming is likely to be higher where consumers are purchasing and switching services within more complex bundles combined with a process which has low levels of upfront customer consent.

[110] Based on an analysis of slamming complaints to the CCT between November 2010 and October 2011 about [✂, ✂ and ✂]. It does not include 577 slamming complaints to the CCT where the consumer was not able to identify the provider.

[111] This does not include 577 slamming complaints to the CCT where the consumer was not able to identify the provider. Using the same sample, we found that 232 providers had generated 2 or fewer complaints each month representing 90% of the providers that consumers logged slamming complaints with the CCT against but only 16% of the volume of slamming complaints.

10% of complaints were generated by smaller providers who each generated more than 10 complaints to the CCT each month.

Figure 17: Breakdown of slamming complaints - November 2010 to October 2011



Source: CCT complaints (actual and attempted slamming complaints combined)
Notes: Excludes ET complaints. The slamming categories used are: (a) Change of mind not actioned: where the consumer changes their mind about switching to the GP and advises the GP of this but the GP fails to cancel the order. (b) Contact but no contract: where the consumer has had contact with the provider but did not agree a contract. (c) Misrepresentation: where the provider passes themselves off as a different provider. (d) No contact: where the consumer has had no contact with the provider.

4.113 It is difficult to understand why the consumer research and complaints data are pointing in different directions.

4.114 We are confident that consumers involved in the research understood the concept of slamming and the questions related to this. It may be that they have not accurately remembered the time period in which they were slammed (i.e. it may have happened more than 12 months before). We would not expect this to have a significant impact on the findings and would be reflected within the error margins. However, as noted above, given the margins of error, it is difficult to be able to precisely measure a change in the incidence of slamming based on the survey data.

4.115 A number of factors can have an impact on the volume of consumers that register a complaint with the CCT. For example:

- Consumers may not be aware of Ofcom generally or the complaints facility provided by the CCT specifically.
- Contact with Ofcom may reflect the quality of providers' complaint handling systems as well as the quality of the underlying service, meaning that some problems are resolved to the customer's satisfaction without the need for recourse to Ofcom.
- The impact of media coverage on specific problems may affect the number of complaints raised with us.
- Changes to our internal processes over time which could have some impact on our trend data.

4.116 We are not able to quantify the impact of these factors on our slamming complaints data from November 2010 to October 2011.

4.117 If the complaints and research data were both pointing in the same direction (which they are not) then this might have given us greater confidence that the overall slamming incidence has fallen as significantly as the complaints data alone would suggest. Given the results of the 2011 research, we remain concerned that there is still an unacceptably high level of slams being reported despite our continued enforcement efforts.

4.118 We are planning to carry out two further pieces of analysis in 2012 as part of our broader mis-selling work which may help to provide further insight into the incidence of slamming:

- We are commissioning consultants to carry out a 'forensic' analysis of all of our fixed line mis-selling and slamming complaints to help determine how we can rely on our complaints data to understand the experiences of consumers and causes of harm.

- We will be carrying out additional consumer research to help understand consumers' mis-selling and slamming experiences in more detail and to better understand the scale of the problem. We will consider the costs and benefits of repeating this research to track consumers' experiences over time.

Question 8: Do you have evidence to suggest that the incidence of slamming has changed significantly? Please provide any evidence you have to support your views.

Costs to consumers

4.119 In our broadband consumer research 2011, we asked consumers who experienced fixed voice and/or broadband slamming how much financial loss they suffered e.g. paying ETCs. Whilst the majority of consumers (72%) reported no financial loss, a significant minority (17%) reported some loss and some (11%) were unsure or could not remember.[112] We estimate the financial loss to consumers from slamming is £0-3.1 million per year (see paragraphs A8.6 to A8.13).

4.120 In addition to financial loss, consumers incur wasted time and effort trying to deal with a slam. The case study below demonstrates what a consumer may go through as a result of a slam where they have had contact with the gaining provider but had not agreed to switch to them.

4.121 We estimated that the time cost to deal with actual slams is £1.6m and a further £0.2m to deal with attempted slams (i.e. using the Cancel Other process)[113] across all households per year.

4.122 BT argues that the current lack of upfront consent validation, consumer authentication and confirmation of assets/services to be switched currently leads to high levels of order failure or cancellation - up to 20% of orders.[114] It also stated

[112] Slamming research 2011 Q2 page 7. Data based on small sample so should be treated as indicative only. Error margins of +/-15% apply, based on the result of 17% and a 99% confidence level.
[113] This includes an estimated £0.1m of costs associated with 'failure to cancel' uses of the Cancel Other process which is used when the GP does not cancel an order at the customer's request.
[114] Section v page 17 and section 4.1 page 23. We are unable to confirm the underlying reasons for the orders being cancelled but note that other factors, unrelated to the switching process, may also be lead to cancellation of orders e.g. consumers changing their mind.

that 30% of the unfair trading reports[115] that BT receives from its customers are due to the GP failing to cancel an order on request.[116] It argues that this inefficiency creates costs which may ultimately be borne by consumers.

Figure 18: Slamming case study

The consumer advised that he was with Provider A for fixed line services. The consumer advised that he received a call from Provider B about switching but it was his colleague that had answered the phone. The consumer advised that his colleague did not agree to a switch of services and advised Provider B that he did not have the authority to agree to switch the services. The consumer then received a 'sorry to see you go' letter from Provider A advising that another provider had placed an order to switch the consumer's services. The consumer advised that he contacted Provider A who agreed to cancel the order. The consumer advised that the switch went through anyway and the consumer has received a bill from Provider B. The consumer advised that his service has now been disconnected and the consumer has been levied early termination charges of £199 from Provider B and also early termination charges by Provider A.

Source: CCT complaint

Costs to providers

4.123 Providers also incur costs in dealing with slamming and attempted slamming. These arise from the various communications with the customer (e.g. the customer contacts the provider to explain what has happened and to discuss what needs to be done and the costs involved in being transferred back), and then the execution of back end actions to rectify the slam where the consumer asks to be reinstated. We estimate that slamming costs providers as a whole £11.3m per year including the time spent handling and rectifying slams and the wholesale cost incurred in returning the consumer to the correct provider. These wholesale costs comprise the vast majority of the costs to providers from slamming (over 80% of the total estimated cost per slam – see paragraphs A8.14 to A8.16). Providers also incur costs of around £0.9m per year operating the Cancel Other process.[117]

4.124 It is likely that the additional costs to providers may ultimately be borne by consumers in the form of higher prices. Slamming therefore not only has a negative impact on those that have been slammed but on all consumers.

Competitive effects

4.125 Providers who lose customers through slamming will unjustly lose revenues, either temporarily (while the situation is rectified which could take up to several months) or permanently (in the event that the customer remains with the slammer). Whilst the impact across the industry will be neutral (because revenues are transferred from one provider to another rather than lost), there is an issue of equity and efficiency since the slamming provider gains revenues unfairly at the expense of the LP. Successful slams mean that consumers have not been able to exercise choice and hence are economically inefficient.

4.126 Our slamming research 2011 provided indications that a significant proportion of consumers (between 28% and 60%) that had been slammed were not restored to

[115] These are consumer complaints and enquiries relating to slamming, mis-conduct and mis-selling.
[116] Section 4.1 page 23.
[117] These are costs arising from attempted slams and an estimated £0.3m of costs associated with 'failure to cancel' uses of the Cancel Other process which is used when the GP does not cancel an order at the customer's request.

their original provider.[118] This may be driven by consumers not wanting to spend too much time trying to resolve the issue or due to the possibility of having to pay an ETC (which may be quite high as it would be early on in the MCP) if they try to move away from the provider that slammed them. This implies that slamming can not only have a negative impact on consumers' experiences but also on the competitive process as it could allow inefficient firms to unfairly win customers from more efficient firms and stay in the market.

Enforcement activity

4.127 Since 2005, we have undertaken a significant industry-wide programme of active compliance monitoring and enforcement of the GC24 rules, including those relating to slamming.

4.128 As part of this enforcement programme, we monitor and analyse consumer complaints to the CCT and complaints from providers about slamming, collect data from providers and Openreach using our formal information gathering powers and carry out benchmarking analysis. Where we identify potential problems, we will take action through a range of means including informal action, and where necessary and appropriate, formal investigations. Under sections 96A and 97 of the Act, we can fine providers up to 10% of relevant turnover for non-compliance with the GCs, including GC24.

4.129 Investigations and the outcomes of our investigations are published on the Ofcom website in the Competition and Consumer Enforcement Bulletin area.[119]

4.130 To date, we have conducted 12 investigations into fixed line mis-selling under GC14.5 and GC24. As a result of those investigations, we have issued 13 contravention notifications, the most recent of which was issued to Talk Talk Group Ltd in May 2011. We have also fined two companies (Lo-Rate Telecom and Telephonics Integrated Telephony Ltd) the maximum 10% of their relevant turnover.

4.131 As discussed above, we have seen some reduction in slamming complaints since the introduction of GC24, which we believe may in part be as a result of our enforcement activities. Whilst we have targeted a number of providers for mis-selling and slamming related issues, complaints against other providers and new issues have emerged that have made it difficult to achieve a consistent downward trend in complaints. We expect that with continued active enforcement at present levels we can maintain or possibly deliver further reductions in consumer complaints about slamming. However, given the volatility of CCT complaints data, we cannot guarantee this.

4.132 In any event, regardless of our continued focus on targeted action in this area, we expect there will continue to be providers who generate a material number of complaints. Our experience shows that, even with provider controls in place, large providers who generate a significant volume of sales find it difficult to drive slamming down to low levels (e.g. less than 10 per month).

[118] Slamming research 2011 Q9 page 21. The slamming research 2011 indicated that an average of 44% of consumers who had been slammed were not restored to their original provider. Based on the sample sizes involved in the slamming research 2011, we can be 95% confident that the proportion of consumers affected is between 28% and 60%.

[119] http://stakeholders.ofcom.org.uk/enforcement/competition-bulletins/

4.133 Moreover, it is also likely that we will be unable to achieve significant reduction in the harm created by the 'long tail' of providers which generate only a few slamming complaints each per month. As set out above, a large number of providers (typically in the region of 250) generate only a few slamming complaints each per month. This means that enforcement action is not necessarily the most efficient and effective means to tackle this problem. Whilst we engage informally with a large number of providers (including those generating both small and high numbers of complaints), and use letters to regularly remind all providers of the rules (GC24), this action may only be effective in some cases, and the entry of new providers will mean it is a continuous process. More formal action (i.e. a formal investigation) is generally very effective in reducing the harm generated by that provider, and the issuing of notifications, and penalties, will have some deterrent effect on the industry. However, investigations are very resource intensive and has to date only been considered to be justified in cases where the level of harm is significant. This makes it difficult for an enforcement strategy to establish and maintain a credible threat against these providers who are likely to consider the threat of enforcement action to be low.

4.134 Overall we consider that increasing our enforcement activities alone would not be the most appropriate or efficient way to deal with the totality of the problem. We believe that changes need to be made to the switching process in order to achieve further significant reductions in slamming.

Question 9: Is there further action you think could be taken to help tackle slamming (e.g. preventative measures to stop it from occurring or enforcement activities after it has happened to act as a deterrent) under the existing processes? Please explain your answer.

Question 10: Do you think it would be more appropriate to introduce stronger upfront consumer protections within the switching process or continue with the current reliance on enforcement to tackle slamming? Please explain your answer.

Conclusion

4.135 Slamming causes considerable consumer harm including distress, time and effort trying to resolve the situation and financial harm. We estimate the costs from slamming are £12.8m to £15.9m per year (£1.6-4.7m per year for consumers and £11.3m per year for providers (which may ultimately be borne by consumers)). The vast majority of the cost to providers is the wholesale costs they incur in returning the consumer to the correct provider.

4.136 We estimate additional costs to consumers of £0.2m per year for consumers and £0.9m for providers in dealing with attempted slams using the Cancel Other process.[120]

4.137 As well as having a negative impact on consumers' experiences of switching, slamming can also have a negative impact on all consumers through potentially higher prices due to significant provider costs of dealing with slamming. Further, competition may be harmed where slammed consumers are not restored to their original provider.

4.138 Whilst our enforcement activities have been successful in reducing consumer harm from slamming, where customer consent checks are not carried out upfront, we do

[120] As noted above, these figures include an estimated £0.1m of costs to consumers and £0.3m of costs to providers associated with 'failure to cancel' uses of the Cancel Other process.

not think it will be possible to deal with the totality of the problem through enforcement activity alone.

Question 11: Do you agree with our assessment of Problem 3: Insufficient customer consent? If not, please explain why you disagree.

Problem 4: Lack of awareness of the implications of switching

4.139 When consumers switch providers, they may have contractual liabilities with the LP. For example, a customer may be liable to pay cease charges or ETCs. We have found that just under half of consumers are in a MCP[121] and may therefore be liable for ETCs[122] should they choose to switch. Cancellation of one service in a bundle may have implications for other services provided by the LP, for example the price for any service they continue to take from the LP or the availability of additional services may be dependent on provision of the service the consumer has switched.[123]

4.140 We believe that it is important that consumers are informed about the full financial and service implications of switching as part of the switching process and that they have an opportunity to change their mind about switching once they have considered this information. If consumers do not have access to information about the implications of switching this could lead to consumers regretting the decision to switch on receipt of the final bill from the LP.

4.141 The way in which consumers are informed about the implications of switching depends on the switching process followed. LPL processes have an advantage over GPL processes in terms of the provision of information about consumers' contractual liabilities at the point of sale i.e. when they are deciding to switch and before they have placed an order with the GP. However, this can increase the complexity of the switching process and consumers may find it difficult to process and use the information to make effective decisions.

4.142 ETC information can be complex for some consumers to process, especially when it is communicated orally during a short conversation and where there may be some relatively complex service, pricing and contractual implications (e.g. bundled pricing discounts). For this reason, communicating ETC and service implication information in a durable format could potentially be better as the consumer would have the time to digest the information and reflect better on their decision to switch. Having such information in writing would leave a paper trail and minimise the incentives for providers to manipulate the information in order to dissuade consumers from switching. Some consumers may also need to discuss the implications of switching

[121] Data collected through a formal information request in 2011 suggested that on average 58% of fixed voice consumers and 54% of broadband consumers are not under a MCP.

[122] Our Additional Charges Statement http://stakeholders.ofcom.org.uk/binaries/consultations/addcharges/statement/addchargestatement.pdf sets out what we think would be a 'fair' approach to calculating ETCs under the legislation. We have an ongoing enforcement programme seeking to ensure providers comply with the law. The Statement notes we believe that providers should inform consumers about their ETC liabilities where they ask to cancel their contract and that we would generally expect that the losing provider has the opportunity to, and should, inform the consumer of any ETC they will incur.

[123] Virgin Media (Q3) highlighted that clarity around contractual information can extend beyond the application of an ETC alone to the impact on monthly charges. It stated that if a customer has a bundle of services and switches one of the bundle of services, the customer may for example lose a bundled discount, meaning that their monthly charge may change. Virgin Media suggested that depending on the size of any ETC or change to monthly charges the customer may be liable for it is potentially possible that any cost savings to the customer from switching may be lost or diminished.

with more than one provider where they are switching multiple services at one time. It may prove challenging for some consumers to process and keep track of the information provided particularly given that some of this may be quite complex.

Current approach

Notification of Transfer

4.143 Under the NoT process, consumers are informed about the implications of switching through the NoT letter from the LP (which is required by GC24.7). The consumer has the option of cancelling their order with a GP without charge before the switch goes ahead (e.g. if they become aware of unexpected implications of switching which cause them to change their mind).

4.144 Under the GCs, the letter must specify (amongst other things) all of the services affected/unaffected by the switch. Ofcom's Guidance on Unfair Terms in Contracts for Communications Services recommends that in order to follow Best Practice, providers should also:

- make very clear to consumers the level of any ETC at the point at which the consumer is considering terminating their contract;
- make it very clear to consumers what the minimum notice period is not only at the point of sale but also at the point at which the consumer is considering terminating their contract, and
- make it very clear to consumers the level of any cease charge not only at the point of sale but also at the point at which the consumer is considering terminating their contract.[124]

4.145 LPs use the NoT letters as a way to communicate information about ETC liabilities to the customer.[125] However, the ETC information tends to be a general prompt about the possibility that the consumer may be liable for an ETC as opposed to specific information about the actual level of any ETC.[126] Failing to provide specific information about the level of the ETC in the NoT letters is not the most consumer friendly way to comply with the Best Practice set out in Ofcom's Guidance on Unfair Terms in Contracts for Communications Services.[127] This could create confusion for those consumers that are no longer in a MCP and therefore are not liable for any ETC.

4.146 The NoT letter can be sent in paper format or another durable medium (e.g. electronically if explicitly agreed by the consumer).[128] It is sent to the consumer after

[124] http://stakeholders.ofcom.org.uk/binaries/consultations/addcharges/statement/Guidance.pdf
[125] The standard industry template letter which was developed following the CAT CPS save activity judgement is available at http://www.offta.org.uk/IndustryBPGAppendixDStandardTemplateLosing.pdf.
[126] Our experimental research 2010 suggested that having more detailed information about the actual level of an ETC leads to better switching decisions than having a simple warning about the possibility of an ETC - http://stakeholders.ofcom.org.uk/binaries/consultations/consumer-switching/annexes/economics-research.pdf. O2 and Virgin Media indicated that the LP is best/better placed to advise consumers about the actual level of the ETC.
[127] See best practice box following paragraph 84 at http://stakeholders.ofcom.org.uk/binaries/consultations/addcharges/statement/Guidance.pdf.
[128] Durable medium means any instrument which enables the customer to store information addressed personally to him in a way accessible for future reference for a period of time adequate for

the order has been placed but before the switchover takes place (GC 24.8). This may mean consumers are not aware of relevant information (e.g. about ETCs) at the point of sale when they make the decision to switch. This may mean that some consumers incur costs in terms of time and hassle if they find out about the implications of switching after they have placed an order and subsequently decide they do not want to go through with the order and have to cancel it.[129] Providers would also incur costs (which may ultimately be borne by consumers) unwinding such orders including wasted time and effort making the sale and then having to place the cancellation. BT stated at least 10% of orders placed under the NoT process are currently cancelled due to a change of mind some of which might occur due to the lack of awareness of switching implications.[130]

4.147 Our broadband consumer research 2011 showed that some consumers do separately contact the LP about the implications of switching - 17% of broadband switchers going through the NoT process (average of 16% amongst all switchers) contacted the LP to find out about ETCs/cancellation charges.[131] The research also identified that amongst switchers that had incurred an ETC: 25% found out about the ETC through a written communication from the LP; 16% were already aware of ETCs/remembered from the contract; 14% had looked at the terms and conditions to find out about ETCs; and 5% found out from their previous provider's website.[132]

Migrations Authorisation Code

4.148 There is no formal requirement to inform consumers about the implications of switching as part of the MAC process. However, under the MAC process consumers have the option of discussing ETCs and other service implications with the LP when they contact them to obtain the MAC. Data collected through a formal information request in 2010 found that, amongst respondents that charged ETCs, all informed consumers requesting a MAC about possible ETCs and the vast majority confirmed they were able to calculate and provide details to consumers on the actual level of the ETC in real time.[133]

4.149 The discussion with the LP takes place in advance of the consumer placing a firm order with the GP which means the consumer is potentially better informed about the implications of switching before any order is placed by the GP.[134] However, there is a risk that the LP may be incentivised to use this opportunity to encourage the consumer to stay e.g. by providing vague or confusing information which puts the consumer off switching. Requiring LPs to provide information about the actual level of the ETC could help to address this risk. It would also be consistent with the Best Practice set out in Ofcom's Guidance on Unfair Terms in Consumer Contracts for Communication Services.

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the purposes of the information and which allows the unchanged reproduction of the information stored.

[129] BT suggested that the lack of this information under the current NoT process leads to many consumers changing their minds about switching.

[130] Section v page 17. Based on the information available, we are unable to verify if the change of mind was associated with ETC/other service implication information or some other reason.

[131] Broadband consumer research 2011 Slide 14

[132] Broadband consumer research 2011 Slide 35

[133] Formal information request in 2010 Questions B.6(b) and B7

[134] Everything Everywhere (Q11 to Q13) argued that the LP should notify a customer who is proposing to terminate his or her contract of the consequences of that proposal before the customers proposed decision is acted upon. It considered that ensuring consumers have all relevant information available to them when making a switching decision will guard against problems of bill shock.

Consumer harm

4.150 Consumers can suffer harm where they go through with a switch without being fully informed of the implications of doing so. We consider below the consumer harm caused where consumers 'unwillingly' pay an ETC (i.e. where the consumer is required to pay a charge which they were not aware of before they switched and subsequently regrets the decision to switch). Based on the information currently available to us, we are not able to provide details on the harm associated with the lack of awareness about other implications of switching (e.g. loss of other services or changes in the price of remaining services).

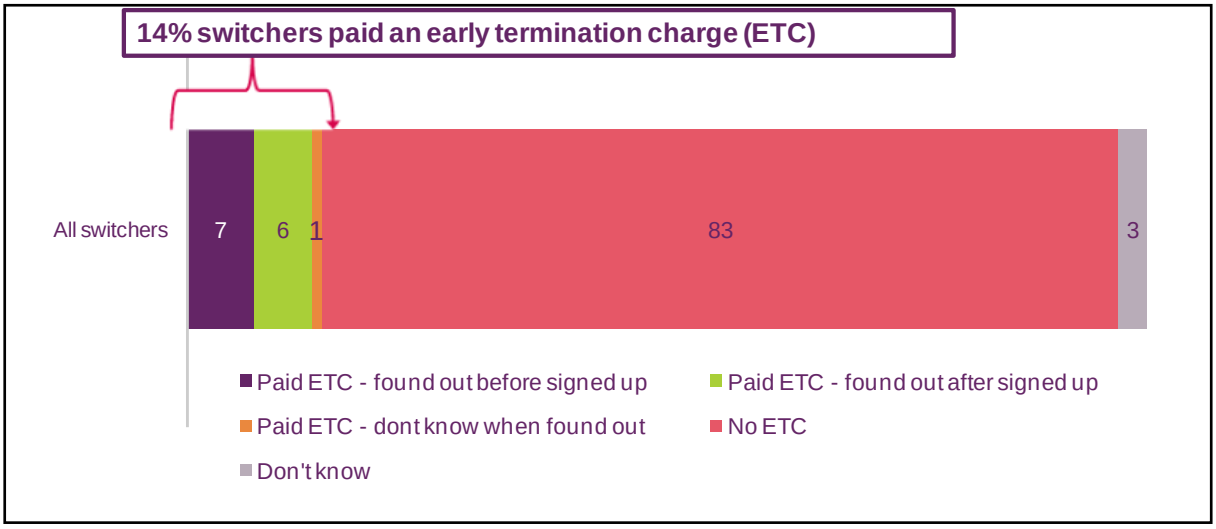
4.151 We think it is important for consumers to understand whether or not they will be required to pay an ETC, and what the level of that charge will be. Our consumer research 2010 found that around half of switchers found it easy to know about whether they would need to pay a cancellation charge (54% each for fixed voice and broadband and with a further 25% and 27% respectively saying it was neither easy nor difficult).[135] Across all services where switchers had paid an ETC, around one in ten (13%) said they did not know about the ETC before they agreed to switch provider.[136] Given the low base size, we were not able to analyse this for a particular service or process. We carried out further research in 2011 to try and understand this issue in more detail.

4.152 Our broadband consumer research 2011 found that the vast majority of broadband consumers did not incur an ETC when they switched (83%).[137] Consumers that switched using the MAC process were less likely to incur an ETC (8%) than NoT or C&R process users (15% and 16% respectively). The average ETC was £38 with little variation by how recently the switch took place.

4.153 Just over one in ten (14%) broadband switchers said they had to pay an ETC to leave their LP – 7% said they found out about the ETC before they signed up/placed an order with GP and 6% said they found out after (Figure 19).[138]

[135] Consumer research 2010 Figure 14 page 23 and Figure 16 page 24
[136] Consumer research 2010 Section 52 page 37
[137] Broadband consumer research 2011 Slide 30
[138] Broadband consumer research 2011 Slide 33

Figure 19: Proportion of broadband switchers that paid an ETC when they found out about their ETC



Source: Broadband consumer research 2011 slide 33
Base: All fixed broadband switchers (1423)
P24Q1: When you decided to switch to your new supplier, did you need to pay your previous supplier an early termination charge in order to leave your contract with them? P25Q1 Which of the following best describes at what point you found out about the early termination charge? Weighted data

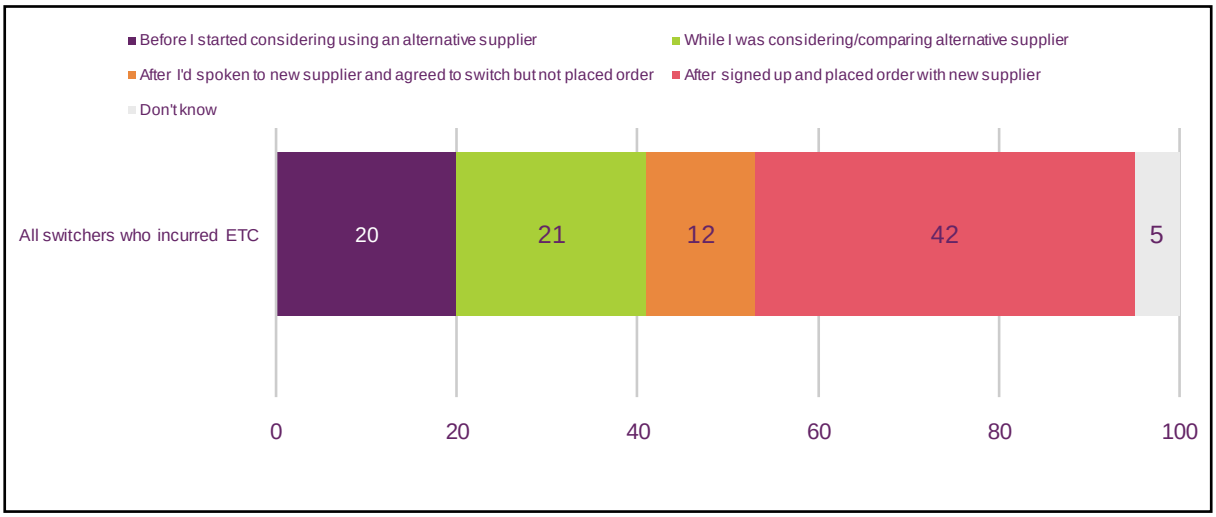
4.154 Our consumer research 2011 also identified (see Figure 20) that 42% of switchers who experienced an ETC said they found out about the ETC after they had signed up/placed an order with a new provider. However, of these, the vast majority (88%) said they were happy with the decision to switch.[139]

4.155 A similar proportion of switchers who experienced an ETC (41%) said they found out about the ETC before or whilst they were considering alternative providers and therefore made an informed decision to pay these charges. A further one in ten (12%) said that while they had agreed to switch to a new provider they had not signed any agreement at the point they found out they were obliged to pay an ETC.

4.156 Using the research findings, we estimate that approximately 21% of broadband switchers (including broadband/fixed voice bundle switchers) who paid an ETC were unaware of the charge before they had committed to switch.[140] Amongst these consumers, 5% said they were unhappy with their decision to switch as a result of the ETC. This is equivalent to an estimated 1% of all broadband and broadband/fixed voice bundle switchers. [141]

[139] Broadband consumer research 2011 slide 32
[140] Broadband consumer research 2011 slide 32. As part of the current NoT processes losing providers inform their customers about the implications of switching during the 'switchover period' i.e. after the consumer has placed the order but before the switch has actually happened. This gives the consumer a chance to cancel the switch after they have signed up with the GP but before it actually happens if they change their mind as a result of learning about ETCs. When excluding these consumers from the analysis - the proportion of switchers who incurred an ETC and found out after they had actually switched stands at 21% (down from 42%). It should be noted that based on current consumer behaviour a further 10% of switchers who incurred an ETC were informed of this when they contacted their previous provider to cancel the service – and therefore, would also have been in a position to terminate the new contract and not incur the ETC.
[141] Bespoke calculations by Ofcom based on the data from the broadband consumer research 2011.

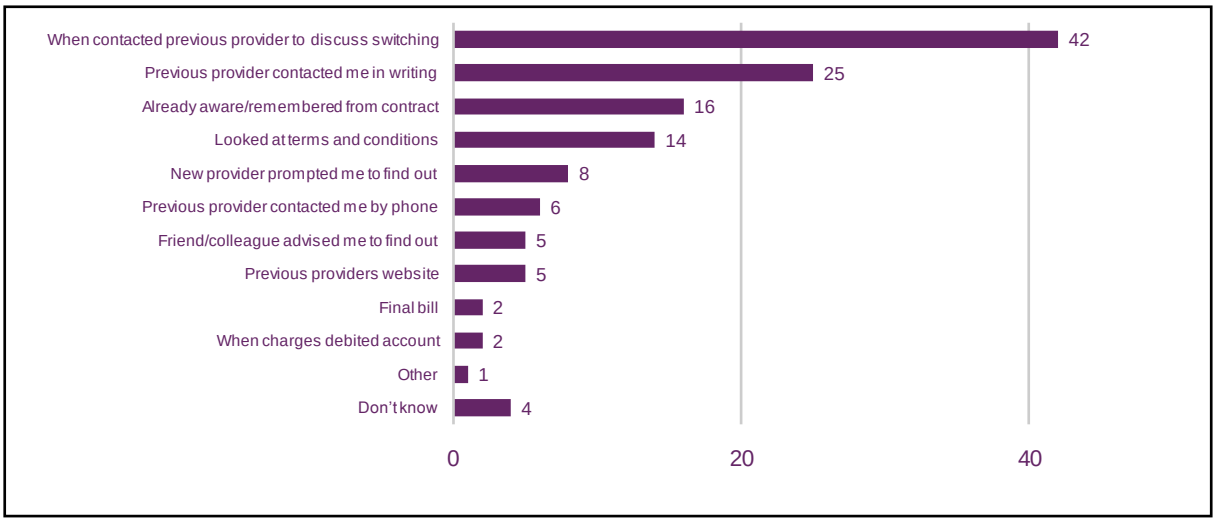
Figure 20: Point that switchers found out about their ETC



Source: Broadband consumer research 2011 – Slide 32
Base: All fixed broadband switchers who paid an ETC (171) Weighted data
P25Q1: Which of the following best describes at what point you found out about the early termination charge?

4.157 As shown in Figure 21, our broadband consumer research 2011 identified that a significant proportion of broadband switchers who incurred an ETC said they were directly informed of this by their previous provider (42%) when they contacted them to discuss switching. A quarter (25%) said their previous provider contacted them in writing and small proportion (6%) said their previous provider contacted them by phone to advise of this charge. Other ways in which consumers were informed about ETCs were their terms and conditions, provider websites and final bills.

Figure 21: Current methods of informing consumers about ETC's



Source: Broadband consumer research 2011 – Slide 35
Base: All fixed broadband switchers who experienced an ETC (171) Weighted data
P25Q1: How did you find out about the early termination charges? Prompted, other specify allowed

Cost to consumers

4.158 We estimate the level of harm associated with consumers unwillingly paying an ETC to be £0.4m per year (see A6.49 to A6.55). However this does not reflect the harm

associated with the lack of awareness about other implications of switching (e.g. loss of other services or changes in price of remaining services). Nor does it reflect the provider and consumer costs associated with unwinding orders when a consumer finds out about ETCs/service implications after an order is placed and subsequently changes their mind.

Conclusion

4.159 We believe that it is important that consumers are informed about the implications of switching as part of the switching process. This is reflected in our Guidance on Unfair Terms in Contracts for Communications Services.

4.160 Where consumers find out about the implications of switching after they have initiated a switch and it results in them changing their mind about their decision to switch, they will incur costs (time and hassle) cancelling the order. Providers would also incur costs (which may ultimately be borne by consumers) unwinding such orders including wasted time and effort making the sale and then having to place the cancellation. This problem is more likely to arise under the NoT than the MAC process.

4.161 Our broadband consumer research 2011 found that 14% of broadband and broadband/fixed voice bundle switchers had paid an ETC – 7% said they found out before they had signed up/placed an order with the GP and 6% said they had already signed up when they were made aware of the charge.[142] An estimated 1% of broadband and broadband/fixed voice bundle switchers unwillingly paid an ETC.[143]

4.162 The level of harm associated with consumers unwillingly paying an ETC (i.e. they were not aware of the ETC until after they switched and subsequently regretted the decision) is estimated to be £0.4m per year. However this does not reflect the harm associated with the lack of awareness about other implications of switching (e.g. loss of other services or changes in the price of remaining services) or the costs of unwinding orders.

Question 12: Do you agree with our assessment of Problem 4: Lack of awareness of the implications of switching? If not, please explain why you disagree.

Problem 5: Varying and unnecessary switching costs/hassle

4.163 The hassle involved in switching fixed voice and broadband providers varies depending on the switching process the consumer needs to go through. The level of hassle involved is reflected in the switching costs the consumer faces.

4.164 Switching costs arise when there is a cost to the consumer incurred by changing supplier that is not incurred by them remaining with the current provider.[144] There are several types of switching costs but here we are concerned about the switching costs associated with different switching processes i.e. those costs that vary from one switching process to another, as well as those which are incurred 'unecessarily'.

4.165 Consumers will always incur some level of switching costs when they switch provider (e.g. searching for information about the offers available from different providers[145]).

[142] Broadband consumer research 2011 Slide 33
[143] Bespoke calculation by Ofcom based on the data from the broadband consumer research 2011.
[144] See http://www.oft.gov.uk/shared_oft/reports/comp_policy/oft655.pdf, paragraph 1.1.
[145] BT (Q1 page 34), KCOM (Q1), Vodafone (Q1) and O2 (paragraph 34) highlighted that informational issues are the main source of difficulty or hassle for many consumers. We are not

Some of the steps involved in switching provider, and that may be perceived as hassle by consumers, are intended to protect them from harm later in the process (e.g. customer authentication and intent validation to protect against slamming).[146]

4.166 In this section, we consider three issues that may result in increased and unnecessary switching costs for the consumer:

- The relative difficulty of the process which varies across switching processes.
- The level of engagement required by the consumer based on the number of required touch points. This is the hassle that varies across switching processes but is considered to be 'necessary' as a result of the way the current processes are intended to work.
- The ability of the LP to act on its incentive to frustrate the process, which can have a negative impact on both consumers' experiences and competition where consumers are prevented from moving to their provider of choice. This is the hassle that is considered to be 'unnecessary' as result of the way providers act within the current processes and varies across switching processes.

4.167 Switching costs may vary from one consumer to another. For any given consumer, some switching processes may imply higher switching costs than others. These costs may be either inherent to the processes or they may result from the fact that some processes make it easier for providers to create artificial switching costs.

4.168 The level of switching costs can significantly affect the nature of competition and consequently the level of prices within the market and therefore will affect how well the market delivers for consumers.

4.169 We consider that, on balance, unnecessary switching costs tend to dampen competition and therefore that processes that are free from unnecessary hassle will deliver better consumer and competition outcomes.[147]

Overview of varying and unnecessary hassle experienced under the current processes

4.170 The evidence suggests that the existing LPL MAC process tends to be associated with higher switching costs than the existing GPL NoT process. We consider that

considering the broader issue of information obstacles to switching as part of this consultation (although we do consider whether consumers are aware of the implications of switching as part of the switching process). However, we note there are a number of other Ofcom projects that seek to help consumers overcome information barriers to switching and make informed decisions about their choice of provider (e.g. our price accreditation scheme, consumer guides, publication of provider specific complaints and quality of customer service data).

[146] BT (Section i page 15) and Virgin Media (Q8 page 16) highlighted this issue.

[147] Our detailed analysis of switching costs is set out in the September 2010 consultation – see paragraphs 5.3 to 5.42 and 5.111. Many stakeholders (ACN European Services Limited (Q8), Citizens Advice (Q8 and Q9), Consumer Focus (Q9), FCS (Q8), Gemserv (Q8), H3G (Section 3.2), Internet Telephony Services Providers' Association (ITSPA) (Q8 to Q12), Talk Talk (Q8), Telephony Services Limited ('TSL') (Q8 to 15), Tesco Telecoms (Q8), SSE (Q8), which? (Q8) and [✂]) agreed with our analysis that switching processes with higher costs are, all else being equal, more likely to cause detriment to consumers and dampen competition and that overall LPL processes have higher switching costs relative to GPL processes. BT (Q8 and Annex 4), Sky (paragraph 5.21), Virgin Media (Q8), O2 (paragraphs 83 to 86) disagreed with our analysis. We consider the key arguments raised relating to some recent academic papers on switching costs in Annex 6.

there is some evidence of varying and unnecessary hassle under the current processes that can lead to poor consumer and competition outcomes.

Notification of Transfer

4.171 There appear to be relatively lower levels of hassle associated with the NoT process.

- The NoT process was most likely to be rated as 'easy' by switchers. In our consumer research 2010, 86% of voice and broadband switchers rated the NoT process as easy versus 58% of broadband switchers using the MAC process.[148]

- It involves fewer touch points and does not require consumer contact with the LP to start the switching process so the potential for the LP to frustrate the switching process is limited.

4.172 There is some evidence that the LP may frustrate switching through abuse of the Cancel Other process (GC24),[149] whereby the LP cancels the order during the switching period to prevent the consumer moving away. We consider this represents unnecessary hassle for the consumer. The CCT does not receive significant volumes of consumer complaints about this (circa 30 per month in the last year about all types of misuse of Cancel Other as opposed to just instances where the LP wilfully prevents consumers from switching). However, representations from industry[150] in addition to evidence we have collected through our GC24 monitoring and enforcement programme[151] suggests that misuse of Cancel Other is more of an issue than consumer complaints data alone may suggest.[152]

Migrations Authorisation Code

4.173 There appear to be a relatively higher level of hassle associated with the MAC process.

4.174 A significant minority of switchers find the MAC process difficult. In our consumer research 2010, 23% of broadband switchers found the MAC process difficult versus 8% for the NoT process.[153] Aspects of the process that broadband switchers identified as being difficult included:

[148] Consumer research 2010 Figure 11 page 21

[149] GC24.14 specifies the circumstances under which LPs are permitted to use Cancel Other. BT (Annex 2), Everything Everywhere (Q5) and KCOM (Q5) have raised concerns about abuse of the Cancel Other process.

[150] In our formal information request in 2011, 4 out of 12 providers noted that abuse of Cancel Other was a problem. These providers suggested there were around 8,400 cases of this type of abuse of Cancel Other in the last year. This abuse causes costs to both the consumer, who has to reorganise the switch, and the gaining provider who has to place the order to switch again. We estimate that the costs to consumers and providers are £25k and £87k per year respectively.

[151] As part of our GC24 monitoring and enforcement programme, we use our powers under section 135 of the Act to request information about providers' processes and procedures when using Cancel Other. We select the recipients of these requests based on analysis of CCT complaints and industry representations. In 2011, we notified 3 separate providers regarding their misuse of Cancel Other.

[152] Section v page 17 and Annex 2 page 57 of BT's response to the September 2010 consultation. BT argues that despite the introduction of GC24 in March 2010, there is still significant misuse of Cancel Other by a large number of providers. BT states that its data shows that consumers often have difficulty in getting GPs to cancel their orders when they have changed their mind about switching. BT also states that 25% of its use of Cancel Other relates to instances of failure to cancel orders on request and that this creates a frustrating and poor experience for consumers.

[153] Consumer research 2010 Figure 11 page 21

- Being able to get through to the LP to tell them they wanted to cancel their service (16%).
- Having to tell the LP that you wanted to cancel their service (16%).
- Arranging for services to start and stop at the same time (16%).
- Getting the LP to provide the information needed to be able to switch to another provider (14%).[154]

4.175 The consumer has to contact both the LP and GP to start the switching process so the number of touch points in the formal switching process is higher.[155] This increases the time and hassle involved in switching. It also increases costs to providers which may ultimately be borne by consumers. CSMG estimated the average time taken for telesales under NoT and MAC based on the formal switching process i.e. one GP contact point for NoT and one GP and one LP contact point for MAC. CSMG estimated the conversation with the GP is 12 minutes in both cases. However, the MAC process has an additional conversation with the LP for 10 minutes bringing the total time for MAC to 22 minutes.[156] The number of contact points can also affect consumer perceptions of the hassle involved in the process and may deter some from actively thinking about switching provider. Our consumer research 2010 found that a significant proportion of inactive consumers thought that having to be in contact with more than one provider to arrange the switch (29%) and having to tell your provider that you wanted to cancel your service (22%) would be too much hassle.[157]

4.176 Some consumers may experience additional hassle because it is not possible to simply walk into a shop and sign up without first contacting the LP to obtain the MAC. In some cases it may be possible to obtain the code 'on the spot' e.g. the customer could call the LP MAC facility in the shop, however, this would only work where the customer had in hand the relevant information to complete the customer consent process with the LP. Where the MAC is communicated in writing, the regulations (GC22 A1.5) require that it should be provided within five working days of request.

[154] Consumer research 2010 Figure 14 page 23
[155] The consumer may make additional contacts outside the formal process under either a GPL or LPL process.
[156] CSMG estimates. These time estimates do not include the time the consumers spend waiting to get through to speak to the provider.
[157] Consumer research 2010 Figure 22 page 30

Figure 22: MAC case studies

Case study 1

The consumer sent Provider A an email to obtain their MAC, they were told they had to call cancellations. The consumer did this but kept getting put on hold for 30 minutes. The consumer emailed again saying they could not get through and were given a postal address. The consumer then sent a letter asking for their MAC. A few days later they received a voicemail from Provider A asking them to call back. When the consumer did, the advisor tried to get them to stay but the consumer said they just wanted their MAC. They were then told this would be sent in five working days and that their services would be cut off 2 days later.

Case study 2

A CAB in Leicestershire reported that their 80 year old client wanted to switch his broadband provider so contacted his existing provider to request a MAC. The Client was aware that this process should take approximately five days but six weeks after making the request the client still had not received the MAC. The client reported that he felt great frustration at his inability to obtain the MAC and considered that he was being coerced into accepting a new contract with his existing provider.

Source: Case 1 CCT complaint. Case 2 CAB complaint, Citizens Advice response to the September 2010 consultation (Q5)

4.177 The consumer needs to contact the LP to get a MAC code to start the switch. The LP can frustrate the switching process by delaying/making it difficult for the consumer to get the code or discouraging them from switching e.g. by making reactive save offers. We put regulation in place (GC22) to try and protect consumers from the harm arising from providers not giving MACs on request.[158] The introduction of this regulation and our subsequent industry wide enforcement programme were successful in significantly reducing consumer complaints to the CCT. However, getting a MAC still remains a problem for some consumers; from November 2010 to October 2011 the CCT received 1,638 complaints about MACs. 1,144 complaints related to difficulties getting a MAC and 354 complaints were because the LP refused to supply a MAC. Our Consumer Experience Report 2011 identified that 1% (2% in 2010 and 2009[159]) of consumers with the internet said they had difficulty obtaining a MAC when trying to switch their broadband service in the previous 6 months. We consider that failure to or delay in obtaining a MAC represents unnecessary hassle.

4.178 Research from a price comparison website in 2010 found that 4% of consumers gave up on switching due to problems getting a MAC code.[160] Our broadband consumer research 2011 found that 6% of broadband considerers said they dropped out of the process due to the hassle of getting the MAC.[161]

[158] GC22 came into force on 14 February 2077. We opened an industry wide monitoring and enforcement programme the same day. We closed this programme in November 2009 in light of significantly reducing complaints levels. We now carry out enforcement on a case by case basis.
[159] The change from 2% to 1% is not statistically significant.
[160] http://www.moneysupermarket.com/c/press-releases/broadband-providers-still-failing-on-mac-codes/0009167/
[161] Broadband consumer research 2011 Slide 46

Cease and Re-provide

4.179 There appear to be a relatively higher level of hassle associated with the C&R process.

4.180 The C&R process involves at least two touch points as consumers need to contact the GP to start their new service and the LP to cancel their existing service. There are some indications from our consumer research 2010 that fixed voice switchers may find the C&R process more difficult to navigate than the NoT process – 22% (note – low base) said they found the C&R process difficult compared to 9% for NoT.[162]

4.181 Consumers switching through a C&R process also face the task of co-ordinating the stopping and starting of the service, ensuring the switch happens seamlessly and ensuring they do not have an unwanted break in service. Consequently, C&R could be more difficult for the consumer to go through than an LPL process. Our broadband consumer research 2011 found that broadband switchers that suffered a loss in service and went through the C&R process suffered from a longer unwanted break in service (12 days) than those that went through the MAC (7 days) or NoT (8 days) process.[163]

4.182 Consumers switching through a C&R process may also lose their phone number and/or incur additional charges (i.e. connection and cease charges). Some consumers that should have switched using the NoT process are sent through the C&R process. We consider that this results in unnecessary hassle for the consumer.

Conclusion

4.183 We consider that the MAC process is associated with higher switching costs than the NoT process (including for example the relatively higher difficulty of the process and the additional level of engagement required by the consumer). We consider that on balance unnecessary switching costs dampen competition and that processes that are free from unnecessary hassle will deliver a better consumer experience and better competition outcomes.

4.184 There is some evidence of unnecessary hassle within both of the current processes that can lead to a poor consumer and competition outcomes. There is an opportunity for the LP to frustrate the switching process under NoT through abuse of the Cancel Other process and under MAC through delay on failing to provide the MAC. The existing regulations have helped to reduce but not eradicate the level of consumer harm arising from providers frustrating the switching process.

4.185 Consumers who are switched using the C&R process when they could have used the NoT process also experience unnecessary hassle and therefore increased switching costs.

Question 13: Do you agree with our assessment of Problem 5 Unnecessary switching costs/hassle? If not, please explain why.

[162] Consumer research 2010 Figure 11 page 21

[163] Broadband consumer research 2011 Slide 22 - this data excludes consumers that were moving home at the same time as changing provider. Slide 21 - if we include homemovers, the unwanted breaks in service are 15 days for C&R, 10 days for NoT and 7 days for MAC.

Key messages and conclusions

4.186 There are a number of problems with the current processes for switching fixed voice and broadband services across the Openreach copper network. These result in considerable consumer harm and there is a need for change to deliver better consumer and competition outcomes.

Question 14: Are there any other key problems with the existing Notification of Transfer and Migration Authorisation Code processes that we have not identified? Please provide evidence to support your answer.

Section 5

Reactive save activity

5.1 In this section, we set out our concerns over reactive save activity. Reactive save activity is where the LP is able to accurately identify, as a result of information the LP receives as part of the formal switching process, all those customers intending to switch and to make them a counteroffer not to switch. The LP is informed of the imminent switching either by the consumer via the code request under a LPL process or by the GP placing the order to transfer the service under a GPL process. The term does not refer to counteroffers requested by a consumer who explicitly contacts the LP with the purpose of obtaining a better offer.

5.2 Reactive save activity is a problem under the current switching process. Reactive save activity is prohibited under the NoT process, but is not prohibited under the MAC process.[164]

5.3 Switching in the communications sector has specific features which often require the LP to be involved in order for the switch to proceed. This requirement gives the LP the opportunity to engage in reactive save activity by making counteroffers to switching consumers. The LP's ability to engage in this reactive save activity can be facilitated or hindered by the form of the switching process. We are concerned that an LPL process may be negative for competition as it provides an in-built opportunity for reactive save activity.[165] We currently regulate against reactive save activity under the GPL process. A similar ban under LPL processes raises much greater enforcement issues.

5.4 We believe reactive save activity can have a significant negative impact on competition as it advantages incumbents over new entrants, who will face higher customer acquisition costs. The incentives on incumbents to offer good service and low prices to existing less active customers is also diminished as reactive save allows incumbents to accurately identify more active customers, and to make counteroffers to those who show an intention to switch. As a result consumers will not receive the benefits from competition that they should be able to expect.

5.5 Our concerns in this section specifically relate to reactive save and do not apply to save activity more generally. We accept that the effect of general save activity on competitive outcomes (and ultimately consumer welfare) is more complex.

5.6 We had previously expressed our concerns over the impact of reactive save activity on competition in the September consultation. We received responses from several stakeholders, the majority of whom agreed with our analysis. In Annex 7 we present Stakeholder views in relation to the analysis of reactive save activity conducted in the September Consultation. We also address specific issues raised by some of the Stakeholders, which are not covered in the present section.

[164] Reactive save activity is placed in a separate chapter purely for expositional purposes. The fact that it is in a different chapter is not an indication that it is separate to the issues under current switching processes.

[165] We have other concerns about the LPL process, which relate to the hassle they cause for consumers, including the opportunity they provide for LPs to frustrate switching consumers. These issues are however addressed in Section 4.

Switching in the communications sector requires coordination between the GP and LP

Service and infrastructure specific features in the communications markets require that the LP often needs to be involved to implement a switch

5.7 Communications markets have a number of features which mean that the LP has to be involved in order for a customer to change provider. These features distinguish switching in the communications sector from most other markets.

5.8 First, fixed voice and broadband communications services provided on the Openreach copper network are provided on a physical infrastructure which is often shared by providers. Although a customer may switch from one broadband provider to another, the service will typically be delivered to the consumer's house over the same copper pair. This means that the service cannot be supplied by a new provider before the existing provider has been informed and has stopped supplying its services.

5.9 Second, many consumers wish to port their telephone number when switching supplier. This requires the involvement of the LP. Note that this requires the involvement of the LP, even if the switch is between providers who do not share infrastructure.

5.10 Third, the LP may need to be involved in order to identify which exact assets need to be switched (i.e. to avoid erroneous transfers). Sometimes, the GP is unable to identify the specific line on which services need to be switched. The LP may need to be involved in such cases to identify the customer's underlying assets.

5.11 These specific features result in a greater role for the LP than is typical in other markets. We acknowledge that in other subscription markets, customers may often contact the LP in order to cancel the service. It is a common practice in many subscription markets that service providers make counteroffers to consumers who are considering or are in the process of switching, without this necessarily raising competition or regulatory concerns.[166] This is the case for example in the markets for car or house insurance. In these markets however, and unlike in most telecommunications markets, the LP need not be involved in order for the new provider to be able to provide the service, or without the service being discontinued or losing critical features.[167]

5.12 A consumer can contract with a new provider of car insurance policy before they cancel their contract with their existing provider. In contrast, in many instances, a consumer who is supplied a fixed telephony service by a given CP cannot switch to another provider without the involvement of the existing provider. Otherwise, the services may not be provided or the consumer may lose critical features of the service (e.g. a telephone number). Similarly, a broadband customer cannot ask a new provider to provide it with broadband services if the existing broadband provider has not 'freed' the line on which the service is provided.

5.13 The special features of the communications sector give the LP an important role in allowing a switch to proceed. The LP has incentives to use the information which it is provided for technical purposes (i.e. to implement the switch) to its commercial

[166] This was noted at paragraph 5.47 of the September 2010 consultation
[167] This was noted at paragraph 5.48 and 5.181 of the September 2010 consultation

advantage. Our view is that, if the LP is allowed to act on this information, then this can lead to bad consumer and competition outcomes.

The switching process may emphasise or mitigate the LP's role

5.14 The LP's ability to use to its own advantage the information provided to it within the switching process can be mitigated or enhanced by the switching process itself. GPL processes mitigate this ability as the customer is not required to contact the LP for the switch to proceed. As we explain below, the LP's role is further mitigated under the GPL NoT process, by a regulatory ban on the LP proactively contacting the customer in order to make a counteroffer, as a result of information it receives during the switching process.

5.15 By contrast, the LPL MAC process enhances the role of the LP. Under the LPL MAC process the switching customer is required to contact the LP in order to obtain a MAC code. The customer is unable to sign up to the GP until they have obtained the MAC code from the LP. This provides the LP with a built in opportunity to engage in reactive save activity. Effectively, the LP is in a 'position of authority' as no customer can commit to a new provider until they have spoken to their existing provider (i.e. the LP). In considering switching of voice and broadband we must therefore consider whether it is necessary to put in place a switching process and/or to impose restrictions which limit the LP's ability to take advantage of its position.

The CAT recognised the specificity of the communications sector in the context of the CPS Save Judgment

5.16 The differences between communications and most other sectors were recognised by the Competition Appeals Tribunal ("CAT") in the 'CPS Save Activity' case.[168] The CAT found that the supply of call services differs from that of most other goods or services. Specifically, the CAT said in the final Judgment (emphasis added):

"Looking more particularly at the circumstances of the present case, it is self-evident that, because of the physical requirement to reconfigure the switch, BT has to be informed, in its capacity as network provider, that one of its retail customers has agreed to transfer all or some of its calls to a competitor, and is necessarily so informed before that transfer has taken place. *This situation is markedly different from the supply of most other goods or services, where the customer can simply move his business from one supplier to another and is not dependent on the existing supplier having to undertake any activity to implement that move.* In the present case, it seems to us, the need for BT to have the CPS information in question derives principally from its capacity as network provider, without whose cooperation the CPS transfer cannot take place at all." (Paragraphs 226)

Reactive save leads to consumer harm

5.17 We are concerned that as switching cannot be implemented without the LP being involved in the process, allowing the LP to use that opportunity (and the information provided) for the purpose of reactive save activity provides it with a competitive advantage over the GP. We are concerned that this is detrimental to consumers as it has an overall negative impact on the level of competition in the retail broadband and fixed voice markets.

[168] British Telecommunications plc v Ofcom, 2004, Case 1025/3/3/04, Judgment of 4 December 2004.

Reactive save activity favours incumbents over entrants to the detriment of overall competition in the market

5.18 We are concerned that reactive save activity is detrimental to competition as it favours incumbents over new entrants and providers seeking to expand their customer base[169], reducing the overall competitiveness of the market.[170]

5.19 Under the current LPL process, each customer who wishes to switch to a new provider is required to contact the LP. If the LP wishes to retain that customer, the LP can make an immediate counteroffer to that customer before the customer has signed up to a new provider. This ability to make a counteroffer gives the incumbent provider three advantages over new entrants.

5.20 Firstly, in order to win customers, a new entrant will need to make attractive offers to all potential customers. However, the incumbent can successfully thwart this challenge by matching this offer only on those customers who intend to switch to the new entrant. This places the entrant at a significant disadvantage to the incumbent. Whereas in order to win customers, the entrant needs to make an attractive offer to all, the incumbent can compete by offering selective price cuts to a small part of its customer base, whilst charging higher prices to the rest.

5.21 Secondly, the ability to make counteroffers to identified switchers will raise the costs for new entrants, reducing their ability to compete. Through reactive save activity, the incumbent provider is able to make a counteroffer to those consumers identified as being in the process of switching. By making targeted counteroffers to these individual consumers, many of these consumers will be 'saved' by the incumbent provider. The result is that, compared to a situation where reactive save activity is not allowed, entrants will face higher customer acquisition costs. New entrants are likely to incur higher customer acquisition costs (advertising and marketing expenses) per customer won as they will lose many potential customers due to LPs' systematic opportunity to make a counteroffer to every potential switcher when the consumer contacts them to request a code. As we show below, data from one provider [✂], showed that the per customer acquisition costs could be as much as four times higher under the MAC process than under other processes.

5.22 Thirdly, new entrants may suffer from an adverse selection problem. This problem may result from the fact that under the switching process, providers are a) systematically alerted to those customers looking to switch; and b) know the 'commercial' value of their customers for those services. Incumbent providers have discretion on whether they make reactive save offers to consumers. Our broadband consumer research 2011 evidence shows that only just over half of consumers who were in contact with the LP during the switching process were given the opportunity to have a save offer.[171] We would expect that many of the consumers to whom the LP did not make a save offer were low value consumers who are 'let go' by their providers. This raises concerns that the customers acquired by new entrants may be disproportionately low value customers.

[169] Note that in the rest of this section, we use the term 'new entrants' to include providers who are seeking to expand their customer base. Such providers are also adversely affected by the advantage reactive save activity gives to incumbents.

[170] See paragraphs 5.43 to 5.99 in the September 2010 Consultation

[171] Our broadband consumer research 2011 (slide 15) found that 53% of broadband switchers who contacted the losing provider under the MAC process were given the opportunity to receive a save offer. This figure is similar to the 51% of NoT switchers who were given a save offer when in contact with the losing provider.

5.23 The cumulative impact of these disadvantages is that firms with low market shares or new entrants are likely to find it more difficult to expand, and incentives to enter the market may be materially weakened, all else being equal, under an LPL process. This limits entrants' ability to successfully challenge incumbents, and may ultimately discourage market entry and expansion. The impact of reactive save activity on the market will depend on its prevalence. As we note later in this section, under the GPL NoT process, the LP is prevented from using information acquired during the switching process to contact the customer to make reactive save offers.[172] However, there is no prohibition under the LPL MAC process when broadband alone is being switched.

5.24 We are also concerned that reactive save activity may weaken the incentives for existing providers to compete vigorously with each other. For example, with reactive save opportunities, providers are less likely to offer discounts across their customer base because they know they will be able to target discounts just at those customers who attempt to switch. This form of price discrimination may be good for the customers who receive a discount following an attempt to switch, but not for the remaining consumers who do not attempt a switch for whom prices will generally be higher than if discounts are applied more widely.

The concerns about reactive save are supported by empirical evidence

5.25 Our concerns about the impact of reactive save activity are supported by evidence. We have three distinct pieces of evidence to support our concerns. First, in the September 2010 consultation we included evidence from a new entrant who acquired customers through both the LPL MAC and the GPL NoT processes.[173] This provider collected data on one week's worth of sales in April 2010. This provider found that of 45 sales which were keyed in, and required a MAC code, just 10 (22%) became customers. By comparison, where sales did not require a MAC code, 80% became customers. Based on the evidence supplied by this provider, the cost of acquisition of a customer under the MAC process could be as much as 4 times higher than the cost of acquiring a customer that does not require a MAC.

5.26 Second, our market research evidence also shows that save offers are generally effective. Evidence from our consumer research 2010 indicates that four out of five consumers who were looking to switch and received a save offer accepted it.[174] Our broadband consumer research 2011 found that of those broadband consumers who had started the switching process and then decided to remain with their existing provider, two-thirds (67%) had accepted a save offer.[175]

5.27 Third, the MAC switching process is disproportionately used by new entrants and smaller providers when acquiring customers. This means that even if only a minority of switches take place through the LPL MAC process nearly all consumers who switch to the new entrants do so under the MAC process. Most entrants in the residential broadband market [✂] use either SMPF or IPstream as their wholesale

[172] Note that the LP is still permitted to make save offers if contacted by the consumer. However, this is not a requirement of the GPL process.
[173] September 2010 consultation, paragraph 5.108.
[174] Note that this is based on a small sample size and is therefore indicative only. Section 6.5 page of the consumer research 2010
[175] See broadband consumer research 2011, slide 46.

technology. Such providers therefore rely mainly on the MAC process to acquire new customers from BT and other providers who use SMPF/IPstream.[176]

5.28 At present, the existence of multiple switching processes and the prohibition of reactive save activity under the NoT process, means that the current impact of reactive save activity on the market is muted. However, if we were to harmonise on an LPL process, reactive save activity could have a much more adverse impact on the competitiveness of the market.[177]

The 'CPS Save Activity' Judgement provides some perspective on save activity

5.29 As noted above, the CAT has also expressed concerns that reactive save activity gives a competitive advantage to the LP. Within the context of a GPL process, the CAT's Judgment[178] in the 'CPS Save Activity' case concluded the following:

> "As to whether BT was in breach of the second sentence of GC 1.2,[179] it seems to us that the use of the information in question by BT Retail, for the purposes of the "save call", "could provide a competitive advantage" to the latter. As the contested Notification points out, the possibility of contacting the customer prior to the switchover, with a view to persuading the customer not to switch, is a valuable competitive opportunity for BT. By means of the information passed to it, BT knows that the customer may be "biddable". In addition, BT Retail knows the pattern of the customer's existing calls, and is in a position to make suggestions as to how to take advantage of the various packages and offerings which are available from BT. In those circumstances in our view the misuse of the information supplied by the CPS Operator to BT in its capacity as network provider plainly "could provide a competitive advantage" to BT in its capacity as retail supplier."(Paragraph 333)
>
> "Although in the normal case there is, as far as we know, no regulatory objection to BT contacting its existing or prospective customers with marketing information of various kinds, the key factors here it seems to us are that: (i) BT is making the call at a particular time, i.e. during the switchover period; (ii) the purpose of the call is specifically to defeat a particular transaction, namely the customer's move to another retail provider; (iii) BT would not be able to make that call at that particular time or for that specific purpose had the information as to the impending CPS transfer not been

[176] Talk Talk has 11% of its customer base on SMPF/IPstream. Talk Talk Interim Results presentation, 15 November 2011, slide 7. Available at http://www.talktalkgroup.com/investors/presentations/2011.aspx
As at 30 June 2011, Sky had 51% of its broadband customer base on MPF. http://corporate.sky.com/documents/pdf/latest_results/fy_press_release_1011.htm

[177] This is discussed further in Annex 7.

[178] Ibid

[179] GC1.2 reads 'Where the Communications Provider acquires information from another Communications Provider before, during or after the process of negotiating Network Access and where such information is acquired in confidence, in connection with and solely for the purpose of such negotiations or arrangements, the Communications Provider shall use that information solely for the purpose for which it was supplied and respect at all times the confidentiality of information transmitted or stored. Such information shall not be passed on to any other party (in particular other departments, subsidiaries or partners) for whom such information could provide a competitive advantage.'

passed by BT Wholesale to BT Retail; (iv) BT Wholesale in its capacity as network provider received the information in confidence from the CPS Operator for the purpose of making the network connection; and (v) BT Wholesale did not receive the information for the purpose of enabling BT Retail to use that information so as to defeat the very transaction for which the CPS information was supplied in the first place. It seems to us that use for that latter purpose gives rise to a breach of GC 1.2." (Paragraph 334)

Reactive save activity is particularly problematic for competition under LPL

5.30 Reactive save activity can occur under either a GPL or a LPL process. We are particularly concerned about reactive save under LPL for the following reasons:

- Reactive save under GPL is being addressed by regulation;
- There are structural differences between the GPL and LPL processes which imply that, absent regulation under both regimes, the harm from reactive save is likely to be more significant under LPL than under GPL.

5.31 One option to deal with this might be to create a new prohibition on reactive save under a LPL process. However, we believe enforcement of such a prohibition would be problematic for the reasons explained in the following section.

Reactive save activity is being addressed under the current GPL NoT process

5.32 Under GPL processes, consumers are not required to contact the LP before they can initiate a switch. The nature of GPL processes therefore limits the opportunity for LPs to engage in reactive save activity. Although many broadband and broadband/fixed line bundle switchers may contact the LP under the NoT process, the identification and retention of genuine switchers outside reactive save activity remains highly imperfect.[180]

5.33 Under the current GPL NoT process, the LP has to be informed during the switching process of a customer's imminent switch. The LP is not permitted to act upon that information by calling the consumer on its own initiative in order to make a save offer. GC 1.2 states that information a CP gets from another CP (relating to network access) can only be used for the purposes it was provided for. GC 1.2 explicitly prohibits the information being passed to another part of the organisation where this could provide it with a competitive advantage. Under the 'CPS Save Activity' judgement, this has been interpreted as prohibiting the LP from contacting consumers to make a save offer, when it has been informed by the gaining provider that the consumer has requested a switch.[181] Under GC 24.18, the LP is prohibited from making any marketing statements or representations in its communications which may induce the customer to terminate their contract with the GP and/or remain in a contract with the LP.[182]

[180] We address Everything Everywhere's arguments to the contrary below.
[181] See paragraph 5.29.
[182] The General Conditions can be found at http://stakeholders.ofcom.org.uk/binaries/telecoms/ga/general-conditions.pdf

5.34 Ofcom uses complaints data to help enforce these GCs.[183] Ofcom has issued three notifications relating to contraventions of GC 24.18 since GC 24 was introduced in March 2010. Each of these investigations was initiated following complaints from consumers and other providers. Under the GC 24 Programme we monitor the types of issues and complaints raised by consumers and CPs about other CPs breaching GC 24.18 and will open investigations where we consider appropriate and in line with our current Enforcement Guidelines.

5.35 Prior to the introduction of GC 24 in March 2010, Ofcom issued section 94 notifications to several CPs e.g. Telecom Plus, Telephonics,[184] Universal Telecom amongst others, where we had reasonable grounds to believe those providers had contravened GC 1.2 (which concerns network access) by using information that they received from GPs for purposes other than those for which the information had been provided (negotiating network access and sending NoT letters) namely, by marketing to and trying to retain transferring customers.

5.36 Some save activity still occurs under the NoT process. Although there is no requirement to contact the LP during the NoT process, many switching consumers do so. If a consumer initiates a contact with an existing provider and wishes to engage into 'save' discussions, this provider has an opportunity to engage in save activity. As noted below, between half (consumer research 2010) and three quarters (broadband consumer research 2011) of consumers switching broadband through the NoT process contacted the LP at some point during the switch[185], and of these around half receive a save offer. This does not fall under our definition of reactive save activity, as it is customer initiated and not part of the formal switching process.

Save activity is more effective under the MAC process

5.37 As explained earlier, the LPL process places the current provider in a position of authority over the switching process. Under the LPL MAC process, a consumer cannot switch service without first obtaining a MAC code from their existing provider. This has two implications.

a) Under the LPL MAC process all switching consumers contact the LP;

b) Under the LPL MAC process, the opportunity for reactive save arises before the consumer has formally signed up to the GP.

5.38 Under the existing GPL NoT process, a significant proportion of switchers do contact the LP. As the contact is proactive and does not form part of the formal switching process, the LP is allowed to make save offers to these customers. However, as we explain below, such save activity is much less effective than under the LPL process as a significant proportion of switchers do not contact the LP and such contact may occur after the customer has contracted with the GP.

[183] The Ofcom Consumer Contact Team (CCT) provides an advice service to consumers who refer complaints to Ofcom. Data from the CCT is an input to enforcement and consumer policy work in Ofcom.

[184] We also issued an Enforcement and Penalty Notification to Telephonics under section 95 and 96 of the Act.

[185] Our broadband consumer research 2011 (slide 14) found that 77% of consumers who switched broadband (as a standalone service or as part of a bundle) using the NoT process had contacted their previous provider. For fixed voice switchers going through the NoT process our consumer research 2010 (Figure 32 page 42) found that under half (42%) had contacted the LP.

5.39 As an integral part of the LPL process, the consumer is required to contact the LP. The incumbent provider is therefore called by all consumers who intend to switch. By definition, this call occurs before the customer signs up with a GP as switches cannot be implemented until the consumer provides to the GP the MAC code obtained from the LP. This contact provides the LP with the opportunity to make selective offers to those consumers it wishes to retain.[186] It also implies that, because consumers receive the offer before they have signed up to the GP, they are more likely to accept an offer. By contrast, under the GPL NoT process, only a proportion of switchers contact the LP and, generally, after signing up with a new provider when they are likely to be less interested in a reactive save offer by the LP.

5.40 Although consumers using the NoT process are not required to contact the LP, a high proportion do so. Ofcom's consumer research has found that between half (consumer research 2010) and three quarters (broadband consumer research 2011) of consumers switching broadband through the NoT process contacted the LP at some point during the switch.[187] Our broadband consumer research 2011 explored why broadband and broadband/fixed voice bundle switchers had contacted the LP under the NoT process. In total, 77% of NoT process users contacted their LP and a variety of reasons were given by the consumers for this contact including 'to cancel their current service' (79%), 'to discuss ETCs' (22%) and 'to ask for a better deal' (6%).[188]

5.41 This contact gives the LP an opportunity to engage in save activity as a result of a spontaneous initiative of the consumer. Our broadband consumer research 2011 also showed that 51% of broadband NoT switchers who contacted the LP were given a save offer.[189] This figure is similar to the 53% of MAC switchers who were given a save offer when in contact with the losing provider. This shows that once the consumer is in contact with their existing provider, they are equally likely to receive a save offer whether they are undergoing a NoT or MAC process.[190]

5.42 Although many consumers who use the GPL process do contact the provider, this rate of contact is still significantly lower than under the LPL process where it is a requirement. For example, our broadband consumer research 2011 found that 77% of switchers following the NoT switching process contacted the LP[191] By comparison, contacting the LP is a requirement for all MAC switchers. This figure is for consumers switching broadband services (including bundles with fixed voice) and excludes those switching voice services only. We are unable to calculate the overall figure for those switching fixed voice and/or broadband and it may be different. For example, [✂], a

[186] Some Stakeholders have suggested that, even in the absence of a LPL process, subscription goods with minimum contract periods (MCP) would provide opportunities for reactive save (i.e. providers can approach customers when their contracts are about to expire). In Annex 7, we explain why the opportunity provided by MCP fundamentally differs from that offered by the LPL process.
[187] Our broadband consumer research 2011 (slide 14) found that 77% of consumers who switched broadband (as a standalone service or as part of a bundle) using the NoT process had contacted their previous provider. For fixed voice switchers going through the NoT process our consumer research 2010 (Figure 32 page 42) found that under half (42%) had contacted the LP. Consumer research 2010, (Figure 32 page 42) found that up to 46% of those who switched fixed broadband under the NoT process had contact with the previous supplier.
[188] Base is those NoT switchers who were in contact with their previous provider and multiple answers were possible.
[189] The remaining switchers either did not receive an offer (45%) or did not know (2%).
[190] As we explain below, the LP is aware of the consumer's spending pattern and may choose not to make a save offer to low value consumers. This can result in an adverse selection
[191] Broadband consumer research 2011 slide 14. Note that this research found that 98% of MAC switchers contacted the LP, the remaining 2% did not know whether they had or not.

large provider, stated that 35% to 60% of fixed line switchers contacted it before leaving.[192] This confirms that the overall prevalence of save activity is higher under the LPL process.

5.43 The high proportion of GPL switchers who contact the LP may be prompted by a number of factors. Some consumers may contact the LP as the notification letter or email received from the LP often suggests that they should call to find out about potential ETCs, even if none may be payable. Others may be confused as to whether there is a need to cancel the service. The fact that 79% of those who called, said that this was to cancel the service is consistent with confusion over the process. Under a harmonised GPL process, where the notification letter/email contained details of the actual level of ETCs due and where it is clear that there is no need to cancel the service, the proportion of consumers who contact the LP can be expected to decrease.[193]

A save offer is more likely to be accepted if the consumer has not 'signed up' to the GP

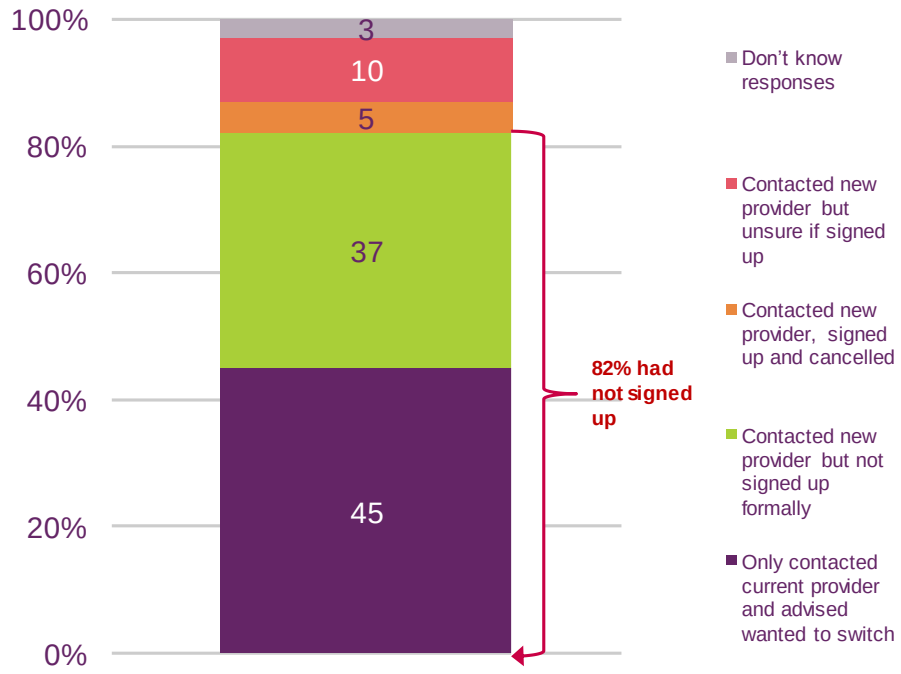
5.44 We are concerned that save offers are more effective if they are received before a customer has entered into a contract with the new supplier. Under an LPL process at the point at which they contact the LP, the consumer has not formally entered into a contract to the potential gaining provider. By contrast, under GPL processes, many of the switchers who do contact the LP (e.g. those who contact when they receive the notification from the LP) will have already committed to switching and will have been far into the process. In the LPL MAC process, a consumer who accepts a save offer need take no further action. In the GPL process, a substantial proportion of consumers who accept save offers would then need to contact the potential GPL to cancel the switch.

5.45 Our broadband consumer research 2011 confirms that under the NoT process the contact with the LP is more likely to occur *after* the consumer has already signed up with the GP. Over half of NoT switchers (56%) received the save offer *after* they had signed up with the GP (versus 39% of MAC switchers [194]).

5.46 The same research also suggests that save offers are more likely to be accepted if they are received before a customer has signed up to a new supplier. The broadband consumer research 2011 found that, of those consumers who had considered switching ('considerers'), but then decided to stay with the incumbent provider 67% did so because of a save offer[195]. These 'saved' consumers were disproportionately likely not to have signed up to a new supplier. Figure 23 shows the breakdown of those consumers who had accepted a save offer.

[192] Q1B formal information request in 2011 and additional data provided in January 2012.
[193] We also note that the recent abolition of Automatically Renewable Contracts (ARCs) may also be expected to reduce the number of customers who call in relation to ETC. The abolition of ARCs is likely to reduce the percentage of customers subject to an ETC.
[194] See slide 16 of the broadband consumer research 2011. Note that under the MAC process consumers cannot sign up to the new broadband provider until they have provided the MAC code to the GP. This therefore suggests some confusion about the process. It is possible that this figure may relate to consumers switching fixed voice and broadband bundles, who may have committed to the fixed voice provider. Nevertheless, under a harmonised LPL process, no consumer would be able to commit to the switch until they had contacted the LP.
[195] See broadband consumer research 2011 slide 46.

Figure 23: Behaviour amongst those who were 'saved'



Source: Broadband consumer research 2011 Slide 45
Notes: Base: All fixed broadband considerers who were 'saved' by their current provider (159)
P51q1: Have you/did you contact your provider to tell them you wanted to stop using their services?
P52q1: Have you/did you contact a potential new provider to tell them you wanted to start using their services? P54q1: Which of these best describes the discussions you had with your potential new provider.

5.47 Figure 23 shows that consumers who had accepted a save offer (and so did not switch) were disproportionately likely not to have formally signed up to the new provider. Just 5% of all those who had accepted a save offer, had signed up to a new provider and then cancelled. This low acceptance of save offers is what would be expected if consumers followed the GPL process and contacted the LP when prompted by a notification letter. A further 10% had contacted a new provider but were unsure if they had signed up, before accepting a save offer. It is also possible that under both GPL and LPL processes, some consumers would contact the LP first[196]. It therefore may be more appropriate to compare the success of save activity amongst those who had been in contact with the GP. Of those who had been in contact with the GP, seven times more consumers accepted a save offer when they had not formally signed up (37%) than when they had signed up and needed to cancel (5%). This is consistent with save activity being more successful when consumers have not already committed to switching.

5.48 This evidence is consistent with the existence of a 'default' bias. Research in the field of behavioural economics identifies a strong 'default bias' that is, a tendency to select

[196] Our consumer research 2010 found that consumers who used the Cease and Re-provide process (and who therefore needed to contact two providers) were slightly more likely to contact the previous provider before the new provider. For example, 50% of fixed broadband and 56% of fixed voice switchers contacted the LP first. This compares to 40% of each who contacted the new provider first. The remainder could not remember.

default options even when the effort of making a different decision is low.[197] This implies that once a consumer has signed up with a new provider and incurred switching costs on the way (i.e. under the GPL NoT process), it is less likely that they will cancel their new contract and revert back to their old provider than if they had not yet signed up (i.e. under the LPL MAC process). Save offers would therefore be less likely to be accepted when the consumer has committed to the process under the GPL process.

5.49 A consideration of the level of hassle in the switching process also suggests that save offers are more likely to be accepted when a consumer has not formally signed up. Note that under the GPL process, a consumer who has signed up to the GP, but then wishes to accept a subsequent save offer from the LP, would then need to call the GP to cancel the switch[198]. By contrast, accepting a save offer under the LPL process means that there is no reason to further contact the GP. This means that all else being equal, the save offer is more likely to be accepted under the LPL process.

5.50 Finally, in relation to those consumers who would still consider a counteroffer, the GPL process would allow the GP to react to any counteroffer made by a LP while the LPL process would not. Under the GPL process, it is the GP who initiates the process for transferring the customer's service. The GP is waiting for the switch to be completed implying that he can always query any reason behind a switch not going through. If this is because of a retention offer, he can always choose to enter a 'bidding war' with the LP. Under the LPL process, this is unlikely to be possible since, at the time the consumer informs the LP of her/his imminent switching (through the code request), she/he is unlikely (or significantly less likely) to have signed up with a GP and indeed may not have made any contact at all with the prospective GP.[199] Potential GPs are therefore unlikely to be in position to make a counteroffer to that made by the LP.

It is difficult to enforce against reactive save under the LPL process

5.51 While reactive save activity has been addressed under the GPL process by effectively prohibiting the LP initiating contact with the switching consumer in order to make a save offer (see paragraph 5.33), we believe that a similar prohibition under an LPL process would present a number of challenges.

5.52 As noted earlier, Ofcom has banned reactive save activity under the GPL NoT process through GC 1.2 and 24.18. This prohibition enables us to address most of our concerns on reactive save activity under this process.[200] The LP is prohibited from using the information received during the switching process to initiate contact

[197] See Ofcom's 2011 consultation on Automatically Renewable Contracts (paragraphs 3.32-3.34) available at http://stakeholders.ofcom.org.uk/binaries/consultations/arcs/summary/arcs.pdf

[198] The LP should not use the Cancel Other process in this situation. Cancel Other is a consumer protection mechanism designed to ensure that customers are not switched between Communications Providers without their knowledge or consent. It is the industry term for a functionality that enables the LP to cancel wholesale orders (during the Transfer Period) placed by the GP. Therefore, Cancel Other should only be used in certain circumstances, in particular, where the customer believes they are a victim of slamming. Cancel Other should not be used to cancel a switch where the customer has changed their mind or been mis-sold, unless the GP has not processed the cancellation request (i.e. 'failure to cancel').

[199] A customer switching online may have researched new tariffs and been informed that they need to contact the LP to request a MAC code, before speaking to a prospective GP.

[200] Some concerns may remain where we believe that a lack of precise information in notification letters lead customers to contact the LP and so provide an opportunity for reactive save activity.

with the customer and so make a save offer. Customers who proactively contact the LP under the GPL process are still able to receive a counteroffer.

5.53 The nature of the LPL MAC process implies there would be significant challenges to implementing and enforcing a ban on reactive save activity similar to that under the GPL process. This is because under the LPL MAC process, all consumers are required to contact the LP as an integral part of the process. Under the GPL process, regulation seeks to ensure that the LP can only make a save offer to those customers who proactively contact it. Under the current LPL process, it is difficult to distinguish customers who are genuinely interested in save offers (and would have contacted the LP even if they did not have to request a code) from those customers who contact the LP provider only because they have no other alternative as they want to switch.

5.54 A total ban on reactive save activity under the current LPL process may in fact go further than the current ban under GPL. A total prohibition would involve LPs being unable to make a counteroffer to any customer who contacted them because they were thinking about leaving. This would ban proactive activity initiated by the consumer, which can be beneficial for competition. Such a prohibition would also make the communications sector out of line with other sectors.

Regulation is potentially a solution under a modified LPL process

5.55 An alternative way to resolve the concerns over reactive save under an LPL process is to remove the opportunity for save offers as an automatic part of the switching process. An example of how this could be done is provided by the existing process in France for mobile number portability (see A7.73 to A7.76). A MAC process could be envisaged so that consumers could request a MAC through an automated server (e.g. by calling a vocal server or going online and entering some details). The MAC would then be automatically sent to them by text message or email. We would then impose a ban on LPs (similar to that under GPL) from using the information entered in the automatic server for the purpose of contacting the customer and engaging in reactive save activity.

5.56 Another alternative could be to require that all providers dedicate a specific telephone number for requesting MACs and prohibiting the LP from making save offers to consumers who contact them to request a MAC on that number. We could impose call-recording obligation on that number for the purposes of monitoring and enforcing the ban.

5.57 Under either option, save offers could still be made if customers contact the LP for other reasons – for example, if customers contact the LP specifically for a counteroffer (under the second alternative this would have to be by calling a number other than that dedicated to MAC requests) . This would make the LPL MAC system analogous to the current GPL system, and also analogous to the situation in other markets.

Regulation under a modified LPL process would however be challenging

5.58 We have however doubts that regulating save activity in this way would be effective or easy to monitor.

5.59 First, we note that the incentive to comply with the regulation would be less under the LPL process. We believe that save offers are more likely to be accepted before consumers have formally signed up. This means that reactive save activity is more

likely to be successful under an LPL regime, increasing the incentives for providers to engage in it. The incentives to circumvent the regulation would be high.

5.60 Second, it may be difficult to mandate a purely automated process. In the mobile sector, the customer's mobile number provides a unique identification. There is no comparable equivalent in the broadband sector as not all broadband customers may have a telephone number.[201] As an automated process may not be possible, then any dedicated line may involve speaking to a customer service advisor. This provides an opportunity for save activity. Although we could try and enforce against such activity through call recordings, such enforcement is likely to be imperfect.

5.61 Third, If LPs are allowed to make save offers to customers who call them on one telephone number, but not to those who call them on another number, then they would have an incentive to direct customers to the option where it is allowed to make a save offer. Although we may be able to assess compliance by monitoring call recordings on the dedicated line, we may have greater difficulties in assessing whether consumers are directed appropriately in the first place. Although LPs may comply on the dedicated line, they may direct customers to call other lines on which save offers are allowed. In a worst case scenario rogue providers could comply on the dedicated line but then call the customer on another line and make save offers. Again, the incentives to engage in this kind of behaviour are higher under LPL because the customer is unlikely to have signed up with a provider at that stage. This means the LP knows that it is unlikely that a GP is expecting the customer's switch to proceed and monitoring the process.

5.62 Finally, we also note that we may be less likely to be alerted by external sources to contraventions under an LPL regime. We cannot rely on consumer complaints data to monitor compliance, as 'saved' consumers may be content with their save offer and therefore unlikely to report/ complain about reactive save activity. Instead, we would have to rely mainly on complaints from other providers.

5.63 Under a GPL regime, the GP can monitor and report any abuse of a regulation that would prohibit save activity as the GP is already waiting for the services to be transferred when the LP becomes aware of an imminent switch.[202] If a customer accepts a save offer from the LP, only the GP is allowed to cancel the order. Indeed, several of the investigations into the notifications of a breach of GC24.18 and GC 1.2 were initiated following complaints by the prospective GP.

5.64 However, complaints from the prospective GP are less likely to occur under a LPL regime. Under an LPL regime, the formal switching process requires consumers to contact the LP first. This may mean that GPs are not even aware of potential switchers and so are not able to report suspected breaches. Without information on suspected breaches, it would be difficult for us to monitor compliance. We therefore consider that regulating save activity is likely to create significantly more compliance challenges under LPL than under GPL.

Question 15: Do you agree with our assessment that a prohibition on reactive save activity under the LPL process would be difficult to enforce effectively? Can you suggest how enforcement of a prohibition on reactive save may be made effective?

[201] Some broadband customers may not have a fixed line.
[202] This argument was made by SSE in its response to the September 2010 consultation.

Conclusion

5.65 We consider that reactive save activity favours incumbents over entrants to the detriment of overall competition. We consider that reactive save activity places new entrants and providers seeking to expand their customer base at a significant disadvantage to incumbents through:

- Higher customer acquisition costs;
- A requirement on new entrants/small providers to price competitively to win customers which incumbents can thwart by selective offers on only those switching;
- An adverse selection problem of the switching customers being disproportionately low value consumers who were 'let go' by the LP.

5.66 We are also concerned that the ability to engage in reactive save activity gives incumbents less incentive to compete to retain all their customers as they will have always have warning and an opportunity to make a save offer before a consumer leaves. Under a harmonised LPL process, this could have a significant detrimental impact on the overall level of competition in the market.

5.67 Reactive save activity can occur under either GPL or LPL processes. However, it is particularly problematic under LPL processes. Under an LPL process, *all* switching consumers would contact the LP, providing an in-built opportunity for reactive save activity. Reactive save offers are also more likely to be successful under an LPL process as, in contrast to a GPL process, they would be made before a consumer has formally signed up to a new provider.

5.68 Although we can and do enforce against reactive save under a GPL process, we consider that it would be much more difficult to enforce against such activity under an LPL process. A prohibition on reactive save activity under an LPL process risks being either disproportionate (in the case of a total ban on any kind of save activity not just reactive save), or ineffective (for a ban on some types of save activity but not others).

Section 6

Options

Introduction

6.1 In this section we explain the switching process options we are consulting on in the document. We first set out the high level options we consulted on in the September 2010 consultation. We also describe the work that was carried out through the SWG including the process of narrowing down various switching options for the purpose of more detailed specification and costing. Finally, we specify each of the options we are now consulting on as the potential ways of addressing the problems identified in sections 4 and 5.

Background

September 2010 consultation

6.2 As noted in section 2, in the September 2010 consultation, we consulted on our long term strategic view that GPL processes are preferable to LPL processes when starting from first principles and there are no existing switching processes in place ('greenfield'). We stated that we believed GPL processes perform better than LPL processes in terms of both consumer and competition outcomes. We noted that further work would be required to consider how this applies to services where switching processes are already in place.

6.3 We also set out that in considering the case for a preferred 'greenfield' switching process, our starting point was to consider how each switching process could be adapted to mitigate against the identified weaknesses of the existing GPL and LPL processes.

6.4 Based on our analysis of the existing GPL and LPL processes and in light of previous switching work, we sought views on a number of high level options.[203] In addition to the status quo, these were:

- Enhanced GPL (NoT) process.
- Consumer Code on Bill process.
- Third Party Validation (TPV) process.
- Enhanced LPL (code) process.
- Transfer Code (TxC) process.

6.5 We carried out an assessment of all responses received[204] and used these to help inform discussions through the SWG.

[203] The options are described in paragraphs 6.59 to 6.94 of the September 2010 consultation. Technical specifications had not been developed for the purposes of the greenfield consultation.
[204] http://stakeholders.ofcom.org.uk/consultations/consumer-switching/?showResponses=true

Switching Working Group

6.6 As set out in section 2, we established the SWG to help develop detailed specifications and costings for different switching process options to feed into the analysis and assessment for this consultation.

6.7 The SWG considered the pros and cons of the high level switching process options that were set out in the September 2010 consultation. SWG members were invited to submit alternative switching process options for consideration and to express a view on the options that should be selected for more detailed consideration. In the course of the SWG discussions, a variety of options were considered and assessed. Three switching process options were selected for technical specification development and cost assessment:

- The Unique Service Number ('USN') model – a GPL process.
- The TPV 'Gatekeeper' ('TPV') model – a GPL process.
- The LPL Transfer Code ('LPL TxC') model – a LPL process.

6.8 The detailed technical specifications that were developed by the SWG for each of these models are available on the SWG website.[205] The purpose of the specifications was to provide sufficient information to SWG members to effectively conduct their own assessment of the incremental costs and implications of adopting each of the three models. The industry assessments of costs were provided to Ofcom to enable us to develop a clearer view of the potential costs to industry of transitioning to these models. An independent cost analysis was carried out by CSMG to feed into the option analysis and assessment for this consultation (see section 7).

6.9 The SWG option specification development primarily focussed on switching fixed voice and broadband services over the Openreach copper network. However, towards the end of the SWG process, the SWG also considered the design feasibility of the adaptability of the TxC process to meet other potential switching requirements.[206] One area that we have specifically considered is extending a TxC process to support the WLTO process in order to address our concerns with ETs in the context of homemoves (as discussed in section 4). We set out our current thinking on this at the end of this section.

6.10 The USN and LPL TxC models we consider in this consultation are the same as those developed by the SWG. The TPV model we are consulting on includes a revision to one of the assumptions in the original SWG TPV model (see paragraph 6.38). We consider these options in more detail below along with some additional options that were identified outside of the SWG process. Ofcom developed two options which are incremental enhancements to existing processes and one harmonised GPL option which uses the back end process developed by the SWG but the current NoT front end process. In addition, a subset of industry stakeholders developed a variation on the SWG LPL TxC model.

[205] http://stakeholders.ofcom.org.uk/telecoms/groups/switching-working-group/prcoesses-developed-swg/

[206] http://stakeholders.ofcom.org.uk/binaries/telecoms/groups/swg/meetings/13july2011/SWG_7_130711_JR_note_on1.pdf

Identified Options

6.11 The range of switching process options we are consulting on and which are specified in this section are:

- **Status quo and incremental enhancements to today's processes (unharmonised)**
  - Option 1a: Current NoT and MAC processes
  - Option 1b: Enhanced NoT and MAC
- **GPL options (harmonised)**
  - Option 2a: Enhanced NoT
  - Option 2b: GPL TxC
  - Option 2c: USN
  - Option 2d: TPV
- **LPL options (harmonised)**
  - Option 3a: LPL TxC
  - Option 3b: LPL Alternative ('ALT')

Status quo and incremental enhancements to today's processes (unharmonised)

Option 1a: Current NoT and MAC processes

6.12 Under this option, we would not make any changes to the current process for switching fixed voice and broadband services delivered over the Openreach copper network. These switching processes are described in section 3.

Option 1b: Enhanced NoT and MAC

6.13 Under this option, we would try to tackle the problems with the current NoT and MAC processes, which are identified in sections 4 and 5, through incremental improvements to both processes. This is an unharmonised option so the problems associated with having multiple switching processes would persist.

Specified Enhanced NoT model

6.14 The Enhanced NoT option would work along similar lines to the current NoT process (see paragraphs 3.3 to 3.10) but with some changes based on our evaluation of the problems with existing NoT process and the extent to which we consider it is possible to address these limitations. Figure 24 below sets out the proposed specification for the Enhanced NoT process.

Figure 24: Option 1b– process specification for Enhanced NoT element

- Maintain current approach to enforcement against slamming.
- Mandate use of the Cancel Other process by all providers offering fixed voice services.[207] Extend and mandate the use of Cancel Other by all providers offering broadband services. Mandating the use of Cancel Other will allow all consumers to stop the order going ahead in the event of slamming.
- Mandate use of the LOs process to help address some of the problems around loss of service when switching bundles of fixed voice and broadband services.
- LP communications to provide specific information on SIs including ETCs.
- Continued prohibition on marketing statements/ representations in consumer communications to induce them to stay with the losing provider or cancel their contract with the gaining provider
- Universal visibility of all Openreach CLIs (including MPF) either through enhancements to Openreach database/dialogue services or requiring MPF providers to establish their own dialogue services.[208]

Question 16: Are there other enhancements that you think should be included in the Enhanced NoT specification to help protect consumers both now and in the future? Please explain your answer and provide any supporting evidence.

Enhancements that were considered but not included in the Enhanced NoT specification

Strengthening record keeping obligations for consent validation

6.15 As set out under problem 3 in section 4, our key concern relating to the current NoT process is the lack of upfront consumer consent checks. This means we are very reliant on enforcement action to tackle consumer harm from slamming.

6.16 We have considered whether strengthening record keeping obligations would enhance our enforcement capabilities. This could include mandating that GPs keep a record of consent from consumers via email, text messaging or letter or through a requirement for providers to retain call recordings of customers' consent. We are currently of the view that these approaches would be unlikely to deliver sufficient reductions in instances of slamming to justify the likely costs of imposing such a requirement on all providers for the following reasons:

- The majority of larger providers who generate around half of slamming complaints to the Ofcom already record all sales calls. Based on our discussions with providers, we understand that they typically use these records to help with internal compliance checks and general monitoring of staff customer service performance. Whilst we do not currently monitor providers' call recordings on an ongoing basis, we can request

[207] It is our understanding that the larger providers do currently choose to use the Cancel Other process for fixed voice but many of the smaller providers have not chosen to use it.
[208] As noted 4.49, the OTA is currently in discussions with MPF providers about the possibility of them putting a CLI helpline facility in place.

these records for enforcement purposes if required. Therefore, strengthening record keeping obligations is unlikely to make a difference to our enforcement capability with respect to this category of provider.

- Smaller providers do not tend to already have call recording in place. However, where a smaller provider has generated significant volumes of complaints about slamming, we have still been able to take effective enforcement action against them by investigating other sales records kept by the relevant provider and, where necessary, through witness statements. Our experience to date suggests that the lack of call recordings for sales amongst smaller providers has not to date adversely impacted on our ability to tackle slamming through effective enforcement action. Therefore, it is unclear that an obligation to strengthen record keeping would make a significant difference to our enforcement capability with respect to these providers (especially when compared with the additional cost these providers would incur).

- It is not clear that strengthened record keeping obligations would help us to take additional enforcement action, over and above what we do today, against the large number of providers that each generate a low volume of complaints per month or that it would necessarily change the incentives on these providers to comply with the rules.

- We consulted on the possible introduction of call recording obligations in our fixed line mis-selling project. We received a mixed response from providers on this issue with the majority of respondents arguing that introducing such an obligation was likely to be onerous, expensive and disproportionate in respect of the problem it was intended to solve.[209]

Question 17: Do you think strengthening record keeping obligations for consent validation would increase protection against slamming? Would this be adequate to safeguard consumers now and in the future? Please explain your answer and provide any supporting evidence.

Information on bills

6.17 which? suggested that information could be added to consumers' bills to inform consumers about the length of time remaining on their minimum contract period and the cost of leaving their contract.[210] We considered whether this would help to tackle the lack of awareness of the implications of switching (problem 4 in section 4).

6.18 We are not proposing at this stage to introduce such an obligation under this option for the following reasons:

- We think it will be more effective to introduce an obligation on the LP to provide specific information to the consumer about SIs within the losing letter from the LP as this would cover the range of service implications rather than being limited to ETCs.

- Our billing research 2011 identified that a significant minority of broadband consumers (15%) say they do not receive a bill and/or notification of charges.[211] Amongst broadband consumers that do, a fifth (21%) say they never or rarely check

[209] These responses can be viewed at http://stakeholders.ofcom.org.uk/consultations/protecting_consumers/?showResponses=true.
[210] Q14
[211] Billing research 2011 slide 7

their bill.[212] This means that many consumers may continue to be unaware of the implications of switching.

Question 18: Do you think that the introduction a requirement to include specific information about early termination charges (ETC) and/or minimum contract periods (MCPs) in bills should form part of the enhancements to the current NoT process? What are the likely costs and benefits of such an approach? Please provide any evidence to support your answer.

Cancel Other call recording obligations

6.19 As set out under problem 5 in section 4, we are concerned that there continues to be abuse of the Cancel Other process by LPs who use Cancel Other to prevent consumers from switching between providers where they choose to do so. We established new rules in 2009 in the form of GC24 which requires all providers who use Cancel Other to do so only in accordance with a specified reason code. The record keeping obligations in GC24.17 require providers to record the reason for using Cancel Other.

6.20 We considered whether introducing new record keeping obligations to record all requests for use of Cancel Other would help tackle problems with abuse of Cancel Other. Currently, we do not think that the harm generated through abuse of Cancel Other is sufficient to justify the likely costs of imposing such a requirement.

Question 19: Do you agree that Cancel Other call recording obligations should not form part of the Enhanced NoT model? What are the likely costs and benefits of introducing Cancel Other call recordings? Please provide any evidence to support your answer(s).

Enhancements to the MAC

6.21 The Enhanced MAC option would work along similar lines to the current MAC process (see paragraphs 3.11 to 3.17) but with some changes based on our evaluation of the problems with existing MAC process and the extent to which we consider it is possible to address these limitations.

6.22 Figure 25 below sets out the proposed specification for the Enhanced MAC process. The enhancements are primarily focussed on improving consumers' experiences of requesting and obtaining a MAC.

[212] Billing research 2011 slide 14

Figure 25: Option 1b Enhanced MAC – process specification

- Require providers, at a minimum, to accept MAC requests by telephone and, where requested over the phone, to issue either immediately over the phone or within two hours by e-mail or SMS (or by another reasonable method if the consumer asks, and the provider agrees e.g. a call back facility for those that are unable to use email or SMS).[213]

- Setting up a dedicated MAC provision facility, with clear rules prohibiting reactive save activity from the MAC provision activity and call recording obligations. Providers would be required to collect performance management information (e.g. average time taken to provide the code).

Enhancements that were considered but not included in the Enhanced MAC specification

Addressing reactive save activity

6.23 Under an Enhanced MAC process, we considered a number of options for addressing the competition concerns about reactive save activity set out in section 5.

6.24 We considered three ways to separate out the provision of the MAC from reactive save activity:

i) an interactive voice response ('IVR') option/automated system where consumers are given the choice of 'opting-in' to a save offer.

ii) a dedicated and automated MAC provision facility (either telephone number or online facility) where LPs are not able to speak to the consumer. This option would work along similar lines to the current system for mobile porting in France which uses an automated response and which we discuss in paragraphs A7.73 to A7.76.

iii) a dedicated MAC provision facility (either telephone number or online facility) where consumers are able to request and obtain a code by interacting with a live customer services agent and where save activity is prohibited.

6.25 Based on the information currently available, we considered that option (iii) would be the most effective way to address our competition concerns about reactive save activity within the MAC process for the following reasons:

- Those consumers who are most likely to accept a save offer are also the most likely to opt-in to listening to a reactive save offer which would mean the outcome/effect of the process is unlikely to materially differ from the current MAC process with reactive save activity which is likely to dampen competition.

- An automated facility would more fully address concerns relating to reactive save activity than a process where there was interaction between the consumer and a live agent. This is because with an automated facility there would be no opportunity for providers to engage in reactive save activity as part of the MAC provision process. However, it was

[213] This would follow a similar process to that introduced for porting authorisation codes in the mobile sector following changes to GC18 http://stakeholders.ofcom.org.uk/binaries/consultations/mnp/statement/mnp.pdf.

not clear to us how the consumer consent checks could be carried out or how the correct assets could be identified through an automated call.

Question 20: How can Ofcom best address competition concerns relating to reactive save activity through enhancements to the MAC process? What are the likely costs and benefits of such an approach? Please provide any evidence to support your answer.

GPL options (harmonised)

Option 2a: Enhanced NoT

6.26 Under this option, we would seek to put in place a harmonised NoT option for switching fixed-line voice and broadband over the Openreach footprint i.e. the MAC process would be abolished. This option would follow an identical specification to that already described in relation to the Enhanced NoT (Non-harmonised) option described above in Figure 24.

Options 2b, 2c and 2d - Common features

6.27 In this section, we describe the remaining three GPL (harmonised) switching options (Options 2b GPL TxC, 2c GPL USN and 2d GPL TPV). We first describe a number of features that are common across these GPL options:

- Hub and database.
- Identical approach to service and asset validation through a 'back end' transfer code (TxC) process.
- Customer Cancel system.
- Post sales durable communications.[214]

<u>Hub and database</u>

6.28 All of the harmonised GPL options (with the exception of Option 2a Enhanced NoT) would have centralised database and an inter-provider hub ('the Hub').Under each of the GPL TxC, USN and TPV options, the centralised database would include a list of all UK fixed voice and broadband services, identified by either the USN (under the USN process) or through account references (for the GPL TxC and TPV processes).This enables GPs and LPs to identify the correct service(s) and assets to be switched based on information provided by the consumer. The Hub communicates information between the GP and the LP.

<u>TxC process</u>

6.29 All of the harmonised GPL models (with the exception of Option 2aEnhanced NoT), would utilise the TxC process[215] to ensure that the correct service(s) and assets are identified and validated throughout the supply chain.

[214] We note that all the proposed options would require that communications are available in alternative formats for disabled customers and that any call centre or provider would be able to accept calls via text relay.

[215] The TxC process was originally proposed by BT. Further details can be found in UC04 steps 8 to 23 for the USN model at

6.30 A TxC is a code which identifies services and assets to be switched. The TxC process is an end–to-end electronic mechanism which is designed so that all the services and assets to be switched are accurately identified and validated through being 'tagged' by the code. In this way, the TxC provides a unique one-time reference for the switch – it is only generated at the time of the switch. The TxC is passed up and down the supply chain of both the LP and the GP, so that the correct assets and services are tagged by all the players in both supply chains. Once the service(s) and assets have been correctly tagged, the GP is able to use the TxC to initiate the back end switching process.

Question 21: Are there any particular issues that you think would need to be considered in establishing the hub and database under any of the GPL options (e.g. general practicability setting up and/or ongoing operation)? Please explain your answer.

Customer Cancel System

6.31 All of the harmonised GPL models (with the exception of Option 2a Enhanced NoT), would make changes to the current process for cancellations. Under the existing NoT process, there are two cancel processes, 'Cancel Own' and 'Cancel Other'. The Cancel Other process has been removed from each of the harmonised GPL options with the exception of Option 2a Enhanced NoT. Instead, customers will be able to cancel their switches, during the transfer period, by calling an automated Customer Cancel System, or a live TPV agent.[216]

Post sales durable communications

6.32 All the harmonised GPL models (including Option 2a Enhanced NoT[217]) would follow an identical approach to help ensure consumers were informed of the implications of switching. This would work along similar lines to the existing NoT process where consumers would receive post-sales communications from both the LP and GP. Therefore, the LP letter would continue to play a vital role to inform consumers of their ETCs and SIs.

Option 2b: GPL TxC model[218]

6.33 Under this option, the customer facing front-end process would be identical to Option 2a Enhanced NoT (discussed above). However, unlike Option 2a Enhanced NoT, Option 2b GPL TxC would introduce a fundamental change to identify and validate the services and assets which are to be switched. This is to address the problems that have been identified with the back end systems. Figure 26 sets out a process description of the GPL TxC model. This option is based on elements of the TPV and

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http://stakeholders.ofcom.org.uk/binaries/telecoms/groups/swg/processed/SWG_Switching_Process_Use6.pdf and UC04, steps 18 to 33 for the TPV model at http://stakeholders.ofcom.org.uk/binaries/telecoms/groups/swg/processed/SWG_Switching_Process_Use4.pdf.

[216] Further details can be found in UC07 for the USN model at http://stakeholders.ofcom.org.uk/binaries/telecoms/groups/swg/processed/SWG_Switching_Process_Use6.pdf and UC07 for the TPV model at http://stakeholders.ofcom.org.uk/binaries/telecoms/groups/swg/processed/SWG_Switching_Process_Use4.pdf.

[217] In option 2a Enhanced NoT, the post sales durable communications plays a critical role in trying to reduce the harm from slamming since there are no additional up front consumer protection measures built into this role.

[218] http://stakeholders.ofcom.org.uk/binaries/telecoms/groups/swg/processed/SWG_Switching_Process_Use4.pdf

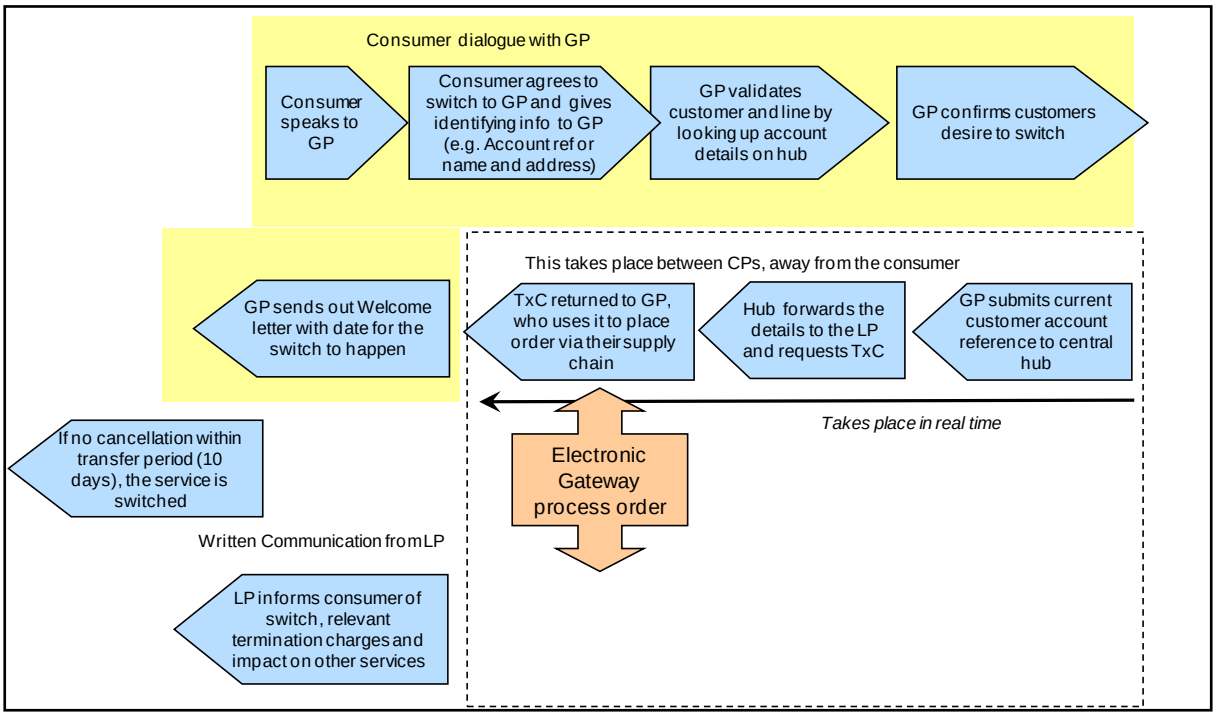
USN models that were specified through the SWG but it was not considered as a standalone option within the SWG process.

Figure 26: Option 2b GPL TxC – process description

- A customer wishing to switch a service would tell the GP which services they wish to switch, and their account reference with their current provider (if available). As part of the sign up process, the customer would also supply a set of data such as: their name, address, postcode, CLI and current provider.
- The GP would then enter this information into an inter-provider hub ("the Hub"), enabling the GP to identify the correct service(s) to be switched and communicate this to the LP. The Hub would hold a centralised database which would include a list of all UK fixed voice and broadband services and providers, account references, customer names, addresses, postcodes and CLIs. This database and Hub would be utilised only for the consumer switching process.
- If a customer did not have their account reference to hand, the GP sales agent could use other customer information to query the central database of all provider accounts and services to uniquely identify the customer's account.
- Once the account has been successfully located on the central database, the GP would then request a TxC from the Hub. The Hub forwards the request to the LP with the customer information. The LP verifies the customer account and requests a TxC up its supply chain, via its wholesale provider and Access Operator. The CP's Access Operator requests the TxC from the Hub and this is passed down the supply chain. The assets involved in the switch are tagged and the code forwarded to the GP. Once the GP has received the TxC from the Hub they would be able to utilise this to begin the back end switching processes.
- To assist in ensuring data consistency, it is envisaged that this Hub would automatically update the centrally held database when customers switch. Providers would need to update the central database if there were changes to the service (e.g. disconnection, new service provision) or any changes to the customer information held on the database (such as name, address etc).
- Customers are made aware of the implications of the switch (including service impacts and ETCs) through a written durable communications after agreeing to switch but before the switchover happens.

6.34 Option 2b GPL TxC is illustrated in the figure below.

Figure 27: Option 2b GPL TxC – process flow diagram



Option 2c: USN[219]

6.35 This is a GPL model which utilises a Unique Service Number ('USN') which would be provided to customers on their bill, and which would assist providers in identifying the service(s) to be switched and in authenticating and validating the customer. This is the version which was specified (and costed) through SWG. It is a simple version of the Code on Bill process which is used in the GB energy sector today. Figure 28 provides a brief description of how Option 2c USN would work.

[219] http://stakeholders.ofcom.org.uk/binaries/telecoms/groups/swg/processed/SWG_Switching_Process_Use6.pdf

Figure 28: Option 2c USN – process description

- Each of a customer's services would be identified by a unique number, the USN. This USN would be communicated to the customer by their current provider and printed on their bill. A customer wishing to switch a service would provide the USN to the GP who would then enter the USN into an inter-provider hub ("the Hub"), enabling the GP to identify the correct service(s) to be switched and communicate this to the LP. The Hub would hold a relatively simple, centralised database which would include a list of all UK fixed voice and broadband services, identified by the USN. This database and Hub would be utilised only for the consumer switching process. By providing their USN to the GP, a customer will be providing their consent for the switch to go ahead. If a customer is unable to provide their USN (e.g. they do not have the USN to hand in a retail environment), they will not be able complete the sale at that time.

- After the GP has validated the USN, the GP would provide the USN to the Hub with a request for the asset validation to begin via the Transfer Code process. The Hub forwards the request to the LP with the USN. The LP verifies the customer account and request a TxC up its supply chain, via its wholesale provider and Access Operator. The CP's Access Operator requests the TxC from the Hub and this is passed down the supply chain. The assets involved in the switch are tagged and the code forwarded to the GP. Once the GP had received the Transfer Code from the Hub they would be able to utilize this to begin the back end switching processes. The Transfer Code pinpoints and ensures that the correct asset is transferred.

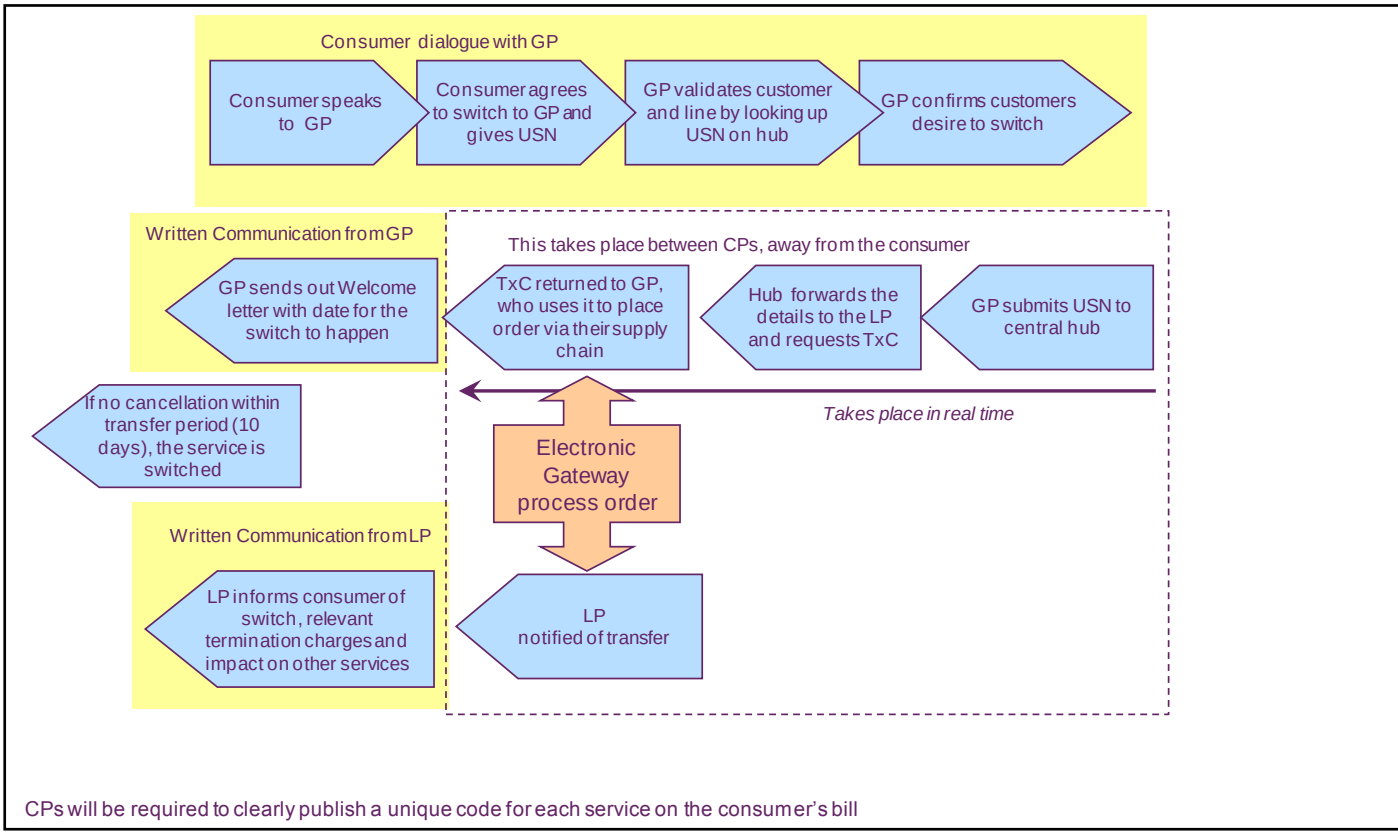
- To assist in ensuring data consistency, it is envisaged that this Hub would automatically update the USN database when customers switch. Providers would only need to update the central database if there were changes to the service (e.g. disconnection, new service provision) or USN (which is likely to change very infrequently).

- Customers are made aware of the implication of the switch (including service impacts and ETCs) through a written durable communication after agreeing to switch but before the switchover happens.

- Customers retain the right to cancel the order where they have either changed their mind or not consented or have no knowledge of the switch through a 'Customer Cancel function'.

6.36 Option 2c USN is illustrated below.

Figure 29: Option 2c USN model – process flow diagram



Option 2d: TPV model[220]

6.37 This is a GPL process which utilises the customer's existing account reference (provided by their current provider on their bill) or other information if they are unable to provide their account reference (e.g. telephone number and address) to authenticate the consumer, and a TPV process to perform consent validation.

6.38 This model is the same as the model that was specified and costed by the SWG with one revision to the underlying assumptions. In the SWG process, it was assumed that when the consumer is passed over to the TPV body to carry out the consent checks that the GP would stay on the line and close the conversation with the customer after they have spoken to the TPV. In this TPV model, it is assumed that the GP does not stay on the line. Our current view is that it is not necessary for the GP to stay on line or that it would generate sufficient benefit to justify the additional costs involved. Although it would not be a mandated part of the process for the GP to stay on the line, they could choose to do this.

Question 22: Do you agree that the GP staying on the TPV call should not be a mandated part of the TPV model? Do you think there are significant benefits from the GP closing the call with the customer after the TPV conversation? Please explain your answer(s) and provide any supporting evidence.

6.39 A summary description of Option 2d TPV is set out below.

[220] http://stakeholders.ofcom.org.uk/binaries/telecoms/groups/swg/processed/SWG_Switching_Process_Use4.pdf

Figure 30: Option 2d TPV – process description

- A customer wishing to switch a service would tell the GP which services they wish to switch, and their account reference with their current provider (if available). As part of the sign up process, the customer would also supply a set of data such as: their name, address, postcode, CLI and current provider. If a customer did not have their account reference to hand, the GP sales agent could use this information to query a central database of all provider accounts and services (similar to that used in the GPL TxC model) to uniquely identify the customer's account.

- Once the sale is completed and the account has been successfully located on the central database, the GP would transfer the customer to an independent TPV body. On successful handover, the GP would close the call with the consumer. The TPV agent would then record a statement of consent from the customer, e.g.: "Do you wish to switch service(s) X from CP Y to CP Z?" This statement of consent would be stored, and would be able to be retrieved in the case of a slamming allegation.

- After the conversation with the TPV, the call would be finished and the TPV would then electronically notify the GP that consent had been validated[221], and the GP would then request a Transfer Code from the Hub to begin the back end switching processes. The Hub forwards the request to the LP with the customer information. The LP verifies the customer account and requests a TxC up its supply chain, via its wholesale provider and Access Operator. The CP's Access Operator requests the TxC from the Hub and this is passed down the supply chain. The assets involved in the switch are tagged and the code forwarded to the GP.

- The TPV would also "unlock" the service(s) on the Hub, allowing the service(s) to be switched. If the service(s) have not been "unlocked" this would suggest that consent had not been given, and the GP would be unable to acquire the Transfer Code from the Hub. In this way, the TPV acts as a "gatekeeper" to assist in the prevention of slamming abuse by GPs.

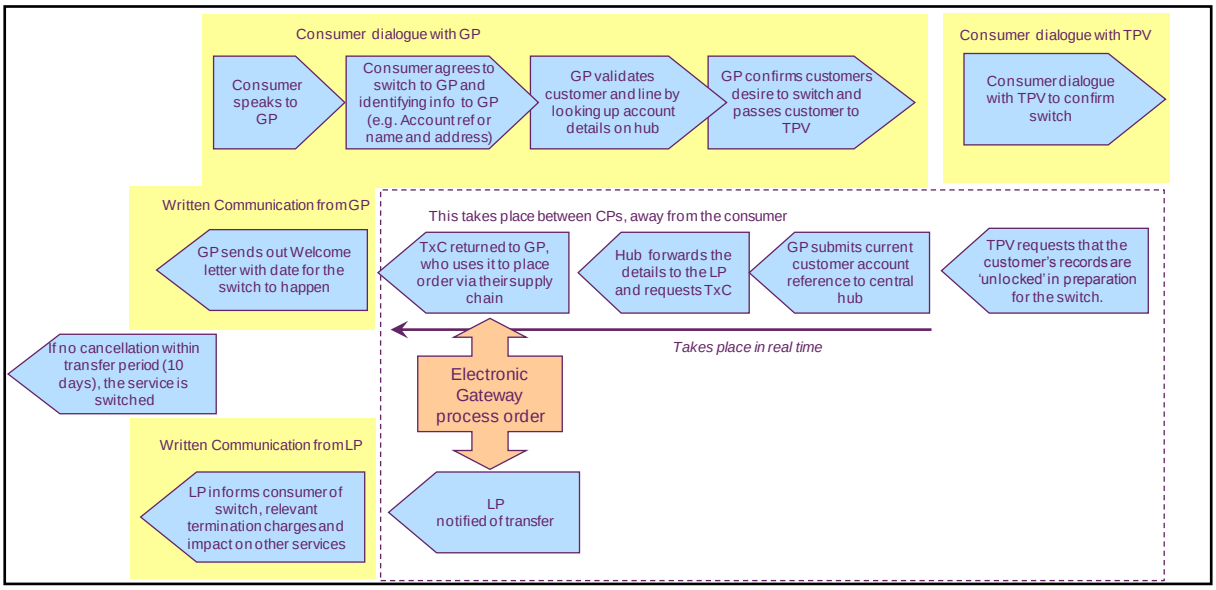
- The TPV process would be handled by phone call for telesales, retail shop and door-to-door sales. Customers using an online sales channel would be presented with a TPV web form to collect a record of consent.

- Customers are made aware of the implication of the switch (including service impacts and ETCs) through a written durable communications after agreeing to switch but before the switchover happens.

6.40 Option 2d TPV model is illustrated below.

[221] Under the original TPV SWG specification, the GP agent would be held on the call while the customer spoke to the TPV. Under the preferred TPV model, the model is costed assuming the GP agent completes the sale before transferring to the TPV and therefore doesn't stay on the TPV call with the customer. In this scenario, if validation is successful, the GP is informed by the TPV that the process has been successful and can begin the TxC process. If the TPV is unable to validate customer consent successfully, the TPV notifies the GP that validation has been unsuccessful and the GP sales agent can then choose to call back the customer to enquire further.

Figure 31: TPV model – process flow diagram



Data protection and privacy

6.41 The GPL TxC and GPL TPV options involve setting up a database or hub which would process information that is considered to be 'personal' data under the Data Protection Act 1998 (i.e. data which relates to a living individual who can be identified from those data or from those data and other information which is in the possession of, or is likely to come into the possession of the data controller). Personal data includes name, address and postcode.[222] As noted in the SWG discussions on the development of the TPV model, there will therefore be a need to ensure that the relevant bodies (i.e. the communications providers and the hub or TPV provider) process this personal data in accordance with the requirements of the Data Protection Act 1998, including using and disclosing the data in a fair and lawful manner, and ensuring that the data is kept secure.[223] Communications providers must also comply with the Privacy and Electronic Communications (EC Directive) Regulations 2003.[224]

6.42 Providers are required to fulfil certain obligations under the legislation including providing their customers with information about how their data will be used. This is often called a 'Fair Processing Notice' (FPN), or 'privacy notice', and sets out, amongst other things, the identity of the data controller and the purpose for which the data will be processed. Responses to a formal information request in 2011 indicated that many providers incorporate the FPNs into their terms and conditions. These are often sent to consumers when they first enter into a contract with a provider or are available for them to access electronically (e.g. on the providers website or via email). Providers may need to update their FPN if we proceed with a GPL option which requires setting up a database or hub with their customers' personal information.

[222] The data is not 'sensitive' data as defined by the Data Protection Act 1998.
[223] The Information Commissioner's Office issues guidance on to help organisations to adopt good practice when sharing information about people - see http://www.ico.gov.uk/for_organisations/guidance_index/data_protection_and_privacy_and_electronic_communications.aspx#processing.
[224] S.I. 2003/2426 as amended by the Privacy and Electronic Communications (EC Directive) (Amendment) Regulations 2011/1208.

6.43 Given that providers already hold the personal data that would be processed under the GPL TxC and GPL TPV options, we do not think that consumers will be adversely affected by the disclosure of their data to a hub or database, as long as that data is processed in accordance with the requirements of the Data Protection Act 1998 (in particular that it is processed in a fair and lawful manner, and kept secure), and is only used for the purpose of switching. We do not consider that it would be appropriate for data held on any database to be used for marketing purposes. Other than the general security concerns which are inherent with all databases of this nature and can be met through adequate security measures being put in place, it is not clear to us the basis on which it could be suggested that distress and/or damage could be caused to consumers by the processing of their data in this manner (i.e. the passing of their personal data to a database for the purposes of aiding switching of telecommunications services). However, we would welcome input from stakeholders on this.

Question 23: Are there any particular data protection and/or privacy related issues that you think would need to be considered under the GPL TxC and/or the GPL TPV options? Are these issues likely to be significantly different to the issues that need to be considered under the current processes? Please explain your answer.

Question 24: Are there circumstances in which you can envisage that consumers would be likely to be distressed and/or harmed by the sharing of their personal data as required under the GPL TxC and/or the GPL TPV options? Do you think that consumers will object to the sharing of their data in this way? Please explain your answer.

Question 25: Are there any particular issues that you think would need to be considered in terms of the practicalities involved in setting up the TPV body and its ongoing operation under the GPL option? Please explain your answer.

LPL options (harmonised)

Option 3a: LPL TxC[225]

6.44 This is a LPL process which performs authentication and consent validation with the customer's existing provider, the LP. In this process the TxC is requested directly by the customer from their current provider. This is in contrast to Options 2b (GPL TxC), 2c (USN) and 2d (TPV) where the TxC is used solely by the LP and GP behind the scenes (for service(s) and asset validation) and is invisible to the consumer.

6.45 Under the GPL models, the TxC is provided by a centralised Hub. Whereas, in the LPL models, the TxC would be provided to the LP's Access Operator by a TxC Issuing Authority (TxCIA) and the TxC would be passed back down the supply chain to the LP who would then pass it to the customer. The TxCIA would be a body which would be independent of Openreach. The TxCIA would potentially be able to provide TxCs across multiple infrastructure providers, if required.

6.46 Option 3a LPL TxC, as described here, is the version which was specified (and costed) through SWG. It works along similar lines to the Enhanced MAC process insofar as it has been designed to address a number of the identified deficiencies within the existing MAC process. It includes the following enhancements:

[225] http://stakeholders.ofcom.org.uk/binaries/telecoms/groups/swg/processed/SWG_Switching_Process_Use2.pdf

- Makes the code process more user friendly through real time provision of codes and reduced code length.

- Requires providers, at a minimum, to accept transfer code requests by telephone and, where requested over the phone, to issue the code during the phone call.

- A Service Level Agreement on the response time to calls to the dedicated line or IVR option to be agreed, reported and auditable.

- Aims to mitigate concerns about reactive save in a LPL processes through a dedicated Transfer Code phone line with clear rules prohibiting 'save' activity on this line, backed up by call recording on the line and greater regulatory monitoring and enforcement activities by Ofcom.

- Mandate GP and LP durable communications to provide additional notification to consumers. LP communications to include specific information on ETCs and SIs.

- Aims to facilitate bundled switching by enabling the same TxC to be used to support multiple services where consumers are switching more than one service. It is designed to support switching beyond the current limited scope of the MAC process i.e. would work for services delivered over MPF and accommodate switching involving multiple access providers.

6.47 A summary of Option 3a LPL TxC model is detailed below.

Figure 32: Option 3a LPL TxC – process description

- A customer wishing to switch services would contact their current provider, the LP, to request a TxC. For telephone communications, this would be via a dedicated facility where LP retention activity would be prohibited.

- The LP would authenticate the customer using existing methods e.g. using account reference numbers, or a password on the account. Once the service(s) to be switched have been identified, the LP may inform the customer of any ETCs and SIs that would result from the switch.

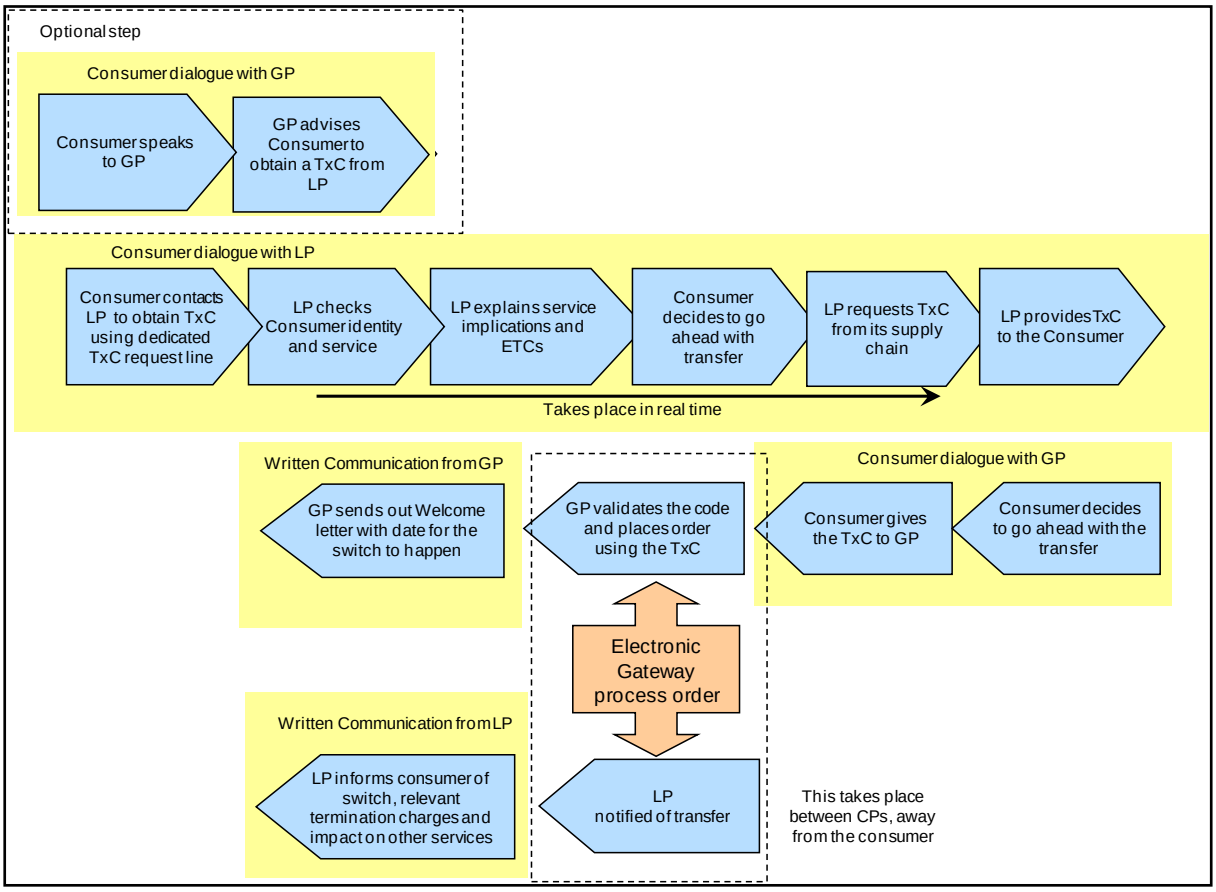
- The LP would then perform the necessary services(s) and asset validation, which needs to occur while the customer is on-line (either by phone or web) and within a reasonable amount of time. The LP request a TxC up its supply chain, via its wholesale provider and Access Operator. The CP's Access Operator requests the TxC from the code issuing authority and this is passed down the supply chain. The assets involved in the switch are tagged and the LP is given the TxC. Once asset validation had taken place, the LP would provide the customer with a TxC.

- The customer would subsequently be able to provide their TxC to the GP, which once validated, could be used by the GP to initiate the back end switching process.

- Customers are made aware of the implications of the switch (including service impacts and ETCs) through a written durable communications after agreeing to switch but before the switchover happens.

6.48 Option 3a LPL TxC is illustrated below

Figure 33: Option 3a LPL TxC – process flow diagram



Option 3b: LPL ALT

6.49 Option 3b LPL ALT was proposed by BT, Sky, Virgin Media and Zen[226] and is similar to the Option 3a LPL TxC with the following important differences:

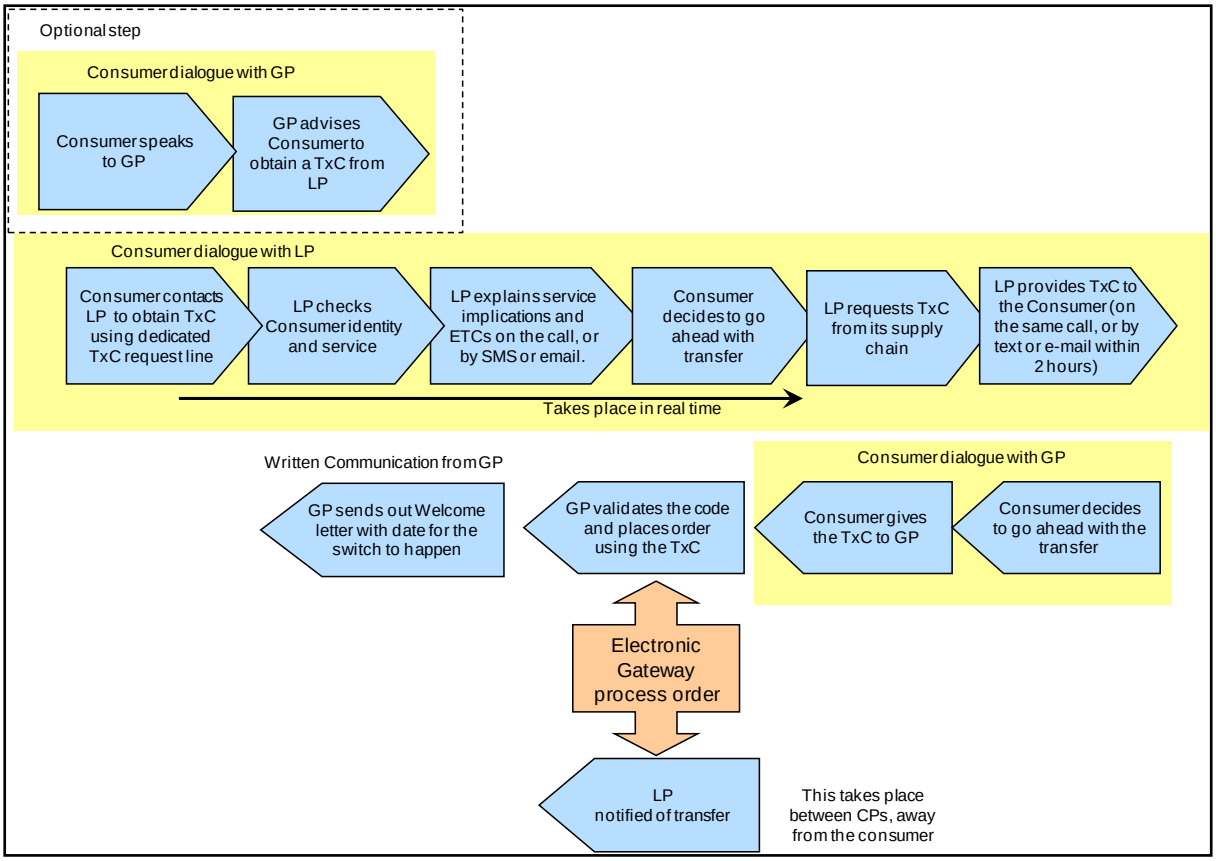
- Providers can choose whether there would be a separate phone number or IVR option for customers to notify their existing provider of their wish to leave. Additionally, customers would be verbally offered the option to receive the TxC without needing to listen to any save offers. The service would include:
- A dedicated line or IVR option with all calls to be recorded.
- A Service Level Agreement on response to calls to the dedicated line or IVR option to be agreed, reported and auditable.
- The consumer has the opportunity to receive a code without hearing a save offer through being provided with the ability to 'opt-out' of any save activity.
- Providing the TxC to the customer while they are on the phone, or where this is not possible within 2 hours by SMS, or email (similar to the current process in the mobile

[226] It was also suggested that this option could be implemented within 18 months but that some of the changes proposed to the consumer facing elements could be implemented in a shorter timeframe. See http://stakeholders.ofcom.org.uk/binaries/consultations/switching-fixed-voice-broadband/annexes/option_proposal.pdf.

sector for requesting a Porting Authorisation Code). This option notes that the CP could also invite the customer to call back or the CP could offer to call the customer back with the TxC, or provide it by email or SMS to a friend or neighbour.

- An assessment of the impact of ceasing their service, including any ETCs (if applicable), would be offered to the customer verbally while they were on phone and also offered to be delivered to them via SMS or email (no letter from the LP about the implications of the switch would be required as part of the formal switching process).

Figure 34: Option 3b LPL ALT – process flow diagram



Question 26: Are there any particular issues that you think would need to be considered in terms of the practicalities involved in setting up the Transfer Code Issuing Authority and its ongoing operation under the Losing Provider Led options? Please explain your answer.

Question 27: Do you agree with the proposed specifications for each of the options? If not, please specify what changes you consider should be made to the specifications and the basis for this.

Question 28: Are you able to provide an estimate of the time it would take to make the necessary changes to your systems and processes to implement each of the options? Please explain your answer.

Erroneous transfers and homemovers

6.50 As we discussed in section 4, ETs are caused by deficiencies in the underlying switching processes. ETs arise where the provider is unable to reliably identify the correct address and associated assets to 'takeover' and provide services to. The

result is that sometimes the provider takes over the wrong line. Analysis of the root causes of ET complaints by the OTA (working with industry stakeholders) suggested that the vast majority of actual ETs are related to the WLTO process which is used for homemoves.

6.51 As part of the SWG process, we asked industry stakeholders to conduct an initial design feasibility study into whether a TxC process (designed to be used in switching) could be used to support the WLTO process to deal with the problem of ETs in a homemovers context.

6.52 The initial design feasibility work conducted by a subgroup of the SWG suggested that, from a technical design perspective, it should be possible to adapt a TxC process to support the WLTO process to deal with the problems of ETs in a homemovers context.[227] However, it was also noted that the consumer experience of the WLTO process would differ depending on the process option that was being considered.

6.53 Figure 35 sets out our initial thinking on how the process might work based on the initial design feasibility work that was conducted via the SWG. We note that further work is required and we plan to develop technical specifications for how the TxC process could be used to support the WLTO process for homemoves across all of the harmonised GPL (excluding Option 2a Enhanced NoT) and LPL options. We would welcome input from stakeholders on this.

[227] http://stakeholders.ofcom.org.uk/binaries/telecoms/groups/swg/meetings/13july2011/SWG_7_130711_JR_note_on1.pdf.

Figure 35: Summary of how the TxC process could support homemoves

Option	Process summary
Option 2c: GPL USN	• The consumer moving into the property gets the USN from the consumer that is moving out of the property who finds it on a recent bill. • The consumer moving into the property gives the USN to their provider. • The provider queries the database to confirm the incumbent provider, service type, access type for the target line. • The provider submits a TxC request as normal. • The incumbent provider should contact the consumer that is moving out of the property to confirm their intention to move out of the property and the expected date. • The provider submits the WLTO order with the TxC and target date.
Option 2d: GPL TPV*	• The consumer moving into the property tells the provider the information they know about the property they are moving into (address and where available the name of the consumer moving out of the property and the CLI).*** • The provider queries the hub database using the information the consumer has been able to provide (name, address and CLI or a subset of these) to confirm the incumbent provider, service type, access type for the target line. • The provider submits a TxC request. • The incumbent provider should contact the consumer that is moving out of the property to confirm their intention to move out of the property and the expected date. • The provider submits the WLTO order with the TxC and target date.
Option 3a: LPL TxC**	• The consumer moving into the property needs to get the TxC from the consumer that is moving out of the property who requests this from their provider. • The consumer moving into the property provides the TxC to their provider who submits the WLTO request with the associated TxC.

*The SWG did not consider Option 2c but this would work in the same way as Option 2d.
** The SWG did not consider Option 3b but this would work in the same way as Option 3a.
*** Option 2d could also work on the basis of account reference where the consumer moving into the property has been able to get this information from the consumer moving out of the property.

6.54 Based on the initial design feasibility work that has been carried out to date, we have some concerns about the effectiveness of extending the TxC process to the WLTO process to support homemoves under Options 2c USN, 3a LPL TxC and 3b LPL ALT. The options are heavily reliant on the consumer moving into the property being able to get information from the consumer that is moving out of the property who has no incentive to incur time and hassle of getting hold the information and subsequently sharing it. We set out our concerns more fully in section 7. Consequently, we have assumed that we would retain the current WLTO process to support homemoves under Options 2c USN, 3a LPL TxC and 3b LPL ALT.

Question 29: How could the switching process options be used (or amended) to support the WLTO process to deal with the problem of ETs in the context of a homemove? Please explain your answer.

Section 7

Assessment of the options

Introduction

7.1 As set out in section 2, Ofcom has a general duty under section 3 of the Act to further the interests of citizens in relation to communications matters, and to further the interests of consumers in relevant markets.

7.2 Under sections 47 and 51 of the Act, Ofcom has the power to set General Conditions. Section 51 allows us to set General Conditions which we consider appropriate for the purpose of protecting the interests of end-users of public electronic communications services. Section 51(h) specifically gives us the power to set such general conditions to ensure that conditions and procedures for the termination of a contract do not act as a disincentive to an end-user changing communications provider.

7.3 In the recitals to the Universal Services Directive, it is clear that one of the aims of Article 30 of the Directive is that consumers should be able to change providers when it is in their interests to do so, and without hindrance by "*legal, technical, or practical obstacles*".

7.4 We are specifically required by the Universal Service Directive to ensure that:

i) subscribers are protected throughout the switching process and are not switched to another provider against their will;

ii) (without prejudice to any minimum contractual period)... conditions and procedures for contract termination do not act as a disincentive against changing service provider.

7.5 In sections 4 and 5 we identified a number of problems which consumers and communications providers face when switching fixed voice and or broadband providers using current processes. We also identified competition issues arising from use of reactive save. Consequently, we consider that the current conditions and procedures for contract termination act as a disincentive to switching.

7.6 We also consider that current switching processes and enforcement of these processes are not working effectively such that a significant number of subscribers are being switched to other providers against their will. This can be due to error by a provider who is attempting to switch another consumer, but can also be deliberate.

7.7 We are considering whether to exercise our power under section 47 of the Act in order to set a General Condition for the purpose of protecting the interests of end-users of public electronic communications services, and to ensure that conditions and procedures for the termination of a contract do not act as a disincentive to an end-user changing communications provider.

7.8 We are considering in particular whether to exercise our power to make a General Condition for this purpose which:

i) relates to the supply, provision or making available of goods, services or facilities in association with the provision of public electronic communications services (s51(2)(a));

ii) gives effect to a Community obligation to provide protection for end-users (s51(2)(b)) (in that it ensures that subscribers are protected throughout the switching process and are not switched to another provider against their will); and

iii) ensures that the conditions and procedures for contract termination do not act as a disincentive to switching (s51(2)(h).

7.9 Against this background, we consider that taking action to ensure that switching processes address the problems identified in sections 4 and 5 is in accordance with our general duty to further the interests of citizens in relation to communications matters, and to further the interests of consumers in relevant markets.

7.10 Switching processes affect the conditions of competition in the relevant markets. We therefore consider that by improving switching processes for consumers, and preventing processes from adversely affecting competition, we will be acting in accordance with our general duty to further the interests of consumers in relevant markets, where appropriate by promoting competition.

7.11 In section 6 we identified a number of switching process options which might help solve these problems.

7.12 This section considers the extent to which each switching process option effectively deals with the problems identified in sections 4 and 5. We then consider which process option is the most appropriate to put forward for implementation.

7.13 In order to change the current GCs to implement a new or amended switching process we must satisfy the tests set out in section 47(2) of the Act. These are that each condition must be:

- objectively justifiable in relation to the networks, services, facilities, apparatus or directories to which it relates; [228]
- not such as to discriminate unduly against particular persons or a particular description of persons;
- proportionate to what the condition or modification is intended to achieve; and
- in relation to what it is intended to achieve, transparent.

7.14 In making this assessment, we are also required by section 3(3) of the Communications Act to have regard to the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed; and any other principles which appear to us to represent best regulatory practice.[229]

7.15 Taking all the above into account, our objective is to identify the option(s) which most proportionately deal with the problems we have identified, taking into consideration

[228] Section 47(3) disapplies subsection (2)(a) in relation to the setting of a General Condition.
[229] Ofcom's Regulatory principles can be found at: http://www.ofcom.org.uk/about/what-is-ofcom/statutory-duties-and-regulatory-principles/

both the effectiveness at addressing the problems faced by consumers and the impact on CPs. The structure of this section is as follows:

- We consider the extent to which each option deals with the problems identified;
- We consider the impact each option would have on CPs;
- We summarise the available quantitative information on costs and benefits;[230] and
- We compare the options in order to consider the most proportionate way of solving the problems, and propose our preferred option.

7.16 The analysis presented in this document represents a draft impact assessment, as defined in section 7 of the Act. In sections 4, 5 and 6, and this section, we discuss all of the relevant factors and options that we have considered and their impact on stakeholders, including both consumers and CPs. For further information about Ofcom's approach to impact assessments, see the guidelines, "Better policy-making: Ofcom's approach to impact assessment", which are available on Ofcom's website.[231]

Extent to which each option deals with the problems

7.17 In the section below we consider the extent to which each option deals with the problems identified. We have included red, amber, green (RAG) analysis as a simplified visual summary of the performance of each of the options in addressing the issues identified. Green indicates that the option largely deals with the problem, amber that it partially deals with the problem and red that it significantly fails to deal with the problem.

Problem 1: Multiple switching processes

7.18 In section 4 we noted that having multiple switching processes creates a lack of clarity and increases confusion for consumers, which in turn increases switching costs and contributes to a poor consumer experience. These multiple processes also create an uneven playing field for competitors.

Summary of how each option performs:

Problem	Option 1a – Current NoT and MAC	Option 1b – Enhanced NoT and MAC	Option 2a – Enhanced NoT harmonised	Option 2b – GPL TxC	Option 2c – USN	Option 2d – TPV	Option 3a – LPL TxC	Option 3b – LPL ALT
Multiple switching processes	Red	Red	Green	Green	Green	Green	Green	Green

Options which largely deal with the problem

7.19 We consider that options 2a-d (Enhanced NoT harmonised, GPL TxC, USN and TPV) and 3a-b (LPL TxC and LPL ALT) all deal with this problem. All these options

[230] The estimates of quantitative benefits for each option are provided for illustrative purposes based on the information available to us and should be treated as indicative only. It is important to note that a number of the benefits associated with the solving the problems are difficult to quantify and more qualitative in nature.

[231] See: http://stakeholders.ofcom.org.uk/binaries/consultations/better-policy-making/Better_Policy_Making.pdf

have a harmonised switching process thus would deal with the problems around consumer/provider confusion and competitive neutrality which are associated with multiple switching processes.[232] The benefits of having a harmonised switching process are; reduced potential for consumer confusion (with associated lower levels of switching hassle), reduced provider confusion and costs in running multiple processes and a more competitively neutral switching process.

Options which do not deal with the problem

7.20 We consider that options 1a (status quo) and 1b (enhanced NoT and MAC) do not deal with this problem. Both these options retain multiple switching processes i.e. the NoT and MAC process. We have described in paragraphs 4.13 to 4.41 the problems associated with multiple switching processes.

Question 30: Do you agree with our assessment of the options regarding multiple switching processes? If not, please explain why you disagree.

Problem 2: Back end systems deficiencies

7.21 This problem covers three areas: lack of reliability, loss of service and lack of technological neutrality.

Lack of reliability

7.22 In section 4 we discussed several problems with the reliability of the current NoT process which lead to ETs (i.e. wrong service switched in error). These include:

- Where CLIs are not available on Openreach dialogue services because the service is provided over MPF and the GP is not able to identify the correct service to switch based on address matching alone.
- Where there are mismatches between the CLIs held in wholesalers' databases and the associated correct asset ID.
- Where services/technologies do not have an associated CLI. While this is currently this only affects a limited number of FTTC and MPF services we expect the number of services affected to increase in the future as FTTC and FTTP are rolled out.
- Where services have multiple CLIs associated with them making it harder to identify the CLI associated with the exchange line e.g. the consumer uses VoIP to make calls.
- Where several services are provided over a shared asset making it difficult to identify precisely which service to switch.

7.23 Where the CLI is not available the provider will turn to address matching to identify the correct asset and service to switch. However, this can lead to problems when it is not possible to find a unique address match (discussed in paragraphs 4.58 to 4.61). Currently most ETs arise due to problems with the homemover process and are essentially due to an inability to target the correct asset to 'takeover' based on

[232] The impact on competition due to reactive save under each option is discussed later in this section.

the address provided. Some other types of ET (e.g. due to services not having CLIs and multiple services over shared assets) are likely to increase in the future.

7.24 We noted that in some cases CPs use a C&R process in order to mitigate the risk of ETs. However, C&R creates costs for consumers e.g. loss of telephone number, connection and cease charges, more hassle and a potential loss of service. It also creates wasted costs and inefficiencies for Openreach which ultimately is a cost to consumers.

Summary of how each option performs:

Problem	Option 1a – Current NoT and MAC	Option 1b – Enhanced NoT and MAC	Option 2a – Enhanced NoT harmonised	Option 2b – GPL TxC	Option 2c – USN	Option 2d – TPV	Option 3a – LPL TxC	Option 3b – LPL ALT
Lack of reliability	Red	Amber	Amber	Green	Amber	Green	Amber	Amber

Options which largely deal with the problem

7.25 We consider that Option 2b (GPL TxC) and Option 2d (TPV) largely deal with these problems.

Ability to deal with ETs

7.26 Because the database supporting these switching processes contains both address and customer account information we would expect that these options would deal with the most significant current source of ETs (i.e. homemover ETs). The incoming occupier can supply the address of the property to the GP who can use the database to identify the correct line. The line is then tagged with the TxC to ensure the correct line is taken over.[233] We estimate that around 80% of current ETs would be avoided under these options resulting in a benefit to consumers and CPs of £3.5-4.1m per year.[234] There could be further benefits to consumers from avoiding the distress of suffering an ET.

Question 31: Do you agree that the Options 2b (GPL TxC) and 2d (TPV) are likely in practice to deal effectively with homemove ETs? Can you foresee any problems with adopting this process for homemoves? Please explain your answer.

7.27 The combination of the database/hub to locate the correct service and the TxC process, whereby the correct assets to switch are 'tagged', would deal with the other types of ETs today and in the future (including those relating to unavailability/invisibility of CLI, having several services on the same asset and mismatches between the CLI and the correct asset ID). CPs would not need to use C&R to avoid the risk of ETs.

Other issues

7.28 These options would rely on a central database which contains information on every fixed line/broadband customer. It would be important that CPs kept the information in the database up to date (i.e. update any change to name/address /account number/service details). There could be potential for reliability issues e.g. if the

[233] We need to consider further how the outgoing occupier would indicate their consent to the takeover for each option.
[234] This is an indicative estimate based on the information available to us. Further details of the calculations behind this estimate are provided in paragraphs A8.40 to A8.48.

central database does not contain a record for every service, or the central and CPs databases do not align correctly. There would need to be a requirement on all CPs to ensure that centrally stored data was accurate and up to date. If we found CPs were not maintaining the database then we would need to take enforcement action.

7.29 There could be potential for disruption under these options (i.e. consumers unable to switch) if the central systems (e.g. the central database or hub) fail. We would need to be confident that sufficient resilience has been built into the system to minimise the chance that this happens. We would also have to rely on CPs taking necessary steps to ensure the security of personal customer data and accuracy of information held on the database i.e. CPs having necessary controls and processes in place. We have asked for feedback on these issues in questions 23-25 in section 6.

Options which partly deal with the problem

7.30 We consider that Option 1b (enhanced NoT and MAC (unharmonised)), Option 2a (Enhanced NoT harmonised), Option 2c (USN) and Options 3a-b (LPL TxC and LPL ALT) partly deal with this problem.

Ability to deal with ETs

Option 1b (enhanced NoT and MAC (unharmonised)) and Option 2a (Enhanced NoT harmonised)

7.31 Under Options 1b and 2a the problem of ETs will be partially dealt with by expanding the Openreach dialogue services to include the CLIs for all fixed line assets within the Openreach footprint i.e. including MPF lines. This would require MPF CPs to provide and update this information to Openreach on a regular basis or provide their own dialogue service to other CPs. This means CPs would be able to interrogate a database using CLI to identify the correct assets/target address. However, to address homemover ETs this does rely on the incoming occupier being able to get hold of the outgoing occupier's CLI, and also that CPs are able to search the dialogue services by CLI (which might require systems developments by both Openreach and CPs). In addition, because this solution fundamentally relies on identifying services through the CLI it would not deal with all causes of ET, in particular the following problems would still remain:

- Where the service has no associated CLI (e.g. some FTTC and FTTP services).
- Where services have multiple CLIs associated with them.
- Where there is a mismatch between the CLI and the correct asset ID.
- Where several services are provided over a shared asset making it difficult to identify precisely which service to switch.

7.32 We may need to consider whether the emergency restore process should be extended/mandated if consumers continue to suffer from ETs for some types of service switching.

Option 2c (USN) and Options 3a-b (LPL TxC and LPL ALT)

7.33 Option 2c (USN) and Option 3a-b (LPL TxC and LPL ALT) incorporate the TxC process which provides strong asset validation as it is able to 'tag' all the relevant services and assets with the TxC. As such, it would deal with ETs relating to

unavailability/invisibility of CLI, having several services on the same asset and mismatches between the CLI and the correct asset ID.

7.34 In theory the USN and LPL options could support homemoves through the outgoing occupier passing the USN/TxC to the incoming occupier who could pass this information to the GP to identify the correct line. However, we think this is unlikely to work reliably in practice because it requires the person vacating the property to either i) locate the USN and pass it to the person moving in or ii) request a transfer code from their current provider and pass it to the person moving in. We consider that the person vacating the property lacks the motivation to do this so these options are unlikely to deal with the problem as well as Options 2b (GPL TxC) and 2d (TPV). In addition, the use of the USN for homemoves could provide a confusing message for consumers i.e. consumers would be told only to give out the USN to a CP they wanted to switch to, however, for the homemove process we would be telling them to give the code to the incoming occupier.

7.35 Currently we do not see how the USN or LPL options could effectively deal with homemove ETs. However, we are open to suggestions from stakeholders on how these options could be used to deal with homemover ETs. If viable suggestions that overcome the problems we have identified are presented then we would reconsider our assessment.

Question 32: Do you agree that the Option 2c (USN) and Options 3a-b (LPL TxC and LPL ALT) are unable in practice to deal effectively with homemove ETs? If not, please explain how these options could be used to deal with homemove ETs?

Other issues

7.36 Option 2c (USN) relies on all transferable services having a USN which are held in a central database. This creates potential for reliability issues e.g. if the central database does not contain a record for every service, or the central and CPs databases do not align correctly. We would require CPs to ensure that the centrally stored data was accurate, secure and up to date. If we found CPs were not maintaining the database then we would need to take enforcement action. There is also potential for disruption if the central systems (e.g. the central database or hub) fail (as for the TPV and GPL TxC options above).

7.37 In order to supply consumers with a transfer code in real time Option 3a (LPL TxC) relies on each LP having access to the TxCIA via their supply chain in real time e.g. provided to the customer during the LP conversation. Because codes need to be provided in real time (which is not a requirement under USN, TPV or LPL ALT) the links between the LP and the TxCIA need to be fast and reliable. We currently believe this to be achievable. However, if the links do not work then this will impede the switching process.

Options which do not deal with the problem

7.38 Option 1a (status quo) does not deal with these problems for the reasons set out in paragraphs 4.45 to 4.62.

Loss of service

7.39 A loss of service can arise where CPs do not support the appropriate processes to enable seamless switching. We have identified two specific issues:

- Where MPF CPs do not support the MPF migrate process which means the consumer has to go through the C&R process when switching between MPF providers (under the C&R process the consumer is more likely to a longer break in service).

- Where a CP does not support the LO/PO process. In this case a consumer can experience a loss of service when switching a bundle of services because the services are switched sequentially rather than simultaneously.

7.40 We discussed above that a lack of reliability can also lead to consumers following a C&R process (e.g. problems around ETs mean that CPs encourage consumers to go through C&R). We have described the negative implications for consumers using the C&R process rather than the current NoT and MAC switching process in paragraph 4.67 and 4.79. Loss of service may also arise within the C&R process due to difficulties in co-ordinating the ceasing and starting the service.

7.41 Loss of service is a potentially damaging experience not just for the consumer making the switch who loses access to important online resources, but also for family and friends trying to contact them. As online connectivity is increasingly important socially and economically, the damage caused by unnecessary service breaks is also greater. A loss in service can be especially damaging to small businesses who may lose custom as a result.

Summary of how each option performs:

Problem	Option 1a – Current NoT and MAC	Option 1b – Enhanced NoT and MAC	Option 2a – Enhanced NoT harmonised	Option 2b – GPL TxC	Option 2c – USN	Option 2d – TPV	Option 3a – LPL TxC	Option 3b – LPL ALT
Loss of service	Red	Amber	Amber	Green	Green	Green	Green	Green

Options which largely deal with the problem

7.42 We would expect Options 2b-d (GPL TxC, USN and TPV) and Options 3a-b (LPL TxC and LPL ALT) to deal with loss of service problems. The TxC will allow orders to be linked so the GP can arrange for multiple services to start at the same time and the process should be supported by all providers, so CPs should not use the C&R process where a co-ordinated switching process is available.

Options which partly deal with the problem

7.43 We consider that Option 1b (enhanced NoT and MAC (unharmonised)) and Option 2a (enhanced NoT (harmonised)) would continue to rely to some extent on the C&R process, with its associated loss of service and, therefore these only partially deal with the problem.

7.44 As noted in paragraph 7.31 some of the problems around ETs would be addressed which would partially remove the reliance on the C&R as a means of avoiding ETs. However, we as discussed in paragraph 7.50 below that some MPF CPs are likely to continue to win MPF customers using the C&R process rather than supporting MPF migrate.

7.45 We would mandate that CPs support the LO process as part of the NoT process to improve the problems around a break in service when consumers switch fixed line and broadband at the same time.

Options which do not deal with the problem

7.46 We consider that the Option 1a (status quo) would not deal with these problems for the reasons set out in paragraphs 4.68 to 4.85.

Lack of technological neutrality

7.47 The current back end switching systems vary depending on the technology used to supply services. As technologies evolve, CPs need to support specific upgrades so that consumers can continue to use the industry agreed NoT/MAC process to switch services. If CPs choose not support these upgrades then consumers can find it more difficult to switch from/between specific technologies. For example, we noted above that sometimes the current switching processes do not appear to deliver well for consumers looking to switch between MPF providers e.g. when switching between MPF providers if the GP does not support MPF migrate then the consumer will need to use the C&R process. This can mean some consumers find it more difficult to switch than others (e.g. they need to use the more cumbersome C&R process rather than a seamless switching process). This may be an issue in the future as other technologies evolve which require further back end system upgrades. In addition we have considered whether the switching options could be expanded to accommodate other infrastructures e.g. cable.

Summary of how each option performs:

Problem	Option 1a – Current NoT and MAC	Option 1b – Enhanced NoT and MAC	Option 2a – Enhanced NoT harmonised	Option 2b – GPL TxC	Option 2c – USN	Option 2d – TPV	Option 3a – LPL TxC	Option 3b – LPL ALT
Lack of competitive neutrality	Red	Red	Red	Green	Green	Green	Green	Green

Options which largely deal with the problem

7.48 We consider that Options 2b-d (GPL TxC, USN, TPV) and 3a-b (LPL TxC and LPL ALT) would deal with this problem. Under these options there would be a single switching process regardless of the underlying technology and we believe that these options could be expanded to accommodate future technologies.

7.49 We believe these options could be expanded to accommodate other infrastructures because they use the TxC process and have a centralised switching function which all CPs, wholesale and access providers can link up to.

Options which do not deal with the problem

7.50 We have considered if there are any improvements that could be made under Option 1b (enhanced NoT and MAC (unharmonised)) and Option 2a (enhanced NoT (harmonised)) which would address the issue around some MPF CPs using C&R rather than MPF migrate to win customers. As noted in section 4 we consider that the means to address this problem is already available (i.e. CPs could support MPF migrate which would provide a seamless switching process to win customers from

MPF). However, despite this capability being available for some time some CPs have not chosen to support the MPF migrate process. We consider that this situation is likely to persist and most CPs will continue to use C&R in order to win customers currently using MPF.[235]

7.51 In addition, it is unclear how these options could be expanded to accommodate other technologies or infrastructures in the future.

7.52 We consider that the Option 1a (status quo) would not deal with these problems for the reasons set out in paragraphs 4.86 to 4.90.

Question 33: Do you agree with our assessment of the options regarding back end processes? If not, please explain why you disagree.

Problem 3: Customer consent

7.53 In section 4 we noted that switching processes which do not require upfront consumer consent can lead to slamming which creates significant costs for consumers and CPs. Slamming is a particular problem under the existing GPL NoT process.

Summary of how each option performs:

Problem	Option 1a – Current NoT and MAC	Option 1b – Enhanced NoT and MAC	Option 2a – Enhanced NoT harmonised	Option 2b – GPL TxC	Option 2c – USN	Option 2d – TPV	Option 3a – LPL TxC	Option 3b – LPL ALT
Customer consent	Red	Red	Red	Red	Amber	Green	Green	Green

<u>Options which largely deal with the problem</u>

7.54 We consider that slamming will be significantly reduced under Options 2d (TPV) and 3a-b (LPL TxC and LPL ALT).

7.55 The TPV agent checks that the consumer consents to switching the services specified and only 'unlocks' the assets which the consumer wants to switch when consent has been given. The TPV model also protects against misrepresentation as the TPV agent is able to confirm the identity of the CP who is requesting consent validation and check with the consumer that this is the CP they expect to switch to.[236] We estimate that the TPV model could reduce slamming by around 90% and reduce consumer and CP costs associated with slamming by £11.5-14.3m per year.[237] There could be further benefits to consumers from avoiding the distress of being slammed.

[235] If MPF migrate were to be more widely adopted by CPs then we may reconsider out assessment.
[236] It may be possible for the CP to imitate a consumer by interrogating the central database to obtain account information in order to attempt to slam without consent. However, we consider this to be a relatively extreme form of slamming activity. If there was evidence of this criminal fraudulent activity, there would be a number of enforcement options available to us. The TPV will record the consent validation (e.g. the phone call) which provides a means to enforce against this type of activity. In addition, access to the TPV database is password protected so it would possible to identify any rogue agents engaging in this activity.
[237] This is an indicative estimate based on the information available to us. Further details of the calculations behind this estimate are provided in paragraphs A8.6 to A8.26.

7.56 Under the LPL options (3a-b), the process follows a similar approach to that of the MAC process as switching can only take place where the consumer has provided the GP with a code supplied by the LP. The fact that the consumer obtains a switching code and provides it to the GP indicates their intention to switch. In section 4 we noted that only a small proportion of slamming complaints received by Ofcom are from consumers who switched using the MAC process and we consider that the LPL options (3a-b) would similarly provide good protection against slamming. We estimate that the LPL options could reduce slamming by around 95% and reduce consumer and CP costs associated with slamming by £12.2-15.1m per year.[238] There could be further benefits to consumers from avoiding the distress of being slammed.

7.57 In addition, all three options would not require CPs and consumers to use the current Cancel Other mechanism to protect against slamming. We estimate that the cost saving to CPs and consumers through no longer needing to use the Cancel Other process at around £1.1m per year.[239]

Options which partially deal with the problem

7.58 We consider that Option 2c (USN) partially deals with the problem and would significantly reduce slamming relative to the status quo. We consider that providing the USN (which is labelled as a switching code on the consumer's bill) to the GP is generally a good indicator that: i) the person has authority over the services that they are looking to switch and ii) the person intends to switch.

7.59 However, this option does have some weaknesses as the consumer may not understand the significance of the USN and give it to the GP on request even when they are not ready to switch, or GPs may take USNs for services which the consumer does not intend to switch (e.g. take USN for both fixed voice and broadband when consumer only wants to switch broadband). A further problem could occur with door-to-door sales where the sales agent asks to see a bill under the guise of verifying details, but copies the USN and switches the customer when they do not want to proceed i.e. "contact but no contract" slamming.

7.60 We also believe this process cannot address slamming through misrepresentation (i.e. where CPs pass themselves off as a different CP). This is because there is no explicit check on the identity of the GP. We estimate that the USN option could reduce slamming by around 75% and reduce consumer and CP costs associated with slamming by £9.6-11.9m per year.[240] There could be further benefits to consumers from avoiding the distress of being slammed.

7.61 In addition, the USN process will not require the current Cancel Other mechanism to protect against slamming. [241] We estimate that the cost saving to CPs and consumer through no longer needing Cancel Other at around £1.1m per year.[242]

[238] This is an indicative estimate based on the information available to us. Further details of the calculations behind this estimate are provided in paragraphs A8.6 to A8.26.
[239] This includes the cost of using Cancel Other: i) to protect against slams and ii) in cases where the GP has failed to cancel the order (e.g. where the consumer has changed their mind about switching). This is an indicative estimate based on the information available to us. Further details of the calculations behind this estimate are provided in paragraphs A8.27 to A8.39.
[240] This is an indicative estimate based on the information available to us. Further details of the calculations behind this estimate are provided in paragraphs A8.6 to A8.26.
[241] Consumers would still be able to stop attempted slams through the customer cancel system which performs a similar function to Cancel Other (i.e. the consumer would be able to contact an industry centralised function and request that the order to switch is cancelled - the centralised function passes

Options which do not deal with the problem

7.62 We consider that Options 1a-b (status quo, enhanced NoT and MAC (unharmonised)) and 2a-b and (enhanced NoT (harmonised) and GPL TxC) do not deal with the problem. This is because these options rely on the NoT process to protect against slamming (partly for Options 1a-b and exclusively for Options 2a-b) which does not build in upfront consent validation any stronger than currently required by General Condition 24. While under Options 1a-b the MAC process would provide good protection against slamming, the majority of switches would continue to go through the NoT process which provides poor protection against slamming.

7.63 Under the NoT process the gaining and losing provider send letters to the customer. Where the customer has not initiated the switch they need to contact the LP (for Options 1a-b and 2a) or the customer cancel facility (for Option 2b) to stop the switch going ahead. As discussed in section 4 the NoT process is not effective at preventing slamming. In fact, slamming may increase under the Options 2a-b (enhanced NoT harmonised and GPL TxC) as switches which currently go through the MAC or C&R process (which offer good protection against slamming) would instead go through the NoT process.

7.64 We have considered whether we could rely on enforcement action alone to deter slamming. However, as explained above in paragraphs 4.131 to 4.134, a large number of CPs generate a few slamming complaints each and we do not think enforcement is the most efficient way to tackle this 'long tail' of complaints. In section 4 we welcome stakeholder views on whether slamming could be effectively dealt with through enforcement.

7.65 In section 6 we considered whether there were other enhancements e.g. strengthened record keeping obligations for consent validation which could be included in the enhanced NoT specification to improve our enforcement capabilities (see paragraph 6.16). Our current view is that these approaches would be unlikely to deliver sufficient benefit to justify the cost. In section 6 we welcome stakeholder views on the effectiveness of enhanced record keeping obligations for consent validation.

7.66 Under Option 2b (GPL TxC) we have estimated that slamming could increase by around 8% resulting in additional costs to consumers and CPs of £1.0-1.3m per year.[243] This estimate does not capture the potential additional costs to consumers in terms of distress of being slammed.

7.67 Under Options 1a-b and 2a (status quo, enhanced NoT and MAC (unharmonised) and enhanced NoT (harmonised)) the Cancel Other mechanism would need to be maintained to protect against slamming (under Options 1b and 2a it would be mandated to ensure that all CPs support this process).

7.68 Under Option 2b the Cancel Other mechanism would be replaced with the customer cancel system which performs a similar function in protecting against slamming.

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this request to the access provider). The set up and running costs of the customer cancel system are included in the implementation costs for CPs produced by CSMG.

[242] This is an indicative estimate based on the information available to us. Further details of the calculations behind this estimate are provided in paragraphs A8.27 to A8.39.

[243] This is an indicative estimate based on the information available to us. Further details of the calculations behind this estimate are provided in paragraphs A8.6 to A8.26.

Under the GPL TxC the cost saving from no longer needing Cancel Other is estimated at £1.0m.[244]

Question 34: Do you agree with our assessment of the options regarding consumer consent? If not, please explain why you disagree.

Problem 4: Implications of switching

7.69 In section 4 we noted that it is important that consumers are aware of the implications of switching. A lack of awareness may mean the consumer unexpectedly incurs ETCs, loses services or faces a higher price for some services which were previously included at a discount within a bundle. If a consumer does not learn about the implications of switching until they have placed an order, and subsequently decides not to go ahead, they will incur costs (time and hassle) cancelling the order. Providers also incur costs (which are ultimately borne by consumers) unwinding such orders including wasted time and effort making the sale and then having to place the cancellation. This problem is more likely to arise under the NoT process than the MAC process.

Summary of how each option performs:

Problem	Option 1a – Current NoT and MAC	Option 1b – Enhanced NoT and MAC	Option 2a – Enhanced NoT harmonised	Option 2b – GPL TxC	Option 2c – USN	Option 2d – TPV	Option 3a – LPL TxC	Option 3b – LPL ALT
Implications of switching	Amber	Amber	Amber	Amber	Amber	Amber	Green	Green

Options which largely deal with the problem

7.70 Under Option 3a (LPL TxC) the consumer will have the option of discussing ETCs and service implications with the LP when they obtain the TxC before they initiate the switching process.[245] The LP has a strong incentive to make the consumer aware of the implications of switching.[246]

7.71 Given the possible complexity of this information, and the difficulty consumers may have in being able to fully process this information (particularly given the potential for multiple contacts when switching more than one service from different providers and therefore multiple ETCs and service implications), under Option 3a the LP will also need to provide this information in a durable format (e.g. letter, email) after the order has been placed but before the switchover happens. This means the consumer has an additional chance to digest, understand and think about the information provided, and the incentives for providers to manipulate such information are significantly reduced.

[244] This is an indicative estimate based on the information available to us. Further details of the calculations behind this estimate are provided in paragraphs A8.27 to A8.39.
[245] There are some questions about the availability/accuracy of the information which can be provided during the discussion with the LP. For example, our formal information request 2010 revealed that most but not all CP agents are able to calculate ETCs in real time, and some CPs have noted that it is not possible to provide precise information about broadband ETCs until the MAC is given to the GP.
[246] However, there is a risk that the LP may exaggerate the implications of switching to encourage the consumer not to switch. We may need to monitor call recordings to enforce against this and deter this behaviour.

7.72 Under Option 3b (LPL ALT) where the TxC is requested on the phone the consumer will be able to discuss the implications of switching (similar to Option 3a), however, it is not mandatory to send the service implication information in a durable format. The consumer will be offered the information via email or text on request. This does mean that the small proportion of consumers who do not have access to email or a mobile phone may not be able to receive the information in a durable format (a CP may provide the information to these consumers in a letter at its discretion).

7.73 Under Option 3b some CPs may allow consumers to obtain the TxC online. In this case the consumer will not have contact with an LP agent to discuss the implications of switching, nor will they receive a durable communication. The LP will alert the consumer that there may be implications of switching when the code is provided and indicate how the consumer can get further details (e.g. a phone number to call). We are concerned that this could be confusing to consumers and mean that consumers who do not actually have any ETCs/service implications contact the LP. While obtaining the code online would mitigate some of our concerns around reactive save (discussed below), it comes at a cost of consumers being less well informed about the implications of switching (or having to contact the LP anyway to get more detailed information).

7.74 Overall, consumers should be better informed about the implications of switching under these options relative to the status quo[247], so it is likely that fewer consumers will 'unwillingly' pay ETCs.[248] For illustrative purposes we estimate the potential benefit in reducing unwanted payment of ETCs at £0.4m per year.[249]

7.75 There are also likely to be other benefits from informing consumers about the implications of switching before they place an order (which we have not quantified), for example, less hassle incurred by consumers having to cancel orders and less wasted resource incurred by CPs making sales which are subsequently cancelled.

Options which partially deal with the problem

7.76 We consider that the Options 1a-b (status quo and enhanced NoT and MAC (unharmonised)) and Options 2a-d (enhanced NoT (harmonised), GPL TxC, USN and TPV) partially deal with the problem.

7.77 Under Options 1a-b the way consumers are informed about ETCs depends on whether they are following the NoT or MAC process.

7.78 Under the NoT process the consumer is informed about the implications of switching through the regulated letter from the LP after the order has been placed but before the switchover. Under Option 1b the LP would additionally be required to provide specific ETC information (to reduce the scope for the LP to provide vague/unhelpful information) and more detailed information on the implications of switching (e.g. if moving one service results in the price of another service increasing). The consumer has the option of cancelling the order without charge before the switch goes ahead if they become aware of unexpected implications of switching which cause them to change their mind. However, in the event that the consumer does need to cancel the

[247] Under the status quo consumers using the NoT process are reminded about ETCs after the order to switch is placed but before the transfer has been affected.
[248] We define unwilling payment of ETCs as where the customer is unaware of ETCs when they switch and, as a result of paying ETCs, regrets the decision to switch.
[249] This is an indicative estimate based on the information available to us. Further details of the calculations behind this estimate are provided in paragraphs A8.49 to A8.61.

order this will result in extra hassle and time taken. In addition, the consumer may fail to read/understand the letter meaning they incur unexpected ETCs when the switch happens.

7.79 Under the MAC process the consumer has the option to discuss ETCs and service implications with the LP when they obtain a MAC, and in advance of placing an order with the GP. Thus the consumer is relatively well informed about the implications of switching.

7.80 The consumer is potentially better informed about the implications of switching under the MAC process because they receive this information before any order is placed by the GP. However, in both cases the consumer should receive information on the implications of switching before the switch is completed and have adequate time to act on the information before the switch actually happens.

7.81 Overall we consider that the current processes partially address this problem. Under the MAC process the consumer is likely to be well informed about the implications of switching before they place the order with the GP. Under the NoT process the consumer is informed about the implications of switching – but this may not be until after an order has been placed with the GP and the process relies on the consumer reading and understanding the letter from the LP.

7.82 Under Options 2a-d (enhanced NoT (harmonised), GPL TxC, USN and TPV) the consumer will be made aware of the implications of switching via a notification from the LP during the switchover period. The main difference relative to the current NoT process is that we propose the LP should provide specific ETC information and more detailed information on the implications of switching (as noted for Option 1b above). The consumer would be free to contact the LP to discuss service implications before switching if desired.

Question 35: Do you agree with our assessment of the options regarding the implications of switching? If not, please explain why you disagree.

Problem 5: Varying and unnecessary switching costs/hassle

7.83 We concluded in section 3 that switching costs dampen competition and that processes that are free from unnecessary hassle will deliver a better consumer experience and competition outcomes. We consider that the LPL MAC and C&R processes are associated with higher switching costs than the GPL NoT process. We consider that there is some evidence of unnecessary hassle within the current processes that can lead to poor consumer and competition outcomes.

Summary of how each option performs:

Problem	Option 1a – Current NoT and MAC	Option 1b – Enhanced NoT and MAC	Option 2a – Enhanced NoT harmonised	Option 2b – GPL TxC	Option 2c – USN	Option 2d – TPV	Option 3a – LPL TxC	Option 3b – LPL ALT
Unnecessary switching costs/hassle	Amber	Amber	Green	Green	Amber	Green	Amber	Amber

Options which largely deal with the problem

7.84 We consider that Options 2a (enhanced NoT (harmonised)), 2b (GPL TxC) and 2d (TPV) largely deal with the problem for the following reasons:

- These options only require consumers to contact their GP in order to switch and our consumer research suggests that GPL processes are easier for consumers to navigate (see paragraph 4.171). We expect GPL processes to generally have lower switching costs than LPL processes, as the GP has an incentive to make switching easy and hassle free.
- The ability for the LP to frustrate the process is limited because there is no requirement for the consumer to make contact with the LP.
- We expect the processes to work well across all sales channels.

Time taken to switch

7.85 A key aspect of the level of switching costs is the time it actually takes for a consumer to organise the switch. Under options 2a (enhanced NoT (harmonised) and 2b (GPL TxC) we estimate that the amount of time consumers spend on the switching process will be reduced relative to the status quo because they will no longer need to contact both the GP and LP for switches which currently go through the MAC or C&R process. We estimate that the benefit to consumers due to time saved is around £0.5m per year.[250]

7.86 Under Option 2d (TPV) consumers have to make one call to the GP, and then at the end of the call are transferred to the TPV for confirmation. This is estimated to increase the length of the switching call by 5 minutes (i.e. the conversations with the GP and the TPV are estimated to last 13 minutes and 5 minutes respectively).[251] For an online sale, the verification process is estimated to be less, approximately 1 minute. We believe that the incremental hassle of having to follow this additional step is likely to be relatively small and should be relatively seamless for phone and online sales – i.e. akin to an internal transfer and it will at least partially be compensated for by the increased peace of mind.

7.87 It is possible that the additional step could be more significant in some cases e.g. for retail shop and door to door sales where the consumer needs to complete a verification conversation on the telephone at the end of the sale or if the TPV is busy and the consumer has to hold to complete the process. We would expect the acceptable call waiting time and appropriate level of staffing for the TPV to be considered in the detailed design and implementation phase if this option is taken forward. This hassle is likely to be reduced over time if more sales are completed online.

7.88 We estimate that the cost to consumers due to extra time spent on the TPV switching process is around £0.5m per year.[252]

[250] This is an indicative estimate based on the information available to us. Further details of the calculations behind this estimate are provided in paragraphs A8.62 to A8.78.
[251] This excludes any time the customer is kept on hold before they speak to an agent.
[252] This is an indicative estimate based on the information available to us. Further details of the calculations behind this estimate are provided in paragraphs A8.62 to A8.78.

Ability for the LP to frustrate the process

7.89 These options are GPL so the potential for the LP to frustrate the process is limited; however, there are still some possibilities. Under Option 2a (enhanced NoT harmonised) there would still be potential for the LP to frustrate the switch through abuse of Cancel Other (discussed in paragraph 4.172).

7.90 There are two ways the LP could frustrate the switch in Options 2b (GPL TxC) and 2d (TPV). First, the process relies on the CP accurately providing certain customer information to a central database. We consider that the threat of enforcement action could be used to mitigate the risk that a CP does not provide the correct information, providing there were strict rules, processes, and checks in place to ensure accuracy and reliability of data. (If it was apparent that CPs were not providing correct data then we would need to use enforcement powers). Clearly a degree of co-ordination and co-operation would be required across all CPs to make sure the centralised functions of the switching process work smoothly (this is likely to be greater for the GPL options[253] relative to the LPL Options because the central hub and database underlying these options carries out a wider range of functions).

7.91 Second, it is possible for the LP to frustrate the switching process through abuse of the customer cancel facility i.e. calling the customer cancel facility and pretending to be the consumer to request the order be cancelled. Because calls to the customer cancel facility will be recorded and retained, if it became apparent that an LP was consistently abusing this facility then we could use these records for enforcement action. In addition this form of abuse is likely to constitute a criminal offence.

7.92 Under Options 2b (GPL TxC) and 2d (TPV) Cancel Other would not be used and the LP would not be able to abuse this process. The benefit to CPs and consumers from avoiding abuse of Cancel Other (as distinct from the costs of operating the Cancel Other process) is estimated at £0.1m per year.[254]

Options which partly deal with the problem

7.93 We consider that Options 1a-b (status quo and enhanced NoT and MAC (unharmonised)), 2c (USN) and 3a-b (LPL TxC and LPL ALT) partly deal with the problem. We discuss each option below.

Option 1a – Status quo (current NoT and MAC)

7.94 As noted in section 4, unnecessary switching costs/hassle is not a significant problem under the NoT process. It was the process most likely to be rated as 'easy' by switchers in the consumer research 2010 and it does not require consumer contact with the LP to start the switching process – so potential for the LP to frustrate the switching process is limited. We have some evidence that the LP may frustrate switching through abuse of Cancel Other.

7.95 However, the MAC process performs relatively poorly. A significant minority of switchers found the process difficult in the consumer research 2010. Because the consumer needs to contact the LP to get a MAC code to start the switch the LP can frustrate the switching process by delaying/making it difficult for the consumer to get the code or making reactive save offers.

[253] i.e. the GPL TxC, USN and TPV.
[254] This is an indicative estimate based on the information available to us. Further details of the calculations behind this estimate are provided in paragraphs A8.79 to A8.82.

7.96 Overall we consider that the current processes partially address this problem. While the NoT process is relatively easy for consumer to navigate, the MAC process has significant weaknesses.

Option 1b - Enhanced NoT and MAC (unharmonised)

7.97 We consider that Option 1b performs similarly to the current processes noted above. It would try to address the problems with the LP frustrating the code provision by requiring it to be provided in real time on a dedicated, recorded line. In addition CPs must collect performance information e.g. average time taken to provide the code.

7.98 However, due to the large number of CPs in the market it may be difficult for us to check that all CPs comply with these rules and we are concerned that some CPs might flout the rules if they believe the threat of enforcement is low. Overall, we consider that it is unclear whether Option 1b would perform significantly better than the status quo.

7.99 The time spent by consumers on the switching process would be the same as the status quo.

Option 2c - USN

7.100 This option is a GPL process so does not require contact with the LP to switch.[255] In addition it does not require the 'Cancel Other' mechanism which provides the LP with a means to frustrate the switch. The benefit to CPs and consumers from avoiding abuse of Cancel Other is estimated at £0.1m per year.[256]

7.101 However, we have concerns about the following features of the USN process.

Reliance on access to bill

7.102 The USN process relies on the consumer providing the GP with a service-specific USN found on their bill. Our billing research 2011 suggests that most consumers do receive either a paper or electronic bill which they can access relatively easily (on average it takes 5-6 minutes to access the bill).[257] However, a significant minority of standalone broadband consumers (15%) claim not to receive a bill and/or notification of charges.[258] In addition, some consumers (14% of fixed voice and 9% of broadband) said it would take longer than 10 minutes to find the bill or they would not be able to access the bill.[259] For these consumers switching provider under the USN process would represent significant extra hassle compared to the current NoT process. Consumers looking to create a bundle could incur extra hassle because they would need to access multiple bills and a problem accessing a bill for one service could delay the switch for other services in the bundle.

7.103 The consumer may face further hassle if they cannot locate the USN at the point they want to switch e.g. if the consumer wants to sign up for a deal in a retail store but

[255] Similar to the TPV discussed in paragraphs 7.90 and 7.91, under the USN process the LP could frustrate the process by: i) failing to provide accurate information to the central database or ii) through abuse of the customer cancel facility. As set out above, we believe we could enforce against these types of activity.
[256] This is an indicative estimate based on the information available to us. Further details of the calculations behind this estimate are provided in paragraphs A8.79 to A8.82.
[257] Billing research 2011 slide 21
[258] Billing research 2011 slide 7
[259] Billing research 2011 slide 21

does not have the bill to hand, or if the consumer is unable to locate a bill or access their online account when they want to switch e.g. if they cannot remember the password. This might mean the USN works less well for retail shop sales.

7.104 There could also be a problem if the LP provides bills infrequently or fails to print the USN on the bill. In order to mitigate this risk we believe it is likely to be necessary to set out how the USN must appear on the bills.

7.105 Consumers who could not access a bill would need to call the LP to obtain the USN. We have reservations about this mechanism being widely used because of the potential for the LP to engage in reactive save activity or frustrate the process.

7.106 Overall, switching could become significantly more difficult for a minority of consumers, and while it is relatively easy for most to access the bill this would add to the time (and potential hassle) taken for every switch. We estimate that the extra cost to consumers due to extra time spent on the switching process (specifically time taken to find the bill) would be around £0.6m per year (this does not reflect the cost to consumers who are unable to find the bill).[260]

Need to quote multiple codes

7.107 As discussed in section 6, a USN will need to be provided for <u>each</u> service the consumer purchases. At this stage this means a consumer will potentially need to quote up to three USNs to the GP. This potentially gives rise to additional hassle because of the extra time taken quoting the codes and checking they are correct.

<u>Options 3a-b (LPL TxC and LPL ALT)</u>

7.108 Under Options 3a-b the consumer is required to get a code from the LP which means that there is greater scope for the LP to frustrate the process. These options would employ the same safeguards as Option 1b (enhanced NoT and MAC (unharmonised)) above to try and tackle frustration in code provision (i.e. codes must be provided over a dedicated, recorded line where performance information must be provided.) However, (as above) we consider it may be difficult to ensure that CPs follow these rules.

7.109 As with the MAC process discussed above, the time taken to switch is longer because the consumer needs to contact both the LP and GP, and some consumers may incur additional hassle because it is not possible to simply walk into a shop and sign up without first contacting the LP to obtain the TxC. For telesales we estimate that it will take 21 minutes to complete the conversations with the LP and GP to place an order, this compares to 18 minutes under the TPV and USN options (which includes the time spent verifying the switch with the TPV/locating the bill to provide the USN).[261] We have estimated the extra cost to consumers due to the extra time taken on the switching process relative to the status quo (i.e. the need to contact the LP for every switch) at £1.4m per year.[262] We note that if the TxC is obtained online under the LPL ALT option the additional time spent on the process might be lower. However, it is not clear at this stage how many CPs could provide this facility or how widespread its use would be.

[260] This is an indicative estimate based on the information available to us. Further details of the calculations behind this estimate are provided in paragraphs A8.62 to A8.78.
[261] These estimates do not include any time the customer is kept on hold before they talk to an agent.
[262] This is an indicative estimate based on the information available to us. Further details of the calculations behind this estimate are provided in paragraphs A8.62 to A8.78.

7.110 A further source of hassle is that the subset of switchers who are moving multiple services from different providers to a bundle would need to contact each LP to obtain a code. This would also increase the time taken to switch.

7.111 We have noted above that the LP may be able to frustrate the process because the consumer requires a code from the LP to switch, however, the LP would no longer be able to frustrate the process by abuse of Cancel Other (since the Cancel Other process is not a feature of these options). The benefit to CPs and consumers from avoiding abuse of Cancel Other is estimated at £0.1m per year.[263]

Question 36: Do you agree with our assessment of the options regarding unnecessary switching costs/hassle? If not, please explain why you disagree.

Problem 6: Reactive save activity

7.112 In section 5, we noted that LPL processes (and currently the MAC process) are likely to dampen competition because the LP has a greater incentive and opportunity to engage in 'reactive save' activity. This dampening of competition due to reactive save means that, on average, consumers are not able to receive the benefits from competition that they should be able to expect. We are concerned that reactive save activity disadvantages new entrants by raising their per customer acquisition costs. Reactive save activity may also result in an 'adverse selection' problem whereby the LP may choose not to make 'save' offers to low margin customers. This may mean that the customers acquired by entrants are disproportionately lower value customers.

Summary of how each option performs:

Problem	Option 1a – Current NoT and MAC	Option 1b – Enhanced NoT and MAC	Option 2a – Enhanced NoT harmonised	Option 2b – GPL TxC	Option 2c – USN	Option 2d – TPV	Option 3a – LPL TxC	Option 3b – LPL ALT
Reactive save activity	Amber	Amber	Green	Green	Green	Green	Amber	Red

Options which largely deal with the problem

7.113 We consider that Options 2a-d (enhanced NoT (harmonised), GPL TxC, USN and TPV) deal with the problem because the LP has less incentive and opportunity to engage in reactive save as discussed in section 5. In particular we note the following:

- Under the LPL process all consumers must contact the LP as part of the formal switching process so there is an inbuilt opportunity for reactive save. Under the GPL process contact with the LP is optional at the consumer's discretion and not all switching consumers choose to contact the LP.

- The LP's opportunity to engage in reactive save under a GPL process is more likely to arise after the consumer has placed the order with the GP (at which point the consumer is more likely to go ahead with the order even if an alternative offer is presented).

[263] This is an indicative estimate based on the information available to us. Further details of the calculations behind this estimate are provided in paragraphs A8.79 to A8.82.

- It is easier to monitor reactive save activity under a GPL process since the consumer has to go back to the GP to cancel the order if they accept the save offer (meaning the GP is more likely to be aware of reactive save and can inform Ofcom), so a regulatory ban on reactive save is more likely to be effective.

Options which partially deal with the problem

7.114 We consider that Options 1a-b (status quo and enhanced NoT and MAC (unharmonised)) and Option 3a (LPL TxC) would partially deal with the problem.

7.115 All these options would rely on the consumer contacting the LP to obtain a code for at least some switches. A significant difference is that for Options 1a-b the LPL switching process would only be used for certain broadband switches whereas for Option 3a the LPL process would be used for all switches. We are concerned that the LP has a greater incentive and opportunity to engage in reactive save under these processes relative to the GPL processes which could have a dampening effect on competition.

7.116 To mitigate against this risk under Option 1b (enhanced NoT and MAC (unharmonised) and Option 3a (LPL TxC), we are proposing that the code must be provided on a dedicated, recorded line and that the LP will not be allowed to target save offers at those requesting a code. We believe this could mitigate the concerns about the dampening effect on competition under an LPL process providing it effectively prevents reactive save when the code is requested.

7.117 However, we remain concerned that the LP has an incentive to retain the customer and it will be difficult for Ofcom to easily monitor and enforce against those providers who are not complying with this obligation e.g. the CP may divert switching customers to another non-recorded line where they can make save offers. It is unlikely that consumers who are successfully saved will complain to Ofcom or that the GP would be able to identify that the customer had been saved since they would have little visibility of the interaction between that consumer and their current CP (the code is requested from the LP before the order is placed with the GP). These options would likely require Ofcom resource to monitor and enforce the regulatory ban on reactive save.

7.118 Overall we consider that the potential for Options 1b (enhanced NoT and MAC (unharmonised) and 3a (LPL TxC) to effectively deal with this problem depends on the extent to which the ban on reactive save when the code is requested is successful. We have requested feedback on our assessment of the potential to enforce a prohibition on reactive save in a LPL switching process in section 5. If stakeholders provide convincing evidence that it is possible to effectively enforce a ban on reactive save activity in a LPL switching process then we may reconsider our assessment.

Options which do not deal with the problem

7.119 We consider that Option 3b (LPL ALT) will not deal with the problem. Under this option the TxC request would be on a dedicated, recorded line (similar to Option 3a above), however, save offers would not be banned (i.e. reactive save is permitted). The consumer would verbally be given the option of receiving the code without listening to any save offers. In addition, some CPs may provide the code via an online facility which would not be accompanied by save offers (although the CP may prompt the consumer with a number to call/call back option for save offers/ETC information which they could opt to call).

7.120 We consider that Option 3b (LPL ALT) would have a larger negative impact on competition than Option 3a (LPL TxC) because those consumers who are most likely to accept save offers are also most likely to opt to hear a save offer. Thus the impact on competition is similar to the current MAC process expanded to all switches (i.e. an LPL process with no limits on reactive save). While the provision of the code via an online facility (without save) would mitigate it to some extent, it is not clear whether all CPs would be able to adopt this. In addition, consumers may still be prompted to contact the LP to discuss the implications of switching which would provide a reactive save opportunity in these cases.

Question 37: Do you agree with our assessment of the options regarding reactive save activity? If not, please explain why you disagree.

Summary

7.121 The figure below summarises how each option performs against each of the identified problems:

Figure 36: Summary of how the options perform against the identified problems

Problem	Option 1a – Current NoT and MAC	Option 1b – Enhanced NoT and MAC	Option 2a – Enhanced NoT harmonised	Option 2b – GPL TxC	Option 2c – USN	Option 2d – TPV	Option 3a – LPL TxC	Option 3b – LPL ALT
Multiple switching processes	Red	Red	Green	Green	Green	Green	Green	Green
Back end system deficiencies:								
Lack of reliability	Red	Amber	Amber	Green	Amber	Green	Amber	Amber
Loss of service	Red	Amber	Amber	Green	Green	Green	Green	Green
Lack of competitive neutrality	Red	Red	Red	Green	Green	Green	Green	Green
Customer consent	Red	Red	Red	Red	Amber	Green	Green	Green
Implications of switching	Amber	Amber	Amber	Amber	Amber	Amber	Green	Green
Varying and unnecessary switching costs/hassle	Amber	Amber	Green	Green	Amber	Green	Amber	Amber
Reactive save activity	Amber	Amber	Green	Green	Green	Green	Amber	Red

Options 1a (status quo), 1b (enhanced NoT and MAC unharmonised) and 2a (enhanced NoT harmonised)

7.122 The figure shows that Option 1a (status quo) performs poorly against a number of the problems (as discussed in detail in section 4), and Option 1b (enhanced NoT and MAC (unharmonised)) performs only slightly better due to some tactical fixes around the back end processes which improve reliability. Neither of these options would deliver a harmonised switching process so consumer and provider confusion due to multiple switching processes would persist (resulting in higher switching costs for consumers). Both options would continue to rely on the MAC process which results in greater hassle for consumers (e.g. due to more CP-consumer touch points) and has greater potential to dampen competition due to reactive save activity. We are concerned that it would not be possible to extend the MAC process to different technologies in the future.

7.123 We note that Option 2a (enhanced NoT (harmonised)) delivers somewhat better against the problems. In particular, because it is a harmonised GPL process it performs well in relation to solving the problems of multiple switching processes, obtaining good consumer and competition outcomes and reducing unnecessary switching costs/hassle.

7.124 However, we continue to have concerns as to whether further improvements are possible to reduce consumer harm experienced as a result of slamming. We have given further consideration as part of this review to what further steps are possible to strengthen consumer protections against slamming. However, based on our analysis

of the likely mitigations, we remain unconvinced that it is possible to provide further protection to consumers against slamming through a switching process which fundamentally relies on consent validation being based on consumers being notified of an impending transfer and having an opportunity to stop the order going ahead where slamming has been identified.

7.125 We have carried out a number of reviews of the NoT process in the past with the objective of building in additional safeguards to protect consumers from the risks of slamming. As a result of these reviews, we have already introduced a number of incremental improvements to the NoT process to tackle slamming and other concerns. Most recently, we published a statement[264] which introduced new rules including clear prohibitions on mis-selling, extending Cancel Other rules to all providers and strengthening record keeping obligations. While we consider these enhancements have had a positive impact on the level of harm experienced by consumers as a result of slamming, as discussed in section 4, our view is that these incremental fixes have not fully addressed our concerns relating to slamming.

7.126 We have considered the possibility of the further enhancements to reduce slamming through the NoT process – both through our analysis of consultation responses and through our engagement with the industry through the SWG process. This includes further consideration of the case for call recordings to improve the effectiveness of our enforcement activities. However, we have not been able to identify a robust fix to solve slamming within the NoT process. In section 6 we are inviting feedback on whether there are other enhancements to the current processes which we should consider.

7.127 We are concerned that all three options fail to deliver an adequately future proofed solution and would not fully resolve issues around the lack of reliability when switching. In particular the NoT process is reliant on the CLI to identify the correct line/service to switch. In the future we expect increased roll out of services which do not have a CLI (e.g. some services on FTTC and FTTP) or have one CLI for mapping onto multiple services (meaning that it cannot be used as an identifier for switching a specific service). BT has announced that it expects fibre broadband to be available to two thirds of UK premises by 2014.[265] Unless we move away from reliance on CLIs it is likely that switching will become increasing unreliable in the future resulting in ETs. This might encourage CPs to use the C&R process which creates additional costs for CPs and consumers. We believe it is important to ensure that the switching process works reliably now and in the future, otherwise it could undermine consumer confidence and deter consumers from switching. We have not been able to identify a fix for this problem within the NoT process.

7.128 While it is likely that these options would be cheaper to implement (because they build on existing processes) it appears short sighted to invest in processes which are fundamentally flawed and unlikely to be fit for purpose within a few years.

7.129 Because these options fundamentally fail to address a number of the current problems we are minded not to proceed with them. However, we may reconsider these options if stakeholders provide compelling evidence that these options should be investigated further.

[264] http://stakeholders.ofcom.org.uk/binaries/consultations/protecting_consumers_misselling/statement/statement.pdf

[265] http://www.btplc.com/News/Articles/ShowArticle.cfm?ArticleID=D228F2B4-25FC-4095-8EC4-BD17B903CC3B

Question 38: Do you agree that we should discard options 1a (status quo), 1b (enhanced NoT and MAC unharmonised) and 2a (enhanced NoT harmonised) on the basis that they fail to adequately address the current and anticipated future problems? If not, please provide your reasoning.

Options 2b (GPL TxC), 2c (USN), 2d (TPV), 3a (LPL TxC) and 3b (LPL ALT)

7.130 We consider that all of these options deliver a number of common benefits relative to the current processes. In particular, all these processes deliver well in relation to:

- Multiple switching processes - because the processes are harmonised resulting in less consumer and provider confusion.
- Aspects of the back end switching processes – these processes would also deliver on:
- Switching services which do not have an associated CLI/have multiple CLIs/the CLI is not currently visible to the GP on Openreach DS – all the options enable the GP to identify the correct services to switch without the CLI.
- Mismatches between the CLI and the correct asset ID – the switching process would not be reliant on correct matching between the CLI and the asset ID because the TxC tags the asset to be switched through the whole supply chain.
- Switching services provided over a shared asset – the TxC identifies the precise service to switch.
- Loss of service – CPs would not need to use the C&R process to avoid the possibility of ETs and/or because they do not support MPF migrate for switching involving MPF. There would not be a loss of service when switching bundles due to CPs not supporting the LO/PO process.
- Lack of technological neutrality - switching from MPF would follow the same seamless switching process as switching from other technologies.
- Possibility of expanding to other infrastructures such as cable - because Openreach would not sit at the centre of the switching process.

7.131 We have not attempted to quantify the benefits arising from any of the factors above because they are more qualitative in nature (e.g. they deliver reduced confusion) or refer to benefits which will arise increasingly in the future (e.g. switching services without a CLI and complex wholesale supply chains) and are inherently difficult to estimate. However, in aggregate we expect these benefits to be substantial.

7.132 In addition, the options have individual pros and cons. For example:

- The TPV and GPL TxC options deliver better in relation to reliability of process relative to USN, LPL TxC and LPL ALT (because we expect that the TPV and GPL TxC can effectively deal with homemove ETs).
- The GPL TxC, USN and TPV options deliver better in relation to avoiding reactive save relative to the LPL TxC and LPL ALT options.

- The TPV, LPL TxC and LPL ALT options deal with the problem of consumer consent better than the USN and GPL TxC options.

- The LPL TxC and LPL ALT options deal with the implications of switching better than the GPL TxC, USN and TPV options.

- The GPL TxC, and TPV options deal better with varying and unnecessary switching costs/hassle than the USN, LPL TxC and LPL ALT options.

7.133 Our assessment summarised in Figure 36 above shows that, overall, the TPV option delivers best in terms of dealing with the identified problems. We find that the TPV proposal:

- Resolves the issues associated with multiple switching processes;

- Provides a future proof solution to back end processes;

- Would not result in significant unnecessary switching costs/hassle;

- Delivers good competition outcomes by avoiding reactive save within an LPL process; and

- Resolves issues around customer consent.

7.134 None of the other options scores as highly across all the identified issues.

Impact on CPs

7.135 Resolving the problems discussed above would result in CPs avoiding some costs which they currently incur to deal with the problems e.g. costs arising due to slamming and ETs. For some problems we have provided illustrative estimates of the magnitude of the avoided costs to CPs under each option (discussed further in Annex 8). In this section we consider specifically how each of the shortlisted options (i.e. excluding those we propose to discard) would impact on CPs in terms of: i) implementation costs and ii) the intrusiveness of the regulation required to implement the option.

Implementation costs

7.136 Options 2c (USN), 2d (TPV) and 3a (LPL TxC) were specified and costed by CSMG in conjunction with the SWG. Option 2b (GPL TxC) uses components of the TPV and USN options and CSMG used their independent cost model to derive a cost estimate for this option. Option 3b (LPL ALT) is very similar to Option 3a (LPL TxC) (and the CPs who developed the proposal have not been able to provide any further cost estimates) therefore for the purposes of this assessment we have assumed the cost estimates for these options to be the same.

7.137 The cost estimates include:

- The changes Openreach, wholesale CPs, retail CPs and third party integrators (TPIs – who support smaller CPs) would need to make to their systems and processes.

- The central functions required for each option (i.e. the hub and database for GPL TxC, USN and TPV, third party verification for TPV and TxCIA for the LPL TxC and LPL ALT).

7.138 CSMG estimated the costs using two methods:

- *Industry cost method* – this uses estimates provided by a sample of CPs through the SWG process and extrapolates them to come to a view of total industry costs. Estimates using this cost method are only available for the USN and LPL TxC options which were specified at the time the CP cost inputs were requested.[266]

- *Independent cost method* – CSMG used their experience to estimate the potential costs for CPs. This consisted of a thorough review of all material changes to a CP's systems and processes to implement each switching process. The costs were estimated based on the development, infrastructure and personnel requirements to effect and support these changes.

7.139 We have presented the high level results of the costing exercise below (Figure 37) based on the CSMG report (the full report on costs is published alongside this document). To calculate the annuitised net present costs (NPC) the setup and ongoing costs estimated by CSMG were discounted using the social rate of time preference of 3.5% (published by HM Treasury).[267] The discounted costs were summed (assuming 10 years of ongoing costs) and annuitised over 10 years using a discount rate of 3.5%.[268]

Figure 37: Incremental Cost of Each Option £m

	Option 2b - GPL TxC[269]	Option 2c - USN	Option 2d - TPV	Option 3a and 3b – (LPL TxC and LPL ALT)
	Annuitised NPC			
Industry cost method	-	8.4	-	7.7
Independent cost method	4.8	9.4	11.4	7.6

Source: CSMG cost report and Ofcom calculations

7.140 It is important to note that the costs estimated above do not reflect the costs associated with Ofcom's monitoring and enforcement activity (with Ofcom's costs funded by industry through fees). As noted above, we anticipate that the LPL options will require more significant levels of monitoring by Ofcom.

[266] A version of the TPV option was also costed by CPs, however, this has a slightly different specification (and associated implementation cost) relative to the preferred TPV model used in this assessment.
[267] See http://www.hm-treasury.gov.uk/d/green_book_complete.pdf p98. The costs and the discount rate are both in real terms.
[268] Annuitisation converts the 10 year net present cost into an equivalent constant annual cost based on a given time period (in this case 10 years) and discount rate (in this case 3.5%).
[269] We only have independent cost estimates for the GPL TxC option (industry was not asked to provide cost estimates for this option).

Impact of setup costs on smaller CPs

7.141 Each of the shortlisted options result in setup costs for CPs – in particular contributing to setting up any central systems (e.g. hub and database (GPL TxC, USN and TPV) or TxCIA (LPL TxC and LPL ALT)) and building interfaces to the central systems. For smaller CPs we have considered whether these costs would be significant enough to affect market entry or exit decisions.

7.142 Overall, it appears likely that small CPs use TPIs to interface with these central functions and the development costs are likely to fall on the TPIs in the first instance and then be reflected in higher ongoing fees charged to CPs (rather than being an upfront cost for CPs).

7.143 In addition, for Option 2d (TPV) the need to pay a TPV fee for every sale could be viewed as a barrier to entry because it increases the costs of customer acquisition. However, we consider this less likely because the estimated TPV fee is £2.70 per switch which is small in relation to the potential revenues from gaining a customer (average residential fixed line revenue per customer was £251 per year in 2010).[270]

Question 39: Do you think that the payment of a TPV fee for each sale is likely to be a significant barrier to entry for smaller CPs? Please provide any supporting evidence.

Intrusiveness of the regulation required to implement the option

7.144 In this part we consider the level of industry effort and co-ordination which would be required to implement each option (changes to CPs' individual systems and processes are reflected in the implementation cost estimates). One of Ofcom's regulatory principles is to operate with a bias against intervention, but with a willingness to intervene firmly, promptly and effectively where required.[271] The level of industry effort and co-ordination required is likely to impact on the time taken to implement each option, and thus the time which will elapse before any benefits from a new process are seen.

7.145 All of the GPL options (GPL TxC, USN and TPV) would require industry to establish some central systems (i.e. a database and hub) which all CPs (or for smaller CPs their TPIs) would need to interface with and provide information to. This is likely to require a substantial amount of industry co-ordination and effort including agreeing a specification, a tendering process and agreeing on funding arrangements. It would be a substantial task for CPs to upload customer information from their own systems into the central database (this could be greater for the TPV because this option requires a larger amount of customer information in the database so might involve a greater amount of standardisation across CPs). In addition, the TPV option would require the set up of an independent third party organisation to record the consent for each sale with the associated governance processes etc.

7.146 The LPL options (LPL TxC and LPL ALT) would also require a new body to be established and funded (i.e. the TxCIA) which CPs/TPIs would need to interface with. However, the TxCIA would perform simpler functions relative to the hub and

[270] Total residential access and calls revenues were 5,967m in 2010 and total residential exchange lines were 23,746,000. Source: http://stakeholders.ofcom.org.uk/binaries/research/cmr/telecoms/Q22011.pdf

[271] http://www.ofcom.org.uk/about/what-is-ofcom/statutory-duties-and-regulatory-principles/

database required for the GPL options[272], and would not require CPs to upload customer information to a central database, thus the TxCIA would be likely to require less effort and co-ordination to establish overall. Despite the LPL options likely requiring less co-ordination to establish, they have higher implementation costs than the GPL TxC because the LPL models have higher ongoing order handling costs (i.e. the customer needs to talk to both the GP and LP in the LPL models, compared to only the GP in the GPL TxC model, this is only partially offset by the higher costs for the hub and changes to CP systems in this GPL TxC option).

Summary

7.147 Of the shortlisted options, the TPV is the most costly and intrusive to implement and thus likely to have the largest impact on CPs. The GPL TxC is less costly to implement as it does not include the third-party verification. Nevertheless, it requires the same central hub and database as the TPV option and so is relatively intrusive. The LPL options are cheaper than the TPV and USN options, but appear to be more costly than the GPL TxC due to the higher order handling costs noted above. In terms of the burden on CPs the LPL options are the least intrusive to implement.

Summary of quantitative costs and benefits

7.148 In this part we bring together the quantitative costs and benefits we have estimated in order to calculate a partial net present value (NPV) for each shortlisted option. Note that by their nature many benefits cannot be quantified. For example, the benefits associated with improved competition by eliminating reactive save activity are likely to be substantial (discussed further below). However, as it is difficult to model how eliminating reactive save would impact prices, quantifying this benefit is difficult. It should be noted that many of the benefits quantified are really avoided costs (e.g. reductions in costs of dealing with slamming and ETs). These estimates should be taken as indicative only and considered alongside the qualitative analysis in the rest of this section.

7.149 Figure 38 below summarises the estimated costs and benefits (further detail on how the benefits were estimated is available in Annex 8). Negative numbers under the benefits section represent an increase in costs either to CPs or consumers.

[272] The TxCIA would just issue codes and store them in a database. The hub and database in the GPL model would hold customer information and CPs would need to interrogate the database in order to make sales.

Figure 38: Summary of quantitative costs and benefits for each option (£m per year)

Option	2b – GPL TxC	2c - USN	2d - TPV	3a-b – LPL TxC and LPL ALT
Benefits				
Back end system deficiencies				
Reduction in consumer costs due to ETs	0.5-1.1	0	0.5-1.1	0
Reduction in CP cost due to ETs	2.9	0	2.9	0
Customer consent				
Reduction/increase in consumer cost due to slamming	-0.4 - -0.1	1.2-3.5	1.4-4.2	1.5-4.4
Reduction/increase in CP cost due to slamming	-0.9	8.4	10.1	10.7
Reduction in consumer cost – no need for Cancel Other[273]	0.1	0.2	0.2	0.2
Reduction in CP costs – no need for Cancel Other	0.9	0.9	0.9	0.9
Implications of switching				
Reduction in consumer harm due to better information about ETCs	0	0	0	0.4
Varying and unnecessary switching costs/hassle				
Decrease/increase in time spent on the switching process (consumer)	0.5	-0.6	-0.5	-1.4
Reduction in consumer cost – no abuse of Cancel Other	0.03	0.03	0.03	0.03
Reduction in CP costs - no abuse of Cancel Other	0.1	0.1	0.1	0.1
Total benefits (consumers)	*0.8-1.6*	*0.7-3.1*	*1.7-5.1*	*0.7-3.7*
Total benefits (CPs)	*3.0*	*9.4*	*14.0*	*11.6*
Total benefits[274] (consumers and CPs)	***3.8-4.6***	***10.1-12.5***	***15.7-19.1***	***12.4-15.3***
Costs				
Implementation costs for CPs (annuitised)	4.8	8.4-9.4	11.4	7.6-7.7
Annuitised NPV[275]	***-1.2- -0.3***	***0.3-3.6***	***3.8-7.1***	***4.2-7.2***

7.150 We consider that the information provided by CPs and independent work by CSMG has given us a reasonable view of the implementation costs for CPs. However, it is important to note that the costs of enforcement (which could be significant for LPL TxC and LPL ALT) are not included.

[273] Includes 'failure to cancel' and preventing slamming uses of Cancel Other (see paragraph A8.27).
[274] Total may not add up to sum of column due to rounding.
[275] The NPV is calculated by discounting the estimated costs and benefits at the social rate of time preference of 3.5%. We have assumed that 10 years on ongoing costs and benefits are accrued. The 10 year NPV is annuitised to calculate an equivalent constant annual payment (assuming a discount rate of 3.5% and a time period of 10 years). Further details are provided in paragraph A8.84.

7.151 Our partial quantification of the benefits does not cover every type of benefit we have identified. We have discussed the aspects we have not been able to quantify in paragraph 7.130 above. In particular we have not been able to quantify the benefits from having a single harmonised switching process, aspects of improved reliability of the back end processes and reducing the cost to consumers due to loss of service arising under the current processes which we expect to be avoided under the new switching options. This means it is important to consider the qualitative assessment alongside the quantitative assessment.

7.152 In addition, while the implementation costs for CPs include the costs of applying the switching processes to small businesses with up to 10 employees as well as residential consumers, we are largely unable to quantify the other costs and benefits for small businesses (e.g. costs avoided by reducing slamming). We have considered the possible impact this might have in A8.86. Overall we expect that the benefits of implementing the new switching processes are understated due to these factors.

Comparison of the options and conclusions

7.153 In this section we use the option assessment above to compare the shortlisted options. We have identified that, on balance, the TPV best deals with the problems we have identified. However, we also recognise that the TPV has the highest implementation costs and would be the most intrusive option in terms of the impact on CPs. In this section we consider whether the TPV may be the most appropriate and proportionate way of addressing the issues we have identified by comparing it to each of the other options considering all the factors we have discussed above.

TPV versus GPL TxC

7.154 In relation to dealing with the problems, Figure 36 shows that the GPL TxC performs the same as the TPV except that the GPL TxC does not deal with the problem around consumer consent and could result in increased slamming. The TPV would largely deal with the problems around consumer consent through third party verification. However, the inclusion of third party verification makes the TPV significantly more expensive (the estimated annuitised NPC for the TPV option is £11.4m versus £4.8m for the GPL TxC). Whilst both options require a central database and hub, additionally the TPV would require the setting up of a third party body which would entail a greater level of effort and co-ordination by industry.

7.155 Overall, we consider that addressing slamming is an important issue. We have assessed that slamming is likely to remain around current levels based on a continuation of our current level of enforcement effort. Our quantitative assessment has estimated the indicative costs due to slamming for CPs and consumers at £12.8-15.9m per year. A comparison of the quantified costs and benefits for the TPV and GPL TxC options shows that addressing slamming does result in net benefits as shown in Figure 38 above (i.e. the annualised NPV for the TPV is greater than for the GPL TxC).

7.156 On this basis it appears that an option which addresses slamming (recognising that this results in higher costs) is justified, thus we prefer the TPV to the GPL TxC. We welcome views on whether building up front protections into the switching process to protect against slamming is necessary or whether slamming could be effectively dealt with through ex post enforcement activity (we have asked for feedback on these points in section 4).

Question 40: We welcome stakeholder views on whether the additional cost of the TPV option over the GPL TxC option is justified due to the superior protection against slamming?

TPV versus USN

7.157 The analysis contained in this section (summarised in Figure 36) shows that, overall, the TPV is better at dealing with the problems of reliability in the back end switching processes, customer consent and unnecessary switching costs/hassle than the USN. The USN is cheaper than the TPV to implement, however, our partial cost benefit assessment (which reflects the higher implementation costs of the TPV relative to the USN) shows that the USN has a significantly lower quantified net benefit than the TPV (annuitised NPV of £0.3-3.6m for USN versus £3.8-7.1m for TPV). This is principally because the USN does not deal with the problem of homemover ETs or prevent slamming as well as the TPV.

7.158 Furthermore, we do not consider that the USN has higher qualitative benefits than the TPV (i.e. the USN option delivers a similar outcome to the TPV in relation to the problems described in paragraph 7.130). The TPV would be a more intrusive option to implement from a regulatory perspective because it would require the establishment of a third party body and more customer information must be included in the TPV database. However, we consider that this is justified in relation to the significant additional benefits which we expect the TPV to yield. In particular, the third party body makes the TPV more effective in dealing with slamming and the inclusion of extra information in the TPV database means it is effective in dealing with homemover ETs. On this basis we prefer the TPV to USN.

Question 41: Do you agree with our assessment that the TPV option should be preferred to the USN option. If not, please provide your reasoning.

TPV versus LPL TxC and LPL ALT

7.159 The main difference between the LPL TxC and LPL ALT is that the former attempts to restrict reactive save activity, whereas the latter explicitly permits it where the customer wants to hear a save offer. In section 5 we explained that reactive save activity dampens competition. For this reason we consider that the LPL TxC performs better against the problems and we conclude that LPL TxC is the 'leading' LPL option. On this basis (and in the interest of avoiding repetition) we have compared the TPV to the LPL TxC option (however, the analysis we present below would also largely apply to the LPL ALT option).

7.160 The figure below summarises how the TPV and LPL TxC options perform against the problems. We also indicate whether the difference in performance under each problem has been reflected in the quantitative assessment, or whether one option has qualitative benefits relative to the other.

Figure 39: Comparison of the TPV and LPL TxC options

Problem	Option 2d – TPV	Option 3a LPL TxC	Is the difference in performance between the TPV and LPL TxC reflected in the quantitative assessment?
Multiple switching processes	Green	Green	Not quantified. Both options deliver a harmonised process.
Back end system deficiencies:			
Lack of reliability	Green	Amber	Yes - the quantitative assessment reflects the difference in the ability of each process to deal with homemove ETs. The qualitative benefits (which relate to e.g. stopping ETs arising where services do not have CLIs or multiple services use a shared asset) are the same for both processes.
Lack of competitive neutrality	Green	Green	Not quantified. The qualitative benefits are the same for both processes.
Loss of service	Green	Green	Not quantified. Unlikely to be a difference between the two processes.
Reactive save activity	Green	Amber	No – Differences in the ability to support competition have not been quantified. The TPV has qualitative benefits relative to LPL TxC. This is an important factor and it is discussed in section 5 above.
Customer consent	Green	Green	Yes – the quantitative assessment reflects the difference in the ability of each process to deal with slamming
Implications of switching	Amber	Green	Partly – non ETC implications of switching have not been quantified. Nor have the CP and consumer costs of cancelling orders due to finding out about ETCs after the sale has been made. LPL TxC has qualitative benefits relative to TPV.
Varying and unnecessary switching costs/hassle	Green	Amber	No - only the increased time taken to switch has been reflected in the quantitative assessment which is only part of the potential additional switching costs under the LPL TxC process. The TPV has qualitative benefits relative to LPL TxC.

Additional qualitative benefits for LPL TxC relative to TPV

7.161 In relation to the problems identified, we consider that the only area where the LPL TxC could deliver an additional benefit relative to the TPV which has not already been quantified is in relation to awareness of the implications of switching. We have quantified part of the benefit above (i.e. a reduction in consumers unwillingly paying ETCs), however, there are also other implications of switching e.g. loss of specific services such as personal safety alarms or price increases for services when a bundle is broken which are not captured within this estimate.

7.162 However, the difference between the options relates to the timing of when the information is provided, not the provision of the information per se. Under the LPL TxC the consumer can discuss the implications of switching before they place the order with the GP, under the TPV the information is provided in a notification letter after the order has been placed but before the switch has occurred (and the consumer has an option of cancelling). There will be some benefits to having the information provided earlier under the LPL TxC e.g. less consumer hassle having to cancel orders due to unexpected implications and less CP resource expended placing orders which are ultimately cancelled. However, we consider that these benefits are not sufficiently large to outweigh the other benefits of the TPV relative to the LPL TxC option.

Additional qualitative benefits for TPV relative to LPL TxC

Reactive save activity

7.163 We expect the TPV process to be pro-competitive relative to the LPL TxC given the lower switching costs and also because there is less incentive and opportunity to engage in reactive save. Lower switching costs encourage consumers to search around for the best deal in the knowledge that they can switch easily. We have assessed in section 5 that reactive save activity dampens competition and creates barriers to new entrants. While we have identified a means of restricting the opportunities for reactive save in the LPL TxC, we will rely on CPs following the rules and monitoring/the threat of enforcement to deter CPs from trying to save customers when they request a code. Overall, we see the dampening of competition as a potentially serious adverse consequence of an LPL process. However, as discussed in section 5 we are inviting views from stakeholders on our assessment of the likely effectiveness of a ban on reactive save in a LPL process. If stakeholders provide convincing evidence that our concerns about reactive save activity in an LPL process could be addressed then we may reconsider our assessment.

7.164 It is not possible to quantify the benefit to competition and consumers through implementing a GPL option relative to a LPL option. However, the TPV need only generate a relatively small benefit through improved competitiveness relative to the LPL TxC option to offset the lower CP implementation costs of LPL TxC. In the figure below we summarise the potential consumer benefit and impact on the TPV option annuitised NPV for an average price decrease of £1 per year under the TPV relative to the LPL TxC. [276]

Figure 40: Impact of a one off price decrease

Average one off price decrease to consumer bill per year	Consumer benefit per year £m[277]	Annuitised NPV for TPV if one off price decrease is achieved £m
£1	23.7	26.7-30.0

7.165 The average revenue per residential exchange line was £251 per year in 2010. Thus a £1 price decrease represents a very small decrease of substantially less than 1%

[276] i.e. assuming consumers benefit from an average annual bill which is £1 lower under the TPV option relative to the LPL TxC option and this differential is maintained over the subsequent 10 years.
[277] Based on 23.7m residential exchange lines at Q2 2011.
http://stakeholders.ofcom.org.uk/binaries/research/cmr/telecoms/Q22011.pdf

of the average annual revenue and it only needs to occur once. If the TPV option delivered a one off price reduction of £1 then the annuitised NPV would be larger than that for the LPL TxC (which is £4.2 to 7.2m). In fact, the TPV would only need to deliver a 2p reduction to the average annual bill relative to pricing under LPL TxC for the annuitised NPV of the TPV to be larger than that of the LPL TxC.

7.166 An alternative way to look at the potential benefits of GPL relative to LPL processes is to consider the benefit from additional consumers switching due to lower switching costs. The broadband consumer research 2011 looked at the benefits of switching for a sample of broadband standalone and broadband/fixed line bundle switchers. The research found that 93% of switchers obtained some benefit from switching. 67% achieved some degree of cost saving, and the average saving for the broadband service was £9 per month (£108 per year).[278] Assuming that 67% of switchers achieve a cost saving of £108 per year implies an average cost saving per switch of £72.[279]

7.167 If an extra 50,000 consumers switched under the TPV relative to the LPL TxC this would generate £3.6m in consumer cost savings per year. We estimate around1.2m people switch their standalone broadband or component(s) of a bundle of fixed line/broadband per year.[280] 50,000 consumers amounts to a small (4%) increase in the total number of standalone broadband and broadband/fixed line bundle switchers per year. If the TPV delivered a benefit of this magnitude then the annuitised NPV would be £7.3m to £10.6m[281] (clearly greater than the LPL TxC NPV range).

Question 42: Do you agree with our assessment that the TPV option is pro-competitive relative to the LPL TxC option? If not, please explain why you disagree.

Varying and unnecessary switching costs/hassle

7.168 We expect the TPV to have lower switching costs relative to the LPL TxC process e.g. because the consumer only needs to make one contact to the GP to switch and because the GP has an incentive to make switching easy and hassle free. Under the LPL TxC process a consumer will always have to contact the LP in order to initiate the switch which adds friction to the process. The LPL TxC process is heavily reliant on monitoring and enforcement (with associated costs) to ensure that the LP provides consumers easy access to the switching code.

7.169 In addition the TPV is an easier process to navigate when a consumer wants to switch multiple services at the same time (e.g. to form a bundle). Under the LPL TxC the consumer would need to obtain a code for each service they wanted to switch (possibly contacting multiple providers). Under the TPV the consumer would only need to make one call to the GP.

Summary – TPV versus LPL TxC

7.170 The partial annuitised NPVs presented in Figure 38 show that the TPV and LPL TxC result in a similar level of quantified net benefit. While these NPVs reflect the differences in the estimated implementation costs for the options, there are a number

[278] Broadband consumer research 2011 slide 36
[279] This is a conservative estimate of the total benefits of switching broadband since it does not include non price benefits such as larger download allowance or faster broadband speeds.
[280] Based on calculations used in the CSMG cost modelling exercise.
[281] We have not factored in any increase to CP costs due to extra switches – the estimated increase to the TPV 10 year NPC as a result of a 4% increase in the number of standalone broadband and broadband/fixed line bundle switches per year is less than 1%.

of qualitative benefits which are not included. As discussed above, we consider that the TPV has significant qualitative benefits relative to the LPL TxC. We recognise that the TPV is a more intrusive option to implement than the LPL TxC, however, we consider that the additional effort and co-ordination required to establish the TPV at the outset may be justified by the long term consumer benefits that the TPV would bring. Therefore, based on the evidence and analysis set out above, we prefer the TPV to the LPL TxC.

Conclusion

7.171 Our evaluation has shown that the current NoT and MAC switching processes have a number of problems which we have discussed in detail in sections 4 and 5.

7.172 We have considered whether incremental improvements to the current processes, or an enhanced harmonised NoT process would be a proportionate solution to these problems. We think that such improvements could deliver some benefits, but that they would not be effective remedies because fundamental issues would remain. We are particularly concerned that the NoT process does not provide adequate protection against slamming. It is also difficult to see how the current switching processes could be adapted to meet future challenges on reliability given market and technological developments.

7.173 Of the remedies which we consider may be effective, our option assessment shows that the TPV is the only one which deals with all of the problems identified (with the exception of the implications of switching, which it partly meets). We recognise however that the TPV option is more onerous to deploy than either the LPL options or GPL TxC. We are therefore faced with a complex judgment, balancing the relative effectiveness of different options in dealing with different problems against the relevant costs to CPs and consumers. At present our view is that the assessment of costs and benefits supports the adoption of the TPV, but we invite comments on our evaluation.

7.174 We consider that adopting the TPV option is better than maintaining the status quo (i.e. do nothing) because our quantitative assessment of the costs and benefits of the TPV relative to the status quo shows that the TPV has a positive net benefit (see figure 38 above) and, furthermore, we believe the TPV option has significant additional qualitative benefits relative to the status quo. We also expect the TPV to deliver a positive benefit relative to the enhanced versions of the status quo i.e. Options 1b (enhanced NoT and MAC (unharmonised)) and 2a (Enhanced NoT harmonised)). We set out in paragraphs 7.122 and 7.124 to 7.129 why we think the enhanced versions of the status quo fail to deliver well against all the problems identified and we consider these options are unlikely to be fit for purpose in the future.

Question 43: Do you agree that the TPV is the most proportionate way to deal with the problems identified? If not, please provide your reasoning.

Question 44: Do you have any other comments on our option assessment?

Legal tests

7.175 To change the current General Conditions to implement a new or amended switching process we need to satisfy the tests set out in section 47(2) of the Act. These are that each condition must be:

- objectively justifiable;
- not such as to discriminate unduly against particular persons or a particular description of persons;
- proportionate to what the condition is intended to achieve; and
- in relation to what is intended to achieve, transparent.

7.176 The analysis set out above reflects these considerations. In terms of objective justification, we have considered in sections 4 and 5 the existence and scale of the problems requiring consideration by Ofcom and in sections 6 and 7 the effectiveness of different options in addressing them. Of the options which we consider may be effective (GPL TxC, USN, TPV, LPL TxC and LPL ALT) we consider these are transparent and non discriminatory because they would apply to all CPs using the Openreach copper network in the same way. We noted in paragraph 1.6 that our proposals do not extend to the Virgin Media cable network at this time. We will consider whether it is appropriate to extend these proposals to cable once we have concluded our proposals for the Openreach copper network.[282] We also set out above for consultation our assessment of the proportionality of these different options.

Equality Impact Assessment

7.177 We have carried out an Equality Impact Assessment in accordance with our duties under the Equality Act 2010 to determine whether our proposal has any particular impacts in relation to the defined Equality Groups. [283] We do not consider that any of these Equality Groups would be negatively impacted by our proposals as a result of being a member of that group. Our objective is to make switching easier for all consumers. Our proposed solution would apply to all consumers of the relevant services equally. Process obstacles to switching could potentially affect consumers with disabilities and older consumers more profoundly than other groups of consumers and we consider that our proposal to introduce a harmonised GPL switching process could benefit these groups.

[282] We plan to consider possible changes to FTTP and the KCOM network alongside cable.
[283] The Equality Groups are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, sexual orientation, religious belief/political opinion (Northern Ireland only) and Dependent (Northern Ireland only).

Section 8

Next steps

8.1 In this section, we set out how we plan to take forward this part of our strategic review of consumer switching processes. We also provide a high level overview of subsequent parts of the review.

8.2 In this consultation document, we have sought to achieve the following in relation to switching fixed voice and broadband services over the Openreach copper network:

- identify and set out the available evidence of the key problems with the current NoT and MAC processes.
- Set out a range of switching process options and assess how these perform against the identified problems.
- Set out our view on the switching process option we consider best addresses the identified problems based on a qualitative and quantitative option assessment and how the preferred option meets the relevant legal tests.

8.3 We are now inviting comments on the issues raised in this consultation document. We are keen to get feedback from both industry and consumer stakeholders on the evidence and analysis presented in this consultation. We would particularly welcome any additional evidence stakeholders may be able to provide that is relevant to either the qualitative and/or quantitative assessment of the switching process option and our preferred option.

8.4 The consultation period is due to close on 23 April 2012. Following consideration of the responses to this consultation and further discussions with stakeholders, we will issue a further consultation. The scope of that consultation will depend on the issues raised in the responses to this consultation.

8.5 The scope of the subsequent consultation may affect the publication timelines but we are currently planning to issue the subsequent consultation document in Q2/Q3 2012-13 and the statement in Q4 2012-13.

8.6 As noted in section 6, there is further work that needs to be done to develop technical specifications for how the harmonised GPL (excluding the Enhanced NoT option) and LPL options may be extended or adapted to support the WLTO process in the context of homemoves. We plan to carry out work on this ahead of the next consultation.

Annex 1

Responding to this consultation

How to respond

A1.1 Ofcom invites written views and comments on the issues raised in this document, to be made **by 5pm on 23 April 2012**.

A1.2 Ofcom strongly prefers to receive responses using the online web form at http://stakeholders.ofcom.org.uk/consultations/switching-fixed-voice-broadband/howtorespond/, as this helps us to process the responses quickly and efficiently. We would also be grateful if you could assist us by completing a response cover sheet (see Annex 3), to indicate whether or not there are confidentiality issues. This response coversheet is incorporated into the online web form questionnaire.

A1.3 For larger consultation responses - particularly those with supporting charts, tables or other data - please email consumerswitching@ofcom.org.uk attaching your response in Microsoft Word format, together with a consultation response coversheet.

A1.4 Responses may alternatively be posted or faxed to the address below, marked with the title of the consultation.

Matthew Chapman
Ofcom
Riverside House – 2nd Floor
2A Southwark Bridge Road
London SE1 9HA

Fax: 020 7981 3333

A1.5 Note that we do not need a hard copy in addition to an electronic version. Ofcom will acknowledge receipt of responses if they are submitted using the online web form but not otherwise.

A1.6 It would be helpful if your response could include direct answers to the questions asked in this document, which are listed together at Annex 4. It would also help if you can explain why you hold your views and how Ofcom's proposals would impact on you.

Further information

A1.7 If you want to discuss the issues and questions raised in this consultation, or need advice on the appropriate form of response, please contact Matthew Chapman on 020 7981 3809 or Ian Vaughan on 020 7783 4331.

Confidentiality

A1.8 We believe it is important for everyone interested in an issue to see the views expressed by consultation respondents. We will therefore usually publish all responses on our website, www.ofcom.org.uk, ideally on receipt. If you think your

response should be kept confidential, can you please specify what part or whether all of your response should be kept confidential, and specify why. Please also place such parts in a separate annex.

A1.9 If someone asks us to keep part or all of a response confidential, we will treat this request seriously and will try to respect this. But sometimes we will need to publish all responses, including those that are marked as confidential, in order to meet legal obligations.

A1.10 Please also note that copyright and all other intellectual property in responses will be assumed to be licensed to Ofcom to use. Ofcom's approach on intellectual property rights is explained further on its website at http://www.ofcom.org.uk/about/accoun/disclaimer/

Next steps

A1.11 Following the end of the consultation period, Ofcom intends to publish a further consultation in Q2/Q3 2012-13 and a statement in Q4 2012-13.

A1.12 Please note that you can register to receive free mail Updates alerting you to the publications of relevant Ofcom documents. For more details please see: http://www.ofcom.org.uk/static/subscribe/select_list.htm

Ofcom's consultation processes

A1.13 Ofcom seeks to ensure that responding to a consultation is easy as possible. For more information please see our consultation principles in Annex 2.

A1.14 If you have any comments or suggestions on how Ofcom conducts its consultations, please call our consultation helpdesk on 020 7981 3003 or e-mail us at consult@ofcom.org.uk . We would particularly welcome thoughts on how Ofcom could more effectively seek the views of those groups or individuals, such as small businesses or particular types of residential consumers, who are less likely to give their opinions through a formal consultation.

A1.15 If you would like to discuss these issues or Ofcom's consultation processes more generally you can alternatively contact Graham Howell, Secretary to the Corporation, who is Ofcom's consultation champion:

Graham Howell
Ofcom
Riverside House
2a Southwark Bridge Road
London SE1 9HA

Tel: 020 7981 3601

Email Graham.Howell@ofcom.org.uk

Annex 2

Ofcom's consultation principles

A2.1 Ofcom has published the following seven principles that it will follow for each public written consultation:

Before the consultation

A2.2 Where possible, we will hold informal talks with people and organisations before announcing a big consultation to find out whether we are thinking in the right direction. If we do not have enough time to do this, we will hold an open meeting to explain our proposals shortly after announcing the consultation.

During the consultation

A2.3 We will be clear about who we are consulting, why, on what questions and for how long.

A2.4 We will make the consultation document as short and simple as possible with a summary of no more than two pages. We will try to make it as easy as possible to give us a written response. If the consultation is complicated, we may provide a shortened Plain English Guide for smaller organisations or individuals who would otherwise not be able to spare the time to share their views.

A2.5 We will consult for up to 10 weeks depending on the potential impact of our proposals.

A2.6 A person within Ofcom will be in charge of making sure we follow our own guidelines and reach out to the largest number of people and organisations interested in the outcome of our decisions. Ofcom's 'Consultation Champion' will also be the main person to contact with views on the way we run our consultations.

A2.7 If we are not able to follow one of these principles, we will explain why.

After the consultation

A2.8 We think it is important for everyone interested in an issue to see the views of others during a consultation. We would usually publish all the responses we have received on our website. In our statement, we will give reasons for our decisions and will give an account of how the views of those concerned helped shape those decisions.

Annex 3

Consultation response cover sheet

A3.1 In the interests of transparency and good regulatory practice, we will publish all consultation responses in full on our website, www.ofcom.org.uk.

A3.2 We have produced a coversheet for responses (see below) and would be very grateful if you could send one with your response (this is incorporated into the online web form if you respond in this way). This will speed up our processing of responses, and help to maintain confidentiality where appropriate.

A3.3 The quality of consultation can be enhanced by publishing responses before the consultation period closes. In particular, this can help those individuals and organisations with limited resources or familiarity with the issues to respond in a more informed way. Therefore Ofcom would encourage respondents to complete their coversheet in a way that allows Ofcom to publish their responses upon receipt, rather than waiting until the consultation period has ended.

A3.4 We strongly prefer to receive responses via the online web form which incorporates the coversheet. If you are responding via email, post or fax you can download an electronic copy of this coversheet in Word or RTF format from the 'Consultations' section of our website at www.ofcom.org.uk/consult/.

A3.5 Please put any parts of your response you consider should be kept confidential in a separate annex to your response and include your reasons why this part of your response should not be published. This can include information such as your personal background and experience. If you want your name, address, other contact details, or job title to remain confidential, please provide them in your cover sheet only, so that we don't have to edit your response.

Cover sheet for response to an Ofcom consultation

BASIC DETAILS

Consultation title:

To (Ofcom contact):

Name of respondent:

Representing (self or organisation/s):

Address (if not received by email):

CONFIDENTIALITY

Please tick below what part of your response you consider is confidential, giving your reasons why

Nothing ☐

Whole response ☐

Part of the response ☐

Name/contact details/job title ☐

Organisation ☐

If there is no separate annex, which parts?

If you want part of your response, your name or your organisation not to be published, can Ofcom still publish a reference to the contents of your response (including, for any confidential parts, a general summary that does not disclose the specific information or enable you to be identified)?

DECLARATION

I confirm that the correspondence supplied with this cover sheet is a formal consultation response that Ofcom can publish. However, in supplying this response, I understand that Ofcom may need to publish all responses, including those which are marked as confidential, in order to meet legal obligations. If I have sent my response by email, Ofcom can disregard any standard e-mail text about not disclosing email contents and attachments.

Ofcom seeks to publish responses on receipt. If your response is non-confidential (in whole or in part), and you would prefer us to publish your response only once the consultation has ended, please tick here. ☐

Name

Signed (if hard copy)

Annex 4

Consultation question

A4.1 We have asked the questions set out below in this consultation.

Section 3

Question 1: Do providers support (i) each of the different order type processes (ii) Linked Orders (iii) Parallel Orders processes? Where providers do not support each of these individual processes, please explain why you think this is the case? Please provide evidence to support your view.

Section 4

Question 2: Are gaining providers currently able to correctly advise consumers at the point of sale on the correct switching process to follow (e.g. do agents have access to and the ability to use Dialogue Services and have access to information on which technology will be used to supply the service to the customer)? Please provide any evidence you have to support your views.

Question 3: Do you agree it will become more difficult for Gaining Providers to advise consumers at the point of sale on the correct switching process to follow as new technologies or new combinations of existing technologies are rolled out? Please provide any evidence you have to support your views.

Question 4: Do you agree there is lack of competitive neutrality from having multiple processes? Please provide any evidence you have to support your views.

Question 5: Do you agree with our assessment of Problem 1: Multiple switching processes? If not, please explain why you disagree.

Question 6: Do you agree that the current switching processes are likely to become less reliable in the future? Please explain your answer and provide any evidence you have to support your views.

Question 7: Do you agree with our assessment of Problem 2: Back end system deficiencies? If not, please state why you disagree.

Question 8: Do you have evidence to suggest that the incidence of slamming has changed significantly? Please provide any evidence you have to support your views.

Question 9: Is there further action you think could be taken to help tackle slamming (e.g. preventative measures to stop it from occurring or enforcement activities after it has happened to act as a deterrent) under the existing processes? Please explain your answer.

Question 10: Do you think it would be more appropriate to introduce stronger upfront consumer protections within the switching process or continue with the current reliance on enforcement to tackle slamming? Please explain your answer.

Question 11: Do you agree with our assessment of Problem 3: Insufficient customer consent? If not, please explain why you disagree.

Question 12: Do you agree with our assessment of Problem 4: Lack of awareness of the implications of switching? If not, please explain why you disagree.

Question 13: Do you agree with our assessment of Problem 5 Unnecessary switching costs/hassle? If not, please explain why.

Question 14: Are there any other key problems with the existing Notification of Transfer and Migration Authorisation Code processes that we have not identified? Please provide evidence to support your answer.

Section 5

Question 15: Do you agree with our assessment that a prohibition on reactive save activity under the LPL process would be difficult to enforce effectively? Can you suggest how enforcement of a prohibition on reactive save may be made effective?

Section 6

Question 16: Are there other enhancements that you think should be included in the Enhanced NoT specification to help protect consumers both now and in the future? Please explain your answer and provide any supporting evidence.

Question 17: Do you think strengthening record keeping obligations for consent validation would increase protection against slamming? Would this be adequate to safeguard consumers now and in the future? Please explain your answer and provide any supporting evidence.

Question 18: Do you think that the introduction a requirement to include specific information about early termination charges (ETC) and/or minimum contract periods (MCPs) in bills should form part of the enhancements to the current NoT process? What are the likely costs and benefits of such an approach? Please provide any evidence to support your answer.

Question 19: Do you agree that Cancel Other call recording obligations should not form part of the Enhanced NoT model? What are the likely costs and benefits of introducing Cancel Other call recordings? Please provide any evidence to support your answer(s).

Question 20: How can Ofcom best address competition concerns relating to reactive save activity through enhancements to the MAC process? What are the likely costs and benefits of such an approach? Please provide any evidence to support your answer.

Question 21: Are there any particular issues that you think would need to be considered in establishing the hub and database under any of the GPL options (e.g. general practicability setting up and/or ongoing operation)? Please explain your answer.

Question 22: Do you agree that the GP staying on the TPV call should not be a mandated part of the TPV model? Do you think there are significant benefits from the GP closing the call with the customer after the TPV conversation? Please explain your answer(s) and provide any supporting evidence.

Question 23: Are there any particular data protection and/or privacy related issues that you think would need to be considered under the GPL TxC and/or the GPL TPV options? Are these issues likely to be significantly different to the issues that need to be considered under the current processes? Please explain your answer.

Question 24: Are there circumstances in which you can envisage that consumers would be likely to be distressed and/or harmed by the sharing of their personal data as required under the GPL TxC and/or the GPL TPV options? Do you think that consumers will object to the sharing of their data in this way? Please explain your answer.

Question 25: Are there any particular issues that you think would need to be considered in terms of the practicalities involved in setting up the TPV body and its ongoing operation under the GPL option? Please explain your answer.

Question 26: Are there any particular issues that you think would need to be considered in terms of the practicalities involved in setting up the Transfer Code Issuing Authority and its ongoing operation under the Losing Provider Led options? Please explain your answer.

Question 27: Do you agree with the proposed specifications for each of the options? If not, please specify what changes you consider should be made to the specifications and the basis for this.

Question 28: Are you able to provide an estimate of the time it would take to make the necessary changes to your systems and processes to implement each of the options? Please explain your answer.

Question 29: How could the switching process options be used (or amended) to support the WLTO process to deal with the problem of ETs in the context of a homemove? Please explain your answer.

Section 7

Question 30: Do you agree with our assessment of the options regarding multiple switching processes? If not, please explain why you disagree.

Question 31: Do you agree that the Options 2b (GPL TxC) and 2d (TPV) are likely in practice to deal effectively with homemove ETs? Can you foresee any problems with adopting this process for homemoves? Please explain your answer.

Question 32: Do you agree that the Option 2c USN and Options 3a-b LPL TxC and LPL ALT are unable in practice to deal with homemove ETs? If not, please explain how these options could be used to deal with homemove ETs?

Question 33: Do you agree with our assessment of the options regarding back end processes? If not, please explain why you disagree.

Question 34: Do you agree with our assessment of the options regarding consumer consent? If not, please explain why you disagree.

Question 35: Do you agree with our assessment of the options regarding the implications of switching? If not, please explain why you disagree.

Question 36: Do you agree with our assessment of the options regarding unnecessary switching costs/hassle? If not, please explain why you disagree.

Question 37: Do you agree with our assessment of the options regarding reactive save activity? If not, please explain why you disagree.

Question 38: Do you agree that we should discard options 1a (status quo), 1b (enhanced NoT and MAC unharmonised) and 2a (enhanced NoT harmonised) on the basis that they fail

to adequately address the current and anticipated future problems? If not, please provide your reasoning.

Question 39: Do you think that the payment of a TPV fee for each sale is likely to be a significant barrier to entry for smaller CPs? Please provide any supporting evidence.

Question 40: We welcome stakeholder views on whether the additional cost of the TPV option over the GPL TxC option is justified due to the superior protection against slamming?

Question 41: Do you agree with our assessment that the TPV option should be preferred to the USN option. If not, please provide your reasoning.

Question 42: Do you agree with our assessment that the TPV option is pro-competitive relative to the LPL TxC option? If not, please explain why you disagree.

Question 43: Do you agree that the TPV is the most proportionate way to deal with the problems identified? If not, please provide your reasoning.

Question 44: Do you have any other comments on our option assessment?

Annex 5

Switching Working Group

A5.1 Ofcom invited industry stakeholders to form the Switching Working Group to develop possible switching processes and identify the costs of implanting each of these options. These meetings were chaired by the OTA.

Figure 41: SWG meetings and agendas

Date of meeting	Agenda
SWG 1 – 18th November 2010	○ SWG Terms of Reference ○ Assessment framework and GPL switching options ○ Updates on complaints data ○ Other GPL options ○ Selection of GPL options for further detailed implementation work http://stakeholders.ofcom.org.uk/telecoms/groups/switching-working-group/meetings/18nov2010/
SWG 2 – 2nd December 2010	○ Erroneous transfer update ○ Alternative GPL switching options ○ Clarification of Ofcom's switching principles ○ Assessment framework and Ofcom GPL switching options ○ Selection of GPL options for further detailed implementation work http://stakeholders.ofcom.org.uk/telecoms/groups/switching-working-group/meetings/2dec2010/
SWG 3 – 6th January 2011	○ Basis for selection of GPL options ○ Development/Specification of selected GPL switching options – key considerations and options ○ Identification of key cost drivers of selected GPL switching options http://stakeholders.ofcom.org.uk/telecoms/groups/switching-working-group/meetings/06jan2011/
Offline workshop – 13th January 2011	○ Scope of the offline process workshops ○ Assessment of the proposed processes against required capabilities ▪ Notification of Transfer ▪ Enhanced Notification of Transfer ▪ Code on Bill + NoT ▪ TPV + NoT ▪ TPV + Transfer Code + Inter CP comms platform http://stakeholders.ofcom.org.uk/telecoms/groups/switching-working-group/meetings/13jan2011/

Date of meeting	Agenda
Offline workshop – 18th January 2011	○ Discussion of GPL options ▪ NoT + TPV variants ▪ Code on Bill + TPV variants ▪ Transfer Code options http://stakeholders.ofcom.org.uk/telecoms/groups/switching-working-group/meetings/18jan2011/
Offline workshop – 27th January 2011	○ Discussion of GPL options ▪ TPV + Transfer Code options ▪ Code on Bill http://stakeholders.ofcom.org.uk/telecoms/groups/switching-working-group/meetings/27jan2011/
Offline workshop – 3rd February 2011	○ Discussion of GPL options strawman analysis ▪ Upfront customer authentication ▪ Consent Validation ▪ ETCs and Service Implications ○ Transfer Code process ○ Transfer Code and USN http://stakeholders.ofcom.org.uk/telecoms/groups/switching-working-group/meetings/3feb2011/
SWG 4 – 10th February 2011 ***Offline Workshop***	○ Update on scope of the SWG (to include LPL options) ○ Update on progress in offline workshops ○ USN process ○ TPV (gatekeeper) option http://stakeholders.ofcom.org.uk/telecoms/groups/switching-working-group/meetings/10feb2011/
Offline workshop – 3rd March 2011	○ Feedback on Strawman options ○ USN process document ○ Costs template http://stakeholders.ofcom.org.uk/telecoms/groups/switching-working-group/meetings/3mar2011/
Offline workshop – 10th March 2011	○ TPV Model ○ USN only Model http://stakeholders.ofcom.org.uk/telecoms/groups/switching-working-group/meetings/10march2011/
Offline workshop – 17th March 2011	○ Draft TPV use cases ○ LPL Switching Options ○ http://stakeholders.ofcom.org.uk/telecoms/groups/switching-working-group/meetings/17march2011/
SWG 5 – 24th March 2011 ***Offline Workshop***	○ Update on progress in offline workshops ○ Update on GPL options ○ Update on LPL Model http://stakeholders.ofcom.org.uk/telecoms/groups/switching-working-group/meetings/24march2011/

Date of meeting	Agenda
Offline workshop –31st March 2011	○ LPL use cases ○ Monitoring and reporting ○ Accommodating business customers http://stakeholders.ofcom.org.uk/telecoms/groups/switching-working-group/meetings/31march2011/
Offline workshop –7th April 2011	○ Future proofing the Transfer Code process ○ LPL use cases ○ Draft Service Levels ○ LPL Process Assessment ○ Update on business customers consideration http://stakeholders.ofcom.org.uk/telecoms/groups/switching-working-group/meetings/7april2011/
SWG 6 – 12th May 2011	○ Update on costs data ○ Roadmap for switching project http://stakeholders.ofcom.org.uk/telecoms/groups/switching-working-group/meetings/12may2011/
Offline workshops – 7th, 16th and 30th June	○ Design feasibility of proposed options to future requirements http://stakeholders.ofcom.org.uk/binaries/telecoms/groups/swg/meetings/13july2011/SWG_7_130711_JR_note_on1.pdf
SWG 7 – 13th July 2011[284]	○ Summary conclusions on design feasibility ○ Roadmap review ○ Programme update ○ Cost assessment update http://stakeholders.ofcom.org.uk/telecoms/groups/switching-working-group/meetings/13july2011/

[284] A final offline workshop, which was due to take place in August 2011, was cancelled.

Annex 6

Recent literature on switching costs

A6.1 Here we discuss the recent findings that stakeholders referred to in their responses to the September 2010 consultation which suggest that switching costs may increase competition.

Stakeholder comments

A6.2 Sky[285] and Virgin Media[286] argued that our discussion of the academic literature of switching costs does not take into account the nuanced nature of the economic literature. They both cite passages of the NERA report (commissioned by the OFT and DTI in 2003)[287] which suggest that the existence of switching costs may not necessarily imply competition problems and that one must be cautious about drawing general conclusions in relation to the effects of switching costs.

A6.3 BT[288] and Sky[289] also said that Ofcom did not take into account recent academic papers (both providers cite the papers by Dube, Hitsch and Rossi 2009, and Cabral 2008)[290] that argue small switching costs may make markets more competitive.

Our view

A6.4 In the September 2010 consultation, we presented a short summary of the literature on switching costs which relied on a number of recent authoritative reports and surveys on switching costs. Specifically, we relied on the NERA report but also on a number of academic papers and high profile surveys published afterwards.

We recognised the nuanced nature of the literature

A6.6 We agree with Sky and Virgin Media about the nuanced nature of the literature on switching costs. Specifically, we recognise that the literature (especially the earlier theoretical literature) identifies situations in which switching costs may weaken competition as well as situations in which they may have the opposite effect. However, we disagree that our analysis did not reflect these nuances. While our summary of the literature does not go into as much detail as previous surveys or reports, paragraphs 5.9-5.32 of the September 2010 consultation do seek to reflect those nuances.[291]

A6.7 Our view that unnecessary switching costs in the UK communications sector are likely to dampen competition relied on an overall view of the existing literature. This includes the recent empirical literature which is mainly focused on telecoms and

[285] See Section A1 of Appendix A in the Plum report commissioned by Sky
[286] See Section 8, heading "Theoretical Literature and Academic Research"
[287] Switching costs, April 2003. See OFT655 at http://www.oft.gov.uk/OFTwork/publications/publication-categories/reports/Economic-research/
[288] See Annex 4, response to question 8, pages 78-79
[289] See Annex A.2 of Plum report
[290] Dubé, J-P. G. Hitsch and P. E. Rossi, 2009, "Do Switching Costs Make Markets Less Competitive?", *Journal of Marketing Research*, 2009, 46(4), pp 435-45; Cabral L., 2008, "Small Switching Costs Lead to Lower Prices", Manuscript, *New York University*
[291] See in particular paragraphs 5.12, 5.13, 5.15, 5.21, 5.25.

less nuanced about the competition effect of switching costs, the most recent surveys, the existing evidence, and economic principles.

The recent findings that switching costs are pro-competitive have little application for communications markets in general

A6.8 These recent findings apply to "small switching costs". Dube, Hitsch and Rossi ('DHR' 2009) and Cabral (2008) show that average equilibrium prices have a U-shaped relationship with switching costs. Equilibrium prices initially decrease as switching costs rise from zero but then start rising again beyond a 'small' threshold level of switching cost. The fact that DHR's results apply to small switching costs is also confirmed by comments made by other academics on the DHR (2009) paper and quoted below (Italics added).

"First, as Dube, Hitsch, and Rossi stress**,** *the results depend on the value of switching cost being small***.** In Cabral (2008), I show that for higher values of the switching cost equilibrium, prices increase in the value of switching cost and eventually become higher than they would if there were no switching costs**…** *The case of large switching costs is perhaps closer to the conventional wisdom regarding the anticompetitive effects of switching costs*."[292]

"The U-shaped relationship between switching costs and average prices [obtained in DHR 2009] has implications for how to interpret existing empirical work and how to design new tests on the ways switching costs affect competition. For example, Viard (2007) finds that allowing number portability (a reduced switching cost) in mobile telephony lowered prices. This result may appear to be superficially inconsistent with DHR's finding. However, when we recognize the U-shaped relationship, *the result can be consistent with DHR's result if the switching cost before number portability was in the high-switching-cost range*."[293]

A6.9 DHR analyse the market for orange juice and margarine. Their estimated switching costs are on the order of 15% of the average price for orange juice, and 19% of the average price for margarine which indeed constitute very small switching costs relative to those that consumers may experience in communications markets (see below for more details). They also perform a sensitivity analysis and argue that prices still decrease when switching costs raise from zero to a level up to 120% or even 180% of the price for some orange juice or margarine brands in their sample.[294]

A6.10 We consider these recent findings do not affect our view that unnecessary switching costs in the communications market are likely to dampen competition for a number of reasons.

A6.11 Firstly, even if we assume DHR's findings are robust to assumptions made in their model, switching costs which are 120% or even 180% the price of margarine or

[292] Cabral L., 2009, "Small Switching Costs Lead to Lower Prices", *Journal of Marketing Research*, Commentaries and Rejoinder to "Do Switching Costs Make Markets Less Competitive?" 46(4) page 451

[293] Shin J. and K. Sudhir, 2009, "Switching Costs and Market Competitiveness: Deconstructing the Relationship", *Journal of Marketing Research*, Commentaries and Rejoinder to "Do Switching Costs Make Markets Less Competitive?", 46(4) page 449

[294] According to their analysis, it is only when switching costs reach thrice their estimated value that some prices start to raise. Because the distribution of switching costs in their sample ranges from 15% to 60% the price of the product, scaling switching costs by 2 or 3 implies switching costs for some products on the order of up to 120% or 180% of the price of the product.

orange juice products are still likely to be significantly low compared to switching costs in the communications markets.[295]

A6.12 Secondly, it is likely that more research will be needed to determine how robust DHR's results are to model assumptions. For instance, Cabral (2009) argues that the competitive effects of switching costs critically depend on two aspects: that switching costs are small (this has already been discussed above) and that there is symmetry across firms.[296]

A6.13 The robustness of DHR's findings is questioned in another paper by Arie and Grieco (2011).[297] Following on DHR's paper, their paper "illustrates when the introduction of small switching costs may reduce prices and profits". Arie and Grieco's suggested intuition for why small switching costs may reduce prices and profits is that with small switching costs, firms reduce prices in order to compensate customers who switch (and incur switching costs). In contrast, they argue, when switching costs are not small, the price reductions that are required to compensate consumers who switch become too high, making it unprofitable for firms to offer these reductions (hence prices increase).

A6.14 However, as Arie and Grieco note, the compensating effect "provides a *short-run* incentive to lower price" (Italics added). They also emphasise, like Cabral (2009),

[295] For instance, one of the orange juice products which its price starts to raise again when switching costs are multiplied by 3 (Minute Maid) has an equilibrium price at that level of switching costs equal to $1.461. This implies that prices start to raise again before a threshold switching cost of $2.6 (i.e. 180% of $1.461) which is still low compared to switching costs in the communications market. For instance, Krafft and Salies (2006) estimate that the net switching costs in the French broadband market range from €337.92 to €430.09 which is nearly the value of the annual fees. This high level of switching costs includes transactional, contractual and some cognitive costs. (Krafft J., Salies E., 2006, "The cost of switching Internet providers in the French broadband industry, or why ADSL has diffused faster than other innovative technologies", *Document de Travail OFCE* No 2006-16). Shy (2002) estimates that switching costs in the Israeli mobile phone services market are about the price of an average phone (Shy, O., 2002, "A quick and easy method for estimating switching costs", *International Journal of Industrial Organization*, 20, pp. 71-87). Grzybowski (2008, page 127) presents evidence of "significant switching costs between mobile network operators" in the UK market and Grzybowski and Pereira (2007, page 12) present evidence that suggests "substantial switching costs" in the Portuguese mobile telephony market (Grzybowski, L., 2008, "Estimating switching costs in mobile telephony in the UK", *Journal of Industry, Competition and Trade*, vol. 8, pp. 113-132; Grzybowski, L. and P. Pereira, 2007, "Subscription choices and switching costs in mobile telephony", *NET Institute Working Paper* No. 07-12*)*

[296] In relation to the latter point, Cabral (2009) says the following. "The idea is that a small switching cost leads the "incumbent" firm (the firm to which the consumer is attached) to increase its price and the "challenger" firm (the firm to which no consumer is attached) to lower its price. In absolute value, these price variations are of the same size. Therefore, if each firm is expected to make a sale with approximately the same probability, it follows that average price remains approximately constant. *However, if the incumbent firm has a much higher probability of making the sale (e.g., because its product is better), the "harvesting" price changes no longer average to zero."* (Cabral 2009, page 451– Italics added)

[296] In relation to the latter point, Cabral (2009) says the following. "The idea is that a small switching cost leads the "incumbent" firm (the firm to which the consumer is attached) to increase its price and the "challenger" firm (the firm to which no consumer is attached) to lower its price. In absolute value, these price variations are of the same size. Therefore, if each firm is expected to make a sale with approximately the same probability, it follows that average price remains approximately constant. *However, if the incumbent firm has a much higher probability of making the sale (e.g., because its product is better), the "harvesting" price changes no longer average to zero."* (Cabral 2009, page 451– Italics added)

[297] Guy Arie and Paul L.E. Grieco, 2011, "Do firms compensate switching consumers?", Working paper Northwestern University

that the result that lower switching costs lead to lower prices is not robust to assumptions about the relative characteristics of the firms in the market.[298]

A6.15 Pearcy (2011)[299] also suggests that the findings in DHR are not robust to the number of firms in a market.

A6.16 Pearcy's intuition is that if few firms share the demand in a market, then each of them has (on average) a substantial customer base and it therefore pays off for a firm to 'harvest' its customers (i.e. to charge them high prices). In contrast, with a large number of firms sharing the demand, each firm's customer base is lower (on average) implying that it is less likely to be profitable for each of them to harvest their existing customers; in this case, firms instead 'invest' in acquiring customers by charging lower prices.

A6.17 Pearcy argues that his findings can therefore explain the difference between the findings of Viard (2007) that the lowering of switching costs in the telecoms market (through the introduction of number portability) leads to a decrease in prices and DHR (2009)'s result that an increase in switching costs in the margarine and orange juice market leads to a decrease in prices. Implicit in this statement is the suggestion that in the orange juice and margarine markets there are arguably a larger number of players sharing the demand more evenly than in the telecoms markets.

A6.18 Finally, Cabral (2009) argues that "the effect of switching costs on market competitiveness is largely an empirical question", a phrase which is also quoted by BT in its response to our consultation. An empirical scrutiny of the markets would most likely reveal that, among other things, switching costs in the margarine and orange juice markets are unlikely to be comparable to switching costs in communications markets. Fixed voice and broadband are purchased infrequently on a subscription basis. This is very different from the frequent purchase of fast-moving consumer goods such as margarine and orange juice, and suggests that switching costs would be higher. We also note that in the UK communications markets there are a few firms with significant market shares for whom 'harvesting' is likely be profitable, and that for a number of reasons, incumbents in these markets are more likely to retain a customer (especially under LPL regimes) than a smaller firm or an entrant would be to acquire that same customer, all else being equal.

A6.19 All these facts suggest that within these markets, the dampening effect of switching costs on competition is consistent even with the findings of the recent academic literature mentioned by stakeholders and discussed above.

[298] For instance, they note that "The effect of switching costs on firm conduct changes qualitatively if the firm has a strong market position to begin with… If one firm has a strong quality advantage over its rivals, the high-quality firm's marginal consumers will be mostly loyal and, thus, will not require compensation…As a result, in the low-switching-costs range, prices and profits will fall for the low-quality firms and rise for the high-quality firm. Therefore, switching costs may exacerbate the market power of a dominant firm."

[299] J. Pearcy, 2011, "Bargains Followed by Bargains: When Switching Costs Make Markets More Competitive", Working Paper Tulane University

Annex 7

Stakeholder comments on reactive save

A7.1 In this Annex we present Stakeholder views in relation to the analysis of reactive save activity conducted in the September Consultation. We also address specific issues raised by some of the Stakeholders, which have not already been covered in Section 5 above.

A7.2 We note that, because Stakeholders' submissions were made in 2010, any reference by Stakeholders to Ofcom research is in relation to 2010 or prior. Specifically, the 2011 research did not yet exist when Stakeholders made their submissions in 2010.

A7.3 The majority of stakeholders agreed with our analysis of reactive save activity and the negative effect it can have on competition.[300] BT, Sky, Virgin Media, O2, Everything Everywhere and Vodafone disagreed with our analysis. We first summarise the views of the respondents who agreed with our analysis, before responding to the arguments made by those who disagreed.

A7.4 Having reviewed these submissions, we explain in this Annex why we consider that they do not materially affect the views we expressed in the September 2010 consultation and in the present document.

Some stakeholders share our concerns on reactive save

A7.5 Talk Talk considers that the opportunity to save a customer who is contemplating leaving is ultimately the primary if not sole reason why any "incumbent" provider would be advocating the choice of an LPL process. Talk Talk argued that it is far cheaper for a provider to offer a retention deal to an existing customer than to acquire a new customer from another provider.

A7.6 Talk Talk argued that although the CAT judgment in the "CPS Save Activity" case[301] (see discussion in paragraph 5.29 above) refers to a GPL process (the NoT process), the reasoning as to why the losing provider holds a competitive advantage would clearly apply to the LPL process scenario we analyse. In Talk Talk's view, the central question in the appeal was whether the losing provider would be allowed to try and save a customer who had signalled their intention to leave.

A7.7 Talk Talk further said that arguments about customers' understanding of the implications of switching and the LPL being the only party that can provide that information "are but a smokescreen for the real reason for their desire for a LPL process is the opportunity to save customers and reduce churn."[302]

A7.8 [✂] referred to the differential rates of successful sales follow-through which were presented in the September 2010 consultation. These rates were much higher for

[300] ACN, Citizens Advice, Consumer Focus, Consumer Panel, FCS, Gemserv, H3G, ITSPA, SSE, Talk Talk, Tesco Telecoms, Telephony Services Limited, which? and [✂].
[301] British Telecommunications plc v Ofcom, [2004] CAT 23, para. 333.
[302] See Ofcom Strategic Review of Consumer Switching, Response by Talk Talk Group, page 5. Available at:
http://stakeholders.ofcom.org.uk/binaries/consultations/consumer-switching/responses/TalkTalk.pdf

the GPL switching process for their fixed line telephony offers compared with the LPL broadband switching process. [✂] also said that it is easier to monitor unwanted save activity under a GPL process than under an LPL process as the GP will be made aware of it under a GPL process. Under the GPL process the consumer needs to contact the GP to cancel the switch and the GP can therefore raise the issue with the regulator. However, the GP would not necessarily be made aware of save activity under an LPL process as consumers who experience save activity are unlikely to report it.

A7.9 A number of stakeholders (Tesco Telecoms, Consumer Focus and which?) all made a similar point that save activity should be proactive rather than part of a switching process. Tesco Telecoms argued that while they are generally supportive of proactive retention activity (i.e. providers should be able to reward customers for their loyalty to a provider), they feel that reactive save activity on customers that have already committed to switch to another provider can stifle competition and is not welcomed by many customers.

A7.10 Consumer Focus also submitted that while they feel that customers should still be able to have the option to negotiate with their supplier, they strongly feel that this process should not be an automatic part of the PAC/MAC issuing process. Which? argued that while individual consumers can benefit from save activity, it believes that the benefits from save activity would not necessarily be lost to consumers by switching to a GPL switching process because losing providers could still contact those customers reaching the end of their contracts to ask if they are happy and would like to renew.

A7.11 Consumer Focus argued that save activity which is an "automatic part of the PAC/MAC issuing process" benefits a minority of customers, and only those who are willing or able to engage in sometimes unpleasant negotiations with their provider for a cheaper deal. Consumer Focus also noted that the current culture of retention activity encourages providers to reserve their best offers only for those customers who threaten to leave. Consumer Focus said it agrees that while those customers may have a positive experience of retention activity in a LPL process it is unlikely to be in their best interests more broadly.

A7.12 Citizens Advice also argued that save activity is more likely in a LPL system, and that while an individual customer may find such activity useful in effectively entering into a process of bartering with their existing provider in order to get a better deal, it is concerned that large segments of the customer base who may be less able or less confident may be excluded from getting a better deal. Citizens Advice argued that enabling communications providers to segment the market in this way is likely to produce unwelcome results, both in terms of the deals offered to customers who are not looking to switch provider and in terms of efforts to encourage robust competition among existing and new communications providers.

Providers cannot use minimum contract periods as a substitute for reactive save

A7.13 [✂][303] argued that the subscription nature of telecom services implies that there is no difference between reactive save activity and save activity in general. [✂] argued that that allowing reactive save activity will not have a significant detrimental impact on competition because, at least for contract customers, LPs are already aware of when the contracts of their customers are up for renewal and the

[303] [✂]

knowledge that a customer is seeking a PAC or MAC is unlikely to give significantly more information to LPs about the timing of likely subscriber demand for upgrades or switching than is already known.

Our view

A7.14 We note that save activity can occur in many industries, including those where goods or services are sold on a subscription basis. As we have discussed in paragraphs 5.17 to 5.50, the LPL MAC process provides the LP with the opportunity to make a reactive save offer to every switching customer, *before* they have signed up to the new supplier. We believe that this opportunity for save activity as part of the formal switching process dampens competition and is different from that presented in subscription markets. In particular, we dispute that minimum contract periods provide the same opportunity for the LP to engage in reactive save activity as they would receive under the LPL MAC process.

A7.15 In order for save activity at the end of a MCP to be equivalent to reactive save activity during the formal switching process, the following conditions would need to be met:

- A substantial proportion of customers are under a MCP and consumers who arrive at the end of a MCP switch. This would allow operators to use the end of a MCP as a trigger for retaining customers who are likely to switch; and

- Consumers do not switch while being under a MCP (or only an insignificant minority does).

A7.16 If both conditions hold, then [✂] would be correct in that the request of a code would be "unlikely to give significantly more information to LPs about the timing of likely subscriber demand for upgrades or switching than is already known."[304] As we demonstrate below, neither of these conditions hold.

<u>The majority of fixed voice and broadband customers are currently not under a MCP</u>

A7.17 The majority of fixed voice and broadband customers are not under a MCP. Data obtained from CPs identified that at March 2011, 58% of fixed voice consumers and 54% of broadband consumers on average were not under a MCP. These consumers either have never had an MCP or did not enter into new contracts at the expiration of their MCP.

A7.18 These customers have the possibility to stop their service or switch at any time without being subject to ETCs. Providers cannot use the expiry of an MCP to identify which of these consumers are likely to switch. We are not able to distinguish between those customers who have never had an MCP and those whose MCP has expired. However, the fact that the majority of customers are not under a MCP, does imply that not all customers switch at the end of an MCP. It is simply obvious that nearing the end of a MCP is significantly less likely to be the expression of an intention to switch than requesting a code under a LPL process. Whereas reactive save activity under an LPL process identifies accurately all customers who intend to switch, the expiry of an MCP is at best one among a number of indicators of which customers may switch.

[304] [✂]

Many customers switch while being under a MCP

A7.19 [✂] argument requires that customers switch at the point where their MCP expires. However, in reality a high proportion of customers who switch provider do so during the MCP. In the second half of the financial year 2010-11, about 55% of fixed voice switchers and 52% of broadband switchers actually switched while being under a MCP.[305]

A7.20 In summary, the combination of the high percentage of customers who are not under a MCP, the high percentage of customers who switch while being under a MCP and the fact that customers who near the end of their MCP do not necessarily intend to switch demonstrates that save activity to customers who are near the end of the MCP is not equivalent to reactive save activity.

Reactive save activity is an effective retention tool

A7.21 BT and Sky question the effectiveness of save activity in retaining customers.

A7.22 BT[306] submitted that "[Ofcom] assumes that save activity is risk-free, costless and fully effective at retaining customers that are planning to switch". BT added "Ofcom's own consumer research data shows that save activity is, actually, quite a blunt and ineffective customer-retention tool. For example, in 2010, the percentage of switching customers that listened to save offers when in contact with the losing provider ranged from only 9% for fixed-line to 31% for Pay TV.[307] Similarly, the percentage of customers that considered switching but decided not to because they accepted save offers was just 10% in fixed line, 11% for broadband and 14% in the mobile sector.[308]" BT claims this demonstrates that the incentive to set high prices is currently low.

A7.23 Sky[309] also makes a similar argument, citing results from our consumer research that "only 30% of MAC/PAC broadband and mobile customers listened to a save offer from their provider." It said that if the majority of customers do not listen to save offers, then the use of save offers is likely to be ineffective in retaining these customers. Sky also argues that non-price reasons (e.g. wanting to buy a bundle, dissatisfaction with service/provider), which are key reasons for switching broadband and mobile customers, also render save activity unreliable as a lock-in mechanism.

Our view

A7.24 BT and Sky's arguments fail to consider four key issues. Firstly, both make a general statement about save activity when, in fact, there are significant differences in the nature and effectiveness of save activity depending e.g. on the switching process and the timing of the save activity i.e. whether it happens as part of the formal switching process and before or after the consumer has signed up to the potential GP. We do not dispute that retention activity outside of the formal

[305] Source: Ofcom, based on data received from CPs in 2011 through our information gathering powers. Note that customers who switch whilst under an MCP do not necessarily pay ETCs. Many providers exonerate customers from paying ETCs. Our 2011 consumer research found that just 14% of switchers paid ETCs.
[306] BT Response to Ofcom's consultation document, Annex 4, response to question 9.
[307] Ofcom Strategic review of consumer switching, paragraph 4.96
[308] Ofcom Strategic review of consumer switching, paragraph 4.97, footnote 61
[309] Plum report, Sections 2.3 and 2.4

switching process may be largely ineffective at targeting only those consumers likely to switch. We have argued above that outside of the formal switching process, the identification of genuine switchers is imperfect. We would however disagree that reactive save activity (i.e. as part of information received during the formal switching process and particularly, before customers have signed up to the prospective GP), is an ineffective retention tool.

A7.25 Secondly, the statistics presented by BT for customers who listened to save offers relate only to those consumers that actually switched. This excludes consumers who are successfully saved and so is not a useful basis on which to judge the effectiveness of the various types of save activity. When assessing the effectiveness of save activity, the most relevant category of consumers are not those that actually switched (the 'switchers') but all those who considered switching ('the 'considerers' and 'switchers' combined). This is because the 'switchers' category excludes those consumers who have considered switching but have actually been successfully retained by the LP. These consumers would be included in the 'considerers' category. While BT also provides some figures in relation to the considerers, these are aggregated across processes, obscuring a true comparison.

A7.26 The following example illustrates the importance of including the considerers in assessing the effectiveness of save activity. Suppose that 100 customers asked for a MAC and 95 of these were successfully saved. A survey of the five switchers then reveals that none of them listened to a save offer. Under BT's logic we would conclude that save activity is ineffective since 0% of switchers listened to a save offer. The reality however would be that save activity was extremely effective as all those who listened to a save offer were saved, amounting to 95% of intended switchers. The 95% percentage is the key figure to assessing the effectiveness of reactive save activity in this example.

A7.27 Thirdly, the fact that many customers do not receive a save offer may reflect an adverse selection problem rather than the ineffectiveness of save activity. An adverse selection problem may be created by the fact that providers are a) systematically alerted to those customers looking to switch; and b) know the 'commercial' value of their customers for those services. A significant proportion of consumers who do switch under LPL may be low value consumers who are 'let go' by their providers. These customers may not be made attractive retention offers or any offer at all. However, reactive save activity could still be highly effective for those consumers who the LP wishes to retain.

A7.28 Fourthly, the opportunity for save activity differs depending on which switching process the consumer is following. As reactive save activity is not permitted under the GPL process, statistics which look at the overall impact on the market may simply reflect the prevalence of the GPL process.

A7.29 In order to assess the impact of reactive save activity under the LPL process, one should look at the percentage of consumers who initiated switching under a LPL process but were successfully saved by their provider. Our consumer research 2010 and 2011 did not allow us to have such a level of granularity. In particular, the research did not enable us to have the percentage of considerers who were successfully saved (disaggregated by switching process) mainly because of methodological challenges.[310] We tried to obtain this information by means of an

[310] Given the multiplicity of processes and the confusion about which process to follow, it would have been difficult to have the figures across processes because considerers have not been through the entire process and may therefore not be in a position to identify precisely which process they initiated.

information request that we sent to providers in April 2010 in which we asked providers to supply us with both the number of customers who contacted them to request a MAC code, and the number of MAC codes that were effectively issued and used. No CP was able to provide the first type of information on the basis that they do not record it. Only the number of MACs issued was provided.

A7.30 Although we were unable to obtain the ideal information for this analysis, we note that our consumer research is consistent with reactive save activity being effective under the LPL process. We note that consumers who accepted a save offer were disproportionately likely not to have signed up to a GP when they accepted the save offer, consumers were more likely to have listened to a save offer under the LPL process and that a substantial proportion of those who listened to a save offer accepted it. Together this information suggests that reactive save activity under the LPL process is effective.

A7.31 Our broadband consumer research 2011 examined at what point in the process considerers were saved by their LP. As noted at 5.45, this research shows that the vast majority of consumers who were successfully 'saved' had not signed up to the new provider. Of those considerers that were successfully saved, just five per cent had signed up with the new provider and then needed to cancel this agreement. 45% had not contacted the potential GP so definitely not signed up; 37% had contacted the GP and had agreed to switch but had not formally signed up; 10% had contacted the GP but were unsure as to whether they had signed up with the rest answering 'do not know'. This is consistent with 'save' activity being more effective under the LPL MAC process.

A7.32 Survey evidence also shows that broadband consumers who switched under the LPL MAC process were significantly more likely to have listened to an offer than those who switched using the GPL NoT process. Evidence from the broadband consumer research 2011 set out at paragraphs 5.40 to 5.42 shows that those switchers who followed the LPL MAC process were more likely to receive a save offer than switchers who used the GPL process. Our consumer research 2010 found that in relation to considerers, of those who were in contact with the LP about their intention to switch, around half experienced save activity and around four in five of these accepted the save offer and one in five said they felt put under pressure to stay (see paragraph 4.97 of our consultation document which BT refers to).[311]

A7.33 These figures are substantial and suggest that reactive save activity under the current LPL migration processes is far from being "a blunt and ineffective customer-retention tool". Furthermore, if we were to harmonise the switching processes for fixed telephony and for broadband to LPL, it is likely this would imply very high retention rates by LPs.

A7.34 We also note that BT's position contrasts with other statements it has made. BT argued in response to the September 2010 consultation that not including cable under a harmonised GPL process would create an uneven level playing field because C&R enables more effective save activity than GPL processes.

[311] Note that the 2011 consumer research did not address the acceptance rate of save offers nor whether consumers felt under pressure to stay. The percentage who experienced save activity for the LPL and GPL processes is addressed in Section 5 as referenced earlier in this paragraph.

The overall competitiveness of the UK communications sector does not allow one to draw conclusions about the impact of reactive save activity

A7.35 BT, Everything Everywhere, KCOM, Sky, and Virgin Media argue that Ofcom's claim that reactive save activity dampens competition is not supported by the reality of the UK communications market.

A7.36 BT[312] submitted that our emphasis on competitive outcomes is not relevant given that the UK communications markets are "fully competitive at the retail level and increasingly competitive at the wholesale level" and "are among the top performers in the world on a range of measures." BT[313] also argued that our analysis "is fundamentally flawed" as "it relies on the ability to isolate and measure the impact of a particular switching process on the degree of competition in the market and the set of outcomes that would result". BT added that we have failed to measure how material the alleged competitive benefits of GPL are.

A7.37 Everything Everywhere[314] argued that Ofcom does not attempt to connect its theoretical consideration with reality when it seems to be saying that the broadband and pay monthly mobile markets are less competitive than they could be because of reactive save activity being permitted as part of the switching process.

A7.38 Virgin Media[315] argued that Ofcom does not cross-check its conclusions from the economic literature with what is happening in the marketplace. In particular, Virgin Media said that there is no examination of market performance (entry, overall level of competition in the UK) and no benchmarking of prices in the UK against prices in other countries including countries which only have a GPL process, but that there is strong evidence that the UK markets are extremely competitive and that prices are competitive when compared internationally.

A7.39 Sky[316] said that Ofcom's statements regarding the alleged effects of reactive save activity under LPL processes are at odds with the evidence in the market. Sky argues that against Ofcom's negative prediction, the UK broadband market has grown hugely, reduced the incumbent's market share to one of the lowest in Europe, attracted significant new entrants such as Sky and Talk Talk Group, supported increased investments, witnessed aggressive marketing targeting specific competitors by name and encouraged consumers to exercise their prerogatives. Sky also said that, in its analysis of the competitive impacts of LPL, Ofcom should have taken into account the fact that many broadband consumers do not switch through a LPL process. [317]

A7.40 KCOM[318] said they are concerned about our conclusion that save activity under LPL is likely to weaken competition and reduce the benefits from competition overall. KCOM argued that there is no evidence this has been the impact in the broadband market and that clear evidence of the negative impacts of reactive save activity on

[312] Paragraph 1.3, third bullet point (see also Annex 4, overview and response to question 9)
[313] See the "overview" in Annex 4. (see also Annex 4, overview and response to question 9)
[314] Section 8, response to question 10
[315] Section 9, heading "Ofcom does not check…"
[316] Paragraphs 5.13-5.15
[317] Paragraph 5.17 and Plum report, section 2.2
[318] Response to question 9

competition should be demonstrated before Ofcom reaches any conclusions on whether save activity should be allowable."

Our view

A7.41 The legal framework for intervention in this area is explained in section 2. In considering switching processes Ofcom must consider the potential for those processes to impede switching by consumers – preventing them from taking full advantage of competition. More generally Ofcom has duties to promote competition in the interests of consumers. It is therefore necessary to consider how the switching process might impede competition in the affected markets.

Extent to which switching processes may impede competition

A7.42 Market competitiveness is not a binary variable i.e. it is not that markets are either competitive or they are not; it is a continuum. A market can be considered competitive at a given time, yet become more competitive at a later time. A set of markets can be considered competitive, yet there could be wide agreement that some markets within that set are more competitive than others. The issue is not whether the retail communications markets that we consider are competitive or not. The key issue in this context is the extent to which switching processes may impede competition.

A7.43 It is very difficult to measure the impact of switching processes in isolation from everything else going on in competitive and dynamic markets. This is a common issue when undertaking empirical work in complex markets where many factors affect the outcomes that we observe.

A7.44 We have dealt with these by identifying what we considered to be the key characteristics of switching processes and by assessing how they impact consumers and competition. We have compared these characteristics across the various switching processes to try to isolate the impact by switching process. Our analysis in sections 4 and 5 takes into account a number of findings in relation to how these characteristics compare across processes. Our option assessment (see section 7) seeks to identify more precisely and quantify where possible the costs and benefits of various switching processes.

The multiplicity of switching processes in the UK weakens the negative impact of reactive save activity on competition

A7.45 In the broadband market, there is currently a mix of switching processes (LPL, GPL, and C&R) which co-exist with each other. This implies that we cannot make simple inferences from some of the current market outcomes in relation to the impact on competition of the LPL switching process and reactive save activity. The fact that many consumers switch their broadband services through the GPL NoT process could mitigate the concerns around reactive save activity as it means that providers cannot exclusively rely on the MAC process and reactive save to retain customers. This mix of processes can lead to market outcomes that are likely to be different from those we described as resulting from harmonised LPL processes in Section 5.[319]

[319] Note that although the multiplicity of processes may mitigate the negative impact on competition of the LPL process, it results in an uneven playing field for CPs as discussed in Section 5.

A7.46 There are two issues to consider in relation to Sky's argument that many broadband customers do not switch through a LPL process. Firstly, in our analysis of the competitive impact of individual switching processes, we compared harmonised processes. We recognise that is not the current situation. However, the analysis is relevant given that that most stakeholders agree and support a harmonised switching process. We have used the analysis of the impact of the LPL MAC process to reach conclusions about the impact of a harmonised LPL system on competition.

A7.47 Secondly, our analysis of the competitive impact of individual switching processes in the September 2010 consultation assumed harmonised processes. That is, we used the analysis of the effect of the LPL MAC process to inform the likely impact which a harmonised LPL system might have on competition. The low proportion (14%) of consumers switching through the MAC process is not informative of the magnitude of the impact of this process on competition.[320]

A7.48 Our consumer research 2010 had found that 'only' 14% of broadband switchers had switched using the LPL MAC process. [321] It would however be incorrect to conclude that because this percentage is low relative to those who switched using the GPL NoT process or the C&R process, that the competitive impact of reactive save activity under LPL is not material. This relatively low percentage may, paradoxically, be part of the LPL problem. In other words, the low percentage of LPL switchers may be explained by the effectiveness of the LPL MAC process in retaining customers. If retention rates are higher under an LPL process, then the percentage of consumers who initiated a switch under the LPL MAC process may be materially higher.

A7.49 Therefore, even if our analysis did not rely on a comparison of harmonised processes, it would be incorrect to rely only on the percentage of consumers who ultimately switched under the MAC process in order to assess the materiality of the impact on competition of the LPL MAC process. The percentage of consumers who initiated a switch under the MAC process is likely to be materially higher. (See the discussion under the heading "Save activity is an ineffective retention tool", paragraphs A7.21 to A7.34).

A7.50 We recognise that the low percentage of consumers switching through LPL may not be solely attributable to the effectiveness of reactive save activity. Market developments may also explain this low percentage, e.g. it may be that a significant proportion of consumers are switching to bundles of double or triple-play in switches that involve MPF or cable providers (for which the processes would be NoT or C&R processes). Nonetheless, when assessing the impact of switching processes on competition, it is not correct to focus on the percentage of consumers who have completed a switched under each process as some processes may mean that many fewer consumers complete a switch than others.

We do not actually know whether or how much the mix of switching processes mitigates the impact of reactive save activity

[320] Consumer research 2010 page 18

[321] Note that the 2011 consumer research surveyed a higher proportion of MAC users (36% of those who switched). This proportion was much higher than the 14% in the 2010 survey. The 2010 proportions were also more consistent with Openreach data. We have therefore used the 2010 proportions. The results of the 2011 survey on switching have been weighted in line with the 2010 proportions. See Consumer research 2010 page 18

A7.51 In order to assess how much the mix of switching processes mitigates the impact of reactive save activity, we would need to empirically compare the current market outcomes with the counterfactual of a harmonised LPL process. This is not something we can observe. Furthermore, even under the current mix of switching processes, we do not agree that competition is sufficiently effective as some markets (e.g. broadband) approach maturity to the extent that no intervention is required as BT, Everything Everywhere, KCOM, Sky and Virgin Media claim. In paragraphs 5.23 to 5.26 we have presented evidence which is consistent with reactive save activity dampening competition.

The literature on price guarantees does provide a sound basis for conclusions regarding save activity

A7.52 Sky, Virgin Media and [✂] argue that reactive save activity differs from a price guarantee.

A7.53 Sky[322] points to a number of alleged differences between reactive save activity and the form of price guarantee which we considered most closely matches reactive save activity ('meet-or-release' guarantee[323]). Sky argued it is important that Ofcom takes proper account of differences between meet-or-release guarantees and reactive save activity "given the evidence in the literature that small differences in the nature of price guarantees can have a significant impact on their implications for consumer welfare". In particular, Sky argues that i) unlike meet-or-release guarantees, reactive save activity is not a contractual arrangement; ii) whilst the existence and nature of some save offers may be observable to competitors, the policies underlying reactive save activity are not transparent unlike meet-and release guarantees which are advertised; and iii) a meet-or release guarantee is an explicit commitment to match a rival's price, unlike reactive save activity. Sky[324] concludes that the economic literature on price guarantee does not provide a sound basis for conclusions regarding reactive save activity.

A7.54 Virgin Media[325] and [✂][326] also argued that a save offer is not always made and that even if it is made, it will not always match the best offer. Virgin Media cites Ofcom's research that 82% of those who had listened to a save offer for fixed lines said the offer was worse than the best offer the customer had found. [✂] also makes a similar point.

Our view

A7.55 We continue to find that the economic literature on price guarantees provides a basis for conclusions regarding reactive save activity. We do not consider that this conclusion is affected by Sky, Virgin Media and [✂] arguments.

A7.56 We said in the September 2010 consultation (at paragraph 5.51) that the economic literature does not specifically address the issue of reactive save activity in a LPL environment but that some elements of reactive save activity bear strong similarities with price discrimination and price guarantees.

[322] Plum report, Section 3.1
[323] A 'meet-or-release' guarantee is where the firm promises either to match the better terms offered by a rival or to release the customer so that they can take up the better offer without penalties.
[324] Paragraph 5.18
[325] See the last two paragraphs at page 19 of its submission.
[326] [✂]

A7.57 Because reactive save activity involves some price discrimination between customers who are looking to switch and customers who are not, we have reviewed the literature on price discrimination in competitive environments. We came to the view that, on its own, this strand of the literature had limited applicability to reactive save activity and therefore we have not drawn conclusions from this literature in relation to reactive save activity.

A7.58 We considered this was not the case in relation to the literature on low price guarantees (LPG) which we found to be relevant to our analysis.[327] Specifically, we considered that a key element of reactive save activity was the fact that the LP had a systematic opportunity to match or beat any alternative offer that a customer was switching to before the customer's service is transferred to the GP. We said that reactive save activity under LPL does not amount to a classic price guarantee because there is not a promise by the current firm to match any new offer (see paragraph 5.67 of the September 2010 consultation). We considered however that there are a number of similarities with 'across-firms'[328] price guarantees and that, because telecommunications services are often supplied on a contractual basis, reactive save activity under LPL is closest to the meet-or-release guarantee. We therefore concluded that the economic literature is consistent with the view that LPL processes can impede competition.

Reactive save activity is similar to a price guarantee

A7.59 We disagree with Sky's arguments that there are significant differences between reactive save activity and price guarantees. A closer look at the main characteristics of both concepts reveals they are similar.

A7.60 Real-life markets often differ from theoretical economic models. However, such models can still provide useful insights into how specific features can affect real-life markets. We considered that the insights from the literature on price guarantees, combined with the specific features of the communications markets allowed us to draw conclusions in relation to the impact of reactive save activity on competition.

A7.61 We also dispute that differences in legal structure mean that reactive save activity has a different economic effect from LPGs. Reactive save activity may not a contractual arrangement in the sense that there is no legal requirement for an offer, however if it is widespread among providers, then the economic effects will be similar. Specifically:

- A consumer cannot switch without automatically triggering the opportunity for reactive save activity. The provider can always choose to make an offer at the point where the consumer has not yet completed the switch;

[327] We commissioned a short review of the literature on price guarantees to Prof. Morten Hviid who has written a number of academic papers on price guarantees. This review considered the key aspects of the so-called "low price guarantees" and in particular the various circumstances under which price guarantees may stifle competition or be pro-competitive. This review is available at http://www.uea.ac.uk/polopoly_fs/1.170059!Summary%20of%20LPG%20literature%20Final.pdf. We also commissioned Professor Hviid to provide an assessment of the MAC and PAC processes. This assessment is published with the current consultation at http://stakeholders.ofcom.org.uk/binaries/consultations/switching-fixed-voice-broadband/annexes/paper.pdf.

[328] This is where a guarantee depends on prices offered by other firms, as opposed to, e.g., 'across-customers' price guarantees (i.e. where the guarantee depends on prices offered to other customers of the same firm).

- This is common knowledge among all providers;
- Data from providers (although limited) show substantial discounts being offered.

A7.62 As long as a significant proportion of consumers who request a MAC are made save offers (which is the case[329]), reactive save activity is likely to have the same effects of a price guarantee and the intuitions from that literature apply. Therefore, arguments such as 'save offers will not always be made'[330] do not imply that the basic intuitions from the price guarantee literature cannot apply to reactive save activity.

A7.63 In relation to Virgin Media's point regarding 'matching' or 'beating' the best alternative offer, Virgin Media's reference to fixed lines consumers being made worse 'retention' offers is consistent with the fact that GPL regimes are more competitive than LPL regimes (switching fixed lines follows a GPL processes). We have argued that we expect competition to be more intense under GPL than under LPL and therefore headline prices to be lower under GPL.

A7.64 In the September 2010 consultation document we also stated (at paragraph 5.69) that where switching costs exist, an incumbent supplier need not necessarily have to exactly match the competing offer to thwart switching. As the customer will not incur the switching cost if they remain with the incumbent, the correct comparison is not between the retention offer and the alternative offer, but between the retention offer net of any switching cost and the alternative offer. This implies that a retention offer which is 'worse' than the customer's best alternative may still match or beat the alternative offer once switching costs have been deducted. Therefore, 'worse' retention offers could simply be evidence of a market that is either already competitive or has positive switching costs.

Reactive save activity has less ambiguous effects than price guarantees

A7.65 In order to address criticisms that the literature on price guarantees does not apply to reactive activity, we consulted an expert on price guarantees, Prof. Morten Hviid[331]. Professor Hviid provided an analysis of the impact of reactive save activity

[329] The broadband consumer research 2011 finds that 53% of those who switched under a MAC process reported that their existing provider tried to make them a save offer. About 60% of customers who switched under the LPL MAC process were subject to retention offers (these customers either listened to a retention offer or the firm wanted to make them an offer but they were not interested to listen to it). In addition, the research found that two-thirds of those who initiated the switching process, but then stayed with their current provider did so because of a successful save offer. We also note that even where LPGs apply, many customers do not invoke them.

[330] In fact, the argument that a save offer is not always made shows that providers strategically target their offers as we argued in the September 2010 consultation document (at paragraph 5.74). This was also confirmed by H3G which argued that "LPs are well informed of the consumer value and therefore are in a good position to "cherry pick" high value customers and "let go" of low value customers." H3G also argued that "[it] is hampered in its aim of seeking to provide market leading deals to all customers because some of the best offers are "hidden", in that they are only available on retention." We argued (at paragraph 5.74) of the September 2010 consultation document that this was likely to lead to an 'adverse selection' problem whereas providers anticipate that switchers are likely to be low value customers who are 'let go' by their providers which has the effect of reducing even further their incentive to compete for each other's customers.

[331] Professor Hviid is a Professor in Competition Law at the School of Law, University of East Anglia and a Member of the ESRC Centre for Competition Policy. He is a former editor of Journal of Industrial Economics and a former associate editor of the International Journal of Industrial Organization. See Centre for Competition Policy http://www.uea.ac.uk/~n052/ at the University of East Anglia (http://www.uea.ac.uk/law/Staff/All+People/Academic/mhviid). Correct as at 7/2/12.

under LPL (i.e. as part of the formal switching process) as it currently happens in the UK communications markets. [332]

A7.66 Prof. Hviid's view was that reactive save activity under the LPL MAC process may have a similar effect to a 'meet or release' low price guarantee' (LPG). The conclusion of his analysis was that reactive save activity is likely to dampen competition.

A7.67 More specifically, Prof. Hviid argued that "while the positive effects on consumers from the switching rules [reactive save activity under MAC or PAC] appear speculative and hard to measure, the negative effects are much more obvious". The "negative effects" that Prof. Hviid's referred to are the weakening of providers' incentives to compete for each other's customers and the potential for entry deterrence. Prof. Hviid expressed particular concern about the risk of adverse selection. He noted that

> "The current supplier will have access to the full usage history of the consumer and hence is able to assess the benefits of offering to match rather than simply to release. The implication of this is that the firm offering the new deal gets an adverse selection of the consumers...
>
> Entry deterrence could be a serious issue due to the adverse selection effect identified above. While an existing supplier might be able to cope with new consumers being relatively more costly to supply through using their current consumers to cross subsidise new consumers, an entrant clearly could not."[333]

A7.68 In relation to potential pro-competitive effects, he argued that reactive save activity under LPL does not have the key aspects that may mitigate the negative effects of price guarantees or make them pro-competitive.

A7.69 Firstly, Prof Hviid argued, a criticism of the alleged anti-competitive effects of LPGs and a key mitigating factor of their negative effects is that few customers tend to invoke a guarantee. In other words, because of e.g. hassle costs, consumers may simply switch rather than purchase at the higher price and ask for a refund. This implies that a firm which undercuts a rival may attract the rival's customers despite the rival offering a price guarantee. Under the PAC or MAC regime however, Prof Hviid argued, customers cannot switch without (implicitly) activating the 'guarantee': the request for a code systematically alerts the provider and triggers reactive save activity for a substantial proportion of switching attempts.

A7.70 Secondly, Prof Hviid argued, the most likely pro-competitive function of LPGs is that they can be used to credibly signal low prices to consumers, which is beneficial to them because they make more informed decisions. However, Prof Hviid noted that this function is not relevant to the LPL switching process as reactive save activity is not publicised to customers by providers and so this argument does not apply.

A7.71 The other potentially pro-competitive function of LPGs relates to price discrimination. Prof. Hviid's analysis argued that the LPL process would clearly lead

[332] Prof. Hviid's analysis is available at http://stakeholders.ofcom.org.uk/binaries/consultations/switching-fixed-voice-broadband/annexes/paper.pdf.

[333] Professor Morten Hviid, "Applicability of the literature on price guarantees to the PAC and MAC processes.", July 2010.

to price discrimination but that the key issue was whether this is welfare enhancing or welfare decreasing. He argued that for reactive save activity the pro-competitive benefits from price discrimination appear speculative and hard to measure, whereas the negative impacts were much more obvious.

Views on reactive save activity from stakeholders outside the present project

A7.72 We have also considered the approach to reactive save activity taken by other NRAs. We note that there is no consistent approach across regulators.[334] Although the French communication regulator has acted to stop reactive save activity in the context of mobile number portability, the Canadian Radio-Television and Telecommunications Commission (CRTC) has recently reversed a previous prohibition on reactive save activity under a GPL process. We provide a summary of both these approaches below.

ARCEP views[335] on save activity

A7.73 In France, the switching process currently in place for switching mobile telephony with number portability is, in its current form, a LPL process. Customers looking to switch their mobile telephony services with number portability need to request a Relevé d'Identité Operateur (RIO) from their existing provider, which they have to hand over to the GP. However, a key difference with the LPL processes in place in the UK is that the code request is automated. Customers can request the RIO necessary to port their number by calling a voice server from their mobile phone. The voice server provides both the RIO and the contractual liabilities, both of which are subsequently confirmed in a text message sent to the customer.

A7.74 Prior to 1 January 2007, the process in place for switching mobile telephony with number portability was not however automated and, in fact, was similar to the existing MAC and PAC processes in the UK.[336] Customers then had to contact directly their provider by phone (i.e. there was no voice server at that time) to cancel their service and obtain a porting authorisation ("bon de portage") which they would have to hand to the gaining provider in order to switch. This contact with the provider implied a direct interaction between the customer and the provider.

A7.75 The process was changed on 1 January 2007 mainly in order to simplify and render faster the porting process for consumers "without implicitly strengthening the operators' mechanisms for retaining customers."[337] More specifically, ARCEP stated (Italics from ARCEP):[338]

> "Generally, the Authority reminds that, in line with article D.99 of the CPCE, '*operators which hold information relative to negotiations or implementation of an*

[334] Details of whether NRAs used a GPL or LPL switching process were presented in the September 2010 consultation, page 38.
[335] This section is based on our interpretation of both the switching processes in place in the French Telecommunications and Broadcasting sector and ARCEP's views on some aspects of the switching process. Our interpretation is based solely on our reading of the "*Décision no 06-0381 de l'Autorité de régulation des communications électroniques et des postes en date du 30 mars 2006 précisant les modalités d'application de la portabilité des numéros mobiles en métropole*".
[336] The PAC process is used by consumers switching mobile operators who wish to port their number to the GP. Such consumers need to obtain a PAC code from the LP to give to the GP.
[337] «Décision no 06-0381 de l'Autorité de régulation des communications électroniques et des postes en date du 30 mars 2006 précisant les modalités d'application de la portabilité des numéros mobiles en métropole», see page 2.
[338] Ibid, page 12

access or interconnection agreement can only use that information for the purpose explicitly stipulated at the time the information was communicated. In particular, such information cannot be communicated to other departments, subsidiaries or partners for which they could constitute a competitive advantage....Information relative to a request for number portability by a customer, and therefore to a request for terminating her/his contract should not provide the losing provider with a competitive advantage in the retail market, in particular with respect to the gaining provider."

A7.76 Among the reasons expressed by ARCEP to justify this change is that reactive save activity provides the LP with a competitive advantage relative to the GP. The voice server was put in place to ensure that LPs do not engage in reactive save activity. As ARCEP said, "the aim of the voice server providing the information is not to be used as a commercial instrument, for example the identification of a customer who is considering leaving its provider, which would be an abuse of the objective of this functionality."[339]

Canadian Radio-Television and Telecommunications Commission (CRTC) 'views' on save activity

A7.77 In contrast to the situation in France, the Canadian communications regulator has recently reversed a previous prohibition on reactive save activity under a GPL process. In Canada, the switching regime in the Telecommunications and Broadcasting sector provides customers with the choice to go either through a GPL or a LPL route.[340]

A7.78 Until 19 August 2011, save activity was not allowed as part of the formal switching process when the consumer goes the GPL route. The reason for this prohibition was "to isolate the customer/competitor information [received from GPs acting on behalf of consumers] from the sales and marketing/function...*thus avoiding an unfair and ultimately anti-competitive advantage for incumbents*" (Italics added). In particular, "the reason for this practice is to prevent those groups [sales and marketing] from using such sensitive information to reacquire a customer who is lost to a competitor, while the transfer of facilities and/or services for that customer is taking place."

A7.79 The Commission issued a decision[341] on 19 August 2011 which allowed save activity as part of the formal switching process under a GPL process. The Commission's decision was justified on the basis that end-users were not treated in a symmetrical manner with respect to receiving improved service offers. This was because customers are free to go either the GPL route or the LPL route with providers being allowed to engage in save activity under the latter process. The Commission said that "regardless of whether they receive broadcasting or telecommunications services and regardless of how their service is cancelled, end-users should have as much information as possible, when choosing their service provider" and "considers that an important component of such information includes improved service offers from their existing service provider, which the end-user has decided to replace."[342]

[339] Ibid
[340] http://www.crtc.gc.ca/eng/archive/2011/2011-191.pdf and http://www.crtc.gc.ca/eng/archive/2011/2011-192.pdf
[341] Broadcasting and Telecom Regulatory Policy CRTC 2011-512, available at http://www.crtc.gc.ca/eng/archive/2011/2011-512.htm
[342] Ibid, paragraph 21

Annex 8

Supporting calculations

A8.1 In this Annex we provide additional detail on the calculations used to attempt to quantify the consumer and CP costs arising as a result of the problems identified in section 4. We provide further details on how the benefits in Figure 38 are calculated including an indication of the extent to which each of the shortlisted options 2b-d and 3a-b (i.e. GPL TxC, USN, TPV, LPL TxC and LPL ALT) could mitigate the problems identified in section 4 (or result in additional costs).

A8.2 The estimates of the additional or avoided costs under each option are provided for illustrative purposes based on the information available to us and should be treated as indicative only.

A8.3 It is important to note that a number of the costs associated with the problems are more difficult to quantify. For example, we are concerned that reactive save activity dampens competition, resulting in poor outcomes for consumers. We believe that the unquantifed costs/benefits can be significant as discussed in paragraphs 7.130 to 7.131 and 7.164 to 7.167. When reviewing this section it is important to bear in mind that our assessment of the different options is based on a number of factors, some of which can be quantified and others that cannot. The assessment is complex and undue weight should not be placed on individual factors simply because they can be more easily quantified.

A8.4 The figure below shows the areas where we have tried to quantify the costs and benefits associated with improving the consumer switching processes (listed under the problem they relate to):

Figure 42: Areas where we have tried to quantify costs and benefits

Problem	Potential benefit/cost
Consumer consent	We have estimated the reduction/increase in consumer and CP costs due to: • Lower/higher levels of slamming; and • No longer needing the Cancel Other process.
Back end system deficiencies	• We have estimated the reduction in consumer and CP costs due to avoiding current ETs.
Implications of switching	• We have estimated the reduction in consumer costs due to better information about ETCs.
Varying and unnecessary switching costs/hassle	• We have estimated the increase/decrease in cost to consumers where the average time spent on the switching process is greater/less than needed for the current processes. • We have estimated the savings for consumers and CPs through avoiding abuse of the Cancel Other process.

A8.5 We discuss each of the above in turn.

Consumer consent

Consumer costs due to slamming

A8.6 Our slamming research 2011 found that approximately 2.5%[343] of households had experienced a fixed voice and/or broadband slam in the last 12 months. This corresponds to 650,000 households experiencing a slam in the last year.[344]

A8.7 Our slamming research 2011 also tried to uncover whether slamming was 'deliberate' or due to ETs.[345] To consumers no contact slams and ETs appear the same – in both cases the consumer is switched to a new provider without any prior contact with that provider. However, ETs are not actually deliberate slams but rather take place as a result of process-based problems relating to the back end switching processes. They largely relate to problems with the homemovers process which are caused by an over reliance on address-matching tools to identify the correct assets to take over where a CLI is not available, as discussed in paragraph 4.62 above.

A8.8 The slamming research 2011 suggested that around 16%[346] of slams were actually ETs. Due to the small sample size for this question we have also looked at an analysis of slamming complaints received by the CCT[347] from November 2010 to October 2011. Around a quarter of slamming complaints received by the CCT during this period appear to relate to ETs as opposed to slams. Using both of these pieces of information we estimate that around 20% of slams were actually ETs.

A8.9 We have reduced the figure for households experiencing slamming by 20% to reflect only deliberate slams (i.e. exclude ETs). Using this adjustment, we estimate that 520,000 households experienced a deliberate slam in the last 12 months. The harm generated by ETs is discussed under the 'back end system deficiencies' heading below.

A8.10 In the slamming research we asked consumers who experienced fixed voice and/or broadband slamming how much financial loss they suffered e.g. paying ETCs. 72% reported no financial loss, 17% reported some loss and 11% were unsure/could not remember.[348] The financial loss ranged from £0-70, with an average of £6.[349]

A8.11 Because we only have indicative information on the financial loss due to slamming, we consider it appropriate to present the aggregate harm due to slamming as a range. Following the approach used for the 2009 consultation on fixed line mis-

[343] Slamming research 2011 Q1a page 3
[344] Number of UK households (26m) x % slammed per year (2.5%). Source for UK households data is Office for National Statistics (Social Trends Report page 2) and Northern Ireland Statistics and Research Agency.
[345] The effect of both issues appear similar on face value, but the symptoms are different so we asked consumers who experienced a slam; i) Whether they experienced a welcome letter from another telephone/internet company that was addressed to someone else and/or ii) Was their phone number changed. If the consumer experienced either of these when their service was changed then it is more likely to be a homemover ET than a slam (although, this is not a perfect indicator).
[346] Slamming research 2011 Q7 page 17
[347] The complaint analysis looked at slams for fixed voice and bundles of fixed voice and broadband.
[348] Slamming research 2011 Q2 page 8
[349] Bespoke calculation using slamming research 2011. However, this result should be treated as indicative only because it is based on a small sample size.

selling[350], we have calculated an illustrative range bounded by the mean and median financial loss per slammed household. On this basis the indicative range for estimated financial loss due to slamming is £0-3.1 million per year.[351]

A8.12 We have also estimated the cost of time to consumers in dealing with slamming. In our slamming research 2011 we asked consumers how long they spent actively dealing with slamming. For those that could remember, the average time spent dealing with the issue was 87 minutes (the time taken ranged from up to 15 minutes to more than 10 hours).[352] However, because only 31 respondents were able to estimate the time taken to deal with the issue it is possible that the average could be skewed by outliers. The median time taken is in the range 16-29 minutes but is quite close to the next band (30-59 minutes). We have assumed that the average time taken is around 30 minutes per slam – close to the median - which we consider to be a relatively conservative approach. We have assumed that each household deals with slamming in their leisure (non-working) time using a value of time of £5.97[353] per hour. Based on 520,000 slams per year we estimate the time cost in dealing with deliberate slamming at around £1.6m per year.[354]

Figure 43: Estimate of consumer costs due to slamming (per year)

	Total
Financial loss £m	
Median loss	0
Mean loss	3.1
Time cost £m	1.6
Total cost[355] (median) £m	1.6
Total cost (mean) £m	4.7

A8.13 Due to uncertainty in the parameters used to estimate the costs we have tended to take a conservative approach.[356] In particular:

- We have assumed that consumers deal with slamming issues in their leisure time, this is conservative because some people may deal with problems during the working day and the value of working time is considerably higher than non working time.[357]

[350] See http://stakeholders.ofcom.org.uk/binaries/consultations/protecting_consumers/summary/protectingconsumers.pdf page 95.
[351] Lower bound of range = median financial loss due to slamming (£0) x number of slams (520,000). Upper bound of range = mean loss due to slamming (£6) x number of slams (520,000)
[352] Slamming research 2011 Q6 page 15
[353] We made the conservative assumption that all consumers deal with slamming problems in their leisure rather than working time. We estimated the value of time ('VoT') using the 2002/3 estimate of non-commuting leisure time given by the Department for Transport ('DfT') and converted it to a 2010/11 price using historical price inflation ('RPI'). In addition, the DfT states that the VoT grows with income so we have increased the VoT by the historical annual increase in average earnings (given by growth in real GDP per capita) multiplied by the elasticity of (non work) value of time (0.8) to income (which is taken from the DfT). See also http://www.dft.gov.uk/webtag/documents/expert/unit3.5.6.php#012, Section 1.2.20
[354] Time spent dealing with slam (0.5 hours) x Value of time (£5.97) x Number of slams per year (520,000)
[355] Financial plus time cost
[356] Although we also note that a few survey respondents who experienced financial costs as a result of slamming did receive compensation. Because the sample size for this question is very small (only 2 consumers reported getting compensation) it does not seem appropriate to make an adjustment to offset any compensation received against the financial loss experienced.
[357] The value of working time is around £30 per hour.

- We have only assessed the harm arising for residential consumers and have not included SMEs (we do not have information on the incidence of slamming for SMEs). We might expect the harm for SMEs to be higher because they would deal with the problem in working time, ETCs are generally higher (which is likely to result in a greater financial loss) and if the SME loses its phone number it may lose business and need to incur cost revising marketing material.
- We have not attempted to quantify consumer harm caused by the distress arising from slamming.
- We have not quantified consumer harm due to consumers being not on their preferred tariff or with their preferred supplier as a result of slamming.

CP costs due to slamming

A8.14 CPs also incur costs in dealing with slamming. Costs arise because CPs need to take steps to rectify slams (i.e. reinstate consumers when they have been slammed).

A8.15 We have used information provided informally by some CPs to provide an illustrative estimate of the costs CPs incur to deal with slamming. Using the information provided by CPs we have estimated that it takes around 20 minutes to deal with a customer who has been slammed (i.e. discussion between the customer service agent (CSA) and the customer, and placing the order to get the customer switched back to the correct provider). [358] We have assumed that the average cost of a CSA is around £20 per hour[359] thus the CSA cost to deal with the slam is estimated at £6.6 per case.[360] There is also a wholesale charge incurred to move the line back to the original provider. We have estimated the weighted average wholesale charge at £32.1.[361] We estimate that the total CP cost to deal with each slam is around £38.7.[362]

[358] We assume it takes 30 minutes for the consumer to deal with the slam and 20 minutes for the CP to deal with the slam. The reasons for the difference are: 1) time spent on hold before the consumer talks to the CP; 2) time spent reading communications from CPs; and 3) (in some cases) time spent making complaints e.g. to Ofcom or the Ombudsman services.

[359] The CSA cost varied across CPs. We looked at the cost across CPs and also the assumptions used in the CSMG costs assessment which has been published alongside this consultation. The CSA cost includes direct and indirect costs i.e. it includes an allowance for overheads.

[360] CSA cost per hour (£20) x time spent dealing with slam (0.33 hours)

[361] The wholesale charge depends on the underlying technology the consumer is being moved from and to. We have assumed that for a fixed voice only reinstatement the charge is £3.09 (i.e. the move is from WLR to WLR), for a broadband only reinstatement the charge is £39.79 (i.e. the move is from SMPF to SMPF), for a voice/broadband bundle reinstatement we have assumed the charge is £42.88 (i.e. the move is from WLR+SMPF to WLR+SMPF). This is a relatively conservative approach because if the consumer has been slammed to MPF from WLR+SMPF then the cost of reinstatement is higher at £74.86, the cost for an MPF to MPF or WLR +SMPF to MPF reinstatement is slightly lower at £39.79. We have calculated the weighted average charge based on the proportion of each type of slam that is experienced (23% voice only, 54% broadband only and 23% voice/broadband bundle based on the slamming research 2011 using a bespoke calculation).
The wholesale charge to transfer a WLR line is published here:
http://www.openreach.co.uk/orpg/home/products/pricing/loadProductPriceDetails.do?data=ccWy9ZJoVtf1gb2YRVL3pYSkcG%2Bc%2B30URCuKygKmgSNUNeIS4WkJBRh6z%2FRUAIt8maxtgrEro1A7%0Aw5V8nzAZpQ%3D%3D The wholesale charge to transfer a SMPF line is available here:
http://www.openreach.co.uk/orpg/home/products/pricing/loadProductPriceDetails.do?data=LI%2BLzfp8sh2Y2DndjiRMoqOJDXc5GerAOSBb9tNt8RglMnGHsqdC0vzO163bJmh34D91D7M0q8u%2F%0AIlSgtIFAKw%3D%3D

[362] This comprises a cost of £6.6 for the time of a CSA to deal with the problem and a £32.1 wholesale charge to move back to the original provider.

A8.16 It is possible that a proportion of slams will not be rectified e.g. because of extra hassle or costs involved for the consumer (e.g. the slammer could charge ETCs which exceed the ETC of the original CP). Our slamming research 2011 provided indications that between 28% and 60% (average 44%)[363] of those who experienced a slam or erroneous transfer did not get the service restored back to the original provider. Based on these inputs the illustrative estimate of the costs to CPs to rectify slamming is £11.3m per year.[364]

Extent to which each switching process will deal with slamming

A8.17 Each switching process obtains consent validation for the switch in a different way (i.e. through provision of the USN to the GP in the USN option, via a conversation with an independent third party in the TPV option and via obtaining a code from the LP in the LPL TxC and LPL ALT options). This means the extent to which slamming is reduced under each process will vary – we discuss this further below.

A8.18 We assume that under the status quo the current level of slamming will persist and this is our counterfactual. We have no information to suggest that the level of slamming will materially increase or decrease relative to the current levels absent regulatory intervention (the consumer research conducted in 2010 and 2011 did not suggest a significant change in the incidence of slamming – see Figure 15).

GPL TxC

A8.19 As discussed in paragraph 7.62, the GPL TxC would offer no additional protection against slamming relative to the current NoT process. In fact, because switches which currently go through the MAC or C&R processes (which provide good protection against slamming) would go through the GPL TxC (which does not obtain upfront consumer consent) the level of slamming is likely to increase. Our 2010 consumer research suggested that 25% of fixed voice and/or broadband switchers went though the MAC or C&R processes and 75% went through the NoT process.[365] All else equal this might suggest that slamming could increase by 25/75 = 33% under the GPL TxC process relative to the status quo.

A8.20 However, under the GPL TxC option there will be improved protection against attempted slams being realised due to the customer cancel system. This means the consumer is not reliant on the GP or current CP to cancel the order to stop the slam. Instead, under the GPL TxC a consumer can contact the central customer cancel system to stop the order. It is difficult to estimate precisely how many slams would be prevented through use of the customer cancel system. Our CCT complaints data about actual slams shows that 19% of complaints were classified as 'change of mind not actioned' over November 2010 to October 2011 i.e. where the customer has asked the CP to stop an order but this has not been actioned. We consider that this type of slam would not arise under the GPL TxC option

[363] Slamming research 2011 Q9 page 21 suggested this affected an average of 44% of consumers. We have used an estimate of 44% for the NPV calculations. However, this figure is based on a low sample size and should therefore be treated as indicative. Based on the sample sizes, we can be we can be 95% confident that between 28% and 60% of slammed consumers were not restored to their original provider. Using values of 28% or 60% for the percentage who did not get restored back to the original provide would result in an illustrative estimate for the cost of rectifying slamming at £14.5m or £8.0m per year respectively (keeping all other inputs constant).

[364] Number of slams (520,000) x % rectified (56%) x cost to rectify (£38.7)

[365] Excluding those switching to/from Virgin Media – switching to and from Virgin Media on its cable infrastructure is not within the scope of this consultation. The percentage of consumers going through each process was calculated using a bespoke Ofcom calculation using the 2010 consumer research.

because the consumer can go straight to the customer cancel system to stop the order. Using the complaints data as a proxy we have assumed that total slams will be reduced by 19% due to the customer cancel system. In considering these offsetting factors we estimate that slamming will increase by 8% under the GPL TxC option.[366]

TPV

A8.21 We noted in section 7 that the TPV option provides very good protection against slamming overall. However, we recognise that it is unlikely to reduce slamming to zero as there is still some possibility of CPs imitating consumers.

A8.22 We looked at the US experience of introducing a TPV process to inform our view on how much slamming would be reduced through the use of a TPV. In the US written complaints about slamming reduced from 25,000 in 1999 to 3,000 in 2002 (a decrease of 88%)[367] as result of stricter policies introduced in 2000, which included a TPV model. The US TPV is a validating model – so the TPV simply records the consumers consent to switch. The TPV model we are proposing additionally checks the identity of the consumer and the GP so would probably provide better protection against slamming relative to the US model.

A8.23 We consider the US experience useful to inform our analysis. Assuming that slamming complaints are a reasonable proxy for the level of slamming, then we might expect slamming to reduce by around 90% on the introduction of the proposed UK TPV model.

USN

A8.24 Under the USN model protection against deliberate slamming is not quite as effective as the TPV. We do not have any examples where a USN style switching process has been introduced to assess the impact on slamming. The main types of deliberate slamming which would remain possible under the USN (misrepresentation[368], contact but no contract[369] and upslamming[370]) generated around a quarter of CCT complaints about actual slams from November 2010 to October 2011.[371] Using this information we consider that the reduction in deliberate slamming could be around 75%.

LPL TxC and LPL ALT

A8.25 We assessed that the LPL TxC and LPL ALT models provide the best protection against deliberate slamming, although they are still unlikely to be perfect. Using the TPV model as a benchmark the possible reduction in slamming could be around 95%.

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[366] Because a larger number of switches go through a GPL process without upfront consent validation we assume that slams would increase by 33% absent the customer cancel system, and the customer cancel system reduces total slams by 19%. [(1+33%) x (1-19%)] -1 = 8%

[367] See http://stakeholders.ofcom.org.uk/binaries/telecoms/groups/switching-working-group/papers/csmg.pdf page 29

[368] Where a CPs passes itself off as a different CP.

[369] Where there is a conversation between the consumer and the CP, but the consumer does not believe they have signed up to switch provider. In this case it is possible that the consumer might mistakenly hand over the USN during the conversation.

[370] Where a consumer agrees to switch some service(s), but finds that additional services are switched.

[371] Source: CCT complaints data and Ofcom calculations.

A8.26 The figure below summarises our view on the extent to which each switching process will reduce/increase costs arising due to slamming. We have estimated the financial and time costs consumers incur due to actual slams. For CPs we have estimated the time spent restoring slammed customers back to the original provider and wholesale fees incurred. We have multiplied these costs by the reduction/increase in slams under each process to arrive at the cost/benefit we expect each process to deliver. Negative numbers represent an increase in costs for consumers and CPs, while positive numbers represent a reduction in costs (benefit) for consumers and CPs.

Figure 44: Reduction/increase in consumer and CP costs per year £m

Option	% reduction in slamming	Reduction consumer cost £m	Reduction CP cost £m	Total cost reduction £m
Option 2b – GPL TxC	-8%	-0.4 - -0.1	-0.9	-1.3 - -1.0
Option 2c - USN	75%	1.2-3.5	8.4	9.6-11.9
Option 2d – TPV	90%	1.4-4.2	10.1	11.5-14.3
Option 3a and 3b- LPL TxC and LPL ALT	95%	1.5-4.4	10.7	12.2-15.1

Reduction in consumer and CP costs due to no longer needing Cancel Other

A8.27 The 'Cancel Other' process is an industry process which enables the customer's current CP (the LP in a switching environment) to cancel a 'pending' order where the customer alleges slamming or the consumer changes their mind about switching and the GP fails to cancel the order. While the latter use of Cancel Other is not strictly related to slamming, we consider it is a similar situation because the GP is effectively trying to switch the customer when they have requested that the order be cancelled.

A8.28 Cancel Other is primarily used alongside the current NoT process to protect against slamming, and would not be a feature of Options 2b-2d (GPL TxC, USN and TPV) or 3a-3b (LPL TxC and LPL ALT). Under Options 2b-d Cancel Other is replaced by a customer cancel system (described in paragraph 6.31). The costs of the customer cancel system are included within the implementation cost estimates produced by CSMG. Under Options 3a-b (LPL TxC and LPL ALT) there is no customer cancel system because these options provide the greatest upfront protection against slamming (a customer would still be able to request that the GP cancel any unwanted orders).

CP costs

A8.29 We asked CPs for information on the costs of operating Cancel Other in the formal information request 2011. Six CPs were able to answer this question and varying levels of response detail were given.

A8.30 It appears that the most significant cost in operating Cancel Other is the CSA time spent dealing with the issue (liaising with the customer being the most significant task). Some CPs noted that the amount of CSA time used depends on the 'type' of Cancel Other. A 'standard' Cancel Other to prevent a slam generally involves one contact between the current CP and the customer to stop the slam going ahead. Most CPs who provided information on the time spent to dealing with attempted slams suggested that each case took about 20 minutes.

A8.31 When 'failure to cancel' is used due to the consumer changing their mind about switching it usually involves three contacts. This is because on contacting the current CP the consumer is directed to the prospective GP to place a 'cancel own' on the order (in accordance with industry rules). Only if the GP fails to cancel the order can the consumer legitimately request that the current CP cancels the order using Cancel Other. Under Options 2b-2d (GPL TxC, USN and TPV) and under Options 3a-b (LPL TxC and LPL ALT) this type of cancellation should only involve one contact so there is time saving of 40 minutes per case (we assume each CP contact takes around 20 minutes).

A8.32 Some CPs noted that in both cases there can be additional costs e.g. postage to send a letter to the customer confirming the cancel has been placed and text/call costs. We have assumed these costs are around £1 per case. We have assumed that the cost of a CSA is around £20 per hour (as above) so the total CP cost is estimated at £7.6 per attempted slam and £14.2 per failure to cancel.[372]

A8.33 The available wholesale information suggests that there were 104,000 Cancel Others applied to WLR and CPS orders from May 2010 to April 2011 for reasons to do with attempted slamming/failure to cancel. [373] We consider this is likely to be an underestimate of the total use of Cancel Other because we do not currently receive wholesale reporting showing volumes of Cancel Others placed against MPF or Wholesale Calls orders. Of the 104,000 Cancel Others applied to WLR and CPS orders we estimate 96,000 were legitimate uses.[374] Of these we estimate that 22%[375] (21,000) were failure to cancel. Our indicative estimate for the CP cost of operating Cancel Other is £0.6m per year for dealing with attempted slams and £0.3m per year for dealing with failure to cancel, however, as noted above this is likely to be an underestimate because we have not been able to capture all uses of Cancel Other.[376] Under options 2b-d (GPL TxC, USN and TPV) and 3a-b (LPL TxC and LPL ALT) these costs will be avoided.

Consumer costs

'Failure to cancel'

A8.34 Currently around 21,000 'failure to cancel' orders are placed through the Cancel Other process for WLR and CPS products. As noted above, this can involve three consumer-CP contacts currently and should be reduced to one contact under Options 2b-2d and Options 3a-b. We assume that each contact takes around 20 minutes so the potential time saving is 40 minutes per 'failure to cancel'. As noted

[372] Cost per attempted slam = time spent dealing with slam (0.33 hours) x cost of CSA per hour (£20) + other costs (£1). Cost per 'failure to cancel' = time spent dealing with issue (0.66 hours) x cost of CSA per hour (£20) + other costs (£1).
[373] Source: Information provided by BT Wholesale and Openreach
[374] We discuss below that some CPs have identified abuse of Cancel Other where the CP simply cancels orders to prevent the consumer switching. These CPs identified 8,400 cases of Cancel Other abuse over 2010. These uses of Cancel Other are not included since they do not involve contact with the customer.
[375] Source: Information provided by BT Wholesale and Openreach
[376] Failure to cancel costs are calculated as cost of dealing with failure to cancel (£14.2) x number of failure to cancel cases (21,000). Attempted slam costs are calculated as number of cancel others used to prevent slamming (96,000-21,000) x cost of dealing with attempted slam (£7.60).

above the cost of consumer time is estimated at £5.97 per hour, so the indicative estimate for the potential avoided cost is £0.1m per year.[377]

Preventing slams

A8.35 We assume the majority of the remaining uses of Cancel Other (around 75,000 per year) are to prevent slams. We estimate that each consumer spends 20 minutes preventing a slam using the Cancel Other process. As discussed above, we expect the reduction in slamming to vary according to the mechanism for obtaining consent validation, for Options 2c-d (USN and TPV) and 3a-b (LPL TxC and LPL ALT) we have assumed that each switching process has a reduction in attempted slams in line with the reduction in actual slams (see A8.21 to A8.25 above). We would expect any residual attempted slams to go through the customer cancel system (for the USN and TPV options) or be reported to the GP (for the LPL TxC and LPL ALT options) who can cancel the order. We assume that the amount of time the consumer spends dealing with these residual slams is the same under the status quo and the USN, TPV, LPL TxC and LPL ALT switching processes (in all cases it is likely to involve a call requesting that the order to switch is cancelled).

A8.36 For Option 2b (GPL TxC) we have assumed there will be no reduction in the consumer use of anti-slamming cancellations because this option does not include any up front consumer validation. We have considered whether an increase in attempted slams would result in increased costs to consumers through an increase in the use of anti-slamming cancellations. Our assessment is that any plausible increase in the use of anti-slamming cancellations will not have a material impact on consumer costs so we have not included this cost.[378]

A8.37 The figure below sets out an indication of the costs consumers can expect to avoid through no longer needing to spend time stopping slams using the Cancel Other mechanism. In order to estimate the cost avoided under each option we have multiplied the consumer cost by the percentage reduction in cancelled orders which we assume to be the same as the reduction in actual slams discussed above.

Figure 45: Reduction in consumer cost through reduction in attempted slams

Switching process	Reduction in attempted slams	Reduction cancelled orders	Reduction in consumer cost per year £m
Option 2b - GPL TxC	0%	-	-
Option 2c - USN	75%	56,000	0.1
Option 2d - TPV	90%	68,000	0.1
Option 3a and 3b - LPL TxC and LPL ALT	95%	71,000	0.1

A8.38 The indicative total cost avoided to CPs and consumers due to no longer needing Cancel Other is £1.1m under options 2c-d (USN and TPV) and 3a-b (LPL TxC and LPL ALT) and £1.0m for Option 2b (GPL TxC). The difference in the avoided costs for Option 2b relative to the other options is because we do not anticipate any reduction in the consumer costs of dealing with attempted slams under this option.

[377] Time spent dealing with issue (0.66 hours) x cost of time (£5.97) x current uses of failure to cancel (21,000)

[378] For example, if anti slamming cancellations increased by 50% (higher than we might anticipate) the increased cost to consumer is only estimated at £0.07m per year.

A8.39 We have assumed that under the status quo Cancel Other will be maintained and the ongoing cost to CPs and consumers will remain constant over time at the current level (consistent with the assumption above that the level of slamming will remain at the current level under the status quo absent regulatory intervention). The reduction in CP and consumer costs due to no longer needing Cancel Other is summarised in the table below.

Figure 46: Reduction in CP and consumer costs due to no longer needing Cancel Other £m per year

Switching process	Reduction in CP cost – no longer dealing with slams	Reduction in CP costs – no longer dealing with failure to cancel	Reduction in consumer cost – no longer dealing with slams	Reduction in consumer costs – no longer dealing with failure to cancel	Total cost reduction[379]
Option 2b - GPL TxC	0.6	0.3	-	0.1	0.9
Option 2c - USN	0.6	0.3	0.1	0.1	1.1
Option 2d - TPV	0.6	0.3	0.1	0.1	1.1
Option 3a and 3b - LPL TxC and LPL ALT	0.6	0.3	0.1	0.1	1.1

Back end system deficiencies

A8.40 Erroneous transfers (ETs) arise when the CP switches assets belonging to a customer other than the one who had asked for the switch. As noted above, we estimate that 20% of slams are actually ETs. This may increase in the future as CLIs become less effective as an identifier of the services and assets (discussed in paragraph 4.54). We estimate there are currently around 130,000 ETs per year, and these largely relate to the homemover process. Each ET impacts on two separate consumers. One consumer is switched in error (which appears similar to a slam) and the other consumer does not get a service when they expect to.

Consumer costs

A8.41 We have provided an illustrative estimate for the consumer financial cost arising due to the 'slam' component of the ET at £0-0.8m per year using the approach described in paragraphs A8.10 to A8.11 above.[380] We have considered the time cost to unwillingly switched consumers in dealing with the slam component of the ET using the approach described in paragraph A8.12 and estimate this at £0.4m.[381] Thus the total (financial and time) cost arising due to the slam component of the ET is estimated at £0.4-1.2m.

[379] Note figures quoted are rounded to nearest 0.1m meaning the total does not always equal the sum of the rounded components.
[380] The lower bound assumes each household incurs the median financial loss due to slamming which is zero. The upper bound assumes that each household incurs the mean financial loss due to slamming which is £6. The upper bound is thus calculated as number of ETs (130,000) x mean financial loss (£6)
[381] Number of ETs (130,000) x cost per hour (£5.97) x number of hours dealing with the issue (0.5)

A8.42 We have also considered the time the consumer who expected to get a service needs to spend on the phone to the CP trying to reorganise the line takeover. We have assumed this takes longer than the standard NoT GP sales call (of 12 minutes) since the CP and consumer are likely to discuss what had previously happened/gone wrong. We have assumed that the conversation lasts 20 minutes and estimate this cost at £0.3m per year.[382] So the total consumer cost (financial loss and time taken) arising due to ETs (slam component plus reorganising the takeover) is estimated at £0.6-1.4m per year. [383]

CP cost

A8.43 ETs also result in costs to CPs who need to rectify the problem. For the 'slam' component we estimate it costs £38.7 per case for the CP to rectify (see paragraph A8.15 above). Our slamming research 2011 provided indications that between 28% and 60% (average 44%)[384] of slams and ETs do not get restored to their original provider (so costs are not incurred to rectify the problem). Based on these inputs our indicative estimate of cost to CPs due to the 'slam component' of erroneous transfers is £2.8m.[385]

A8.44 In addition, the provider needs to have a discussion with the consumer who is moving in order to rearrange for the line to be taken over and explain what has gone wrong. We assume that this will take 20 minutes and cost £6.6 per case (based on a £20 per hour cost for a CSA). The estimated cost to deal with the 'rearrangement component' is £0.9m.[386] Thus the total estimated cost to deal with ETs is £3.7m.[387]

Effectiveness at dealing with ETs

A8.45 We have discussed whether each of the alternative switching options could effectively be used to deal with the problem of homemover ETs in paragraphs 7.26 and 7.33 to 7.35. We noted that, while technically it is possible for all four of the shortlisted options to deal with ETs, practically we expect it is only likely to be viable for the GPL TxC and TPV processes (we are open to suggestions from stakeholders on how the other options could be used to deal with homemover ETs).

A8.46 We have conservatively assumed that the level of ETs remains at the current level under the status quo when modelling the potential avoided costs over time. As noted in paragraph 4.54, it is possible that the number of ETs will actually increase as more services are provided which do not have CLIs and the provision of multiple services over shared assets increases.

A8.47 We have done some analysis of the root cause for a sample of current ETs and we consider that 80% could be resolved under the TPV and GPL TxC processes. The remaining 20% are made up of cases caused by incorrect historic installation details, and a small element of engineer and CP-based process errors.

[382] Number of ETs (130,000) x cost per hour (£5.97) x number of hours dealing with the issue (0.33)
[383] Note figures quoted are rounded to nearest 0.1m meaning the total does not always equal the sum of the rounded components.
[384] See footnote 363. Using values of 28% or 60% for the percentage who did not get restored back to the original provide would result in an illustrative estimate for the 'slam component' of rectifying ETs at £3.6m or £2.0m per year respectively (keeping all other inputs constant).
[385] Number of ETs (130,000) x % who are restored (56%) x cost to rectify (£38.7)
[386] Number of ETs (130,000) x cost to deal with rearrangement (£6.6)
[387] Cost of dealing with 'slam' component (£2.8m) + cost of dealing with rearrangement component (£0.9m).

A8.48 The figure below summarises the reduction in consumer and CP costs due to the reduction in ETs for each option. We have estimated the consumer costs by looking at the financial loss and time spent dealing with the ET. We have estimated the CP costs by considering the wholesale fees CPs will incur to rectify the ETs and the time spent dealing with the issue. For both the CP and consumer costs we have considered the costs of dealing with both the person who is transferred in error and the person who expects to be provided with a service but does not receive this. In order to estimate the cost avoided under each option we have multiplied the consumer and CP costs by the percentage reduction in ETs which we expect to arise.

Figure 47: Reduction in consumer and CP costs due to improved reliability of process per year

Switching option	Reduction in ETs	Reduction in consumer costs £m	Reduction in CP costs £m	Total cost reduction £m[388]
Option 2b – GPL TxC	80%	0.5-1.1	2.9	3.5-4.1
Option 2c - USN	0%	-	-	-
Option 2d - TPV	80%	0.5-1.1	2.9	3.5-4.1
Option 3a and 3b - LPL TxC and LPL ALT	0%	-	-	-

Implications of switching

A8.49 ETCs arise when a consumer cancels their contract before the minimum term elapses. ETCs are written into the consumer contract thus, in theory, the consumer should always be aware of their ETC obligations should they switch. However, it is possible that consumers forget about these obligations or fail to read the contract in sufficient detail at the outset. Thus it can be beneficial if the consumer is made aware of ETCs in advance of switching, so the consumer is able to factor in whether switching will cause them to incur ETCs which might affect their decision to switch.

A8.50 We want to measure the benefit of consumers avoiding paying ETCs due to improved awareness through the switching process relative to the current situation. We are primarily concerned with the situation where a consumer is unaware of a liability to pay an ETC when they switch, and as a result of incurring ETCs, regrets the decision to switch. We do not want to capture the consumer cost from ETCs which are 'willingly' incurred i.e.:

- a consumer decides to go ahead with a switch in the knowledge that they will incur an ETC; or
- a consumer incurs an unexpected ETC but remains happy with the decision to switch once he/she is made aware of the ETCs.

A8.51 We have illustrated the approximate magnitude of the costs to consumers from unexpectedly paying ETCs by measuring the proportion of consumers who paid an ETC but were unaware of ETCs when switchover happened and were unhappy with the decision to switch as a result of incurring an ETC. Using our broadband consumer research 2011 we estimate that 21% of broadband and broadband/fixed voice bundle switchers who paid an ETC were unaware of ETCs when the switch

[388] Note figures quoted are rounded to nearest 0.1m meaning the total does not always equal the sum of the rounded components.

happened,[389] and 5% of these switchers were unhappy with the decision to switch as a result i.e. 21% x 5% = 1.1% of switchers unwillingly paid ETCs.[390]

A8.52 In the formal information request 2011 we asked CPs providing a service on Openreach infrastructure[391] to provide information about the total revenue earned through ETCs and the number of consumers who paid ETCs when they switched.[392] Ten CPs were able to provide the information we asked for.[393] [394]Based on the information provided the total annual revenue from ETCs was [✂] for fixed voice and [✂] for broadband. [395]

A8.53 We have adjusted the information provided by CPs in two ways:

- Scale for the total Openreach footprint – The CPs responding to the formal information request represent close to 100% of fixed voice customers and 91% of broadband customers served by Openreach infrastructure. We have scaled up the broadband ETC revenues to reflect the total industry. [396]

- Remove consumers switching from Openreach infrastructure to Virgin Media on its cable infrastructure – these consumers will continue follow a C&R process (as they do currently) so we would not expect these consumers to be better informed about ETCs relative to the status quo. One CP providing ETC information had already excluded switches to Virgin Media. For the rest of the CPs we have made an adjustment for switches to cable using our consumer research 2010 and broadband consumer research 2011. We estimate that [✂] of those switching broadband moved to Virgin Media, and [✂] of these consumers incurred an ETC. For fixed voice we estimate that [✂] moved to Virgin Media, and [✂] incurred an ETC. [397]

A8.54 Applying these adjustment implies that total ETC revenues (excluding those switching to Virgin Media) were [✂] for voice[398] and [✂] for broadband.[399] In

[389] Broadband consumer research 2011 slide 32
[390] We have used market research for broadband and broadband/fixed voice bundle switchers to proxy ETCs unwillingly paid across both broadband and fixed voice services. Because the research was conducted via an online panel it did not capture fixed voice standalone switchers. The majority (83%) of switchers captured by the survey were switching both fixed voice and broadband services and (in the absence of better information) we consider that the responses to the ETC questions are also a reasonable proxy for fixed voice standalone switchers.
[391] The information request did not apply to the Virgin Media cable network.
[392] Most CPs were not able to separately identify ETCs paid by consumers switching provider and those ceasing the service.
[393] One CP had considerably higher ETC revenues than the others in relation to the size of its customer base, we have not made any adjustment for this. We have run a sensitivity scenario and concluded that even significantly reducing the ETC revenues for this CP would not significantly impact on the overall results.
[394] One CP was excluded because it was only able to provide ETC information at an aggregate level which included contracts for products other than fixed voice and broadband (this does not have a material impact on the results).
[395] Five CPs provided information from October 2010 to March 2011, and two from April 2010 to March 2011. We have scaled up revenues for CPs who provided 6 months to represent annual data (i.e. multiplied by 2).
[396] We have assumed that the average ETC per customer for the sample of CPs providing information is the same as the average ETC per customer for the CPs who we do not have information for.
[397] The proportion of Virgin Media consumers incurring an ETC is approximated by the % of consumers who incurred an ETC when going through a C&R switching process.
[398] (Annual revenue from fixed voice ETCs ([✂]) – ETCs from CP who has already excluded switching to Virgin Media ([✂])) x [1- (% of fixed voice switchers moving to Virgin Media ([✂]) x % of

addition, we have added ETC revenues provided by one CP for fixed voice/broadband bundles (where the revenues could not be split between the voice and broadband components). In total we estimate that ETC revenues were £35.2m across fixed voice and broadband.

A8.55 As set out above we have estimated that 1.1% of switchers unwillingly incurred ETCs therefore our illustrative estimate for the aggregate amount of ETCs that are unwillingly paid is £0.4m per year.[400] We recognise that the amount of ETCs paid could be influenced by a number of factors over time e.g. the number of consumers signing up for contracts with minimum contract periods, the length of the minimum contractual periods and consumer awareness about their contractual obligations. For our modelling we have assumed that the amount of ETCs unwillingly paid remains constant at the current level under the status quo (absent information suggesting the level could materially increase or decrease).

Extent to which each switching process will reduce unwilling payment of ETCs

Options 2b-d (GPL TxC, USN and TPV)

A8.56 Under Options 2b-d the consumer will receive a letter from the LP during the switching period which will provide information on the implications of switching. This is similar to the situation for the current NoT process. We propose that the LP letter will have to provide more precise information than is provided currently i.e. the indicative amount of the ETC rather than a warning that there may be implications from switching. This should help inform the consumer regarding whether they want to go ahead with the switch (and incur any ETCs) or cancel the switch because the ETCs are higher than expected. Potentially this could mean that fewer consumers incur unwanted ETCs and are unhappy with the decision to switch.

A8.57 However, relative to those who switch under the current MAC process, under Options 2b-d the consumer will be made aware of the implications of switching later in the process i.e. the information about implications will be sent in a letter during the switchover period rather than being given during a discussion about implications when the consumer gets the code, before the order is placed. In addition, as consumers may fail to read the letter there is a greater possibility that the consumer would be unaware of the implications of switching under these options relative to the MAC process.

A8.58 Overall, we consider that the above factors will broadly offset one another. Therefore the potential for consumers to incur unwanted ETCs is broadly the same under the GPL TxC, USN and TPV as under the current switching processes.

Options 3a-b (LPL TxC and LPL ALT)

A8.59 Under Option 3a all consumers will have the potential to discuss the implications of switching with the LP prior to placing an order with the GP.

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those switching to Virgin Media that incurred an ETC ([✂]))] + ETCs from CP who has already excluded switching to Virgin Media ([✂])

[399] ([Annual revenue from broadband ETCs ([✂]) / % of industry broadband customers covered by sample of CPs (91%)] – ETCs from CP who has already excluded switching to Virgin Media ([✂])) x [1- (% of broadband switchers moving to Virgin Media ([✂])) x % of those switching to Virgin Media that incurred an ETC ([✂]))] + ETCs from CP who has already excluded switching to Virgin Media ([✂])

[400] Total ETC revenues (£35.2m) x % of switchers who paid ETCs unwillingly (1.1%)

A8.60 Under Option 3b some consumers might obtain their TxC online and not have contact with the LP to discuss the implications of switching. It is not clear to what extent the online TxC facility will be offered by CPs or taken up by consumers. We have assumed that most consumers will discuss the implications of switching with the LP prior to making the order (particularly as the online TxC facility will prompt the consumer to contact the LP to discuss implications of switching).

A8.61 Because most consumers will be made aware of ETCs in advance of making the decision to switch under these options (i.e. ETCs will no longer be unexpected) we estimate the potential benefit at £0.4m per year (i.e. the consumer cost estimated in paragraph A8.55 above will be avoided).

Varying and unnecessary switching costs/hassle

Time spent on switching process

A8.62 A key aspect of the level of switching costs is the time it actually takes for a consumer to organise the switch. Using available information we have illustrated the incremental increase/decrease in the time spent completing the necessary steps in each new switching process (and the associated cost to consumers) relative to the current processes.

A8.63 To estimate the incremental increase/decrease in time spent on the formal switching process we have considered each sales channel (telesales, online, door to door and retail shop) separately. In its costing model CSMG estimated that there are around 2.1m switches on Openreach infrastructure per year[401], and the sales channel mix is currently as follows:

Figure 48: Sales channel mix[402]

Sales channel	% of switches	Number of switches per year
Telesales	60%	1,260,000
Online	20%	420,000
Door to door	10%	210,000
Retail shop	10%	210,000

A8.64 The time taken communicating with the GP and LP under both the new options and the current processes is based on the formal switching process and does not include additional contacts at the discretion of the consumer. So, for the NoT, USN, TPV and GPL TxC processes the call handling time is based on the consumer having one conversation with the GP (although the consumer may also decide, outside of the formal switching process, to contact the LP e.g. to discuss ETCs). For the MAC, C&R, LPL TxC and LPL ALT processes the call handling time is based on one conversation with the LP followed by a conversation with the GP (although the consumer may first have a conversation with the GP outside of the formal switching process).

A8.65 CSMG estimated call handling times for telesales under the current switching processes as follows.[403]

[401] Source: CSMG cost report footnote 29.
[402] Source: CSMG cost report page 46.

Figure 49: Time taken to switch – current switching processes (CSMG)

Switching processes	% of switches going through process	Average time speaking with GP	Average time speaking with LP
NoT	75	12	-
C&R	18	12	10
MAC	7	12	10

A8.66 Using this information, the weighted average total call time under the current processes is 14.5 minutes.

A8.67 We consider the incremental increase/decrease in the time spent on the switching process for each option below.[404]

GPL TxC

A8.68 Under the GPL TxC process the amount of time consumers spend on the switching process will be reduced relative to the status quo because currently switches which go though the MAC or C&R processes require contact with the LP (estimated to take 10 minutes per switch)[405] and this would not be required for the GPL TxC. We estimate a time saving of 5.3m[406] minutes due to avoiding contact with the LP.

USN

A8.69 Under the USN process each consumer needs to find their bill to provide the USN to switch. Our billing research 2011 suggests it takes around 5 minutes on average to find the bill. As above, there will also be a time saving because contact with the LP under the current MAC and C&R processes will be avoided.

A8.70 For telesales CSMG has estimated the call handling time is 18 minutes – an average increase of 3.5 minutes per switch relative to the current processes[407], in aggregate totalling an extra 4.4m[408] minutes per year.

A8.71 For online, retail shop and door to door sales we estimate that it will take an extra 2.1m minutes to switch per year in aggregate. This comprises 4.2m[409] extra minutes

[403] These estimates are based on the time the consumer spends speaking to an agent, they do not include any time the consumer spends on hold before talking to an agent.
[404] For telesales we have estimated the incremental increase/decrease in the time spent interacting with an agent (referred to as the call handling time). We have assumed that the time the consumer spends on hold before talking to an agent is approximately the same under the current and new switching process options.
[405] We assume that the consumer will generally call the LP to request the code or cancel their contract.
[406] The weighted average call time for the current processes is 14.5 minutes and the estimated call time for the GPL TxC is 12 minutes. There is an average time saving of 2.5 minutes per telesales multiplied by 1,260,000 telesales = 3.2 million minutes saved per year. In addition, 25% of current online, retail shop and door to door switches go through the C&R or MAC process and involve contact with the LP (amounting to 210,000 sales per year). Each contact with the LP is estimated to take 10 minutes. Avoiding this contact with the LP saves 2.1 million minutes per year.
[407] We assume the consumer finds the bill while they are on the sales call with the GP.
[408] 3.5 minutes x 1,260,000 telesales per year
[409] 840,000 online, retail shop and door to door switches x 5 minutes to find bill

spent finding the bill, offset against a time saving of 2.1m[410] minutes in avoiding contact with the LP.

TPV

A8.72 Under the TPV process the consumer needs to confirm with the TPV that they consent to the switch. For phone, door to door and retail sales this will be through a conversation with a TPV agent which is estimated to take 5 minutes. For online sales this is via a webform which is estimated to take 1 minute. As above, there will also be a time saving because contact with the LP under the current MAC and C&R processes will be avoided.

A8.73 For telesales CSMG has estimated the call handling time is 18 minutes – an average increase of 3.5 minutes per switch relative to the current processes, in aggregate totalling an extra 4.4m minutes per year.

A8.74 For online, retail shop and door to door sales we estimate that it will take an extra 0.4m minutes to switch per year in aggregate. This comprises an extra 0.4m[411] minutes for online TPV verification and 2.1m minutes for retail shop and door to door TPV verification.[412] As above, this is offset against a time saving of 2.1m minutes in avoiding contact with the LP.

LPL TxC and LPL ALT

A8.75 Under the LPL TxC process all consumers need to have a conversation with the LP to obtain a code and then pass it to the GP before they can switch. For telesales CSMG has estimated the call handling time for the LPL TxC is 21 minutes – an average increase of 6.5 minutes per switch relative to the current processes, in aggregate totalling an extra 8.2m minutes per year.[413] For the LPL ALT option it is possible that some consumers will obtain the TxC online and avoid the conversation with the LP. However, it is not clear to what extent CPs will offer this facility. In addition, consumers using this facility may still be prompted to call the LP to discuss the implications of switching (which will not be available online). Therefore, at this point, we have assumed that under the LPL ALT process consumers will still have a conversation with the LP. If we altered this assumption to assume that a portion of consumers would not have contact with the LP then for consistency we would also need to adjust down the estimated benefit from better information about the implications of switching under the LPL ALT option (discussed above).

A8.76 For online, retail shop and door to door sales we assume that the majority of consumers will call the LP to get the TxC and the conversation will be 9 minutes (consistent with CSMG's assumption of the length of the LP conversation for the LPL TxC process).[414] This equates to a total time spent obtaining TxC's of 7.6m

[410] 25% of current online, retail shop and door to door switches go through the C&R or MAC process and involve contact with the LP. Each contact with the LP is estimated by CSMG to take 10 minutes. Avoiding this contact with the LP saves 2.1 million minutes per year.
[411] 420,000 online sales x 1 minute online verification (1 minute for online verification was estimated by CSMG).
[412] 420,000 retail shop and door to door sales x 5 minute verification call
[413] 1,260,000 telesales x 6.5 minute conversation with the LP
[414] The LP conversation to get the code under the LPL TxC option is estimated to be 1 minute shorter on average than the current MAC conversation because the code is provided on a dedicated line and save activity is banned.

minutes per year.[415] However, not all this time is incremental since some consumers already have contact with the LP under the current MAC and C&R switching processes. As set out above, we have estimated the amount of time spent under the current processes to be 2.1m minutes per year thus the extra time required to switch using the LPL TxC and LPL ALT processes is estimated at 5.5m minutes per year for online, retail shop and door to door sales.

A8.77 We have estimated the cost to consumers from the incremental increase in time spent dealing with a switch as a result of the above factors in the table below. We have assumed that the value of consumer time is £5.97 per hour. We have assumed that the sales mix and number of switches per year remains constant over time. However, if the proportion of online sales increases this would reduce the number of extra minutes taken for the TPV process (and if use of the online facility to obtain TxCs under the LPL ALT process was high this could reduce the number of extra minutes for this process).

A8.78 Note that the cost to CPs as a result of extra call handling time associated with each option is already reflected in the CSMG implementation cost estimates.

Figure 50: Cost of extra time spent on the switching process

Switching process	Total increase (decrease) in minutes per year (millions)	Cost to consumers £m per year (negative = benefit to consumers)
Option 2b - GPL TxC	(5.3)	-0.5
Option 2c - USN	6.5	0.6
Option 2d - TPV	4.8	0.5
Option 3a and 3b – LPL TxC and LPL ALT	13.7	1.4

Avoiding abuse of the Cancel Other process

A8.79 We have noted that in some cases the Cancel Other process is abused, when the LP stops the consumer from switching by cancelling the order even when the consumer wants to leave (see paragraph 4.172). This causes costs to both the consumer, who has to reorganise the switch, and the gaining CP, who has to place the order to switch again. These costs will be avoided under options 2b-d (GPL TxC, USN and TPV) and 3a-b (LPL TxC and LPL ALT) because they do not incorporate the Cancel Other process.

CP costs

A8.80 In the formal information request 2011 we asked CPs for the costs of dealing with Cancel Other abuse. Some CPs considered that this type of abuse was rare and the associated costs were minimal. Four CPs considered that this type of abuse does arise and these CPs identified around 8,400 abuses of Cancel Other in 2010.

[415] 840,000 online, retail shop and door to door sales x 9 minute conversation with LP to obtain TxC. This may be an underestimate because it assumes that each switcher calls one LP to obtain their TxC(s). If a consumer is moving several services from different CPs they will need to call each CP to obtain a TxC.

Based on the information provided by CPs, the total cost in dealing with Cancel Other abuse is estimated at £87K per year. [416]

Consumer costs

A8.81 We have assumed that it takes 30 minutes for each consumer to deal with a case of Cancel Other abuse (i.e. realising they have not been transferred, discussing it with the GP and asking for the order to be resubmitted). Based on the CPs' estimate of 8,400 abuses of Cancel Other per year and a cost of time of £5.97 we estimate that the total cost to consumers is around £25K per year.

A8.82 The total CP and consumer costs due to Cancel Other abuse are around £0.1m per year. We assume this cost would remain constant under the status quo as the Cancel Other process would be maintained to protect against slamming.

Summary

A8.83 The figure below summarises the costs and benefits (i.e. avoided costs) for each option which we have estimated above. Negative numbers in the benefits section represent increased costs to consumers and CPs. In addition, we have added the implementation costs for each option which were estimated by CSMG.[417]

A8.84 To provide an indicative estimate of the net present value for each option we have forecast the ongoing costs and benefits over 10 years. [418] We have assumed that each CP and consumer cost estimated above arising due to problems with the current switching processes above will remain at its current level under the status quo (our counterfactual) e.g. the level of harm from slamming/ETs remains constant over time, unwilling payment of ETCs remains constant over time. We have assumed that the ongoing costs and benefits are constant over time in real terms. We have discounted the projected costs and benefits using the social time rate of preference of 3.5% (real) (published by HM Treasury).[419] The discounted costs and benefits are summed and annuitised over 10 years using a discount rate of 3.5%. The annuitised NPV is presented as a range where lower bound selects the value for the cost/benefit[420] which results in the lowest NPV and the upper bound selects the value which results in the highest NPV.

A8.85 It is important to restate that this is only a partial assessment of the benefits since we have not been able to quantify a number of the benefits. For example, we have not been able to quantify the benefits from having a single harmonised switching process, aspects of improved reliability of the back end processes and reducing the cost to consumers due to loss of service arising under the current processes which we expect to be avoided under the new switching options. We have presented the

[416] The estimated cost per case ranged from £2.5 to £11 (the main costs are CSA time in talking to the customer and submitting the order). Costs have been adjusted where appropriate. For example, the cost of re pitching products to the customer is not considered necessary to deal with Cancel Other abuse and has not been included. To calculate the total CP cost we summed each CP's adjusted estimated cost in dealing with a Cancel Other abuse multiplied by the number of Cancel Other abuse cases reported by that CP.
[417] We have annuitised the costs so they are provided on a basis consistent with the NPV.
[418] We consider that 10 years is an appropriate estimate for the life time for the operator specific investments required to implement the proposed switching processes. The set up costs are assumed to occur in 2013. The ongoing costs and benefits arise from 2014.
[419] We consider this the appropriate discount rate because the benefits of the proposed new switching processes accrue primarily to consumers. The costs and benefits are discounted back to 2012.
[420] Relevant for costs and benefits which are presented as a range in the figure below.

quantified costs and some of the quantified benefits as a range to reflect uncertainty in the underlying inputs. While all the quantified benefits are provided as illustrative estimates only, we have not presented all categories of benefit as a range because we do not have information on which underlying inputs are most uncertain or the alternative values that should be used. Given the indicative and partial nature of the quantified benefits we do not consider it helpful to conduct a further sensitivity analysis on the results.

Figure 51: Summary of quantitative costs and benefits for each option £m per year

Option	2b – GPL TxC	2c - USN	2d - TPV	3a-b – LPL TxC and LPL ALT
Benefits				
Back end system deficiencies				
Reduction in consumer costs due to ETs	0.5-1.1	0	0.5-1.1	0
Reduction in CP cost due to ETs	2.9	0	2.9	0
Customer consent				
Reduction/increase in consumer cost due to slamming	-0.4 - -0.1	1.2-3.5	1.4-4.2	1.5-4.4
Reduction/increase in CP cost due to slamming	-0.9	8.4	10.1	10.7
Reduction in consumer cost – no need for Cancel Other[421]	0.1	0.2	0.2	0.2
Reduction in CP costs – no need for Cancel Other	0.9	0.9	0.9	0.9
Implications of switching				
Reduction consumer in harm due to better information about ETCs	0	0	0	0.4
Varying and unnecessary switching costs/hassle				
Decrease/increase in time spent on the switching process (consumer)	0.5	-0.6	-0.5	-1.4
Reduction in consumer cost – no abuse of Cancel Other	0.03	0.03	0.03	0.03
Reduction in CP costs - no abuse of Cancel Other	0.1	0.1	0.1	0.1
Total consumer benefits	*0.8-1.6*	*0.7-3.1*	*1.7-5.1*	*0.7-3.7*
Total CP benefits	*3.0*	*9.4*	*14.0*	*11.6*
Total consumer and CP benefits[422]	***3.8-4.6***	***10.1-12.5***	***15.7-19.1***	***12.4-15.3***
Costs				
Implementation costs for CPs (annuitised)	4.8	8.4-9.4	11.4	7.6-7.7
Annuitised NPV[423]	***-1.2- -0.3***	***0.3-3.6***	***3.8-7.1***	***4.2-7.2***

[421] Includes 'failure to cancel' and preventing slamming uses of Cancel Other (see paragraph A8.27).
[422] Total may not add up to sum of column due to rounding.
[423] The Joint Regulators' Group (JRG) are consulting on a revised approach to discounting for regulatory interventions which are financed by industry but the benefits primarily accrue to consumers. The annuitised NPVs using this revised approach are as follows GPL TxC = -£1.6 to -£0.7m, USN = -£0.2 to £3.0m, TPV = £3.3 to £6.6m, LPL TxC and LPL ALT = 3.7 to 6.9m. The annualised NPVs for all options are lower this revised approach, however, it does not materially

Impact of unquantified costs and benefits for small businesses

A8.86 The implementation costs for CPs include the costs of applying the switching processes to small businesses. However, the other costs and benefits estimated in this annex mainly relate to residential consumers and we are largely unable to quantify the other costs and benefits for small businesses. We have considered the possible impact this might have in the figure below. Overall we expect that the benefits of implementing the new switching processes set out above are understated, as we expect that the new switching processes would have an overall positive impact on small businesses.

change the relative ranking of the options. Further detail on the revised approach to discounting is available in the JRG report here
http://stakeholders.ofcom.org.uk/binaries/consultations/cba/summary/JRG-condoc.pdf

Figure 52: Unquantified costs and benefits for small businesses

Problem	Potential impact:
Back end system deficiencies	
Reduction in costs to deal with ETs	We do not have information on the incidence of ETs for small businesses. However, small businesses are likely to be affected in a similar way to residential consumers. The cost of time spent dealing with the issue would be higher for businesses relative to residential consumers.
Customer consent	
Reduction in costs to deal with slamming	We do not have information on the incidence of slamming for businesses. However, our CCT complaints from small businesses suggest that they face similar slamming problems to residential consumers. In certain circumstances the impact may be greater on small businesses, for example, if the phone number is lost as a result of slamming (meaning lost business or additional costs to market a new number).
Reduction in costs of using Cancel Other	We have estimated the cost to CPs in operating Cancel Other using the total number of Cancel Others applied which would include both residential consumer and business cases (we do not have a split between the two). However, we have used the value of leisure time to estimate the cost in dealing with Cancel Other – for businesses it would be appropriate to use the value of working time which is significantly higher.
Implications of switching	
Reduction in consumer costs due to better information about ETCs	We do not have sufficient information to estimate the amount of ETCs unwillingly paid by small businesses. The limited information we have suggests that average ETCs tend to be higher for businesses (which is unsurprising since they would tend to have higher rental charges). However, we might expect businesses to be less likely to unwillingly incur ETCs because we would expect businesses to have a better awareness of their contractual obligations/seek this type of information before switching provider.
Varying and unnecessary switching costs/hassle	
Extra time spent on the switching process	There is likely to be some additional incremental cost to small businesses due to extra time spent on the switching process under the USN, TPV, LPL TxC and LPL ALT options. Under the GPL TxC option there could be a time saving.
Avoiding abuse of Cancel Other	CPs who provided information gave the total number of Cancel Other abuses which included business and residential consumer cases (a split was not provided). However, we have used the value of leisure time to estimate the cost of dealing with Cancel Other abuse – for businesses it would be appropriate to use the value of working time which is significantly higher.

A8.87 We discuss our option assessment in detail in section 7. We have considered the extent to which each option deals with the problems we have identified and the impact on CPs (including a quantitative and qualitative assessment of the costs and benefits of each option). We have provisionally concluded that the TPV is our preferred option. We are inviting comments on our assessment as part of this consultation.

Annex 9

Glossary

A9.1 A glossary of the key terms used in this consultation is set out below.

Act: means the Communications Act 2003

Broadband: a service or connection which is capable of supporting 'always-on' services which provide the end-user with high data transfer speeds.

BT: British Telecommunications plc.

Bundle: where a consumer purchases two or more services from the same provider on a single bill and considers this to be a package of services. The consumer may or may not receive a discount

Cable Network: means a hybrid fibre-coax Electronic Communications Network that uses a combination of optical fibres and coaxial cable.

Cancel Other: is the industry term for a functionality that enables the Provider losing the customer to cancel wholesale orders (during the switchover period) placed by an alternative Provider where slamming has been alleged by the customer or the GP has failed to cancel the order on the customer's request.

Communications Provider (CP): a person who provides an Electronic Communications Network or provides an Electronic Communications Service, as defined in the Act.

Customer Contact Team (CCT): the team within Ofcom responsible for dealing with complaints and enquiries from members of the public.

Cease and Re-provide (C&R): the consumer terminates their contract with the losing provider and requests a new service from the gaining provider, not necessarily in this order (i.e. the consumer may request a new service first before terminating their contract).

Competitive neutrality: In the context of this consultation this refers to a situation where some providers enjoy a competitive advantage over others simply by virtue of the switching process associated with the service(s) they provide.

Consumer: any natural person who uses or requests a publicly available electronic communications service for purposes which are outside his or her trade, business or profession (the definition provided by the EU Framework Directive).

Considerers: consumers that have considered switching in the last year but subsequently decided not to.

Early Termination Charge (ETC): a charge for consumers who terminate their contract before the end of any Minimum Contract Period (or Subsequent Minimum Contract Period).

Erroneous transfers: where the wrong customer's service is transferred as a result of a process failure.

Fixed-line: means Narrowband call and/or line rental services provided to consumers and

small business consumers.

Full LLU: means services where the provision of access to the copper wires from the customer premises to a BT exchange allows a competing provider to provide the customer with both voice and data services over such copper wires.

Gaining Provider (GP): Provider to whom the customer is transferring.

Gaining Provider Led (GPL) process: Switching process where the consumer only needs to contact the provider they are transferring to in order to switch.

General Conditions (GCs): a set of regulations that apply to anyone who provides an electronic communication service or an electronic communications network.

Greenfield: situations where there are no existing switching processes already in place and we are starting from first principles (for example with the rollout of next generation access networks, new switching processes need to be developed).

Inactive: those that have neither switched nor considered switching in the last year.

IPstream: wholesale broadband product provided by BT.

Local loop: The access network connection between the customer's premises and the local serving exchange, usually comprised of two copper wires twisted together.

Losing Provider (LP): Provider from whom the customer is transferring.

Losing Provider Led (LPL) process: Switching process where the consumer needs to contact the provider they are transferring away from as well as the provider they are transferring to in order to switch.

Metallic Path Facility (MPF): a way for providers to gain full control of the local loop connecting to end users to deliver both voice and broadband.

Migration Authorisation Code (MAC): a unique code that a customer obtains from the losing broadband service provider and gives to the gaining provider, that allows the service to be transferred from an existing service provider seamlessly and with little or no disruption of service.

Minimum contract period (MCP): a minimum (fixed-term) contractual period set at the start of a contract (often for 12 to 24 months).

Mis-selling: Irresponsible sales and marketing activities, such as the provision of false or misleading information, applying unacceptable pressure to change providers and where customers are switched without their express consent.

Narrowband: means services provided over a traditional Public Telephone Network, excluding services provided over a Cable Network.

Notification of Transfer ('NoT') process: the consumer only has to contact their gaining provider in order to switch, and is informed of an impending switch before it happens (through receipt of letters) and involves a 10-day switchover period.

Ofcom: Office of Communications. The regulator for the communications industries, created by the Office of Communications Act 2002.

Openreach: BT's access services division.

Office of the Telecommunications Adjudicator (OTA): the OTA acts independently from industry and the regulator. It seeks to facilitate the implementation of process improvements particularly where multi-lateral engagement is necessary.

Proactive save: where the LP offers the consumer an incentive not to switch without being alerted as part of the switching process that the consumer is intending to switch.

Price discrimination: where a provider sells the same good or service at a different price to different consumers.

Price guarantees: incentives offered by firms to retain or attract customers for example a firm may offer to match or beat any lower price a consumer finds at competing rivals or where a firm promises either to match the better terms offered by a rival or to release the customer so that they can take up the better offer without penalties.

Public Telephone Network: means an Electronic Communications Network which is used to provide Publicly Available Telephone Services; it supports the transfer between Network Termination Points of speech communications, and also other forms of communication, such as facsimile and data.

PSTN: Public Switched Telephone Network.

Reactive save (also known as targeted save activity): where the Losing Provider is able to accurately identify, as a result of information the LP receives as part of the formal switching process, all those customers intending to switch and to make them a counteroffer not to switch. The LP is informed of the imminent switching either by the consumer via the code request under a LPL process or by the GP placing the order to transfer the service under a GPL process. The term does not refer to counteroffers requested by a consumer who explicitly contacts the LP with the purpose of obtaining a better offer.

Slamming - where a CP has requested to takeover CPS, WLR and/or LLU services without the Customer's express knowledge and/or consent; that is in the following circumstances:

(i) where the Customer has never been contacted by the Gaining Communications Provider;

(ii) where the Customer has been contacted by the Gaining Communications Provider, but has not given the Gaining Communications Provider authorisation to transfer some or all of their telephone calls and/or line rental to the Gaining Communications Provider;

(iii) where the Customer has agreed to purchase a product or service from the Gaining Communications Provider and the Gaining Communications Provider has submitted a request for a different product or service which the Customer has not agreed to purchase; or

(iv) where the Customer has agreed to transfer some or all of their telephone calls and/or line rental to the Gaining Communications Provider having understood, as a result of a deliberate attempt by the Gaining Communications Provider to mislead, that they

are making an agreement with a different Communications Provider.

Shared Metallic Path Facility (SMPF): a way for providers to gain partial control of the local loop connecting to end users.

Small business consumers: businesses with up to ten employees.

Switching costs: Costs incurred by changing supplier that are not incurred by remaining with the current provider. There are several types of switching costs including transaction costs, compatibility costs, learning costs, contractual costs, equipment costs, uncertainty costs, psychological costs, shopping costs and search costs.

Switchers: consumers that have switched their provider in the last year.

Unique Service Number (USN): code that would be issued to consumers via their bills that they would need to give to the GP before they could switch.

TPV: Third party body used to record a consumers consent to switch.

Transfer Code (TxC): code that identifies the assets and services to be switched at each level in the supply chain.