



Virgin Media's Response to Consumer Switching

Proposals to reform switching of mobile communications services – May 2017

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1. Virgin Media welcomes the opportunity to respond to Ofcom's mobile consumer switching proposals (the **Consultation**) published on 19 May 2017.
2. Virgin Media supports Ofcom's desire to improve the process of switching for the benefit of consumers. As a general principle, across all types of switching, Virgin Media supports Gaining Provider Led ('**GPL**') switching processes provided Ofcom (i) amends General Condition 1.2 to allow customers to compare their Losing Provider's ('**LP**') offer alongside the Gaining Provider's ('**GP**') offer at the time of the switch; and (ii) ensures that any proposal is cost effective to implement. Any solution adopted also needs to be forward-looking and should anticipate further convergence of services. Otherwise, there is a risk that additional reforms will be required in a few years which will entail further disruption for industry.
3. In our previous responses to Ofcom's mobile consultations in March and June 2016 and further engagement on Ofcom's revised cost estimates, we reiterated our support in principle of a GPL switching process. However, in our view the cost and level of intervention previously proposed through the Auto-PAC or GPL switching proposal was disproportionate. We believed that the same or similar consumer benefits could be achieved at a lower cost and be more quickly implemented than under either of Ofcom's options. We raised particular concerns regarding the coordination and cost of providing an end-to-end switching system and the costly development of an enhanced centralised porting system ('**CPS**') which was designed to coordinate the switching process between the LP, GP and the customer. We agree with the Consultation that the likely cost of the end-to-end management system was likely to be more than £29m. In relation to the CPS, we argued that if SMS information could be provided directly to customers (without going through the CPS system) this would reduce the overall cost to industry by more than £5m. The CPS required not just the enhancement of the Syniverse system but the complete reengineering of the current porting system.
4. We therefore welcome Ofcom's proposal to introduce a text-based and online routes (in addition to phone) to obtain a PAC/NPAC – i.e. the "Auto-Switch" process. This approach potentially alleviates one of our concerns regarding the CPS and an automated coordination of the end-to-end switching processes. Consumers will be able to benefit from the extra options to contact the LP to switch without having to speak to their LP by phone if they do not wish to. We also agree that the implications of switching information should be provided directly by the provider to its customer rather than through a third party. This substantially reduces cost but also the risk of data protection breaches by reducing the number of third parties involved in the switching process.
5. We therefore support Ofcom's Auto-Switch proposal. We consider that it is not justifiable for Ofcom to implement a GPL switching for mobile given that the cost/benefit analysis set in the Consultation indicates that the net cost to industry is more than double for a GPL than Auto-PAC¹ switching process. Adoption of the Auto-Switch proposal is consistent with Ofcom's remit to ensure

¹ See Consultation, paragraph 5.103 – costs are £44m for Auto-Switch vs £87m for GPL.

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it implements the least onerous method to achieve its objectives. Ofcom's consumer research also appears to show that consumers preferred Auto-Switch to GPL, when each option was explained.²

6. In its proposals Ofcom includes residential and small business customers switching between 2 and 24 numbers. Virgin Media is concerned about the extra functionality and the cost implications of this proposal. [3<]. We welcome the clarification provided in the Consultation that providers would not need to introduce an SMS route to switch more than one mobile number. We agree with Ofcom that switching multiple numbers via SMS would be highly impractical.

7. We note that Ofcom has not commented on GC1.2 in the Consultation. We assume that save activity will still be permitted in relation to switching customers under Auto-Switch as the requirements of the GC1.2 prohibition do not apply. As stated previously, we can understand why consumers may benefit from not having to speak to their LP. However, there is still value for many consumers to have a conversation (even if this now happens through an outbound call) to ensure they are fully aware of the implications of switching; given mobile products and services are not homogenous. We consider that it is unlikely that all customers will be able to understand the full implications of switching just by reading a long text message.³

8. We remain concerned that Ofcom's Consultation does not deal with each product set on their specific facts. For example, Virgin Media's Freestyle⁴ mobile offering allows consumers to take out a monthly tariff for their airtime allowance and a separate loan (regulated by the FCA) for their handset. Far more detailed consideration needs to be given as to whether it is appropriate for a customer to be informed of an outstanding loan which could affect their credit score (this will impact a customer's ability to secure finance more generally) by way of an SMS, as proposed in the Consultation.

9. In relation to banning a 30-day notice period, we are concerned at the lack of proper justification to curtail a legitimate charge which has been voluntarily entered into by consumers on the basis of Ofcom's desire to remove 'difficulties or deterrents'⁵. Ofcom's proposals in the Consultation seek to regulate the price paid in retail contracts that have been freely entered into in a competitive market, without any compelling evidence of a harmful effect on consumers or any robust data on the likely increased number of consumers switching following the ban on notice.

10. Ofcom explains in paragraph 3.99 of the Consultation that a notice period is not justified even where the customer was aware of the obligation. We respond to each of Ofcom's points in turn. Ofcom states that:

(i) a consumer may be aware of the specified notice period at the outset of their contract (and presumably regardless of whether this has been brought to their attention) but then become unaware sometime afterwards.

- Virgin Media submits this could be relevant to any contract a person enters into, including many standard consumer contracts such as mortgages, club memberships, gas and

² Mobile switching research, 2017, slide 10

³ In its revised time saved estimates, Ofcom continues to assume that a switcher would spend one minute digesting and considering the contents of the text message they received.

⁴ <http://store.virginmedia.com/virgin-media-mobile/freestyle-contracts.html>

⁵ Consultation, paragraph 6.5

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electricity contracts. Provided a key obligation is brought to the consumer's attention at the start and end of a contract, it should not be relevant if some consumers are unaware at a later stage, especially if this information is provided on bills and on the consumer's account;

(ii) that double payment is used by consumers to reduce loss of service or switch before their PAC runs out;

- This issue is being addressed through the OSG and the commitments made through that forum to ensure the porting process is more efficient. [X].

(iii) consumers do not like double paying and have difficulty coordinating the switch.

- There are many terms (including the price itself) which a consumer may not like which are legitimate charges. This does not mean that such a charge should not be permitted by a regulator. In relation to coordination difficulties, this is separate to the issue of double paying. Under Auto-Switch, a consumer has the option to let the GP know when to use the PAC/NPAC Code at a date in the future to eliminate double paying.

11. Ofcom states in the Consultation that the issue it has with notice periods is just isolated to switching in mobile contracts. However, given the weak justification provided for why this issue falls within Ofcom's remit to regulate, it is concerning that Ofcom has taken a policy position on this issue without any evidence of increase in switching expected following the ban on notice periods. Businesses need certainty of revenue and across many different industries (including other regulated industries) having a 30 day notice period is entirely normal.

12. The scope of Ofcom's role to '*protect consumers*' is not unbounded, nor does it mean simply intervening in ways that will affect the interests of consumers without a specific element of *protection*. One important reference point for Ofcom's role in consumer protection is consumer law, the purpose of which is to protect consumers. However, Ofcom seems to have dismissed current UK standards of consumer law and relied on general and unspecific powers it has to '*protect consumers*'. This provides industry with considerable uncertainty regarding what Ofcom considers to be reasonably within its scope to decide upon. Rather, Ofcom as it itself acknowledges, goes further than required under UK law⁶. Ofcom should be seeking to align its position with UK consumer law rather than broadening its powers. We are concerned that any Ofcom initiative can be stated as '*consumer protection*' without any reference to the standards required for intervention, the proportionality and expected outcomes.

13. We consider that many of the harms Ofcom considers to be caused by the notice period can be remedied by the requirement for mobile operators to provide transparency of switching processes to ensure that customers are well informed both at the outset and during the contract.

14. We consider that Ofcom's proposals for Auto-Switch are best developed and discussed within an industry forum to ensure there is coordination in relation to key issues such as '*go-live*' dates. We need to develop standard industry processes for the short codes and to explain to a customer why a PAC/NPAC request is rejected where (i) the account holder is deceased; (ii) fraud is detected on the account or (iii) the MISDIN is inactive. We see Ofcom's role as similar to the approach it adopted

⁶ Consultation, paragraph 3.94

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with the introduction of the new switching rules on the Openreach network. Ofcom should lead and chair these industry working groups to ensure that queries can be answered expeditiously.

15. Finally, we welcome Ofcom's work with the OSG to ensure that there is coordination of switching arrangements where it may be helpful to consumers. However, only some providers are actively involved in the discussions taking place (i.e. only the MNOs are members of the OSG) and therefore it would be appropriate that all providers have an opportunity to comment on the OSG's proposals.

16. In relation to the Consultation, we would appreciate further clarity on the following issues:

SMS

17. We set out below the information that will likely need to be sent to a customer by way of SMS (a maximum of 160 characters) to fully inform the customer of the implications of switching:

- ETC and outstanding monthly term
- Outstanding charges incurred (e.g. roaming)
- Outstanding loan amount (in accordance with FCA requirements)
- PAC/NPAC
- Expiry of PAC/NPAC
- Link to customer's online account
- Number to call Virgin Media
- Explanation of why text has been sent
- What to do if the text received in error or if the customer is not the account holder
- That the customer cannot respond to text message

18. Ofcom has not discussed the practicality of sending this (and any other relevant information) in a text or the likelihood of a customer reading such an extensive list of information. Ofcom needs to provide examples of how this should be presented in 160 characters.

Immediacy of SMS generation

19. We note that Ofcom has required that the PAC and ETC are generated immediately. There is a two hour window in which providers have to generate this information. Ofcom should make clear that it is not intending to shorten the window providers currently have to provide this information to customers.

Cost/benefit analysis

20. In relation to the cost/benefit analysis, we welcome Ofcom's efforts to refine the basis of time saving estimates resulting from its proposals. We also welcome the more realistic cost estimates of Ofcom's proposals. [X].

21. We have not reviewed Ofcom's revised estimates of harm or costs in detail. Absence of comment on this analysis should not be construed as support for its findings.

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22. Below we raise some high-level comments based on a brief review of Ofcom's harm analysis. In our view, this analysis continues to demonstrate that Ofcom should consider the proportionality of its proposals carefully. It appears that the more evidence that is collected and analysed, the more narrow and limited the estimates of possible benefits become. Ofcom should prioritise minimising the cost to industry, to provide the greatest chance for Ofcom's proposals to generate an overall positive net benefit. As noted previously, we agree with Ofcom's preference for Auto-Switch and believe this is a positive step towards proposals that are proportionate.

Likes/dislikes of the current process: survey responses

23. Ofcom's updated analysis further strengthens the evidence base that the current system is working well and is liked by the vast majority of consumers. When customers were directly asked to identify aspects of the current process they do not like, negligible volumes of survey respondents raised concerns about the process being complicated, customer agents undertaking a 'sales pitch' or long discussions with agents. In fact, respondents were far more likely to confirm these features of the current process were characteristics that they liked. For example, 2% of respondents that made a phone call to get a PAC said that the process was "not easy/too complicated" when they were asked to identify characteristics they did not like. In contrast, 38% of respondents specifically said that the ease or simplicity of calling for a PAC was a characteristic of the current process they liked. Similarly, respondents were more likely to identify the ability to speak to someone on the phone as something they liked, rather than something they did not like.

24. The number of survey respondents that got their PAC via a method other than phone is small in Ofcom's survey results. Therefore it is important not to put significant weight on comparisons between phone vs other PAC routes. Nevertheless, across a wide range of survey questions, the subset of phone-based PAC requests appeared to report higher levels of satisfaction when compared against the entire cohort that included those that used an alternative method. For example:

- Phone requestors were more likely to report to be very or fairly satisfied with the process of requesting a PAC;
- Phone requestors of PACs were more likely to say the process was simple and fast and fewer said there were no aspects of the current process that they liked, or they didn't know what aspects they liked, compared to the overall cohort; and
- Phone requestors of PACs were less likely to say they felt like the process was a 'sales pitch' and more were likely to say there were no aspects that they disliked, or they didn't know, compared to the overall cohort.

25. A similar pattern can be seen when respondents were asked about their experience of the process of cancelling. As we note, the sample size for comparison is small and in many cases the variations between the phone-only subset against the overall cohort are limited. Nevertheless, this does provide further evidence that the current process is well-liked, very few customers identify aspects of the existing process that they don't like and where they do, it is not clear that alternative methods are preferable. Furthermore, Ofcom's concern that the phone method may put off potential switchers as it is perceived as difficult, switchers are systematically kept on the phone for a long time or that customer agents apply pressure to stay or undertake a 'sales pitch' is not supported by respondents' answers.

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Subjective benefit estimates of potential users

26. Ofcom asked respondents that said they would probably opt for the new Auto-Switch process some further questions. In particular, they were asked if they would still contact the LP, despite receiving the SMS. They were also asked whether or not they thought they would save time overall. We do not think Ofcom or operators can robustly conclude whether or not consumers will save time or change their propensity to contact the LP; consumers responding to such questions are unlikely to be in a position to provide a reasonable estimate of what they would do given the limited information available to them during the survey. Despite this, almost two thirds of those that are more likely to opt for an SMS-route said they would possibly, probably or definitely contact the LP. The vast majority identified legitimate reasons for why they would need to contact the LP. In addition, many respondents may not have an *a priori* reason to contact the LP, but would after receiving the SMS. Information in the SMS may be unforeseen or they may have forgotten about an aspect of their service. As a consequence we place limited weight on these estimates by respondents. In our previous consultation response, we said that it is likely that many customers that may opt for a none-phone option would still ultimately call the LP. We remain of this view. We also place limited weight on survey respondents' ability to undertake an estimate of the implied net time-savings of a hypothetical scenario which they are not familiar with and has just been introduced to them during the survey.

Willingness to pay

27. Ofcom asked those that would probably or definitely use Ofcom's proposed alternative route, how much they would be willing to pay ('WTP') to use this option. We do not comment on the appropriateness or the methodology used to elicit estimates of the value consumers place on this proposal. To reduce 'hypothetical bias' inherent in such responses, Ofcom applies dampening factors to account for the fact that respondents may over-estimate their propensity to take up the option and overestimate their WTP for it. We focus our comments on the WTP estimates of those that self-report they would 'definitely' pay the value presented and definitely or probably opt to use the process in the first place. When averaged for all switchers, the average estimates range from £0.39-0.44.

28. We note that the lowest 'price' Ofcom offered for this service was £0.50 and even at this level, 40% of the subset of respondents that said they would use the Auto-Switch process said they possibly, probably or definitely would not be willing to pay this price. Therefore, even those that say they might use this option place limited value on it. This appears to be consistent with respondents' views of their satisfaction with the current process and their likes and dislikes of it.

29. Taking the results as given, £0.44 is the valuation of those that definitely or probably would use the new process and would definitely be willing to pay. Applying Ofcom's estimated value of leisure time and assuming that respondents were not factoring in any other form of harm, this implies that customers believe this process will save them on average c. 4 minutes and 45 seconds. If customers were putting value on other factors they wanted to avoid such as perceived hassle or avoiding a 'sales pitch' that they did not want, then respondents' estimates of actual time saved would be even lower to reflect these other factors. Consequently, this estimate is significantly lower than the revised time estimates that Ofcom presents in its analysis.

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Ofcom's revised time saving estimates

30. We welcome Ofcom's efforts to refine its time saving estimates. Virgin Media previously expressed concerns about the credibility of these estimates. In its March 2016 consultation Ofcom applied an average call time saving of 15.4 minutes. Ofcom's revised estimate is now 7.4 minutes. Following specific comments on Ofcom's methodology, Virgin Media broadly concluded that Ofcom's original estimate may be overstated by 50-80%. In light of Ofcom's revisions, while we welcome Ofcom's further engagement with operators and revised estimates, we continue to believe they are overstated.

31. We do not believe Ofcom has made adequate adjustments to its time saving estimates to reflect the subset of customers that would be expected to take up this new process. Ofcom recognised stakeholders' concerns that a simple average call duration for calls that resulted in a termination and/or PAC request would be misleading. Calls are frequently used by customers for a wide range of purposes and objectives during one call. Ofcom's own research illustrates this.⁷ It seems intuitive that those that are likely to use the new method would have been disproportionately likely to experience shorter call durations than average. Even if a customer did need to speak to the LP to discuss other matters associated with their switch, this would not feed into the time saving.

32. Ofcom agrees that on balance there is a risk of overestimating the time saved for those that would opt-in to the new process.⁸ However, it notes that there is also a risk that customers that experience the longest calls may be induced to adopt the new process. This appears unlikely; Ofcom's consumer research shows that c.5% of respondents that disliked the current process felt the process taking too long was a factor they did not like.

33. In response to the risk that time saving estimates may be overstated, Ofcom uses the median of call durations and corroborates this result comparing the output to the mean time saving estimates, with the longest 10% of calls excluded. In abstract, adjustments such as this may be appropriate if the data was suspected to be impacted by skew/kurtosis. However, this is not the concern that stakeholders raised or the risk that Ofcom recognised. In our view, the large majority of calls in Ofcom's revised sample include activities other than PAC or cancellation processing. Customers that self-select into the new process are less likely to undertake these other activities or would call separately/subsequently to undertake them. Either of these circumstances would not result in a timesaving that is comparable to the median or mean (less the top 10%) of Ofcom's call sample to be representative.

18 month implementation period

34. Based on a high-level review of the current Auto-Switch proposals, the 18 month implementation period appears to be reasonable.

Porting window

⁷ For example, slide 49 of Ofcom's Mobile Switching Research 2017 slide pack shows that even amongst those most likely to take up the Auto-switch; many would contact their LP to discuss other matters that might otherwise have conducted on the call.

⁸ Consultation, paragraph A10.34

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35. We note that Ofcom has included a requirement to pay 'reasonable' compensation if the 'cancellation' takes more than one working day⁹. We would like clarity on whether Ofcom proposes to go further than the current requirements in GC18.3 which requires that providers must affect a number port within one business day of a request to port by the consumer. If a provider fails to meet this requirement, consumers are entitled to reasonable compensation. Furthermore, we would like clarity on the level of compensation proposed as neither mobile nor business customers are included in Ofcom's provisional automatic compensation proposals and Ofcom notes that no equivalent analysis of consumer harm for mobile was undertaken as part of that exercise.

36. We are particularly concerned about any provision to include business customers. Virgin Media has fundamental concerns about the veracity of Ofcom's automatic compensation evidence. It is not clear on what basis Ofcom judges the c.£10 per day figure to have any relevance to delayed mobile cancellations. The figure Ofcom quotes relates to the loss of service of an ongoing, blended, fixed broadband and fixed phone service. No such equivalent harm would be generated; the (in our view, flawed) mechanism by which it was calculated has no bearing for a delayed cancellation of a mobile contract. Furthermore, Ofcom's survey evidence shows that the vast majority of mobile customers report no direct financial cost associated with their loss of service, the majority of customers 'did not do anything' as a result of the loss of service and when customers were asked what impact the loss of service had the most popular response was 'no impact'. In relation to fixed services, Ofcom observed that in the context of delayed provisioning, the harm observed was significantly lower than the loss of an on-going service, as customers often had a pre-existing service to revert to. Given that a mobile switching customer would always have a pre-existing service, even based on Ofcom's fixed-line methodology (which we believe is flawed) the equivalent value of harm to consumers would be negligible. Furthermore, a delayed port would leave the customer still able to access their existing service. We see no evidence or argument put forward by Ofcom that would support the compensation payments Ofcom references. Instead, a pro-rated refund of the marginal day(s) for which the cancellation was delayed would be proportionate, assuming the customer was billed for that period.

37. We assume Ofcom means in Figure 5 that compensation is payable in the event a provider fails to provide a NPAC/PAC Code rather than 'cancellation'. If not, we query in what circumstances a customer would be penalised if we did not 'cancel' their contract in time given once the PAC/NPAC is used under the Auto-Switch process this effectively stops the customer's contract. If there has been a mistake and the customer's contract is not cancelled at the time of port or switch, we consider the appropriate remedy to be reimbursement of any subscription/airtime cost of those extra days rather than compensation (as the customer has not been inconvenienced).

⁹ Consultation, paragraph 4.56, Figure 5