



NON CONFIDENTIAL

Virgin Media's response to Ofcom's call for inputs

"Helping consumers to engage in communications markets"

1. Virgin Media welcomes the opportunity to respond to Ofcom's call for inputs on 'helping consumers to engage in communications markets' (*'The Consultation'*). We consider that having an easy process by which customers can switch their communication services is vital for a competitive market.

Executive Summary

2. Virgin Media supports Ofcom's desire to improve the switching process for the benefit of consumers. We believe that switching should be straightforward and reflect the swift implementation of a consumer's informed choice. We agree that, in principle, customers that are more engaged in the market should be able to make more informed choices about switching. However, there is a balance to be struck between providing sufficient information and tools to facilitate those choices and over-burdening both consumers and Communications Providers (*'CPs'*) with unnecessarily excessive levels of detail. We fear that some of Ofcom's informational proposals fall into the latter category such that there are less intrusive measures that can be taken to achieve the objectives that Ofcom sets out.

Unnecessary and unfocussed provision of information will not help consumers

3. Before proceeding with the types of interventions envisaged or overly committing resource to an undefined outcome, Ofcom must be clear about the problem that it is attempting to solve and on the consequences of any resulting remedies and the bounds of its powers. Ofcom's principal duty is to further the interests of citizens and consumers, including where appropriate by promoting competition. Before Ofcom embarks on any new initiative it should explain the link between Ofcom's duties and powers and its thinking on how it will revise the General Conditions. In a competitive market, regulation is only needed to the extent that there is an identified problem (that is, to protect consumers) or clear evidence of a market failure. Ofcom should not regulate simply to 'improve consumer engagement' without further clarification of what this means and what outcomes is Ofcom seeking. Regulators have the challenge to reconcile that there are some customers who through understandable reasons do not have the time or interest to engage actively. We think Ofcom's premise is therefore wrong by stating that *'[i]f we can identify what is preventing these consumers from engaging more actively, we may be able to help more consumers into becoming 'interested' and 'engaged'*¹.
4. There is clear evidence of the risks and unintended problems that over-regulation is likely to cause. These problems are almost always unknown and hence invisible at the time of making a

¹ Para 2.10, Consultation

new regulatory rule, which is why a precautionary approach is both appropriate and in the best interests of consumers. 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 defined and assessable harm. We do not think that an aim of 'better consumer outcomes' is specifically clear or a defined objective. Once Ofcom has defined what its objective is, it then needs to make testable predictions and then assess whether these predictions came to pass.

Switching and engagement on the Virgin Media network

5. Switching to and from the cable network is working well. It is efficient as a process and overall consumers are satisfied with their experience. This is demonstrated by both Ofcom's and Virgin Media's data². Similarly, we observe no fundamental problems concerning switching involving other providers. To the extent that issues frustrating the switching process exist, these are largely specific and contained: Ofcom would be much better placed in targeting any interventions at these specific problems. We identify these later in this response in relation to non-coterminous contracts.

6. Regarding overall customer engagement, Virgin Media considers its customer base to be engaged. On average, [X] of our customers contact us every year (unique customer contacts). There are approximately [X] package changes each year and approximately [X] of the base makes a package change each year. Ofcom's research in the Consultation that shows that c.80% of triple-play customers are interested/engaged³. Except to the extent that Ofcom has identified a specific market failure deriving from BT's SMP in relation to BT solus voice customers, there appears to be no general barriers for consumers to get a better deal. In relation to BT solus customers, the harm to these consumers is being addressed through a specific retail pricing remedy and informational requirements to encourage those customers to become more engaged. Ofcom should also not view the proposals it is testing and pursuing in relation to BT to stimulate engagement in the solus voice market to be a template for its work in relation to overall all customer engagement. The harm Ofcom identified in relation to this group of vulnerable customers stemmed from the specific circumstances relating to these customers and BT's market power.

Ofcom's decision not to pursue GPL switching

7. Virgin Media was supportive of Ofcom's GPL switching solutions if implemented in a proportionate manner and in a way which allowed legitimate reactive save activities. We note Ofcom's decision not to intervene in relation to switching of triple play services on the basis that it is no longer 'proportionate and justified' to pursue reform in this area. However, just because a cost/benefit analysis yields a positive benefit does not mean that intervention is justified or proportionate or within the bounds of Ofcom regulation.

² 89% of cross-platform switchers were satisfied with their decision to switch (Slide 71, BDRC main findings). 78% of cross-platform switchers would recommend switching based on their experience (slide 72, BDRC main findings).

³ Figure 1, Consultation

8. Virgin Media considered that the system changes required to link between CPs' internal systems and the industry switching platform was far more complex and costly than estimated by Ofcom and this could have had unintended consequences for consumers. Based on Ofcom's original proposals, Virgin Media estimated its capex costs of implementation to be [~~8x~~] in year one. This is higher by a factor of [~~8x~~] than Cartesian's cost estimates. We consider that Ofcom's revised cost estimates to be much more realistic as net costs (10-year NPV) to implement GPL would be in the region of £110m, compared to the provisional estimate of £23.9m – £25.7m at the time of consultation. We agree therefore with Ofcom's statement that the impact of its previous GPL switching proposals could increase costs and *"in turn they might have an impact on consumers (such as being passed through into higher prices or affecting providers' incentives to invest)"*⁴.
9. Regarding reactive save, we welcome Ofcom's statement that *"As part of Ofcom's broader review of the General Conditions, we have proposed to remove this rule noting that we are now generally less concerned about the effects of reactive save activity than was previously the case. Ofcom expects to issue a decision on this (and other changes to the consumer protection rules in the General Conditions) later this year"*⁵. We have always considered that all types of save activity can be beneficial to consumers to help them understand the products and services they are getting. This is particularly important in a market where products are not homogenous and there is real consumer choice.

Ofcom's Approach and Desired Outcomes

10. In the context of the above, Ofcom's decision to no longer pursue changes to cross platform switching but rather focus on barriers to consumer engagement and whether there are features of a market that indicate it may not operate effectively, seems the right approach. However, we consider that Ofcom should take a targeted approach to any further intervention. The Consultation is too wide-ranging at the moment to provide a meaningful focus for intervention. Ofcom deals with a number of different issues in the Consultation all of which may impact consumer engagement across different consumer groups but not every issue impacts on a consumer's ability to switch. Some of Ofcom's proposed remedies concern just the provision of increased information to consumers to enable them better to understand the product they are paying for and its price.
11. Ofcom's general consumer policy work highlights that CPs and consumers focus too much on price, and on introductory offers in particular⁶. Ofcom looks to be considering greater standardisation and engagement via pricing offers to entice less engaged consumers. We believe Ofcom is setting out on a programme of work with the wrong objectives that will reinforce this feature of the market. It would be perverse if any policy proposals Ofcom puts forward were to incentivise a focus on introductory offers and a 'race to the bottom' regarding service quality to save costs, or work against consumer willingness to pay for or take up 'full-fibre' service; which is key to stimulate demand for high quality network services and the investment that they

⁴ Para 1.7, Switching Statement *"Ofcom's decision on switching landline, broadband and/or pay TV between different platforms"*

⁵ Para 2.22, Switching Statement

⁶ Ofcom reiterates its concern in the Consultation, for example paragraph 2.11

require in the long-term. The broader interests of consumers are not enhanced by simply looking for the cheapest priced service offering; this is not a good measure of engagement. Instead there should be a focus on service quality and value for money and educating consumers about factors other than price.

12. Virgin Media customers can already find out a plethora of information online or through an agent over the phone including: what packages the customer already subscribes to; any additional 'add ons'; and the end date of their fixed term period. It is unclear what further information is necessary or required without creating an overload of information for consumers or unnecessarily standardising what is otherwise a competitive market where providers compete to offer consumers enhanced tools. Ofcom needs to be clear about the outcomes it is seeking – is it wanting to ensure that consumers can switch without impediments or is it wanting to ensure that consumers (or some groups of consumers) are more aware of what their needs are? A too wide ranging review of consumer engagement without a targeted approach and defined set of desired outcomes may hamper progress.

Specific Ofcom Proposals

Co-terminus contract end dates

13. Virgin Media believes that Ofcom should consider what the real impediments are to consumer switching. In particular, we consider that Ofcom should focus on ensuring that the terms and conditions of consumers' contracts and industry practices do not impede or have the effect of stopping customers from leaving their existing contracts. We have received many complaints over the years from customers about the practice of some providers of having non co-terminus contract end dates for different elements of their triple play services. This bad practice is sometimes combined with a CP's policy of not having an ETC policy for an individual element of the triple play bundle (instead requiring the customer to pay the full term of the contractually committed subscription fee) [X]. This is a real impediment to consumer switching as it means that only the very savvy customer can ensure they are aligned to switch without being subject to ETCs for all their triple play products. This can take months of planning to align contract end dates. For most customers in this situation, despite a clear desire to switch, and even having gone through the switching process by contacting a new provider and entering into a new contract, when they find out they have no possibility to exit one of their triple play services early, they are effectively locked to their existing provider.
14. For customers in contract on any of their triple play products where the end dates are not aligned, it is extremely difficult for a customer, even if they were able to manage their contract dates, to switch without paying an ETC either on their phone/broadband subscription or continuing to pay their subscription fee on their Pay TV until the end of the contractual term. We consider that Ofcom should mandate that triple play service should have the same contract end date so that customers can switch easily and through one process. It is not sufficient just to provide consumers with additional information in these circumstances as there is little they can do with this information once they have decided to switch.

Informational messages

15. Ofcom is considering whether to mandate informational messages to customers to encourage them to review their existing deal, usage, allowances, and package on the current services they purchase and to standardise their personal information. We are not convinced this will be effective. [X]. At best, such a proposal may prompt those who are already engaged in the market to do so at an earlier stage in the process but it is unlikely to increase switching. Ofcom needs to be clear about what success would look like in such circumstances and have a review mechanism to ensure any mandated information yields more switching and more engagement in the market. Unnecessary information or complex information provided to consumers can have the opposite effect of what is intended. For example, complex regulated pricing information provided to consumers in relation to non-geographic calls has not increased consumer confidence in the market. We refer Ofcom to the Annex to this response where we analyse in more detail the risk of unintended consequences in relation to unnecessary provision of information.

Pricing information

16. Ofcom is also proposing to provide customers with easily comparable pricing information. Whilst we consider there is benefit to helping consumers navigate the market and to understand the different packages providers offer, providing consumers with standardised pricing information needs full consideration to avoid distorting the market and creating false comparisons. This is a significant risk in markets where products are not homogenous. For example, we are not convinced it is possible to compare prices for broadband without linking the price to actual speeds achieved.

17. Even where prices may be able to be compared (for example out of bundle call charges), the customer needs to be able to assess and review the package in the round in terms of overall fees and data allowances and understand their usage. Even if such additional information is provided, we are concerned about how much information would need to be disseminated to consumers to make a meaningful comparison across providers. A customer who wants to understand their current deal in full is best placed to go onto the Virgin Media website or call into a customer agent.

18. Regarding the pricing comparison websites, these sites do not have the functionality or commercial incentive to be able to collate and present multiple data points to allow accurately a consumer to determine what deal is best for them. The pricing websites are privately owned profit making companies. Such websites necessarily will focus on a CP's price rather than overall product quality and services. The default algorithm on most of the websites presents sponsored recommendations first (and this will change regularly) – with the potential to mislead consumers regarding the best deal for them. [X]. There is also no standardisation of how pricing information is presented. Some websites present pricing information based on first year cost, others on the basis of monthly cost. Some factor in bill credits and others provide high street vouchers. Overall, it is extremely difficult for consumers to understand what the best deal is for them (in terms of price, value and service) from these websites without engaging with a provider directly. There is a risk that a consumer could overly focus on one element of the deal (such as a high street voucher) on such a website without understanding what they need in terms of a communication product. Virgin Media has already developed these online tools with a 'help me

choose' and 'bundle builder' functionality available which asks a detailed set of questions about the customer's intended usage, number of people in the house etc. to suggest an optimal package.

19. We do consider that more can be done to allow consumers to understand the actual broadband speed they are getting. Speed is important for consumers when choosing between providers, because speed delivers a series of benefits, e.g. the ability to run multiple simultaneous applications or to support data intensive services. We have advocated to the ASA, based on Virgin Media commissioned quantitative and qualitative research from ICM and BritainThinks respectively, as part of its consultation on revised broadband speeds advertising guidance that there is a need to better understand how broadband speeds advertising could be made clearer to the average consumer. Our research found that peak-time speeds are considered unhelpful by consumers. In focus groups, consumers expressed a preference for knowing the speed they will receive over the whole day, rather than just between 8pm and 10pm. This is particularly true of those who use their broadband throughout the day (i.e. the growing homeworker community, stay at home parents, retired people, etc.).

Ofcom's Questions

Question 1: Do you agree that we should include SMEs in the scope of our work?

20. We consider that Ofcom has taken too broad a definition of whom to include within the scope of its work. A company with up to 250 employees is likely to have significantly more complex communication needs than an individual household. Ofcom risks not properly addressing the needs of individuals if it includes within the scope of its work what can be large multi-million pound companies with hundreds of employees. Ofcom should keep the scope in its review limited to consumers and micro businesses (with up to 10 employees), in line with its standard definition of consumer/end user used in relation to switching.

Question 2: What are your views on whether consumers not knowing when to engage is a barrier to their engagement? What impact do you think this has on them and to competition in the various communications markets? Please provide evidence supporting your views, including any research you have conducted or have access to.

21. Virgin Media already provides through its customer portal online and through customer service agents contract end dates. The pricing websites also can remind a customer when their deal is coming to an end. Customers already have this information available to them so this cannot be a factor materially impacting engagement.

Question 3: What are your views on the suggested possible solutions to help address consumers not knowing when to engage? What could be their positive or negative effects? What other possible solutions might there be?

22. Please see response above

Question 4: What are your views on whether consumers not understanding their own needs, or having difficulties navigating available information, is a barrier to their engagement? What impact do you think this has on them and on competition in the various communications markets?

Please provide evidence supporting your views, including any research you have conducted or have access to.

23. Please see response above

Question 5: What are your views on the suggested possible solutions to help consumers understand their own needs, and navigate available information? What could be their positive or negative effects? What other possible solutions might there be, and what might be their effects?

24. Please see response above

Question 6: What are your views on whether these (or other) particular contract terms and conditions, or industry practices, are a barrier to consumer engagement? What impact do you think this has on them and on competition in the various communications markets? Please provide evidence supporting your views, including any research you have conducted or have access to.

25. Please see response above

Question 7: What are your views on the suggested possible solutions to help address the impact on consumer engagement of particular contract terms and conditions, or industry practices? What could be their positive or negative effects? What other possible solutions might there be, and what might be their effects?

26. Please see response above

Question 8: Are there other barriers to engagement that you think our work should seek to address? What impact do you think these have on consumers and on competition in the various communications markets? What possible solutions might there be to these barriers, and what might be their effects? Please provide evidence supporting your views, including any research you have conducted or have access to.

27. We refer Ofcom to our paragraph above about helping consumers understand the broadband speed they are actually getting over a 24 hour period.

Question 9: What are your views on the need to trial or test potential solutions? To what extent might you be willing and able to participate in or facilitate field trials or other testing of possible solutions?

28. We have shared some data with Ofcom already as part of this response. [X].

Annex 1 - Ofcom's work to date on Consumer Engagement

Ofcom notes in the Consultation that the increasing price and service complexity may particularly affect vulnerable consumers. In our response to the standalone voice consultation we noted that where a well-defined and persistent issue exists; namely chronic disengagement amongst voice-only customers, a targeted remedy may be appropriate. However, we also noted that Ofcom's proposals went far beyond this subset of customers and risked unintended consequences to the broader (highly competitive) market. We see the same risks arise in this call for inputs.

The importance of having a focussed approach to any intervention is highlighted in Ofcom's recent qualitative research conducted as part of its review of the standalone-voice market.⁷ This research firmly support Virgin Media's argument that there are a wide variety of reasons for lower engagement and the suitable remedies that should, or should not, be put in place are equally varied.

Ofcom's standalone voice research raised a number of concerns for Virgin Media, particularly if Ofcom were to seek to emulate its approach in some way to intervene in the broader, highly competitive, market for communication services.

In the strawman communication samples Ofcom sought to stimulate a 'call to action' for the customer by emphasising the cost savings that might be achieved from switching to another provider. It may be the case, although we do not comment given the inconclusive results, that this may be effective in the small subset of disengaged voice-only customers whose services are relatively homogenous. However, we believe adopting any similar proposals, wholesale, for the broader retail market would be damaging to competitive differentiation.

Intervention of this kind would also risk creating an incentive to game any standardised side-by-side comparisons; making it more, not less, likely that CPs would find it commercially advantageous to apply the largest possible discounts to new customers and forsake existing customers which may be less engaged. This would make any potential engagement-gap wider.

Ofcom noted in its final statement on triple-play switching that, in part, the cost benefit analysis of its proposals failed because it impacted too narrow a subset of subscribers – the cost for addressing them was therefore too large. We would encourage Ofcom to consider, and clearly articulate, the issue it perceives, the subset of the population affected, how its future proposals seek to target these issues, in addition to defining clearly its success criteria for any intervention.

An intervention that is wide-ranging and therefore has a broad impact may help to ensure a positive cost-benefit analysis, but by design, such an intervention is likely to be highly intrusive, may be disproportionate and is more likely to suffer from unintended consequences. We anticipate that any remedies that Ofcom proposes will be as targeted as possible to minimise the impact on a market that Ofcom itself recognises is effective for the broad majority of consumers.

⁷ Ofcom, Enriching understanding of standalone voice customers, <https://www.ofcom.org.uk/research-and-data/telecoms-research/fixed-line-phones/enriching-understanding-of-standalone-voice-customers>