Ofcom 3 Feb 2021 Quick, easy and reliable switching Consultation

Response from Fern Trading Limited, on behalf of itself, Swish Fibre Limited and Jurassic Fibre Limited

13 April 2021

EXECUTIVE SUMMARY

1. INTRODUCTION

1. Fern welcomed Government's decision in 2020 to require Ofcom to fully transpose the switching and number portability requirements of the EECC. This gives Ofcom the mandate it needs to ensure that customers can transfer services easily between different fixed network providers, in the same way they can currently between mobile networks, and between service providers operating on the KCOM and Openreach networks. This will make it easier to attract new customers, and will thereby encourage investment in ultra-fast fibre deployment.
2. The EECC mandates a seamless one-stop shop switching process, led by the recipient provider. Ofcom's October 2020 general switching rules, which transpose the EECC, support these aims. They ensure customers are adequately informed and are not switched without their explicit consent. They ensure the switch happens quickly, that loss of service is minimised, and that customers are compensated if things go wrong.
3. The NoT+ process for service switching on the Openreach and KCOM networks could have been adapted for inter-network switches. This would have had the benefit of consumer familiarity, and would have fulfilled most EECC requirements. But the process is slow, far from seamless, and gives information about switching implications to customers too late in the process.
4. Given the difficulty in adapting NoT+ to conform to the new switching rules, Ofcom asked industry to design an alternative process. Industry came up with two alternatives: 'Option X' and 'Option Y'. We supported a variant of Option Y under which the recipient provider controlled all customer contact. This would have provided the smoothest customer switching experience. However, in the interests of moving inter-network switching forward, we are willing to drop this in favour of the "One Touch Switch" ('OTS') variant. Under OTS, some customer contact is made by a 'hub' and some by the recipient.
5. Both Option Y variants give a better customer experience than Code to Switch ('CTS'). More importantly, both are EECC-compliant, as they are seamless, one-touch and recipient-led.
6. We hope Ofcom will see the willingness of Option Y supporters to rally behind OTS as a reason to increase its own involvement in implementation. It should also reset the deadline by allowing 18-24 months to implement from the time it publishes its *process* (as opposed to its *general*) switching GCs.

7. Previous switching reforms were completed 18 months after process GCs were in place. But these were substantially simpler than inter-network switching. Resetting the deadline in this way will give industry greater clarity, and avoid Ofcom being forced to continually re-set its hard December 2022 deadline, which industry is unlikely to meet.

2. COMPLIANCE OF THE OPTIONS WITH THE EECC

8. In section 3 we will compare the OTS and CTS processes over how easy they are for consumers to use, how quick and reliable they are, and whether they support informed consumer decision-making. However, more important than this is the fact that only the OTS process complies with EECC requirements for "*a one-stop-shop enabling a seamless switching experience for end-users*" and for recipient-led switching. CTS, by contrast, involves two stops, is not seamless, and is donor-led. We now examine these components.

9. The EECC says "*The receiving provider shall lead the switching and porting processes*". Ofcom believes "*process*" refers only to the coordination of stop and start times for old and new services. But it should refer to the *entire switching process*, including authentication and authorisation, information provision, and service coordination. This view is supported by the CMA and by countless Ofcom documents since 2010. Under both OTS and CTS, the recipient leads the co-ordination component. But it is only under OTS that the recipient leads the entire end-to-end process on behalf of the consumer. CTS does not comply with the recipient-led EECC requirement.

10. Ofcom will hear arguments that CTS is similar to the code-based mobile Auto-switch process, and that, therefore, if it believes Auto-switch complies, it should believe CTS does too. On the face of it, it may appear that Auto-switch does not comply with EECC requirements for seamless, one-stop shop, recipient-led switching is questionable, because it involves two stops, and the donor leads part of the process.

11. However, Auto-switch can be easily defended on the grounds that it delivers essentially the same benefits as the EECC requirements. In particular, it is very simple to use and adds negligible time to the switching process. This is because of the intrinsic role that the mobile handset plays in the authentication, information provision, and consent stages of the switch.

12. CTS, by contrast, very clearly does not comply with the EECC. It involves two stops, and the donor plays a fundamental role in authentication and information provision. But it also does not have the consumer benefits of Auto-switch. It has no text-based contact option, has more complex customer authentication and asset identification, and can cause delays between request and receipt of switching information. Adding web-chat, text or IVR code request routes does not change this.

3. ASSESSING THE OPTIONS

13. We agree with Ofcom's option assessment framework. Switching processes should be easy to use, quick, and reliable. Below we assess how well OTS and CTS compare on these measures.

- OTS is easier for consumers to use than CTS because it is simpler, more familiar as it is similar to the existing NoT+ fixed switching process (claims of similarity between CTS and mobile Auto-switch are over-stated), offers customers greater control over their interaction with the donor, and is marginally simpler for service bundle switching.
- OTS allows for faster switching than CTS for landline-only customers and those who prefer to receive communications by letter, rather than email or online. This is because they must wait for a letter from both the donor and the recipient.
- There is no material difference between the reliability of OTS and CTS. Both allow the same level of accuracy over identification of services to be switched and switching date, although OTS removes the possibility of confusion which can arise under CTS where the customer gives different information to the recipient and donor. OTS and CTS do not affect the back-office functions which determine risk of loss of service or errors, or restoration procedures. Both options allow recipients to be confident that the person requesting the switch is authorised to do so, and in practice offer similar levels of protection against slamming.

4. EXPLICIT CONSENT

14. We agree with Ofcom that recipients should take all reasonable steps to ensure they do not switch customers without their "express" consent. We also agree that the switching process should provide customers with the core quantifiable impacts of their decision, such as early termination charges and outstanding balances on hardware purchases, before they consent.

15. However, we disagree with Ofcom's new view that customers cannot consent unless the switching process also provides them with information about all contractual impacts arising from removing one service from a bundle when they sign up with a new provider. Customers already receive this information when they first sign up. Ofcom has not evidenced the benefits that it believes will arise from providing all of this information again before consent.

16. We believe that information overload risks deterring switching. The need to receive non-core information in durable medium will slow down the process for some dual-play customers without mobile, and also for some customers with landline and mobile but no broadband. It will make one-touch switching impossible for those who phone to request a transfer, but can't access the internet at the same time. Ofcom should at least require providers to separate out core information, so that it does not get lost in contractual detail.

17. Currently in mobile switching, only Ts & Cs which change over time are considered core to informed consent. There is no evidence that this leads to bad switching decisions. We believe Ofcom should adopt this approach for both fixed and mobile switching.

18. Under OTS, the core donor switching information is always up-to-date, as it is provided live during a switch request. Under CTS, by contrast, it will be out of date if the customer does not use the code immediately. OTS therefore performs better in terms of facilitating informed decision-making, which is a necessary condition for explicit consent.

19. Ofcom says a lot about "informed consent" but little about how consumer must "explicitly express" this consent. Some guidance on this would be helpful in its statement.

5. THE CTS IVR ROUTE

20. The late inclusion by the Option X group of a CTS IVR route for requesting a code could allow landline-only customers to get an authorisation code via the IVR, and then use this to switch before they receive the switching information in durable medium. This would mean they switched without explicitly consenting.

21. IVR would probably be even slower and for consumers than the OTS web, voice and app code request routes, and could involve similar levels of hassle, including voice-recognition rejections, and being sent back to a customer services representative.

22. Furthermore, it remains non-compliant with EECC requirements for recipient-led and seamless switching, and takes longer, and involves more hassle, than OTS. Like all CTS code-request routes, IVR also offers a post-request donor save opportunity until expiry of the code. This opportunity is limited under OTS, because switching information is provided 'live'. Under CTS it would be difficult to audit unwanted post-request save activity.

6. SCOPE OF INTER-NETWORK SWITCHING

23. We do not think Ofcom has adequately explained why the inter-network switching process should not apply to the switching of pay-TV services. We think this is envisaged by both the EECC and by Government. We accept that this is not part of this current process consultation, but we believe Ofcom should work to bring this within scope of the new process as quickly as possible.

7. COSTS AND PROPORTIONALITY

24. We accept Ofcom's assessment of the proportionality of OTS, given that a) it is the most effective means of meeting its switching policy objectives while avoiding introduction of additional difficulties and deterrents into the switching process; b) the EECC requires that Ofcom creates an inter-network switching process, and industry cannot agree on any alternative to OTS; c) the costs represent a trivial component of typical consumer telecom bills.

8. IMPLEMENTATION CONCERNS

25. We start this section by considering the tasks required to implement Ofcom's OTS proposals. We note that the most contentious component is likely to be agreeing governance arrangements. We compare OTS implementation to the much simpler NoT+ and mobile Auto-switch processes, where Ofcom allowed operators 18 months to implement.

26. We then challenge Ofcom's understanding of OTS implementation tasks, based on its December 2019 consultation proposal to allow just 12 months for this. We welcome Ofcom's decision in October 2020 to extend this to 24 months, in line with previous

implementations, but with six additional months to deal with extra OTS complexity. This is commensurate with CTS and OTS estimates of 21 and 18 months respectively.

27. Had Ofcom started the 24-month implementation clock *from the publication of its switching process GCs*, as it did for every previous switching reform, we would have nothing further to say in this section. However, instead, it has set implementation by reference to the December 2020 publication of EECC GCs, giving a hard launch deadline of December 2022.

28. Ofcom does not now plan to publish its switching process GCs until Q3 2021, leaving only 15 months to implement. This is less time than it allowed for MAC, PAC, Auto-switch, NoT or NoT+, despite the greater complexity involved. Ofcom has provided no evidence for why it believes implementation can complete in less time than Option X or Y groups estimated.

29. This situation should not have arisen. Ofcom invited industry to develop a switching process. History should have told it that there could be no agreement. This approach resulted in more than 12 months of delay. If, instead, Ofcom had designed its own switching process options as it has done previously, it could have consulted on these when it consulted on its general switching rules, in December 2019. It could then have published both sets of GCs in December 2020, and customers could have looked forward to OTS before December 2022.

30. Ofcom can still address this. It needs to remove the hard December 2022 deadline, and instead allow 18-24 months to implement from the time it publishes its GCs. This is how it has approached implementation for every previous switching reform. This would move the timeframe back in line with industry implementation estimates, and allow time for further Ofcom delays, like the six months it took to consult following the Option X/Y submissions, and the two-week extension it allowed in order to accommodate amendments to CTS.

31. Without this change, industry is highly unlikely to deliver OTS in December 2022, and Ofcom will have to keep extending deadlines (Threats to fine a whole industry for late delivery, when most are hugely incentivised to launch as soon as possible, and Ofcom is largely at fault for delays to date, are not credible).

32. Ofcom's 7 April letter asking the OTA to help establish an implementation working group is useful, but will not help industry hit a hard December 2022 deadline. It will take many weeks just to establish funding and voting arrangements for this group. And while it can conduct background research into governance models, operators are unlikely to start substantive implementation, including *selecting* the actual hub governance model, until Ofcom has chosen its switching process, and probably not until its rules are published.

TERMS USED IN THIS DOCUMENT

- We use the terms "donor" and "recipient" to indicate the customer's current and prospective provider respectively. (Ofcom uses the terms " losing provider" and "gaining provider" for the same parties.
- We user the terms "donor-led" and "recipient-led" to indicate switching processes where the customer must contact the donor and recipient, or purely the recipient.

Ofcom uses the terms "losing provider led" and "gaining provider led" for these processes.

- We use the term "hub" to describe the central software platform which controls the switch order flow, and customer communications. In the switching industry (and by the providers of these platforms) this entity is more commonly known as a "clearinghouse".
- For Ofcom documents, we refer to:
    a. *Quick, easy and reliable switching Proposals for a new landline and broadband switching process and to improve information for mobile switching* as "the Feb 2021 consultation".
    b. *Fair treatment and easier switching for broadband and mobile customers Implementation of the new European Electronic Communications Code* as "the Oct 2020 statement".
    c. *Fair treatment and easier switching for broadband and mobile customers. Proposals to implement the new European Electronic Communications Code* as "the Dec 2019 consultation".
    d. *Consumer switching Decision on reforming the switching of mobile communication services* as "the Dec 2017 mobile statement".
    e. *DIRECTIVE (EU) 2018/1972 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 11 December 2018 establishing the European Electronic Communications Code* as "the EECC".
    f. *Option X - Broadband & Voice switching proposal Response to Ofcom* as "Option X"
    g. We also make reference to:
        1. The *Government response to the public consultation on implementing the European Electronic Communications Code 22 July 2020*
        2. *General Conditions of Entitlement Unofficial Consolidated Version*
        3. *Strategic review of consumer switching A consultation on switching processes in the UK communications sector, Sept 2010*
        4. *Consumer Switching A statement on the GPL NoT+ elements*, 2013

1. INTRODUCTION

Fern welcomed Government's decision in 2020 to require Ofcom to fully transpose the switching and number portability requirements of the EECC. This gives Ofcom the mandate it needs to ensure that customers can transfer services easily between different fixed network providers, in the same way they can currently between mobile networks, and between service providers operating on the KCOM and Openreach networks. This will make it easier to attract new customers, and thereby encourage investment in ultra-fast fibre.

33. Fern believes that smooth switching processes are an essential part of allowing customers to exercise choice. This in turn encourages competition, by incentivising providers to deliver better, cheaper and more innovative services.

34. With a choice of over 50 full-fibre networks currently in development, and with plans for these to reach around a third of UK premises, the ability to switch services from providers operating on old BT copper to those operating on ultra-fast networks has become critical. This makes investment in gigabit-capable networks even more attractive.

35. The UK already has regulated processes in place which support inter-network mobile switching, and intra-network fixed telecoms switching between service providers operating on the Openreach or KCOM networks. However, while some limited ad hoc bi-lateral industry agreements exist, there is currently no regulated process which facilitates service transfers between providers operating on *different fixed* networks.

36. Without such a process, customers wishing to change to a provider operating on a different network must contact their current and prospective providers, to arrange the transfer, and to co-ordinate stop and start times for the old and new services. This is time-consuming, and risks service loss and double paying for overlapping services. Ofcom evidence[1] shows this creates customer difficulties, and can discourage switching.

37. Ofcom recognised this issue when it consulted on proposals to introduce recipient-led inter-network switching in 2016. However, its work was complicated by the inclusion of switches involving pay-TV services to or from satellite networks, in addition to voice and broadband services on fixed networks.

38. A number of providers, in particular Sky and Virgin, successfully argued that the likely costs of Ofcom's proposals were substantially higher than it had estimated. They also argued that Ofcom had over-estimated customer difficulties with switching, and that its research in this area was flawed. Ofcom subsequently withdrew its proposals.

39. We therefore welcomed Government's decision[2] in July 2020 to require Ofcom to fully transpose the consumer protection provisions of the European Electronic Communications Code ('EECC'), and, in particular, the provider switching and number portability requirements of Article 106 / 107.

[1] E.g. Ofcom Triple play switching, online research Main findings, slides 22 and 23.

[2] Government response to the public consultation on implementing the EECC.

40. This clarifies Ofcom's mandate to impose obligations on operators to ensure that customers can switch any internet access services ('IAS') or number-based interpersonal communications services ('NBICS') (i.e. any fixed or mobile telecoms service), between any provider, and over any network.

41. This decision by Government was particularly welcome in the light of:

    - the benefits to UK consumers of a simple inter-network switching process;
    - the failure of Ofcom's previous attempt to create such a process;
    - the failure of the telecoms industry to come up with an unregulated alternative; and
    - the opposition of Sky and Virgin to regulated activity in this area.

The EECC mandates a seamless one-stop shop switching process, led by the recipient provider. Ofcom's October 2020 general switching rules, which transpose the EECC, support these aims. They ensure customers are adequately informed and are not switched without their explicit consent. They ensure the switch happens quickly, that loss of service is minimised, and that customers are compensated if things go wrong.

42. Switching processes work best when they are free, simple, and quick, and when they help customers make informed choices. Customers should trust that the switching process will be error-free, and that the transfer will occur when they expect, with minimal service interruption. Experience across the world shows that switching works most efficiently when the process is led by the recipient provider, with no need for donor provider contact.

43. EECC (106) successfully captures these characteristics of good switching processes (and (107) applies some of them to services bundled with IAS or NBICS). In addition, Recital 281 makes clear that the process should "*facilitate a **one-stop-shop** enabling a seamless switching experience for end-users*", and "*be led by the receiving provider*".

44. We think Ofcom was broadly successful in transposing these requirements in its October 2020 switching rules, and, in most instances, sensibly took a minimal transposition route, which largely copied the EECC requirements. These rules require that:

    - the new provider takes the lead in managing the switch;
    - customers are kept adequately informed before and during the switch and are not switched without their explicit consent;
    - the switch happens in the shortest possible time and on the customer-agreed date;
    - providers minimise or avoid loss of service during the switch; and
    - customers are compensated if things go wrong.

The NoT+ process for service switching on the Openreach and KCOM networks could have been adapted for inter-network switches. This would have had the benefit of consumer familiarity, and would have fulfilled most EECC requirements. But the process is slow, far from seamless, and gives information about switching implications to customers too late in the process.

45. The EECC left discretion to National Regulatory Authorities ('NRA's) to provide the detail of the switching and porting processes used to deliver its objectives.

46. One option could have been to adapt the existing regulated 'NoT+' process for fixed service switching between providers operating on the Openreach or KCOM fixed networks. Under NoT+, the customer contacts the new provider and asks to switch, and then automatically receives a letter from the donor containing information about the implications of their decision. The customer can cancel if they change their mind after receiving this letter.

47. This process has the advantage of being well-understood by customers, having been around in its basic form for almost ten years, and in its enhanced "+" version for over six years. It would be sensible to design any reforms to fixed switching processes in a way which retains as many NoT+ features as possible, in order to retain this process familiarity.

48. However, while NoT+ fulfils some of the EECC switching requirements, notably being recipient-led, minimising loss of service and allowing for compensation if things go wrong, it suffers in several areas. We set these out below, as they become relevant to our later discussion of the relative merits of 'Code to Switch' ('CTS') vs 'One Touch Switch' ('OTS').

    a. **NoT+ slows down the switching process**. Even if a next-day switch is technically possible, the transfer is held back for ten days, until the customer has received the switching implications letter. The arrival of this information so long after the initial request is likely to confuse some customers.

    b. **NoT+ gives switching information to customers too late in the process**, i.e. after they have requested the switch. However, we disagree with Ofcom over *what* information customers need in order to make an informed switching decision. We believe Ofcom's approach will deter some would-be switchers, and moves further away from seamless one-touch switching (see section 4 below).

    c. **NoT+ is far from seamless**. It only provides for switching information to be sent by letter, rather than by instantaneous durable formats, such as an SMS text message, or via an online account. This removes the possibility of seamless switching. A delay is built into the NoT+ process to ensure that the switch does not take place until the customer has received their letter.

Given the difficulty in adapting NoT+ to conform to the new switching rules, Ofcom asked industry to design an alternative process. Industry came up with two alternatives: 'Option X' and 'Option Y'.

We supported a variant of Option Y under which the recipient provider controlled all customer contact. This would have provided the smoothest customer switching experience. However, in the interests of moving inter-network switching forward, we are willing to drop this in favour of the "One Touch Switch" ('OTS') variant. Under this process some customer contact is made by a 'hub' and some by the recipient.

Both Option Y variants give a better customer experience than Code to Switch ('CTS'). More importantly, both are EECC-compliant, as they are seamless, one-touch and recipient-led.

49. Given Ofcom's view that NoT+ could not be easily adapted to conform to the new switching rules, in July 2019 it asked the Office of the Telecoms Adjudicator to work with the fixed telecoms industry to come up with an alternative design. However, there was no consensus, and industry subsequently split into two camps:

50. 'Option X' proponents favoured a process under which the customer first contacts their current provider, by phone, online or app, to get switching information and a code authorising the switch. This is sent by email or text where possible; by letter where not[3]. Once the customer receives their code, they contact their new provider and give the code to them, along with their consent to switch. The new provider then co-ordinates the stop and start of the old and new service. Ofcom calls this "Code To Switch" ('CTS').

51. 'Option Y' proponents favoured a process under which the customer contacts the new provider by phone, online or in-store to arrange the switch (although an app could also be used). The new provider then arranges for the old provider to authorise the switch and to send customer-specific switching information to a 'hub'. The hub then either sends this direct to the customer (the 'Y-Hub' variant, which Ofcom has termed "One Touch Switch" ('OTS')), or forwards to the GP to send to the customer ('Y-GP' variant). This information is sent by email, text or letter, or included within the online order screen via a third-party pop-up (similar to online payment verification systems).

52. The majority of Y-GP proponents preferred the Y-GP variant. This offers a smoother switching experience than Y-Hub, because the customer receives all communications from the recipient, rather than receiving some of them from the hub. This includes authorisation confirmation, switching information, contract summary and progress communications. Under Y-GP, the recipient can sequence these messages more efficiently.[4]

53. Ofcom was concerned that Y-GP gives the recipient visibility of confidential changes to donor Terms and Conditions ('Ts & Cs'), where the customer does not switch all elements from a bundle. We think these concerns are mis-placed. Operators tend to know the prices and Ts & Cs of competitors, including the discounts they offer on service bundles. We would have no qualms about them seeing our own offers if one of our customers switched away.

54. However, both Y-GP and Y-Hub are substantially better than CTS from a customer experience perspective, being easier to use and faster, and providing the same level of reliability and informed decision-making (see section 3). Furthermore, unlike CTS, they also comply with EECC requirements for seamless, one-touch, recipient-led switching (see section 2).

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[3] We note that CTS did not include a facility to send information by letter. Its proponents appeared not to have considered that some people might not have internet access. Nevertheless, we accept that letter-sending is a necessary addition to the process, in order to comply with Ofcom's durable medium requirement. We also note that Ofcom does not appear to have taken into account, in its summary description of CTS on page 24 of the Feb 2021 consultation, the fact that customers with mobile phones cannot receive by text the new switching information that Ofcom proposes, unless they have a smartphone. We go into this issue in more detail in section 4.

[4] Ofcom says on page 26 of the Feb 2021 consultation that switching information can be sent "*as part of the gaining provider's online order process*". This is more seamless under Y-GP, where the recipient provider controls all information. For example, if a customer orders by phone, under Y-GP, the recipient can be certain that it has sent the necessary information before proceeding with the order, rather than rely on the hub to confirm this.

55. Therefore, as it is in customers' interests to get a smooth inter-network switching process in place as quickly as possible, we, like other Y-GP supporters, are now willing to drop our support for Y-GP in favour of support for Ofcom's preference for OTS.

56. However, regardless of the process chosen, we have significant concerns about the information which Ofcom requires must be provided to customers before they can consent to switch. We believe Ofcom's proposals will slow down the process, lead to drop-out, and, in some instances, lead to *less* informed switching. We set out these concerns in more detail in section 4.

We hope Ofcom will see the willingness of Option Y supporters to rally behind OTS as a reason to increase its own involvement in implementation. It should also reset the deadline by allowing 18-24 months to implement from the time it publishes its process (as opposed to its general) switching GCs.

Previous switching reforms were completed 18 months after process GCs were in place. But they were substantially simpler than inter-network switching. Resetting the deadline in this way will give industry greater clarity, and avoid Ofcom being forced to continually re-set its hard December 2022 deadline, which industry is unlikely to meet.

57. We hope Ofcom will see this industry collaboration as a reason to increase its own involvement in implementing the new process, with a view to helping get inter-network switching up and running as quickly as possible.

58. We also hope Ofcom will see that it has left insufficient time to implement the new process. Its current deadline is 24 months after the *general* switching General Conditions ('GC's') came into force in December 2020. But all previous switching implementations took 18 months from the point at which the *process* GCs were published. As Ofcom does not plan this until Q3 2021, even if industry could complete in 18 months, it would not meet the 2022 deadline.

59. However, in practice we doubt industry will complete within 18 months. This is because inter-network switching is ***substantially*** more complex to implement than, say, Auto-switch or NoT+. This is because there is no pre-existing hub, it does not build on an existing process, and the majority of network providers do not currently offer switching, so must start from scratch. Conducting early work on governance structures *before* the process GCs are in place will not alter this; the majority of the work, including selecting the governance mechanism, will only start once the regulations are clear. (See section 8).

60. So, despite our clear commercial interest in implementing inter-network switching as soon as technically possible, we think it will take industry 18-24 months to launch OTS from creation of the new process GCs. It would give industry much more clarity if Ofcom recognised this now, rather than being forced to continually re-set deadlines.

2. COMPLIANCE OF SWITCHING OPTIONS WITH THE EECC

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making. However, more important than this is the fact that only the OTS process complies with EECC requirements for "*a one-stop-shop enabling a seamless switching experience for end-users*" and for recipient-led switching. CTS, by contrast, involves two stops, is not seamless, and is donor-led. We now examine these components.

The EECC says "*The receiving provider shall lead the switching and porting processes*". Ofcom believes "*process*" refers only to the coordination of stop and start times for old and new services. But it should refer to the *entire switching process*, including authentication and authorisation, information provision, and service coordination. This view is supported by the CMA and by countless Ofcom documents since 2010. Under both OTS and CTS, the recipient leads the co-ordination component. But it is only under OTS that the recipient leads the entire end-to-end process on behalf of the consumer. CTS does not comply with the recipient-led EECC requirement.

61. EECC 106 (6) requires that "*The receiving provider shall lead the switching and porting processes*". We believe Ofcom has mis-interpreted the term "*processes*" in this requirement. Ofcom appears to think this term refers simply to the process of coordinating stop and start times for old and new services. Under this interpretation, the recipient leads this activity under both OTS and CTS.

62. But under any natural reading, "*the switching and porting processes*" refers to the *entire end-to-end switching process*. If the recipient leads this process, there should be *no* need for the customer contact to contact the donor, whether for authentication, authorisation, information provision, or service coordination. Under recipient-led switching, the recipient should do all of this on the consumer's behalf.

63. This is why, for example the Competition and Markets Authority said, "*switching should generally be managed by the gaining supplier so that **customers do not have to contact their existing supplier if they want to move.***"[5]

64. It is why Ofcom has, since 2010, consistently described "losing provider led processes", as those where the must contact the donor *at some stage during the switch*, i.e. not just at the co-ordination stage. E.g.

    - *"LPL process* - Losing *provider led 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"*[6]
    - "*Losing Provider* Led *('LPL') - a switching process where the consumer needs to contact their existing (ie. losing) provider in order to enable the switch to go ahead*"[7].
    - "*Losing Provider Led (LPL) Process: where the consumer contacts their losing provider (i.e. their current provider) in order to switch. Also known as a 'donor-led' process."*[8]

[5] CMA Tackling the loyalty penalty Response to a super-complaint made by Citizens Advice on 28 September 2018, para 26.

[6] December 2013 Statement on GPL NoT+ elements, Glossary page 13

[7] July 2014 Consumer switching: next steps and calls for inputs: page 4

[8] See: March 2016 Proposals to reform switching of mobile communications services Glossary page 74, July 2016 Consumer Switching: Further proposals to reform switching of mobile services Glossary page 80, and Dec 2017 Decision on Reforming the Switching or Mobile Communication Services Definitions, page 41.

65. When "process" is defined properly this way, i.e. as the end-to-end customer switching journey, OTS is the only inter-network process which conforms with the EECC requirement that the recipient should lead the switching and porting process,

Ofcom will hear arguments that CTS is similar to the code-based mobile Auto-switch process, and that, therefore, if it believes Auto-switch complies, it should believe CTS does too. Despite Ofcom's defence, Auto-switch compliance with EECC requirements for seamless, one-stop shop, recipient-led switching is questionable, because it involves two stops, and the donor leads part of the process.

But Auto-switch can be easily defended on the grounds that it delivers essentially the same benefits as the EECC requirements. In particular, it is very simple to use and adds negligible time to the switching process. This is because of the intrinsic role that the mobile handset plays in the authentication, information provision, and consent stages of the switch.

66. We realise that Ofcom has taken its limited interpretation of the "process" that the recipient must lead, because of the problems this presents for the EECC compliance of the mobile Auto-switch process. Similarly, we realise that Ofcom is reluctant to focus too hard on the "*one-stop shop*" envisioned in the EECC recitals, because Auto-switch involves two stops.

67. This position will be amplified by CTS supporters, who claim that, as a code-based process, it is in essence, the same as the code-based mobile Auto-switch process, and delivers similar benefits. Under this reasoning, if Ofcom believes one process complies, it should believe the other does too.

68. Auto-switch is problematic on both the recipient-led and seamless one-stop-shop fronts, for related reasons:

    - The customer must contact the donor for authentication, switching information, and to receive a code which confirms that the switch is authorised. This means the donor is integrally involved in the process.
    - It also means two stops are involved; first with the donor, and then with the recipient to give them the code, and to give explicit consent to switch.[9]

69. As set out above, Ofcom tries to get round both points by claiming that the "process" which the EECC says must be led by the receiving provider, doesn't begin until the customer hands over the code. We don't think this stacks up. We think Ofcom can mount a better defence of Auto-switch EECC compliance by focusing on its "seamlessness", and the fact that it takes almost no more time than a fully recipient-led process would.

    - All mobile switchers can be authenticated instantly from the handset they use to request the PAC and switching information.

[9] A third step will be required for some customers, if Ofcom believes they must be again be given the information they received when they first signed up about the impacts on remaining services of removing one component from a bundle. This information is too complex to include in a text message. It therefore cannot be immediately accessed by those without smartphones, who cannot access weblinks embedded in text messages.

- All mobile handsets, regardless of age, support SMS text messaging, which means there is currently *never* a need speak to the donor to receive the PAC and switching information, unless the customer wants this[10].
- The entire process, from texting "PAC" to 65075, to receiving the code and switching information, is near instantaneous. As the majority of mobile switchers use their mobile handset to contact the recipient, this code is always readily available to them and can be easily read out to the recipient; there is no need to search for it on a computer.

70. This makes the whole Auto-switch process only fractionally slower and less seamless than a fully recipient-led codeless process. It works because of the central and intrinsic role of the mobile handset in the authentication, information provision, and consent stages of the switch. The Option X proposal appears to acknowledge this, noting that Auto-switch has been "*well-received by consumers*".

CTS, by contrast, very clearly does not comply with the EECC. It involves two stops, and the donor plays a fundamental role in authentication and information provision. But it also does not have the consumer benefits of Auto-switch. It has no text-based contact option, has more complex customer authentication and asset identification, and can cause delays between request and receipt of switching information. Adding web-chat, text or IVR code request routes does not change this.

71. CTS is much slower than codeless processes, involves at least two steps, is not seamless, and the donor leads a substantial part of the process. It therefore complies with neither the letter nor the intent of the EECC. Furthermore, Unlike Auto-switch:
    - **Customers without internet access are forced to contact the donor by phone**. This is because there is no text-only code request route. While this could in theory be added, neither the authentication mechanism, nor the means of identifying the services to be switched, is clear. CTS phone contact can be either be via Interactive Voice Response ('IVR') or by speaking to a customer services representative. Customers who contact by landline must then seek an internet-connected terminal or smartphone in order to receive switching information in durable medium, or else wait for a letter.
    - **Authentication and identification of the services to be switched is more complex**. Under Auto-switch the mobile Caller Line Identity ('CLI') is always associated with the customer account, and only the mobile service can be switched. Under CTS, customers must authenticate using personal data or passwords which can be matched by the donor. Using a fixed CLI for this carries risks, because fixed handsets are accessible without passwords. They must also state which service they want switched. potentially other service.

[10] Although if Ofcom determines that mobile switching information must include the re-provision of the 'static' Ts & Cs that the customer was given when they first signed up, this will be too complex to include within a text message. This means that customers without smartphones must wait to receive a letter, or find a computer terminal on which to access the information by email or online account.

- **There can be a delay between request and receipt of switching information**. This occurs where the customer requests this information by landline and it is sent by letter, or to an email address or online account but the requester has to locate a fixed or mobile internet-connected terminal in order to access this. This potentially adds a second step, before the third step of contacting the recipient to give them the code. If landline-only customers are given the code verbally by phone, they can use this to switch before they receive switching information in durable medium (see section 4).[11]

72. All of this is far from instantaneous. If the customer wishes to speak with an operator, they will experience delays from an IVR, and then from the authentication process. Customers who go online must log on to their operator account and navigate to the 'switching section' (which we doubt would be prominent) to get their code. Any notion that these routes are real-time, or mimic the mobile switching experience, is entirely misplaced.[12]

73. Ofcom asked CTS proponents whether they could modify their proposal by adding a webchat or text-based code request mechanism, and they did add an IVR route after Ofcom published its consultation. However, these routes are still slower, involve two steps, and require the customer to contact the donor for authentication. They therefore also do not comply with the EECC:

    - **Webchat**. We agree with CTS proponents that it would take consumers considerable time to authenticate and request a code using a webchat facility. This route would still involve two stops, one to get a code, and one to deliver it to the recipient. It could also create significant cost for providers who do not currently offer this facility.
    - **IVR**. We set out the many problems with Interactive IVR code requests in section 5. However, in summary, these include authentication issues, switching the wrong services, and being sent back to a customer service representative after a voice-recognition failure. All of this is far removed from the swiftness and smoothness of mobile Auto-switch.

74. Ofcom has stated its concerns about difficulties with code-based switching processes multiple times in consultations going back to 2010. CTS does not solve these problems.

3. ASSESSING THE OPTIONS

We agree with Ofcom's option assessment framework. Switching processes should be easy to use, quick, and reliable. Below we assess how well OTS and CTS compare on these measures.

OTS is easier for consumers to use than CTS because it is simpler, more familiar as it is similar to the existing NoT+ fixed switching process (claims of similarity between CTS and mobile

[11] The use of codes *per se* are not necessarily incompatible with OTS, provided the code is simply used between donor and recipient as a mechanism to confirm authorisation to switch. It is only when a customer must contact the donor to get a code and then pass this to the recipient, that it becomes donor-led, and a two- or three-step process.

[12] The only route which comes close to the Auto-switch experience in terms of speed is the use of a donor app.

Auto-switch are over-stated), offers customers greater control over their interaction with the donor, and is marginally simpler for service bundle switching.

75. It should be self-evident that effective switching processes should be easy to use. A process which is difficult to use will deter switching. OTS scores better on this than CTS by virtue of being simpler to understand, giving greater customer control over donor contact, and generally involving less hassle than CTS. Following Ofcom's assessment framework we consider each of these aspects of ease of use below.

    - **Simpler to understand**. Under OTS, the customer need only contact the recipient, who is incentivised to make the process as easy as possible, and can manage the process on their behalf. Simply by virtue of being a two-step process, CTS increases scope for confusion. Customers may not understand that they need to contact both donor and recipient. Any customer who mistakenly contacts the recipient first will be re-directed to the donor to get a code. This adds unnecessary complexity.

    - **More familiar**. OTS is similar to NoT+, and to other utility and financial service switching processes, in that the main step is simply the need to contact the recipient. As the majority of fixed telecom switchers currently use NoT+ to cancel their old services, this familiarity should aid customer understanding. CTS, by contrast, would require customers to move back to something more like the old MAC code-based process for switching fixed services. There is also minimal similarity between OTS and mobile Auto-switch, so familiarity with Auto-Switch will not aid understanding of CTS for fixed switches:

    - **OTS is marginally simpler for bundles**. We think Ofcom has probably over-stated this benefit. Firstly, OTS and CTS could both be adapted to allow switches which include mobile, although this would come at a huge cost to operators. Nevertheless, as currently specified, neither process has this functionality. This means customers wishing to switch bundles which include mobile would need to use Auto-switch and either OTS or CTS. Use of two processes adds complexity in both cases, but OTS has the benefit that the recipient can guide the customer through this.

    - **OTS offers greater customer control over donor contact**. CTS by its nature involves donor contact. Under CTS, any customer who contacts the donor by phone is potentially exposed to the difficulties or deterrents highlighted in Ofcom's 2020 Switching Experience Tracker. These include the hassle and time involved in contacting two providers, difficulty getting through to a representative or being put in a queue, and unwanted save activity. In some instances, this will deter customers from switching, or will lead would-be switchers to abandon their attempt.

      While inclusion of an IVR option in theory means no customer has to speak with an operator under CTS, in practice this route risks not complying with Ofcom switching rules because it potentially allows uninformed consent (see section 5). In any event, many customers, particularly those who are older and vulnerable, often prefer to engage with providers by phone, and are therefore exposed to the risks outlined above.

Although CTS offers customers some elements of control by virtue of giving them a choice of communication channels for requesting (app, online or phone) and receiving (email, text or letter) code and switching information, this is nothing that OTS doesn't also offer. In addition, despite Option X proponents claiming that they would not engage in retention activity during the code request calls, they are clearly incentivised to do so. (Ofcom should note the scope for abuse behind the Option X claim that "*A CP can guide the customer as to which services can / cannot be switched on their own*"). The difficulty in enforcing this sort of save activity was a key driver behind dropping the MAC process.

The Auto-switch code-based process gives customers much greater control over donor contact than CTS by virtue of its text-only request/receive option, its in-built authentication mechanism, and its use solely for switching the mobile service. All of these design features limit the need to interact with the donor unless required.

OTS allows for faster switching than CTS for landline-only customers and those who prefer to receive communications by letter, rather than email or online. This is because they must wait for a letter from both the donor and the recipient.

76. The OTS process is clearly quicker for customers to use than CTS, by virtue of being a one-stop process which does not need codes. However, both allow the customer to specify when they want to switch, and both allow for next-day switching where technically feasible. We agree with Ofcom that, where customers receive information by post, whether because this is their communication preference or because they only have a landline, OTS is potentially quicker. This is because the customer need only wait for a letter from the recipient, rather than two letters, one from each provider.

There is no material difference between the reliability of OTS and CTS. Both allow the same level of accuracy over identification of services to be switched and switching date, although OTS removes the possibility of confusion which can arise under CTS where the customer gives different information to the recipient and donor. OTS and CTS do not affect the back-office functions which determine risk of loss of service or errors, or restoration procedures. Both options allow recipients to be confident that the person requesting the switch is authorised to do so, and in practice offer similar levels of protection against slamming.

77. OTS and CTS both concern the process by which a customer selects services to switch on a specific date, secures authorisation for this, gets information about the implications of their decision, and then gives their consent for the switch to take place.

78. Under CTS, the customer informs the donor of their address, the services to be switched, and the desired switch date. This information is captured within the code given to the customer. There is some potential for confusion if the customer then asks the recipient to switch different services to those they initially requested from the donor, but only those initially requested can be switched.

79. Under OTS, the customer provides the same address, service and date information as under CTS to the recipient, which then provides this to the donor via the hub. This should

deliver the same level of asset identification and transfer date accuracy as CTS, and should not return more 'un-matched' rejections. However, scope for confusion is reduced, as the customer does not also provide this information to the donor.

80. OTS and CTS have no bearing on the back-end functions involved in co-ordinating the stop and start times of the old and new services, or the routing of calls. They therefore do not affect issues such as technical reliability, loss of service, or the likelihood of errors, or service restoration where an error occurs.

81. Both options allow recipients to be confident that the person requesting the switch is authorised to do so, and both offer similar levels of protection against slamming.

- Under CTS, the customer and services to be switched are identified in the donor code which the customer must pass to the recipient. The donor uses existing authentication processes to ensure only authorised customers receive codes. It is highly unlikely that the code could fall into the wrong hands, but, in any event, as the customer must give financial details before the switch can proceed, and as confirmation is sent to the account holder, risk of customer fraud is negligible. In addition, slamming should be eliminated as the switch cannot proceed without the code, and operators have no way of accessing these.
- Under OTS, the customer and services to be switched are identified by the recipient, and these details are given to the donor to match. Although authentication details such as donor account number could also be provided, OTS has strong fraud prevention measures - provision of the financial details of the switcher to the recipient and customer alert via communication to the donor-held contact details. We think additional protections are unnecessary. The hub identifies which provider requested a switch. This audit facility acts as a huge disincentive for 'no contact slamming', even if the provider finds some way of getting hold of the customer information required for match and request.

4. EXPLICIT CONSENT

We agree with Ofcom that recipients should take all reasonable steps to ensure they do not switch customers without their "*express*" consent. We also agree that the switching process should provide customers with the core quantifiable impacts of their decision, such as early termination charges and outstanding balances on hardware purchases, before they consent.

However, we disagree with Ofcom's new view that customers cannot consent unless the switching process also provides them with information about the contractual impact of removing one service from a bundle when they sign up with a new provider. Customers already receive this information when they first sign up. Ofcom has not evidenced the benefits that it believes will arise from providing this information again before consent.

We believe that information overload risks deterring switching. The need to receive non-core information in durable medium will slow down the process for some dual-play customers without mobile, and also for some customers with landline and mobile but no broadband. It will make one-touch switching impossible for those who phone to request a transfer, but can't

access the internet at the same time. Ofcom should at least require providers to separate out core information, so that it does not get lost in contractual detail.

Currently in mobile switching, only Ts & Cs which change over time are considered core to informed consent. There is no evidence that this leads to bad switching decisions. We believe Ofcom should adopt this approach for both fixed and mobile switching.

Under OTS, the core donor switching information is always up-to-date, as it is provided live during a switch request. Under CTS, by contrast, it will be out of date if the customer does not use the code immediately. OTS therefore performs better in terms of facilitating informed decision-making, which is a necessary condition for explicit consent.

Ofcom says a lot about "informed consent" but little about how consumer must "explicitly express" this consent. Some guidance on this would be helpful in its statement.

82. EECC106(6) requires that the receiving provider must not "*port numbers or switch end-users without the end-users' explicit consent*". Ofcom's 2020 rules transposed this by requiring gaining providers to take all reasonable steps to ensure they do not switch customers without their "*express*" consent, and that the customer is authorised to request a switch, and intends to enter into the contract. We agree with this approach.

83. Ofcom says that the decision to switch involves both a decision to accept a contract for new services with the new provider, and a decision to cancel a contract for services with the old provider. It says this requires that the customer is given information in durable medium about their new services, and also about the consequences of their decision to cancel their old services, including changes to contractual terms.

84. However, while we agree with Ofcom that information about quantifiable impacts of a switching decision are needed before a customer can consent, we note that it no longer distinguishes between "*the core potential costs of switching that consumers would need to weigh up before deciding whether and when to switch*"[13], and non-core contractual elements, such as loss of bundle discounts[14].

85. Ofcom previously said that, for mobile switching, core information must be provided within the body of a PAC text, but non-core information, such as changes to contractual terms of unswitched services from a bundle, could be provided via a link to an online account embedded in this text. Core information meant quantifiable figures that change over time - early termination charges, outstanding credit, and outstanding handset balances - i.e. things that even an informed customer would not necessarily know without prompting and without calculation. Non-core information involved static information that the customer was already given when they signed up, such as discounts arising from service bundles[15].

[13] Dec 2017 Mobile switching statement 4.57

[14] Ibid 4.65

[15] The new Contract Summary requirements mean that customers will be given this information twice.

86. This distinction between core and non-core information is critical to informed decision-making and to the swift operation of the mobile switching process. We examine this for mobile switching first, before going on to show the impact on fixed service switching.

- It means that customers requesting a PAC by text *cannot not receive or use the code without also seeing the core information*, because this is included in the PAC text. This helps ensure *all* customers have an "adequate" level of information before they switch. It means that this critical information is not lost in several pages of non-critical information about Ts & Cs.
- It speeds up the process. For those that wish to read it, the non-core information is available via an online account (for which a link is included in the PAC text), or by phoning the donor (in which case it can be given verbally and then sent by letter), or by going into a shop (in which case it can be given in print-out form). But this information is currently discretionary - it is not required for informed consent. Customers do not need to wait until they have received or can access this information in durable medium before switching.
- In fact customers without internet access, and those with fixed internet access but without a smartphone, *cannot* access non-core switching information in durable medium when they receive the PAC text, because they can't click through from the text link[16]. Those that phone the donor to request a PAC can be given elements of non-core information verbally, but not in durable medium until *after* the PAC text is sent (when it can be sent by letter). Under current rules donors cannot wait until such customers have received the non-core information in durable medium; they must send the PAC within one minute of the request call. In these circumstances customers can use the PAC before they receive this information. Current rules allow this, and the process is widely considered to work very well. But under Ofcom's *new* interpretation of informed consent, these customers are switching without "adequate" information.

87. In the inter-network fixed telecoms service switching context, this issue will have similar ramifications. Under CTS, customers can receive switching information by email or SMS. Under OTS they have the additional option of receiving it within an inline content pop-up, as part of the recipient order process.

88. If Ofcom insists on providing both core and non-core information in these communications, a customer who wants to switch could be faced with several pages of contractual detail. We suggest that, while customers *can* trawl through this if they want to, most won't. In fact it risks the perverse effect of leading to *uninformed decision-making* by virtue of giving too much information, which may mean customers ignore the important bits. Information overload may even lead to some level of drop-out from the switching process. We think Ofcom should mandate the separation of core/non-core information, to aid better decision-making.

89. Under both OTS and CTS, customers can receive notifications confirming the switch order and providing progress updates. Both processes also allow the sending of switching

[16] Ofcom accepted in the Feb 2021 consultation (6.24) that, unlike 'core' information, this information is too complex to include in a text.

information in durable medium from donor and recipient, about the old and new services. However, under OTS, the core donor switching information is always up-to-date, as it is provided live during a switch request. Under CTS, by contrast, it will be out of date if the customer does not use the code immediately. OTS therefore performs better in terms of facilitating informed decision-making, which is a necessary condition for explicit consent.

90. We now consider how requiring non-core switching information in durable medium affects various switching journeys. This involves trade-offs between process speed and switching information, which Ofcom does not appear to have weighed up. It also discriminates against people who are older and vulnerable, who are less likely to have internet, less likely to have mobile, or, if they do, less likely to have a smartphone.

- **Customers who request a code (CTS) or a switch (OTS) online or via an app** should receive switching information (and code) immediately in durable medium. There is no problem here.
- **Customers with landline and broadband who request a code (OTS) or switch (CTS) by landline** cannot proceed until they can access the switching information in a durable medium. Where these customers don't have a mobile (or have a mobile which isn't to hand, or have a handset with no internet access), they must locate a connected device in order to access their email or donor online account, to view the information. Where this device is not near their landline, they must change location, and possibly phone back later once they have accessed it. This adds time and hassle to the process, and will probably lead to drop-out. If Ofcom allowed consent on the basis of core information only, at least dual-play customers who phone by landline but have a non-connected mobile handset nearby could proceed without pause.
- **Customers with landline and mobile but no broadband** who wish to switch their landline, can only receive full switching information immediately if they have a smartphone, and can therefore access a weblink embedded in the text (or have some other way of accessing a connected terminal). Recipient operators do not know in advance who these people are, although they could ask when the customer phones, or orders online or in-store. If Ofcom changed its rules, where they identify customers without smartphones, they could request authorisation and switching information from the donor, but halt the process until the customer has had a reasonable opportunity to receive a letter (or found a way to access the information online). But this would slow down the switching process for these people.
- If instead, Ofcom allowed these customers to consent on the basis of core switching information alone, this can be sent in the body of the text as per the current PAC process, and so is accessible by those with and without smartphones, because no weblink is required. Where these customers phone by mobile, or phone by landline but have their mobile nearby, they could then proceed immediately with the switch instead of waiting to receive a letter or find a connected terminal. (If Ofcom wished, the non-core information could be sent by letter in parallel. Any customer who ordered the switch remotely on the basis of the core information, but then changed their mind when they received this letter, could cancel their order under Consumer

Contracts Regulations. The donor could in theory refuse to take them back, but in practice this is unlikely).

91. Ofcom seems to think that its new inclusion of non-core contractual information 'drops out' of the EECC. It doesn't; the EECC simply says providers "*shall provide the end-user with adequate information before and during the switching process*"[17]. It leaves discretion to NRAs to interpret what "adequate" means.

92. It is therefore disappointing that Ofcom has not analysed the choices that customers currently make under Auto-switch, where only core information must currently be provided before consent. It has not assessed how many consumers bother accessing non-core information via embedded web-link, or whether those without smartphones that cannot access this information would have made different choices if they could access it. This analysis would help inform regulatory decisions over the appropriate level of information for inter-network switch consent. We are not aware of any complaints from the regulator, mobile operators, or consumers, that Auto-switch users currently lack adequate information, or would have made different choices.

93. As a final point on consent, Ofcom says a lot about the pre-conditions for *informed* consent, very little about how the customer "*expresses*" their consent. We assume that under both processes, the customer has to either tick a box, or confirm verbally that they want the switch to proceed. In particular, under CTS we assume that the mere act of giving the code to the recipient is not enough, that some addition "expression" would be required. Even if Ofcom pursues its preference for OTS, some guidance on its expectations around this would be helpful in its statement.

94. Both processes allow for recipient customer notifications confirming the switch order and providing progress updates. However, under OTS, the core switching information is always up-to-date, as it is provided live. Under CTS, it will be out of date if the customer does not use the code immediately.

95. Furthermore, while Ofcom considers the risk that OTS switchers who contact the recipient by phone might feel pressured into considering the information quickly and making a decision, this overlooks the fact that:

    a) customers can pause the call if they want to; and

    b) under CTS many customers will request the code and switching information from the donor live while on a call to the recipient. To the extent any pressure exists, it applies equally to these customers.

96. Note: the desire to switch swiftly almost certainly means that most customers will only want to consider core switching information; we expect very few to waste time reading the donor contractual Ts & Cs that Ofcom believes they need (and that they were already presented with when they first signed up with the donor).

[17] Although this EECC requirement only applies to internet access services, not all communications services.

5. THE CTS IVR ROUTE

The late inclusion by the Option X group of a CTS IVR route for requesting a code could allow landline-only customers to get an authorisation code via the IVR, and then use this to switch before they receive the switching information in durable medium. This would mean they switched without explicitly consenting.

97. The Option X group made the following in a late submission to Ofcom's consultation process. "*As part of the 'contact centre' option CPs must offer customers the opportunity to receive their switching Code via an IVR platform. When connecting to the IVR the customer would need to* provide *relevant authentication information (to ensure the request is valid) and the Code would be provided to the customer via the IVR and, subsequently, in durable format (letter/email/SMS). This would allow all customers, including voice-only customers, to receive their Code without speaking to a CP agent*."

98. This amendment is intended to extend the opportunity to avoid speaking with a customer services representative, and thereby avoid unwanted save activity during the authorisation and information-giving process, to customers without internet access. However, it potentially means that the donor can give landline-only customers their code verbally during a request call, and the customer can then give this to the recipient and switch, before they receive their switching information in durable medium. This would prevent them from making an informed decision, and would mean they cannot explicitly consent to the switch. It therefore does not comply with Ofcom's October 2020 switching rules.

IVR would probably be even slower and for consumers than the OTS web, voice and app code request routes, and could involve similar levels of hassle, including voice-recognition rejections, and being sent back to a customer services representative.

Furthermore, it remains non-compliant with EECC requirements for recipient-led and seamless switching, and takes longer, and involves more hassle, than OTS. Like all CTS code-request routes, IVR also offers a post-request donor save opportunity until expiry of the code. This opportunity is limited under OTS, because switching information is provided 'live'. Under CTS it would be difficult to audit unwanted post-request save activity.

99. While the Option X group has not provided detail on how IVR authentication and menu options would work, this route is likely to be even clunkier for customers than the web, voice and app-based CTS routes, all of which are already slower than OTS. Furthermore, unlike OTS, no CTS route is recipient-led or one-touch EECC compliant.

100. In addition, IVR CTS suffers from the following issues:

- Voice recognition is not a reliable process. Using it to authenticate the customer, and to identify the services they want to switch from a bundle, risks error, and will lead to failures. This will lead to some customers being put back through to a customer services representative, adding even more time, and leading to drop-out.
- Customers who want to switch should not be forced into unwanted save conversations. Under OTS this can never happen - the customer only speaks to the

donor if they want to. If Option X could find an fool proof IVR solution, the same might be true of CTS. However, all CTS request routes allow the donor to contact the customer *after* providing the code, up to the point that the customer gives this to the recipient. This contrasts with OTS, where there is no code, and the switching information is generally sent live, during the conversation (or online order) with the recipient. There is therefore no donor save contact window under OTS.

- This may not be a significant issue. For Auto-switch, Ofcom dropped its opposition to donor post-PAC save calls, noting that the window for this is often small, and the customer can refuse the call.[18] Its focus instead, was on ensuring that the communication used to deliver the code did not unnecessarily induce the customer to contact the donor. Nevertheless, Ofcom promised to "*monitor the incidence and effect of providers' save activity and in particular the degree to which consumers find this an unwanted intrusion*"[19]. Under CTS, if Ofcom became concerned about post-code save activity in future, it would find it hard to audit the link between this and the initial code request. Ofcom identified this problem when it considered IVR code processes in 2010.[20]
- It must be quick and simple for a customer to initiate a request for Code generation – once this process has been initiated then retention activity will not be allowed (as per the mobile process).
- We are highly sceptical that IVR will remove any cost by virtue of reducing the volume of customer service calls. Many providers would need to invest in new IVR systems, which for some will lead to greater costs.

6. SCOPE OF INTER-NETWORK SWITCHING

We do not think Ofcom has adequately explained why the inter-network switching process should not apply to the switching of pay-TV services. We think this is envisaged by both the EECC and by Government. We believe Ofcom should work to bring this within scope of the new process as quickly as possible.

101. EECC 107(1) says: "*If a bundle of services or a bundle of services and terminal equipment offered to a consumer comprises at least an internet access service or a publicly available number-based interpersonal communications service* ['NBICS'] *... Article 106(1)* [which concerns arrangements for switching between internet service providers] *shall apply to all elements of the bundle including, mutatis mutandis, those not otherwise covered by those provisions.*"

102. In July 2020, in its *Response to the public consultation on implementing the EECC,* Government confirmed that, for the purposes of granting powers to Ofcom regulate communications service bundles, Article 107 applies to all commonly included elements of

[18] The Option X proposal did not appear to understand Ofcom's mobile switching rules on save activity. It said: "It must be quick and simple for a customer to initiate a request for Code generation – once this process has been initiated then **retention activity will not be allowed (as per the mobile process)**." (emphasis added).

[19] Dec 2017 mobile switching statement, 4.101

[20] 2010 Strategic review of switching, 6.89

an internet- or NBICS-bundle, including "*digital services (e.g. music and video streaming* services*), Pay-TV services, and mobile handsets/routers ...*".

103. We believe it is clear that the Government's intention was that pay-TV services, when bundled with internet services, should be included within the scope of whatever inter-network switching process Ofcom decides to impose. Government made this decision despite Sky's objection that this would result in unjustified costs and consumer harm.

104. Despite Sky's objection during the December 2019 consultation that pay TV is not an Electronic Communications Service ('ECS'), and therefore is not within scope of the proposed GCs (unless bundled with an ECS), we fully agree with Ofcom that it has the power to regulate pay TV where this includes conveyance of signals on an Electronic Communications Network.[21]

105. When CityFibre raised this point previously, Ofcom was correct to say that "*the EECC does not mandate that the gaining provider led requirement* [i.e. 106(6)] *should apply to all elements of a bundle*"[22]. But EECC 107(1) *does* mandate that, where pay-TV is bundled with an internet or voice service, it must comply with the switching requirements of EECC106(1). This includes provision of adequate customer information before and during the switch, service continuity, activation within the shortest possible and customer-agreed time, no break in service before the switch, and switching within one working day.

106. At the very least this implies that there should be *some* switching process available for switching bundled pay-TV services. Yet no such process currently exists. We do not think Ofcom has adequately explained why it has chosen to exclude pay-TV services from OTS switching.

7. COSTS AND PROPORTIONALITY

We accept Ofcom's assessment of the proportionality of OTS, given that a) it is the most effective means of meeting its switching policy objectives while avoiding introduction of additional difficulties and deterrents into the switching process; b) the EECC requires that Ofcom creates an inter-network switching process, and industry cannot agree on any alternative to OTS; c) the costs represent a trivial component of typical consumer telecom bills.

107. Ofcom is required by Government to put in place rules which support the switching and porting provisions of EECC 106/7. There is therefore no option *not* to have a fixed inter-network switching process. Providers will incur hub, system, process, CRM, testing, marketing training and reporting implementation costs, regardless of which switching process is adopted.

108. Accurately assessing these costs is difficult. Nevertheless, we note that on the basis of information submitted by operators, the OTA estimated capex costs of £35.4-48.8m and opex costs of -£5.9m/year for CTS, against capex costs of £28.3-39.0m and opex costs of £3.1m per year for OTS.

[21] October 2020 statement, 4.9
[22] Ibid 9.45

109. To the extent that it is relevant, given that CTS does not comply with the EECC requirements for recipient-led one-stop-shop seamless switching, and does not meet Ofcom's inter-network switching process objectives, we are highly sceptical about the negative opex claim for CTS. We note that several participants did not provide opex estimates, and most of those that did thought it would be identical across both options.

110. We accept Ofcom's assessment of the proportionality of OTS, i.e. that:

- OTS is the most effective means of meeting its switching policy objectives while avoiding the introduction of additional difficulties and deterrents into the switching process.
- Ofcom must transpose the EECC. Leaving industry to design a compliant process did not work, and could not have worked, given the strong history of disagreement over switching processes, and the fact that leaving each operator to develop their own process would have confused customers and possible resulted in unnecessary switching difficulties or deterrents.
- If passed through to customers, the OTS costs estimates represent only a tiny proportion of annual consumer telecoms bills.

8. IMPLEMENTATION CONCERNS

111. We start this section by considering the tasks required to implement Ofcom's OTS proposals. We note that the most contentious component is likely to be agreeing governance arrangements. We compare OTS implementation to the much simpler NoT+ and mobile Auto-switch processes, where Ofcom allowed operators 18 months to implement.

112. We then challenge Ofcom's understanding of OTS implementation tasks, based on its December 2019 consultation proposal to allow just 12 months for this. We welcome Ofcom's decision in October 2020 to extend this to 24 months, in line with previous implementations, but with six additional months to deal with extra OTS complexity. This is commensurate with Option X and Y estimates of 21 and 18 months respectively.

113. Had Ofcom started the 24-month implementation clock *from the publication of its switching process GCs*, as it did for every previous switching reform, we would have nothing further to say in this section. However, instead, it has set implementation by reference to the December 2020 publication of EECC GCs, giving a hard launch deadline of December 2022.

114. Ofcom does not now plan to publish its switching process GCs until Q3 2021, leaving only 15 months to implement. This is less time than it allowed for MAC, PAC, Auto-switch, NoT or NoT+, despite the greater complexity involved. Ofcom has provided no evidence for why it believes implementation can complete in less time than CTS or Y estimated.

115. This situation should not have arisen. Ofcom invited industry to develop a switching process. History should have told it that there could be no agreement. This approach took over 12 months. If, instead, Ofcom had designed its own switching process options as it has done previously, it could have consulted on these when it consulted on its general

switching rules, in December 2019. It could then have published both sets of GCs in December 2020, and customers could have looked forward to OTS before December 2022.

116. Ofcom can still address this. It needs to remove the hard December 2022 deadline, and instead allow 18-24 months to implement from the time it publishes its GCs. This is how it has approached implementation for every previous switching reform. This would move the timeframe back in line with industry implementation estimates, and allow time for further Ofcom delays, like the six months it took to consult following Option X/Y submissions, and the two-week extension it allowed in order to accommodate amendments to CTS.

117. Without this change, industry is highly unlikely to deliver OTS in December 2022, and Ofcom will have to keep extending deadlines (Threats to fine a whole industry for late delivery, when most are hugely incentivised to launch as soon as possible, and Ofcom is largely at fault for delays to date, are not credible).

118. Ofcom's 7 April letter asking the OTA to help establish an implementation working group is useful, but will not help industry hit a hard December 2022 deadline. It will take many weeks just to establish funding and voting arrangements for this group. And while it can conduct background research into governance models, operators are unlikely to start substantive implementation, including *selecting* the actual hub governance model, until Ofcom has chosen its switching process, and probably not until its rules are published.

Implementing One Touch Switch will require individual telecoms companies to undertake a complex programme of work, and necessitates an unprecedented level of industry cooperation.

119. In order to comply with the new switching rules, providers will need to undertake a series of major workstreams, at both an industry and individual company level.

    - At an industry level, this will include:

        a. establishing a working group with terms of reference and voting procedures;
        b. establishing funding, leadership and project management support for this group;
        c. establishing a governance process for procurement and operation of a 'hub';
        d. agreeing a technical specification for the hub; and
        e. issuing a tender, selecting, and contracting with a hub provider.

    - At an individual operator level, it will include:

        f. adapting or putting in place new Operational and Business Support Systems (including Customer Relationship Management systems);
        g. establishing and testing inter-working with the hub;
        h. creating new customer information materials and marketing; and
        i. training staff.

Probably the most complex and contentious of these tasks is the agreement of the governance arrangements for specifying, selecting and operating the hub. This can be done in parallel with other implementation tasks, and will be a key driver for total implementation time.

120. Of these tasks, the first is likely to be the most contentious; i.e. establishing a governance process for the procurement and ongoing operation of a hub. This issue is one of chicken

and egg; unfortunately, there is no agreed voting mechanism for deciding what the governance mechanism should be.

121. For example, with over 50 separate network providers, and a large number of service providers (i.e. ISPs), all needing to link their network to the hub, here are just some of the questions which will need to be considered:

    - Should there be a one-company-one-vote ownership system, with capital costs split equally?
    - Should service providers have the same say in operations as network providers?
    - Switching volumes will probably be a factor in determining operational costs, but should they also play a part in capital expenditure?
    - What Intellectual Property rights should exist in the 'hub'? Should it be outsourced entirely to a third party, or should operators retain ownership of the system and give a contract to run it (i.e. the mobile switching model)?

122. There are likely to be major differences of opinion about these issues, and there is no obvious way to decide between competing views. Ofcom clearly hopes that industry will complete a substantial part of this work *before* it publishes its GCs, on the basis that some form of governance mechanism will be required whatever the final switching process.

123. Industry can conduct some background research on governance models and consider these issues at a high level, although we consider that this should be done under the auspices of an implementation working group. But experience from the financial services and energy sectors, as well as the original mobile PAC process, shows that the time-consuming component is negotiating the actual governance model. Operators are unlikely to commit resources to this until Ofcom publishes its GCs. Ofcom should not pin its hopes for OTS launch by December 2020 on industry agreeing a governance model before this.

It took 18 months to implement fixed NoT+ and mobile Auto-switch. Both were vastly simpler than One Touch Switch, because fewer network and service providers were involved, and governance arrangements and a switching 'hub' were already in place.

124. Implementing the original MAC and PAC switching processes was hard. However, as both were introduced at an early stage in UK telecoms market liberalisation, the task was made easier by virtue of there being relatively few service providers and networks to switch between. This meant that fewer entities needed to connect to the 'hub', and there were fewer competing views to consider on governance arrangements and design issues.

125. When fixed switches were harmonised to the Notice of Transfer ('NoT') and then NoT+ process in 2013, the governance arrangements and hub were already in place, and transfers still only took place over one network (BT or KCOM). Despite this, Ofcom allowed 18 months for operators to implement the new rules, recognising their complexity.

126. Similarly, when the mobile PAC rules were upgraded to Auto-switch in 2017, Ofcom allowed 18 months for implementation, noting that its reforms built on existing porting arrangements, that providers already had the capability to create PAC codes and send

switching information by SMS, and that many customers already had online provider accounts through which to view additional switching information[23].

127. None of this is the case with the current inter-network switching proposals. There is no regulated porting process in place, on which to build. Most network providers have not offered switching before. Few currently connect to a switching hub. Most have no capability to generate codes or send switching information by SMS (or IVR). And, while many customers have online accounts, these are not configured to facilitate switching.

128. In other words, providers must implement the new inter-network switching requirements from scratch, without the benefit of previous implementations. This makes OTS probably the largest co-operative implementation exercise ever seen in UK telecoms[24]. It means Ofcom should listen to Option Y/X implementation estimates of 18-21 months, *from the point that the switching process is selected and the GCs are published*.

Ofcom's initial proposal to allow 12 months to implement OTS following GC publication was inadequate. In fact, at most 9 months was available, after allowing for further Ofcom consultations. Ofcom also did not consider time required to establish governance arrangements.

129. In these circumstances, if Ofcom had looked to its previous switching decisions, it might have been expected to allow *more* time, not *less*, for OTS implementation, given that it had allowed 18 months for previous switching implementations, where many of the necessary building blocks were already in place.

130. Yet, in its December 2019 consultation, Ofcom said "*We propose that the requirements will apply to any switch or port a customer requests from 21 December 2020*"[25]. I.e., it thought the inter-network switching process could be in place only 12 months from consultation.

131. This included time for Ofcom to conduct a further consultation to check compliance of industry process proposals with the EECC and proposed GC requirements. If this had taken place, it would have eaten even further into the time left for industry to implement[26]

132. However, even if this had been averted, with winners and losers from smooth and simple switching coming together to propose a single compliant process, Ofcom still could not have published GCs until March 2020. This means it was proposing a maximum of *nine months* from GC publication to inter-network switching implementation, i.e. half the time it allowed for the much simpler NoT+ and Auto-switch processes.

133. In addition, Ofcom's proposal did not include time to establish governance arrangements (the word "governance" did not appear in the consultation, it only mentioned the need for operators to develop "*new systems and processes*").

134. Ofcom also failed to consider that operators have little control over whether it completes its consultations on time; it left no room to extend deadlines in the event that it was late.

[23] Dec 2017 Mobile switching statement, 5.58

[24] One-touch switch is certainly a much larger implementation exercise than either the MAC or Notice of Transfer processes, both of which only involved switching provider over a single network.

[25] December 2019 consultation, 7.223.

[26] Ibid.

In 2020, Ofcom recognised that 24 months was an appropriate OTS implementation time, but still didn't recognise the impact of using this time to conduct further switching process consultations.

135. The reason for discussing the 2019 nine-month implementation proposal is not to shine a light on past errors. It is to introduce themes which continue to run through Ofcom's subsequent 2020 EECC implementation statement and 2021 switching consultation, and which we believe Ofcom now has an opportunity to correct:
    - failure to align OTS implementation window to process GC publication;
    - failure to allow more time where it is Ofcom that is the causer of delays; and
    - failure to provide evidence that less time is needed than was estimated by CTS/Y.

136. By October 2020, Ofcom recognised that stakeholders - including those who would benefit most from the fastest possible implementation - were almost unified in their view that it had heavily under-estimated the implementation time required. As a result, Ofcom sensibly changed its position, saying "*our new switching and porting requirements will come into force 24 months after the publication of the notification of the revised GCs.*"[27]

137. Again this failed to consider the time needed to establish new governance arrangements, and again it included time for an additional switching process consultation, which would eat into the 24-month window. Again it did not consider the impact of any delays to the consultation process.

Now in 2021, Ofcom has recognised the role of agreeing procedures in implementation, but has not amended its December 2022 deadline to reflect this. Nor has it accounted for the 13 months that it proposes to take to publish GCs. This eats into industry implementation time, because Ofcom set a hard deadline for delivery, instead of being driven by data on progress.

138. Ofcom *does* now appear to have recognised that establishing industry-agreed governance arrangements is a difficult and time-consuming process, which must be factored in to OTS delivery[28]. However, it has failed to reflect this by extending its December 2022 date.

139. Furthermore, Ofcom has already been responsible for substantial delays to switching implementation, and again has not reflected this by extending the deadline:
    - The Option Y process proposal was submitted to Ofcom on 4th August 2020, shortly after the CTS proposal. Yet, it took Ofcom until 3rd February 2021 to publish its consultation, exactly ***six months*** after it received all the information it needed from industry, about design, cost and timelines.
    - Ofcom could have consulted on the GC changes required to give effect to its proposals as part of its current consultation, instead of leaving this to a separate consultation. Conducting parallel consultations on switching reforms and associated GCs is common practice[29]. This could have saved a further ***three months*** in Ofcom's process.

[27] October 2020 consultation, 9.194.

[28] Feb 2021 consultation, 7.7.

[29] E.g. this is how Ofcom approached it NoT+ reforms and GCs

- Ofcom has extended the current consultation by ***two weeks***, in order to accommodate new CTS proposals, rather than simply accept these as submissions to the consultation process, which is normal practice.

140. Even if Ofcom experiences no further delays, and meets its target of publishing GCs in Q3 2021 - let's say September - it will have taken Ofcom ***13 months*** from the submission of industry process proposals to putting the new rules in place. While industry took longer than hoped to develop process proposals, and was delayed by disagreement, Ofcom must also take responsibility for the delays that *it* has introduced, and *is still* introducing, into the implementation process. This is entirely outside of the control of operators.

141. By setting a hard deadline which does not allow for delays, including those caused by Ofcom, Ofcom is allowing the implementation timetable to be driven by dates, not data.

Given the uncertainty over the final switching process, providers will not meaningfully start implementation until the new GCs are in place. This is consistent with Ofcom's approach in previous switching work. By Ofcom's own timetable, it means work will start in Sept 2021, assuming Ofcom does not create further delays. i.e. 15 months before its Dec 2022 deadline.

142. If Ofcom is conducting a genuine consultation on its OTS proposal, then it must hold open the possibility that stakeholders will present arguments and evidence which force it to reconsider its position. It might even need to re-evaluate compliance of CTS with EECC (106), depending on the responses made by supporters of this process.

143. This is not just a theoretical concern. Ofcom surely recognises how strongly many providers feel about switching issues, and how hard they will fight to achieve their preferred outcome. Ofcom will recall that it has already twice dropped switching proposals following stakeholder intervention[30]. It cannot pre-judge the outcome of this present consultation.

144. Fixed operators are therefore not certain that Ofcom will end up determining that they must adopt OTS, let alone the detail of this, until the consultation process is concluded, and new GCs are in place. Even then, unless we see positive responses from CTS supporters, there remains a concern that Ofcom's decision will be appealed.

145. We will certainly engage with any implementation working group and do what can be done before the GCs are legally in place. But given the uncertainty over the final switching process, and the intense industry disagreement on this, we doubt providers will start implementing the new switching rules in any meaningful way until the GCs are legally in place.

146. This is exactly what happened with NoT+[31] and mobile auto-switch[32] implementation. In both cases, Ofcom set the implementation window *from the moment the GCs were published*. In neither case did this window include issues outside of operator control, such as further Ofcom consultations.

[30] Once in 2008 following the appeal to the Competition Appeal Tribunal by Vodafone, and again in 2016 following cost arguments made by Sky and Virgin. In addition, Ofcom withdrew its ant

[31] December 2013 Switching Statement 4.2

[32] December 2017 mobile switching statement 5.51

147. This time, Ofcom has stuck with the December 2022 deadline it set before it issued this current process consultation. It has not extended this as a result of the delays it has already caused, or may still cause. It appears to hope that industry will have "sufficient clarity" to begin implementation once its statement is published (which it intends for Q2 2021)[33], but equally seems to accept this is unlikely until its GCs are published (planned Q3 2021).

Ofcom chose to use up potential implementation time by asking industry to agree a switching process. History shows this could never have worked.

148. Ofcom says that, rather than consult, it "*considered whether we should leave industry to comply* with *the new switching rules*", i.e. without specifying a switching process. However, Ofcom recognised that this could lead to a coordination failure, and potentially to multiple transfer processes, which risked confusing customers, and possibly deterring switching[34].

149. There is also a risk of confusion and additional costs for providers. Any new process will require cross-industry support and engagement in order to develop and implement it effectively. Without clarity on the work needed to implement a new process and its future operation, providers will be unable to plan and allocate resources efficiently and may incur unnecessary costs.

150. In fact, without a regulator-defined process, co-ordination failure was almost certain. Switching is the one time where competitors must cooperate in order to comply with Ofcom regulations. But, where they disagree, there is no mechanism by which they can choose between competing process options to deliver the new regulations. Ofcom is the only organisation which can make decisions in situations like this. It is neutral between all parties, and has the authority to enforce compliance with its preferred process.

151. This point is critical when considering how much time to allow providers to implement OTS. There was nothing wrong with offering industry an opportunity to see if it could find common ground on a switching process. But Ofcom must have realised that the chance of success was negligible. It is aware of the long history of strongly held and opposing industry views over switching policy, as well as appeals against previous regulatory decisions.

152. This is precisely why Ofcom designed its own switching processes, and then consulted on these, for both NoT+, and mobile Auto-switch. It knew that industry would not create processes unaided *before* consultation, and did not ask them to do so.

153. Having chosen to use up time by asking industry to design a process which it could never have agreed, Ofcom must take responsibility for the fact that this has eaten into the OTS implementation time left before December 2022. This is a further reason why setting a hard deadline before the final statement to this current consultation is nonsensical.

Most OTS supporters are highly incentivised to implement the new switching arrangements as quickly as is technically possible. But despite this, it is unlikely that industry will hit the

[33] Feb 2021 consultation

[34] It also recognised the risk of confusion, inefficiency and additional costs for providers. Feb 2021 consultation 3.17

December 2022 deadline. CTS and OTS implementation time estimates assumed that GCs were in place by March or June 2021 respectively.

154. Ofcom must understand that most Option Y supporters believe they will be net customer gainers from inter-network switching. They are therefore heavily incentivised to launch the new process *as soon as possible*. We, like every Option Y participant we have spoken to, would implement and use the process *tomorrow* if this was technically feasible.

155. However, it is unlikely that operators implement by December 2022, because work in earnest will not start until Ofcom has completed its consultation process, and probably not until publication of GCs.

156. Ofcom must realise that both CTS and OTS implementation time estimates were based on work starting *once Ofcom had published its statement, and probably its GCs*:

    - CTS suggested 21 months from the point at which Ofcom provides an "*official statement to industry on option to implement*"[35].
    - Similarly, Option Y suggested "*Development timescales will be driven by Ofcom consultation timescales"* and on *"the timeliness of the decision by Ofcom as to which Option to take forward". "Openreach suggests a minimum delivery window of 18 months from the start to completion for the work*."

If Ofcom retains a hard Dec 2020 deadline, we believe it will be forced into granting deadline extensions.

157. Threatening to use regulatory powers for failure to implement is reasonable, where an individual operator fails to comply with regulations[36]. However, threatening penalties on an entire industry, for delays in implementing rules that most are incentivised to enact as fast as they possibly can, is not a credible position for Ofcom to take.

158. Rather than being forced into granting deadline extensions, we recommend that Ofcom focuses on speeding up its own consultation process and putting in place its new rules. Then it can set an 18-24-month deadline to completion from that point, exactly as it did with mobile Auto-switch. (Alternatively, Ofcom could confirm that it will not prioritise enforcement for failure to implement by December 2022, provided it sees sufficient evidence of industry commitment and progress, to be monitored regularly).

159. We cannot be held responsible for further delays caused by Ofcom's consultation / rule creation process, or because other companies refuse to participate constructively in implementation[37].

160. If all providers dropped opposition to Ofcom's proposal, and started implementing now, we might get somewhere close to a December 2022 launch. However, as this looks

[35] https://www.ofcom.org.uk/__data/assets/pdf_file/0025/216727/option-x-updated-proposal-march-2021.pdf p12

[36] February 2021 consultation 3.18

[37] Ofcom's failure to recognise its own agency in implementation deadlines is becoming a worrying theme of telecoms regulation. Its proposals for implementing the new video relay requirements similarly neglect to take into account that, if Ofcom delays the authorising of a third party to provide these services, this has a knock-on effect on our ability to implement to Ofcom's required timetable.

impossible, we support an Ofcom-imposed switching implementation timeframe, in order to force the pace among players that wish to frustrate the process. We also have no problem with a 24-month timeframe, as proposed in the original consultation. But the key is that the clock cannot start ticking until Ofcom's new rules are in place.

If Ofcom wishes providers to engage in substantive implementation work before it has determined its final rules, and while there is still strong industry disagreement on the switching process, it should play a substantive role in this group.

161. Minimal implementation work has taken place to date, or can meaningfully take place, ahead of publishing the GCs.

162. Some work was done on the technical specification for the hub, as part of the design proposals put forward by CTS and Y. But this was high-level only, and neither side has commented on the other's work. Most key hub specifications, such as the role it plays in generating or storing/sharing transfer codes (CTS), or communicating with customers (Y-Hub), will be determined by the process Ofcom chooses, as reflected in amended GCs.

163. Looking forward, Ofcom suggests that, as both the CTS and Option Y proposals require a central 'hub'[38] "*Establishing the governance arrangements through which providers will work together is one area where industry could usefully start developing plans*." i.e. ahead of publishing its final switching rules. We have explained above why this will only happen at a high level ahead of Ofcom publishing GCs.

164. Work on both technical specification and initial work on governance are both much better considered as early tasks for a properly resourced implementation working group, in which all providers participate, and which is supported by a central project management function, led by a respected neutral industry figure. We therefore welcome Ofcom's letter of 7 April encouraging such a group (although note this only came after prompting, and not in February or March, as was the intention stated in its consultation) [39].

165. However, If Ofcom wishes providers to engage in substantive implementation work before it has determined its final rules, and while there is still strong industry disagreement on the switching process, it must play a substantive role in this group.

166. Even if Ofcom accepts that most implementation work will not begin until the GCs are published, it should still consider the role it played in previous switching implementations. For NoT+, Ofcom funded a project manager to help bring together multiple providers to time and specification. For both NoT+ and Auto-switch, it kept a watchful eye on progress, holding regular industry meetings, and intervening and giving direction where necessary.

167. Implementing inter-network switching is vastly more complex than either of these previous exercises. The need for deep Ofcom involvement is much greater, particularly over agreeing new governance arrangements for procuring and operating the hub. There may well be a need for Ofcom to step on this in a way it hasn't had to before.

[38] Hubs are more commonly known in the switching world (and by those that provide them) as 'clearinghouses'.

[39] Feb 2021 consultation 7.8

Operators who think they will lose customers as a result of easier switching tend to seek to add friction to the process and to try to frustrate implementation.

168. As a final note, we urge Ofcom to reflect on the following when considering responses to this consultation.

169. It is common for incumbents and large providers in regulated industries to lose customers when it is easy for them to switch away. In an effort to stem their losses, some seek to frustrate the creation of new customer-friendly switching processes, or at least to slow down implementation. Obstruction can manifest itself in a number of ways:

    - blocking or challenging proposals for new regulated switching processes (often on grounds of proportionality, which can be difficult to quantify);
    - seeking to add friction during the process design phase (for example by requiring customers to contact both the losing provider and the gaining provider);
    - ensuring the process includes a retention opportunity, whether the customer wants this or not (for example by forcing some customers to speak with the losing provider to get a switching code); or
    - delaying implementation of a regulated switching process (for example by refusing to participate positively in working groups until final regulations are in place).

170. Ofcom has witnessed these sorts of activities from its previous switching work. It will already have seen examples in its current consultation, and can probably look forward to continued efforts to frustrate and delay. This why we strongly encourage Ofcom to take an active role in OTS implementation