Quick, easy and reliable switching

Proposals for a new landline and broadband switching process and to improve information for mobile switching

TalkTalk's response to Ofcom's consultation

14 April 2021

<u>**Introduction**</u>

- We welcome the opportunity to comment on Ofcom's proposal that providers should develop and implement a new process for all residential customers who switch landline and broadband services, regardless of who their provider is or the technology or network their provider uses.

- Ofcom proposes that providers develop and implement a new 'One Touch Switch' process for all residential customers who switch landline and broadband services, regardless of who their provider is or the technology or network their provider uses. This new process would replace the existing arrangements (including the existing Notice of Transfer ("NoT") process on the Openreach network) from December 2022 onwards.

- TalkTalk supports the One Touch Switch process for the reasons outlined in this response.

- In the One Touch Switch process, customers would only need to contact their new provider, who would arrange and manage the switch on their behalf. This will be a familiar process for many customers switching within the Openreach network – such as between BT, Sky and TalkTalk. It will mean customers switching between networks – for example from Virgin Media to Hyperoptic or a provider delivering services using the CityFibre or Openreach network – will no longer need to manage the switch themselves and coordinate with their new and existing provider. It will also apply to customers switching between different providers of full-fibre broadband that deliver services over the same network. All customers will be able to use one process that is easy, quick, reliable and ensures their informed consent.

- The One Touch Switch process is illustrated below:

Figure 1.1: One Touch Switch process overview

Contact new provider to request services and provide details.

Switching information from current provider | Contract details from new provider

Automatically get important switching information (eg early termination charges) from current provider. Get contract details from new provider and consent to switch.

SWITCH DATE

New services begin on agreed date and old services cease.

Source: Ofcom's consultation document, page 3.

TalkTalk agrees with Ofcom's proposal to implement the One Touch Switch process

- We agree with Ofcom's analysis that the One Touch Switch process better meets the relevant regulatory objectives compared to the so-called Code to Switch process. The One Touch Switch process is simpler to understand, gives greater control to customers and is likely to involve less effort for most customers.

- The starting point when designing a new switching process must be the consumer. All design principles should be based on what the process looks and feels like for the consumer. The technology behind delivering broadband to consumers is complex but that should not mean that the consumer should have to deal with or even understand technical terms when all they want is a reliable, easy-to-understand way to switch broadband provider.

- Smooth switching is also vital to support effective competition between retail providers and will play an important part in facilitating competition between networks as rivals roll out gigabit-capable networks. Today it is harder and more burdensome to switch between broadband services provided over different networks, than to move between providers whose services are delivered over the Openreach network. Failure to implement a single process that applies across all networks, could impede take-up of gigabit-capable services and undermine Ofcom's strategic objective to support investment in upgrading networks.

- We agree with Ofcom that the new switching process should indeed be easy-to-use, quick, reliable and based on informed consent. The One Touch Switch process will also be very familiar to any customer who has ever switched provider on the Openreach network using the existing NoT process. Like now, the customer will understand that they can simply contact their chosen new provider who will take care of the switching without the customer having to contact their existing provider.

The customer can give their "explicit consent" without having real-time access to detailed information about their current broadband service

- Regarding the proposed One Touch Switch option, we are concerned that Ofcom's interpretation of "explicit" or "express" consent is overly strict and not necessarily supported in law. We note one specific consequence of Ofcom's interpretation would be that the losing provider would be required to provide detailed product and contractual information directly to the customer in real-time at the point of sale. This is obviously very different to the current NoT process where the losing provider is able to provide this information to the customer in letter or email during the cooling-off period after the customer has placed their order with the gaining provider. We believe Ofcom has misdirected itself regarding its interpretation of consent for the purposes of the EECC, by adding an additional constituent part – i.e., the requirement that end users be required to contact their losing provider before being able to give explicit "informed" consent to switch. Ofcom's interpretation of what is required for explicit consent goes much further than what is required by Article 106(6) of the EECC framework. We would therefore urge Ofcom to reconsider this specific (and important) aspect of the One Touch Switch process.

The Code to Switch process does not meet the relevant regulatory requirements including the requirement that the process must be gaining provider led

- In contrast, we believe the Code to Switch process would be counter-intuitive to consumers and risk being perceived as a step backwards. The Code to Switch process shares a fundamental feature with the old MAC code process. Many customers may well remember the cumbersome MAC code process according to which customers used to have to get a complicated 16-character string from their existing provider which they then would have to bring to their new broadband provider. Ofcom chose to abolish the MAC process in 2015 precisely because it was so burdensome for customers to switch broadband. The MAC process allowed the existing provider an opportunity to try and save their customer when they asked for the code rather than provide a simple and easy-to-understand way for customers to switch broadband provider. The MAC process was ultimately an unnecessarily complex process which did very little in terms of protecting customers. We are concerned that the One Code Switch process suffers from many of the flaws as the old MAC process.

- We note that Ofcom circulated a revised proposal for the Code to Switch process during the current consultation period. As far as we can discern, the only substantive change to the Code to Switch process is that the provider would be required to offer the switching code via an IVR route. We cannot see how that change addresses any of the fundamental concerns about the Code to Switch process as set out by Ofcom in its consultation document. The consumer would still be faced with the hassle and inconvenience of having to contact their current provider to obtain the switching

code. It is also unclear how the IVR would be able to identify reliably the customer to be able to release the switching code information (together with sensitive contract information). One cannot assume that the customer would always call from their home telephone number or indeed that they would remember any specified security information whilst listening to the IVR options. In those circumstances, the IVR route option would therefore actually increase the hassle and friction for the customer as they may still have to speak to an agent if the IVR route fails to give them the switching code.

- One of the fundamental legal requirements is that the switching process must be led by the gaining provider. It is beyond any doubt that the One Touch Switch process meets this requirement by the very simple fact that the customer does not need to contact their current provider <u>at any stage</u> to initiate the switching of their broadband service. We would argue that this is clearly what is required for a switching process to be deemed led by the gaining provider.

- In contrast, we would argue that it is highly questionable whether the Code to Switch process could be considered to meet the legal requirement to be gaining provider led. The switching process starts when the customer decides to explore the means that they need to deploy to switch broadband provider. In the case of the Code to Switch process, this moment occurs when the customer contacts their existing provider to obtain the code necessary to switch their service. The prospective new provider may not even be aware that the customer is considering the new provider's broadband service. If the customer were to contact their new provider without having first to obtain the switching code, the new provider would have no option but to refer the customer to their existing provider first. The need to obtain a switching code first from the current provider is clearly an intrinsic part of the switching process. At the point in the process where the customer is required to contact their current provider, the new, gaining provider has no control over events and therefore cannot be said to be leading the customer in the latter's journey to switch provider. For this reason, we do not believe that the Code to Switch process would be compliant with the legal requirement that the switching process must be led by the gaining provider.

<u>Ofcom needs to clarify the position of business customers in the context of the establishing a new switching process</u>

- We agree with Ofcom that, in general, business customers are better equipped with the skills and resources to manage their communications services than residential customers. In this vein, Ofcom wrote to the OTA to clarify that the new switching process should be designed to apply only to residential customers and not encompass business customers. Although we can understand the rationale for doing so, the new switching obligations that come into force in December 2022 will apply

to all customers including residential and all business customers. It is unclear to us how Ofcom expects industry to address the process for switching of business customers (particularly small business customers which share characteristics with residential customers).

- We would urge Ofcom to clarify its position in this regard and particularly if it expects the existing industry processes (e.g. the NoT process) to be insufficient to meet the new regulatory requirements with regard to the switching of business customers. If a new switching process needs to be developed for business customers in time for the December 2022 deadline, then this work needs to be started and carried out in parallel with the future industry process work overseen by the OTA (or other industry governance arrangement).

The December 2022 deadline is very challenging and industry work should commence work as soon as possible

- We note that the changes to the new switching process requirements will come into force in December 2022. There is clearly a huge amount of work to be done in the industry between now and then to ensure that we meet this deadline:

  - Establishment of a governance arrangement for the commissioning, implementation and maintenance of the industry switching hub;
  - Agreement on recovery of capital and operational costs;
  - Production and circulation of request for interest document;
  - Assessment of bids for building and maintenance of the industry hub;
  - Building of industry hub including technical specification, testing and launch;
  - Parallel work by all providers to develop, test and launch their individual APIs to interact with the industry hub.

- We would envisage that the industry will need to appoint an overall independent project leader to coordinate all the relevant industry discussions and to ensure that programme progresses as expected. There will also need to be appropriate mechanisms in place to ensure that decisions are not unduly delayed or hampered by individual providers whilst ensuring that all reasonable views are noted and discussed in an open and transparent fashion.

- It is also important to note that where customers also take a voice line, changes to switching processes will also affect the order management processes for number porting. Ofcom should work with industry to ensure that the potential for improvements to porting processes are considered alongside switching reform, and porting changes are incorporated into the implementation where feasible to drive efficiencies. This will minimise disruption for customers who take both voice and data services when changing provider. The risks in divergence between the switching and

porting order management processes are longer outages for the voice service during a switch, and hence loss of access to emergency services for that period, and poor customer experience if the number does not port on the switching date.

- We look forward to contributing to the industry programme with a view to implementing the required changes. We are concerned about the extremely challenging timescales, but the key point is surely that industry starts work as soon as possible. It may not be possible to commission the supplier of the industry hub prior to Ofcom's final statement(s) but it would seem to be possible at least to start discussing the necessary industry governance arrangements. We believe Ofcom has an important role to play in encouraging industry to take these first step and we therefore welcome Ofcom's recent letter explaining that it has asked the OTA to start discussions with industry.

- It will be critical to success of the programme that all providers support the objective of implementing the One Touch Switching process. Based on previous industry discussions, some providers may not necessarily be supportive of a final Ofcom decision to proceed with the One Touch Switch option. Nonetheless, we would hope that such providers would be prepared to engage in initial discussions around governance arrangements prior to Ofcom's final decision. Without the full support of all providers, we are concerned about the potential risk of failure of this programme but equally unclear about what such failure would mean in practice and who the beneficiaries of such failure might be. We would urge Ofcom to consider these questions very carefully and set out as soon as possible its plans to guide the industry on the way forward.