



Consumer Switching

EE's response to the consultation

Non-confidential version

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1. Introduction and executive summary

EE Limited (“EE”) welcomes the opportunity to respond to Ofcom’s Consumer Switching Consultation, published on 28 July 2015 (the “Consultation”).

This response should be read in conjunction with EE’s earlier responses to Ofcom’s Call for Input on Consumer Switching in 2014, and Ofcom’s Strategic Review of Consumer Switching in 2010.

Ofcom’s preference for a Gaining Provider Led process

In the Consultation Ofcom suggests that, all else being equal, Gaining Provider Led (“GPL”) switching processes will deliver the best outcome for consumers. Ofcom reasons that the gaining provider has an incentive to make “*the switching process smooth and easy*”.

However, by stating a general preference for GPL switching Ofcom risks taking a one-size-fits all approach to regulation that ignores the available evidence specific to the mobile sector. This is contrary to Ofcom’s regulatory principles pursuant to which Ofcom should adopt an evidence based approach entailing an assessment of the evidence on the customer experience of switching for mobile specifically, as well as assessing the costs and benefits to consumers of changing to a different switching process.

The available evidence specific to mobile clearly demonstrates that customers are satisfied with their mobile provider and that they have not experienced problems with switching.

- Ofcom’s Consumer Experience Report 2014 showed that 92% of switchers were either “very happy” or “fairly happy” with the mobile switching process.
- Whilst Ofcom may consider that switching levels are low, this does not mean that switching is difficult. In fact, the overwhelming evidence is that customers tend to stay with their current provider because they are content to do so – i.e. due to the duration of the contract they freely chose to enter into (commonly in return for a subsidised hand-set) or due to a perceived lack of financial benefit from switching provider (indicative of the fact that prices for UK mobile services are some of the lowest in the world). These two reasons, which have nothing to do with the switching process available to those consumers, together account for 73% of reasons for not switching.
- These views are reinforced by the fact that Ofcom’s Consumer Experience Report found that 87% of mobile customers are very or fairly satisfied with the value for money they get from their provider. In particular when coupled with the low prices for mobile services and low returns seen in the UK, it is obvious that high satisfaction levels with mobile services are liable to result in a lower propensity to switch. Certainly evidence from other sectors suggests that there is a correlation between customer satisfaction and switching levels. According to Ofcom’s research, sectors with higher switching levels

such as car insurance for example, have lower satisfaction scores when asked if they consider the services provide good value value for money.

Bundling and switching processes

Ofcom explains that their work on switching will ensure that due weight is given to possible future market developments, in particular mass market take-up of 'quad-play' bundles of fixed voice, broadband, pay TV and mobile communications services.

EE agrees with Ofcom that where services are sold as part of a bundle, having different switching processes for each component of the bundle has the potential to make switching difficult. Furthermore, where providers of the same service are subject to asymmetric switching processes this potentially creates an unfair competitive advantage for those providers that are not subject to the GPL process.

These considerations on the face of it strengthen the case for a move to a single switching process, possibly GPL, in the Pay TV, Fixed line and Fixed broadband where:

- i. There is clear evidence that bundling of these services is becoming increasingly common. For example Ofcom's own analysis shows that take up of bundled services, primarily fixed voice, broadband and pay TV, has increased from 29% in 2005 to 63% in 2015. This could make switching between different providers difficult in the absence of a single switching process; and
- ii. Providers of the same service are not subject to the same switching process. For example, Sky follows a LPL switching process in the pay TV market whilst other CPs provide a competing pay TV service but are subject to the GPL switching process. This undoubtedly provides Sky with an unfair competitive advantage over other fixed providers and has the potential to distort competition in the fixed market.

However the situation in the mobile sector is very different. Firstly mobile services are very rarely sold as part of a bundle. Ofcom's own analysis shows that only around 2% of households pay for mobile services as part of a bundle and in 2014, 95% of consumers took out a mobile contract on a stand-alone basis. Secondly, all MNOs are subject to the same switching process. In this respect therefore, there is a level playing field between MNOs.

It is therefore clear that the primary justification for moving to a GPL switching process in the Pay TV, Fixed and Broadband sectors does not apply to the mobile sector.

Ofcom's proposals

Notwithstanding our view that the evidence does not support reform to mobile switching, in the sections that follow we comment on Ofcom's proposals. Before doing so however we also set out the principles that Ofcom should adhere to when considering whether to impose regulatory intervention. In particular, Ofcom's 'Better Policy Making document' contains the following quote:

“The option of not intervening...should always be seriously considered. Sometimes the fact that a market is working imperfectly is used to justify taking action. But no market ever works perfectly, while the effects of...regulation and its unintended consequences, may be worse than the effects of the imperfect market”.

With this in mind, and given the high level of consumer satisfaction with the current mobile switching process, the Consultation should have included a ‘Do Nothing’ option. Similarly, and recognising the principle of choosing the least intrusive means to achieve the desired objective, an option assessing operational improvements to the current process should be considered by Ofcom.

The possible reform options in the Consultation are defined at a very high level which makes assessing their potential impact difficult. However, what becomes immediately clear is that the changes required to our systems will be significant, especially in terms of making customers aware of the implications of switching. In this context, Ofcom should take account of the high opportunity cost of imposing reforms in this area. Implementing such reforms will divert us and other CPs from launching new services or making other service related improvements directly benefiting our customers on a day-to day basis. For instance, the recent changes to non-geographical calls took up a significant amount of resource within in EE with both high costs and high opportunity costs.

In our view, having regard to the principles above, the high levels of satisfaction with mobile switching, and the costs of implementing change, the threshold for intervention is not met. Whilst we encourage Ofcom to continuing monitoring the sector, at this stage we believe that any intervention would not be evidence based and would be unjustifiable. Conversely, we urge Ofcom to focus its resources on areas where further reform clearly is required, namely harmonising switching processes across all fixed platforms including cable; and on the switching of now common fixed and fixed content bundles. Ofcom should not be tempted by perceived “quick wins” on mobile at the cost of diverting its scarce resources from more thorny but more beneficial further interventions in the fixed arena.

1. Mobile switching processes

Mobile Number Portability

Mobile Number Portability ('MNP') launched on 4th January 1999 and since then industry has worked to continuously refine the process. Today the process is highly effective with porting taking only one working day.

It is worth briefly recalling the significant efforts that have been made to get us to where we are today. As Ofcom will recall the process that originally made MNP possible took a cross-industry team over 18 months to develop and although technically sound, it proved complex to implement. Six months after the launch of the MNP process, a review was carried out by the industry group, which resulted in a fundamental change to the MNP process. The result was a new donor-led process which took up to five working days to port a customer and reduced operational costs by using an internet web based solution to facilitate communication and coordination between providers.

In March 2008, the port lead time was further reduced to two working days, followed by a change to the current position of only one working day. From a consumer perspective porting is now fast and convenient.

Ofcom states in 1.13 of the consultation document:

“Some switching processes involve greater difficulty for the consumer and take longer than others. For example, if the process requires the consumer to contact their existing provider, in addition to their new provider, this can take considerable time and can cause hassle. The provider in this instance may have an incentive to frustrate the process. This can deter consumers from switching;”

And

“Difficulties can be compounded where the consumer must also account for any notice period required for terminating their current contract. In order to avoid the risk of losing service some consumers may deliberately choose to subscribe to two services simultaneously, and so double-pay, to avoid service discontinuity;”

It cannot credibly be suggested that mobile porting is anything other than quick and simple. Obtaining the PAC from the existing provider is straightforward. For instance EE provides it immediately over the phone. Once a customer receives their PAC from their current provider the customer simply needs to provide this to their new provider. When doing so the default port date is taken to be the next working day assuming that the new provider submits the PAC to the MNP web system. This means that the customer can be ported within a day of obtaining their PAC. We comment further on continuity of service below.

Ofcom goes on to say in 4.7 to 4.9 of the consultation:

“First, smooth processes allow consumers to switch to the service that best suits their needs in a short timeframe. If switching processes are complicated, time-consuming and considered likely to fail, this may deter consumers from switching. The result may be that they remain

with a provider or package which does not effectively meet their needs.

Second, for consumers who switch, a complex process means more time spent trying to switch, more hassle, and potentially problems which may be costly and time-consuming to resolve. Even if more complex switching processes do not deter switching, consumers may suffer harm if they incur unnecessary switching costs.

Third, seamless switching processes can help promote competition. If switching is easy, providers face strong incentives to provide good value, high quality services. They may also compete to offer innovative services with the aim of winning customers from competitors. Such dynamic aspects of simpler switching processes can be difficult to quantify, although we consider they are important.”

On each of these points the current mobile switching processes fare well and Ofcom has not presented any compelling evidence to suggest otherwise. The MNP Porting Process Manual contains the porting business rules which all providers adhere to. These rules have been developed by industry and are clear and simple to follow and are capable of change where necessary. The aim is to ensure seamless switching and porting of numbers which occurs in practice. The content of the manual is overseen by the Operational Steering Group (‘OSG’) which consists of Executive and Participant members, and is governed by a formal Constitution. Operations and technical issues are raised at the technical or operational sub-groups and where necessary are escalated to the OSG if they require changes to the MNP Porting Process Manual.

Cease and Reprovide (C&R)

Ofcom states that there is no formal process for customers who do not want to port their number. Whilst true this simply reflects the fact that customers well understand and are easily able to coordinate cessation of one service and the commencement of the new service. Indeed consumers do this on a regular basis for instance for gym memberships, insurance policies, or magazine subscriptions. This is the norm in any market where the customer signs a contract with a fixed duration.

In Section 2 we discuss, among other things, the consumer experience of these processes based on Ofcom’s research in this area.

2. Switching processes and potential consumer harm

EE acknowledges the importance of switching in ensuring effective competition and we are very keen to ensure that switching processes work well for consumers. With reference to Ofcom's research, in the sections that follow we assess competition in the mobile market and the consumer experience of switching. Moreover, as Ofcom reiterates its preference for GPL processes we also compare the consumer experience of mobile switching, with the consumer experience of switching fixed services, to test whether GPL processes should be assumed to be preferable. As we show below this is not the case.

Competition

Competition in the UK retail mobile market has evolved very differently from fixed markets. There is no incumbent provider, but rather there are a number of strong MNOs, who engage in fierce end-to-end competition. It is this competition, and not regulation, that has and continues to drive excellent consumer outcomes in terms of innovation, investment and prices.¹ That retail mobile competition is very strong, is evidenced both by the numerous significant competitors, MNOs and MVNOs, and by the outcomes that such competition has delivered:

- **Numerous retail competitors** – In addition to the MNOs there are over 100 MVNOs who act as a significant competitive force. Such MVNOs include powerful communications providers such as Virgin Media and TalkTalk; household names in other markets including Sainsbury's and Asda; and a host of operators targeting specific segments of the market such as Lyca Mobile. MVNO customer bases are significant (e.g. Virgin Media c. 3 million and TalkTalk c. 400k subscribers) with total voice minutes on MVNOs accounting for 16% of total mobile voice minutes.²
- **Low prices** – UK consumers enjoy some of the lowest mobile prices among the EU5 countries.³ Moreover the price of a typical bundle of mobile services has fallen by two thirds in real terms, from around £40 in 2003 to £13 in 2012.⁴
- **High levels of innovation and investment** – Mobile operators have, and continue to make, significant investments noticeably for instance in rolling out their 4G networks. Moreover, innovative services are constantly coming to market, including VoWIFI and VoLTE.

In light of the competitive nature of the retail mobile market:

¹ Anticipated acquisition by BT plc of EE Limited Ofcom's Phase 2 submission to the CMA, paragraph 1.5

² Ofcom DCR Discussion Document, paragraph 4.29

³ Ofcom DCR Discussion Document, paragraph 4.10

⁴ Ofcom DCR Discussion Document, paragraph 1.4

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- Intervention should be targeted to those instances where there is clear market failure resulting in consumer harm. In the ordinary course of events competition can be relied on to drive positive consumer outcomes.
 - The potential benefits of intervention must be balanced against the cost of such initiatives. Intervention can stifle investment incentives and delay the introduction of services that customers are likely to highly value. MNOs do not have unlimited resources and when required to implement regulatory requirements (especially those of the scale Ofcom is considering on switching) other projects are either shelved or delayed.
 - Greater consumer welfare can be expected as a result of regulatory intervention in markets where competition is ineffective such as Pay TV.

In order not to risk distortion of competition the same services should be subject to the same switching processes. For instance cable providers should not be subject to different switching processes from those applying on the Openreach copper network. Moreover, where services are routinely sold in bundles there is a stronger justification for applying the same switching processes to all elements of the bundle. EE therefore welcomes Ofcom's focus on triple play bundles since there is a clear competitive distortion due to the current differences in switching processes.

However, any concerns that may arise as a result of differences between the switching processes of the constituent elements of a bundle of services are largely irrelevant to mobile services. This is because consumers tend to purchase mobile service on an individual basis whereas fixed products and pay TV are all purchased on a household basis. Indeed Ofcom has found that 95% of consumers purchase mobile telecoms as a standalone service⁵ and to date quad play take up has been limited 2% of households.⁶

We expect this purchasing behaviour to continue in the foreseeable future. Whilst it is true that elsewhere in Europe the penetration of quad play bundles is much higher in some markets, this higher penetration has largely been driven by aggressive pricing. However, as noted above, the UK market is highly competitive and as a result there is very limited margin available to fund significant discounts for taking mobile as part of a bundle.

There may be some limited opportunities for cross-selling mobile to existing fixed customers. However, where a product is cross sold, it will be sold pursuant to a separate contract and thus no consumer harm arises as a result of having a different switching process for that product.

⁵ Ofcom Research Report, The Consumer Experience of 2014, published January 2015

⁶ Ofcom's Strategic Review of Digital Communications "Discussion Document" paragraph 4.76.

Research into the consumer experience of switching

In section 1 we gave an overview of the development of MNP over time, and the improvements industry has made to the processes. We commented on Ofcom's description of the mobile switching processes and highlighted the short time it takes to obtain a PAC code, and to port and switch. In this section we look at Ofcom's research into the consumer experience of switching and assess the areas of potential consumer harm identified by Ofcom. We also compare research into the consumer experience of mobile and fixed switching.

Rates of consumer switching

We note Ofcom's observations around the level of switching declining in a number of communications markets. We believe that switching percentages in themselves should not be the main indicator Ofcom takes into account when assessing the level of consumer engagement in the market. Ofcom note that the reasons for the decrease in engagement levels are unclear and comes up with possible explanations. Whilst it is interesting to see the reasons why consumers change provider, it is equally interesting to find out why consumers decide not to switch.

Ofcom's Consumer Experience Report 2014⁷ provides insight into these reasons. Customers tend to stay with their current provider because they are content to do so – i.e. due to the duration of the contract they freely chose to enter into (commonly in return for a subsidised hand-set) or due to a perceived lack of financial benefit from switching provider (indicative of the fact that prices for UK mobile services are some of the lowest in the world). These two reasons, which have nothing to do with the switching process available to those consumers, together account for 73% of reasons for not switching.

These views are reinforced by the fact that Ofcom's Consumer Experience Report found that 87% of mobile customers are very or fairly satisfied with the value for money they get from their provider. In particular when coupled with the low prices for mobile services and low returns seen in the UK, it is obvious that high satisfaction levels with mobile services are liable to result in a lower propensity to switch. Certainly evidence from other sectors suggests that there is a correlation between customer satisfaction and switching levels. According to Ofcom's research, sectors with higher switching levels such as car insurance for example, have lower satisfaction scores when asked if they consider the services provide good value value for money.

We consider that Ofcom should use a set of indicators to assess engagement in markets, most of which are included in the Consumer Experience report. A decrease or increase in a single indicator should not be a reason for concern, but rather should be considered within the wider context. We believe that other

⁷ http://stakeholders.ofcom.org.uk/binaries/research/consumer-experience/tce-14/TCE14_research_report.pdf

indicators provide such explanations, and we set these out in more detail below.

Evidence of issues that can arise during the switching process

Overall perceived ease of mobile switching is high, around 92%, according to Ofcom’s consumer experience research. This research also shows an increase in perceived ease of mobile switching, from 86% in 2013 to 92% in 2014.

Figure 1: Consumer opinions about ease of switching supplier, by purchasing behaviour, among those who have ever switched.



Source: Ofcom Consumer Experience Report 2014

We note in the table above that the perceived ease of mobile switching is similar to if not higher than switching fixed line and fixed broadband services. Both these processes were in 2014 largely subject to a GPL process.

Ofcom then states that these statistics are ‘encouraging’ but that they must be seen in context, and that they only relate to a very small proportion of overall mobile subscribers. We note that these cautionary comments were not included in the Consumer Experience Report where the results were originally published. We would expect that Ofcom would only publish statistics that it considers to be statistically valid.

Ofcom then focuses on the (even smaller) proportion of mobile switchers who signalled they had experienced difficulties during the switching process.

In order to determine possible trends in such difficulties, we have looked at Ofcom’s Customer Retention and Interoperability research (‘CRI research’)⁸ carried out in 2013 which includes an overview of difficulties mobile consumers experienced when they switched providers. We then compare this with the

⁸ http://stakeholders.ofcom.org.uk/binaries/research/telecoms-research/customer-retention/CRI_Report_Final.pdf.

information from the 2014 Consumer Experience report (as per Ofcom’s consultation document). We have combined some of the information⁹ in the table below which sets out the percentage of mobile switchers who experienced issues in a certain area.

Figure 2: Percentage of mobile switchers experiencing issues in 2013 and 2014:

Issues	2013	2014
Provider persuasion to stay	17%	11%
Lack of process clarity	13%	2%
Contacting two providers	11%	7%
Break in service	17%	10%
Paying for two services	21%	4%
Coordinating start and stop times	18%	6%

Source: Ofcom Consumer Experience Report 2014 and Ofcom CRI Report 2013

This table shows that the percentage of customers experiencing issues with mobile switching has decreased, and quite significantly so, in a number of areas. This confirms the overall increase in ease of mobile switching from 2013 – 2014 and is a reflection of continuous improvements made to the switching process by industry.

Ofcom then compares GPL processes with LPL processes, using the CRI research, published in 2013. We note that the fieldwork for this research was carried some time ago in late 2012. We also note that ‘switchers’ included in the sample contain consumers who had switched their service up to 24 months before the fieldwork was carried out, so from late 2010 onwards. This means that the sample included consumers who switched their mobile service between five and three years ago. Considering the decrease in prevalence of mobile switching issues over time, the corresponding general increase in overall perceived ease of mobile switching, and changes made to the switching process by industry, we believe this research is outdated and not relevant for this purpose.

However, we do agree that it is important to compare fixed and mobile switching processes, and assess, based on the most recent evidence, whether Ofcom’s general preference for GPL processes, is indeed based on evidence of a better consumer experience.

⁹ Please note that for the 2013 research, we obtained the percentage in the table by adding the percentage of switchers who either considered the respective issue to be main or major.

Using Ofcom’s most recent Consumer Experience research from 2014, we compare a number of switching related issues and their prevalence in fixed line, fixed broadband and mobile markets in figure 3 below. It provides an overview of the percentage of consumers who have switched their service and encountered a particular issue, by market.

Figure 3: Percentage of switchers who experienced an issue, by market:

Issue	Mobile	Fixed line	Fixed BB
Loss of service	10%	5%	10%
Contacting provider to cancel service	7%	6%	13%
Arranging stop and start dates	6%	10%	16%
Bills for cancelled services	5%	10%	10%
Obtaining switching info from existing provider	4%	11%	13%
Paying for two services	4%	8%	8%
Knowing how to switch	2%	6%	10%
Provider persuasion to stay	11%	28%	21%

Source: Ofcom Consumer Experience Report 2014

It is worth reiterating that the fixed line and fixed broadband processes were at the time this report was published, partly subject to a GPL process. The comparison demonstrates that many of the issues identified by Ofcom are equally or more prevalent in fixed line and broadband switching processes compared to mobile switching processes. This suggests that the classification of the process into C&R, GPL and LPL may be less relevant in the context of assessing the merits of switching processes. It also suggests that Ofcom’s preference for GPL processes is not evidenced by an improved consumer experience.

In our response to Ofcom’s Call for Inputs we questioned the relevance of classifying processes in certain categories, and the appropriateness of Ofcom stating a preference for a certain category. We considered that it would be more insightful to look, based on evidence, whether the process works for consumers.

Ofcom also referred to their qualitative research by Futuresight¹⁰ on consumers’ experiences of switching and compares GPL and LPL processes. Ofcom concludes that this research supports its view that GPL processes result in a better switching experience. The research finds that:

- Most consumers who switched and retained their mobile number using an LPL process did not report any significant problems;

¹⁰ http://stakeholders.ofcom.org.uk/binaries/research/telecoms-research/Ofcom_Switching_Comms_Provider_Research_Futuresight.pdf.

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- The majority of mobile switchers claimed to be satisfied with the switching process, whether or not this included a mobile port;
 - 8% of the mobile sample reported difficulties obtaining a PAC. Issues tended to be related to timing issues.

Ofcom then discusses the differences between GPL and LPL processes in terms of multiple touch points and reactive save. Whereas under the PAC process, customers have to contact both their losing and gaining provider, Ofcom research shows that many consumers, even where the process does not require them to contact the losing provider, will do so anyway. The Futuresight research explains that once consumers carried out their assessment of options '*most sought to negotiate prior to their final decision and claimed that they saw benefit in doing so.*

This behaviour was driven by their desire to gain (if they could) without switching. In this way, the stated intention among the majority was to use their new-found confidence (through assessment) to seek an offer from their current provider if they could, rather than switch. In short, the stated aim was to get from their current provider what they could gain elsewhere, without the perceived hassle and risk of switching'.

Regardless of the process being GPL or LPL, we believe that most consumers are likely to seek a deal from their current provider, unless their dissatisfaction with their current provider is high.

Apart from seeking a deal, consumers may also call their current provider to discuss the implications of switching. In the mobile market, with the prevalence of 18-24 months contracts, it is not unreasonable for a customer not to recall when exactly they entered into a contract, or the exact terms for that contract and to contact their current provider to ask for this information. So even in the case of GPL processes, many consumers would still contact their current provider, making Ofcom's argument regarding multiple touch points less valid.

Ofcom then list a number of areas where consumers have difficulty and are subject to unnecessary switching costs. We will briefly discuss these areas in light of the switching information included in Ofcom's Consumer Experience Report 2014 and our experience with mobile switching processes.

Multiple switching processes

Ofcom state that the existence of two processes potentially creates confusion for consumers. Ofcom's research however shows that a large majority of switchers are clear about mobile switching processes. The Consumer Experience Report shows that only 2% of switchers mentioned 'Knowing how to switch' as an issue. Mobile switching and porting has been around for a long time, processes are well-established and most consumers will be familiar with them. Porting was introduced in 1999 and the C&R process, as set out in Section 1, is a common process, and is used in many other sectors. Providers have detailed information on their websites advising customers how to switch, as does Ofcom and a number of third party price comparison websites. We do

not consider that the simple fact that there are multiple processes leads to consumer harm, and none of the evidence supports this view.

Continuity of service

Ofcom states that loss of service in mobile switching mainly arises under the C&R process. The Consumer Experience Report shows that around 10% of mobile switchers had experienced some loss of service, and that this is the same for fixed broadband switchers. The research does not contain details of the duration of the loss of service, which is an important factor in assessing harm. It is currently industry practice for gaining providers to provide the customer with a temporary number that they can use until the switch is carried out. This enables customers to make outgoing calls and receive incoming calls, if they give out their temporary number, during the short switch-over period. We doubt Ofcom's view that it can take significant organisation on the part of the consumer to give notice to their old provider and arrange for the new service with the new provider. The customer will typically call their current provider who will make them aware of their notice period, contract term and other implications, if applicable, and armed with that information they will then call their new provider to make the necessary arrangements for their new service. This involves making two quick phone calls.

Lack of awareness of the implications of switching

We believe that it is very important for customers to be advised of the implications of switching. Ofcom mention the Early Termination Charge, differences in availability of service and loss of prepaid credit, voicemails and SMS or loyalty benefits. There can be further implications, such as customers with second line discounts, which may fall away if the main contract gets cancelled, and sharer plans, where a group of customers share certain allowances, and where, if the lead contract leaves, a new lead will need to be established, with possible implications for their monthly rental charge. There are also loyalty offers, such as data boosts where customers take out a fixed and mobile contract which may be impacted if the mobile contract gets cancelled. The number of EE customers taking out several contracts, with possible implications in case of switching, is increasing, and currently stands at approximately 20% (sharer plans, second lines etc.). We agree that the current provider is best placed to provide this information to their customers particularly as there can be numerous consequences. We do not consider that there is any evidence of an incentive on losing providers to be vague about switching implications as suggested by Ofcom. On the contrary, it is in the losing provider's interest to be clear, and avoid complaints and issues further down the line.

Insufficient customer consent

Verifying that the customer is indeed the account holder, and therefore that they are authorised to request a switch, is an important part of the switching process. Indeed it is one of the few justifications to refuse a PAC. Clearly verification is more easily carried out when a customer is required to call their

current provider. Whilst we agree that slamming is unlikely, stolen phones may be more easily moved around under a GPL process, if customer authentication is not effectively implemented in the new process. If authentication is not implemented properly, there may be an increase in numbers of reverse migrations, resulting in additional costs for operators.

Conclusion

EE considers that intervention in mobile switching is not justifiable. The evidence clearly supports this view. Competition in the mobile market is thriving, and consumers perceive mobile switching as easy, with a growing number of customers finding switching easier over time. We also question the appropriateness of Ofcom's 'one-size-fits-all approach', in terms of their stated preference for a GPL processes, as the evidence does not support an assumption that GPL will necessarily deliver greater consumer outcomes than existing processes.

3. Options for mobile process reforms

In section 4 of the Consultation, Ofcom set out three options for mobile switching process reforms. Any of these options, if carried through, would represent significant regulatory intervention.

We are concerned that the tone of the Consultation suggests that Ofcom has made up its mind on mobile switching and that it will seek to continue to play down the true conclusions that should be drawn from existing research. There is a real risk that if mobile operators do not agree to Ofcom's proposed reforms given Ofcom's clear positioning that reforms should be made, that confirmation bias will infect any further research and consultations that Ofcom conducts.

Ofcom's Consultation appears to ignore its own regulatory principles. Ofcom's 'Better Policy Making document'¹¹ explains the principles Ofcom uses when deciding to intervene:

- *"It is important for Ofcom to think very carefully before adding to the burden of regulation."*
- *"One of our key regulatory principles is that we have a bias against intervention. This means that a high hurdle must be overcome before we regulate."*
- *"If intervention is justified, we aim to choose the least intrusive means of achieving our objectives, recognising the potential for regulation to reduce competition."*

The document also includes a quote from the Better Regulation Task Force:

"The option of not intervening...should always be seriously considered. Sometimes the fact that a market is working imperfectly is used to justify taking action. But no market ever works perfectly, while the effects of...regulation and its unintended consequences, may be worse than the effects of the imperfect market".

In order to approach this topic with an open mind a 'Do Nothing' option should have been, and must now, be considered. In a similar vein, and recognising Ofcom's principle to choose the least intrusive means to achieve their objective, an option looking at making operational improvements to the current process should be included as well, especially since improvements have been made to the MNP process over time, resulting in an improved switching process, shorter PAC provisioning and porting times, and corresponding customer satisfaction.

We note Ofcom's comment that GPL processes are better at supporting competition. Ofcom set out in the Consultation that its objective is to investigate further whether the consumer experience of switching can be improved. Ofcom have not set out any issues in respect of competition in the mobile market. We would like Ofcom to clarify what the objective of the Consultation is, and, if it has identified competition issues, to share them with stakeholders.

¹¹ http://stakeholders.ofcom.org.uk/binaries/consultations/better-policy-making/Better_Policy_Making.pdf.

Impact assessment

We note that the options set out in the Consultation are very high level and lack the detail necessary for CPs to carry out detailed impact assessments. In EE's experience, the implementation costs tend to rapidly escalate when conducting an impact assessment against exact requirements, rather than based on a very high level process description. In any event, we believe that to do so would be premature given that the evidence does not support the case for change.

We question the reliability of the numbers included in the impact assessment as on any reasonable view they appear low. EE would have preferred Ofcom to engage with a wider group of stakeholders prior to publishing the Consultation, based on more detailed proposals, or not to have included numbers at this stage. We believe they have not been properly validated and give an unnecessary and at this stage, potentially inaccurate steer to stakeholders.

With this in mind, EE have decided at this stage to making qualitative comments on Ofcom's proposal only.

Systems involved in porting

We have identified at least ∞ systems for EE, T-Mobile and Orange which are directly impacted by changes to the porting process. Given the number of systems involved, the costs of implementing the proposed reforms would inevitably be high. Moreover the internal resource required for such major changes would inevitably be significant. The opportunity costs of diverting resource to such a project should not be underestimated. In addition, gathering information around the implications of switching from relevant systems, and relaying the information in a meaningful way to the customer will lead to significant costs as well. Below we discuss in more detail the importance of authentication of the account holder when porting is requested. The costs for an authentication solution will need to be included as well.

Increased time to port

We are concerned that Ofcom's proposals may result in the porting process taking longer because of the additional steps in the process, e.g. relaying mandatory information to customers and customers confirming that they would like to switch. Increasing the time to switch would negatively impact the switching experience and run counter to the progress industry has made to make the process for consumers as swift as possible.

Authenticating the account holder

The MNP Porting Process Manual (version 1.27) states the following:

*"The porting process cannot be initiated without prior authorisation by the DSP to port-out. Authorisation shall always be acquired by an account holder request to the DSP. **The DSP is entitled to validate***

the status of the customer before issuing an authorisation to port-out any MSISDN.

Currently the losing provider carries out an authorisation check to confirm that the request for a PAC has been made by the legitimate account holder, and informs them of any charges payable under a minimum contract term, loss of discounts, sharer plan information, final bill date, etc.

EE's systems do not currently allow for automated authentication. Without speaking to the customer there is no mechanism for EE, as the losing provider, to authenticate the requestor and to ensure that the account holder is the person providing the consent to switch. Ofcom's proposals do not set out how authentication will be carried out under the new proposals. Apart from additional costs of an authentication system (which under some of the options will have to be an industry agreed solution), this could result in issues with privacy regulations, and potentially an increase in the number of reverse migrations (and costs related to reverse migrations), where customers are wrongly switched.

Information about implications of the switch

Ofcom states that simplification can be achieved by allowing customers to request the PAC by SMS or by making a call to an IVR. Key information about the implications of the decision to switch, such as outstanding contract duration and ETCs payable, need to be provided to the consumer before they decide to switch.

In Section 2 we have explained that switching implications are not limited to early termination charges, but that there may be several other implications around multiple lines, sharers, and other loyalty features. The number of customers benefiting from these features is increasing.

This information is currently included in a number of different EE systems, and advisors will know which systems to check to make customers aware of the implications. We do not think an SMS is the right medium to send the customer the switching implications, because of the limited number of characters and the potentially substantial amount of text. In addition, some of the implications may require an action on behalf of the customer, i.e. selecting a new lead to a sharer plan, or a new choice of price plan. This needs to be communicated to the account holder as well.

In terms of timing, it is important that the customer has the relevant information before making their decision as to whether they wish to switch. The information must therefore be relayed to the customer before they confirm that they want to go ahead with the switch. Otherwise there is a risk that customers are made aware of the implications after they have switched, which could lead to an increase in reverse migrations.