



**SKY'S RESPONSE TO OFCOM'S CONSULTATION:  
CONSUMER EXPERIENCE OF SWITCHING MOBILE COMMUNICATIONS SERVICES AND  
OPTIONS FOR PROCESS REFORMS**

**EXECUTIVE SUMMARY**

1. The current consultation ("the Consultation") concerns switching processes in the UK mobile communications sector. Although Sky has announced plans to begin providing mobile communications services in 2016, Sky's principal interest in relation to the Consultation lies in Ofcom's general approach to the issues that it considers. For that reason, we have not commented on the specific proposals for changes to mobile switching processes put forward by Ofcom.
2. In the Consultation, Ofcom begins from a 'preference' that switching processes are gaining provider led ("GPL"). This preference, which was set out in Ofcom publications in 2010 and 2013, is ill-founded. Moreover, examining issues associated with consumer switching through a lens of a pre-determined policy preference is contrary to regulatory best practice; it is apt to lead to ill-founded proposals and/or proposals for disproportionate regulatory intervention.
3. This inappropriate analytical approach fundamentally undermines Ofcom's examination of potential problems faced by consumers when switching supplier of mobile communications services.
4. The analysis in the Consultation is divorced from the reality of the UK communications market today. In particular, it fails to recognise that there is tough competition for customers, and that consumers are more empowered to make well-informed decisions about their provider(s) of communications services than ever before. Millions of UK consumers switch suppliers every year, with the vast majority of those switches being straightforward.
5. The Consultation puts forward no compelling analysis or evidence of problems that would warrant the types of proposals for 'process reforms' set out in Section 5 of the Consultation. Ofcom's preparedness to argue for such changes with such little justification is of profound concern to Sky – particularly in view of the fact that Ofcom proposes now to move on to consideration of switching in relation to 'bundles' of pay TV, telephony and broadband services.
6. Sky considers that, when considered objectively, switching processes in the UK communications sector are not in need of fundamental, costly change. Instead, Sky has long argued that Ofcom should work with operators in the sector to (a) identify genuine, specific problems faced by consumers when switching suppliers, and (b) develop effective, targeted solutions to those issues. Such an approach is likely to deliver greater benefits to consumers than aiming for large-scale, costly and unjustified interventions that will engender opposition rather than co-operation from firms in the sector.



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**1. Introduction**

1.1 This document provides Sky's response to the Ofcom consultation entitled 'Consumer experience of switching mobile communications services and options for process reforms', dated 28 July 2015 ("the Consultation").<sup>1</sup>

1.2 Although Sky has announced plans to begin providing mobile communications services in 2016, Sky's principal interest in relation to the Consultation lies in Ofcom's general approach to issues concerning consumer switching. For that reason, we have not commented on the specific proposals for changes to mobile switching processes put forward by Ofcom.

1.3 As Ofcom is aware, Sky's view is that switching processes in the UK communications sector work effectively, enabling millions of customers to switch providers without significant hassle every year. This does not mean that they are perfect, or that improvements cannot be made. However, Sky considers that the most productive use of the scarce resources of both Ofcom and communications providers ("CPs") is to focus on identifying cost-effective incremental changes that can be effected to existing processes, rather than to aim at large-scale, costly and disproportionate process re-engineering. Sky remains fully committed to engaging with Ofcom, and other CPs, to identify and implement targeted changes.

1.4 This response comprises the following sections:

**Section 2: Ofcom's duties and regulatory principles**

**Section 3: Ofcom's 'preference' for switching processes to be gaining provider led**

**Section 4: Market context**

**Section 5: 'Issues that can arise during switching'**

**Section 6: Other issues**

**2. Ofcom's duties and regulatory principles**

2.1 The Consultation focuses on options for regulatory intervention in relation to switching processes in the mobile communications sector. The Consultation begins with a recital of Ofcom's general duties. However, it is notable that (in contrast to other consultations<sup>2</sup>) Ofcom does not mention in this section its obligations under section 3(3) of the Communications Act 2003 ("the Act"), nor Ofcom's regulatory principles. Given the subject matter of the Consultation, this is a material omission.

<sup>1</sup> All paragraph references in this response are to the Consultation, unless otherwise stated.

<sup>2</sup> See, for example, paragraphs 2.35 - 2.36 of 'Review of Sky's Access Control Services Regulation', 23 July 2014. Available at: <http://stakeholders.ofcom.org.uk/binaries/consultations/sky-access-control/summary/condoc.pdf>.

2.2 Section 3(3) of the Act requires Ofcom, in performing its principal duty under Section 3(1)(b) of the Act, to ensure that its regulatory activities are transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed.<sup>3</sup> As Ofcom has stated previously, in fulfilling its duty under Section 3(3) of the Act, its general regulatory principles include:

- “• *operating with a bias against intervention, but with a willingness to intervene firmly, promptly and effectively where required;*
- *ensuring that our interventions are evidence-based, proportionate, consistent, accountable and transparent in both deliberation and outcome;*
- *always seeking the least intrusive regulatory mechanisms to achieve our policy objectives; and*
- *intervening where there is a specific statutory duty to work towards a public policy goal which markets alone cannot achieve.”<sup>4</sup>*

2.3 Both the requirements of Section 3(3) of the Act, and Ofcom’s regulatory principles, are particularly important when the issue being considered is new or additional regulation. In these circumstances, it is essential that Ofcom:

- (a) approaches its analysis and evidence gathering with an open mind;
- (b) seeks first to identify problems that may require a regulatory solution, on the basis of cogent evidence and analysis;
- (c) considers all potential remedies, and the do nothing option, with an open mind, if such problems are identified; and
- (d) ensures that any proposed remedies are proportionate and the least intrusive regulatory mechanisms, including via conducting a proper regulatory impact assessment.

2.4 As set out further below, the approach taken by Ofcom in the Consultation does not conform with these legal requirements, or Ofcom’s regulatory principles.

### **3. Ofcom’s ‘preference’ for switching processes to be gaining provider led**

#### **It is inappropriate to approach these issues with a pre-determined preference for intervention**

3.1 Ofcom refers to the analysis and conclusions set out in a consultation document published in 2010 (“the 2010 Consultation”<sup>5</sup>) in support of a preference for GPL switching processes. Ofcom states:

*“In our 2010 Strategic Review of Consumer Switching, we set out our preference, in principle, for switching processes to be led by the provider to whom the customer is moving (the ‘gaining provider’), since they have a greater incentive to make the switching process work well.”<sup>6</sup>*

3.2 It is inappropriate for Ofcom to examine switching issues, in any sector, through the lens of

<sup>3</sup> Under section 3(3)(b) Ofcom must also have regard to best regulatory practice.

<sup>4</sup> Paragraph 2.36 of Ofcom’s consultation entitled ‘Review of Sky’s Access Control Services Regulation’, *op. cit.*

<sup>5</sup> ‘Strategic review of consumer switching. A consultation on switching processes in the UK communications sector’, 10 September 2010. Available at: <http://stakeholders.ofcom.org.uk/binaries/consultations/consumer-switching/summary/switching.pdf>.

<sup>6</sup> Paragraph 1.3.

a pre-determined 'preference'.<sup>7</sup> Such an analytical approach is almost bound to give rise to confirmation bias and incorrect conclusions.

- 3.3 Instead, Ofcom should, in line with best regulatory practice, seek (i) to first determine whether there are particular problems faced by consumers when switching suppliers, having regard to the specific facts of each sector, and, (ii) *if it is found that this is the case*, then consider potential solutions to such problems with an open mind to all possible alternatives (as well as the option of not intervening).
- 3.4 One of the most important reasons why Ofcom's 'preference-led approach' to consumer switching issues is inapt is that it is evident that, in most cases, fundamental reform of existing processes will be costly and time-consuming. It is not possible to start with a 'blank sheet of paper' when considering switching processes. Fundamental process reform is almost certain to involve substantial costs associated with scrapping existing processes, and then putting in place all the IT systems, training, changes to marketing and other developments needed to move to alternatives, across a potentially significant number of firms. Accordingly, Ofcom's approach that presumes that such change is the preferred solution to any problems identified with switching carries with it an inherent risk of disproportionality.
- 3.5 Ofcom's examination of issues through the lens of its preference for GPL switching processes is a fundamental flaw that runs through the entirety of the Consultation. For example, as discussed further below, when examining the problems faced by consumers when switching mobile communications provider, Ofcom considers the issue of slamming. Yet, rather than considering whether slamming is a problem currently experienced by consumers in the mobile communications sector, Ofcom instead considers whether slamming would be a problem if it required switching to become gaining provider led.

### **Ofcom's preference for GPL switching is ill-founded**

- 3.6 Ofcom's 'preference-led approach' is all the more problematic when, as in this case, the analysis claimed to support that preference was itself flawed.
- 3.7 The analysis and conclusions contained in the 2010 Consultation contained numerous, significant flaws, particularly in relation to the analysis of customer retention activities (so-called 'reactive save' activity),<sup>8</sup> and its failure to have proper regard to the fact that GPL switching processes have significant detriments associated with them – in particular, the facts that (a) they take longer than other processes, when consumers have a clear preference for shorter switching processes, and (b) they carry with them a greater risk of consumers engaging in switches that are not in their interests, that they either (i) then have to unwind, or (ii) stay with and suffer adverse consequences<sup>9</sup>.

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<sup>7</sup> Such an approach is all the more inappropriate where, as in this case, there was a high degree of confirmation bias in the analysis relied upon in support of the policy preference.

<sup>8</sup> The reasons for this were set out in full in Sky's response to the 2010 consultation. The non-confidential version of Sky's response is available at: <http://stakeholders.ofcom.org.uk/binaries/consultations/consumer-switching/responses/SKY.pdf>.

<sup>9</sup> In its SRDC discussion document Ofcom rightly stresses the need for clear information and transparency to enable consumers to make "*the best choices*". (Paragraph 12.7.) Yet when it comes to switching processes Ofcom favours a process which does not provide full information to consumers at point of switch. Instead, under Ofcom's preferred GPL process customers have to wait for information on the impact of their switch to arrive after they have already signed up with their new provider meaning that they only become aware of the implications of their actions (such as incurring early termination charges, loss of discounts or TV channels) late in the process and once the switch is in train.

- 3.8 Accordingly, neither the 2010 Consultation, nor the 2013 Statement<sup>10</sup> that reflected the analysis and conclusions of the earlier consultation (largely unchanged), provides a sound basis for a presumption that switching processes should be gaining provider led.
- 3.9 Sky did not formally challenge the analysis or conclusions set out in the 2013 Statement. This is because even though Sky profoundly disagreed with them, Ofcom at that time proposed only relatively minor interventions as a result,<sup>11</sup> and it was Sky's preference to continue to work constructively to identify ways in which switching processes could be improved. Ofcom cannot, however, rely on an absence of formal challenge to its 2013 Statement as conferring acceptance by CPs of its analysis and conclusions, particularly that which is asserted by Ofcom to support its 'preference' for gaining provider led processes.

### Proposals for process reforms

- 3.10 In Section 5 of the Consultation, Ofcom sets out "*options for process reform*" in relation to switching in the mobile communications sector. Such proposals are premature. Ofcom has not set out any sound case that there are problems in relation to switching in the mobile telecommunications sector that would warrant intervention by Ofcom compelling significant, costly changes to current processes. Ofcom's willingness to leap to such proposals, principally on the basis of an ill-founded desire that all switching in the communications sector is gaining provider led, is of significant concern.

## 4. Market context

- 4.1 Ofcom's consideration of consumer switching issues risks being divorced from the realities of the market, in which there is strong competition among firms for customers, and in which consumers are more empowered than ever before. Millions of consumers switch provider in the UK communications sector each year and consumer research demonstrates consistently that such switching is considered by most consumers to be straightforward.
- 4.2 Much of Ofcom's analysis and approach to consumer switching issues appears predicated on a belief that consumers are ill-equipped to make good choices for themselves. Nothing could be further from reality. Even if this were the case when Ofcom began its strategic review of consumer switching over half a decade ago, it is plainly not the case today. Consumers are more empowered than ever to make well-informed decisions about their suppliers of communications services. There is a plethora of information available to consumers, not only from suppliers, but also from third party intermediaries, other consumers (for example via blog sites and online forums), and from Ofcom.
- 4.3 The 2013 CRI research cited by Ofcom<sup>12</sup> confirms that among those who have switched and those considering switching, when looking to change their mobile or TV providers, one in two consumers will have calculated the cost of the new service and the cost of changing service and will have looked at individual companies' websites. One in three consumers will have spoken to family and friends and will also check comparison websites and, in the case of changing mobile providers, will have visited a retail outlet.<sup>13</sup>

<sup>10</sup> A Statement and Consultation on the processes for switching voice and broadband providers on the Openreach Copper Network, 8 August 2013. Available at: [http://stakeholders.ofcom.org.uk/binaries/consultations/consumer-switching-review/summary/Consumer\\_Switching.pdf](http://stakeholders.ofcom.org.uk/binaries/consultations/consumer-switching-review/summary/Consumer_Switching.pdf).

<sup>11</sup> Even these relatively limited changes required significant investments to be delivered. [CONFIDENTIAL] The changes were, however, far less costly to implement than the types of interventions that Ofcom had been proposing.

<sup>12</sup> First cited at paragraph 4.2.

<sup>13</sup> Paragraph 3.4.1 of the 2013 CRI research.

- 4.4 Remaining with a current provider is an active choice in most instances, not simply inertia.
- 4.5 The 2013 CRI research also reviewed the attitudes of consumers who had switched or considered switching and found that:

*"The qualitative research highlighted a strong perceived stated need amongst some consumers to periodically review the market to determine whether or not they were still getting the best/a good enough deal."*<sup>14</sup>

The research found that these casual considerers were:

*"more inclined to stay with their communications provider than go through the upheaval of switching, and are therefore really looking for a reason to stay rather than a reason to switch."*<sup>15</sup>

- 4.6 Consumers also benefit from high levels of consumer protection, underpinned by an arsenal of general consumer law and sector specific legislation, both UK and European. Ofcom will be aware that last week the Consumer Rights Act came into force which increased levels of protection for consumers of goods and services with a new category of rights for digital content.
- 4.7 In this context, a belief that radical changes to industry practices must be imposed to support consumer switching is misplaced.

## **5. 'Issues that can arise during switching'**

- 5.1 Section 4 of the Consultation contains an assessment by Ofcom of "*issues that can arise during the switching processes*", which are identified as follows: (i) consumer difficulty and unnecessary switching costs, (ii) multiple switching processes, (iii) continuity of service, (iv) awareness of the implications of switching, (v) slamming, and (vi) erroneous transfers.
- 5.2 Perhaps the most notable feature of this analysis is its brevity. The entire section comprises a little over nine pages, and most of its sub-sections comprise either two or three paragraphs. Plainly, analysis at this level of detail is insufficient to support well-founded conclusions on any problems faced by consumers when switching among providers of mobile communications services.
- 5.3 Given the foregoing, and the fact that a significant part of the discussion relates to mobile switching, in which Sky does not currently have direct experience, we comment briefly on each of the issues raised by Ofcom in the sub-sections below.
- 5.4 Sky welcomes Ofcom's acknowledgement in this section that "*the majority of mobile switchers find the process to be easy*", and that Ofcom finds this to be "*encouraging*"<sup>16</sup>. The finding that most consumers find switching processes to be easy in the UK communications sector is a consistent finding of consumer research. This fact strongly supports a carefully targeted approach of seeking to address clearly identified problems with switching, rather than large-scale re-engineering of switching processes.

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<sup>14</sup> Paragraph 3.3.1, *ibid.*

<sup>15</sup> *Ibid.*

<sup>16</sup> Paragraph 4.36.

**(i) “Consumer difficulty and unnecessary switching costs”**

5.5 Sky notes that this section does not appear to contain any evidence or analysis related to “unnecessary switching costs” – nor, indeed, any discussion of what Ofcom means by this term. Instead, this section appears to comprise something of a catch-all, covering a range of switching-related issues (both in the mobile communications sector and more generally).<sup>17</sup>

5.6 Furthermore, Sky notes that this section does not, as might be expected, contain a thorough analysis of the problems that are *actually experienced* by consumers when switching mobile provider. The only such analysis is a single chart, Figure 6, which presents the results of Ofcom consumer research on this issue. This analysis plainly shows that there are no obvious problems experienced by the many consumers who have switched mobile provider.

*“Additional time associated with multiple touch points”*

5.7 Ofcom considers the extent to which “multiple touch points” cause problems for consumers when switching provider. Notwithstanding the benefits for consumers of speaking to their current provider, in other sectors “multiple touch points” do not hinder switching. For example, in Ofcom’s Strategic Review of Digital Communications (“SRDC”) discussion document, Ofcom refers to switching levels in other industries noting that “[i]n the case of car insurance, 33% of consumers had switched provider in the last 12 months”<sup>18</sup>. It is notable that the switching process in the car insurance sector is a cease and re-provide process where consumers have two touch points, one with their existing provider and one with the new provider (and possibly with a comparison website involved too). Accordingly, it is evident that having multiple touch points does not inhibit switching.

*“Provider making it difficult to cancel/ unwanted save activity”*

5.8 As Ofcom is aware, the issue of the role of customer retention activity in relation to consumer switching is contentious. Such activity is a key facet of competition among CPs, and is highly beneficial to consumers, both as a result of the direct benefits they receive (e.g., discounted charges or other offers), and by saving them the need to go through the process of switching provider to benefit from more attractive terms. Customer retention activity is expensive, and therefore not undertaken lightly by firms.

5.9 Customers calling their existing provider when they are considering switching can also assist customers from avoiding having to switch via ‘right sizing’ – i.e., helping a customer find an alternative service that better suits their requirements, including, for example, cheaper alternatives.<sup>19</sup>

5.10 Ofcom has acknowledged previously to Sky that it recognised that its emphasis on ‘save activity’ as a ‘problem’ in relation to switching had not made a positive contribution to its switching review.<sup>20</sup> Yet, statements in relation to save activity in the current Consultation, such as describing it as “frustrating the switching process”<sup>21</sup>, suggest that Ofcom may have

<sup>17</sup> The majority of Ofcom’s discussion under this heading appears to comprise an attempt to demonstrate that GPL switching processes are easier for consumers to use, and therefore result in more switching, than other processes.

<sup>18</sup> Paragraph 12.32 of the SRDC discussion document. Available at: [http://stakeholders.ofcom.org.uk/binaries/consultations/dcr\\_discussion/summary/digital-comms-review.pdf](http://stakeholders.ofcom.org.uk/binaries/consultations/dcr_discussion/summary/digital-comms-review.pdf).

<sup>19</sup> It would be perverse to describe such discussions as “making it difficult to cancel”, even though the result is that often consumers choose not to cancel their service.

<sup>20</sup> Call with Ofcom on 13 April 2015.

<sup>21</sup> Paragraph 4.33.

moved back towards its earlier position. Sky considers that it would be unfortunate if this were the case.

- 5.11 It is apparent that some consumers – as Ofcom notes<sup>22</sup>, particularly those who have, for some reason, made up their mind to switch supplier – do not wish to engage with retention offers, and would prefer to avoid such discussions. For them, having to reject unwelcome offers increases the hassle of switching, or may put them off switching altogether. Nevertheless, it is also evident that such consumers are in a minority, and that most consumers welcome and engage with customer retention offers. For example, Ofcom reports the results of the 2013 CRI research on this subject as follows:

*“Of the 55% of Considerers who spoke to their previous provider at some point, most (82%) recall their provider persuading them to stay. The majority have a positive experience. A minority (20%) are unhappy with these interventions....”<sup>23</sup>*

**(ii) Multiple switching processes**

- 5.12 Ofcom discusses the possibility that having different switching processes for different types of services, or different elements of ‘bundles’ could *“add complexity and increase difficulty”<sup>24</sup>* for consumers.
- 5.13 Consumers in the UK today live in a world full of complexity, which they appear able to cope with. For example, in the communications sector, both the range of electronic devices available to consumers and the functionality of those devices are changing constantly. Yet every day consumers demonstrate themselves to be capable of not only finding and purchasing the devices that they desire, but also learning how to operate them, and regularly to update their functionality, without any intervention or assistance on the part of regulators.
- 5.14 It would, therefore, be highly surprising if consumers were unable to cope with having to deal with different switching processes for different products and services on the relatively infrequent occasions that they choose to switch providers (or contemplate switching providers). Sky considers that consumers are well able to navigate different switching processes for different products and in different sectors.
- 5.15 There is no good evidence available that would contradict that view. On the contrary, all available evidence supports it. For example, Ofcom acknowledges that its Consumer Experience Report 2014<sup>25</sup> (“the CER 2014”) shows that *“the large majority of switchers were clear about the process for switching mobile telephony.”<sup>26</sup>* That report also shows that when prompted to cite difficulties with their mobile switch only 2% of consumers chose *“knowing how to switch”<sup>27</sup>*.

**(iii) Continuity of service**

- 5.16 In principle, Sky agrees that either potential loss of service or double-billing could be an issue that deters some consumers from switching provider. Plainly, however, the extent of

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<sup>22</sup> *Ibid.*

<sup>23</sup> Paragraph 1.3.1.3 of the 2013 CRI research.

<sup>24</sup> Paragraph 4.38.

<sup>25</sup> The Consumer Experience 2014, Ofcom’s annual reports into the consumer experience of the fixed and mobile, internet, digital broadcasting and postal markets’, 28 January 2015. Available at: [http://stakeholders.ofcom.org.uk/binaries/research/consumer-experience/tce-14/TCE14\\_research\\_report.pdf](http://stakeholders.ofcom.org.uk/binaries/research/consumer-experience/tce-14/TCE14_research_report.pdf).

<sup>26</sup> Paragraph 4.39.

<sup>27</sup> Figure 170 of the CER 2014.



any such problems would need to be properly established. Ofcom refers to the 2013 CRI research as highlighting a possible issue with continuity of service. We have, however, been unable to locate the specific research findings relied upon by Ofcom.

- 5.17 Moreover, it would seem improbable that the most proportionate response to any such issues, were they properly found to be significant, would be to require wholesale changes to switching processes; there are likely to be numerous, easier and cheaper alternative solutions.<sup>28</sup> Once again, Ofcom's approach in the Consultation of assessing whether the imposition of GPL switching would 'remedy' any issues associated with continuity of service when switching providers is both inapt as an analytical approach, and bound to generate erroneous conclusions.

**(iv) Awareness of the implications of switching**

- 5.18 Again, Ofcom's discussion of this issue does not comprise an assessment of the extent to which consumers' awareness of the implications of switching currently affects switching in the mobile sector. Nor does it contain any evidence on this issue. (On the contrary, Ofcom states explicitly that it does not have such evidence in relation to mobile switches.<sup>29</sup>) Instead, it comprises a general discussion about the extent to which consumers are aware of the implications of switching under different types of switching processes.
- 5.19 Ofcom acknowledges, correctly, that losing provider led switching processes perform better in relation to informing the customer about the implications of switching than GPL processes.<sup>30</sup> The evidence on that issue is compelling.<sup>31</sup>
- 5.20 Ofcom, however, asserts that losing providers may provide vague or confusing information on early termination charges ("ETCs") which could put the consumer off switching.<sup>32</sup> Sky is not aware of any Ofcom evidence of a widespread problem of providers misleading customers today. If such evidence were available, however, Ofcom has various powers at its disposal to address such behaviour.

**(v) Insufficient customer consent (slamming) and erroneous transfers**

- 5.21 Rather than examine whether slamming is a problem *currently* in the mobile phone sector (which Sky understands it is not<sup>33</sup>), Ofcom instead argues that slamming would not be a problem if switching in the mobile sector became gaining provider led. Once again, Ofcom's misplaced focus on the merits of GPL processes lead it to focus on the wrong issue.
- 5.22 In relation to erroneous transfers, while Ofcom begins by acknowledging that it is "*not aware of erroneous transfers being a problem in mobile switching*"<sup>34</sup> (thereby indicating that it has not sought to gather evidence on this issue), Ofcom again moves directly, and

<sup>28</sup> For example, 'double paying' might be addressed through clearer notice periods and activation dates.

<sup>29</sup> Paragraph 4.50.

<sup>30</sup> Paragraph 4.49.

<sup>31</sup> For example, the consumer research undertaken for Sky, BT and Virgin Media in 2012 asked respondents whether they would prefer to have all the information about the consequences of switching before they placed an order to switch or whether they would prefer to switch and then be informed by their current provider what the consequences of the switch were a few days later, but be given the opportunity to cancel the order at no cost to them. 88% of respondents preferred to receive information regarding their switch before they placed their order and only 8% opted for receiving information after placing the order.

<sup>32</sup> Paragraph 4.49.

<sup>33</sup> As indicated by Ofcom, this is because customers must put new SIM cards into their phones in order to receive the new service. Somewhat unusually, Ofcom cites this fact in support of a view that slamming would not be a problem if switching in the mobile communications sector were required to be gaining provider led.

<sup>34</sup> Paragraph 4.54.

inappropriately, to consider whether such transfers might be a problem under a GPL process.

- 5.23 It is profoundly disappointing that Ofcom does not draw any lessons in relation to these issues from the experience in relation to targeted intervention on erroneous line transfers (“ELTs”) and broadband migration authorisation codes (“MACs”) in the fixed communications sector. The volume of complaints about ELTs, together with complaints about difficulties experienced in obtaining MACs, were two of the key issues which culminated in the 2010 consultation. In the case of ELTs, both (i) Ofcom’s monitoring and enforcement programme, which targeted the CPs causing harm to the greatest number of consumers, and, (ii) the Best Practice Guide introduced by the Office of the Telecommunications Adjudicator for home-moves in 2008, reduced their incidence. For MACs, Ofcom introduced targeted broadband migration rules requiring suppliers to provide a MAC on request in February 2007. As a result, the volume of complaints about broadband migration in general decreased significantly – even before the relatively minor (although costly) changes to switching on the Openreach network that occurred in June 2015, which only impacted a minority of switches.<sup>35</sup> This experience shows that targeted action to address clearly identified issues is effective; wholesale changes to switching processes to address such issues is not required.

## **6. Other issues**

### **Ofcom’s consumer research**

- 6.1 Given how central consumers’ views, and their experiences, are to supplier switching issues, Ofcom, rightly, has undertaken much consumer research on such issues over the past five years. Sky considers that robust consumer research has a key role to play in assisting Ofcom to reach well-informed decisions in this area. It is critical, however, that such consumer research is (i) undertaken objectively, free from potential biases, and (ii) interpreted fairly.
- 6.2 As Sky has indicated to Ofcom previously, the potential for Ofcom’s consumer research to be subject to criticism from stakeholders after the event is substantially lessened if they are provided with an opportunity to contribute to, or comment on, research being undertaken by Ofcom at an early stage. In Sky’s view, such openness is regulatory best practice. That approach is adopted, for example, by the Competition and Markets Authority during market investigations.
- 6.3 It is also important that Ofcom avoids relying on consumer research where there is a significant risk that its results are unrepresentative, or otherwise unreliable. In Sky’s view, the so-called ‘Diary Study’ qualitative research relied on by Ofcom in the Consultation falls into this category. In particular, due to the small number of participants in that research, it is unreliable as a basis for reaching well-informed policy conclusions.

### **Levels of consumer switching**

- 6.4 At paragraph 4.4 of the Consultation, Ofcom cites evidence on the level of consumer switching in various communications services. As Ofcom is aware, switching levels are an ambiguous indicator of the ease or difficulty of switching – whether considered in absolute terms, or relative to switching levels in other sectors. The most obvious reason for this is

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<sup>35</sup> See paragraphs 9.2.2 and 9.2.5 of the CER 2014. ELT complaints are recorded as a percentage of WLT orders and there has been a significant reduction in ELT complaints as a percentage of WLT orders since 2010. The number of complaints relating to ELTs has decreased from a peak of 60% in December 2010 to 8% in November 2014. This is despite the fact that the volume of WLT orders has increased over the past 12 months. MAC complaints have dropped from 843 in March 2007 to about 50 monthly complaints between October 2013 and October 2014.

that consumers who are satisfied with their existing supplier do not tend to switch, or consider switching. Thus, low levels of switching may simply be an indicator of suppliers doing a good job of satisfying their customers. Encouraging high levels of switching (which is costly for consumers and businesses alike), or evaluating the performance of a sector on the basis of its absolute level of switching, is inappropriate.

- 6.5 In relation to comparisons of switching levels among different sectors, it is also plain that it is necessary to have regard to differences in product characteristics. For example, it might be expected that, all else being equal, switching would be lower in sectors in which products are highly differentiated (and therefore appeal to different groups of consumers), than in sectors selling more homogeneous products (for example, utility services such as gas and electricity).

### Next steps on triple play bundles

- 6.6 At paragraph 6.11 of the Consultation, Ofcom states that it (i) has “commenced a project to review consumers’ experiences of switching triple play services”, (ii) has “commissioned research to examine the relative nature and scale of any consumer harms”, and (iii) will “explore where there are process reform options to help address any consumer difficulties identified in a proportionate way”. Ofcom states that it expects to consult on “any potential improvements by early 2016”.
- 6.7 Sky notes the following in relation to these statements.
- 6.8 First, much of the foregoing is relevant to Ofcom’s work in relation to triple play bundles. In particular, (i) it would be inappropriate for Ofcom to approach this work via a predetermined ‘preference’ for GPL switching processes, and (ii) Ofcom must follow best regulatory practice and first identify problems that are potentially in need of regulatory intervention *before* moving to consider the costs and benefits of potential solutions to those problems, together with the option of not intervening – and including a broader range of options than “*process reform*” alone.
- 6.9 Second, the timetable set by Ofcom for this work appears particularly challenging, giving rise to a real risk that it will be rushed and, as a consequence, of an inadequate standard.
- 6.10 Third, it is important for Ofcom to take into account ‘over the top’ pay TV services in its analysis. These are now an important part of the UK pay TV sector, with operators such as Netflix having larger numbers of subscribers than some ‘traditional’ pay TV retailers.
- 6.11 Fourth, Ofcom must have due regard to the fact that suppliers of pay TV, telephony and broadband services often do not in fact offer these as a ‘bundle’ – *i.e.*, as a package sold to consumers for a single monthly subscription. This is certainly the case in relation to Sky’s services; Sky has separate contracts with its customers (and separate charges) for (i) pay TV, (ii) broadband, and (iii) telephony, services.
- 6.12 Finally, Sky considers that one of the key impediments to switching broadband and telephony services continues to be the poor quality of service delivered by Openreach. Issues such as long lead times for new line installations, missed appointments, and line faults soon after installation (known as early life failures) deter consumers from switching – particularly where there is a risk that they may be left without a working telephone or broadband service for a period of time. Accordingly, Ofcom cannot examine issues in relation to switching of combinations of broadband, telephony and pay TV services in isolation from the issue of Openreach quality of service.