

Ofcom Strategic Review of Consumer Switching

Response by TalkTalk Group

26 November 2010

Introduction

TalkTalk Group welcomes the opportunity to comment on Ofcom's consultation on consumer switching processes in the UK communications sector. We wholeheartedly support Ofcom's long term, strategic view that GPL processes are preferable to LPL processes. We believe that the analysis set out in the consultation document, including all the other work that Ofcom (and industry) has undertaken in this area over the years, fully supports this conclusion.

Ofcom has reached its conclusion by making a reasonable trade-off between three key switching principles, which state that the switching process should:

- Minimise unnecessary switching costs both for individual services and for bundles;
- Protect against slamming; and
- Support competition in retail markets.

Ofcom has pursued a robust analysis of relevant considerations and we fully agree with Ofcom's conclusion that GPL processes perform better than LPL in terms of both consumer and competition outcomes.

There have been discussions ongoing about this subject for some five years now and we are pleased to see that Ofcom is prepared to make some headway on this rather vexed subject. It is now important that the work begins as soon as possible around how this strategic view can be realised in the UK communications industry. It will require steadfast support and guidance from Ofcom to ensure that all industry players work constructively towards an all-GPL end game regardless of their original policy positions on what is the most suitable migration process.

We respond to Ofcom's specific questions in the consultation document in the following section.

Responses to Ofcom's questions

Question 1: Do you think hassle is a key issue we should tackle in this review? Please provide an explanation for your answer and any supporting evidence.

Yes, we do consider hassle is a very important factor that Ofcom needs to take into account when reaching a decision on the most appropriate switching process. The more hassle to the customer, the more cost they will incur. A customer perception that it is difficult or cumbersome to switch providers is likely to act as a powerful deterrent and, as such, be detrimental to consumer welfare because customers do not

avail themselves of potential savings from going to another provider. Even though customers who in fact switch may not experience the process as a key barrier in the end, the perception that there is a barrier is likely to influence the customer's decision-making in a negative way (in the sense they decide not to bother with switching and thereby lose out).

Question 2: Do you agree there is a lack of clarity about the switching processes that consumers need to go through to switch and this may create a barrier to switching? Please provide an explanation for your answer and any supporting evidence.

It is understandable that consumers generally can find switching processes confusing and unclear. We are not surprised about the research findings that suggest that a large proportion of consumers do not know what a MAC is.¹ The gaining provider has a strong incentive to make the switching process as easy as possible for the customer which includes hiding as much as possible of the technical detail. However, with regard to the MAC process, the gaining provider faces additional challenges because they need to: (i) explain what the MAC is; (ii) why it is needed; (iii) convince the customer that they have no option but to contact their current provider; and (iv) hope that the customer will eventually return with the MAC (correctly noted down and in the correct format). From the customer's perspective, it is hardly surprising then that the MAC process is perceived as complex, difficult-to-understand and generally unclear (not least because the MAC code itself can be up to 20 characters long).

Question 3: Do you think clarity is a key issue we should tackle in this review? Please provide an explanation for your answer and any supporting evidence.

We believe clarity is important – if, for instance, how you switch is unclear or not well understood then it is likely to deter switching. We also believe that the gaining provider has a strong commercial incentive to make the process as clear as possible to the customer. This incentive is generally aligned with a regulatory objective of providing clarity to the consumer.

Question 4: Do you think continuity of service (including unwanted breaks and double billing) is a key issue we should tackle in this review? Please provide an explanation for your answer and any supporting evidence.

We believe that current switching processes (particularly the NoT process and the MAC process) do provide continuity of service to the customer who should not experience any noticeable loss in service if the process goes as planned. If the customer experiences loss of service, it would be because the process has broken down in individual cases and for specific reasons, not because the process itself is flawed. We would suggest that any shortcomings in process flows that might result in loss of service during switching are known to industry and would generally already be subject to discussion with a view to addressing those shortcomings. We do not believe that continuity of service as such is something that Ofcom needs to address specifically as part of this review of switching processes.

¹ Paragraph 4.46 of consultation document.

Question 5: Do you think the ability of providers to frustrate the switching process is a key issue we should tackle in this review? Please provide an explanation for your answer and any supporting evidence.

Yes we believe the ability of providers to frustrate the switching process is an important factor that Ofcom needs to take into account when designing an optimal green-field switching process. As Ofcom outlines in its consultation document, the MAC and PAC processes are liable to create situations where the losing provider makes it more difficult than necessary for the customer to leave. There is a strong argument that these processes will always contain an element of frustration by the very fact that the customer has to contact their current provider in order to switch (this applies particularly to the MAC process²). We believe Ofcom will have sufficient evidence in its possession through its enforcement activities to verify the extent to which these processes frustrate switching.

Question 6: Do you think consumers' experience of save activity is a key issue we should tackle in this review? Please provide an explanation for your answer and any supporting evidence.

We agree that consumers' experience of save activity is a key issue that Ofcom should consider carefully in this review but we would caution against portraying it as a key issue. We do not believe that it is possible to reach any firm conclusions through market research as to whether or not consumers prefer to be subjected to save activity when they switch providers. As Ofcom's research to date suggests, some consumers prefer to be offered something from the current provider whereas some consumers view save activity as an unnecessary hassle. We would argue that what the customer wants is to be able to choose whether they want to listen to a save offer and not be forced to listen to a save offer so as part of the switching process. By way of comparison, there is of course nothing in the GPL process that would prevent the customer from voluntarily calling their current provider and ask them what they can better an offer from another provider.

We believe, in many cases, it is likely that a consumer's views about save activity is also coloured by their past experience with their current supplier. If they are not happy with their current supplier, they may regard any save activity as annoying ("my provider only cared for me when I wanted to leave"). On the other hand, if they are generally content with their current supplier but simply have found a better deal (price, service etc), they may be more inclined to listen to a save offer.

We would note that providers who favour a losing provider led process have tended to argue that save activity should be regarded as a separate issue divorced from the switching process itself. In other words, the save activity is not something that prevents the customer from switching whereas for instance failure to release the MAC would be. We find this argument to be both puzzling and flawed. We would suggest that customers who go through the MAC process clearly perceive save activity to be an integral part of the process. Most providers would not release the MAC without first trying to save the customer (or at the very least delay the release of the MAC

² Technically a mobile customer can switch without the PAC although will not be able to retain their mobile telephone number.

until the customer has listened to the save offer). We also believe that this argument shows a fundamental disregard for the customer. It is very easy to inflate the importance of the save activity to the customer whereas in fact the MAC process inherently serves the losing provider's commercial interests, namely to minimise customer churn.

The main point to bear in mind in relation to this question is that it is impossible to arrive at a safe conclusion whether save activity is a good thing on the basis of customer research alone. What is required is a solid economic analysis of the competitive effects of save activity and whether save activity has the potential of softening competition to the detriment of the consumer interest that Ofcom has a statutory duty to protect. Ofcom's analysis does indeed show that save activity as part of an LPL process is likely to have this detrimental effect.

Question 7: Are there issues specific to either residential or business consumers' experiences of the switching processes that you think we should tackle in this review? Please provide any evidence you have to support your views.

There may be an argument to say that residential consumers overall are more vulnerable than business consumers. This may mean that Ofcom should design a switching process with residential consumers in mind and then consider whether the same process with the same safeguards really needs to apply to business consumers (for instance the argument has been made in the past that business consumers do not really need a 10 day cooling off period under the NoT process). However, we would caution against trying to carry out such a detailed analysis in the context of this review. In the fixed market, the same MAC and NoT processes have been applied to both residential and business consumers for many years and we do not believe this has hampered the competitive process in business markets to any identifiable extent.

Question 8: Do you agree with our analysis of switching costs? Please provide any evidence you have to support your views.

We agree with Ofcom's analysis of switching costs. In particular in this case it seems entirely sensible to us to avoid trying to identify the precise size of these costs. This is not necessary for the purposes of understanding what switching process comparatively entails the least switching costs. What Ofcom needs to do is to understand whether a gaining provider led process is reasonably likely on the basis of available evidence to minimise switching costs compared to a losing provider led process. Given that Ofcom's consumer research shows quite clearly that consumers perceive the LPL process to involve more work and hassle to switch than the GPL process, it must follow logically that the former entail higher switching costs than the latter. This also looks intuitively right simply based on the fact that the customer has to contact the losing provider to obtain a MAC under the LPL process.

Question 9: Do you agree with our analysis of save activity? Please provide any evidence you have to support your views.

There is no question in our view that the opportunity to save a customer who is contemplating to leave is ultimately the primary if not sole reason why any provider would be advocating the choice of a losing provider led process. It is by far cheaper for a provider to offer a retention deal to an existing customer than to acquire a new customer from another provider. Over the years, providers favouring an LPL process have put forward many other arguments, including the alleged need to ensure that the customer fully understands the service implications of leaving and that it is only the losing provider who can genuinely provide this information. However, we would dare to suggest that these arguments are but a smokescreen for the real reason for their desire for a LPL process and that is the opportunity to save customers and reduce churn.

It is a well-established fact that a losing provider would hold a distinct competitive advantage over the gaining provider if they were able to save a customer during the migration process. Already in 2004, the Competition Appeal Tribunal dismissed BT's arguments to the contrary and held in the CPS Save judgment that:

“the possibility of contacting the customer prior to the switchover, with a view to persuading the customer not to switch, is a valuable competitive opportunity for BT. By means of the information passed to it, BT knows that the customer may be “biddable”. In addition, BT Retail knows the pattern of the customer’s existing calls, and is in a position to make suggestions as to how to take advantage of the various packages and offerings which are available from BT. In those circumstances in our view the misuse of the information supplied by the CPS Operator to BT in its capacity as network provider plainly “could provide a competitive advantage” to BT in its capacity as retail supplier.”³

Although the CAT judgment refers to a GPL process (the CPS NoT process), the reasoning as to why the losing provider holds a competitive advantage would clearly apply also in a LPL process scenario. The central question in the appeal was whether the losing provider would be allowed to try and save a customer who had signalled their intention to leave.

Question 10: Do you agree with our analysis around the multiplicity of switching processes? Please provide any evidence you have to support your views.

Yes we agree with Ofcom's analysis around the multiplicity of switching processes. Having more than one process is less efficient in that it reduces customer understanding, increases hassle for customers and, ultimately, increases operating costs for providers. It is our experience from operating both types of process that the LPL process does indeed have a discouraging effect on switching compared to the GPL process for the very reason that the customer has to contact their losing provider to obtain a very long and complicated MAC code (composed of 18+ letters, digits and symbols) having first withstood a save effort by the provider.

³ British Telecommunications plc v Ofcom, [2004] CAT 23, para. 333.

Question 11: Do you agree with the general switching principles we have identified? Please provide an explanation for your answer.

Yes we agree that the general switching principles identified by Ofcom appear to be the most relevant for identifying the most suitable single switching process. It is of paramount importance that the switching process is convenient for the customer who must be able to switch at a low transaction cost. We believe the general switching principles correctly encapsulate the various considerations that need to be made in meeting that objective.

Question 12: Do you agree with our proposed tier structure for the general switching principles? Please provide an explanation for your answer.

It is entirely sensible to conclude, as Ofcom does, that there will be a need to make a trade-off between the various general switching principles and that not all principles will in the end be given equal weight. In terms of the proposed tier structure, we agree with Ofcom that the first tier principles should be:

- Minimises unnecessary switching costs both for individual services and for bundles;
- Protects against slamming; and
- Supports competition in retail markets.

We believe these first-tier principles best supports Ofcom's overall objective of protecting consumer where appropriate by promoting competition.

Question 13: Do you agree with our proposal that the preferred switching approach assuming a 'greenfield' basis is GPL?

Yes we agree that GPL should form the basis for a single switching process in the UK communications industry. It is clear that GPL has some weaknesses in terms of customer identification and protection against slamming. It should be borne in mind that the current NoT/GPL process was originally designed by the industry with full Ofcom (OfTel) involvement and supervision in the early days of CPS transfers. It was never designed to provide a high level of customer identification or to provide exhaustive information to customers about all the consequences of switching providers. That is not to say however that the GPL process cannot be adapted to meet those objectives. We fully agree with Ofcom that it can be so adapted without compromising on meeting the objectives of minimising unnecessary switching costs and supporting competition in retail markets.

Supporters of a LPL process tend to argue that the GPL process cannot provide adequate protection against slamming and that only the losing provider can provide all the necessary information to the customer about the consequences (e.g. contractual or service implications) of switching. We agree with Ofcom that the GPL process can be strengthened to provide an adequate protection against slamming. As to the argument that only the losing provider can provide all the adequate information, we believe this is a fallacy in that the losing provider actually may have a reasonably strong incentive to provide information to the customer that is less than objective because the provider

ultimately wants the customer to stay. In fact the losing provider probably has a quite strong incentive to exaggerate the detrimental consequences of switching which leads to a poor customer experience overall.

Finally, it is also a fallacy to suggest that communications services are so complicated that only the losing provider can provide correct information. In fact we believe the gaining provider can provide a perfectly reasonable and well-informed view to the customer about any implication of switching (e.g. that an early termination charge may apply or that the customer may need to change their email address).

Question 14: Which of the identified GPL switching options do you support? Please provide an explanation for your answer.

Ofcom has identified three GPL switching options⁴ each of which are intended to mitigate in different ways against the identified weaknesses of GPL processes. These are:

- Enhanced GPL (NoT) process;
- Consumer Code on Bill process; and
- Third Party Validation (TPV) process.

We would support the enhanced GPL (NoT) process as this is most likely to remedy the weaknesses in the current process in the shortest timeframe.

We are concerned that the proposed Consumer Code on Bill process would conflict with the first-tier principle of supporting competition in retail markets. Ofcom clarifies in paragraph 6.35 of the consultation document that supporting competition also means ensuring that the switching processes work across all sales channels. We do not believe that a Consumer Code on Bill process would work across all sales channels, particularly for example in store sales, because the customer normally does not carry around a copy of their bill (even less so if the customer receives their bill in electronic format).

With regard to the TPV process, we do believe that this is ultimately a very good solution which probably could be introduced at a very reasonable cost. The TPV process would have the added advantage that the current 10-day cooling-off period could potentially be shortened or even abolished altogether allowing a customer to switch as soon as they have passed TPV clearance. However for now, we believe that Ofcom should focus on introducing some “quick wins” to improve consumer protection and confidence and we believe the enhanced GPL (NoT) process is best suited for this purpose.

⁴ At the switching workshop on 18 November 2010, Ofcom presented a fourth GPL switching option called the Digit Activation Process. Whilst we have not had the opportunity to consider this option in detail, it seems to us that it would conflict with the first-tier principle that states that the switching process should support retail competition. This is for the same reason as the consumer code on bill option because it would be difficult for a customer to obtain the code required in the digit activation process in a retail environment. It therefore seems to us that the suggested Digit Activation process does not meet Ofcom’s own requirements based on the identification of three first-tier principles.

Question 15: Do you have any information or views on the costs of the switching options outlined above? Please provide any supporting evidence.

We believe that the enhanced GPL (NoT) process could be implemented at minimal cost for products that already use the NoT process. With regard to fixed broadband that currently uses the LPL (MAC) process, there may be some costs to make the necessary changes but there would also be cost savings for providers who would no longer have to have in place resources to comply with General Condition 22.

With regard to the TPV process, we do not currently have any detailed cost information available and we agree with Ofcom that this would need further investigation before any decision to move to such a process is made.

Question 16: Do you agree with our proposals and implementation priorities for taking forward our work in relation to existing switching processes?

Yes we generally agree with Ofcom's proposals and implementation priorities and look forward to participating in the relevant workshops. It is important that Ofcom shows leadership in the implementation process to ensure that no stakeholders are allowed to unduly delay the various workstreams.