

Ofcom position on consent in a new switching process – June 2020

To give express consent to switch, customers must have been given the losing provider switching information

- 1.1 Our December 2019 consultation document [*Fair treatment and easier switching for broadband and mobile customers*](#) proposed a high-level rule requiring gaining providers to take all reasonable steps to ensure that they do not switch a customer without their ‘express consent’ (proposed GC C7.9; see paragraphs 7.136-7.148 of the consultation). ‘Express consent’ is defined as an express agreement to a switch where the provider has ‘obtained such consent in a manner which has enabled the customer to make an informed choice’.
- 1.2 The requirement to obtain express consent reflects the requirement in Article 106(6) of the EEC that providers do not “port numbers or switch end-users without the end-users’ explicit consent”. Article 106(6) also requires Ofcom to take appropriate measures to ensure that end-users are adequately informed and protected throughout the switch and porting processes and not switched to another provider without their consent.
- 1.3 The decision to switch services involves both:
 - a) a decision to accept a contract for new services with a gaining provider; and
 - b) a decision to cancel a contract for services with the losing provider.
- 1.4 We consider that it follows from these two decisions that in order for a customer to make an informed choice about whether to switch their services, and therefore to be in a position to give express consent, the customer needs to have been given information about both:
 - a) the new services they are taking with the gaining provider; and
 - b) the consequences of their decision to cancel their services with the losing provider.

It is unclear how Option Y meets the consent requirements for all customer journeys

- 1.5 Our present view is that it is unclear how Option Y, as presented, meets the express consent requirement of the high-level rules in all circumstances. In our view, Option Y would not enable gaining providers to ensure that they do not switch a customer without their express consent. This is because in Option Y not all customers would receive the losing provider switching information before agreeing to the switch. There are two paths that customers can take under Option Y. Taking each in turn:
 - Customers that choose to use the main ‘default path’ for switching their services do not receive the losing provider’s switching information as part of the switching process before agreeing to the switch. Nor do they need to take any further active steps to confirm their consent having received the losing provider switching information. We consider that, in the absence of receiving this information and/or taking active steps to confirm that they do wish to proceed having received it, these customers would not have given their express consent to switch.

- Those customers that choose to use the optional 'expedite process' need to contact the gaining provider to give them the expedite code which is sent by the losing provider alongside the losing provider's switching information. In giving this code to the gaining provider, it is clear that these customers do agree to a switch (possibly with a new date) after receiving the losing provider switching information. Therefore, we consider that these customers would have given their express consent to the switch.

1.6 In Option X all customers would have received the losing provider switching information alongside a switching code before contacting the gaining provider. Therefore, the process will enable gaining providers to ensure that they do not switch a customer without their express consent in all circumstances.

A variant of Option Y could be considered in the planned Q2 2020/21 process consultation

1.7 Given our view that the default path in Option Y does not meet the express consent requirement of the high-level rules, we do not presently intend to propose Option Y, as presented, as a possible switching process for industry to adopt.

1.8 However, it might be appropriate to consider a variant of the Option Y proposal based on all customers using a process equivalent to the expedite process. Therefore, we intend to give industry an opportunity to suggest any further amendments to the proposals prior to our planned consultation.

We intend to propose replacing the NoT+ GCs in the consultation

1.9 In the light of the above, we are also presently of the view that the NoT+ process in its current form does not meet the express consent requirement of the high-level rules.

1.10 This is for similar reasons to Option Y. Under the current NoT+ process, customers do not receive the losing provider's switching information as part of the switching process before agreeing to the switch. Nor are customers required to take any further active steps to confirm their consent having received the losing provider switching information.

1.11 As such, we intend to consult on the introduction of a single new process that would apply to residential customers switching all fixed voice and broadband services and on removing the NoT+ rules.