



Strategic review of consumer switching

A consultation on switching processes
in the UK communications sector

Redactions are indicated by [X]

Consultation

Publication date: 10 September 2010

Closing Date for Responses: 19 November 2010

Contents

Section		Page
1	Executive summary	1
2	Introduction and approach to the review	4
3	Overview of previous switching work and new evidence workstreams	20
4	Consumer experience of switching	30
5	Impact on competition & market structure	63
6	Assessment framework for identifying a preferred 'greenfield' switching process	86
7	Consultation, implementation priorities and next steps	112
Annex		Page
1	Responding to this consultation	116
2	Ofcom's consultation principles	118
3	Consultation response cover sheet	119
4	Consultation questions	121
5	Regulatory framework	123
6	Switching costs and Price discrimination	128
7	Glossary	134

Section 1

Executive summary

- 1.1 Competitive communications markets are more likely to work well for consumers when it is quick and easy to switch between providers. This consultation is the first step in our review of the switching processes in UK communications markets. This is a *strategic* review in that we look at switching in a number of sectors – fixed and mobile telecommunications, broadband and pay TV – to identify similarities and common challenges that arise in making sure that the process is easy and reliable.
- 1.2 Switching between communications providers is often complex, and involves steps that must be coordinated between different providers in ways that do not arise in other consumer markets. The way consumers switch providers today varies: sometimes, these processes have been developed by industry; some have been designed with input from Ofcom (or Oftel). There are different processes, even for the same services, often with very different features and experiences for consumers.
- 1.3 Markets are changing, with more bundled services offered.¹ The risk is that with the boundaries between services becoming less clear, and without any strategic oversight, consumers face confusion and avoidable inconvenience and that the competitive process is harmed.
- 1.4 In this review, we will consider whether the current approach delivers good consumer and competition outcomes. Our aim is to make switching work more quickly, cheaply and easily for consumers and, in so doing, make competition work more effectively, for single and bundled services. This Strategic Review of Consumer Switching ('the Review') is one of our priority areas of work as set out in our Annual Plan 2010-11.
- 1.5 The Review is focused on two key areas. Firstly, we want to ensure that an individual consumer's experience of switching is easy and hassle free, both now and in the future. Secondly, we want to ensure that switching processes do not get in the way of providers competing vigorously with each other to deliver benefits to all consumers in terms of lower prices, greater choice and innovation and value for money.
- 1.6 This consultation document seeks to:
 - identify the key issues and problems with the current switching processes; and
 - set out a strategic vision of our preferred model of a switching process.

Our findings

- 1.7 In this consultation document, we consider Gaining Provider Led ('GPL') and Losing Provider Led ('LPL') switching processes. GPL switching processes refer to situations where the consumer is able to rely on the new provider to simply arrange for their services to be transferred from their previous provider to the new provider. LPL switching processes refer to situations where the consumer needs to get a code from their existing provider, before they can switch their service to the new provider. We also consider the situation where no switching processes exist and the consumer

¹ A bundle is where a consumer purchases two or more services from the same provider and gets only one bill from the provider. The consumer may or may not receive a discount.

co-ordinates the end of the service with one provider and the start of the service with the new provider. We've termed this Cease and Re-provide (C&R).

- 1.8 Our long term, strategic view is that GPL processes are preferable to LPL processes. We believe that GPL processes perform better than LPL processes in terms of both consumer and competition outcomes. This is based on evidence and analysis which suggests that:
- a) GPL processes result in significantly less hassle and are easier for consumers to navigate. The gaining provider has an incentive to ensure that the switching process is as smooth and easy as possible.
 - b) GPL processes are also more likely to deliver lower prices, greater choice and innovation for consumers as they force providers to compete vigorously for rivals' customers. In LPL processes this incentive for providers to enter and compete for rivals' customers is reduced because of the ability of the losing provider to identify (via the code request) and retain customers willing to switch through 'save offers'.
 - c) Slamming concerns (i.e. the situation where a consumer is switched to a new provider without their knowledge or consent) can be successfully addressed within a GPL process through appropriate consumer protection measures – as experience in other countries has shown.
- 1.9 Further work is required to consider how this applies to current switching processes. This is because the above assessment does not take into account the costs of moving from the current process to any new process for specific services.
- 1.10 Our analysis shows that the worst problems arise for fixed-line and broadband switching (including switching bundles of the two). This is where we believe we should first focus our efforts.
- 1.11 In May/June 2011, we intend to issue a second consultation document, setting out detailed proposals for reform, if any, of the current GPL and LPL switching processes in fixed line and broadband services. We expect to publish a statement by the end of 2011.
- 1.12 After we have published that statement, we will consider whether changes are necessary to switching processes in the mobile and pay TV sectors (and for fixed-line and broadband switching currently using the C&R process).
- 1.13 We believe this approach has a number of benefits:
- It will focus efforts on those services where there is the evidence of greatest harm.
 - A narrow focus allows us to move more quickly and deliver benefits to consumers earlier.
 - It responds to the views of a number of stakeholders in the fixed line and broadband sectors, following years of industry discussions on these issues, that Ofcom needs to provide strategic direction in this area.
 - It will also allow currently planned changes to the Porting Authorisation Code ('PAC') process for mobile, due to come into effect on 11 April 2011, to have

an effect before considering the need for any further changes in the mobile sector.

- 1.14 We are also aware that new networks are being installed for which switching processes have yet to be developed and agreed. This is the case with the roll out of super fast broadband networks which will allow consumers to benefit from a range of new services.
- 1.15 During this consultation we will seek views from those affected by the move to super fast broadband about how best to apply our preferred model of switching process to services offered over super fast broadband networks. We expect industry to take the lead in developing proposals, although we will provide strategic oversight and guidance where necessary.

Section 2

Introduction and approach to the review

Introduction

- 2.1 Effective competition delivers choice, lower prices and innovation. However, in order to benefit from competition, consumers must have confidence to be able to exercise choice. This means that consumers should be able to switch between services and providers without undue effort, disruption and anxiety. A lack of consumer confidence in switching processes may mean consumers choose not to switch. This could dampen the competitive process, and consumers will not receive the benefits from competition they should be able to expect.
- 2.2 This document focuses on developing a strategic approach towards switching processes and is focused on improving switching processes, where appropriate, in order to deliver positive consumer experiences and good competition outcomes both for single and bundled services. This is one of our priority areas of work, as set out in our Annual Plan 2010-11.
- 2.3 In this section, we set out our rationale and key aims for developing a strategic approach to consumer switching, identify potential issues raised by current switching processes, review the current approach to switching, and in light of that consider the basis for and any need for intervention, outline our evidence gathering workstreams and set out our proposed approach to consultation. We also briefly consider the regulatory framework.

Our work on switching

- 2.4 Over recent years, we have invested significant resource in tackling issues with today's switching processes. This includes our work on fixed-line² and mobile mis-selling,³ broadband switching⁴ and Mobile Number Portability ('MNP').⁵ We set out this work in more detail in section 3.
- 2.5 We are also currently engaged in various ongoing initiatives which relate to switching. Our work is focused on tackling the following barriers to switching:
- Any contractual barriers through our additional charges enforcement programme and our automatically renewable contracts project.
 - Process barriers through this Review, our work with the Office of the Telecommunications Adjudicator ('OTA') and our enforcement programmes relating to broadband migrations, fixed-line mis-selling and mobile mis-selling.
 - Information barriers through our price accreditation scheme and our work on broadband speeds and mobile coverage.

² http://stakeholders.ofcom.org.uk/binaries/consultations/protecting_consumers_misselling/statement/statement.pdf

³ <http://stakeholders.ofcom.org.uk/binaries/consultations/mobmisselling/statement/statement.pdf>

⁴ <http://stakeholders.ofcom.org.uk/binaries/consultations/migration/statement/statement.pdf>

⁵ <http://stakeholders.ofcom.org.uk/binaries/consultations/mnp/statement/mnp.pdf>

Scope and aims of the Review

- 2.6 The scope of our Review is switching processes in the communication sector namely fixed-line, broadband, mobile and pay TV services (and bundles including combinations of these services). It is focused on the following:
- switching between providers where there is a direct consumer impact so does not include switching between only wholesale providers (for example provider switching from Shared Metal Path Facility (SMPF)⁶ to Metal Path Facility (MPF)⁷ at wholesale level) where this does not have a direct impact on the retail consumer.
 - switching across all products/services regardless of the specific technology and infrastructure used for example copper, cable, wireless and satellite; and
 - switching involving only residential consumers and small business consumers (those with up to 10 employees so excluding larger business consumers).
- 2.7 As indicated in paragraph 2.5, our work to tackle contractual barriers to switching is being progressed outside the scope of this Review, for example, our work on early termination charges and automatically renewable contracts. We will continue to work closely with the relevant project teams to understand the linkages between these areas of work.
- 2.8 The overall aim of the Review is to develop a strategic approach to switching and to ensure that switching processes deliver positive consumer and good competition outcomes both for single and bundled services. The key objectives of this consultation are to:
- Identify and assess the key consumer and competition issues arising from the current switching processes (including setting out the evidence we have collected so far from our research on consumer switching, sectoral and international experiences and analysis of the economic literature on switching costs and targeted save activity).
 - Develop a framework, based on a set of general principles, for assessing switching processes.
 - Identify the preferred ‘greenfield’ switching process which should be applied when developing new switching processes (i.e. where no legacy switching process is already in operation).
 - Identify deficiencies in the current switching processes and develop a plan to tackle these deficiencies prioritising areas where there is evidence of the greatest consumer and/or competitive harm.

Current approach to switching

- 2.9 Over time, the communications industry (sometimes with input from Ofcom or Oftel) has developed its own switching processes to enable consumers to switch providers.

⁶ SMPF is a way for providers to gain partial control of the local loop connecting to end users.

⁷ MPF is a way for providers to gain full control of the local loop connecting to end users to deliver both voice and broadband.

Consequently, different processes have evolved across different sectors. This has resulted in the existence of multiple switching processes - even for switching the same type of services (see Figure 1 below). In particular, where bundles or different elements of bundles are switched, the consumer will be required to navigate all the relevant processes in order to be able to switch providers.

2.10 This section describes each of the main switching processes currently used in the UK. The different switching processes are as follows:

- The Notification of Transfer ('NoT') process.
- The Migrations Authorisations Code ('MAC') process.
- The Porting Authorisation Code ('PAC') process.
- Cease & Re-provide ('C&R').

Figure 1: Current switching processes for communications services

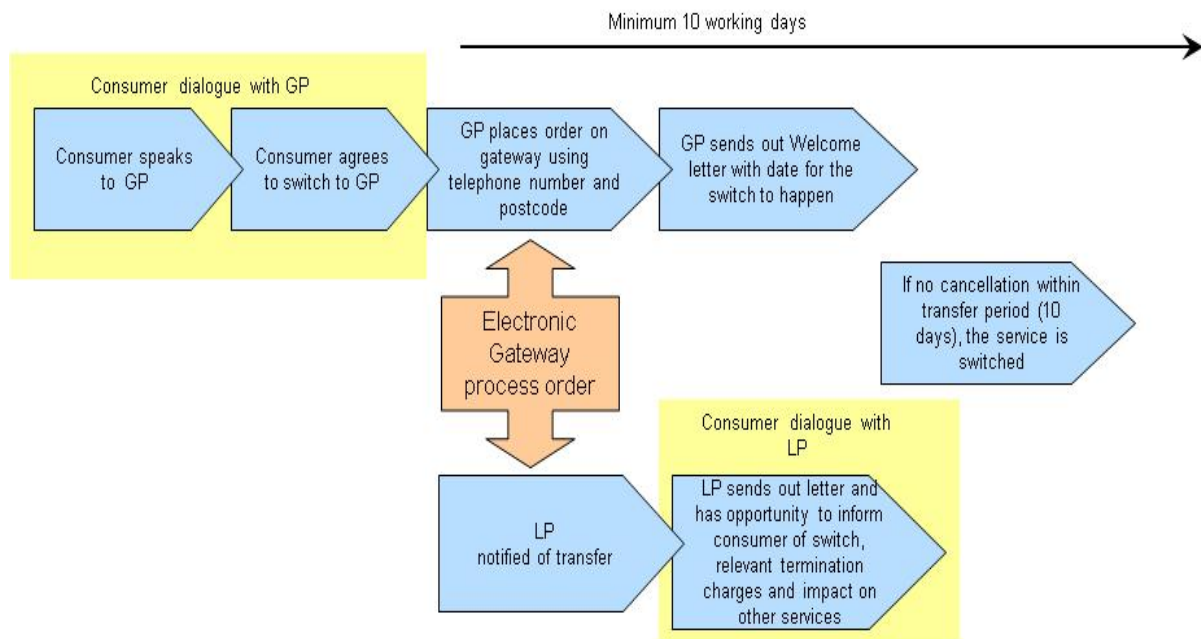
Switching processes	Relevant Services (single or bundled)
NoT process	<ul style="list-style-type: none"> • Fixed-line (using –Wholesale Line Rental or MPF) • Broadband (using MPF*)
MAC process	<ul style="list-style-type: none"> • Broadband (using BT Wholesale product – IPstream or SMPF)
PAC process	<ul style="list-style-type: none"> • Mobile (where number is ported)
C&R	<ul style="list-style-type: none"> • Fixed-line (to/from cable) • Broadband (to/from cable) • Pay TV (using cable or satellite) • Mobile (where number is not ported)**

* Switches to or from MPF follow the NoT process rather than the MAC process.

** With pay as you go mobile a consumer arguably never needs to contact the losing provider to 'cease' as they can just go out and buy a new SIM card or handset and use up the credit they have with their existing provider.

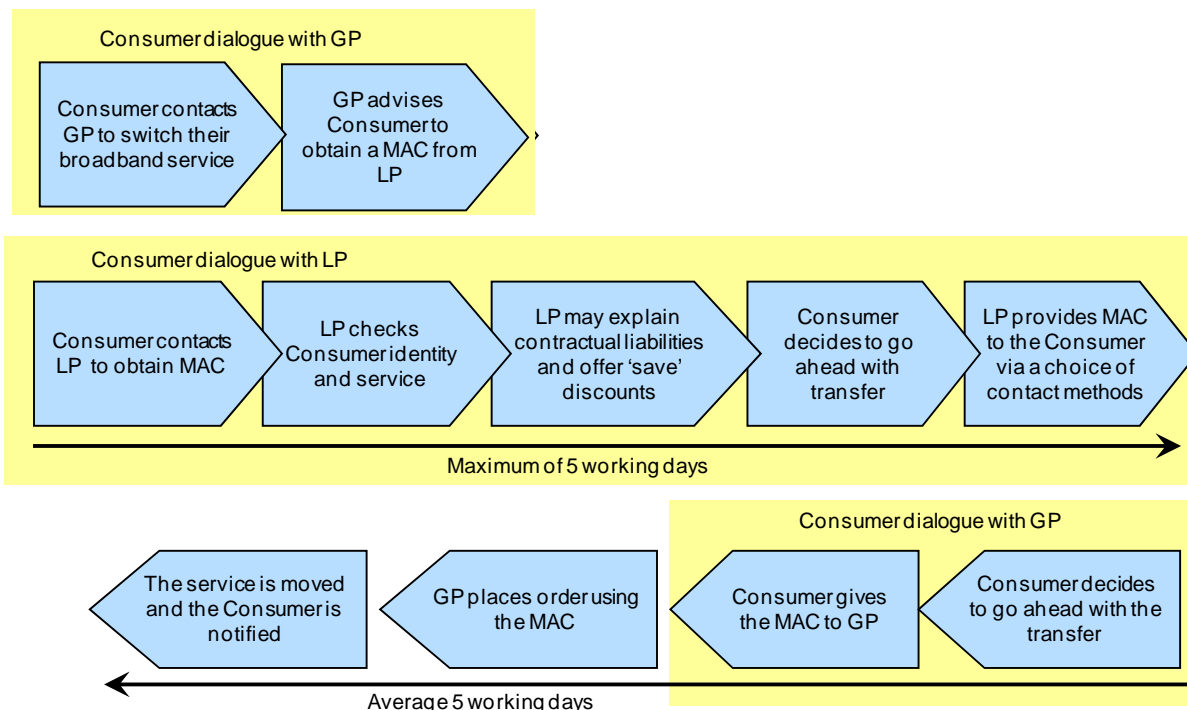
The NoT process

2.11 The NoT process is an example of a Gaining Provider-Led ('GPL') process where the consumer only needs to contact their Gaining Provider ('GP') to switch providers. The consumer will typically receive letters from both their GP and Losing Provider ('LP') about the switch before it happens. This provides an opportunity for consumers to stop the order going ahead where they simply change their mind or in cases where they have no knowledge or have not given their consent to the attempted switch. This notification is associated with a switchover period of 10 working days during which time the switch can be stopped. The NoT process is shown in Figure 2.

Figure 2: The NoT process**The MAC process**

- 2.12 The MAC process is used for switching broadband services in a specific set of technologies. This is an example of a LP Led ('LPL') process and means that if a consumer wishes to change their broadband provider, they must first speak to their LP and request a MAC. The LP carries out an authorisation check to confirm that the consumer making the request is the legitimate account holder. Once the consumer has been validated, subject to certain other conditions, the LP is required to issue a MAC to the consumer. The consumer must then supply this MAC to their GP within 30 days to allow the broadband service to be switched. The MAC process is illustrated in Figure 3.

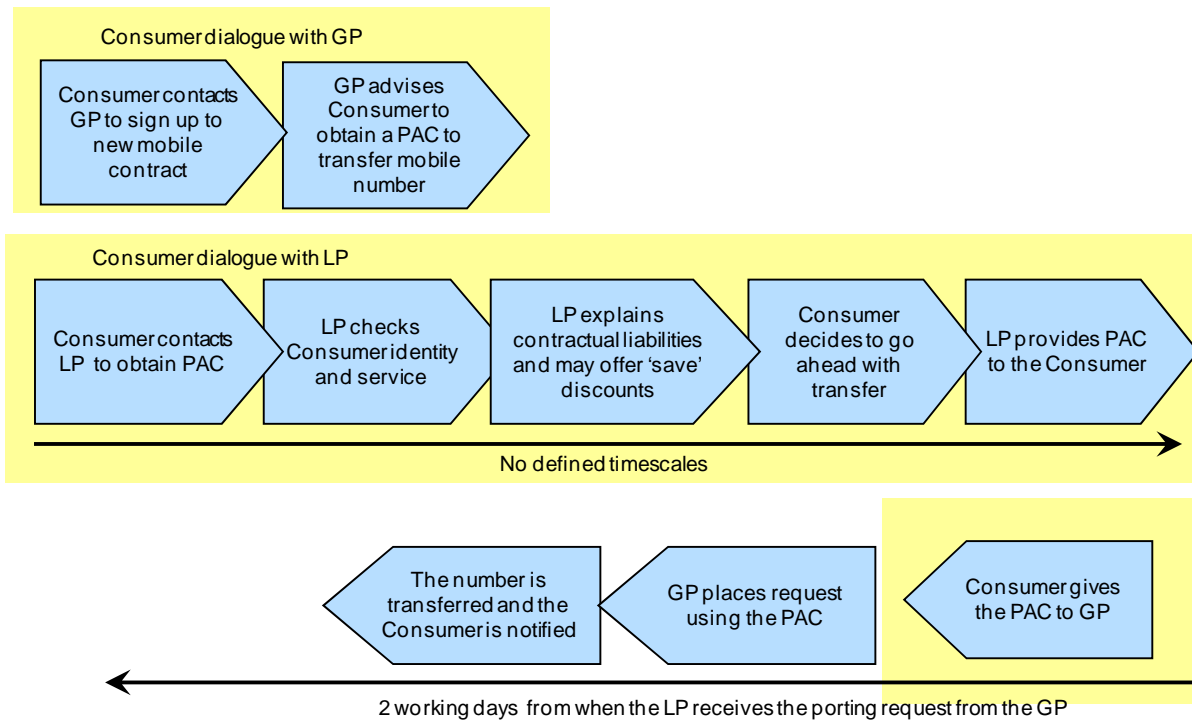
Figure 3: The MAC process



The PAC process

2.13 The process for mobile number portability ('MNP') is a LPL process (it is also sometimes referred to as a 'donor led' process). This means that if a consumer wishes to change mobile network operator ('MNO'), but retain their existing phone number, they must first speak to their existing MNO (the LP or 'donor operator') and request a PAC. The LP carries out an authorisation check to confirm that the consumer making the request is the legitimate account holder. Once the consumer has been validated, subject to certain other conditions, the LP is required to issue a PAC to the consumer. The consumer must then supply this PAC to their new MNO (the GP or 'recipient operator') within 30 days in order to allow the GP to port the consumer's number into its network. This is shown in Figure 4.

Figure 4: The PAC process



- 2.14 Following publication of our MNP statement, from 11 April 2011, the time taken to port a number to a new MNO will be reduced from two to one working day.⁸ MNOs will also be required to give the PAC to consumers who ask for it either immediately over the phone or by SMS within two hours. This requirement will apply to all requests for porting involving fewer than 25 numbers.

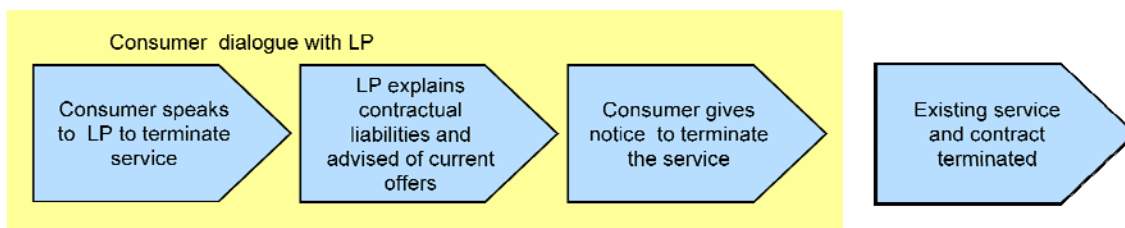
Cease & Re-provide

- 2.15 Where there are no agreed switching processes in place which enable a seamless transfer of services between providers, we have described the process as Cease and Re-provide ('C&R'). Here, the consumer terminates their contract with the LP and requests a new service from the GP, not necessarily in this order (i.e. the consumer may request a new service first before terminating their contract).
- 2.16 This process requires the consumer to manage the stopping and starting of their services. It is ultimately the decision of the consumer whether they choose to coordinate the C&R processes to happen simultaneously (with the risk of a potential loss of service) or to run both services in parallel and only cease the existing service once the new service is up and running (with the result that the consumer may have to pay for two services for a period of time, dependent on the notice period agreed with their LP). This is illustrated in Figure 5.

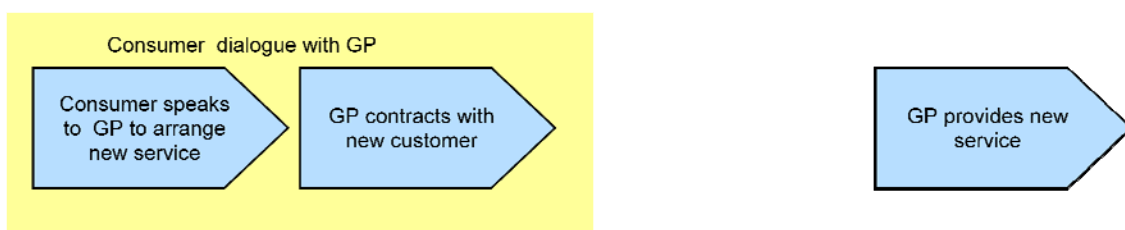
⁸ Article 30(4) of the Universal Services Directive states 'Porting of numbers and their subsequent activation shall be carried out within the shortest possible time. In any case, subscribers who have concluded an agreement to port a number to a new undertaking shall have that number activated within one working day'. See <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:337:0011:0036:EN:PDF>

Figure 5: C&R

Cease



Provide



Switching bundled services

2.17 The above processes apply to switching individual services. Where consumers are looking to switch to, from and between bundled services, it is likely that they will need to navigate different switching processes to move to their new choice of service(s) and/or provider(s). Dependent on the underlying services being switched, and the provider(s) the consumer is switching from and to, in some cases the consumer will currently need to follow the NoT, MAC and C&R processes at the same time when switching a bundle of services (e.g. switching involving Wholesale Line Rental ('WLR') for voice, Shared Metal Path Facility ('SMPF')/IPstream for broadband and satellite for pay TV).⁹

Potential issues raised by switching processes

2.18 Our Review focuses on two areas of potential concern with the switching process both now and in the future:

- the consumer experience; and
- competition effects.

Consumer experience ('direct harm')

2.19 The first issue we consider is whether switching processes lead to concerns about the consumer experience, including the impact of the 'hassle factor', the importance of clarity and predictability where there are multiple processes, the extent of slamming, continuity of service and the ability of providers to frustrate the switching

⁹ In this case switching the fixed-line element would be via the NoT process, the broadband element would use the MAC process and the PayTV element would be C&R.

process. Where switching processes do not allow consumers to switch easily, they may suffer from increased switching costs, inconvenience and even distress.

- 2.20 We set out our analysis of the evidence we have collected on the current consumer experience of switching in section 4.

Competition effects ('indirect harm')

- 2.21 The second issue is whether individual switching processes lead to concerns about their effect on the competitive process. If consumers have a negative experience of switching, and are put off changing providers, the competitive process can be dampened in a way that means consumers will incur some detriment. Competition is only effective where consumers can punish 'poor' providers by taking their custom elsewhere, and reward 'good' providers by continuing to use their services (or switching to them). If switching is difficult, competition may, over time, fail to ensure that consumers receive the benefits they should be able to expect. This can arise where consumers face artificially increased switching costs (e.g. providers frustrating the process) (see paragraphs 5.3 to 5.42).
- 2.22 We also have concerns that targeted save activity under some processes potentially impacts negatively on competition (and consumer welfare). Targeted save activity is where the switching process allows LPs to identify active¹⁰ consumers and offer those consumers an incentive not to switch. Targeted save activity is likely to dull incentives of providers to compete for rival's customers (since they know that the rival has the opportunity to make a targeted save offer) and can be particularly disadvantageous to new entrants (see paragraphs 5.43 to 5.99 and 5.106 to 5.110).
- 2.23 The multiplicity of switching processes for the same service may also result in a lack of competitive neutrality between providers if, everything else being equal, some providers find it harder to win consumers simply on the basis of differences in the underlying switching processes (see paragraphs 2.42 to 2.43 and 5.101 to 5.110).
- 2.24 We consider the impact of switching on competition and market structure, including an economic analysis of switching costs and save activity, as well as their likely impact on switching processes, in section 5.

Sustainability/future proofing

- 2.25 It is also worth setting out how these two potential areas of concern might be affected by future developments in the communications sector. Switching processes have been developed for particular services i.e. for fixed-line and broadband services within Openreach's local wired access network and for porting mobile telephone numbers across different networks. Where a change of service involves an area outside of these, for example when switching to and from services on a cable network, the switching process is C&R. However, the communication environment is becoming increasingly complicated, with the growing take up of bundled services and services increasingly being provided through new infrastructures.
- 2.26 Therefore, we need to consider whether the current regulatory regime will deliver good outcomes for consumers and competition in the future given the increasing trend towards bundling and infrastructure-based competition.

¹⁰ Active consumers are defined here as those consumers that are willing to switch.

Bundled switching

2.27 As discussed in more detail in section 4, bundling of services is still a relatively new feature of the communication sector with the potential for ongoing growth and development. While this is a positive development which should lead to increased competition for bundles, resulting in greater choice and innovation and lower prices, there is a concern that this has the potential to make switching more involved (and potentially more difficult) for consumers. This is because where consumers are looking to switch to, from and between bundled services, it is likely that they will need to navigate different switching processes at the same time to move to their new choice of service(s) and/or provider(s). This is discussed further in paragraphs 2.46 to 2.50.

Infrastructure-based competition

2.28 There is already a multiple infrastructure environment today. In the narrowband and broadband sector, Virgin Media's cable network is competing against Openreach's local wired access network in approximately half of the UK. LLU providers are also present in some of these areas and other areas where cable may not have a footprint. In the mobile sector, most operators have their own mobile networks. However, outside the mobile sector, switching processes have until now not been applied across the entire industry. Only consumers using those services on Openreach's local wired access network have benefitted from agreed switching processes, because of the way these processes were initially developed.

2.29 This may become more challenging with NGA network rollout and an increasing number of new services being offered over NGA networks (for example super fast broadband and Internet Protocol Television ('IPTV')). It is therefore important that there are switching processes in place which do not make switching more complicated for consumers.

2.30 In the future, it is likely that there will be an even greater number of infrastructure providers. The BT NGA network may not cover the same footprint as their legacy wired access network and other providers are likely to develop NGA solutions for areas that the BT NGA network may not reach.

Basis for intervention in this area

2.31 Efficient switching processes are an important part of competitive markets.

- For individual consumers, efficient switching processes result in lower barriers to changing providers. This is because efficient processes limit the hassle involved making it easier to move to a preferred provider (e.g. taking advantage of lower prices/better service quality). For consumers more generally, efficient switching processes are likely to intensify competition between providers.
- For efficient providers, efficient switching processes enable expansion within markets where they already operate and successful entry into new markets. In this way, new/innovative providers are able to challenge incumbents, winning consumers that might otherwise stick with an existing service. With markets opened up to potential entry, providers have the incentive to innovate and supply services which offer customers a clear improvement on existing products.

- 2.32 Efficient switching processes may be provided through normal competitive interaction alone. In such circumstances, where the interests of consumers are served well, regulatory intervention is unnecessary. However, when there is market failure, or consumers experience artificial barriers to switching, there may be a case for action by regulatory authorities to bring about a more efficient switching process.

Market failure

- 2.33 Markets are said to be failing when they do not serve consumers well. In the context of consumer switching, market failure may arise because:

- the characteristics of the market require providers to co-ordinate their actions when consumers are in the process of switching, but
- providers lack the necessary incentives to co-ordinate their actions to achieve a positive outcome for consumers.

- 2.34 Addressing this second condition, a co-ordination failure may take one of two forms.

- First, there may be **no common interest** among providers. The incentives of providers to agree on a common switching process may not be sufficiently aligned, making it difficult for the industry to resolve its co-ordination problem on its own. The current system may give rise to ‘winners’ and ‘losers’, with the winning providers unwilling to yield their advantaged positions by changing the switching process. For example, it may be that current processes favour incumbents, which have large installed bases of consumers, and work against new or potential entrants. We consider this form of co-ordination failure further in paragraphs 2.38 to 2.43.
- Second, there may be a common interest among industry providers, but this interest is **not aligned with consumers’ interests**. In these circumstances, providers may agree upon a common switching process, but one which favours providers rather than consumers. The process may act as a barrier to switching, diminishing the intensity of competition in the sector. We consider this form of co-ordination failure further in paragraphs 2.44 to 2.50.

Consequences of market failure

- 2.35 In these circumstances – where co-ordination is necessary but is unlikely to happen in a way which benefits consumers – markets may not serve consumers well. Consumers may experience direct detriments, such as hassle and a temporary loss of service. They may also incur indirect costs that stem from harm to the competitive process in general, which would likely materialise in higher prices, reduced innovation and choice and lower service quality in the future. In order to protect consumers, there may be a case for regulatory intervention.

Factors that have a bearing on switching processes

- 2.36 Markets vary substantially in their capacity to provide a straightforward switching process which delivers good outcomes for consumers and competition without regulatory intervention. For example, consumers are able seamlessly to switch between shopping with different clothes retailers or listening to different radio stations and in these examples switching involves almost no cost or inconvenience to the consumer. By contrast, purchasers of liquefied petroleum gas (‘LPG’), an alternative to mains natural gas, have in the past faced significant problems transferring

between providers. Customers switching LPG supplier would have to replace their LPG tank, an expensive and logistically complex process that deterred switching and softened competition. These problems merited intervention by the Competition Commission to ease switching, in part by mandating tank transfer between suppliers.¹¹

- 2.37 Contrasting switching conditions between industries highlights the importance of scrutinising specific market conditions to evaluate outcomes for consumers. We have sought to identify market characteristics in the communications sector which are likely to have an impact on the ability of the market to deliver efficient switching processes. The existence of these characteristics in communications sectors may warrant intervention by us to deliver a switching process which better serves competition and consumers.

Market structure

- 2.38 The nature of competition between providers may affect the likelihood that they have a common interest, or that this common interest works in the interest of consumers.
- 2.39 For example, markets may have strong incumbency, with one or more providers controlling large existing customer bases. Such markets may also feature a competitive fringe, with smaller entrants keen to win consumers from the incumbent(s). In these circumstances, existing providers may be relatively content with the status quo, and have incentives to limit switching; by contrast, the entrants require a smooth switching process to be introduced. Due to the lack of a common interest, an efficient, co-ordinated switching process is unlikely to materialise without regulatory intervention.
- 2.40 Some services provided by different providers use the same underlying infrastructure. Where the infrastructure provider is also active in the retail market either directly or through a retail subsidiary, it is likely that its incentives will differ from that of purely retail providers. This might mean that providers do not have a common interest in ensuring a smooth, efficient transfer process.
- 2.41 Another example is where a market may be structured with very high barriers to entry, such that there is little or no threat of entry. Providers may be similar in scale and each earn similarly-sized returns; such conditions are more likely to characterise a stable, mature market rather than one that is young and dynamic. In these circumstances, providers may be content to limit competition between one-another and so operate a relatively restrictive switching process. Here, providers have a common interest to co-ordinate the switching process, but this interest may not serve consumers well.

Multiple switching processes

- 2.42 As outlined earlier in Figure 1, the switching process for a given service may depend on the underlying technology that service is delivered on. In some cases, multiple switching processes for the same service can lead to issues around competitive neutrality i.e. result in winners and losers. A lack of competitive neutrality arises when it is relatively harder/more costly for a particular firm to gain customers (e.g. on average they tend to gain customers under a LPL process¹²), but it is relatively easier

¹¹ <http://www.competition-commission.org.uk/inquiries/current/gas/index.htm>

¹² On average, the customer acquisition costs under an LPL process are higher because some customers who indicate they are willing to switch are 'saved'. This is discussed further in section 5.

for that firm to lose customers (e.g. on average customers tend to switch away under a GPL process).¹³ An example is where an SMPF broadband provider tends to gain customers from other SMPF providers (this switch to the provider would be through the LPL MAC process) but the provider tends to lose customers to MPF providers (the switch away would be through the GPL NoT process). This may lead to some firms having a competitive advantage or disadvantage relative to others.

- 2.43 The case for regulatory intervention rests on the extent to which the use of multiple processes itself creates a lack of competitive neutrality between competitors and results in poor consumer and competition outcomes.

Lack of seamless transfer

- 2.44 In order for a consumer to avoid a temporary loss of service, the service of the GP needs to commence immediately after the service of the LP ceases. However, imperfect switching processes may cause co-ordination difficulties for consumers which result in a period of service loss during switchover. With C&R, where there is no agreed switching process in place to enable a seamless transfer of services, it is the responsibility of the consumer to co-ordinate the stopping and starting of their services. The risk of discontinuity of service may be of particular concern for services such as fixed-line and broadband which many consumers consider to be very important.
- 2.45 When consumers consider loss of service to be a detriment, it is important that providers co-operate to achieve an efficient switching process. However, providers may lack the incentives to bear the cost of putting in place technical and administrative measures to minimise service downtime when the cost of co-ordination can be borne by the consumer. Guidance or regulatory intervention may be required to achieve a seamless switching process for consumers.

Need for harmonised processes

- 2.46 Multiple switching processes for the same service can make it difficult for consumers to know what to do to switch. A lack of clarity amongst consumers about what is involved in the switching process may be a factor in consumers deciding not to switch. Having multiple switching processes for the same service is likely to make it harder for consumers to understand the steps required to switch.
- 2.47 In relation to bundled switching, having multiple switching processes means that a consumer may need to navigate different switching processes at the same time for the services in their bundle.
- 2.48 A harmonised switching process ensures that consumers encounter only a single common process when switching. A single harmonised switching process, which moves all services in a bundle between providers in one procedure, considerably reduces the burden on the consumer relative to separate processes for each service. A single process can much more easily be communicated to consumers, improving the clarity, consistency and ease of switching.
- 2.49 While a harmonised switching process may benefit consumers, providers may struggle to arrive at a single process. For example a certain process may be easily and inexpensively implemented by one provider but not by another, perhaps due to

¹³ We discuss in section 4 that our consumer research found that the LPL MAC process was generally more hassle and harder to navigate than the GPL NoT switching processes.

differences in the technology each provider employs. Without co-ordination, it is highly likely that providers arrive at a patchwork of switching arrangements within and across services, such that consumers would experience a different process depending on the identity of the LP(s) and GP(s). This is currently the case in the UK communications sector.

- 2.50 In these circumstances, there may be a role for the regulator to work with providers to design a harmonised switching process.

Our role

- 2.51 We have been asked by stakeholders a number of times in the past to examine switching processes in the communications sectors. This has been primarily in relation to the fixed-line and broadband sector but some stakeholders have also suggested we should look at switching processes for other services or across all services. For example, the Communications Consumer Panel has argued *“we believe that Ofcom should be working towards a single process to enable consumers who buy bundles of services to switch provider quickly and easily. We would like to see Ofcom develop a strategy to move to a single switching process for all communications services as soon as possible”*.¹⁴ Hutchison 3G UK Limited has stated *“... we urge Ofcom to deal swiftly with MNP reform through its consumer switching project”*.¹⁵

- 2.52 There was also a general consensus at our stakeholder workshop on consumer switching (October 2009) that the current arrangements for fixed voice and broadband do not deliver best outcomes for consumers and there was a need for change.

- 2.53 Our role could, in principle, take a variety of forms, which include:

- facilitating industry discussions in order to enable co-ordination of process development between providers, while ensuring that any agreed position works to the benefit of consumers;
- overcoming industry co-ordination problems by mandating new switching processes which are inserted into General Conditions ('GCs') and enforced through a monitoring programme; and
- an approach which focuses on achieving good switching outcomes for services that may emerge in the future where there is currently no formal switching procedure in place, such as those based on super fast broadband networks/next generation access ('NGA') products but focuses less on existing products, where switching processes may already be in place.

- 2.54 In evaluating any proposed intervention, we consider the costs and benefits of the different options and carry out an impact assessment. We also consider the option of not intervening.

¹⁴ <http://www.communicationsconsumerpanel.org.uk/090630%20Mis-selling%20letter.pdf>

¹⁵ <http://stakeholders.ofcom.org.uk/binaries/consultations/mnp/responses/3UK.pdf>

Evidence gathering and analysis

2.55 We have to date undertaken a detailed evidence gathering exercise in order to build on the existing evidence we already hold through our previous policy and enforcement work related to switching processes (a summary is provided in section 3 and annex 5 respectively). We have done this to further develop our thinking on the key consumer and competition impacts arising from switching processes. The new evidence we have gathered, and our analysis of that evidence, together with previous evidence, has helped us set out what we consider our strategic approach to switching should be. This forms the basis for the consideration of our proposed options as discussed in this document and that we are seeking input from stakeholders on.

Approach to consultation

2.56 In order to progress our strategic review of consumer switching, we are proposing to follow the approach set out below.

Stage 1 consultation (September 2010)

- 2.57 The aim of our first consultation is to get stakeholders to engage with the issues at the earliest opportunity.
- 2.58 Whilst this consultation includes a lot of the evidence we would rely on to support any specific policy proposals in the second stage consultation (see below), we are also using it as an opportunity to ask for further specific information from stakeholders – such as on costs – as well as to invite comments on our economic analysis.
- 2.59 This will help us develop a strategic approach to consumer switching through consulting on, and agreeing, a framework for assessing switching processes first and then applying that framework to specific services.
- 2.60 In this consultation we:
- Identify and assess the key consumer and competition issues arising from the current switching processes, including setting out the evidence base we have collected so far.
 - Develop a framework, based on a set of general principles, for assessing switching processes.
 - Identify a desirable 'greenfield' switching process based on an assessment of different options using the assessment framework developed. Note that the term 'greenfield' in this sense refers to situations where there are no existing switching processes already in place and we are starting from first principles (for example with the rollout of NGA networks, new switching processes need to be developed).
 - Identify the current switching processes which will be the focus of our attention in the second consultation. In particular, we propose to initially focus our work on the areas where we think there is more significant consumer detriment and where we have the potential to deliver benefits to consumers more quickly and consider to be implementation priorities.

Stage 2 consultation (May/June 2011)

- 2.61 The second consultation will consider the responses to the first consultation and will include a specification and cost assessment for various options for current switching processes which have been identified as implementation priorities. At this stage we propose to use the preferred 'greenfield' switching process as the starting point for considering implementation options. In developing proposed switching process options we will take into account the case for regulatory intervention, specific market developments and implementation costs.
- 2.62 The assessment framework will help support selection of the proposed switching process and consider whether harmonised processes would be appropriate for particular services/sectors.

Statement (by the end of 2011)

- 2.63 Subject to the outcome of the stage 1 and 2 consultations, our statement will set out our decision on any intervention for specific sectors/services and include a timetable for implementation of our decision.

Regulatory framework

- 2.64 We regulate the communications sector under, and in accordance with, the legal framework established by the Communications Act 2003 ('the Act'). We currently regulate switching processes through GCs. Further detail regarding the legal framework, our power to set and modify GCs and the existing GCs can be found at annex 5.
- 2.65 As part of this Review we have considered whether the existing consumer protection law regime would be sufficient to enable us to tackle the current problems with switching processes without the need for GCs. While existing consumer protection law does cover some specific concerns that arise in relation to switching processes such as mis-selling, we consider that it would not enable us to deal with all of the overarching problems with switching processes in a way that is tailored to the communications industry.
- 2.66 For example, consumer protection law is unable to regulate whether switching processes should be LPL or GPL. This means that we would be unable to resolve differences of opinion within the industry regarding this issue without using GCs.
- 2.67 In addition, unlike the enforcement powers available to us for enforcing GCs, we are limited in the type of remedies we can employ under consumer protection legislation. We cannot, for example, require the contravening provider to remedy the consequences of contraventions, such as providing compensation. Furthermore, we do not have the power under consumer protection legislation to fine a contravening party.
- 2.68 A further limitation is that the consumer protection regime does not extend beyond residential consumers and, therefore, we would have no powers to provide protection to small business customers in the way we are able to do under a GC route. (Section 52 of the Act requires us to secure effective protection for domestic and small business customers.)

2.69 For the reasons set out above, we consider that GCs remain the appropriate way for us to regulate switching processes. However, we acknowledge that consumer protection legislation still has an important role in tackling particular concerns relating to switching such as mis-selling in some investigations we conduct.

Outline of the remainder of this document

2.70 The rest of this consultation document is divided into the following sections:

- Section 3 summarises the work we have done on consumer switching in the communications sector over the past few years and describes the research and evidence we have gathered for this consultation.
- Section 4 considers the current consumer experience of switching providers, and includes an analysis of the evidence we have collected.
- Section 5 considers the impact of switching on competition and market structure, including the economic analysis of switching costs and targeted save activity, as well as the likely impact of switching processes on competition.
- Section 6 outlines our proposed analytical framework for assessing switching processes and identifies a preferred 'greenfield' switching process.
- Section 7 sets out our planned next steps following publication of this document, including our proposals to progress our work in the context of a 'greenfield' setting (and, in particular, within the NGA environment) as well as in relation to existing switching processes. We also set out our planned stakeholder engagement activities during the consultation period.

Section 3

Overview of previous switching work and new evidence workstreams

Introduction

3.1 This section provides a summary of the work we have done on consumer switching in the communications sector over the past few years, which serves as a useful context for this consultation.¹⁶ We also describe the research and evidence we have gathered for this consultation – which is discussed further in subsequent sections. Finally, we also list other sources of information referred to in this consultation.

Previous policy projects on consumer switching

3.2 Below we set out the main work we have undertaken over the past few years relating to consumer switching. Through this work, we sought to tackle specific issues with the switching processes for particular services and technologies. They did not previously adopt a strategic approach to switching processes across all services which is the purpose of this Review.

Fixed line and broadband switching and mis-selling

3.3 In February 2006, we issued a consultation document¹⁷ that looked at ways in which consumers of fixed-line and broadband are able to move between providers and whether competition in these markets was working effectively and delivering benefits to consumers. It reviewed the approaches to switching and mis-selling and made proposals on common principles, namely:

- a good consumer experience;
- proper protection against dishonest sales and marketing activity, such as mis-selling and slamming;
- well informed consumers; and
- supporting competition in retail and wholesale markets to the benefit of consumers.

3.4 These four principles also helped assess whether consumers and providers would be better served by moving to a single process for switching. The single processes that we proposed and sought views on were:

- A letter facilitation process - the process currently used to switch fixed-line provider.
- A MAC process

¹⁶ There are also cases where Ofcom has experience of taking enforcement action in issues relating to the way in which switching processes have developed. These are set out in more detail in Annex 5.

¹⁷ <http://stakeholders.ofcom.org.uk/binaries/consultations/migrations/summary/migrations.pdf>

- A single code process - similar to that used by electricity and gas providers (a code based process, but customers only need to contact the company they wish to move).

3.5 Our initial view was that there were good reasons to move to a single process across fixed-line and broadband services and the process that we favoured was a single code process. However, we stated that it would be necessary to consider how a single code would work in practice.

Industry Migrations Working Group (2006)

3.6 Following the consultation in February 2006 on the case for a single switching process, and in light of responses received, we encouraged industry to establish an Industry Working Group ('the IWG') with the principal aim of making recommendations to us on preferred options for a single switching process. We viewed this as an opportunity for the industry to proactively agree on the way forward, without regulatory intervention. The IWG was set up in June 2006 and chaired by Openreach and included representatives from across industry.

3.7 The IWG agreed the following 'consumer experience' principles:

- A single process for all products and sales channels was needed;
- The process should support complex switches i.e. those involving product bundles;
- The consumer should be well informed;
- There should be no undue barriers to switching providers;
- Opportunities for mis-selling and slamming should be minimised; and
- End-user touch points should be minimised.

3.8 The scope of the IWG covered switching between providers for both residential consumers and small businesses (ten employees or less) and focused specifically on fixed-line and broadband products.

3.9 The options considered by the IWG included various forms of switching process using a MAC, NoT or Third Party Verification ('TPV') processes.

3.10 A series of five workshops were held, after which the following options were short listed:

- Many MAC - where one MAC is issued per product.
- TPV - where an independent party manages the provision of MACs on behalf of industry. A single MAC per product would be issued, in the same way as the many MAC process.
- A hybrid model - where the consumer can choose whether to follow a MAC process to switch or to use the letter facilitation process. It would be intended that every provider would offer both options.

- 3.11 Each of the IWG members supported one or more of the short listed options.
- 3.12 The IWG submitted its report to us in October 2006, where it agreed that a single switching process was desirable. The IWG also recommended that we undertake a detailed feasibility study into the practical implementation of the options it put forward.

The Deloitte Study (2007 - 2008)

- 3.13 Following on from the IWG and its recommendations, in March 2007, we commissioned Deloitte to consider the relative costs and benefits of alternative ways in which we could implement a single migration process for transferable fixed-line and broadband products. Deloitte considered a variety of options (including, but not limited to those short listed by the IWG) in order to develop a view on the implementation and ongoing operational and maintenance costs and transitional issues associated with a single switching process. Deloitte was asked to evaluate these costs against the improvements to the consumer experience (relating to the six principles adopted by the IWG), but to also take account of other factors, including consumer convenience, time taken to switch, ease of understanding and reliability.
- 3.14 Deloitte submitted its report to us in January 2008.¹⁸ Given the complexity of the issues, the report did not consider all of the options short listed by the IWG in detail but it recommended a single switching process across all transferable products with the following characteristics:
- an Inter Communications Process ('ICP'), described by Deloitte as a variant of the existing MAC process which is GP led and includes a simple third party intermediary to act as the communications facilitator between the GP and the LP;
 - a supporting compensation framework to address potential risks of mis-selling that may exist under the ICP process; and
 - a phased approach to minimise any implementation risks and to ensure that the incremental benefits can be assessed.
- 3.15 It should be noted that this recommendation emerged from an indicative analysis of costs and benefits and did not amount to a detailed cost-benefit analysis. Furthermore the report was not able to consider all the technical and feasibility constraints that may have been important to industry.

Fixed-line mis-selling

- 3.16 In December 2009, we issued a statement¹⁹ introducing new sales and marketing rules and also rules to make it clear when providers are allowed to cancel orders placed by other providers to protect their customers from slamming. The rules include:
- an explicit prohibition on inappropriate sales and marketing activity;
 - confirmation of the type and level of information that needs to be made available to new customers both at the point of sale and after the sale has been concluded (but before the service has actually been switched). This includes providing

¹⁸ <http://stakeholders.ofcom.org.uk/telecoms/policy/mobile-policy/deloitte-report/>

¹⁹ http://stakeholders.ofcom.org.uk/binaries/consultations/protecting_consumers_misselling/summary/main.pdf

important information about the key terms and conditions of the service, including contractual liabilities and cancellation rights;

- specification of the record-keeping requirements for sales and marketing activities; and
- a prohibition from cancelling orders for purposes other than for specified slamming reasons (for example where slamming has occurred where the consumer confirms they were never contacted by the GP or where the consumer confirms they were in contact with the GP but did not provide authorisation for the service to be switched).

Broadband switching

3.17 In December 2006, we issued a statement²⁰ to introduce a requirement on providers to comply with the MAC process for all transfers to which it applies and a requirement to comply with a number of high-level obligations designed to address consumer harm associated with switching broadband where the MAC process does not apply. The high level obligations include for example a requirement to facilitate the switch in a manner that is fair and reasonable and ensure it is carried out within a reasonable period.

Mobile Number Portability

3.18 We published a consultation in August 2009²¹ that evaluated the MNP process for consumers and set out a number of options to make MNP faster and easier for consumers (including both GPL and LPL processes). In April 2010²² we published a statement and consultation setting out our decision to retain the current LPL switching model for MNP but improve the process by reducing the time taken to port mobile numbers from two to one working day and require PACs to be issued either immediately over the phone or by SMS within two hours. The requirements will apply to all requests for porting involving fewer than 25 numbers. We noted that it would be possible to implement these improvements without major changes to the existing process. At that time we decided to suspend consideration of moving to a GPL MNP porting process pending the outcome of this consultation, given the linkages with this Review. In July 2010 we published a statement to confirm the amendments to GC18.²³

Previous research on consumer switching

3.19 We undertook several strands of research to support our MNP and fixed-line and broadband switching projects, in addition to the regular information-gathering exercises and surveys that we carry out. We set out below a description of and the methodology used in the main pieces of recent market research we rely on in this consultation. We set out the relevant findings from these pieces of research in sections 4 to 7.

²⁰ <http://stakeholders.ofcom.org.uk/binaries/consultations/migration/statement/statement.pdf>

²¹ http://stakeholders.ofcom.org.uk/consultations/gc18_mnp/

²² <http://stakeholders.ofcom.org.uk/consultations/mnp/>

²³ <http://stakeholders.ofcom.org.uk/consultations/mnp/statement>

Omnibus survey (2008)

- 3.20 This sought consumers' views and experiences about changing mobile provider and, in particular, porting mobile telephone numbers ('omnibus survey 2008'). It looked to better understand consumers' satisfaction with the existing porting processes and whether consumers supported a move to GPL processes.
- 3.21 The research also investigated consumers' stated willingness to pay for faster porting times. It used a sample size of 2,000 mobile customers in the UK and was conducted via face to face interviews in 2008.²⁴

Jigsaw research (2009)

- 3.22 This was a piece of qualitative research into the expectations and experience among residential and business consumers on mobile number portability ('MNP research 2009').²⁵
- 3.23 It included discussions with 36 consumers in six groups who had switched or considered switching in the previous two years and telephone interviews with 10 business customers who had switched or considered switching in the previous two years.

PAC mystery shopping (2009)

- 3.24 To better understand the consumer experience of mobile porting, we commissioned Synovate to conduct a mystery shopping exercise on obtaining PAC codes from mobile providers ('PAC research 2009').²⁶
- 3.25 The research aimed to:
- establish the process that customers need to go through in order to request and receive their PAC code from their provider;
 - explore any save activity that LPs deploy during the process;
 - establish the frequency of problems and/or delays in receiving PAC codes; and
 - explore consumer views on the experience.
- 3.26 Callers were tasked with getting in contact with their mobile provider and asking to switch company whilst keeping their existing phone number. The length of call and its outcome was recorded, as were any obstacles that were encountered in the process, such as being switched between members of staff or being told it would not be possible to provide a PAC. The exercise was conducted with 151 calls spread across a variety of mobile service providers and price ranges, including pre-pay and post-pay tariffs.

²⁴ Added to this was a survey of 1,020 Irish mobile customers interviewed by telephone in 2009.

²⁵ http://stakeholders.ofcom.org.uk/binaries/consultations/gc18_mnp/Jigsaw_qualitative_research1.pdf

²⁶ http://stakeholders.ofcom.org.uk/binaries/consultations/gc18_mnp/Synovate_PAC_mystery_shoppi1.pdf

Switching bundled packages (2008)

- 3.27 We commissioned Futuresight to conduct a survey of consumers in order to understand the impact that bundled purchasing might have on consumers' ability to shop around and obtain the best deal through switching ('bundles research 2008').²⁷
- 3.28 The research was of a qualitative nature, as the low take-up of bundles at the time would have made it impractical to do a quantitative study on a meaningful scale. Nonetheless, we wished to understand better whether having to use existing single product switching processes to switch bundles might inhibit switching.
- 3.29 It was conducted in two phases, the first being to assess consumers' awareness of, and attitudes towards different aspects of their bundle, as well as their understanding and perceptions of the switching process. This was conducted using focus groups. The second phase aimed to understand to what extent current switching processes act as a barrier to consumers' ability to shop around and switch.
- 3.30 The sample for the second phase consisted of 30 consumers who had two or more services with a single supplier (fixed-line and broadband plus one other service in some cases). 23 of these were considering switching within the next two months and 7 had switched their supplier within the previous three months. The interviews were conducted between February and April 2008.

Fixed-line mis-selling and slamming research (2008)

- 3.31 We commissioned ICM to undertake quantitative research to identify the incidence of mis-selling and slamming and to assess the financial impact on consumers of this ('slamming research 2008'). The research was based on a telephone survey of 2014 consumers.

Mobile, landline and internet switching research (2009)

- 3.32 To help us better understand consumers switching experiences across mobile, fixed-line and broadband services, we commissioned TNS to undertake a quantitative omnibus research ('switching research 2009'). This considered consumers' motivations for switching, reasons for not going through with a switch and experience of save activity.

Consumer Experience Report (2009)

- 3.33 Our most recent Consumer Experience Report was published in December 2009 ('Consumer Experience Report 2009').²⁸ The report includes research that tracks consumers' participation and decision making behaviour across the fixed-line, mobile, broadband, multichannel television and bundled sectors through time. It seeks to understand the process consumers go through when choosing a provider for a new service or switching provider for an existing service. It also seeks to identify barriers to switching.
- 3.34 It is based on research carried out with the member of a household that is primarily responsible for making decisions relating to communications services, making use of a relatively large sample (which varies by the service in question, but always in excess of 100 and in some cases well over 1000). The reports also include data

²⁷ <http://stakeholders.ofcom.org.uk/binaries/research/telecoms-research/switching-bundles.pdf>

²⁸ <http://stakeholders.ofcom.org.uk/binaries/research/consumer-experience/research09.pdf>

from our quarterly consumer concerns research ('QCCR 2010')²⁹ which measures and tracks levels of concern as well as investigates consumers' experiences of specific issues (e.g. silent calls and slamming).

Research and evidence gathered for this consultation

3.35 In this section, we provide an overview of the additional research and evidence that we have gathered specifically for this consultation. We discuss the findings from these further in sections 4 to 7.

Stakeholder workshop on consumer switching 2009

3.36 We hosted a workshop on consumer switching in October 2009 in order to bring together consumer and industry stakeholders to help develop a common understanding of switching issues, discuss the pros and cons of different switching processes and help develop criteria for evaluating the best possible method for consumer switching.

3.37 The workshop provided a useful framework for progressing the issue of consumer switching, and the debate was positive and constructive. There was general consensus that the current arrangements do not deliver best outcomes for consumers and there was a need for change. Some stakeholders argued we should focus on fixed-line and broadband as this would cover the most popular types of bundles and the sectors which appear to create the most difficulty. A number of stakeholders put forward views on the principles that switching processes should be based on (for example the need to protect against slamming and to ensure continuity of the main service).

OTA NoT and MAC process review

3.38 We asked the Office of the Telecoms Adjudicator ('OTA') to work with industry on an evaluation of current switching processes, including highlighting deficiencies and the costs of fixing current problems. The OTA, in conjunction with fixed-line and broadband providers, has undertaken a review of the existing NoT and MAC processes, looking to identify weaknesses of these processes and develop actions to address these. It has been unable to carry out a detailed cost assessment due to difficulties in obtaining the relevant information from providers.

3.39 The OTA has recently published a report on its findings.³⁰ We expect these findings to feed into our planned industry implementation work following publication of this consultation document.

International and sectoral research

3.40 We have also researched the approaches taken in other countries (in addition to that of the Body of European Regulators for Electronic Communications report which we mention below) towards regulation relating to switching between communications providers and the approaches taken in other sectors in the UK. This has helped us to learn from experiences elsewhere and has been most informative when there has been a change in regulation that has a notable effect on consumers' experience of switching. For example, experiences from other countries and sectors suggest it is possible to overcome problems with slamming within a GPL process through building

²⁹ <http://stakeholders.ofcom.org.uk/binaries/research/statistics/Ofcomconsumerconcerns.pdf>

³⁰ <http://www.offta.org.uk/AOT-MAC.pdf>

in stronger validation safeguards to ensure that there is limited potential for slamming.

Economic analysis on the impact of switching processes on competition

3.41 We have undertaken an economic analysis of switching processes and the impact they have on competition (including dynamic effects) and welfare. This includes an assessment of relative switching costs, save activity and issues relating to competitive neutrality. We have also reviewed the literature relating competition with switching costs, price discrimination, price guarantees, and targeted save activity. This analysis has provided a theoretical background and has supported the gathering of evidence on consumers' experiences of switching. This is discussed in more detail in section 5 and annex 6.

Academic workshop (2010)

3.42 In January 2010, we held a workshop to discuss issues that are relevant to switching and invited a number of leading European academic economists and economists from UK competition authorities. The workshop was conducted under Chatham House rules³¹, with a morning session focused on switching costs and competition and a later session on targeted save activity and competition.

3.43 The workshop aimed to foster debate between participants, share ideas and experiences and to test whether there were any areas of consensus. The topics covered included:

- Switching costs in the communications sector as compared to other sectors.
- Switching costs across different switching processes.
- The relationship between switching costs and switching levels.
- The relationship between switching costs and competition.
- The impact of targeted save activity on prices, quality, innovation, choice and market entry across different switching processes.

Experimental research (2010)

3.44 We have also undertaken some experimental research to test the effects of different switching processes on outcomes for consumers in a controlled environment ('experimental research').³² The advantages of this type of research are that it allowed us to look at individual elements of the choices consumers make and isolate the reasons why behaviour changes under different environments.

3.45 The research was designed to investigate the behaviour of consumers and the choices they make when faced with particular switching processes. As a result, our goal was to test whether particular features of the processes tend to lead to more favourable outcomes for consumers and to be able to rank the performance of different switching processes.

³¹ When a meeting, or part thereof, is held under the Chatham House Rule, participants are free to use the information received, but neither the identity nor the affiliation of the speaker(s), nor that of any other participant, may be revealed.

³² <http://stakeholders.ofcom.org.uk/binaries/consultations/consumer-switching/annexes/economics-research.pdf>

- 3.46 The switching processes in the experiment were designed to approximate actual processes present in communications markets in the UK, such as GPL and LPL processes with a variety of other features, including:
- slamming;
 - warnings about potential early termination charges (ETCs);
 - steps to verify the choices of consumers and prevent slamming; and
 - save activity by losing providers.
- 3.47 This allowed us to consider not only the effects on consumers of using GPL or LPL processes in general, but also investigate the particular effects of additional features that are often associated with switching processes.
- 3.48 Subjects were assigned a particular switching process when changing between four different telephone contracts. Outcomes across different switching processes were then compared.

Consumer switching and bundling market research (2010)

- 3.49 We commissioned Saville Rossiter-Base to conduct quantitative and qualitative research into consumers' switching experiences based on the switching process they went through ('consumer research 2010').³³ The research aimed to learn more about consumers' perceptions and purchasing behaviour with regards to single services and bundles, and to investigate the potential barriers to switching that may lead consumers to decide not to switch or to them having a poor experience when they do switch.
- 3.50 It investigated the level of consumers' participation in communications markets and the factors that were relevant in determining how actively they participate. This included looking at how participation varied across different segments of the population, across different communications services, over different switching processes and in relation to bundles in comparison to individual services.
- 3.51 The surveys to gather the quantitative evidence were conducted in-home with 2,008 decision makers and were nationally representative. An additional 863 boost interviews were conducted on-line to boost groups of interest to help reach a minimum sample size.
- 3.52 The qualitative evidence was focused on consumers' experience of switching processes across communications services. A group of 32 participants were chosen based on responses given during the quantitative phase of the research and were interviewed by telephone in order to obtain more detailed pictures of their experiences of switching processes and the importance they attached to certain aspects of those processes.
- 3.53 The results of this research are discussed in detail in section 4.

³³ <http://stakeholders.ofcom.org.uk/binaries/consultations/consumer-switching/annexes/switching-bundling.pdf>

Other information relevant to this consultation

- 3.54 BEREC published a consultation document on Best Practices to Facilitate Switching on 4 June 2010 in which it invited views on the establishment of best practices.³⁴
- 3.55 The aim of this work was to:
- analyse national conditions and practices when dealing with obstacles to switching between service providers, including, inter alia, the length of contract terms, the conditions for termination of contracts and the ease of porting (including the speed of the porting process); and
 - learn from each other's best practices, in the above mentioned areas, and pinpoint what are the most effective approaches to removing obstacles to switching.
- 3.56 The report used a variety of different sources in taking forward its analysis, including a questionnaire addressed to National Regulatory Authorities (NRAs), identification of relevant case studies and various related academic works, studies, reports and surveys.
- 3.57 The report noted, though, that it was not intended to make an assessment of the different approaches to consumer switching adopted by NRAs and that the different approaches to consumer switching adopted by NRAs can only be properly considered in relation to the national market characteristics. In total, 28 countries responded to the questionnaire circulated by BEREC, including 24 EU member states.
- 3.58 The final BEREC report is expected to be published in Autumn 2010.

³⁴ See the consultation document on the BEREC website at:
http://www.erg.eu.int/doc/consult/bor_10_34_switching.pdf

Section 4

Consumer experience of switching

Introduction

- 4.1 This section sets out the evidence we have gathered on the consumer experience of switching across all communication sectors and summarises our key findings. It draws on our consumer research as well as considering our complaints data, experimental research and experiences in other countries and sectors.
- 4.2 We focus on the key factors that can affect consumers' experiences of switching providers and can provide us with some evidence on the nature and relative levels of switching costs associated with different switching processes. This includes consideration of switching levels, hassle, clarity, continuity of service, slamming, the ability of providers to frustrate the switching process and save activity. We also consider the effect of bundling and the provision of services through new infrastructure on consumers' experiences of switching. We consider residential consumers first and then small business consumers (with up to 10 employees) towards the end of the section.³⁵

Switching levels

- 4.3 Regulators and competition authorities often consider switching levels as an indirect way of assessing switching costs. However, high switching levels can be consistent with both effective and ineffective competition and the presence of high switching levels does not necessarily prove or disprove the existence of a competition problem.
- 4.4 A report by NERA jointly commissioned by the Office of Fair Trading ('OFT') and the Department for Business, Enterprise and Regulatory Reform ('NERA (2003)')³⁶ on switching costs states that while it may be tempting to look at the level of switching in the industry, markets can exhibit low levels of switching and be highly competitive. This is because if switching costs are low prices may adjust so that consumers have little or no incentive to switch. Alternatively, a market may exhibit a high level of switching yet switching costs can be very high. This is especially true if firms can price discriminate between existing customers and new customers, leading to higher prices for existing customers. This may encourage the more price sensitive existing customers to switch to become new customers with rival providers, even if in the long term switching may be inefficient (i.e. if consumers incur the switching costs and will in turn be charged higher prices by the new provider once they become existing consumers). The impact of price discrimination is discussed in section 5.
- 4.5 The NERA (2003) report provides examples of mobiles and energy as markets with high switching costs but relatively high levels of switching. The report also provides the example of the Irish mortgage market as one with low switching costs and low switching levels but a high degree of competition.

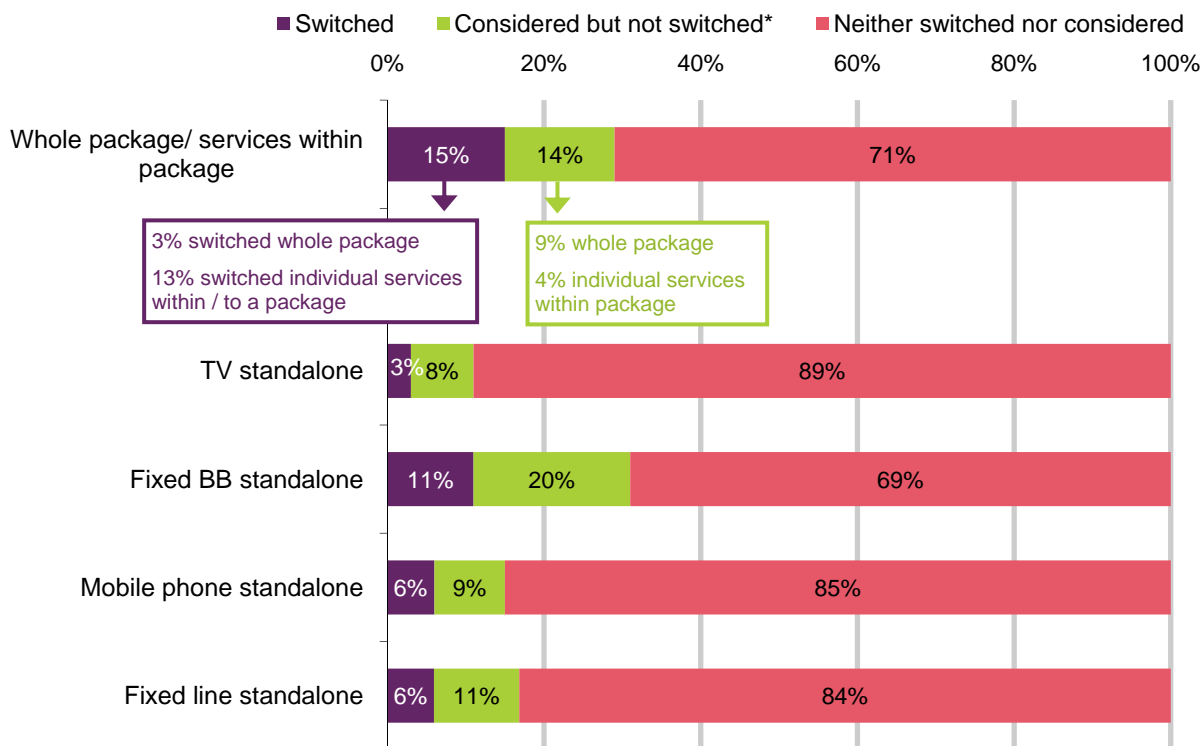
³⁵ We do not specifically consider the need for consumers to search for and compare offers. Whilst this is an important part of the consumer journey in switching between providers, it is not directly related to the switching process which is the focus of this current Review.

³⁶ Switching costs, April 2003. See OFT655 at

<http://www.of.gov.uk/OFTwork/publications/publication-categories/reports/Economic-research/>

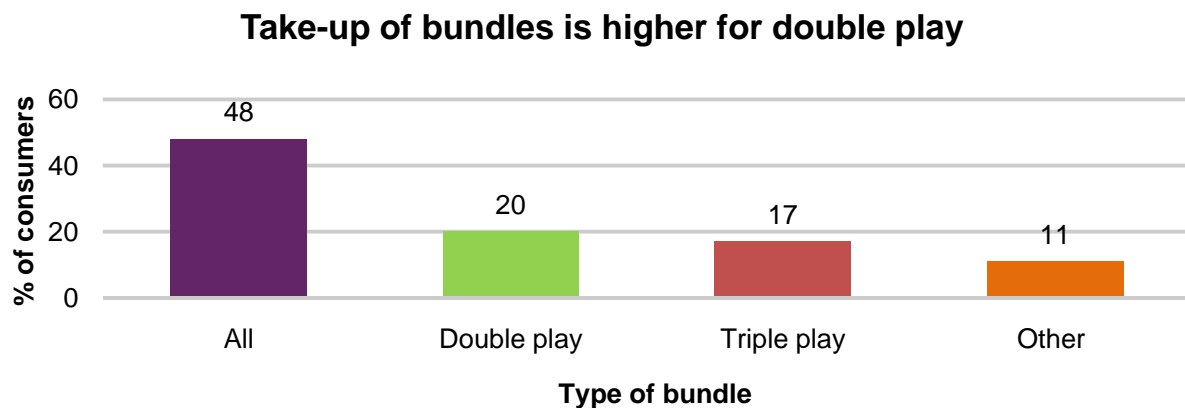
- 4.6 We look here at switching levels in the UK communications sector and consider how these compare to other countries and sectors.
- 4.7 Our consumer research 2010 identifies three broad categories of consumers:
- **Switchers** are those consumers that have switched their provider in the last year.
 - **Considerers** are those consumers that have considered switching in the last year but subsequently decided not to.
 - **Inactive** are those that have neither switched nor considered switching in the last year.
- 4.8 The vast majority of consumers in the communication sector are inactive – ranging from 69% in broadband to 89% in pay TV. Switching levels vary across the different services and whether they are bought as a standalone service or as part of a bundle (see Figure 6).
- 4.9 For single services, our consumer research 2010 shows the lowest level of switching in the past 12 months was in the pay TV sector (3%), followed by mobile and fixed-line (both 6%) and the highest in broadband (11%). We tend to find a higher proportion of considerers than switchers across the sectors. We see the highest proportion of considerers in the broadband sector where they represent one in five consumers (20%).
- 4.10 There is little difference in switching behaviour between demographic groups for single services except:
- Consumers aged 65+ are less likely to have switched or considered switching their pay TV service.
 - Consumers aged 16-35 are more likely and those aged 55+ less likely to have switched their mobile service.

Figure 6: Proportion of consumers who have switched communications providers in the past 12 months



Question: Which of the following applies to your household/ (service) in the last year?
 Base: Those with a package of services for which they receive one bill (1424), Those with each service as a standalone service (996 TV, 714 fixed broadband, 2556 mobile phone, 1214 fixed line).
 Source: Ofcom consumer research 2010, fieldwork carried out by Saville Rossiter-Base in February to March 2010
 Note: The proportions shown in the boxes do not add up to the numbers in the bars due to rounding.

4.11 Around half of all UK households (48%) now buy two or more communication services as part of a bundle (see Figure 7). This is an area with potential for further growth and development. Double play (fixed-line and broadband) bundles are still the most common form (20%) although a significant proportion of households now have a triple play (fixed-line, broadband and pay TV) bundle (17%). Consumers said the main drivers for taking services in a bundle were value for money and convenience. Most consumers named an anchor product (one service within their bundle that they particularly wanted to use) in their bundle. The most important product in a double play bundle tended to be broadband whereas in triple play it is more likely to be pay TV.

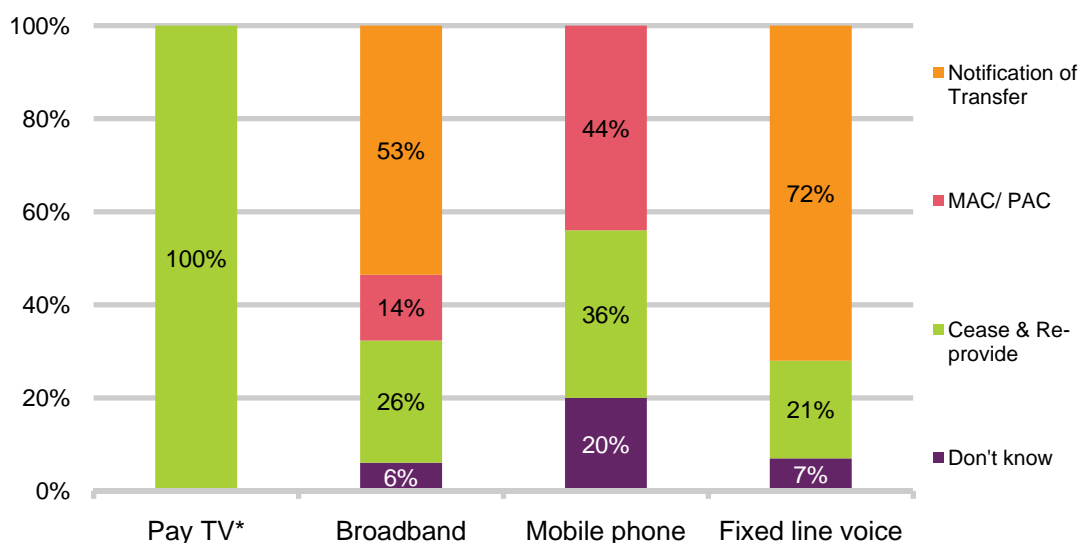
Figure 7: Proportion of consumers purchasing communication services in a bundle

Source: Ofcom consumer research 2010, fieldwork carried out by Saville Rossiter-Base in February to March 2010

- 4.12 The highest level of switching we have seen in the last year was around bundled services (15%). However, it is worth noting the vast majority of switching in this area was by consumers switching single services to form a bundle or a service within their bundle (13%). Only a small proportion of consumers switched their complete bundle of services (3%). Consumers in socio economic group DE are less likely to switch or consider switching their bundle.
- 4.13 We set out in section 2 the different switching processes consumers go through depending on the service they are switching, the provider they are moving from and to and the underlying technology used to provide the service. Figure 8 sets out the proportion of consumers from our consumer research 2010 that went through each of the switching processes when they switched in the past 12 months. The vast majority of fixed-line switchers (72%) and over half of broadband switchers (53%) went through the NoT process. Around a quarter of broadband switchers (26%) went through C&R and around one in ten (14%) the MAC process. Just under half of mobile switchers used the PAC process (44%) and over a third went through C&R (36%).³⁷ All consumers switching a pay TV service needed to go through C&R.

³⁷ A significant minority of mobile consumers were unable to say which process they used. Whilst some of these consumers may just not remember the process they followed, the proportion is much higher than for fixed-line and broadband. Within the overall base of mobile switchers, the incidence of those who were unable to say which process they used is considerably higher amongst those with pay as you go ('PAYG') as compared to those with a contract (50% versus 7%). It may be that the PAYG switchers just ran down their credit with their existing provider and bought a new SIM card or handset to switch to another provider and therefore did not associate this with a C&R process.

Figure 8: Switching process used to switch communication service



Question: Which one of these best describes the process you went through when you switched your (SERVICE) to the supplier you use now? (Prompted responses, single coded). *NB – Not asked of pay TV switchers – all must have used C&R
 Base: All decision makers who have switched provider in the last 12 months (155 pay TV, 451 Fixed broadband, 267 Mobile phone, 326 Fixed line voice)
 Source: Ofcom consumer research 2010, fieldwork carried out by Saville Rossiter-Base in February to March 2010

Switching levels and processes used in other countries

- 4.14 The recently published draft BEREC report on consumer switching³⁸ identified the vast majority of countries follow a GPL switching process, particularly for fixed-line and mobile. Many countries do not have formal switching processes in place for broadband but those that do predominantly follow a GPL process. While relatively few countries have in place an established process for switching bundles, those that do also all follow a GPL process. The reasons given by the NRAs for why GPL processes are preferred were that they were more convenient, simple and advantageous to consumer switching. A number also suggested limiting save activity opportunities for LPs as a key consideration in their decision to implement GPL processes.
- 4.15 The European Commission ('EC') monitors switching as part of its Consumer Markets Scoreboard benchmarking work.³⁹ The switching levels varied significantly across the 27 EU countries. The range for each service over the previous two years was broadband 9% to 36%, mobile 7% to 26% and fixed-line less than 1% to 26%. Switching levels in the UK ranked in the top ten across the 27 EU countries⁴⁰ (19% for fixed-line, 20% for mobile and 24% for broadband). The vast majority of countries that have higher levels of switching than in the UK use GPL processes and none of them use LPL processes for these services. However, it is worth noting that switching levels are likely to be influenced by a range of important factors including the characteristics of the market under consideration and so it is not possible to draw any direct parallels between switching processes and switching levels.

³⁸ http://www.erg.eu.int/doc/consult/bor_10_34_switching.pdf

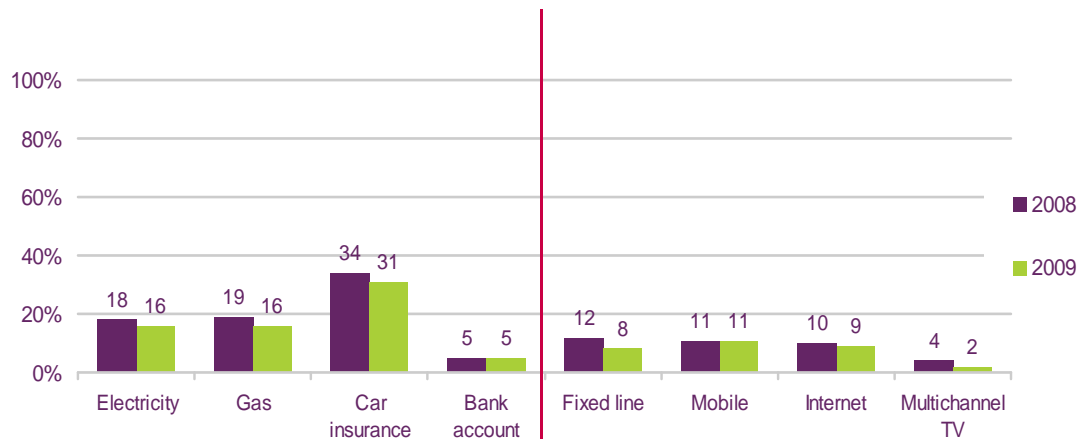
³⁹ http://ec.europa.eu/consumers/strategy/docs/FL243_Annex%20tables_Final.pdf

⁴⁰ The EC survey is based on switching across the previous 2 years. This is not directly comparable with the data from our consumer research which is based on switching levels in the previous 12 months.

Switching levels and processes used in other markets

4.16 We looked at switching levels across a variety of markets in our Consumer Experience Report 2009.⁴¹ As shown in Figure 9, we found consumers were most likely to have switched car insurance provider (similar to C&R process) followed by electricity and gas (a GPL code on bill process⁴²). Consumers were less likely to have switched bank accounts (GP intended to take the lead⁴³) than fixed-line, mobile or broadband.

Figure 9: Proportion of consumers who have switched communications and utilities providers in the last 12 months



Base: All adults with fixed line (2008, 941) (2009, 781) mobile (2008, 1270) (2009, 1231) internet (2008, 460) (2009, 388) multichannel TV (2008, 896) (2009, 837), electricity (2008, 1309) (2009, 1226), gas (2008, 1125) (2009, 1069), car insurance (2008, 1107) (2009, 1019), bank account (2008, 1418) (2009, 1350)
Source: Ofcom Consumer Experience Report 2009

4.17 The EC also looked at switching across sectors and of the 11 sectors analysed found the highest levels of switching over the previous 2 years were in car insurance (25%) followed by broadband (22%), mobile (19%) and fixed-line (18%).

⁴¹ The data presented in the Consumer Experience Report 2009 is based on our Decision Making Survey. It does not include home movers (who also switched providers at the same time as moving home) which were included in our consumer research 2010 and therefore the data sets are not directly comparable.

⁴² This is where a consumer needs to provide the GP with the code they can find on their bill along with other information that the GP then provides to the LP and the LP needs to verify before the switch can be made. This type of process is considered further in section 6.

⁴³ Under the FSA's Banking: Conduct of Business sourcebook (BCOBS), banks are required to provide a prompt and efficient service to enable a banking customer to move to a retail banking service provided by another firm. For personal current accounts, banks follow the European 'Common Principles for Bank Account Switching'. These require that when a consumer wishes to change bank account, the gaining bank will act as the main contact point and offer its assistance throughout the switching process. It will deal with the losing bank, ensuring the transfer of direct debits and standing orders. It will also assist the consumer in closing the old account and transferring the remaining balance to the new account. For cash ISA's, banks follow the BBA/BSA/TISA cash ISA transfer guidelines which, again, require the gaining provider to take the lead in arranging the transfer. The consumer may still need to have some direct contact with the losing provider (e.g. to provide further information or return cards/unused cheques).

4.18 As noted above, switching levels are likely to be influenced by a range of important factors so it is not possible to draw any direct parallels between switching processes and switching levels.

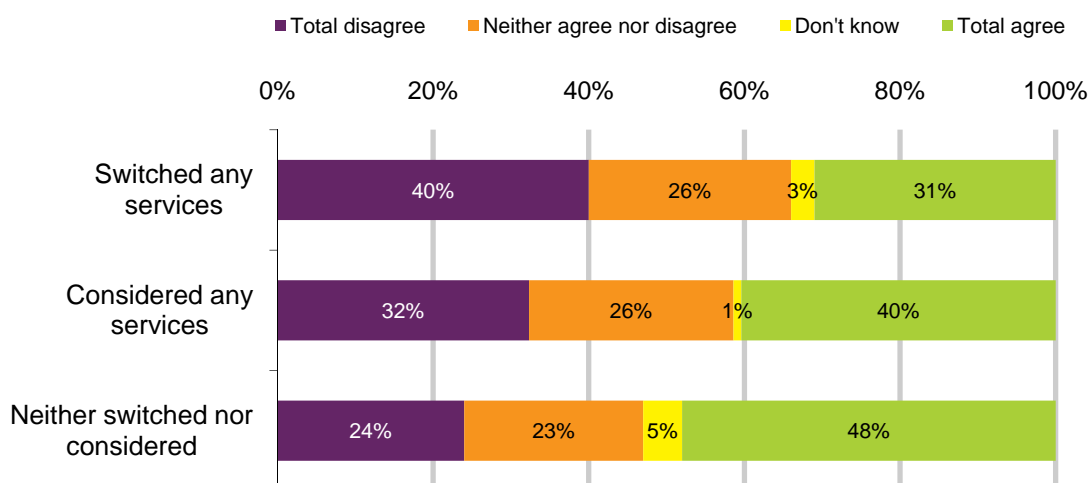
Hassle

4.19 Our Consumer Experience Report 2009⁴⁴ identified that a substantial minority of considerers had not switched due to the hassle factor. However, it was not clear what these consumers meant by the hassle factor and whether it specifically related to the switching process.

4.20 In our consumer research 2010, we have been trying to understand better the source and impact of the hassle factor including the time and effort spent on the switching process, how easy or difficult the process is, the number of touch points involved and consumers' experience of making contact with providers.

4.21 The evidence suggests hassle related to the switching process does stop some consumers from switching and raises the level of switching costs for others.

Figure 10: Proportion of consumers that agree or disagree that switching providers seems like too much hassle



Question: To what extent do you agree or disagree 'Changing suppliers for my home technology seems like too much hassle'?

Base: All decision makers who have switched in the last 12 months (925), all who have considered switching (460), all who have neither switched nor considered (1551)

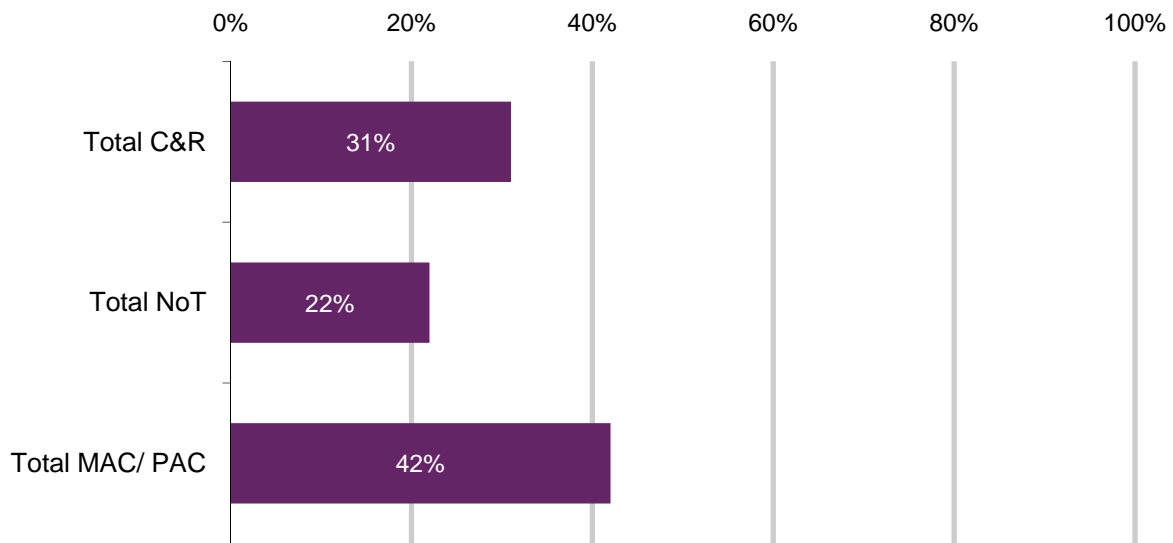
Source: Ofcom consumer research 2010, fieldwork carried out by Saville Rossiter-Base in February to March 2010

4.22 A substantial minority of consumers (between 31% and 48%) agree with the statement that changing providers 'seems like too much hassle' (see Figure 10). As shown in Figure 11, switchers that went through the MAC/PAC or C&R process were significantly more likely to agree with this statement (42% and 31% respectively)⁴⁵ than consumers that went through the NoT process (22%).

⁴⁴ <http://stakeholders.ofcom.org.uk/binaries/research/consumer-experience/research09.pdf>

⁴⁵ There was no statistically significant difference between the proportion of consumers agreeing with the statement that went through the MAC process (39%) as compared to those that went through the PAC process (44%).

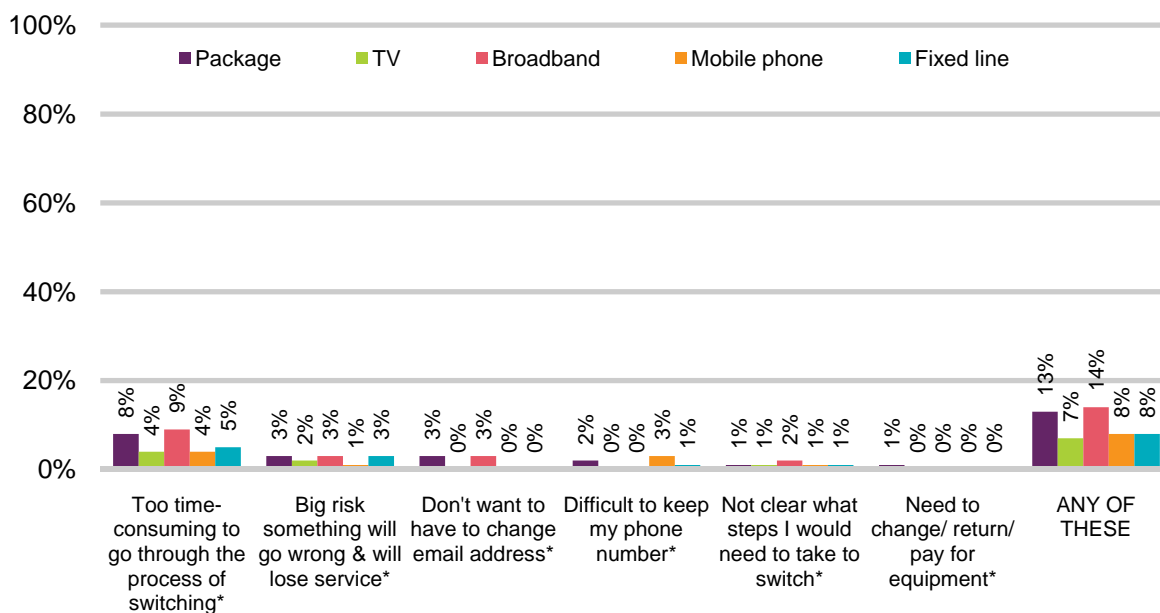
Figure 11: Proportion of switchers that agreed switching providers seems like too much hassle



Question: To what extent do you agree or disagree 'Changing suppliers for my home technology seems like too much hassle'?
 Base: All decision makers who have switched in the last 12 months using C&R (385), NoT (367), MAC/ PAC (231). Source: Ofcom consumer research 2010, fieldwork carried out by Saville Rossiter-Base in February to March 2010

- 4.23 Nearly half of inactive consumers agreed that switching providers seems like too much hassle (48%). The main source of the hassle was searching for information about other providers they could use (identified by 54% of inactive consumers). Other concerns included knowing what steps you need to take to switch (34%) and having to be in contact with more than one provider to arrange the switch (29%). However, when the inactive consumers were asked why they had not considered switching provider, the actual switching processes did not appear to be the key barrier. The key reason given by the vast majority of these consumers not even considering switching is satisfaction with their existing supplier/inertia (between 80 - 86%) with the next reason given, that it was too time consuming going through the process, being significantly lower (up to 9%).
- 4.24 Although many of these consumers have little knowledge of what the switching processes are, there are some within this group that mention hassle related to the switching process as a barrier. Considering the process obstacles related to hassle together (including the time taken to go through the process, lack of clarity about the steps involved and the risk of losing service – these are marked with a * in Figure 12), this appears to be more of an issue for consumers with a bundle or broadband (13% and 14% respectively mention process issues).

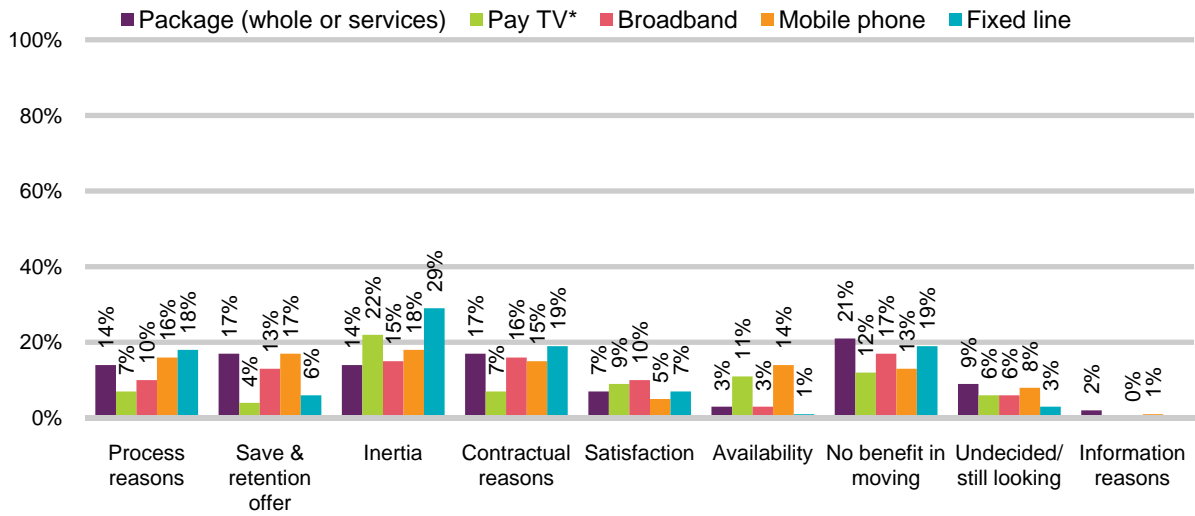
Figure 12: Process barriers to switching amongst inactive consumers



Question – Which, if any, of these are reasons why you have not considered switching to another supplier for your (SERVICE) in the last year? (Prompted responses, multi-coded) NB: Question only asked in in-home interviewing
 Base: Decision makers who have not switched or considered switching in the last 12 months (667 package of services, 551 pay TV, 243 fixed broadband, 1519 mobile phone, 686 fixed line voice)
 Source: Ofcom consumer research 2010, fieldwork carried out by Saville Rossiter-Base in February to March 2010

4.25 Hassle related to the switching process is a barrier for some considerers not switching (14% for bundles, 16% for mobile and 18% for fixed-line). However, there are a range of other reasons for considerers not switching (for example save activity, inertia, no benefit in moving and contractual terms) and no particular reason stands out in the consumer research (Figure 13).

Figure 13: Barriers to considerers switching

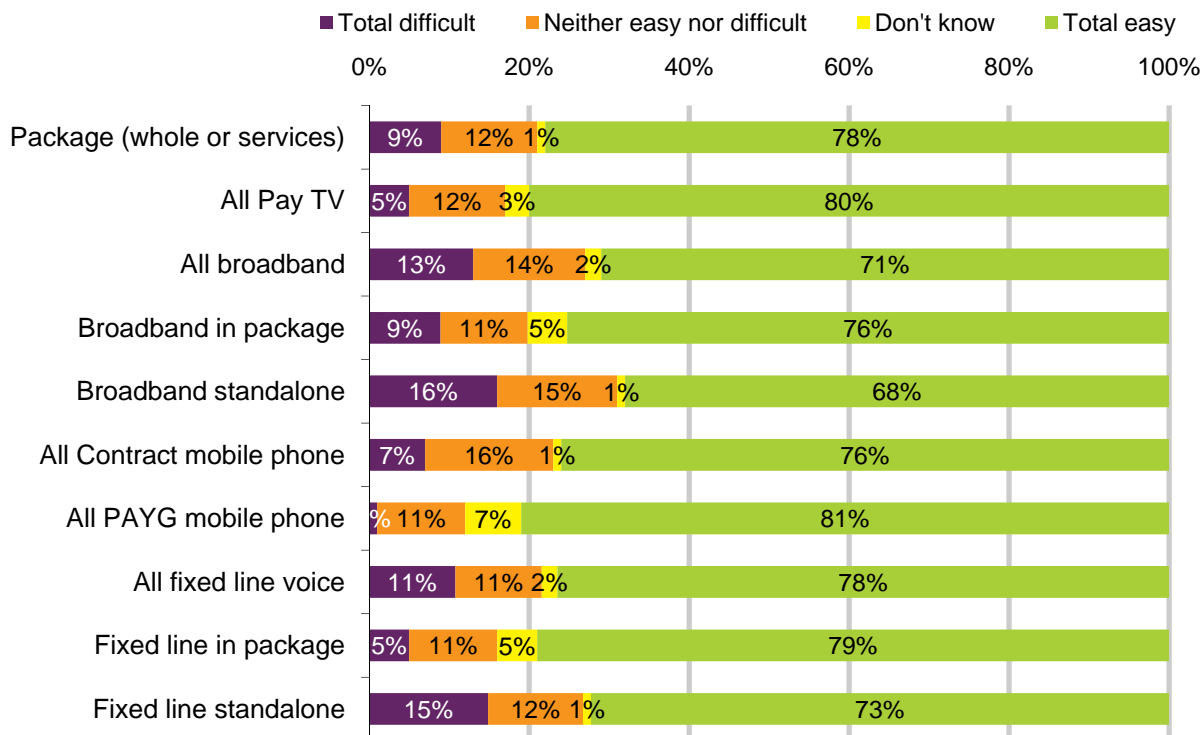


Question – Why did you decide not to switch to a different provider for your (SERVICE)? (Unprompted responses, multi-coded)
 Base: All decision makers who have considered switching provider in the last 12 months, looked into the process, and will not switch soon (114 Bundle, 63 pay TV*, 134 Fixed broadband, 145 Mobile phone, 106 Fixed line voice) *Caution: Low base.
 Source: Ofcom consumer research 2010, fieldwork carried out by Saville Rossiter-Base in February to March 2010

Ease of switching

- 4.26 For those consumers who have switched, there are mixed results on the scale of the 'hassle' involved across switching processes. There is evidence that some of the current switching processes create more difficulty for consumers than others suggesting they are associated with higher levels of switching costs.
- 4.27 Across each of the services, a majority of switchers (between 68% for broadband as a standalone service to 81% for PAYG mobile) said the switching process they went through was relatively easy (see Figure 14).

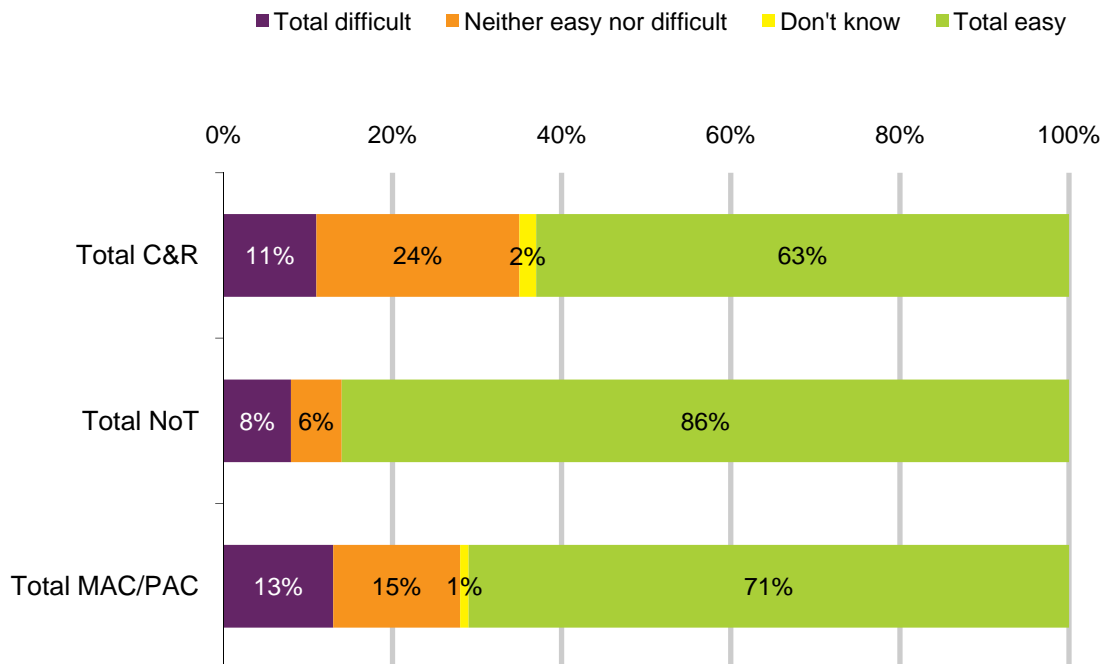
Figure 14: Ease or difficulty of the switching process at a service level amongst switchers



Question – Overall, how easy or difficult did you find the switching process to change the different services in your package?/ How easy or difficult did you find this switching process for (SERVICE)? (Prompted responses, single coded)
 Base: All decision makers who have switched in the last 12 months (125 package of services, 155 pay TV, 489 Fixed broadband, 116 Broadband in package, 373 Broadband standalone, 219 Contract mobile phone, 132 Pay As You Go mobile phone, 335 Fixed line voice, 120 Fixed line in package, 216 Fixed line standalone).
 Source: Ofcom consumer research 2010, fieldwork carried out by Saville Rossiter-Base in February to March 2010

4.28 Looking at the switching process in general (see Figure 15), no switching process is more significantly likely to be rated as difficult (8% for NoT, 11% C&R and 13% for MAC/PAC) but the NoT process is significantly more likely to be rated as easy (86% for NoT, 71% for MAC/PAC and 63% for C&R). However, looking at the switching processes at a service level, we do see some significant differences and this highlights where consumers are experiencing most problems.

Figure 15: Ease or difficulty of the switching process at a process level amongst switchers

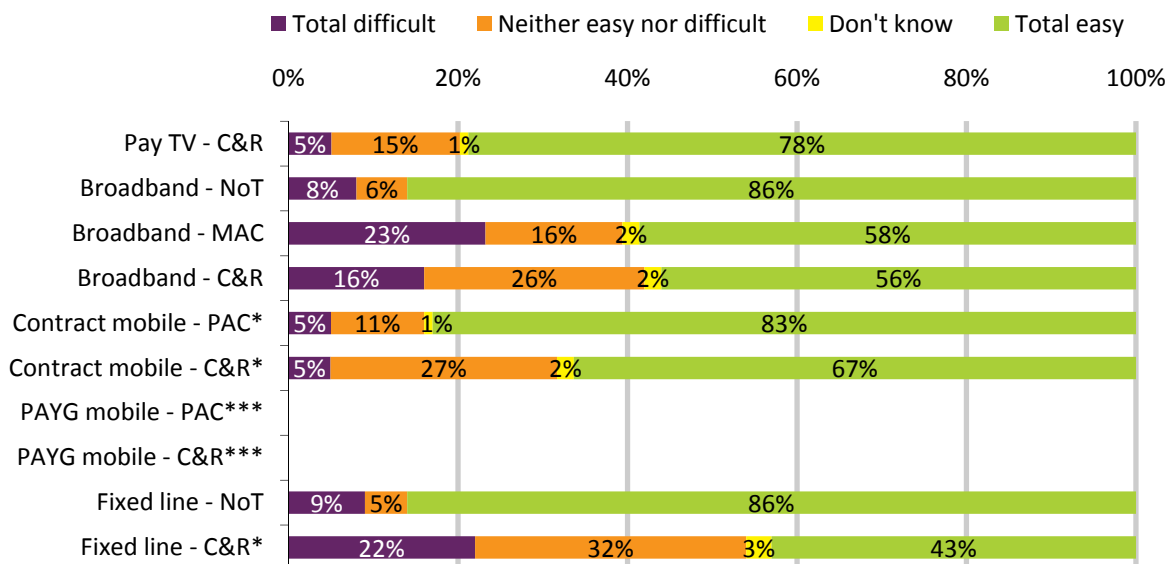


Question: How easy or difficult did you find this switching process for (SERVICE). (Prompted responses, single coded)
 Base: All decision makers who have switched in the last 12 months using C&R (385), NoT (367), MAC/ PAC (231).
 Source: Ofcom consumer research 2010, fieldwork carried out by Saville Rossiter-Base in February to March 2010

- 4.29 The evidence suggests the PAC process is easier for consumers to navigate than the MAC process (see Figure 16). Only a small proportion of mobile consumers said they found the PAC process difficult (5%) and the vast majority (83%) found it easy. By contrast, a significant minority of broadband switchers said they found the MAC process difficult (23%) and substantially fewer consumers found it easy (58%).
- 4.30 Broadband and fixed-line switchers going through the C&R process are significantly more likely to rate the process as difficult (16% and 22% respectively) as compared to the NoT process (8% and 9% respectively). Mobile switchers experience less difficulty with the C&R process (5% said it was difficult) but there is also a significant minority who are neutral about it (27% said it was neither easy nor difficult). Pay TV switchers also experience less difficulty with the C&R process (5% said it was difficult) and are the most likely to rate the C&R process as easy (78%) as compared to fixed-line (43%), broadband (56%) and mobile (67%).
- 4.31 Fixed-line switchers were significantly more likely to experience difficulties with specific aspects of the C&R process (around one third) compared to the NoT process (around one in ten). This related to: keeping their current phone number; getting through to their previous provider to cancel their service; telling their previous provider that they wanted to cancel their service; getting their previous provider to provide them with the information they needed to be able to switch; and arranging for continuity of service. We discuss a number of these issues further below.
- 4.32 The evidence we have collected to date suggests there may be differences between the level of hassle involved in the switching process and how easy or difficult it is for consumers to navigate it. For example, we found that just under half (44%) of mobile switchers that went through the PAC process agreed that switching seemed like too much hassle but only a small proportion (5%) said they found the process difficult.

This suggests that although the PAC process involves more hassle (as it requires more engagement by the consumer and they may incur higher levels of switching costs than under a GPL process), for the majority of consumers the process goes relatively smoothly and with ease.

Figure 16: Ease or difficulty of switching by service and process amongst switchers



Base: All decision makers who have switched in the last 12 months (108 pay TV C&R, 161 Broadband NoT, 125 Broadband MAC, 109 Broadband C&R, 70 Contract mobile PAC, 73 Contract mobile C&R, 206 Fixed line NoT, 75 Fixed line C&R).
 *Caution: Low base ***Base too low for reporting
 Source: Ofcom research 2010, fieldwork carried out by Saville Rossiter-Base in February to March 2010

4.33 The findings from our experimental research suggested that consumers were more likely to make better switching choices (i.e. switch to the provider that offered the contract most suitable for them) under a GPL process (except where slamming is possible) than under a LPL process. Whilst features of the LPL processes such as the increased switching costs partly explain the findings, the researchers suggested the main reason for the effect is that consumers suffer from limited attention when making decisions about switching providers. They argued that switching processes should ideally be as simple as possible for the consumer particularly when making decisions in complicated environments such as those that exist in communication markets with many providers.

Number of touch points

- 4.34 The switching processes vary in the number of contact points that consumers need to navigate to switch and therefore affects the level of switching costs. GPL processes (e.g. NoT) require just one contact with the GP to initiate a switch, however, the consumer may also choose to contact the LP (for example if they want information about any Early Termination Charges ('ETCs')).
- 4.35 In LPL processes such as MAC and PAC, consumers must contact the LP and obtain a code and give this to the GP to effect the switch. This means the process requires

a minimum of two touch points and potentially three if consumers contacted the GP before obtaining the code from the LP.⁴⁶

- 4.36 The C&R process requires at least two touch points as consumers need to contact the GP to start their new service and the LP to cancel their existing service. In our consumer research 2010, there was a broadly equal split amongst consumers going through the C&R process that first contacted the LP and those that first contacted the GP (44% and 49% pay TV, 50% and 40% for broadband, 44% and 46% for mobile and 56% and 40% for fixed-line respectively).
- 4.37 Consumers switching through a C&R process also face the task of co-ordinating the stopping and starting of the service, ensuring the switch happens seamlessly and ensuring they do not have an unwanted break in service. Consequently, C&R can be more difficult for the consumer to go through than an LPL process.
- 4.38 LPL and C&R processes require greater involvement by consumers than the NoT process. In the switching research 2009, over a quarter (28%) of both mobile and broadband consumers who had changed their network provider using these processes claimed to have gone through three stages – contacting the GP then the LP and finally the GP again.

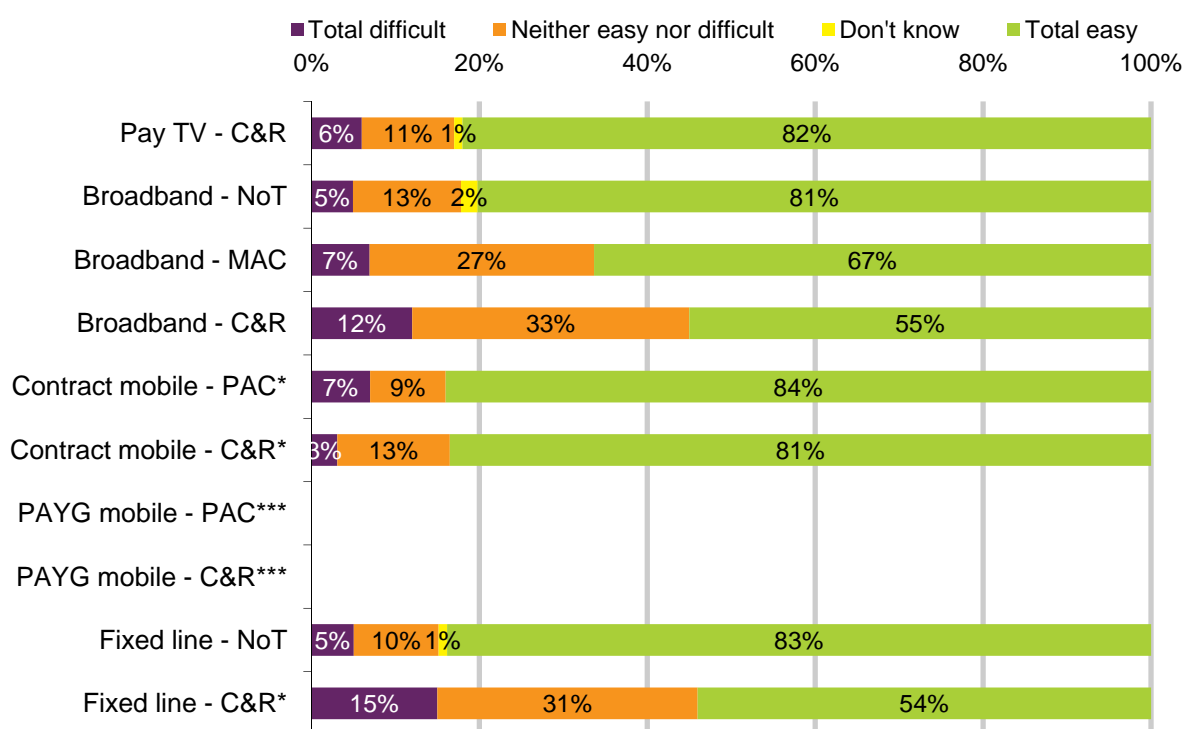
Making contact

- 4.39 Making contact with the relevant customer service staff to start the switching process is likely to be more difficult under a LPL process as the LP has less of an incentive to make the switch happen smoothly than a GP.
- 4.40 Our consumer research 2010 found that a minority of consumers found it difficult making contact with providers to switch (see Figure 17). This was more likely to affect broadband (12%) and fixed-line (15%) consumers using the C&R process.
- 4.41 When asked in more detail about what aspects of the switching process consumers found easy or difficult, a minority of consumers also said it was difficult to get through to the LP to tell them they wanted to cancel their service. The proportion of consumers affected varied from 10% for mobile to 20% for pay TV. Just under a third of fixed-line voice consumers using the C&R process (32%) said they found this difficult.
- 4.42 Online panel research commissioned by Consumer Focus found that 79% of consumers wishing to keep their existing number when they switched would like the switching process to be handled by the mobile providers on their behalf rather than arranging the process with their new and old network providers themselves.⁴⁷

⁴⁶ A consumer might contact the GP first to verify an offer or they may not be aware they need to get a code from the LP.

⁴⁷ http://stakeholders.ofcom.org.uk/binaries/consultations/gc18_mnp/responses/Consumer_Focus.pdf

Figure 17: Ease or difficulty of contacting providers to make the switch (switchers)



Question: How easy or difficult did you find the process of making contact with suppliers in order to make the switch? (Prompted responses, single coded)

Base: All decision makers who have switched in the last 12 months (130 Pay TV C&R, 161 Broadband NoT, 125 Broadband MAC, 109 Broadband C&R, 81 Contract mobile PAC, 74 Contract mobile C&R, 206 Fixed line NoT, 75 Fixed line C&R).

Source: Ofcom consumer research 2010, fieldwork carried out by Saville Rossiter-Base in February to March 2010

Question 1: Do you think hassle is a key issue we should tackle in this review? Please provide any evidence you have to support your views.

Clarity

4.43 It is important that consumers can easily find out and understand what they need to do to switch providers. Switching processes can vary in the extent to which they facilitate the provision of relevant information to consumers.

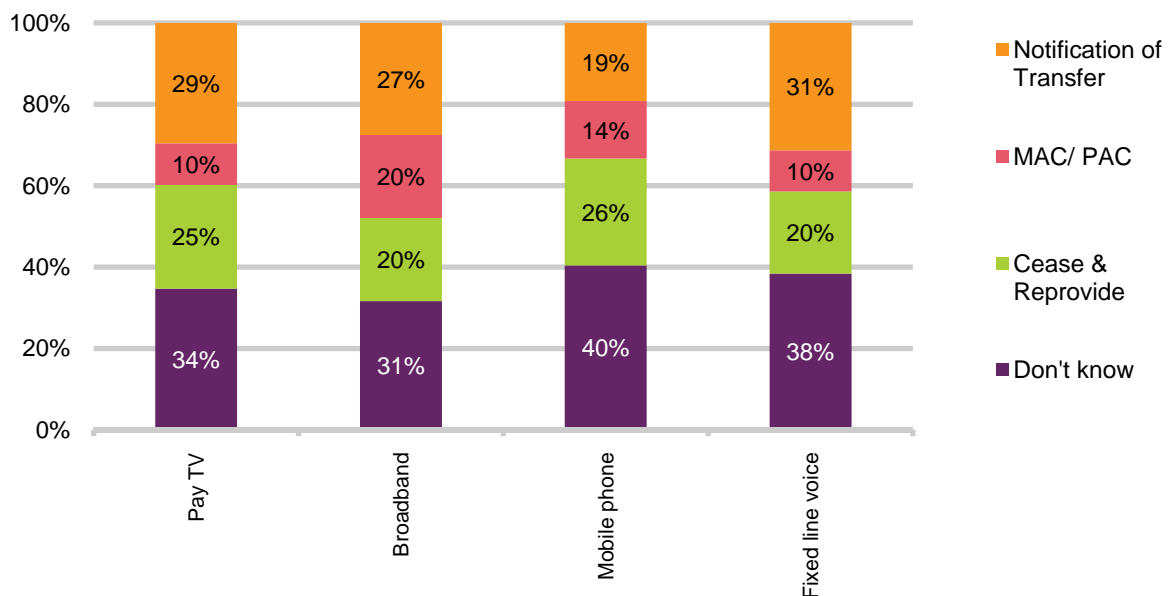
Awareness of the switching process

4.44 The existence of multiple switching processes for the same service depending on the underlying technology can make it difficult for consumers to know what they need to do even if they have switched before. Our consumer research 2010 suggests there is a lack of clarity amongst consumers about what is involved in the switching process. This is potentially less of a problem if, when a consumer wants to switch, they can easily find out what they need to do.

4.45 A small minority of switchers said they found it difficult knowing what steps they needed to take to switch (5% for both mobile and bundles, 8% for fixed-line and 9% for both pay TV and broadband). Around one third of inactive consumers raised concerns about knowing which steps they need to take to switch provider (34%).

Between 31% (broadband) and 40% (mobile) of considerers said they did not know what process they would need to go through to switch to another provider (Figure 18). Some considerers said that not knowing what process they would need to go through to switch was a factor in them subsequently deciding not to switch (ranging from 0% pay TV where there is a single switching process to 5% for fixed-line where there are two).

Figure 18: Considerers awareness of the switching process



Question: Which one of these best describes the process you would need to go through to switch your (SERVICE) to another supplier, as far as you know?

Base: All decision makers who have considered switching provider in the last 12 months (124 pay TV, 242 Fixed broadband, 149 Mobile phone, 214 Fixed line voice)

Source: Ofcom consumer research 2010, fieldwork carried out by Saville Rossiter-Base in February to March 2010

4.46 Awareness of PAC and MAC codes and what they are for is clearly important for switching mobile and broadband services - yet many consumers do not know about them. Only 62% of mobile consumers are aware of their ability to port their number when switching service provider and 22% of mobile consumers who switched and changed their number said they had not ported because they did not know they could keep their number.⁴⁸ For broadband, research by a price comparison service suggested 40% of consumers do not know what a MAC code is.⁴⁹ Lack of prior awareness of the processes may be more of a concern for mobile than for broadband. For broadband MAC, the GP has an incentive to inform the consumer about the correct process to follow as this is the only way it can win the consumer. However, for mobile, the GP may be less incentivised to inform the consumer about the PAC process if it believes the consumer will switch without porting their number. This may lead to consumer detriment where the consumer places a value on retaining their number and they remain unaware of the PAC process.

4.47 There is little information about consumers' perceptions of how clear the PAC or MAC processes are specifically, but in our bundles research 2008 there was almost

⁴⁸ http://stakeholders.ofcom.org.uk/binaries/consultations/gc18_mnp/summary/mnpcondoc.pdf

⁴⁹ <http://www.moneysupermarket.com/c/press-releases/broadband-providers-still-failing-on-mac-codes/0009167/>

no awareness of the legal obligation of a provider to provide a MAC within 5 working days.

- 4.48 The broad characteristics of the NoT process (e.g. the letters sent to switching consumers to notify them of the transfer) may be more familiar to consumers than the MAC/PAC process as it is similar to processes in place when switching other services. It may also be a more intuitive process for consumers as they just need to contact the provider of the service they wish to take to start the switch. The GP also has an incentive to make the process as clear and simple as possible.

Awareness of the switching process for bundles

- 4.49 Our bundles research 2008 and our consumer research 2010 suggests that many consumers expect switching to become easier in a bundle as they think they will only need to contact one provider and use a single process to switch all their services.
- 4.50 However, currently, where consumers are switching to, from and between bundled services they may need to navigate more than one switching process simultaneously. As we set out in section 2, depending on the services being switched and the provider the consumer is switching from and to, it may be the case that the consumer will need to follow the NoT, MAC and C&R processes for the different services in the bundle. The provision of communication services across new infrastructure is likely to lead to there being more complex bundles that consumers may wish to switch to in the future. Given the trend towards bundling services, having a clear and simple process for switching bundles is likely to become increasingly important.

Awareness of contractual arrangements

- 4.51 Analysis of consumer complaints to the Ofcom Advisory Team ('OAT') suggests some consumers are unclear about their contractual liabilities during the switching process.
- 4.52 Our consumer research 2010 identified that contractual reasons are an obstacle to considerers not going through with a switch (see Figure 13 in the hassle section above). This appears to be less of an issue for pay TV considerers (7%) but affects 15% of mobile, 16% of broadband, 17% of bundle and 19% of fixed-line considerers.
- 4.53 We asked switchers whether they had to pay an ETC when they switched and how easy or difficult it was finding out about their contractual obligations when switching. The majority of switchers said they found it easy knowing about whether they would need to pay a cancellation charge or ETC (54% to 68% across services). However, a minority of consumers (around one in ten) said they found this difficult.
- 4.54 Switchers that went through the C&R for their broadband are more likely to have paid an ETC (15% C&R, 9% NoT and 9% MAC). Similarly, switchers that went through C&R for fixed-line are more likely to have paid an ETC (19% C&R, 6% for NoT). There were no significant differences in the proportion of mobile switchers that paid an ETC depending on the process they went through (8% C&R, 9% PAC). Across all services where switchers had to pay an ETC, around one in ten (13%) said they did not know about the ETC before they agreed to switch provider. Given the low base size⁵⁰, we are unable to analyse this for a particular service or process.

⁵⁰ A low sample size means we can be less confident in the statistic.

- 4.55 LPL and C&R processes may perform better here than GPL processes, since a LP has more incentive than the GP to make customers aware of their contractual liabilities and of any ETCs that they would be liable for should they decide to switch. Whilst this information may be available to consumers from their own records of their contract, a reminder may make a difference in reasserting information relevant to consumers that are in a minimum contract period ('MCP') and liable for ETCs.
- 4.56 Data provided by industry⁵¹ suggests the majority of providers inform consumers requesting a MAC of the possibility of ETC liabilities and some provide an estimate of the amount that would be due. For consumers requesting PACs, most providers said they remind them about ETCs and most provide an estimate of the amount. In the NoT process, most providers inform consumers about their liability for ETCs, but this will come only once they have received a request to transfer the customer.
- 4.57 We tested the provision of information about ETCs as part of the switching process in our experimental research. This suggested that having a simple warning about the existence of ETCs (without specifying the amount) appears to hinder good switching decisions. Having more detailed information about the actual level of ETC before going through with the switch performed better than having a simple ETC warning but did not appear to help participants more than having no ETC warning at all.⁵² The researchers suggested that these results may be driven by limited attention. They suggested that if consumers are unable to track and process all the available information then any additional complication during the switching process can affect the efficiency of the consumers' decision making. The provision of additional information on ETCs as part of the switching process increases complexity. There may be other reasons why simple warnings do not help consumers for example they may create confusion amongst consumers that are outside of a MCP and no longer liable for an ETC by making them think they are still liable, which may deter them from switching.

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?

Question 3: Do you think clarity is a key issue we should tackle in this review? Please provide any evidence you have to support your views.

Continuity of service

- 4.58 During the switching process some consumers may experience a loss of service. Others may experience a period where they inadvertently choose to (or feel bound to) pay more than one provider in order to make sure they do not lose their service.

Unwanted breaks in service

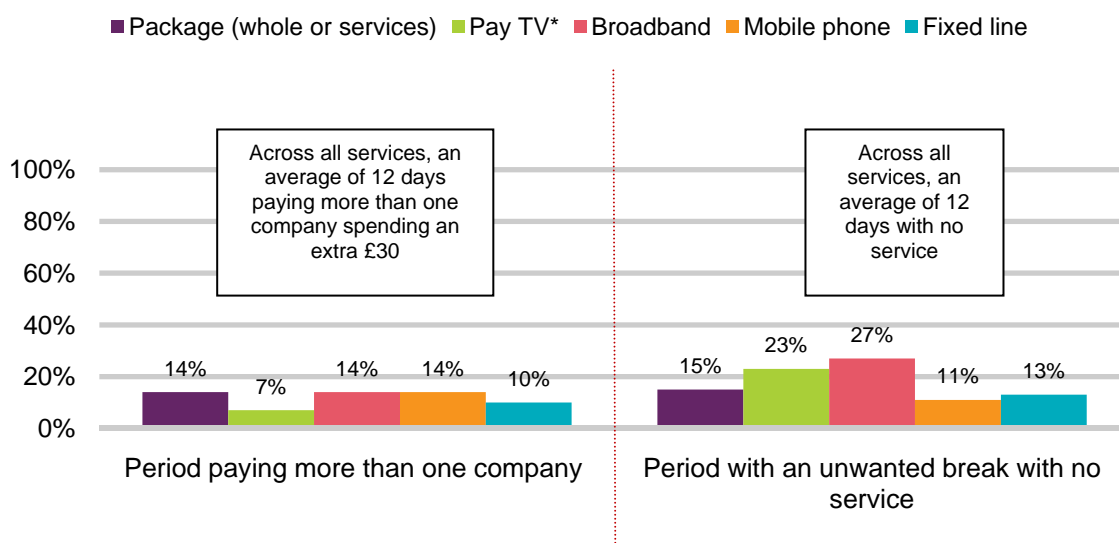
- 4.59 Consumers may experience a loss of service when changing their provider if the switching process is not seamless. This can be frustrating and may require additional effort and cost to recover the service.

⁵¹ This refers to a request for information issued under Section 135 of the Communications Act 2003 that was sent to a sample of fixed, mobile and broadband providers.

⁵² The ETC warnings findings are based on GPL processes tested in the experiment.

- 4.60 Our consumer research 2010 found that an unwanted break in service when switching provider was most common for broadband (27%) and pay TV (23%) consumers (see Figure 19). It did also affect at least one in ten consumers for other services – mobile (11%), fixed-line (13%) and bundled (15%) services. Indications are that they lost services for an average of 12 days which may cause considerable problems for consumers particularly in relation to essential services and where the consumer does not have access to alternatives.
- 4.61 A significant minority of fixed-line (13%, 10% NoT but 30% for C&R), broadband (16%) and pay TV consumers (20%) also reported difficulties arranging for their old and new services to stop and start at the right time.

Figure 19: Switchers experiences with continuity of service

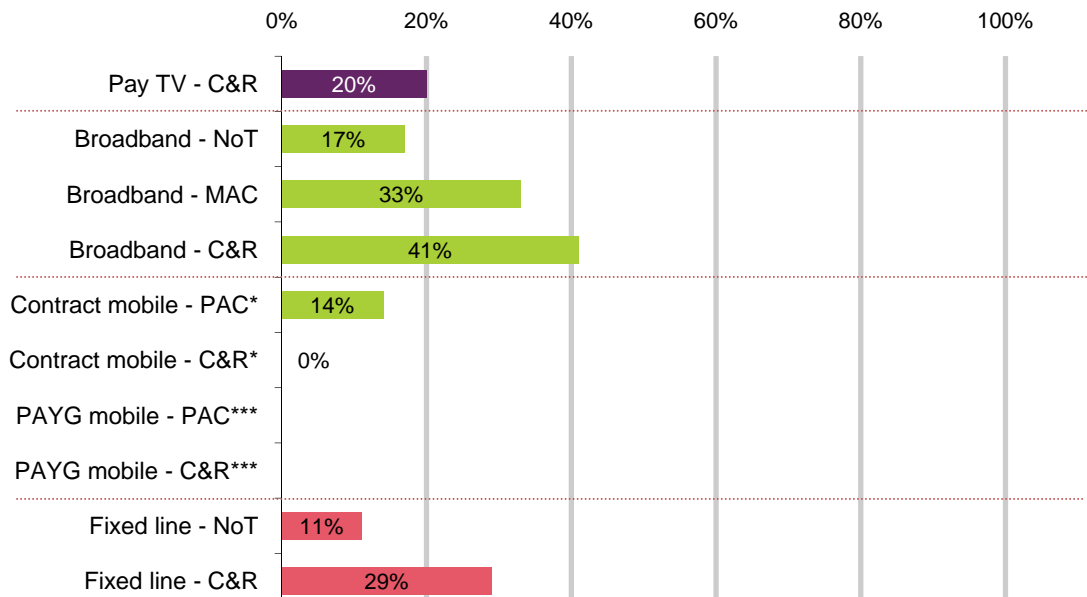


Question: Was there a period of time in the switching process where you chose to or had to pay more than one company to provide a service to make sure you didn't lose that service? Was there a period of time in the switching process where there was an unwanted break where you were not receiving a service from either company? (Prompted responses, multi-coded)
 Base: All decision makers who have switched provider in the last 12 months (125 Package, 87 pay TV, 373 Fixed broadband, 341 Mobile phone, 216 Fixed line voice), *Caution: Low base
 Source: Ofcom consumer research 2010, fieldwork carried out by Saville Rossiter-Base in February to March 2010

- 4.62 At a switching process level (Figure 20), unwanted breaks in service was most likely to be a problem for fixed-line and broadband consumers going through a C&R process affecting 29% and 41% respectively (although there was a low base for the former). This is to be expected given C&R is not a seamless switching process and it is the responsibility of the consumer to manage the start and stopping of the service. A third of switchers that went through the MAC process said they had an unwanted break (33%). This is higher than the levels of unwanted breaks under the PAC (14%) or NoT processes (17% broadband and 11% fixed-line). The potential for an unwanted break in service may be less of a potential concern in mobile where consumers can buy a new phone with a new number and then subsequently port their old number across.
- 4.63 With GPL and LPL processes, the providers should be managing when the services stop and start and making the switch a seamless process for the consumer. There are a number of reasons that might help explain why some consumers had an unwanted break when they went through a GPL or LPL process. Some of these consumers were also switching services in a bundle at the same time (one in five using MAC were also switching other services in their bundle). Some broadband

consumers reported a delay in starting the new services through broadband services being ‘down’ or due to a delay in the transfer of their fixed-line.

Figure 20: Switchers experience of unwanted break by process



Question –Was there a period of time in the switching process where there was an unwanted break where you were not receiving a service from either company?

Base: All decision makers who have switched last 12 months (109 pay TV C&R, 451 Total Broadband, 161 Broadband NoT, 125 Broadband MAC, 109 Broadband C&R, 277 Mobile, 75 Contract mobile PAC, 73 Contract mobile C&R, 327 Total Fixed line, 207 Fixed line NoT, 75 Fixed line C&R). Significance testing shows any difference between those using each switching processes and all switching that service. *Caution: Low base, ***Base too low for reporting

Note: Data includes consumers switching standalone services and bundled services.

Source: Ofcom consumer research 2010, fieldwork carried out by Saville Rossiter-Base in February to March 2010

4.64 Our consumer research 2010 showed that consumers value certainty about when the switch will happen over having the switch occur as quickly as possible. Over half of consumers (55%) preferred a guaranteed date for the switch compared to a quarter (25%) preferring a faster process (19% did not know). The preference for a guaranteed date increased amongst those who had previously switched (64% preferring a guaranteed date) and among considerers (71%).

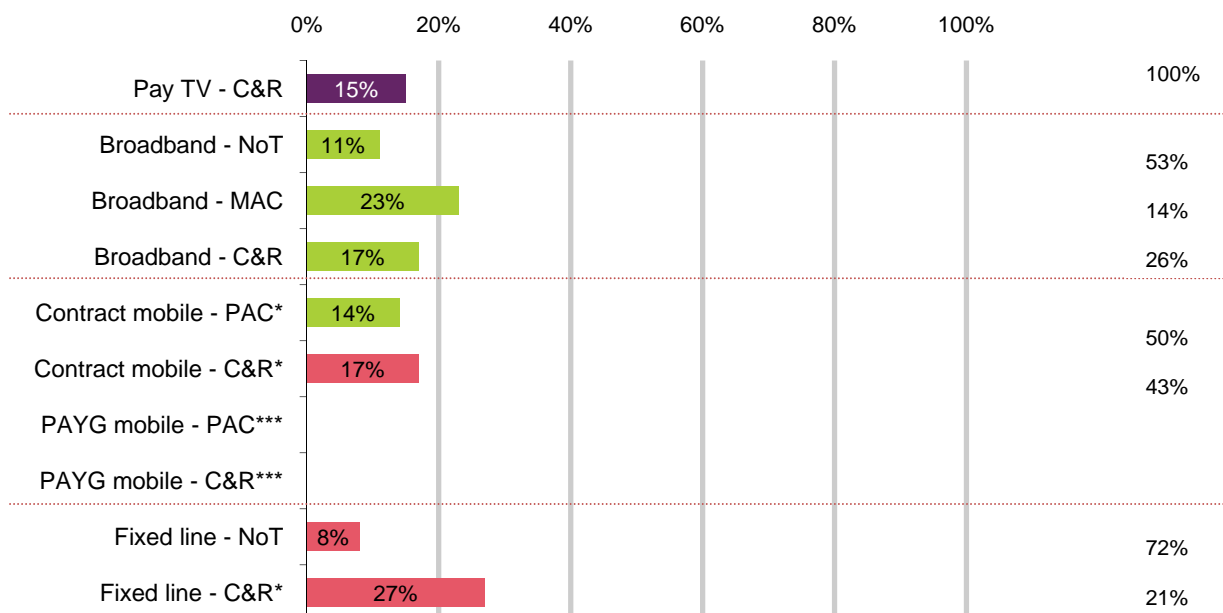
Double-billing

4.65 A switching process may make it more or less easy for consumers to switch without having to temporarily pay more than one provider in order to ensure they receive a service. Apart from the direct financial impact of paying an extra bill for a period of time, consumers that are faced with this situation may be deterred from switching to a cheaper or higher quality service due to the possibility of paying for two services for a period (in this case there would be a detriment in the form of lost savings).

4.66 Our consumer research 2010 found little variation across the switching processes in their performance in limiting periods of double-billing (Figure 21). On average across all services, consumers estimated they spent an extra £30. However, the MAC process for broadband and the C&R process for fixed-line were highlighted as having a higher incidence of double-billing although there was a low base size for the latter. Double billing appeared to be less of a concern for consumers than an unwanted break in service.

4.67 For mobile PAYG consumers, double-billing is not likely to be a potential issue. For those that are not porting their number they can use up their credit with their existing provider before starting to use their credit with their new provider. For those that are porting their number, it is the ability to use up credit with their existing provider before their number is transferred.

Figure 21: Switchers experience of double billing by process



Questions – Was there a period of time in the switching process where you chose to or had to pay more than one company to provide a service to make sure you didn't lose that service?
 Base: All decision makers who have switched last 12 months (109 pay TV C&R, 451 Total Broadband, 161 Broadband NoT, 125 Broadband MAC, 109 Broadband C&R, 277 Mobile, 75 Contract mobile PAC, 73 Contract mobile C&R, 327 Total Fixed line, 207 Fixed line NoT, 75 Fixed line C&R). *Caution: Low base, ***Base too low for reporting
 Note: Data includes consumers switching standalone services and bundled services.
 Source: Ofcom consumer research 2010, fieldwork carried out by Saville Rossiter-Base in February to March 2010

Question 4: Do you think continuity of service (unwanted breaks and double billing) is a key issue we should tackle in this review? Please provide any evidence you have to support your views.

Slamming

4.68 Slamming is an extreme form of mis-selling where consumers are simply switched from one provider to another without their express knowledge or consent. Where this happens, consumers may face additional costs and other forms of harm:

- It may lead to disruption, annoyance and distress for those consumers that are affected and who face an unexpected and unpleasant situation.
- Consumers may have to spend significant time and effort rectifying the situation, which would cause them unnecessary hassle.
- They could temporarily lose the service that they had wanted to keep or certain aspects of their service that were important to them.

- They could lose their phone number if there is no mechanism to get it restored.
 - They may be billed for ETCs by their original provider if the slam caused them to leave before their MCP had ended.
 - They may find themselves subject to lower quality or being charged a high tariff for a service they did not request.
- 4.69 Forms of slamming can include mis-representation, passing off (i.e. where a salesperson claims to represent a different provider), consumers being told they are merely signing up for information rather than entering into a new contract, or the switch being instigated without any contact with the consumer.
- 4.70 As well as intentional slams, process-related slams can also occur when a consumer is switched in error due to deficiencies in the underlying switching process ('erroneous transfers'). Many erroneous transfers are related to the home movers process and working line takeovers. There may be different ways of tackling the two types of slamming. Switching processes can have an impact on the intentional slams through the design of the verification system (relating to the consumer and the asset/service that is being switched) but are less likely to have an impact on the erroneous transfers related to the home movers' process and working line takeovers.

Impact of slamming on consumers

- 4.71 Our consumer research⁵³ suggests up to 2% of consumers experience slamming each year. Our consumer research 2010 found that approximately 1.2% of fixed-line consumers, 2% of broadband consumers and less than 0.5% of mobile and pay TV consumers had experience of slamming in the previous 12 months. The impact of slamming on propensity to change supplier in future was split broadly equally between those who said they are now more likely (17%) and those who are now less likely (13%). The remainder said it has made no difference (42%) or that they are unsure (27%).⁵⁴
- 4.72 Previous projects have estimated the cost of actual slams to consumers. In our fixed-line mis-selling consultation document (2009) we estimated that the financial harm to consumers from slamming in these markets was up to £2 million per year.⁵⁵
- 4.73 In the last year (July 2009 to June 2010), we received a total of 8,673 complaints about slamming. The vast majority of the complaints were from consumers with fixed-line as a standalone service or combined with broadband (8,198) and only a small proportion were from consumers with broadband as a standalone service (272) or mobile (203). This is likely to reflect the lower level of upfront validation in the GPL NoT process used for the vast majority of switching in the fixed-line sector. The lower levels of slamming in mobile and broadband as a standalone service may also reflect the need for the consumer to change equipment e.g. SIM card or router to complete a mobile or broadband switch unlike in switching fixed-line services.

⁵³ Based on data from our consumer research 2010, QCCR 2010 and slamming research 2008.

⁵⁴ There is some limited information from the results of our experimental research to suggest slamming may slightly discourage further switching and reduce the quality of consumer decision making. Once subjects had been slammed in the experiment, they were more likely to make inferior decisions and less likely to switch to the best provider that meets their needs.

⁵⁵ This estimate was based on data from the slamming research 2008 which suggested 0.6% of consumers had experienced slamming in the previous 12 months and a mean financial loss of slamming of £16. See page 95 of

http://stakeholders.ofcom.org.uk/binaries/consultations/protecting_consumers/summary/protectingconsumers.pdf

- 4.74 Across all services, the majority (5,669) were actual slams i.e. where the consumer was unable to prevent the transfer going ahead and was switched across to the new provider. The majority of slamming complaints involved 'no contact' slams (3,593 actual and 2,299 attempted) which is where the consumer alleges they have had no previous contact with the GP. Discussions with providers about the root causes of OAT complaints and their complaints data suggest erroneous transfers may account for a significant proportion of slams.⁵⁶
- 4.75 An important safeguard which has been built into the NoT process is the use of anti-slamming cancellations ('Cancel Other'). This enables the consumer to stop attempted slams becoming actual slams by contacting their existing provider when they receive the NoT letters and request that they cancel the order. Attempted slams can still cause consumer harm including the hassle of resolving the situation and possible distress. Between June 2009 and May 2010, there were, on average, around 6,200 orders stopped each month as a result of the order being stopped through Cancel Other. It is, however, important to note that not all uses of Cancel Other will be attributable to slamming. There is evidence of providers mis-using the Cancel Other process in order to frustrate consumers from legitimately switching providers or where the consumer has simply changed their mind about switching. Rules governing the use of Cancel Other are set out in GC24. We are currently investigating misuse of Cancel Other through our GC24 enforcement and monitoring programme.⁵⁷

GPL processes may be more prone to risk of slamming

- 4.76 Slamming is more likely where switching processes have lower levels of upfront customer validation such as in certain GPL models. In those cases where the switch must be verified by the consumer with their existing provider, there is less scope for slamming given the inbuilt interaction between the consumer and existing provider. Upfront validation can help eradicate the harm from attempted slams and the potential to deal effectively with the risk of actual slamming. Hence the type of switching process in place in a market will influence the potential for slamming to become an issue.
- 4.77 However, the experience of other countries which follow a GPL process as well as experience with other sectors (for example energy) shows that it is possible to overcome problems with slamming within a GPL process through building in stronger validation safeguards to ensure that there is limited potential for slamming.
- 4.78 Our international analysis found slamming was more of a problem for fixed-line than mobile, and much less of a problem for broadband. This analysis also found that GPL switching processes that involve an element of LP validation protect consumers better against slamming than validation processes which rely solely on the GP. There are a number of validation approaches used that do not require a LPL process for example the provision of some unique and undiscoverable⁵⁸ personal customer information such as a code or ID number by the GP to the LP to validate the switch. Other methods that appear to be successful in tackling slamming include industry agreements and guidelines, anti-slamming penalties and third party verification (TPV).

⁵⁶ The OTA is currently undertaking a project on erroneous transfers to investigate the root cause of these problems and to recommend fixes in order to reduce the number of complaints in this area.

⁵⁷ http://stakeholders.ofcom.org.uk/enforcement/competition-bulletins/open-cases/all-open-cases/cw_01045/

⁵⁸ Undiscoverable means information which would only be available to the consumer.

Models used in other countries

- 4.79 TPV is mandatory for carrier pre-selection (CPS) contracts concluded by phone in Switzerland. The TPV is independent and is funded by the providers. The aims in setting up the TPV were to reduce the administrative burden for both the consumer and the providers and to prevent slamming. The TPV model in place has been considered to be effective in tackling slamming.
- 4.80 In Ireland, consumers must sign a customer authorisation form (CAF), sign up on line (electronic CAF) or give consent over the phone (voice CAF or TPV where the telephone call with the TPV is recorded). If no valid CAF can be produced by the GP in the event that a switch is challenged then the consumer has the right to be switched back to their original provider. In 2010, providers agreed to introduce a new method of voice CAF which is similar to the TPV but can be carried out in-house by providers following similar rules to the TPV. The driver for providers seeking to move to this model was effective use of internal resources and cost savings. Slamming levels have reduced following the introduction of a TPV combined with the regulator taking an active role in seeking evidence of authorisation.

Models used in other sectors

- 4.81 The current process for validation in the energy sector is facilitated through a unique reference number of each supply point. This is known as the Meter Point Reference Number ('Mnumber') in gas and the Meter Point Administration Number ('MPAN' or 'Supply Number') in electricity.
- 4.82 When submitting a customer switching order, the GP is required to populate a number of mandatory fields relating to the supply point, including the postcode and the unique reference number. If the unique reference number and the postcode do not match on the order, or either is missing, the order will be rejected.
- 4.83 All bills and statements must include the unique reference number and it must be clearly displayed. Where no bill or statement is issued, the unique reference number must be provided annually. The GP is also able to obtain the unique reference number either directly from the energy bill at the time of the customer sale, or if it is not available, can obtain it via other means on behalf of the customer in order to facilitate the switch such as by contacting the relevant network company directly or via an on-line enquiry service.
- 4.84 The gas and electricity switching process is supported by the Erroneous Transfer Customer Charter ('ETCC'). The ETCC helps resolve problems where consumers have been switched against their wishes by setting out guidelines and allowing for compensation payments in the event of non compliance.

Ability of providers to frustrate the switching process**Delays in the process and failure to supply authorisation codes**

- 4.85 The switching process used may offer providers certain types of opportunities to frustrate consumers' attempts to switch.
- 4.86 With LPL processes there is direct contact between the consumer and the LP which may provide an opportunity for the LP to delay or discourage the consumer from switching. In GPL processes, the LP may be able to impede the process by claiming that the switch is in fact a slam, using the Cancel Other facility. However, there is

generally a greater scope for the LP to frustrate attempts to switch in LPL processes as compared to GPL processes, due to the validation that consumers need to obtain from it. The same is potentially true in the C&R process, especially where consumers contact their existing provider first when switching.

- 4.87 In our consumer research 2010 we asked those who had switched provider how easy or difficult it was to get the previous provider to provide the information necessary to switch (see Figure 22). The majority of consumers surveyed felt that getting their previous supplier to provide the necessary information was an easy aspect of switching, but a minority (around 1 in 10) felt that it was difficult.

Figure 22 – Ease or difficulty in getting information needed to switch

	Easy	Difficult
Bundle	66%	13%
Pay-TV	45%	10%
Fixed broadband	59%	14%
Mobile	62%	12%
Fixed-line	52%	14%

Question: How easy or difficult did you find getting your previous supplier to provide you with the information that you needed to be able to switch to another supplier? Base: All decision makers who have switched in the last 12 months (125 Package, 87 pay TV, 373 Broadband, 341 Mobile, 216 Fixed line). * Caution: low base.

Source: Ofcom consumer research 2010, fieldwork carried out by Saville Rossiter-Base in February to March 2010

- 4.88 Due to low base sizes, we are not able to break these results down by switching process based on our latest research so below we consider previous research we have undertaken in this area.

The PAC/MAC processes

- 4.89 The majority of customers that request a PAC or MAC from their existing provider in order to switch appear to obtain it without significant difficulty. However, for some, this stage of the process can become an obstacle to switching. Between July 2009 and June 2010, around 3% (3,200) of our OAT complaints were about difficulties consumers faced with PACs and MACs.
- 4.90 Our PAC research 2009 looked at the experience of mobile consumers contacting providers to switch. This suggested a minority of consumers experienced difficulties in getting in contact with the LP to obtain a PAC. The study found 75% of shoppers only needed to speak to one member of staff, but 23% had to speak to two and 2% needed to speak to three to get the code.
- 4.91 Our PAC research 2009 also found that 7% of the mystery shoppers who attempted to obtain a PAC were told it was not possible to provide the code and 3% of callers did not receive the code after being told that it would be sent to them after the call. In practice, this may be even higher, since fully-briefed shoppers were tasked with persisting in their attempts to obtain a PAC and it may be that less well informed consumers would not be so persistent.
- 4.92 Difficulties obtaining a PAC were also found in our MNP research 2009. Some of the consumers said they had to call a number of times before succeeding in getting their

PAC, whilst others did not receive the PAC even when they were told that it would be sent to them. Some were delayed by claims by customer services representatives that the system for issuing PACs was temporarily not working or by being passed to several different representatives before speaking to one who could issue a PAC.

- 4.93 From 11 April 2011 we will require PACs to be issued either immediately over the phone or by SMS within two hours.⁵⁹ This will cut the risk of consumers being delayed in receiving their PAC or having to call several times in order to obtain it.
- 4.94 In our bundles research 2008 obtaining a MAC was identified as a significant issue, with some participants in the focus groups being told that it would take 7-10 days for them to receive a MAC and some not hearing anything from the provider subsequently. There were reports that when a consumer who had not received a MAC called back, there would be no record of the request and the process would have to start again. More recent consumer research by a price comparison service⁶⁰ found that 4% of consumers gave up on switching due to problems with getting a MAC code.
- 4.95 Data provided by industry suggests the average time it takes to provide a MAC varies quite widely. Some providers provide a MAC to customers wanting to switch broadband provider on average in a matter of minutes, whereas for others it generally takes a few days.

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 any evidence you have to support your views.

Save activity

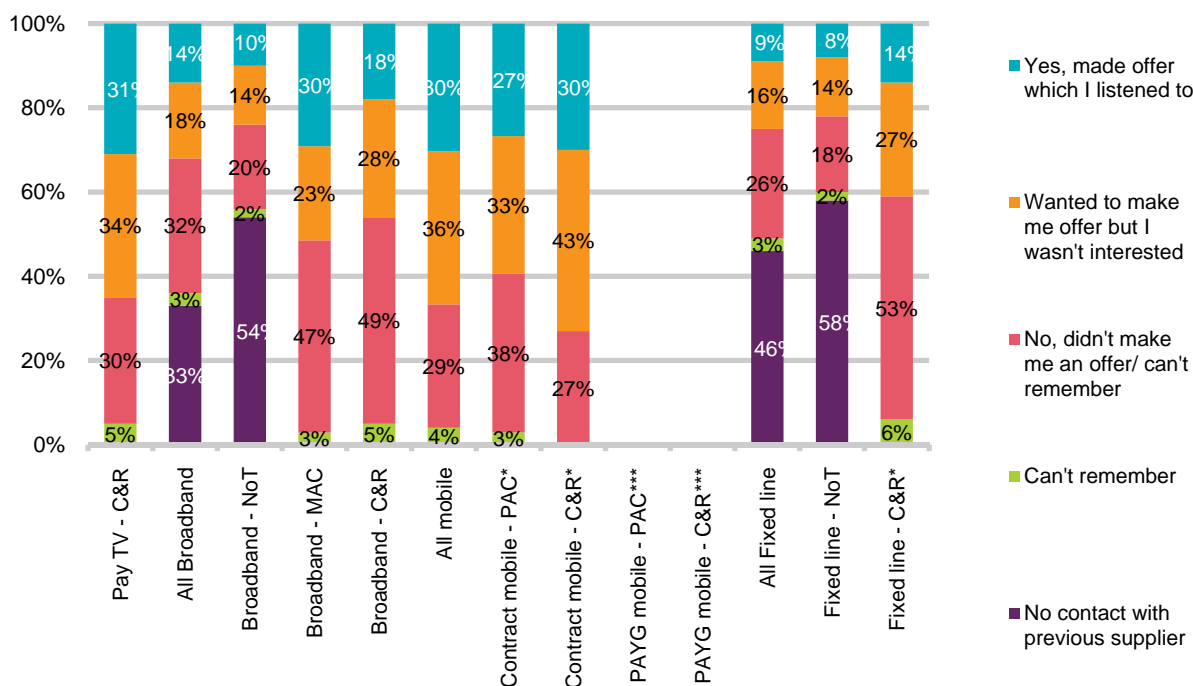
- 4.96 Some consumers may begin the switching process, but not complete it after receiving an offer from their original provider which tempts them to stay. At a service level, our consumer research 2010 found that between 9% (fixed-line) and 31% (pay TV) switchers had listened to a save offer from their losing provider. As expected, switchers going through a MAC/PAC or C&R process were more likely than switchers going through a NoT process to have listened to a save offer.
- 4.97 Save activity was identified as a barrier to some considerers deciding not to switch (13% broadband, 17% mobile, 17% bundle).⁶¹ Of those considerers that were in contact with their LP about their intention to switch, around half experienced save activity. Around four in five of these accepted the save offer and 1 in 5 said they felt put under pressure by the LP to stay. Reasons given for feeling put under pressure included being told by the LP that they would not do better elsewhere and that it was not possible for them to leave their contract.

⁵⁹ <http://stakeholders.ofcom.org.uk/consultations/mnp/statement>

⁶⁰ Moneysupermarket.com online poll carried out by Opinium Research February 2010 <http://www.moneysupermarket.com/c/press-releases/broadband-providers-still-failing-on-mac-codes/0009167/>

⁶¹ Our switching research 2009 found 14% of respondents who had considered switching mobile network, but decided not to, said that their reason for not switching was that their supplier had matched or improved on a competitor's offer. For fixed-line and internet the figures were 10% and 11% respectively of those that had considered switching but not gone through the process.

Figure 23 – Save activity by process



Question– When you were in contact with your previous supplier, did they make you any kind of offer to stay with them? (Prompted responses, single coded)

Base: All decision makers who have switched last 12 months (109 pay TV C&R, 451 Total Broadband, 161 Broadband NoT, 125 Broadband MAC, 109 Broadband C&R, 212 Total Mobile, 70 Contract mobile PAC, 74 Contract Mobile C&R, 327 Total Fixed line, 206 Fixed line NoT, 75 Fixed line C&R). *Caution: Low base, ***Base too low for reporting

Source: Ofcom consumer research 2010, fieldwork carried out by Saville Rossiter-Base in February to March 2010

- 4.98 Save activity is a particular feature of LPL processes as there is an inbuilt requirement for potential switchers to identify themselves to their provider and therefore a built in opportunity for the provider to attempt to persuade them to stay.
- 4.99 In GPL processes the LP does not have such a targeted opportunity to make alternative offers only to those customers who are looking to switch. Data provided by industry showed that, whilst save activity occurs across all products and processes, it is a more prominent feature of LPL processes.
- 4.100 If consumers call their current provider purely with the intention of switching, this save activity may be seen as part of a barrier to switching. However, it may also be viewed as a positive experience that gives consumers the opportunity to obtain a favourable offer from their current provider. Our consumer research 2010 and our MNP research 2009 suggests attempts by providers to retain customers can be seen in a positive way by some consumers, as long as they do not put too much pressure on consumers to stay. Some consumers expressed disappointment where there was no effort to retain them.
- 4.101 The stage at which a save offer is most likely to be made is when a consumer seeks a code from their provider that would allow them to proceed with the switch. In our consumer research 2010, amongst switchers going through the PAC process, 27% were made an offer that they listened to and 33% said the provider wanted to make them an offer but they were not interested (Figure 23). The proportions for switchers going through the MAC process were 30% and 23% respectively.

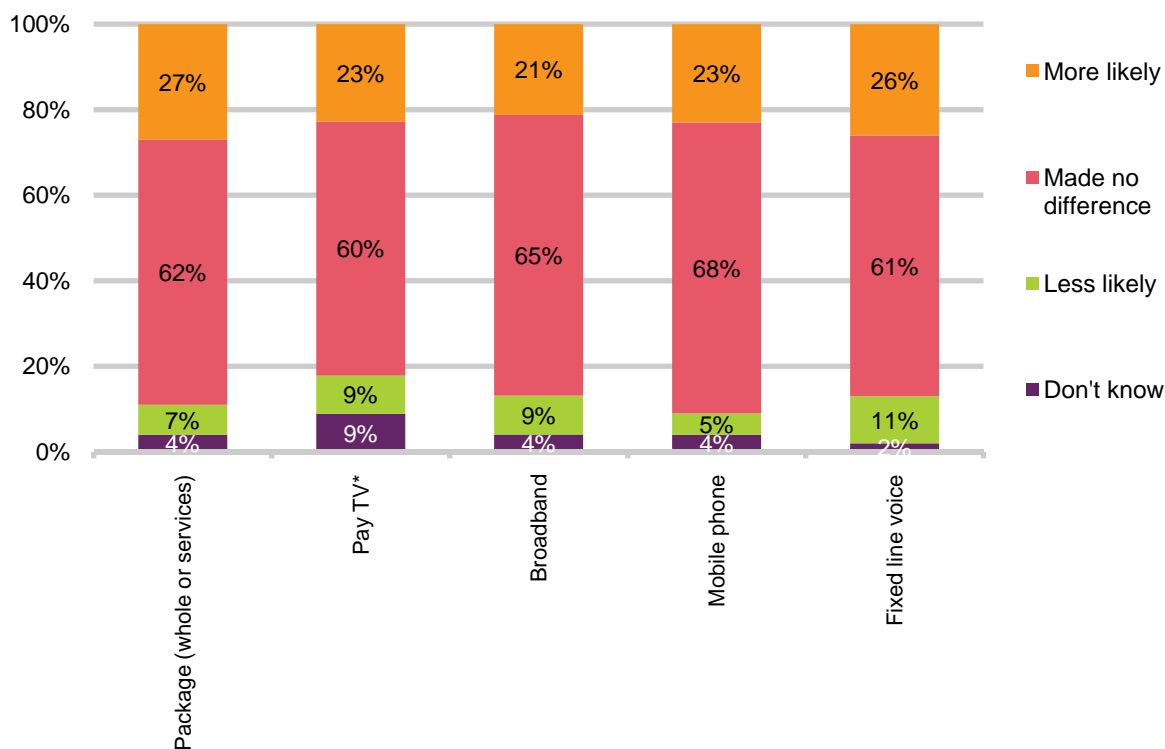
- 4.102 Providers also have an opportunity to make a save offer when a consumer contacts them to stop their service. In our consumer research 2010, the proportion of switchers going through C&R who said they listened to a save offer varied across the services (14% fixed-line, 18% broadband, 30% mobile and 31% pay TV) as did the proportion who said the provider wanted to make them an offer but they weren't interested (27% fixed-line, 28% broadband, 43% mobile and 34% pay TV).
- 4.103 Data provided by industry suggests that save activity is a common feature of LPL switching processes. Some providers offer price discounts to customers when attempting to switch broadband or mobile service provider, and in many cases there are incentives for call handlers to retain customers. The limited evidence gathered from a small number of providers does suggest the discounts offered by some providers to retain consumers appear to be large at between [3<] and [3<] for MAC processes and [3<] and [3<] for PAC processes.
- 4.104 Whilst we have only been able to gain a limited picture of the scale of discounts offered by providers to attempt to retain customers, it seems that in some cases significant discounts or other benefits are made available to those who attempt to switch providers and ask for a MAC or PAC from their provider. On the other hand, by no means all consumers that express an interest in switching will be made an offer, with save policies varying quite widely in their targeting of consumers.
- 4.105 Some providers also attempt to save customers that switch through the NoT process. However, there is less scope for targeted save activity in these cases as consumers do not have to contact their existing provider in order to switch.
- 4.106 There is also some data provided by industry to suggest that some consumers that come to a new provider when they wish to switch but do not have the necessary validation code (MAC or PAC) and subsequently have to go back to their original provider to obtain the code are not converted into new customers. This suggests that once these consumers get back in contact with their original provider, they are persuaded not to switch, either due to save activity or due to any ETCs they may be liable for, or due to the difficulty of the process in general. We discuss this issue in more detail in section 5.

Question 6: Do you think consumers' experience of save activity is a key issue we should tackle in this review? Please provide any evidence you have to support your views.

Propensity to switch

- 4.107 In our consumer research 2010, we asked whether consumers' experience of the switching process made them more or less likely to switch in the future. These findings shown in Figures 24 and 25 should be treated with some caution as consumers' stated intentions do not always reflect consumers' actual behaviour. Due to the potential concern about stated intentions, we are not placing too much weight on the actual levels of propensity to switch but rather we consider whether there are any relative differences across the services or processes.

Figure 24: Propensity to switch by service (switchers)



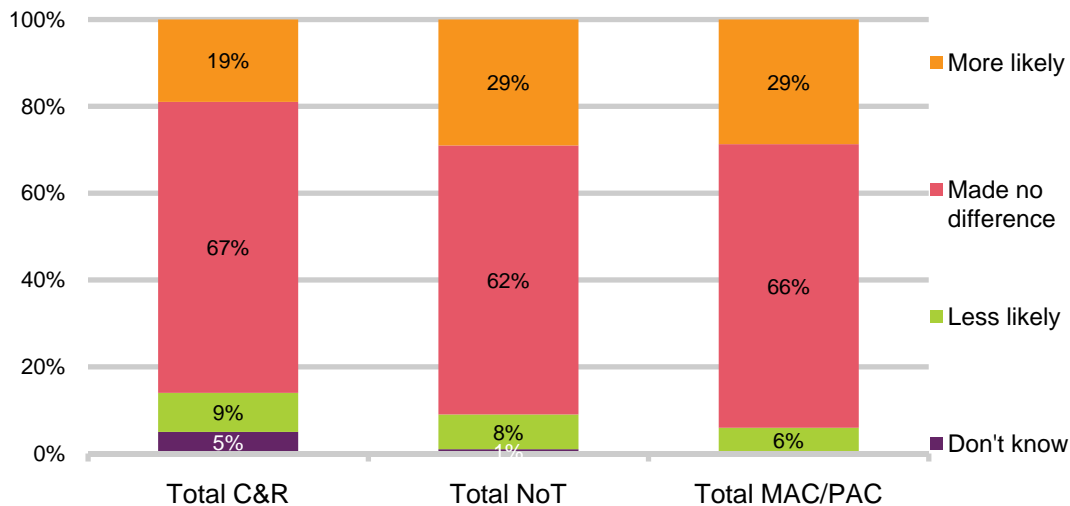
Question – If you were thinking about changing supplier for your (SERVICE) in the future, has your overall experience of the process made you more likely or less likely to make this change, or has it made no difference? (Prompted responses, single coded)

Base: All decision makers who have switched provider in the last 12 months (125 Package, 87 pay TV, 373 Fixed broadband, 341 Mobile phone, 216 Fixed line voice), *Caution: Low base

Source: Ofcom consumer research 2010, fieldwork carried out by Saville Rossiter-Base in February to March 2010

4.108 Only a minority of those switching say their experience will impact their future behaviour. Amongst switchers, no process is more likely to have a higher proportion of users *less likely* to change supplier in the future. However, a significantly higher proportion of NoT and MAC/PAC⁶² users say they are now *more likely* to switch as compared to switchers that went through a C&R process.

⁶² There was no statistically significant differences between consumers that said they were likely to switch and had gone through the MAC process (27%) as compared to the PAC process (30%).

Figure 25: Propensity to switch by process (switchers)

Question– If you were thinking about changing supplier for your (SERVICE) in the future, has your overall experience of the process made you more likely or less likely to make this change, or has it made no difference? (Prompted responses, single coded)

Base: All decision makers who have switched in the last 12 months using C&R (387), NoT (367), MAC/ PAC (237).

Source: Ofcom consumer research 2010, fieldwork carried out by Saville Rossiter-Base in February to March 2010

Business consumers

4.109 We believe that many of the residential consumers' experiences of switching are also relevant to our consideration of the experiences of small businesses. We set out below specific findings relating to the experiences of business consumers.⁶³

Switching levels

4.110 Business consumers are generally more likely than residential consumers to switch provider. Our survey of business consumers in 2009 identified that 12% of businesses had switched their broadband provider, 17% their mobile provider and 18% their fixed-line provider in the previous 12 months.⁶⁴

Hassle

4.111 The frustrations experienced by business consumers of communications services tend to centre on unreliable connections, poor customer service and value for money. However frustration caused by difficult switching processes is consistently one of the ten most mentioned causes of frustration across all markets (3-5% of business consumers).

4.112 One of the reasons for business consumers not switching seems to be the perception that the process of switching is difficult, costly or time-consuming. Among those who considered switching but decided against it, complicated processes were a barrier to 10% of mobile users, 12% of fixed-line users and 16% of internet/data users.

⁶³ This draws on research presented in the Business Consumer Experience Report 2009 <http://stakeholders.ofcom.org.uk/binaries/research/consumer-experience/bce.pdf>. It should be noted that this includes a sample of businesses that fall outside the scope of the Review (i.e. have more than 10 employees). Although it has not been possible to break the data down to look solely at those businesses that only have 10 employees or less, we still believe it offers some valuable insights into business consumers' experiences of switching.

⁶⁴ This compares to switching levels for residential consumers in 2009 of 9% for broadband, 11% for mobile and 8% for fixed-line.

- 4.113 When we asked those businesses who had switched provider whether they found it easy to do so, we found that a large majority found it easy to do so (82% of mobile switchers, 80% of fixed line switchers and 75% of broadband switchers).
- 4.114 Having said this, those who encountered problems experienced considerable difficulties, and it is clear that where the switching process does not work well, considerable frustration is caused. For example, difficulties in porting numbers and commencing services seemed to be a problem for some mobile and fixed-line business consumers:
- Some mobile switchers found the process 'not very/not at all' easy (15%) but this rises to 18% for fixed-line and to 22% for internet/data.
 - Being tied into a contract was a barrier for 13% of fixed-line users and 6% of internet/data users.
- 4.115 Business consumers are more likely to find switching difficult in the internet/data market: 22% of switchers said it was difficult compared to 15% in the mobile market and 18% in the fixed-line market.

Continuity of service

- 4.116 Fear of losing their service deterred 8% of internet/data business consumers from switching.
- 4.117 In our MNP research 2009, we found that for business consumers, anxiety around the MNP process can be exacerbated by the greater level of risk associated with things going wrong, or not happening as they are supposed to. This means that the reasons for switching have to be sufficient to justify exposing the company to this risk. Again, although the decision to switch is generally unaffected by this, it is not something that is undertaken lightly when number porting is a non-negotiable part of the process.

Slamming

- 4.118 Analysis of OAT complaints from small business consumers about slamming suggests they face similar problems to residential consumers. In certain circumstances the impact may be greater on a small business, for example if a business consumer loses its telephone number as a result of being slammed and there is no mechanism to have it restored it may lose custom from customers trying to use that number or face additional costs having to market the new number.

Save activity/negotiating with providers

- 4.119 Our Business Consumer Experience Report 2009 suggests more than three-quarters of mobile business users (77%) had been successful in their negotiations with their existing provider to get a better deal.
- 4.120 Successful negotiation was less common in the fixed-line market. Almost two-fifths of fixed-line business users (37%) had been refused a better deal from their providers. And 10% of those who had tried to get their provider to match a better deal could not yet say whether they had been successful.

- 4.121 Successful negotiation was only marginally more likely in the internet/data market where a similar proportion (36%) had been refused a better deal by their existing provider.
- 4.122 Our MNP research 2009 found that business consumers who are leaving in order to improve their package or deal are typically happy to give their existing provider the opportunity to match this. Those that are leaving because they have had problems with their existing provider (e.g. poor customer service or coverage issues) have already made their decision to leave by the time they call to request their PACs – and accept that the network can do little to retain them.

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.

Key findings

- 4.123 Based on our analysis of the evidence on consumers' switching experiences we are of the view that GPL processes result in significantly less hassle and are easier for consumers to navigate. There are particular consumer experience concerns with the switching processes for fixed-line and broadband services relative to mobile and pay TV services. Fixed line and broadband are the services where there is evidence of greatest harm:

Hassle

- Switching processes do not appear to be a key barrier to inactive consumers not switching but is a factor in some considering deciding not to switch.
- Switchers are more likely to rate GPL processes as easy compared to LPL processes, and GPL and LPL processes are more likely to be rated as easy compared to the C&R process.
- GPL processes are associated with lower levels of switching costs (for example involves fewer touch points, does not require consumer to co-ordinate stop and start of the service, lower proportion of consumers who find the process difficult).
- Fixed-line and broadband where C&R or MAC is used stand out as areas where switchers' consumer experience appears to be relatively poor.
- There is limited evidence of some consumer experience issues with the mobile PAC process and the C&R process for pay TV relative to other switching processes.

Clarity

- There is a lack of clarity and predictability for consumers and providers due to multiple switching processes that differ depending on the service and underlying technology.
- Consumers expect they will only need to go through a single switching process to switch a bundle when they may in fact need to navigate two or three processes at

the same time. Given the trend towards bundling, having a simple and clear process for switching bundles is likely to become increasingly important.

- LPL and C&R processes may have an advantage over GPL processes in terms of the provision of information about consumers' contractual liabilities if they decide to switch. However, this increases the complexity of the switching process and consumers can find it difficult to process and use the information to make effective decisions.

Continuity of service

- A significant minority of consumers have had an unwanted break in service when switching. This is most likely to be a problem for fixed-line and broadband consumers going through a C&R process. This is to be expected as C&R is not a seamless switching process and it is the responsibility of the consumer to coordinate the start and stop of the service.
- A minority of consumers have faced additional costs where they inadvertently or actively decided to overlap service provision between the LP and the GP to ensure continuity of service.

Slamming

- Slamming creates significant harm for those consumers affected including time and effort trying to resolve the situation and financial harm where consumers are charged for ETCs if they are slammed during their MCP.
- The vast majority of slamming complaints we receive are from consumers with fixed-line as a standalone service or combined with broadband. Only a small proportion of complaints are from consumers with broadband as a standalone service or mobile.
- GPL processes would be expected to involve a greater risk of slamming than LPL processes, due to the lower levels of validation that they generally require. Experiences in other sectors and countries suggest it is possible to have a GPL process that adequately protects against slamming.

Ability of providers to frustrate the process

- A small proportion of consumers have experienced difficulties in getting the information they need from their LP before they can switch. There is a greater risk of providers frustrating the switching process in a LPL process (e.g. delays in providing MACs/PACs).
- Changes are being made to the PAC process to reduce the risk of consumers being delayed in receiving their PACs.

Save activity

- A significant minority of switchers listened to a save offer from their LP. As expected, switchers going through a MAC/PAC or C&R process were more likely than those going through a NoT process to have listened to a save offer.
- Save activity is a barrier to some considerers deciding not to switch. A minority of considerers say they felt put under pressure by the LP not to switch.

Section 5

Impact on competition & market structure

Introduction

- 5.1 This section considers the impact of switching processes on competition and market structure. We first aim to identify the key dimensions of the switching processes so we can meaningfully assess the impact on competition of:
- the level of switching costs implied by each switching process;
 - the potential for providers under each process to segment consumers and hence practice price discrimination. In particular, we focus our attention on save activity i.e. the potential for firms under each process to effectively identify and retain consumers looking to switch; and
 - the use of multiple switching processes for a given service and across bundles.
- 5.2 We look at each issue in turn and assess its likely impact on competition. For each issue, we first look at what economic theory tells us about it. Then we analyse the likely impact of the different switching processes on competition relying on basic economic principles, academic findings and evidence currently available to us (mainly from our consumer research 2010 and data provided by the industry through a formal information request).

Switching costs

- 5.3 Switching costs arise when there is a cost incurred by changing supplier that is not incurred by remaining with the current provider.⁶⁵ There are several types of switching costs including transaction costs, compatibility costs, learning costs, contractual costs, equipment costs, uncertainty costs, psychological costs, shopping costs and search costs.
- 5.4 While the economic literature analyses 'switching costs' as generally including all the different types of costs mentioned above, not all of these costs are relevant for our assessment of switching processes. For instance, search costs (of finding alternative products), learning costs (of how to use the new products) and contractual costs are all costs that might be incurred irrespective of what switching process a consumer has to go through in order to switch providers.
- 5.5 In this consultation, we focus on the switching costs associated with different switching processes, i.e. those costs that vary from one switching process to another.⁶⁶ Switching costs may vary from one consumer to another. However, for any given consumer, some switching processes may imply higher switching costs than

⁶⁵ See http://www.offt.gov.uk/shared_offt/reports/comp_policy/oft655.pdf, paragraph 1.1.

⁶⁶ While we are not concerned with non-process switching costs here, we recognise that these costs may become relevant when considering the dynamics of the market. Where process costs are reduced for example by regulatory intervention or technological development, providers may well raise switching costs through other ways. For example, they may increase product differentiation or pricing complexity or introduce new contractual terms in order to increase consumers' switching costs.

others. These costs may be either inherent to the processes (e.g. some processes imply a greater number of touch points with communication providers) or they may result from the fact that some processes make it easier for providers to create artificial switching costs.⁶⁷

- 5.6 The level of switching costs can significantly affect the level of prices and the nature of competition within the market and therefore will affect how well the market delivers for consumers.

The economics of switching costs

- 5.7 This section highlights some of the key findings of the extensive economic literature on switching costs. Switching costs can impact on the market in four key ways. They can affect the:

- structure of prices
- level of prices
- extent of new entry and expansion
- level of consumer welfare and industry profits

- 5.8 There are two comprehensive surveys on switching costs by NERA (2003)⁶⁸ and Farrell and Klemperer (2007).⁶⁹ We have heavily relied on these surveys in this section.

Structure of prices

- 5.9 With switching costs, firms view consumers as being of higher value than they would without switching costs. This is because once consumers are acquired there is a high likelihood that they will make repeated purchases due to the future difficulty of switching i.e. the 'locking-in' of consumers implies a stream of future revenues. This leads to firms competing harder to acquire consumers in the first place. This increased competition in consumer acquisition leads, in theory, to firms pricing low initially (e.g. introductory offers), sometimes aggressively at prices below cost, only to raise prices later once the consumer is locked in.⁷⁰
- 5.10 In the communications markets, broadband providers often have subscription offers for new customers, which include a zero or discounted monthly fee for an initial period of time (e.g. first three months) if they sign a long-term contract. MNOs generally offer free handsets (sometimes worth hundreds of pounds if purchased in isolation) when consumers subscribe to a mobile contract plan. If the MNO (or broadband provider) fully recovered the cost of the handset (or initial discount) during the MCP and the consumer does not switch provider at the end of the contract

⁶⁷ In technical terms, there are both exogenous and endogenous switching costs associated with the processes i.e. costs inherent to the processes and costs created by providers but enabled by the processes respectively.

⁶⁸ Ibid

⁶⁹ J. Farrell and P. Klemperer (2007), "Coordination and Lock-in: Competition with Switching Costs and Network Effects." In Armstrong, M. and R. Porter eds, *The Handbook of Industrial Organization*, Vol.3, Amsterdam: North-Holland.

⁷⁰ The terms 'low' and 'high' are with respect to the prices that would prevail in the absence of switching costs. This pricing structure "is a main theme" of the switching costs literature (Klemperer and Farrell (2007, page 1982)).

period, then this implies that beyond the end of the MCP, existing consumers are paying higher prices than new consumers. This is because they continue paying the same monthly charge that includes a cost recovery element on the handset (or initial discount) even though this has already been recovered during the MCP.⁷¹

- 5.11 The structure of prices implied by switching costs ('low' introductory and 'high' subsequent prices compared to those that would prevail in the absence of switching costs) is inefficient. It "distorts buyers' quantity choices" and "gives consumers wrong signals about whether to switch".⁷²

The level of prices

- 5.12 Switching costs can also affect the level of prices in a market. Generally, its impact on the level of prices will depend on a number of factors, including the maturity of the market and market shares and the extent of price discrimination⁷³ between 'new' and 'existing' customers. These are discussed below.

Impact of maturity of markets and market share

- 5.13 The impact of switching costs depends on the level of maturity of the market. In growing markets, the presence of new customers is likely to intensify competition and result in lower price levels for consumers at a given point in time, whilst in markets approaching maturity there may be greater concern about higher average price levels at a given point in time. In the presence of switching costs and no price discrimination between existing and new consumers, a firm's market share will have a key influence in determining whether it will set higher prices than its rivals. These issues are explained in more detail below.
- 5.14 In growing markets, existing consumers co-exist with new consumers entering the market. When firms set the same price to their existing and new consumers, they face two conflicting incentives.⁷⁴ On the one hand, they would like to set high prices so as to exploit their existing customers who are locked-in because of the switching costs. On the other hand, setting high prices may not be the best strategy to win new customers. The net impact of these conflicting incentives on the uniform price set by a firm will be determined by two key aspects (among others). These are the stage of development of the market and the firm's market share.
- 5.15 When firms cannot price-discriminate between existing consumers and new consumers, we would generally expect that the presence of new consumers in strongly growing markets intensifies competition. New consumers may generally be tempted to enter the market only if firms make attractive offers. Therefore, *at a particular point in time*, economic theory would suggest that average prices in a

⁷¹ Consumers may obtain a free handset after the minimum contract period, but this comes at a cost, e.g. they have to upgrade their contract and commit to another MCP. Also, one could argue that the cost of the handset is recovered over a longer period than the MCP i.e. the MNO factors in the average actual time before switching arises when setting the price. However, whatever that period is, past the MCP consumers are effectively paying 'higher' prices compared to a new consumer who pays the same charge but has a new handset. Therefore, either way, the argument that consumers initially pay a lower price than they do at a later stage remains valid.

⁷² Farrell and Klemperer (2007, *ibid*)

⁷³ Price discrimination occurs when sales of the same good or service are transacted at different prices from the same provider. In particular, it occurs when differences in prices do not reflect differences in costs.

⁷⁴ See e.g. J. Farrell and C. Shapiro (1988), "Dynamic competition with switching costs", *Rand Journal of Economics*, 19(1), 123-137.

strongly growing market with switching costs can be below those that would prevail in a market without switching costs.⁷⁵ It does not, however, mean that this holds true *over the lifecycle* of the product (we discuss this below).

- 5.16 As markets approach maturity, firms' concern about pricing new consumers out of the market diminishes. In this case, it may be more profitable for firms (especially those with a large customer base) to set 'high' prices, exploiting their existing locked-in consumers. As a result, average prices *at a particular point in time* tend to be higher in a mature market with switching costs than without switching costs. Therefore, when firms are not able to set different prices to their existing and new customers, high switching costs are likely to pose a greater concern in markets approaching maturity or that are mature compared to growing markets, all else being equal.
- 5.17 While the stage of market development may impact the general level of prices in the industry, it is a firm's market share that will arguably have the greatest influence on whether under uniform pricing it will set higher prices than its rivals or not. All things being equal, a firm with a higher market share will typically set higher prices because it has a larger proportion of locked-in consumers.⁷⁶ This is because for that firm, the gains from exploiting a large base of locked-in consumers are potentially greater than the gains from winning a relatively few new consumers. Furthermore, for a firm with a large market share, a potentially undesirable effect from lowering prices to attract new consumers is that it may trigger more intense competition from those rivals with low market shares. Firms with a low market share have few locked-in consumers and have therefore greater incentives to win new consumers rather than exploiting their small customer base.

Impact of price discrimination

- 5.18 So far, we have assumed that firms set the same price to new and existing customers. However, in many cases the ability to set different prices to new and existing customers affects some of the findings in the literature discussed above.
- 5.19 When firms can price discriminate between their existing and new consumers, prices to locked-in consumers are more likely to be 'high' in later periods even in growing markets. This is because price discrimination partly eliminates the conflicting incentives that occur under uniform pricing as firms can set one low price to attract new consumers and a separate higher price to their locked-in consumers. As a result, when firms are able to perfectly segment the market and price discriminate between 'existing' and 'new' consumers, market shares no longer have an influence on firms' prices resulting in all firms generally charging lower prices to new consumers compared to existing consumers.

Impact on new entry and expansion

- 5.20 Switching costs generally make entry into a market more difficult because entrants must persuade consumers to incur the switching costs. If economies of scale or network effects are important in a market with high switching costs, then large-scale

⁷⁵ NERA (2003, Part One, paragraph 4.24)

⁷⁶ See J. Farrell and C. Shapiro (1988, *ibid*); A. Beggs and P. Klemperer (1992), "Multiperiod competition with switching costs", *Econometrica*, 60 (3), 651-666; and J. Padilla (1992), "Mixed pricing in oligopoly with consumer switching costs", *International Journal of Industrial Organization* 10, 393-412.

entry is likely to be difficult.⁷⁷ This is particularly relevant in the communications sector given the importance of network effects in these industries.

- 5.21 However, high switching costs can encourage entry at the fringes.⁷⁸ If firms cannot price discriminate or if there is a strategic constraint on the price differential between new and existing consumers,⁷⁹ incumbents with a large customer base will likely opt for 'harvesting' their customer base and not engage in competition for new consumers.⁸⁰ This implies that new entrants can specialise in acquiring new consumers and grow "under the umbrella" of the incumbents. Switching costs may thus create stable market competition where small players tend to progressively grow and large players tend to progressively shrink.
- 5.22 The above is best understood by noting that new entrants do not have existing customers and therefore do not face the conflicting incentives of firms that have existing customers but would like to win new ones. The incentives of entrants are somewhat similar to those of existing firms with very small market shares where the trade-off when setting a uniform price is largely tipped towards lower prices that would allow them to increase their market share rather than higher prices to exploit their (small) customer base.
- 5.23 However, where price discrimination between new and existing customers is possible the barriers to entry are higher since the incumbent can offer a low price to new customers whilst also 'harvesting' their existing customer base. This makes it harder for new entrants to win new customers.

Level of consumer welfare and industry profits

- 5.24 Perhaps the most common perception is that switching costs have a negative impact on competition because they arguably prevent consumers from exercising one of the most effective market disciplining devices which is their ability to switch between providers.
- 5.25 However, some findings from the academic literature suggest an alternative view. A complete assessment of the effects of switching costs on profits and consumers' surplus should take into account prices over the lifecycle of the products. The low prices that consumers may be initially charged in the presence of switching costs are the result of intense competition to win new customers and achieve lock-in. Some academics have argued that such intense competition may actually lead to ex post profits being competed away.⁸¹ In other words, it may be possible that the *prices over*

⁷⁷ J. Farrell and P. Klemperer (2007, *ibid*).

⁷⁸ See A. Beggs and P. Klemperer (1992, *ibid*); P. Klemperer (1995), "Competition when consumers have switching costs: An overview with applications to industrial organization, macroeconomics and international trade", *Review of Economic Studies*, 62, 515–539; and J. Farrell and P. Klemperer (2007, *ibid*).

⁷⁹ Firms may be wary of antagonising their regular customers if they offer much better deals to new customers.

⁸⁰ This decision however is likely to be affected by other variables such as the firms' discounting factor. For example, if incumbent firms strongly value the future at the time new entrants enter the market, they may prefer to delay 'harvesting' to the future and invest more in new customers 'today'.

⁸¹ See, e.g., P. Klemperer (1987), "Markets with consumer switching costs", *Quarterly Journal of Economics* 102, 375-394 and "The competitiveness of markets with switching costs", *Rand journal of economics* 18, 138-150. See also J. Farrell and C. Shapiro (1989), "Optimal contracts with lock-in", *American Economic Review* 79, 51-68 and C. Shapiro (1995), "Aftermarket and consumer welfare: making sense of Kodak", *Antitrust Law Journal* 63, 483-512.

the lifecycle of the product may not be higher than those that would apply in the absence of switching costs.

- 5.26 While in simple models, it is actually possible to show that prices over the lifecycle of a product may not be affected at all by the existence of switching costs,⁸² this is unlikely to be the case in more complex settings that characterise markets in practice. For instance, richer models show that prices and firms' profits are generally higher with switching costs than without.⁸³
- 5.27 The idea that ex ante competition for consumers may compensate for higher prices ex post relies on the implicit assumption of an efficient transfer of profits between periods. The NERA (2003) report notes there are a number of conditions that could prevent ex-post profits being passed through to the consumer at the stage of competition for consumer acquisition. These conditions are:
- The profits that could be extracted once a consumer was locked in were unknown (or more generally difficult to estimate ex-ante).
 - Firms were unable to borrow today against future profits.
 - Firms were risk-averse and so unwilling to incur losses today on the expectation of profits tomorrow.
 - The potential profits from locked-in consumers would require firms to actually pay them to take their products in the first place, (which would attract consumers who are only interested in the bribe), and arrangements such as vouchers against future purchases to deter such consumers are not possible.
 - If heterogeneous buyers have switching costs that differ in a way firms cannot observe.
 - If competition in the initial period is in socially wasteful activities such as excessive advertising or marketing expenditures.
 - If competition in the initial period is weak.
- 5.28 The NERA (2003) report suggests that any of these conditions is *sufficient* to prevent profits being transferred to the consumer. They argue that even if competition in the initial period is fierce, firms are not risk averse and know consumers' switching costs with certainty, other reasons exist why switching costs are likely to raise prices over the lifecycle such as discounting, aggressiveness of competitors and customer expectation. More specifically:

⁸² See Farrell and Klemperer (2007, *ibid*).

⁸³ These models are richer in the sense that, unlike most of the models listed in footnote 81 suggesting that markets with switching costs may be more competitive, they capture some of the dynamics aspects of market and/or acknowledge that consumers may differ in their switching costs. For example, J. Farrell and C. Shapiro (1988, *ibid*) and J. Padilla (1995, "Revisiting dynamic duopoly with consumer switching costs", *Journal of Economic Theory*, 67, 520–530) show that duopolists can earn positive profits by holding asynchronous sales so as not to compete with each other even if they compete in prices and their goods are undifferentiated except by switching costs. Beggs and Klemperer (1992, *ibid*) and Chen (1997, "Paying Customers to Switch", *Journal of Economics and Management Strategy*, 6, 877-897) show that firms' profits are higher with switching costs than without switching costs. Padilla (1992, *ibid*) shows that, despite the presence of new consumers in the market leading to prices that are lower compared to a static market, prices and profits are overall still higher than in the absence of switching costs.

- *Discounting* – If firms value the present more than the future (e.g. £1 has a greater value today than £1 in the future), then they will have a preference for today's profits compared to the same profit in the future. More specifically, firms may not price too low in order to build a customer base, preferring instead to extract profits from locked-in consumers.
- *Aggressiveness of competitors* – If a firm prices too low initially and builds a large customer base, it may expose itself to smaller firms being more aggressive in the future. All else being equal, this reduces the incentives for firms to give too much away in order to attract customers.
- *Consumers' expectations* – Consumers may not be myopic, i.e. they may anticipate that a low price today implies high prices tomorrow. As a result, their attraction to introductory low prices may be reduced, i.e. they become less price-sensitive. This in turn reduces firms' incentives to set low prices in order to attract consumers.

5.29 Further, the increasingly growing empirical literature on switching costs generally lends supports to the view that switching costs dampen competition. A large part of the recent literature has actually focused on the communications sector. In particular this literature has tested the impact of number portability on competition and prices.⁸⁴ Number portability is interpreted in this literature as lowering switching costs and there is some evidence that it does.⁸⁵ The findings from this literature are generally consistent with the view that lowering switching costs increases competition and reduces prices.⁸⁶

5.30 Earlier research in the communications sector not specifically related to number portability has found evidence of heterogeneity in switching costs among subscribers in the long distance telephony market in the US and that consumers with higher switching costs pay higher prices.⁸⁷ In other sectors, research has also provided evidence that switching costs are a major determinant of pricing in the credit card

⁸⁴ See e.g. S. Buehler et al. (2006), "Mobile number portability in Europe", *Telecommunications Policy* 30 (7), 385-399; S. Lyons (2006), "Measuring the benefits of mobile number portability", *Trinity Economic Papers* No. tep 2009; M. Shi et al (2006), "Price competition with reduced consumer switching costs: the case of wireless number portability in the cellular phone industry", *Management Science*, 52(1), 27-38; J. Lee et al. (2006), "Estimating the extent of potential competition in the Korean mobile telecommunications market: switching costs and number portability", *International Journal of Industrial Organisation*, 24, 107-124; and B. Viard (2007), "Do switching costs make markets more or less competitive? The case of 800-number portability", *Rand Journal of Economics*, 38 (1), 146 – 163.

⁸⁵ Viard (2007, *ibid*) documents that this was the case in the US toll-free market and Maicas et al. (2009, "Reducing the level of switching costs in mobile communications: the case of mobile number portability", *Telecommunications Policy* 33, 544-554) test this hypothesis using Spanish data and find that number portability significantly reduces switching costs.

⁸⁶ For instance Viard (2007, *ibid*) tests for the impact of number portability on average contract prices in the "rapidly-growing" market for toll-free services (a market for large customers). His analysis finds that contracts under non-portability "had significantly higher prices" than contracts under number portability. He also finds that post-portability, prices on contracts with more toll-free services declined more than those with less toll-free service. Viard estimates that portability lowered toll-free prices by approximately fourteen percent for the average consumer.

⁸⁷ See N. Epling (2002), "Price discrimination amid heterogeneous switching costs: A competitive tactic of the telephony resale fringe", *Working paper, Yale University*

industry and that they may explain high interest rates on credit card balances⁸⁸ and low interest rates on bank deposits.⁸⁹

- 5.31 In summary, overall the academic literature's position on switching costs is that "on balance switching costs seem more likely to increase prices"⁹⁰ which would tend to reduce consumer welfare. Furthermore, "switching costs can segment an otherwise undifferentiated market as firms focus on their established customers and do not compete aggressively for their rivals' existing customers, letting oligopolists extract positive profits".⁹¹ This conclusion takes into account not only the theoretical literature, but also the empirical literature that often lends support to the view that switching costs dampen competition.
- 5.32 In relation to entry we have noted above that switching costs tend to make entry more difficult, and where price discrimination between new and existing customers is possible, the barriers to entry are higher.

Potential concerns and analysis of evidence

- 5.33 In this section, we examine the evidence around switching costs associated with switching processes. The sources of this evidence are mainly from our academic workshop, our consumer research 2010 and information provided by industry through a formal information request.
- 5.34 We note that some economists have proposed simple methods for measuring switching costs.⁹² However, we have not attempted specifically to measure switching costs, not least because existing methods measure total switching costs while we are interested only in one element of switching costs i.e. those implied by the switching processes.
- 5.35 Instead, we have conducted a large scale survey into consumers' switching experiences and have used this to identify the relative switching costs generated by the different switching processes. The analysis of the consumer experience (as set out in the section 4) suggests that some switching processes may have a significant impact on the switching costs incurred by consumers.
- 5.36 The evidence shows that the NoT process is more likely to be rated as easy relative to MAC/PAC and C&R, and the PAC process is easier for consumers to navigate than the MAC process (see Figures 15 and 16).
- 5.37 Broadband and fixed-line switchers going through the C&R process are significantly more likely to rate the process as difficult as compared to the NoT process (see Figure 16). Mobile switchers experience less difficulty with the C&R process but there is also a significant minority who are neutral about it. PayTV switchers also

⁸⁸ See L. Ausubel (1991), "The failure of competition in the credit card market", *American Economic Review*, 81, 50–81 and V. Stango (2002), "Pricing with consumer switching costs: Evidence from the credit card market", *Journal of Industrial Economics* 50, 475–492.

⁸⁹ See S.A. Sharpe (1997), "The effect of consumer switching costs on prices: A theory and its application to the bank deposit market", *Review of Industrial Organization* 12, 79–94.

⁹⁰ J. Farrell and P. Klemperer (2007, *ibid*). Their paper is arguably the most recent and most comprehensive survey of the literature on switching costs. Hence the statement takes into account much of the findings in that literature.

⁹¹ *Ibid*

⁹² See e.g. O. Shy (2002), "A quick-and-easy method for estimating switching costs", *International Journal of Industrial Organization*, 20, 71–87 and NERA (2003, *ibid*).

experience less difficulty with the C&R process and are the most likely to rate the C&R process as easy.

- 5.38 It appears that while the level of switching costs generated by the NoT and PAC process may not be significant, the opposite appears to be the case for the MAC and C&R processes (mainly in fixed-line and broadband for the latter).
- 5.39 The NERA (2003) report suggests that one way to test for switching costs is, where there is price discrimination between new and existing consumers, to check whether there is a large price differential between these categories of consumers.⁹³ We asked a sample of providers through a formal information request whether they agreed with the statement that “some offers to new consumers are not available to existing consumers”. The answers suggested that there is some price discrimination between new and existing customers, particularly for broadband services: 53% of broadband providers who answered the above question agreed with the statement, compared with 42% of fixed-line providers and 27% of mobile providers.⁹⁴ Further, 40% of broadband providers agreed with the statement that “some products are available to new customers at a lower price than most existing customers are currently paying for the same product” compared with 33% of fixed-line providers and 27% of mobile providers. However, this information needs to be interpreted with caution since it represents only a sample of firms and the statements were relatively high level and may not capture the full nuances of pricing strategies.
- 5.40 To the extent that the existence of price discrimination between new and existing consumers can be an indication of switching costs, then the above findings are consistent with those from our consumer survey which suggests that switching costs are higher under the MAC process for switching broadband and C&R for switching fixed-line than they are under the PAC process for switching mobile telephony services.
- 5.41 Our consumer research has shown that switchers using the LPL MAC/PAC processes are more likely to agree that switching is “too much hassle” relative to those using the GPL NoT process (see Figure 11). This suggests that LPL processes in general result in greater consumer hassle. However, within different LPL processes there may be substantial variation in the consumer experience. For example, switchers generally found the PAC process easier to navigate than the MAC process. There could be a number of factors to explain this including the incentives faced by providers and the current rules and regulations governing each process.
- 5.42 The evidence presented above is broadly consistent with the academic workshop we held in 2010 to discuss switching costs, save activity and competition with leading academic economists and economists from UK competition authorities. There was a strong consensus that switching costs associated with the switching processes should be minimised as much as possible. The LPL process came across as implying higher switching costs than the GPL processes. There was a strong consensus that higher switching costs dampen competition, and that this was especially true in mature markets.

⁹³ See NERA (2003, *ibid*), Part One, paragraph 6.17. Price discrimination between new and existing customers may suggest that firms are able to exploit lock-in and hence be evidence of switching costs.

⁹⁴ These figures are not weighted by the providers’ market shares.

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

Save activity

- 5.43 In general, save activity arises when a consumer decides not to switch after receiving an offer (generally characterised as a price discount⁹⁵) from their current provider which tempts them to stay.
- 5.44 However, in this consultation document, our reference to save activity is very specific and relates only to save activity within the context of the LPL process. In other words, 'save activity' refers to the situation where the save offer is prompted by the losing provider systematically becoming aware of a consumer's intention to switch before the switching actually takes place.
- 5.45 Save activity under LPL potentially results in two issues which we are interested in:
- It may impact the level of switching costs; and
 - It may have more direct impact on competition (e.g. on industry prices and the incentives of firms to win each other's customers).
- 5.46 The first aspect is covered in the analysis of switching costs above. This section focuses on the impact of save activity on competition.
- 5.47 It is a common practice in many markets for suppliers to make counteroffers to consumers expressing a desire to switch without this being necessarily anti-competitive. This is often the case with bank accounts (e.g. consumers looking to switch ISA accounts may be offered a higher interest rate), credit cards, insurance contracts, and even basic products where suppliers cannot identify consumers individually.⁹⁶ A legitimate question is therefore what is special about the communications sector that might justify the potential concern about save activity.
- 5.48 The key difference in the communications sector is the use of LPL switching processes for some products. Under current LPL switching processes save activity is *prompted* by consumers asking their existing provider to give them the validation code *before* they complete a switch (e.g. a PAC or MAC). This means there is an automatic built-in opportunity for save activity in some switching processes, and an opportunity for providers to identify consumers who are actively thinking about leaving and target save offers at them (enabling providers to very accurately price discriminate between their own active and inactive customers). It is this type of targeted save activity which is the focus of this section. We refer to 'targeted save activity' and 'save activity within an LPL environment' interchangeably.
- 5.49 Therefore our analysis of the impacts of save activity in a LPL process will consider, as the counterfactual, the situation where save activity would not be targeted as it is under the LPL process. This could be a GPL process, or a LPL process where save

⁹⁵ In reality, save offers do not always consist of a price discount. They may also take the form of offering the consumer a different package or different features.

⁹⁶ When suppliers cannot identify consumers or when they do not obtain a signal or notice that the consumer is about to switch, the 'counteroffer' is public e.g., 'we'll beat/match the price if you find a lower price elsewhere'. These so-called 'price-matching' or 'price-beating' guarantees have however attracted the attention of some competition authorities. We discuss them below.

activity would be *completely* banned. The effectiveness of each of these approaches to save activity is considered further in section 6.⁹⁷

- 5.50 Note that a C&R process may have some features of the LPL process, in particular where consumers contact their losing provider first to cease their existing services before entering a contract with the new provider.

The economics of save activity

- 5.51 The economic literature does not specifically address the issue of save activity in a LPL environment. However, there are two key elements of save activity that bear strong similarity with practices that have received attention in the economic literature, namely price discrimination and price guarantees. We present the findings of the literature for each aspect before discussing to what extent the models and findings apply to save activity in an LPL environment.

Price discrimination facilitated by switching processes

- 5.52 The most common definition of price discrimination refers to the situation where differences in prices cannot be solely explained by differences in costs. Where firms are able to identify different segments of consumers, price discrimination allows them to tailor their offers to these segments.⁹⁸
- 5.53 Save activity in a LPL process clearly includes an element of price discrimination. The LPL process enables providers to segment their customer base between those consumers looking to switch and those who are not, hence allowing price discrimination between those two segments of consumers. Save activity is price discrimination based not on the consumer's intrinsic characteristics (e.g. willingness to pay, business or leisure traveller, student or other) but on its behaviour (in the LPL case, the consumer's request for a code). While price discrimination based on intrinsic characteristics has been the main focus of the economic literature, there is a recent and growing literature interested in the later form which has been termed behaviour-based price discrimination.⁹⁹ The overwhelming majority of that literature focuses on price discrimination based on purchase history (e.g. whether consumers purchased from firm A or B in the past, whether they purchased brand X or Y) which in practice amounts to price discrimination between a firm's existing customers and new customers. In fact, the literature on behaviour-based price discrimination makes up much of the literature on price discrimination in competitive environments.
- 5.54 In competitive environments, price discrimination serves two roles. First, it allows firms to charge a higher price to some customers (termed 'surplus extraction'¹⁰⁰), which is bad for consumers as a whole. Second, it also allows firms to 'steal' each

⁹⁷ We also consider in section 6 the effectiveness of an enhanced LPL process where consumers can choose to opt in to hearing a save offer.

⁹⁸ Whether they have the ability and incentives to do so is however a different issue.

⁹⁹ See M. Armstrong (2006), "Recent developments in the economics of price discrimination", in *Advances in Economics and Econometrics: Theory and Applications, Ninth World Congress of the Econometric Society*, ed. by R. Blundell, W. Newey, and T. Persson, Cambridge University Press, Cambridge, UK; D. Fudenberg and M. Villas-Boas (2007), "Behavior-based price discrimination and customer recognition." In *Handbook on Economics and Information Systems*, ed. by T. Hendershott. North-Holland, Amsterdam; L. Stole (2007), "Price discrimination and competition", in Armstrong, M. and R. Porter, eds., *The Handbook of Industrial Organization*, Vol.3, Amsterdam: North-Holland; and R. B. Esteves (2009) "A Survey on the economics of behaviour-based price discrimination". *Working paper*, NIPE-WP 5/2009.

¹⁰⁰ This means that in economic terms the consumer surplus is reduced.

other's customers as price discrimination implies firms can tailor prices to their rivals' consumers (e.g. by setting lower prices for new consumers). This second effect, termed 'business stealing effect' is good for consumers. Whether price discrimination is overall good or bad for consumers depends on which of the 'surplus extraction' or the 'business stealing' effect dominates.

- 5.55 We know from the literature on price discrimination that in competitive environments, price discrimination can lead to either of several different outcomes. The standard outcome in the theory is where price discrimination leads to some prices falling while others rise with respect to the unique price that would prevail under uniform pricing. A recent strand of the economic literature has argued that, in some cases however, price discrimination may lead either to higher prices *for all* consumers (instead of just a few) or lower prices *for all* compared to uniform pricing.¹⁰¹ This is discussed further in annex 6.
- 5.56 Therefore, viewed as a price discrimination tool, save activity in a LPL process could in theory lead to any of the three outcomes mentioned above. The theory of price discrimination offers very little practical guidance to assess which of these outcomes is more likely to occur (see annex 6), i.e. whether prices are likely to rise for all, fall for all or raise/fall only for a few.¹⁰² However, intuitively, it is difficult to envisage an outcome where save activity in a LPL process leads to all consumers paying lower prices (compared to the situation where it could be prevented) because the LPL process offers firms the risk-free opportunity to charge high prices to all consumers and only lower prices to consumers who are actively seeking to switch. (see below).
- 5.57 Further, in reviewing the literature, we have come to the view that this strand of the literature may have limited applicability to save activity within the LPL switching process. This is because, among other things, save activity in a LPL process results in price discrimination by a firm between segments of consumers that only that firm can identify (its own existing consumers) while the literature on competitive price discrimination discussed above typically assumes situations where the consumers segments are commonly identifiable by all competing firms. Further, the competitive setting is quite simplified in these models and some academics have warned against drawing policy implications from their findings in relation to their effects on welfare.¹⁰³
- 5.58 Therefore we have not drawn conclusions from this literature now but will continue to monitor developments in the emerging theory going forward.

Price 'guarantees' facilitated by switching processes

- 5.59 We have analysed above one of the key elements of save activity which is price discrimination between a firm's own consumers: those looking to switch and those who are not. In this section, we turn our attention to another key element of save activity which has also received some attention in the economic literature. Save

¹⁰¹ See K. Corts (1998), "Third-degree price discrimination in oligopoly: All-out competition and strategic commitment", *Rand Journal of Economics*, 29, 306-323. Corts termed these outcomes as 'all-out competition' (when discriminatory prices are below the uniform price) and 'all-out price increases' (when they are above the uniform price).

¹⁰² This literature is relatively recent and it is not yet clear how robust the results are. While most existing models obtain that price discrimination leads to all prices being lower than a uniform price, there are also models that obtain the opposite outcome.

¹⁰³ See Stole (2007, *ibid*). For example, in the majority of these models, a simplifying assumption on the demand functions implies that prices have no effect on output. Further, these models assume either that products are differentiated or that there exist switching costs when in reality both aspects co-exist in many markets including communications markets.

activity in a LPL environment has an element of implicit price-matching guarantees because the LPL process offers an in-built opportunity for an existing provider to match or beat at its discretion any alternative offer the consumer may obtain from its rivals.¹⁰⁴

- 5.60 In some markets, firms offer consumers price guarantees which take several forms. The most common forms are where firms offer to match or beat any lower price a consumer finds at competing rivals but another form of price guarantee (known as 'meet-or-release') is where the firm promises either to match the better terms offered by a rival or to release the customer so that they can take up the better offer without penalties. The latter is likely to be particularly relevant to the discussion of save activity (see below).
- 5.61 Price guarantees can affect the behaviour of both consumers and rival suppliers. The economic literature¹⁰⁵ shows that the impact on consumers and competitors will depend on specific circumstances, but a significant finding is that price guarantees do have the potential to stifle competition.
- 5.62 For instance, in the presence of price guarantees if consumers are likely to respond to even small price differences, either by demanding a matched lower price or a refund, then the incentive for a firm to cut its price to gain customers is much reduced. Equally, if the current supplier of a customer offers a price matching guarantee, any rival seeking to reduce prices finds that the reduction is automatically matched by the current supplier so that no advantage in sales can be gained through lowering prices. If all firms have a guarantee, no firm has an incentive to lower its price.¹⁰⁶ The implication is that prices can be stuck at very high levels, even at the level which a single dominant firm or a group of colluding firms would have set.¹⁰⁷
- 5.63 There is another potential inefficiency of price guarantees which relates to firms' entry decisions. Price-matching guarantees can be used to deter entry.¹⁰⁸ If an entrant, because it is less well known, has to price lower than existing firms, at least

¹⁰⁴ Note that if there are switching costs, matching or beating an alternative offer does not imply matching exactly or beating the alternative price offered by the rival, but matching or beating that price plus the switching costs. Therefore, with switching costs, a price-matching or beating can be above the alternative price offered by rivals and yet prevent switching.

¹⁰⁵ A review of the academic literature on price guarantees is published at http://www.uea.ac.uk/polopoly_fs/1.170059!Summary%20of%20LPG%20literature%20Final.pdf.

¹⁰⁶ To be precise, as long as the price is below the monopoly level, no firm has an incentive to lower price. If the price was absurdly high, then a price reduction, even if matched by all would still be in the interest of each individual firm.

¹⁰⁷ In the extreme, monopoly prices can be a stable equilibrium even in an industry with a large number of firms. This result can be attributed to the seminal works of Hay (1982, "Oligopoly, shared monopoly, and antitrust law", *Cornell Law Review* 28: 439-481) and Salop (1986, "Practices that (Credibly) Facilitate Oligopoly Coordination", in: *J. Stiglitz and F. Mathewson, eds., New Developments in the Analysis of Market Structure*, MIT Press, Cambridge, MA). A number of papers have extended the result that the guarantees can lead to monopoly prices by relaxing the assumptions of the original analysis in different directions. See for example Baye and Kovenock (1994, "How to Sell a Pickup Truck: 'Beat-or-Pay' Advertisements as Facilitating Devices", *International Journal of Industrial Organization* 12, 21-33), Belton (1987, "A model of duopoly and meeting or beating competition", *International Journal of Industrial Organization* 5, 399-417), Chen (1995, "How Low is a Guaranteed-Lowest-Price?", *Canadian Journal of Economics* 28, 683-701) Doyle (1988, "Different Selling Strategies in Bertrand Oligopoly", *Economics Letters* 28, 387-390) and Zhang (1995, "Price-matching Policy and the Principle of Minimum Differentiation", *Journal of Industrial Economics* 43, 287-299) for early contributions.

¹⁰⁸ Arbatskaya, M., 2001, 'Can Low-Price Guarantees Deter Entry', *International Journal of Industrial Organization* 19, 1387-1406.

for a period of time, then a price-matching guarantee would deprive an entrant of the ability to attract enough sales to make successful entry possible. Even where entry is relatively easy and high profits earned from successfully charging high prices attract entrants into the market, such entry is likely to be inefficient because it does not have any downward effect on prices.¹⁰⁹ Prices are likely to remain high while profit is inefficiently competed away by 'too many' active firms (e.g. through wasteful marketing or advertising).

- 5.64 Price guarantees can therefore remove the incentives for firms to compete on prices and may deter entry.
- 5.65 Price guarantees can also reduce the incentives on consumers to seek out lower prices. For instance, the guarantee may act as a 'signal' that the firm is offering a good price through giving the consumer the option of invoking a lower price if one can be found. However, for the signal to be credible at least some consumers need to be willing to search for better prices and invoke the price matching mechanism where better prices are found. If consumers simply 'believe' the signal they might stop looking for better prices which means the signal loses credibility (and the firm may not face strong incentives to offer the best price).
- 5.66 The combination of these effects can lead to higher prices and consumer detriment. In the section below we have considered the relevance of the literature on price guarantees to save activity.

Application to save activity

- 5.67 Save activity under LPL processes does not amount to a classic price guarantee because there is not a promise by the current firm to match any new offer. However, there are a number of similarities in that the LP can choose to make an offer at the point where the customer has not yet completed the switch. The effect of save activity under LPL processes is closest to the meet-or-release guarantee described above (assuming that the customer is not in an MCP so will not incur ETCs through switching).
- 5.68 Clearly the LP can only use a save opportunity if the consumer is willing to listen to a save offer. If the consumer does not choose to engage with the save offer then the switch takes place anyway. We therefore assume, in the discussion that follows, that the customer is willing to inform their current provider about the new deal they are proposing to switch to. The application of the literature on price guarantees to save activity would suggest the following:
- Save activity is likely to reduce the incentive of rivals to offer better deals and encourages firm to set 'high' prices.
 - Save activity may deter entry.
- 5.69 The former effect arises because in a LPL process a provider can always activate a 'matching' offer, so it appears to be a relatively costless strategy to charge a 'high' price and lower it only when a switching intention materialises. This in turn weakens materially the incentives of rivals to undercut prices or offer better deals because any such attempt can be countered so that consumers would have little incentive to switch. Further, a provider's commitment to counter any rival's offer is likely to be

¹⁰⁹ Edlin, A., and E. Emch, 1999, 'The Welfare Losses from Price-Matching Policies', *Journal of Industrial Economics* 47, 145–68

credible because with positive switching costs, a consumer's current provider has an advantage over rivals. The existing provider can lower the price it is currently charging the consumer but can keep that price above the rival's offer and still prevent switching. This is because the relevant level of price that the existing provider has to match or beat is not the alternative price offered to a consumer but that price plus any switching costs consumers would incur to switch.

- 5.70 The price-guarantee effect discussed above implies that consumers would pay higher prices under a LPL process with save activity than they would if save activity was not possible or at least not enabled in this way (e.g. as in a GPL process). This is because, given the characteristics of the LPL process and the discussion above, it is difficult to find a strong argument against why firms would not charge at least those consumers who are not looking to switch higher prices than they would in a GPL process for example. There is therefore little doubt that 'inactive' consumers are highly likely to pay higher prices than they would in a GPL process therefore implying that lower prices to all consumers as a result of save activity in a LPL process is highly unlikely.
- 5.71 It is more likely that save activity in a LPL process leads either to higher prices for all consumers or to some category of consumers. The former outcome is clearly detrimental to consumers.
- 5.72 It is in theory possible that save activity could lead to lower prices for some consumers. One potential mechanism through which this could occur is as follows. Given the in-built potential for retention in a LPL process, it could be argued that a firm would have to offer substantially attractive offers to new consumers in order to attract them from its rivals. This in turn could lead the rival to match or beat these attractive offers implying that those consumers who do switch are likely to get low prices, possibly below those they would pay in the absence of save activity.
- 5.73 There are however valid arguments against the above reasoning. Firstly, it is not clear why a rational firm would have any strong incentives to make very attractive offers to potential new consumers from rival firms if it rationally anticipates that such offer may be matched by the rival it is trying to poach consumers from. This implies that save activity in a LPL process is highly likely to weaken materially the incentives of firms to offer lower prices and of new entrants to enter the market as they anticipate that lower prices may not win them a customer base. We would therefore expect prices under a LPL process with save activity to be higher than they would under GPL or if save activity could be prevented. Consumers who accept save offers are likely to be better off compared to not receiving any offer. However, even with a save offer they are likely to be worse off compared to the situation where save activity under LPL could be banned in the first place.
- 5.74 Secondly, there is another critical aspect of save activity which strengthens the argument made above that save activity is likely to reduce materially the incentives of firms both to enter the market and to compete for each other's consumers in a LPL process. When making a save offer, a firm has the history of the consumer's consumption/spend profile and has relevant information about the consumer's value which other firms in the market do not have. This means they are likely to be in a position where they can make a good judgement in relation to how strongly they want to keep the consumer and tailor their offer accordingly. We would indeed expect firms to make more generous save offers to valuable consumers (we test for this below).

This is likely to create an adverse selection¹¹⁰ problem where firms trying to attract their rivals' consumers may rationally anticipate that they are more likely to get the 'low value' consumers. This implies that firms are unlikely to have incentives to compete hard if they would only attract low-value consumers.

- 5.75 This aspect is also likely to have a particularly strong impact on entry decisions because, while an existing supplier might be able to cross-subsidise relatively low value new consumers using their existing customer base, an entrant clearly could not if it is likely to attract only low value consumers as it has no existing customer base in that market by definition. Overall, firms may have little incentive to enter the market or compete for each other's consumers. This may also lead to issues around competitive neutrality because save activity effectively leads to an uneven playing field between existing providers and new entrants. We have received information from some providers (discussed further in paragraphs 5.108 – 5.109) that indicated that they experienced a high number of cancelled orders within an LPL process which, at least in part, is likely to be because of save activity. This could suggest that save activity has a significant impact on expansion prospects.
- 5.76 A further factor is that save activity increases customer acquisition costs, as a number of customers who are initially prepared to switch end up staying with their current provider.
- 5.77 It is also the case that some aspects of the LPL process eliminate the very few potential factors that may mitigate the negative impact of price guarantees. For instance, one key criticism of the argument that price guarantees have a negative impact is that not enough people use the price guarantee for the concern to be credible. Under an LPL process, this criticism does not hold as the process provides a ready opportunity for the firm to make the 'matching' offer.
- 5.78 The above arguments suggest that save activity in a LPL process has the potential to deter entry, dampen competition, and lead to higher prices than those that would prevail in the absence of save activity. This is because save activity in a LPL environment materially weakens the incentives of providers to try and win each other's customers. If firms try to undercut each other they are all likely to lose profits without gaining much market share. As a result, firms are most likely better off exploiting their existing customer base by setting high prices. We might be less concerned about the impact of save activity if consumers switched primarily for quality or service reasons, because in these cases an offer of a better price on the existing service is less likely to be accepted. However, the information we have suggests a significant proportion of consumers switch to cut costs or get better deals, thus are likely to be susceptible to save offers. Our technology tracker for Q1 2010¹¹¹ showed that for fixed-line services the most common reason for switching was 'call charges too expensive' (mentioned by 37% of switchers). This was followed by 'wanted to purchase a bundle of services' (24%) and 'got a cheaper package elsewhere/better deal' (12%). Only 5% of switchers mentioned poor service and 4% poor line quality.

¹¹⁰ Adverse selection arises under conditions of asymmetric information i.e. where one party has more information than another and can take advantage of it. In this case the current provider has information about whether the customer is valuable or not which is not available to a new provider. The current provider is more likely to try and retain high value customers and allow low value customers to leave for rivals.

¹¹¹ Available at <http://stakeholders.ofcom.org.uk/binaries/research/statistics/tech-tracker-q1-2010.pdf>

- 5.79 For broadband and mobile services cost savings is still the major driver for switching but quality/service aspects feature to a greater extent. For broadband services 28% mentioned that the main reason for switching was “charges too expensive”, followed by 27% “wanting to purchase a bundle of services”, 14% mentioning that ‘connection/downloads are too slow/wanted a faster service’, 9% referring to “poor operator service when call customer services” and 5% being “dissatisfied with the service”. For mobile services 27% mentioned that the main reason for switching was “call charges generally too expensive”, followed by 15% mentioning “poor/unreliable coverage”, 8% mentioning “found a better/cheaper deal with another supplier” and 7% answering that they “wanted a handset that was only available on another network”.

Potential concerns and analysis of evidence

- 5.80 In this section, we examine the evidence around save activity. The sources of this evidence are mainly our consumer research 2010 and information provided by industry through an information request.

The relevance of the switching process in concerns about save activity

Validation request under LPL expresses a credible intention to switch

- 5.81 While a consumer can open a new bank account, purchase a new insurance contract or shop from any supermarket without having to contact its existing supplier,¹¹² a consumer cannot switch to a new broadband provider using the MAC process or to a new MNO with MNP without first contacting their existing supplier to obtain a code. The LPL process therefore offers an inbuilt opportunity to segment and try to retain consumers before they can confirm any agreement with a new provider. This is a key difference (and cause for concern) with save activity under an LPL regime compared with save activity in other markets.
- 5.82 All else equal, we would be less concerned if validation requests (e.g. requesting a MAC/PAC) turned out not to be the expression of a credible intention to switch.
- 5.83 The fact that the LPL process allows for a more credible segmentation of consumers is shown by our consumer research 2010. It shows that 53% of consumers who switched broadband using the MAC process and 59% of contract mobile consumers who switched using the PAC process received a save offer to which they listened or were given the option of a save offer which they were not interested in listening to (see Figure 23). This compares with 22% for consumers who switched fixed-line and 24% for consumers who switched broadband using the NoT process.¹¹³ These figures lend support to the fact that the LPL process presents more opportunity for customer segmentation and retention than the GPL process.

C&R has some characteristics of a LPL process

- 5.84 C&R also appears to provide a substantial opportunity for save activity with 73% of mobile contract switchers, 46% of broadband switchers and 41% of fixed-line

¹¹² Of course, in the case of a bank account or insurance contract, the consumer may contact his current supplier to cancel his existing contract. In most cases, however, this is more easily done primarily because the provider does not know whether the consumer has already switched (which she/he may have already done). Under a LPL process, this cannot happen.

¹¹³ These figures may not reflect the true extent of save activity as a substantial proportion of switchers said they did not remember if they were made an offer.

switchers using C&R having received a save offer to which they listened or were given the option of a save offer which they were not interested in listening to. This is not surprising since the consumer has to coordinate ceasing the current service and starting the new service in a C&R process. This requires being in contact with both providers during the switching process, hence the potential opportunity for save activity.

- 5.85 Although C&R appears to provide an opportunity for save activity this does not necessarily imply that we should be as concerned about retention activity under a C&R process. While under LPL processes retention activity takes place before the consumer can sign up to any new service this may not be the case under C&R, where consumers may contact their new provider before contacting their existing provider to cease their current service. In a C&R process, a consumer can sign a contract and start taking services with a new provider without any obligation to contact its existing provider. This implies that contacts with the existing provider (e.g. to terminate an existing contract) may occur after the consumer has already signed a contract with the new provider.
- 5.86 Our consumer research 2010 reveals that half of the consumers who switched their broadband services using C&R contacted their existing provider first. For switching mobile services using C&R, 44% of consumers contacted their existing provider first.¹¹⁴ However, even when the GP is contacted first, if a consumer contacts their LP soon after signing then there may still be an opportunity to cancel the switch without penalty (thus the LP may still have an opportunity to save).
- 5.87 To conclude, for the C&R process we recognise there may be some potential concerns around save activity, although these may not be as significant as LPL processes where the consumer has to contact LP before they switch.

Targeted save activity outside LPL processes

- 5.88 Contractual terms can also generate similar effects to save activity under an LPL process, even where the actual switching process is GPL. For example, automatically renewable contracts (ARCs) can do this. Under ARCs consumers typically receive a benefit (e.g. discount or additional call features) in exchange for signing up to MCPs (usually of 12 months) that are automatically renewed unless the consumer contacts their provider to inform them of their intention to switch to a different plan (or to a different provider) once their existing contract term expires. Switching prior to the end of each MCP is subject to ETCs. While the switching process may still be GPL, ARCs provide an inbuilt opportunity for save activity as a result of the requirement for consumers to contact their provider to prevent their contract renewing automatically. This means the provider is able to identify consumers who do not wish to roll forward to subsequent MCPs and hence treat them as prospective switchers. BT, for example, introduced ARCs to some of its fixed-line contracts for residential consumers in 2008. These contractual terms present BT with an opportunity for save activity and [§<]. The same effect is likely to result from any contractual arrangements which require consumers to contact their provider to prevent automatic renewal of terms.

¹¹⁴ It is important to note that the high percentage of save offers under C&R mentioned above applied to consumers who had switched (hence did not accept the save offer).

Evidence and details of retention offers

- 5.89 Data provided by industry shows that while save activity is widespread across all products/processes it appears more frequent in connection with LPL processes. Most providers do offer financial incentives to their customer retention teams. Incentives are generally in the form of a commission received by the agent if the customer does not switch. Commissions vary from provider to provider and generally depend on whether the consumer re-signs a contract, the length of the contract and also (especially in the case of mobile services) on the value of the customer. However, only a very limited number of providers provided actual figures on commission levels.
- 5.90 One provider [X] mentions an average bonus value in the region of [X]. In 2009/2010, that provider [X] paid over [X] to its retention team achieving a broadband retention rate of 10% of its total customer base (the provider did not provide the number of consumers who wanted to leave). One provider [X] mentions the figure of [X] for each broadband consumer saved and a further [X] if the consumer stays an extra 3 months.
- 5.91 The above is evidence that retention agents are provided with clear incentives to get consumers to re-sign new long-term contracts. Further data provided by other providers also showed that most broadband consumers accepting save offers signed up new contracts tying them to the firm for at least another year. Some broadband providers [X] make retention offers subject to signing a new contract with a MCP. The same is true of save offers made by MNOs as the evidence shows that retention discounts provided by MNOs may be conditional on the length of the new contract signed by consumers. Therefore, save activity may not only discourage switching at that point in time but may also raise contractual switching costs over a substantial period in the future, which could further dampen competition.
- 5.92 Save activity was identified as a barrier to some considerers deciding not to switch in our consumer research 2010 (13% broadband, 17% mobile, 17% bundle). Of those considerers that were in contact with their LP about their intention to switch, around half experienced save activity. Around four in five of these accepted the save offer and 1 in 5 said they felt put under pressure by the LP to stay.
- 5.93 Save activity may also raise switching costs for those consumers who actually switch. This is the case when, e.g. customer service staff are uncooperative and insist on presenting the consumer with save offers when they are not interested in listening to them. For instance, our MNP research 2009 found that many consumers would prefer to avoid conversations with retention teams when trying to obtain their PAC. Some consumers wanted to avoid dealing with what they saw as a difficult conversation while others felt that being offered a good deal to stay highlighted the lack of attention they received as existing consumers. In our PAC research 2009, a number of mystery shoppers made comments about the high pressure nature of the save activity they experienced. In fact, a quarter of the mystery shoppers thought operators were particularly insistent and pushy in their retention efforts. While this may occur under any switching process, there are greater opportunities under the LPL process.
- 5.94 Although save activity is unwelcome in some cases, our consumer research 2010 found that the large majority of consumers who were subject to save activity reported a positive experience with this practice. Some respondents to our MNP research 2009 actually reported feeling disappointed from a lack of attempt to keep them when they expressed an intention to switch. Consumers often enjoy that their existing provider makes them feel valuable.

- 5.95 However, this does not imply that save activity in a LPL process is beneficial for consumers. This is because consumers compare their retention offers to the prices they had before the offer under the same LPL process, not to the prices that they would have obtained in a non-LPL process or if save activity in the LPL process was not possible in the first place. Therefore, although consumers who are saved may be better off compared to their position before they received the offer, they are likely to be worse off compared to the case where save activity is prevented overall.

Save offers consist mostly in price discounts

- 5.96 We asked broadband and mobile providers to provide us with three different contract plans: one plan among those with the lowest monthly fee, one among the medium monthly fee and one among the highest monthly fee. We also asked about details of the plans and of save offers that were made on these plans following a MAC or PAC request. Only two providers supplied the requested information for broadband services and only two for mobile services.¹¹⁵
- 5.97 The data show that the majority of save offers take the form of price discounts. For broadband, discounts varied between 25% and 44% of the current price, on average, across the three plans. The highest discounts are offered on the high monthly fee plans (with one of the two providers offering a 60% price discount on average to customers on that plan). This evidence provides support to the potential adverse selection concern discussed above, namely that 'low value' consumers are the most likely to be provided with little or no incentives to stay hence weakening the incentives of firms to compete for these consumers.
- 5.98 For mobile telephony, retention discounts varied between 32% and 60%, on average, across the three plans for one MNO. The second MNO did not provide details of the level of discounts in relation to PAC requests specifically. While we acknowledge the limitation of the sample size, the substantial discounts suggest there is potentially room for competition to be more effective if targeted save activity could be prevented in some way.
- 5.99 In light of the academic literature, our analysis and the evidence we have gathered, we are of the view that save activity in a LPL environment is likely to weaken competition and reduce the benefits from competition to consumers overall. While those consumers who experience save activity in a LPL process may retain a positive experience and value such practice, it is unlikely to be in their interest overall. Consumers who receive a retention offer compare such offer with the currently existing prices. However, both these prices and the discounted prices they receive are likely to be lower under a different process that does not include an in-built process for retaining consumers. There is little doubt that consumers who are not considering switching are highly likely to pay lower prices if save activity in a LPL environment could be somehow restricted.

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

Multiplicity of switching processes

- 5.100 Except for pay TV, there are at least two switching processes for each of the other communication services (broadband, mobile and fixed-line) – see figure 2. This has

¹¹⁵ Many providers responded that they did not have such data readily available.

implications for the clarity of the switching process (both for a single service and for bundled switching) and for competitive neutrality.

Clarity of the switching process

- 5.101 We noted in section 4 that multiple switching processes for the same service can make it difficult for consumers to know what to do to switch, and our consumer research 2010 suggests that there is a lack of clarity amongst consumers about what is involved in the switching process. Some consumers said that 'not knowing what process to use to switch' was a factor in them subsequently deciding not to switch. Having multiple switching processes for the same service is likely to make it harder for consumers to understand the steps required to switch and may, therefore, increase switching costs.
- 5.102 In relation to bundled switching having multiple switching processes means that a consumer may need to navigate different switching processes for the services in their bundle. This will increase the complexity of the switching process and, again, increase switching costs.
- 5.103 In both cases having multiple switching processes is likely to increase switching costs and, as discussed above, all else being equal, higher switching costs are likely to dampen competition.

Competitive neutrality

- 5.104 There are two situations where a lack of competitive neutrality might arise.
- 5.105 The first situation, which we discussed in section 2, highlighted that, in some specific cases, multiple switching processes for the same service can lead to issues around competitive neutrality.
- 5.106 This arises when it is relatively harder/more costly for a particular firm to gain customers (e.g. on average they tend to gain customers under an LPL process¹¹⁶), but it is relatively easier for that firm to lose customers (e.g. on average customers tend to switch away under a GPL process).¹¹⁷ We have noted above that the customer acquisition costs are higher under a LPL process because a number of customers who are initially prepared to switch end up staying with their current provider (i.e. they are saved). So, all else being equal, for a given marketing spend a provider who tends to gain customers using a LPL switching process might expect to win fewer customers than a provider who tends to gain customers using a GPL process. A lack of competitive neutrality may lead to some firms having a competitive advantage or disadvantage relative to others. It is worth noting that any such impact depends on the net flow of customers for a provider.
- 5.107 The second situation arises in relation to effects of an LPL process more generally. As discussed above, targeted save activity materially weakens firms' incentives to win each other's consumers. This is less likely to be of concern for incumbent firms with a large customer base since they in any case may have lower incentives to acquire new consumers. However, targeted save activity in an LPL switching process means that firms with low market shares or new entrants find it difficult to

¹¹⁶ On average, the customer acquisition costs under an LPL process are higher because some customers who indicate they are willing to switch are 'saved'. This is discussed further in section 5.

¹¹⁷ We discuss in section 4 that our consumer survey found that the LPL MAC processes was generally more hassle and harder to navigate than GPL NoT switching processes.

expand and incentives to enter the market can be materially weakened. This suggests that an LPL switching process may not be competitively neutral between all players in the market - new entrants are likely to be at a relative disadvantage to incumbents in LPL switching processes.

- 5.108 In the broadband market, a sample check by one provider [X] on one week's worth of sales in early April 2010 reveals that of 45 sales that were keyed in and needing a MAC, only 10 became customers. This implies a 78% cancellation rate which, they argue compares with a 20% cancellation rate for new connections that do not require a MAC.
- 5.109 In the mobile telephony market, one MNO [X] reported that in April 2010, a total of [X] customers had agreed a new contract without providing a PAC and subsequently cancelled. Of these consumers, the MNO said that 14% explicitly mentioned 'competitor better offer' as the main reason for cancelling.
- 5.110 Cancellations of the above form may be motivated by reasons not related to save activity or difficulty navigating the LPL process, for example, learning information about ETCs might also have dissuaded consumers from completing the switch. However, these examples (although limited in nature) do lend weight to the evidence that save activity/difficulties acquiring customers under LPL processes may materially affect the expansion of new entrants and ultimately deter entry in the market.

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

Conclusions

- 5.111 Having reviewed the literature and evidence on the impact on competition of switching costs, save activity and multiple switching processes we are of the view that:

Switching costs

- Switching processes with higher costs are, all else being equal, more likely to cause detriment to consumers and dampen competition. The evidence suggests that, overall, the LPL process (MAC/PAC) leads to a worse consumer experience and have higher switching costs relative to the GPL process (NoT).
- Within LPL switching processes the level of switching costs experienced depends on the exact process in question (i.e. the MAC process is more difficult for consumers than the PAC process).

Save activity

- Save activity in a LPL process is likely to dampen competition between existing players. This is because save activity in a LPL process includes an implicit price-matching mechanism at the firms' discretion which can nullify the effectiveness of offering lower prices to attract customers away from other providers. This materially weakens firms' incentives to win each other's consumers. As a result, providers' pricing strategies are more likely to be geared towards exploiting their existing customer base rather than trying to attract new consumers, implying higher prices than we would likely observe if save activity under a LPL process was not possible.

- The implicit price-matching mechanism implied by save activity in a LPL process also discourages entry as potential entrants anticipate the difficulties of building a customer base.
- The existence of save activity in a LPL environment creates an adverse selection problem which further reduces firms' incentives to win each other's consumers. Because the LPL process offers the opportunity to be informed of consumers' intention to switch, firms will try hard to retain especially their high value consumers (this is confirmed by our evidence). This implies that consumers who 'are let go' are likely to be lower value consumers. This materially weakens firms' incentives to win each other's consumers and may also mean that firms with low market shares find it difficult to expand and incentives to enter the market can be materially weakened.
- Save activity in a C&R process may bear some similarities with save activity in a LPL process. However, a C&R process may not allow providers to distinguish the consumers who wish to switch *before* the consumer has signed up with a new provider such that the consumer could be 'saved' by the losing provider without incurring any penalty. Therefore, overall, save activity in a C&R process may not be as much a concern as in a LPL process.

Multiplicity of switching processes

- Multiple switching processes for the same service or bundle switching are likely to increase switching costs.
- Multiple switching processes for the same service provided over different technologies may result in some providers having a competitive advantage over others.

Section 6

Assessment framework for identifying a preferred 'greenfield' switching process

Introduction

6.1 This section sets out an analytical framework for assessing consumer switching processes and identifying a preferred switching process. In this section we assume a 'greenfield' setting which means we are assessing the switching options as if starting from scratch i.e. with no legacy switching processes in place. The structure of this section is as follows:

- We identify general switching principles and consider their relative importance;
- We evaluate how the existing switching processes perform under each principle and identify the strengths and weaknesses of each process; and
- We consider options for 'greenfield' switching processes and, through an evaluation against the switching principles, arrive at a view on the preferred 'greenfield' switching process.

6.2 Both GPL and LPL options are discussed, including how the current processes can be enhanced to resolve our current concerns. The options considered in this section are the following:

- GPL processes:
 - Enhanced GPL (NoT) process;
 - Consumer code on bill; and
 - Third Party Validation process.
- LPL processes:
 - Enhanced LPL process; and
 - Transfer code process.

Developing the general switching principles

6.3 Our overall policy objective is that switching processes should protect consumers by minimising switching costs and promoting competition. This reflects our principal duty in section 3(1) of the Act namely:

- a) To further the interests of citizens in relation to communications matters; and
- b) To further the interests of consumers in relevant markets, where appropriate, by promoting competition.

- 6.4 As discussed in section 3 there have been a number of regulatory and industry initiatives over recent years which have looked to progress issues relating to consumer switching, including discussions around general principles.
- 6.5 We have also considered the experience in other countries. As already noted, across Europe, the vast majority of EU countries follow a GPL process particularly for fixed-line and mobile. Even in broadband, where ten countries do not have a formal switching process in place, only five out of the 28 countries follow an LPL process. The reason behind the higher proportion of GPL processes is largely because these are seen as more convenient, simple and advantageous to consumer switching. A number of NRAs we have had contact with also cited limiting the retention or 'win-back' opportunities for the LP as a key consideration. The BEREC consultation on Best Practices to Facilitate Switching cites "LPs burdening the switching process" and "save and retention activity by the LP" as some of the key obstacles to switching raised by NRAs.¹¹⁸
- 6.6 From our previous work in this area, including our February 2006 consultation, the IWG initiative, the Deloitte study and input from the October 2009 workshop, it is apparent that there is a broad consensus amongst consumer and industry stakeholders relating to the key characteristics of 'good' switching processes. Accordingly, taking account of our principal duty and building on the broad consensus which has emerged in this area, we have identified seven general switching principles against which we propose to measure the efficiency and efficacy of switching processes. These are grouped by those principles which are primarily designed to support a positive consumer experience and those which are primarily designed to encourage a positive impact on the competitive process (and consumer welfare). There is a clear link between the consumer experience and competition principles since consumers will obtain greater benefit from competition where barriers to switching are low and they have the confidence to switch.

Principles to support a positive consumer experience

- 6.7 A positive consumer experience is an important aspect of promoting switching. We have identified the following general principles to support a positive consumer switching experience:

- i) Minimises unnecessary switching costs both for individual services and for bundles.
- ii) Protects against slamming.
- iii) Promotes awareness of the implications of switching.
- iv) Ensures a reliable process with speedy restoration if things go wrong.
- v) Enables continuity of the main service(s) being switched.

- 6.8 These are discussed further below.

i) Minimises unnecessary switching costs both for individual services and for bundles

- 6.9 A key characteristic of 'good' switching processes is that unnecessary hassle is removed and switching costs are minimised. Artificially high switching costs cause

¹¹⁸ See http://berec.europa.eu/doc/consult/bor_10_34_switching.pdf, page 7.

detriment to consumers who go through the switching processes. They may also deter consumers contemplating switching from embarking on the switching process or mean that those who start the process fail to complete it therefore preventing them from getting the best deals available (and preventing more efficient firms from growing).

- 6.10 Switching costs will be higher the more involved the consumer needs to be in the process e.g. switching costs may increase where there are a greater number of consumer-provider touch points or where it is time consuming/difficult to organise the switch.
- 6.11 Our consumer research 2010 has indicated that the switching process does play a role in considerers not going through with the switch (mentioned by 18% of fixed-line and 16% of mobile considerers). Perceptions are also important as almost half of inactive consumers (48%) and a significant minority of considerers (40%) agreed with the statement “Changing supplier for my home technology seems like too much hassle”. For those that had neither switched nor considered switching the main reason for not switching was satisfaction with the current supplier. However, “too time consuming to go through the process of switching” was the second most popular reason, mentioned by 8% of bundle and 9% of broadband consumers.
- 6.12 Our consumer research 2010 indicated that the current switching processes may not be working well as 31% of switchers agreed that switching seems like too much hassle. Switchers using MAC/PAC (42%) and C&R (31%) were significantly more likely to agree that “switching suppliers seems like too much hassle” compared to the NoT process (22%).
- 6.13 One way to minimise unnecessary hassle is to have simple switching processes. A key finding of our experimental research was that consumers achieved better outcomes under simpler processes and that decision making tended to deteriorate as the complexity of the switching process increased. The researchers concluded that “The policy observation from this finding is that switching processes should ideally be as simple as possible for the consumer particularly when making decisions in complicated environments as exist in communications markets with many suppliers and many different contracts”.¹¹⁹
- 6.14 Our qualitative research suggests many consumers expect switching to become easier in a bundle as they think they will only need to contact one provider and use a single process to switch all their services. Many are not aware that they may need to go through two or possibly three switching processes simultaneously. Given the trend towards bundling services, having a clear and simple process for bundle switching is likely to be increasingly important.

ii) Protects against slamming

- 6.15 As already discussed, slamming is an extreme form of mis-selling, where consumers are simply switched from one provider to another without their express knowledge or consent. This is an unacceptable practice and works against the interests of consumers, both directly through harm and distress, but also by undermining confidence in the development of competition and in the industry as a whole.
- 6.16 We have presented in section 4 evidence about the incidence of slamming and level of harm incurred. We discussed that slamming tends to be a greater problem for

¹¹⁹ <http://stakeholders.ofcom.org.uk/binaries/consultations/consumer-switching/annexes/economics-research.pdf>

certain GPL processes which have lower levels of upfront customer validation. However, the experience of other countries has indicated that it is possible to overcome problems with slamming within a GPL system through building in validation safeguards to ensure that there is limited potential for attempted and actual slamming. Also, we note that the energy sector has overcome slamming problems and retained a GPL system (discussed in paragraphs 4.81 to 4.84).

iii) Promotes awareness of the implications of switching

- 6.17 Markets tend to work better when consumers are fully informed about what they are buying and are aware of any implications of changing provider. Without this, consumers may make incorrect decisions and/or be reluctant to purchase. This means that consumers need timely, accurate and objective information, presented clearly and in an easily accessible format. This would include providing information on the respective roles and responsibilities of all parties involved in the switching process (including the LP(s) and GP(s) as well as the consumer) and how long the switching process will take. This is likely to be even more important in complex switching situations e.g. switching bundles. We set out in more detail the type of information which should be provided at the point of sale in the relevant GCs, including GC23 and GC24.
- 6.18 One implication of switching is the possibility that the consumer incurs ETCs. Our consumer research 2010 has shown that ETCs do have an impact on switching - particularly for fixed-line, broadband and mobile where at least one in ten considers decided not to switch for contractual reasons. Contractual reasons appear to be less of a barrier to switching for PayTV where only 7% identified this as a reason not to switch.
- 6.19 Our main concern relating to ETCs, in this context, is to ensure that consumers are aware of any possible liabilities before they switch provider(s), so they can factor this into their decision making. We want to avoid consumers incurring unexpected ETCs after they have changed provider(s).
- 6.20 However, we recognise the need to be careful in how ETC warnings are presented to consumers. Our experimental research (discussed in section 4) suggested that having a simple warning about the existence of ETCs (without specifying the amount) appears to hinder good switching decisions.¹²⁰ This may be because the provision of imprecise ETC information creates extra complexity leading to a deterioration in decision making. This reinforces the need to have a simple and transparent switching process which minimises the potential for consumer confusion.
- 6.21 In addition, a GPL process providing a simple ETC warning may prompt consumers who are not in a minimum contract period (but unsure about their contractual status) to go back to their current provider which opens up the opportunity for the LP to save the consumer. As discussed in section 5, this could have a negative impact on competition.
- 6.22 This suggests that ETC warnings need to be targeted and specific to aid decision making. It may be possible to improve information around ETCs outside of the switching process e.g. by improving contractual information or consumer education. If consumers have a general awareness about ETCs going into the switching process this may aid decision making because the amount of 'new' information encountered during the switching process is reduced.

¹²⁰ The experiment tested the ETC warnings in a GPL environment.

iv) Ensures a reliable process with speedy restoration if things go wrong

- 6.23 In order to promote switching consumers need to have trust and confidence in the process. Where things do go wrong, there should be an immediate restoration process to the provider of their choice.
- 6.24 In our consumer research 2010 we asked decision makers whether a switch happening as quickly as possible or having a guaranteed date for the switch was more important. The answers showed that consumers value certainty about when the switch will happen over having the switch occur as quickly as possible. Across all decision makers 55% preferred a guaranteed date compared to 25% preferring a faster process (19% did not know). The preference for a guaranteed date increased amongst those who had previously switched (64% preferring a guaranteed date) and among considerers (71%).
- 6.25 This is not necessarily a key differentiating factor in a discussion of 'greenfield' switching processes since this preference could be reflected at the process design stage. However, it may be a greater consideration when the detailed specification and design of the switching process is considered.
- 6.26 One aspect which is essential for the reliability of any switching process is appropriate asset validation. This means building in appropriate checks/processes to ensure that services are switched to the correct premise/address and erroneous switches¹²¹ are avoided.

v) Enables continuity of the main service

- 6.27 There are two aspects to this principle:
- Avoiding unwanted service breaks which cause consumer inconvenience; and
 - Minimising any unnecessary overlap of the old and new provider leading to the consumer incurring double bills which can significantly increase the costs of switching. Consumers may deliberately overlap the old and new provider during the switch to avoid possible loss in service, or inadvertently overlap providers due to uncertainty about timing/process.
- 6.28 The expectation of inconvenience caused by a loss of service or additional costs incurred may discourage consumers from switching and hence from getting any benefit from changing provider.
- 6.29 Our consumer research 2010 shows that a significant minority of switchers have had an unwanted break in service. This is more common amongst consumers going through a broadband C&R (41% of switchers) or fixed-line C&R (29% of switchers) process. Across all services indications are that consumers suffering interruption have no service for an average of 12 days.
- 6.30 Paying more than one company was less common but still an issue for a minority of switchers – with the average extra spend amounting to £30 across all services/processes.¹²² In addition, a significant minority of broadband (16%) and

¹²¹ This is when a transfer is made in error due to a fault in the switching process.

¹²² Note that where a consumer pays for a service in advance, it may be possible to end up paying for more than one provider even when there is no service overlap. This is because it may be difficult to organise the services to stop and start on the day when payment is usually taken, meaning that the

PayTV consumers (20%) said it was difficult to arrange for their old and new services to stop and start at the right time.

Principles to support positive impacts on competition and welfare

6.31 As noted above, one of our principal duties is to protect consumers by promoting competition where appropriate. Switching is an important mechanism by which consumers can benefit from the competitive process, therefore it is important that the switching process does not in itself hinder or discourage competition. We have identified the following general principles to support positive impacts on competition and welfare:

- vi) Supports competition in retail markets.
- vii) Is cost efficient to implement and maintain.

6.32 These are discussed further below.

vi) Supports competition in retail markets

6.33 This principle relates significantly to minimising unnecessary switching costs. We have already discussed that consumers experience different levels of hassle across the switching processes already in place. High switching costs make it hard for more efficient firms offering better and/or cheaper services to attract and win new customers. This has the following effects:

- distorts both the level and structure of prices in the market to the detriment of consumers;
- discourages new entry into a market, which can also have a negative impact on innovation and choice in the longer term; and
- discourages existing players from trying to attract the customers of others, leading to a 'softening' of competition.

6.34 We have also discussed in section 5 that under LPL processes the LP can target save activity at customers who express an interest in leaving. This can have a detrimental impact on competition since it materially reduces the incentive of firms to win each other's customers hence softening competition amongst existing players. It also makes it harder for new/more recent entrants to win customers.

6.35 Supporting competition also means:

- ensuring that the switching processes work across all sales channels;
- ensuring that providers, including prospective new entrants, can access efficient, symmetrical and high quality switching processes, through efficient back office operations; and
- avoiding distortions to competitive neutrality and the competitive process.

consumer ends up paying for a period when they are not actually using the service. This may be mitigated if the consumer is able to claim back monies prepaid at the cancellation date.

- 6.36 The last point about competitive neutrality means avoiding the situation where a particular provider has a significant competitive advantage over another due to the type of switching process used. There are two factors to consider here:
- Save activity – as discussed in section 5, the existence of multiple switching processes and especially the fact that some of these have an in-built opportunity for save activity while others don't can have an impact on competitive neutrality.
 - Multiple switching processes for the same services – we noted in section 2 that the switching process may depend on underlying technology, and in some cases there are multiple switching processes for the same service. We noted that in specific circumstances this may result in winners and losers. This may mean that providers lack a common interest and so are less likely to co-ordinate in order to make the switching process always work well for customers. Given the potential for multiple switching processes to result in a lack of competitive neutrality (without any clear benefits) we would not want to introduce multiple switching processes for the same services within the same network for 'greenfield' scenarios.

vii) Is cost efficient to implement and maintain

- 6.37 Switching processes should be carried out in as cost-efficient a manner as possible in order to minimise the costs on the industry and hence the prices that consumers will ultimately pay. In addition, if system set up costs are high, this might act as a barrier to entry which could have a negative impact on competition (i.e. an entrant would need to achieve significant scale in order to justify upfront investment in costly systems).
- 6.38 As part of our information gathering for this stage of the project we asked providers to provide information on the setup and ongoing costs associated with the existing switching and number porting processes (i.e. the MAC, PAC and NoT processes). Few providers were able to provide information on the setup costs associated with these different processes. A number of providers were able to provide estimates for the ongoing costs but in many cases they were only able to estimate a subset of the total costs or found it difficult to apportion costs between processes where multiple processes are used. We also note that on a per customer basis there were significant differences in cost between providers.
- 6.39 As a result, at this stage, we are not able to draw robust conclusions as to whether one existing switching process is fundamentally more cost effective to run than another nor can we say whether a particular option is more cost effective in a 'greenfield' setting. If we chose to proceed to implementation with any of the options set out below for existing service(s), we would engage with industry in order to develop a more detailed specification which would then be subject to a costing exercise and an impact assessment.
- 6.40 Under the cost efficiency heading we will also consider our direct costs of regulation i.e. the costs of us monitoring compliance and the likely need for enforcement action. The costs of regulation are ultimately borne (at least in part) by regulated parties and are a relevant consideration. We would expect that less monitoring and enforcement should be required when the incentives of firms are aligned with our objectives. We will need to consider the potential for process abuse requiring our attention e.g. we have noted a high incidence of slamming due to the lack of upfront customer validation in respect of the NoT process or where monitoring and enforcement activity may be required in relation to a ban or restriction on save activity. This will

involve a qualitative assessment about how much ongoing input/monitoring from us each option will require.

- 6.41 An additional aspect of this principle is the need to recover switching costs between providers according to a charging mechanism that leads to switching charges that are objectively justifiable, proportionate, non-discriminatory and transparent, and that are likely to contribute to efficient switching processes and effective competition. Any mechanism designed to recover costs should ensure that there are strong incentives in place to minimise costs.

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

Relative importance of the general switching principles

- 6.42 It is important to note that there are likely to be a number of trade-offs between the principles set out above. For example, the most cost efficient process might be one which requires less consumer validation but it could lead to an increased chance of slamming. It is also the case that some principles may be considered more important than others. Views on the relative importance of the principles are likely to vary across stakeholders. Nevertheless, we have considered what prioritisation mechanism, if any, should be used for the purpose of this assessment.
- 6.43 Our starting point is our overall policy objective and aims, which are that switching processes should protect consumers by minimising switching costs and promoting competition.
- 6.44 We also need to consider the evidence set out in sections 4 and 5, including evidence from our consumer research, experimental research, complaints data and analysis of competition impacts.
- 6.45 We recognise that any prioritisation mechanism will, inherently, involve a degree of subjective judgement. In light of this we are proposing a simple approach where we have two tiers of importance for the principles. The first tier principles (i.e. higher importance) are:
- i) Minimises unnecessary switching costs both for individual services and for bundles.
 - ii) Protects against slamming.
 - vi) Supports competition in retail markets.
- 6.46 We consider that ‘minimising switching costs’ and ‘supporting competition’ should be first tier as these both directly reflect our principal objective i.e. protecting consumers by promoting competition. ‘Preventing slamming’ is also placed in the first tier as this activity results directly in consumer detriment (both financial harm and non-financial harm such as inconvenience, stress and time spent rectifying the situation).
- 6.47 The remaining principles are categorised in the second tier as we believe that either they can be dealt with outside of the switching process or their importance might vary depending on services/scenarios under consideration:

- *iii) Promotes awareness of the implications of switching* could be dealt with outside the switching process, e.g. through consumer education or extra clarity around contractual obligations. In addition, we have noted above that there is some evidence that obtaining general information about ETCs during the switching process does not necessarily improve consumer decision making.
- *iv) Ensuring a reliable service* is clearly important and will impact on the consumer experience. However, this is likely to be achievable under either a GPL or LPL switching process and rests largely on achieving a well designed system.
- The importance of *v) achieving continuity of service* is likely to vary by service. However, consumers may be able to mitigate the effects of service interruption to the extent that they have substitute services. For example, a consumer might also have access to the internet at work or through mobile broadband thus be able to mitigate the impact of losing a broadband service at home, and a consumer without a fixed-line service might be able to use their mobile phone as a substitute. In addition, USD 30 (4) which applies to fixed and mobile number porting requires that number activation should happen within one working day of the conclusion of an agreement to port. This places a time limit on the service discontinuity arising due to number portability.
- We have noted above that *vii) cost efficiency* is not likely to be a differentiating factor for our 'greenfield' assessment of the options (since this involves starting from scratch and it is not clear that one switching process is fundamentally more cost effective than any other). However, an impact assessment would be an integral part of any options considered for implementation. We have noted in our discussion of 'greenfield' switching options where we expect that the incentives of firms are not aligned with our objectives and we might expect that more monitoring and enforcement could be required.



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

Evaluation of the existing switching processes¹²³ against the general switching principles

- 6.48 In order to facilitate our option assessment we have first considered how well the existing switching processes perform against the seven switching principles (see Figure 26 below). This enables us to identify the strengths and weaknesses of each of the current processes and the key aspects of the current processes which could be improved. In the second stage we set out a range of alternative 'greenfield' switching process options that seek to improve upon and tackle some of the weaknesses identified in the current switching processes.
- 6.49 We have categorised/colour coded the switching processes so green shading represents a switching process which supports the principle, amber shading is neutral and pink shading means the switching process does not support the principle.

¹²³ This evaluation looks at the broad characteristics of each switching process.

Figure 26: Evaluation of existing switching processes against the switching principles

Key:  Supports principle  Neutral  Does not support principle

Principles	GPL (NoT)	LPL (MAC/PAC)	C&R
i) Minimises unnecessary switching costs	<i>Reduced hassle due to lower consumer involvement (i.e. customer only needs to contact their GP). The GP has the incentive to make the switching process as easy and hassle-free for the consumer as possible – as this makes it possible to win more customers.</i>	<i>Increased hassle relative to GPL processes resulting in higher switching costs (including multiple touch points, potentially unwelcome save activity and potential for the LP to introduce additional friction to switching). For mobile switching the GP may be less incentivised to promote number portability because this requires a PAC from the LP and gives the LP an opportunity to save the consumer or frustrate the process. This may lead to consumer detriment where the consumer places a value on retaining their number and they remain unaware of the PAC process. Fundamentally the LP does not have an incentive to make the leaving process easy, although this may be mitigated if there is a chance that they can ‘win back’ the customer at a later stage i.e. good customer service is important (even when leaving) because it could influence the chance that the customer will return in the future.</i>	<i>Significant hassle factor arising from the consumer having to co-ordinate the switch (including multiple touch points, unwelcome save activity and arranging and co-ordinating start and stop times for services).</i>
<u>Summary of evidence</u>	<p><i>In section 4 we discussed our research which showed that switchers were more likely to rate the GPL process as easy compared to the LPL processes, and GPL and LPL processes are more likely to be rated as easy compared to the C& R process. In particular:</i></p> <ul style="list-style-type: none"> <i>Across <u>broadband</u> switchers 86% rated the NoT process as easy, compared to 58% for the MAC process and 56% for the C&R process.</i> <i>Across <u>fixed-line</u> switchers 86% rated the NoT process as easy, compared to 43% for the C&R process.</i> <i>Across <u>contract mobile</u> switchers the PAC process was rated as easy by 83%, and the C&R process was rated as easy by 67%.</i> <i>Those switching <u>broadband</u> using MAC or C&R are more likely to rate the process as difficult (23% and 16% respectively) relative to those switching broadband using the NoT process (8%). The same is true for <u>fixed-line</u> with 22% of those switching by C&R finding the process difficult compared to 9% for those using the NoT process.</i> 		

<i>Principles</i>	GPL (NoT)	LPL (MAC/PAC)	C&R
	<ul style="list-style-type: none"> Switchers using MAC (39%), PAC (44%) and C&R (31%) were significantly more likely to agree that “switching suppliers seems like too much hassle” compared to the NoT process (22%). The experimental research suggested that having a simpler switching process would aid consumers. GPL processes tend to be simpler since they require lower consumer involvement. <p>In section 4 we also noted that only 62% of mobile consumers are aware of their ability to port their number when switching service provider and 22% of mobile consumers who switched and changed their number said they had not ported because they did not know they could keep their number.¹²⁴ This suggests that some mobile consumers who would value keeping their number when switching provider may not be doing so due to a lack of awareness.</p>		
ii) Protects against slamming	<i>Increases the risks of slamming through less upfront validation.</i>	<i>Minimises the risks of slamming through higher levels of validation upfront.</i>	<i>As there is no switching process, slamming is not a relevant feature.</i>
<u>Summary of evidence</u>	<i>In section 4 we identified that slamming is significantly more of a problem for the fixed-line GPL process relative to either the mobile or broadband LPL processes. This is illustrated by the OAT complaints data where from July 2009 to June 2010 we received on average 683 complaints per month relating to slams instigated through the NoT process, but 23 and 17 complaints per month relating to slams instigated using the MAC and PAC processes respectively.</i>		
iii) Promotes awareness of the implications of switching	<i>Consumers are informed about implications of switching through NoT letters after the switching process has commenced. This may mean consumers are not aware of relevant information (e.g. about ETCs) when they make the decision to switch.</i>	<i>Consumers are well informed as there is built in interaction between the consumer and their existing provider in advance of the switch.</i>	<i>Consumers would only be informed at the point at which they contact their LP. Where they choose to follow ‘provide’ then ‘cease’ there is a risk they will not be informed about the implications of switching when they make the decision.</i>
<u>Summary of evidence</u>	<i>LPL processes have a built in opportunity for the LP to discuss the implications of switching and the amount of any ETCs. Under GPL processes the GP is not incentivised to prompt the consumer about possible ETCs since this may result in the consumer contacting the LP therefore providing the latter with a save opportunity, or the consumer may change their mind about switching once they are made aware of ETCs by the LP.</i>		
iv) Ensures a reliable process with speedy restoration if things go wrong	<i>Should be possible so long as the underlying systems enable this.</i>	<i>Should be possible so long as the underlying systems enable this.</i>	<i>Given cease and re-provide are independent activities, there will be no co-ordination of the processes by providers and the smoothness of the process will depend on the consumers’ ability to manage the process.</i>

¹²⁴ http://stakeholders.ofcom.org.uk/binaries/consultations/gc18_mnp/summary/mnpcondoc.pdf

<i>Principles</i>	<i>GPL (NoT)</i>	<i>LPL (MAC/PAC)</i>	<i>C&R</i>
<u>Summary of evidence</u>	<i>The switching processes currently in place are broadly considered to be reliable.</i>		
v) Enables continuity of the main service	<i>Should be possible so long as the underlying systems enable this.</i>	<i>Should be possible so long as the underlying systems enable this.</i>	<i>Given these are independent activities, there will be no co-ordinated process which will ensure this. Although consumers can decide to only cancel their existing service after the new service has been delivered.</i>
<u>Summary of Evidence</u>	<p><i>There are two aspects to this principle; 1) unwanted service interruption and 2) simultaneously paying more than one provider for the service.</i></p> <p><u>Unwanted service interruption</u> <i>Our research shows that the NoT and mobile PAC process tend to perform better in terms of avoiding unwanted service breaks, and C&R tends to perform poorly. 17% of switchers using the broadband NoT process experienced an unwanted break in the service, this compares to 33% for those using the broadband MAC process and 41% for those using the broadband C&R process. For fixed-line 11% of NoT switchers experience a break in service, compared to 29% of those who went through a C&R process. 20% of pay TV switchers using C&R had a break in the service. For contract mobile the PAC process performs relatively well with 14% having an unwanted break in the service. No contract mobile switchers going through the C&R process had an unwanted break in the service.¹²⁵</i></p> <p><i>We noted in section 4 that for GPL and LPL processes the providers should be managing when the services stop and start and making the switch a seamless process for the consumer. There are a number of reasons that might help explain why some consumers had an unwanted break when they went through a GPL or LPL process mentioned in paragraph 4.63.</i></p> <p><u>Paying more than one provider</u> <i>Where the switching process is uncertain/difficult to manage or consumers are concerned that the switching process might give rise to a period of service interruption the consumer may inadvertently or actively decide to overlap service provision between the old and new supplier. This is a more significant issue for the broadband MAC process (23% of switchers pay for more than one service at some point during the switching process) and fixed-line C&R process (27%). It is less of an issue for fixed-line NoT (8% pay for more than one service) and broadband NoT (11%) switchers. Contract mobile falls in the middle with 14% of PAC and 17% of C&R switchers paying for more than one service.</i></p>		
vi) Supports competition in retail markets	<i>Pro- competitive given comparatively lower switching costs and there is not an in built opportunity for save activity by the LP.</i>	<i>Overall, higher switching costs (compared to GPL processes) may dampen competition and deter new entry. Also, gives rise to in built opportunity for save activity which can dampen competition and create an uneven playing field between existing providers and new entrants.</i>	<i>Overall, higher switching costs (compared to GPL processes) may dampen competition and deter new entry. Also, gives rise to save activity which can dampen competition.</i>

¹²⁵ However, this result should be treated with caution since it is based on a small sample size.

<i>Principles</i>	<i>GPL (NoT)</i>	<i>LPL (MAC/PAC)</i>	<i>C&R</i>
<u>Summary of evidence</u>	Switching processes which minimise switching costs should have a beneficial impact on competition. We have discussed in section 5 that save activity may dampen competition and create an uneven playing field between incumbents and new entrants which can deter entry. Overall the evidence suggests that GPL processes minimise switching costs and remove the built in save activity thereby fostering competition to a greater extent.		
vii) Is cost effective	As discussed above, based on the limited information available we cannot conclude that a specific switching process is more cost effective than any other. The C&R process is likely to be the least costly for providers because it does not require any co-ordination between providers. However, clearly this process is more costly and involved for consumers.		

Summary of analysis

6.50 The following table provides a summary of how each switching process performs against each principle.

Figure 27: Summary assessment of existing switching processes against the switching principles

Principles	Tier	GPL (NoT)	LPL(MAC/PAC)	C&R
i) Minimises unnecessary switching costs	1	Support	Neutral	Does not support
ii) Protect against slamming	1	Does not support	Support	Support
iii) Promotes awareness of the implications of switching	2	Neutral	Support	Neutral
iv) Reliable process	2	Neutral	Neutral	Does not support
v) Enables continuity of service	2	Neutral	Neutral	Does not support
vi) Supports retail competition	1	Support	Does not support	Does not support
vii) Cost efficiency	2	n/a	n/a	n/a
Number of principles in each category (number of tier 1 principles in brackets)				
Category		GPL (NoT)	LPL(MAC/PAC)	C&R
Support		2 (2)	2 (1)	1 (1)
Neutral		3 (0)	3 (1)	1 (0)
Does not support		1 (1)	1 (1)	4 (2)

6.51 The assessment above shows that none of the current switching processes clearly performs better than the others against all of the seven general principles. As can be seen from Figure 27, the NoT process performs better against two of the first tier principles, i.e. supporting competition and minimising switching hassle. The MAC/PAC processes perform better at preventing slamming and informing consumers about the implications of switching. As we argue later however, our analysis and international comparisons suggest that it is easier to remedy slamming issues in a GPL process than to remedy the switching costs and competition issues in a LPL process. Therefore, GPL options are likely to perform better than LPL options.

Identifying the 'greenfield' switching processes options

- 6.52 Based on the evaluation in the previous section, we consider that the choice of a preferred 'greenfield' switching process involves choosing between two main options; namely GPL and LPL switching processes. We have already discussed the strengths and weaknesses of existing GPL processes (i.e. the NoT process) and existing LPL processes (i.e. MAC/PAC processes) above. In the context of the general principles this analysis shows that while GPL and LPL processes have a number of strengths, they also have weaknesses. In considering the case for a preferred 'greenfield' switching process (either GPL or LPL), our starting point is to consider how each switching process could be adapted to mitigate against the identified weaknesses.
- 6.53 We have also considered the possibility of regulatory failure in our assessment of the 'greenfield' options, including:
- Whether the option may fail to fully achieve the desired outcomes; and
 - Whether there might be unintended consequences.
- 6.54 As discussed above, we have not conducted a detailed costing exercise for any of the GPL or LPL options set out below. Therefore we are unable to differentiate between the options on the basis of cost efficiency. However, if we believe it is justified to consider implementation of any of the options set out below for particular service(s), we would engage with industry in order to develop a more detailed specification which would then be subject to a costing exercise and a full impact assessment.

Option 1: GPL switching processes

- 6.55 We have assessed that GPL switching processes are relatively easy and convenient for consumers because they reduce hassle and minimise switching costs. We have also discussed that GPL processes can have a positive impact on competition.
- 6.56 However, we have identified that key weaknesses of the existing NoT process are:
- The relative lack of validation which means the process could be more open to abuse (e.g. slamming); and
 - Consumers being less well informed about the implications of switching (e.g. ETCs) as there is no need to contact the LP.
- 6.57 In developing a specific GPL process, we would want to ensure that; i) it has stronger validation mechanisms; and ii) consumers are better informed of the implications of switching.
- 6.58 Based on our experience to date we are proposing three GPL options which aim to mitigate against these potential weaknesses in different ways. These are:
- Option 1(a): Enhanced GPL (NoT) process;
 - Option 1(b): Consumer Code on Bill process; and
 - Option 1(c): Third Party Validation (TPV) process.

Option 1(a): Enhanced GPL (NoT) process

6.59 Under this option, we would seek to incrementally eradicate the weaknesses which are associated with the current NoT process.

6.60 We believe that the key weaknesses of the current NoT process are as follows:

- A lack of upfront customer validation giving rise to higher incidents of slamming;
- Consumers switching without realising they may have existing contractual liabilities with their current provider;
- Consumer harm arising from abuse of the Cancel Other process where it has been used to prevent consumers from switching; and
- Variability of sales records made, and retained, across the industry meaning we have found it difficult on occasion to enforce the rules.

6.61 This option would seek to tackle these weaknesses through the following measures:

- Introducing new record keeping obligations and, possibly, a requirement to record all sales calls and requests for use of Cancel Other. This would mean we are better able to enforce against alleged slamming and misuse of Cancel Other by being able to investigate on the basis of much stronger forms of evidence;
- Strengthening the process for the despatch of NoT letters by increasing obligations on all providers to ensure that all consumers were receiving these. This would include ensuring that LPs are sending their NoT letters and including information about ETCs; and
- Mandating the Cancel Other process to ensure that consumers have stronger protection against slamming where this is identified.

Summary of analysis

6.62 The key advantages and disadvantages of this option are summarised below:

Advantages

- It seeks to specifically target the weaknesses identified in the existing NoT process, building on a process which is familiar.
- It could also be adapted to allow consumers to switch multiple products with a single contact point to the GP (the GP would take on the role of managing the switching process for multiple products behind the scenes with minimum involvement from the consumer).

Disadvantages:

- It is difficult to determine ex ante how effective the proposed 'mitigation' measures would be, and the mitigation measures could be costly. For example, the lack of upfront validation may mean there is still a problem of attempted slams. It is possible that the measures may fail to achieve the desired outcomes.

- We would still need an enforcement programme to ensure that providers complied with the rules. For example, without a credible threat of regulatory action for non compliance providers may fail to keep adequate records, which would make enforcement of the rules difficult.
- The record keeping obligations (e.g. implementing call recording) may be more onerous for smaller players who have to recover this cost over a smaller number of sales. This may have an impact on entry.
- It might still be difficult for consumers to be aware of the implications of switching e.g. ETCs before they start the switch (particularly if this information is sent by letter which might not be read immediately or given the proper attention on receipt). This may mean some consumers still incur unexpected ETCs when they switch.

Option 1 (b): Consumer Code on Bill

- 6.63 Under this option, the consumer would be assigned a single code for each of their communications services, which would appear on their bill (in either paper or electronic form). To switch a consumer would need to provide the GP with the code and other details which would be verified by the LP before the switch could continue. This process is similar to the MAC process, with the key difference being that the consumer is not required to contact their current provider to request the code in order to switch.
- 6.64 The code on bill process we are proposing would differ from that in the energy sector (described in paragraphs 4.81 to 4.84) because we would not allow the GP to act as a proxy for the consumer to obtain the code. This is to reduce the chances of slamming arising where the GP is able to switch the consumer without their consent. If the consumer was unable to find the code (i.e. they do not have access to a bill) they would need to contact the LP (who would carry out an appropriate validation process before providing the code). This is a potential disadvantage because the LP might frustrate the process or save the customer. However, we consider that the majority of consumers will have easy access to the code (particularly as many people now receive bills online). The exception to this is PAYG mobile customers who do not get a monthly bill.
- 6.65 This option would retain most of the benefits associated with GPL processes, but it should reduce the potential for slamming compared to the existing NoT process as the consumer has to actively provide a code to start the switch.
- 6.66 However, the benefits would depend on the way in which the process was managed and we note that there are various practical issues which would need to be considered. For example, under this option, it is important that consumers are able to gain easy access to the code when they wish to switch providers. However, if access to the code is made too easy it makes the process more open to abuse (i.e. increasing the possibilities for unauthorised parties to access the code) meaning that the safeguards to protect consumers from slamming may be undermined.
- 6.67 A 'single code on bill' option was initially proposed by us in our February 2006 consultation document. This proposal received a mixed response from respondents.

- 6.68 A consumer code on bill process may require large scale investment in back-end processes and systems given every bill would require a code. This would require a large database of codes to be maintained and administered so that codes are available and present on each bill. It would also require all providers to change existing bill formats to include a standard formatted code which is checked on each billing run. This could be costly.

Summary of analysis

- 6.69 The key advantages and disadvantages of this option are summarised below:

Advantages:

- It provides specific and effective protection against slamming (e.g. attempts to switch the consumer without their knowledge or consent) in a GPL environment.
- It has been shown to work in other sectors e.g. energy.

Disadvantages:

- Code on bill may not work well for PAYG mobile customers who do not get a regular bill. More generally, a fine balance would need to be struck regarding ease of code access e.g. if it is not easy to get the code then this adds extra hassle to the switching process.
- The process may not map across all sales channels e.g. a consumer might not have a bill to hand if they wanted to switch at a retail shop.
- It may involve higher costs due to need to set up database of codes.

Option 1 (c): TPV process

- 6.70 Under a TPV option, there would be an independent third party to facilitate the switch and act as a check in the process. The process could work in a number of ways. Essentially the consumer indicates to the GP that they want to switch and the GP then either transfers the consumer to the TPV or contacts the TPV who calls the consumer to check consent and gather any necessary details. The TPV may then perform any steps necessary to validate the switch so it can proceed.
- 6.71 It is possible to design a TPV process in such a way that it would have a minimal impact on existing switching processes and hence lower costs i.e. the TPV is simply overlain across the existing switching processes for the consumer facing part. The customer front-end experience would be adapted to include a transfer to the TPV to validate the transaction and the back-end process will accommodate existing systems for NoT, MAC and PAC. There are different levels of TPVs depending on the actual role of the TPV in the process, including:
- (i) Merely validates desire to switch i.e. checks that the consumer has consented to switch;
 - (ii) (i) and prompts awareness of ETCs if the consumer is in a MCP;

- (iii) (i) and contacts LP and then provides the consumer with in/out of contract information or actual ETC information (there could be a possibility of providing this information in real time or re-contacting the consumer);
 - (iv) (i) and (iii) and obtains information from LP about the different services and features currently provided and whether a switch would have implications for the provision of other products/services.¹²⁶
- 6.72 The more involved the TPV in the process, the better the level of protection for consumers from potential abuse and the more informed consumers would be about the implications of switching. However, this will need to be balanced against the costs of the TPV.
- 6.73 The advantages of TPV are an easy and straightforward process for consumers, minimal touch points and good validation upfront, thereby reducing the potential for slamming. As the consumer is not required to make contact with their existing provider this means that the ability of the existing provider to frustrate the process is limited. TPV models have been successfully used in other countries e.g. Spain, Ireland and the US. In particular, we note that a TPV has been used for more than 20 years in the US. It was initially introduced to eliminate unwanted switching of long distance services by aggressive sales agents who pushed through switching without the full agreement of the consumer.
- 6.74 TPV processes have been considered as part of previous initiatives relating to consumer switching in the communications sector. In particular, the IWG and Deloitte both considered processes where there would be a third party to manage the process. The IWG recommended a basic model where the TPV body simply records the consumer's desire to change providers, records a description of which services the consumer wishes to migrate and, where appropriate, checks that the consumer is aware of any likely impacts. Deloitte selected a more involved version of a TPV body where it would facilitate the data transfers required for a switching through a third party centralised data hub.
- 6.75 We note that TPV options have been rejected in the past due to concerns relating to costs and impacts on existing legacy systems and processes. However, we consider that this was largely down to the TPV configuration chosen. As noted above, the Deloitte TPV option involved a third party centralised data hub. This is a particularly complex and expensive option since the third party would need a complete view of customer products and services across multiple organisations, channels and business lines, where there are multiple sources of customer data in several applications, systems and databases. This type of TPV would require a high level of investment to support the scale and complexity of the solution not only in terms of implementation but also maintenance (e.g. data in the third party database would have to be carefully maintained). We believe it is possible to have much simpler TPV models (e.g. without the need for a centralised database) at much lower cost.
- 6.76 Another issue with the Deloitte TPV option was that implementation could lead to potential disruption of existing services that would be unprecedented and extremely high risk. In the 'greenfield' setting we are currently considering this would not be a significant issue as legacy systems would not be in place. And it may not even be an issue where existing systems are in place as we are considering overlaying the TPV across the existing processes rather than creating a new centralised data hub.

¹²⁶ For example, if a consumer decided to switch their phone line from BT to cable, they might find that their current broadband supplier would be unable to provide a service.

- 6.77 The set-up and ongoing costs, would depend largely on the exact role of the TPV in the switching process (as discussed above) and the model employed (e.g. live agent, automated process or a combination of the two).

Summary of analysis

- 6.78 The key advantages and disadvantages of this option are summarised below:

Advantages:

- It could also be adapted to allow consumers to switch multiple products with a single contact point to the TPV.
- Validation by an independent party is an effective protection against slamming.
- Depending on the model chosen, a warning about ETCs could be built into the process.
- It may also be possible to add a warning where the switch has implications for other services taken by the customer e.g. if changing fixed-line provider has implications for broadband provision.
- It decouples the front and back end switching process and encourages CPs to develop efficient back office switching functions.¹²⁷
- It has been shown to work in other countries e.g. Spain, Ireland and the US.

Disadvantages:

- Dependent on the option chosen, the TPV can result in extra costs relative to the other GPL options due to the need to set up an independent process, and, where it has a more involved role the possible need to create and maintain a database of customer information or develop multiple interfaces with providers.
- There may need to be some oversight or regulation of the TPV e.g. to ensure that validation and record keeping procedures are followed, to ensure that providers (including the LP where appropriate) co-operate with the TPV, and to resolve any disputes which arise between the TPV and consumers or providers. Ineffective rules and/or poor monitoring may mean that the objectives of the TPV (e.g. preventing slamming) are not achieved.
- It adds an extra step into the switching process e.g. a consumer cannot simply walk into a shop and sign up, they would additionally need to contact the TPV/be contacted by the TPV to start the process. This may result in additional hassle associated with switching (e.g. longer phone call or need to call consumer back).

Option 2: LPL switching processes

- 6.79 Under this option, we would identify the preferred 'greenfield' switching process as LPL where the consumer would be required to first contact their existing provider to obtain a code before being able to switch away.

¹²⁷ However, back end processes may still need to be co-ordinated across CPs to ensure efficient switching for consumers.

- 6.80 This would take into account that LPL processes tend to perform better in terms of protecting against slamming and ensuring consumers are better informed of the implications of switching e.g. about ETCs.
- 6.81 We considered above how the existing LPL process performs against the proposed general switching principles and identified the following weaknesses:
- LPL processes introduce additional friction to the switching process which gives rise to concerns relating to hassle and increased switching costs.
 - There is inbuilt interaction between the consumer and the LP which means that the LP has the opportunity to save the consumer, which may dampen competition.
- 6.82 Based on our experience to date we are proposing two LPL options which aim to mitigate against the weaknesses. These are:
- Option 2(a): Enhanced LPL (code) process; and
 - Option 2(b): Transfer Code process.

Option 2(a): 'Enhanced' LPL (Code) process

- 6.83 Under this option, we would look to eradicate some of the weaknesses which are associated with the current code-based processes (i.e. MAC/PAC) by splitting out save activity from code provision. This would mean codes would be provided via a separate telephone number/interactive voice response (IVR) option/automated system and save activity linked to the use by consumers of this system would be prohibited.¹²⁸
- 6.84 This option could be set up in a similar manner to the current system for mobile porting in France which uses an automated response. Under the French system, the consumer has to contact a specific freephone number on their existing provider's network to obtain a PAC equivalent, in line with a LPL process. However, the code request process is automated, and LPs are able to verify the consumer's details without having to speak with them. The consumer then receives their code immediately (via SMS, in the case of a consumer port) which also includes details of when their contract is due to expire. This process is therefore notable for retaining the 'code' requirement of a LPL process, but it gives consumers more control over the process, by providing quick access to their code.
- 6.85 This enhanced LPL process would have the benefit of improving the customer experience by eliminating save activity for those that do not wish to receive save offers and making the code easier to obtain. It has potential to enhance competition by increasing incentives for greater price competition, more potential entry in the market and greater opportunity for expansion. It may also be possible to include some information to the consumer of the consequences of switching e.g. remaining time on contract/any ETCs. However, adding this possibility is likely to increase the costs of this option, perhaps substantially.

¹²⁸ This means not requiring the customer to listen to a save offer before giving them a code and not allowing the LP to call the customer to try and retain them following code provision (unless this is explicitly requested).

- 6.86 One potential issue is whether this option would be effective in achieving the positive impacts on competition given the incentives of LPs and the level of enforcement required to ensure compliance with this system. LPs may have a strong incentive to try and retain customers so may try to circumvent the rules about not contacting customers soon after provision of the code. This means such an LPL approach may require greater regulatory scrutiny and be difficult to enforce. An additional way to strengthen enforcement and compliance may be to require call recording on most outbound calls to check that providers are not calling consumers who have used the automated system in order to make them a save offer. This would increase the effectiveness of enforcement by providing evidence in cases of alleged non-compliance. However, clearly this would also have cost implications.
- 6.87 We do not believe that an LPL option which allows some level of save activity (e.g. through 'opt-in' or 'opt out') would be appropriate. Firstly, while such an option may address the consumer experience issue in some cases (e.g. in the case of opt-in), it fails to address the competition concerns. Those consumers who are most likely to accept a save offer are also most likely to opt-in to listening to a save offer which would make the process no significantly different from the current LPL process with save activity which, as we explained earlier, is likely to dampen competition.
- 6.88 Secondly, an LPL option with some save activity allowed would create even greater enforcement issues (than the LPL option with banned save activity-see above) that are likely to be insurmountable. Given the strong incentives for save activity, it would be very difficult for Ofcom to monitor that consumers who receive a save offer have indeed opted in or chosen not to opt out.

Summary of analysis

- 6.89 The key advantages and disadvantages of this option are summarised below:

Advantages

- It should reduce save offers for those who do not wish to receive it (and the associated inconvenience this may cause) and may enhance competition.
- It offers protection against slamming as consumer validation happens prior to the switch.
- The LP can inform the consumer of the implications of switching e.g. ETCs but this is likely to involve potentially significant additional cost to the switching process.

Disadvantages

- This may require development (and additional costs) of a method by which the LPs automated IVR is able to verify the consumer's details without having to speak with them.
- Switching to a bundle where the services are currently provided by different providers involves contact with multiple LPs to obtain codes and requires multiple codes for each service within any bundle being switched. This means significant consumer involvement in the process.
- There is an inherent friction in the switching process due to more than one touch point.

- It may still have a dampening effect on competition and competitive neutrality between incumbents and entrants because it does not remove the incentive and opportunity to save customers if providers have access to the information from the automated system.
- It will require strong regulatory policing to ensure that LPs do not attempt save activity linked to information on customers who have requested a code. For example, they may have an incentive to call the customer with a save offer shortly after they have requested the code and when it is still possible to cancel the contract with the GP/before the consumer has contacted the GP with the code. It may be difficult to monitor and enforce against this activity.
- A consumer cannot simply walk into a shop and sign up as they would need to contact the automated IVR of the LP to obtain the code. In some cases it may be possible to obtain the code 'on the spot' e.g. the customer could call the automated IVR for the code in the shop, however, this would only work where the customer had to hand the relevant information to complete the verification process with the LP.

Option 2(b): Transfer code process

6.90 A further option being developed by BT is the Transfer code process. BT have noted that this approach could work under either a GPL¹²⁹ or and LPL process. BT recommends that the process is LPL for the following reasons:

- The customer will interact directly with the LP, so there is less chance of the initial validation failing i.e. there is no need for the GP to collect information from the consumer in order to validate the switch with the LP;¹³⁰
- There is no need for a business to business gateway between the GP and the LP to facilitate real time validation and provision of the code to the consumer. This means the costs and complexities of implementation may be lower with a LPL process.¹³¹
- Customers can be made aware of any implications of switching/ETCs before they place an order with a new provider, so there is less chance of customers changing their mind about a switch and orders being cancelled.

6.91 The LPL Transfer code option would have the following features:

- A consumer who wanted to switch would contact the LP to obtain a code in real time.¹³²

¹²⁹ Under the GPL variant the GP would act as an agent for the switch. The customer would need to provide the GP with information, which the GP would then validate with the LP.

¹³⁰ Given that the GP would be collecting a standard set of information from the customer it is not clear that there is a significant chance of validation failing under the GPL version.

¹³¹ It is not clear to us that a business to business gateway would be necessary under the GPL version. For example, under a GPL process the GP could simply call the LP to validate the customer. In addition, we need to consider whether real time validation is necessary. For example, it may be reasonable to do the validation after the customer has contacted the GP/provided necessary details, and only call the customer back if validation was not successful (rather than have them hold on the call whilst validation is carried out).

¹³² It is envisaged that this process would work electronically via business to business gateways. The LP passes the code request up their supply chain with validation at each stage in the chain. When the code is issued it is disseminated back down the existing supply chain and at each level the

- The customer could be given the option of contacting the provider over the phone or the internet.
 - The code issuing channels would be adequately resourced to ensure customers get a prompt reply when they request the code.
 - The customer would be validated by the LP before the code is released (to provide protection against slamming and unintended switches). The validation process would confirm the identity of the customer (and their consent to switch), the service(s) and asset(s) involved in the switch, and convey the relevant information to all providers involved.
 - The customer can be informed of implication of leaving e.g. ETCs.
 - The code could be issued by phone, email or text.
 - The code would be valid for a fixed period of time e.g. 30 days.
 - Save/retention calls could be an optional part of the process or not part of the process at all.
 - The code would be a unique reference to a particular switch, distributed to the operational support systems of all the providers in the existing supply chain, thus enabling accurate, swift cut-over with minimal service break. A central database that matches services, assets and codes would not be required.
 - Greater automation meaning quicker code provision, faster to switch between providers and less chance for manual errors.
- 6.92 This is fundamentally an LPL code process and therefore has many of the advantages and disadvantages of Option 2a. However, the Transfer code process does have some additional benefits i.e. making the code simpler and potentially easier to obtain due to having multiple contact channels. Introducing greater automation may help to reduce errors but may also be more expensive to set up. Because the Transfer code is tagged against customer records throughout the supply chain there may be less chance of some types of 'erroneous transfers', where the wrong line is switched. However, it may also require detailed regulatory scrutiny and there remains a potential issue relating to the high level of enforcement required in order to ensure compliance with this system.
- 6.93 In addition, it is not clear to us how the proposal would naturally facilitate more complex switching such as triple play bundles and would be capable of identifying all of the relevant services and assets.

Summary of analysis

- 6.94 The key advantages and disadvantages of this option are summarised below.

provider tags their records with the code. When the consumer passes the code to the GP it is similarly passed up their supply chain and tagged against the relevant asset.

Advantages

- It seeks to make the code process more user friendly compared to the current LPL process (e.g. by using a simpler code and having multiple contact channels (phone and internet)).
- It should reduce save offers for those who do not wish to receive it (and the associated inconvenience this may cause) and may enhance competition.
- It offers protection against slamming since as consumer validation happens prior to the switch.
- There is less chance of some types of erroneous transfers as the transfer code is tagged against customer records throughout the supply chain.
- The LP can inform the consumer of the implications of switching e.g. ETCs.

Disadvantages

- Switching to a bundle where the services are currently provided by different providers involves contact with multiple LPs to obtain codes which means significant consumer involvement in the process.
- Real time provision of the code would require a sophisticated electronic gateway between retail, wholesale and access providers. It is not clear how feasible or costly this would be.
- Implementation would need careful co-ordination and would require a synchronised 'big bang' switch over. This may increase the risk of 'glitches' at the outset and increase costs.
- There is an inherent friction in the switching process due to more than one touch point.
- It may still have a dampening effect on competition and lead to a lack of competitive neutrality between incumbents and entrants because it does not remove the incentive or opportunity to save customers. With an 'opt in' save offer option the LP could still prompt the customer as to whether they were interested in a save offer before they sign up with the GP, meaning they could still target save activity on those active consumers who were most likely to accept a save offer. It is likely that even a ban on using information from the switching process to inform save activity, will not be very effective in removing the negative competition impacts given the difficulties of enforcing effectively (see below).
- It may require strong regulatory policing to ensure that LPs do not attempt save activity e.g. calling the customer with a save offer shortly after they have requested the code and when it is still possible to cancel the contract with the GP/ before the customer has contacted the GP with the code. It may be difficult to monitor and enforce against this activity.
- A consumer cannot simply walk into a shop and sign up, they would need to contact the LP to obtain the code. In some cases it may be possible to obtain the code 'on the spot' e.g. the customer could call the LP for the code in the shop, however, this would only work where the customer had to hand the relevant information to complete the verification process with the LP.

Conclusions and proposals for a preferred 'greenfield' switching processes

6.95 It is clear that both GPL and LPL processes have advantages and disadvantages. However, when starting from first principles we believe that a GPL process should be preferred in a 'greenfield' setting. This is because GPL switching processes better meet our stated policy objectives and aims, for the following reasons:

- The economic literature suggests that we should seek to minimise switching costs. Fundamentally, GPL processes tend to reduce switching costs as there are fewer contact points and less opportunity for the LP to frustrate the process. The GP has a greater incentive to make the switching process smooth. This means GPL processes would, on average, tend to perform better than LPL processes on minimising unnecessary switching costs (first tier principle).
- GPL processes would, fundamentally, tend to perform better than LPL processes on supporting retail competition (first tier principle). Save activity within an LPL process has the potential to significantly weaken competition resulting in higher prices for all consumers (including those who are 'saved'). Save activity increases customer acquisition costs as a number of customers who are initially prepared to switch end up staying with their current provider. Over time this has the effect of dulling competitive activity.
- Regulating save activity in a LPL process (e.g. LPL with 'opt-in' or 'opt-out' save activity) may resolve the consumer experience problems with save activity in some cases, but are unlikely to resolve the competition issues. Banning save activity (i.e. in a LPL process) would create a serious regulatory logistic and enforcement challenge, one that would be highly difficult to overcome.
- Experience from other sectors and countries has shown that it is possible to successfully deal with slamming issues and protect consumers within a GPL switching process. It may also be possible to provide information on the implications of switching in a GPL process or indeed seek to provide that information outside of that process.
- It is harder to envisage how we would overcome the disadvantages of the LPL switching processes in an effective way whilst still delivering a process which minimises switching costs and supports retail competition.

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

GPL Options

6.96 In this section, we have considered three possible options, each of which mitigates in different ways against the identified weaknesses of GPL processes.

6.97 We note that each GPL process has advantages and disadvantages. Our assessment thus far would suggest that when starting from first principles, the TPV model performs better than the other options (in particular it offers strong protection against slamming and can be adapted for bundled switching). However, at this stage we have not considered the cost dimension and therefore we are unable to make a firm recommendation, but we would welcome comment from interested stakeholders on which of the options considered would best meet our stated objectives and aims.

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

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

Section 7

Consultation, implementation priorities and next steps

Introduction

- 7.1 In this section we set out how we plan to progress our work on switching processes both in a 'greenfield' setting and in relation to current switching processes.
- 7.2 In this consultation document, we have sought to achieve the following:
- identify and assess the key consumer and competition issues arising from the current switching processes (including setting out the evidence base we have collected so far);
 - develop a framework, based on a set of general principles, for assessing switching processes;
 - identify a preferred 'greenfield' switching process (i.e. the process that should be applied when developing new switching processes where no legacy switching process is already in operation) based on an assessment of different options using the assessment framework developed.
- 7.3 We are now inviting comments on the issues raised in this document, including our proposal that GPL processes should be adopted for 'greenfield' situations to facilitate consumer switching. We are keen for feedback on our analysis and proposals. The consultation period is due to close on 19 November 2010.
- 7.4 However, we consider that this document is just one element of a much wider debate. As such, we will be undertaking a number of proactive and focussed activities over the next few months which are designed to facilitate debate on the various issues raised in this document. This will include discussions with consumer and industry stakeholders on a bi-lateral and multi-lateral basis. A central element of these activities will be a consumer and industry stakeholder workshop which is intended to address questions arising from the consultation itself and to provide a forum for discussion.
- 7.5 Our objective in undertaking these additional activities is to gather the views of as many stakeholders as we can and to ensure everyone fully understands the approach we have set out in this document.
- 7.6 We set out below our suggested approach for progressing this work both for a 'greenfield' setting as well as for current switching processes

Progressing our work in relation to a 'greenfield' setting

- 7.7 As discussed in section 6, we have provisionally concluded that a GPL process should be preferred in a 'greenfield' setting. In light of this, our view is that GPL processes should be adopted for 'greenfield' situations to facilitate consumer switching.

- 7.8 This is particularly relevant in the context of NGA where industry is currently discussing the switching processes in an NGA environment through industry forums, such as the FTTH/GEA copper migrations working group.¹³³
- 7.9 During this consultation we will be engaging fully with NGA stakeholders to understand their views on the issues raised in this document. We hope that this consultation document will provide some additional information and guidance as industry look to develop switching processes to and from Openreach's local wired access and its NGA infrastructure, switching within its NGA infrastructure and potentially switching between its NGA and other NGA infrastructures.

Progressing our work in relation to existing switching processes

- 7.10 As set out in section 2, this document does not consider changes to current switching processes. We intend to first consider the responses to this consultation and take forward work with relevant stakeholders in relation to a specification and cost assessment for various options for our implementation priorities (discussed below). Our second consultation will consider if changes should be made to these switching processes, using our assessment framework and the preferred 'greenfield' switching process as the starting point, and taking into account the case for regulatory intervention, specific market developments and implementation costs.

Implementation priorities

- 7.11 Based on our analysis of the consumer experience and competition evidence in sections 4 and 5 and our assessment of the current switching processes against our assessment framework in section 6, we have identified fixed-line and broadband services as the areas of highest concern. Therefore, in our second consultation document and subsequent statement planned for 2011, we propose to only consider changes to current switching processes for fixed-line and broadband services (including bundles of the two) which currently use the NoT and MAC processes.
- 7.12 We will only consider whether changes are necessary to the switching processes for mobile and pay TV, and for fixed-line and broadband switching using the C&R process (including triple play bundling) after we have published the 2011 statement.
- 7.13 Our proposed approach is based on prioritisation grounds and the need to narrow the focus of the Review in order to make progress. We believe the approach has a number of benefits:
- It will focus efforts on those services where there is evidence of greatest harm. There are significant consumer experience concerns with the switching processes for fixed-line and broadband services relative to mobile and pay TV services. For example, consumers find it particularly difficult to navigate the MAC process as compared to the NoT or PAC processes, and there are particular problems with slamming in the NoT process.
 - It allows us to focus on the fixed line and broadband sectors where a number of stakeholders have expressed the view that Ofcom needs to provide strategic direction.

¹³³ The FTTH/GEA copper migrations working group is an ad-hoc industry group chaired by the OTA consisting of communication providers and Openreach. The objective of the group is to develop switching processes for NGA migration to/from copper.

- A narrow focus on MAC and NoT within broadband and fixed-line services also allows us to focus effort on the areas where we believe we can make quicker progress so that we can deliver benefits to consumers more quickly.
- It will allow us to consider and prioritise harmonising switching processes for the most common type of bundle.
- It will allow the changes to GC18 which have been recently finalised in our MNP statement to bed down before considering the case for further changes in the mobile sector.

7.14 In order to take forward our proposal to consider changes to the current NoT and MAC processes for fixed-line and broadband we plan to establish an industry working group. We expect to hold the first meeting of the working group around 4 weeks after the publication of this consultation document. This group will consider possible specifications and costings for switching processes. We expect the development of the specification and associated cost analysis to be an iterative process. It will require ongoing engagement and a commitment from stakeholders to provide comments on the options and cost information. The outputs and analysis from the working group will feed into an impact assessment for our next consultation document where we plan to be able to include a specification and cost assessment of options for changes to the current NoT and MAC processes.

7.15 A key objective is to consider harmonising the switching processes for fixed-line and broadband to make it easier to switch double play bundles. This means we would need to apply a GPL or an LPL process to both services. Given our preference for GPL processes on a 'greenfield' basis and our stated concerns relating to the existing LPL processes, we are proposing to use GPL processes as our starting point for developing specifications and costing options. Our assessment at this stage, subject to consultation responses, is that it is difficult to overcome the disadvantages of the LPL switching processes in an effective way whilst still minimising switching costs and supporting retail competition. Therefore, given that it is costly for industry and us to work up detailed specifications and costings, it would seem a disproportionate burden on stakeholders at this stage to develop the LPL options given that GPL options are likely to be preferred. In light of this, we are not proposing, at this stage, to give further detailed consideration of LPL processes although we recognise that this might change later (see below).

7.16 We have discussed in section 6 of this document the relative merits of three possible GPL processes which we believe overcome some of the identified weakness of the current NoT process. We are keen to work with both consumer and industry stakeholders in further developing specifications of options, including the likely costs. If there are difficulties in obtaining cost data in this area, we may need to consider developing a costing model which we would then seek comments from participants and other stakeholders on or consider other alternatives in order to progress matters.

7.17 We recognise there are deficiencies in the existing GPL processes but experience from other sectors and countries has shown that it is possible to successfully deal with slamming and protect consumers within a GPL switching process. It may also be possible to provide information on the implications of switching in a GPL process (for example if the TPV option is pursued it may be possible to include a warning about ETCs) or indeed seek to provide that information outside of that process (for example through wider consumer education about ETCs). We plan to progress some more detailed analysis of possible GPL options as part of our preparatory work for the working groups.

- 7.18 In the event that GPL options do not cost in, or the responses to our consultation make us rethink our position, then we will reconsider whether we should also take forward further consideration of LPL processes (e.g. working up more detailed specifications and costings).

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

Annex 1

Responding to this consultation

How to respond

- A1.1 Ofcom invites written views and comments on the issues raised in this document, to be made **by 5pm on 19 November 2010**.
- A1.2 Ofcom strongly prefers to receive responses using the online web form at <http://www.ofcom.org.uk/consult/condocs/consumer-switching/howtorespond/form>, as this helps us to process the responses quickly and efficiently. We would also be grateful if you could assist us by completing a response cover sheet (see Annex 3), to indicate whether or not there are confidentiality issues. This response coversheet is incorporated into the online web form questionnaire.
- A1.3 For larger consultation responses - particularly those with supporting charts, tables or other data - please consumerswitching@ofcom.org.uk attaching your response in Microsoft Word format, together with a consultation response coversheet.
- A1.4 Responses may alternatively be posted or faxed to the address below, marked with the title of the consultation.
- Gavin Daykin or Katharine Morrison
Ofcom
Consumer Affairs – Strategy & Market Developments
6th Floor
Riverside House
2A Southwark Bridge Road
London SE1 9HA
- Fax: 020 7981 3333
- A1.5 Note that we do not need a hard copy in addition to an electronic version. Ofcom will acknowledge receipt of responses if they are submitted using the online web form but not otherwise.
- A1.6 It would be helpful if your response could include direct answers to the questions asked in this document, which are listed together at Annex 4. It would also help if you can explain why you hold your views and how Ofcom's proposals would impact on you.

Further information

- A1.7 If you want to discuss the issues and questions raised in this consultation, or need advice on the appropriate form of response, please contact Gavin Daykin on 020 7981 3859 or Katharine Morrison on 020 7981 3098.

Confidentiality

- A1.8 We believe it is important for everyone interested in an issue to see the views expressed by consultation respondents. We will therefore usually publish all

responses on our website, www.ofcom.org.uk, ideally on receipt. If you think your response should be kept confidential, can you please specify what part or whether all of your response should be kept confidential, and specify why. Please also place such parts in a separate annex.

- A1.9 If someone asks us to keep part or all of a response confidential, we will treat this request seriously and will try to respect this. But sometimes we will need to publish all responses, including those that are marked as confidential, in order to meet legal obligations.
- A1.10 Please also note that copyright and all other intellectual property in responses will be assumed to be licensed to Ofcom to use. Ofcom's approach on intellectual property rights is explained further on its website at <http://www.ofcom.org.uk/about/accoun/disclaimer/>

Next steps

- A1.11 Following the end of the consultation period, we intend to publish a second consultation document in May/June 2011 and a statement by the end of 2011.
- A1.12 Please note that you can register to receive free mail Updates alerting you to the publications of relevant Ofcom documents. For more details please see: http://www.ofcom.org.uk/static/subscribe/select_list.htm

Ofcom's consultation processes

- A1.13 Ofcom seeks to ensure that responding to a consultation is easy as possible. For more information please see our consultation principles in Annex 2.
- A1.14 If you have any comments or suggestions on how Ofcom conducts its consultations, please call our consultation helpdesk on 020 7981 3003 or e-mail us at consult@ofcom.org.uk. We would particularly welcome thoughts on how Ofcom could more effectively seek the views of those groups or individuals, such as small businesses or particular types of residential consumers, who are less likely to give their opinions through a formal consultation.
- A1.15 If you would like to discuss these issues or Ofcom's consultation processes more generally you can alternatively contact Vicki Nash, Director Scotland, who is Ofcom's consultation champion:

Vicki Nash
Ofcom
Sutherland House
149 St. Vincent Street
Glasgow G2 5NW

Tel: 0141 229 7401
Fax: 0141 229 7433

Email vicki.nash@ofcom.org.uk

Annex 2

Ofcom's consultation principles

A2.1 Ofcom has published the following seven principles that it will follow for each public written consultation:

Before the consultation

A2.2 Where possible, we will hold informal talks with people and organisations before announcing a big consultation to find out whether we are thinking in the right direction. If we do not have enough time to do this, we will hold an open meeting to explain our proposals shortly after announcing the consultation.

During the consultation

A2.3 We will be clear about who we are consulting, why, on what questions and for how long.

A2.4 We will make the consultation document as short and simple as possible with a summary of no more than two pages. We will try to make it as easy as possible to give us a written response. If the consultation is complicated, we may provide a shortened Plain English Guide for smaller organisations or individuals who would otherwise not be able to spare the time to share their views.

A2.5 We will consult for up to 10 weeks depending on the potential impact of our proposals.

A2.6 A person within Ofcom will be in charge of making sure we follow our own guidelines and reach out to the largest number of people and organisations interested in the outcome of our decisions. Ofcom's 'Consultation Champion' will also be the main person to contact with views on the way we run our consultations.

A2.7 If we are not able to follow one of these principles, we will explain why.

After the consultation

A2.8 We think it is important for everyone interested in an issue to see the views of others during a consultation. We would usually publish all the responses we have received on our website. In our statement, we will give reasons for our decisions and will give an account of how the views of those concerned helped shape those decisions.

Annex 3

Consultation response cover sheet

- A3.1 In the interests of transparency and good regulatory practice, we will publish all consultation responses in full on our website, www.ofcom.org.uk.
- A3.2 We have produced a coversheet for responses (see below) and would be very grateful if you could send one with your response (this is incorporated into the online web form if you respond in this way). This will speed up our processing of responses, and help to maintain confidentiality where appropriate.
- A3.3 The quality of consultation can be enhanced by publishing responses before the consultation period closes. In particular, this can help those individuals and organisations with limited resources or familiarity with the issues to respond in a more informed way. Therefore Ofcom would encourage respondents to complete their coversheet in a way that allows Ofcom to publish their responses upon receipt, rather than waiting until the consultation period has ended.
- A3.4 We strongly prefer to receive responses via the online web form which incorporates the coversheet. If you are responding via email, post or fax you can download an electronic copy of this coversheet in Word or RTF format from the 'Consultations' section of our website at www.ofcom.org.uk/consult/.
- A3.5 Please put any parts of your response you consider should be kept confidential in a separate annex to your response and include your reasons why this part of your response should not be published. This can include information such as your personal background and experience. If you want your name, address, other contact details, or job title to remain confidential, please provide them in your cover sheet only, so that we do not have to edit your response.

Cover sheet for response to an Ofcom consultation

BASIC DETAILS

Consultation title:

To (Ofcom contact):

Name of respondent:

Representing (self or organisation/s):

Address (if not received by email):

CONFIDENTIALITY

Please tick below what part of your response you consider is confidential, giving your reasons why

Nothing	<input type="checkbox"/>	Name/contact details/job title	<input type="checkbox"/>
Whole response	<input type="checkbox"/>	Organisation	<input type="checkbox"/>
Part of the response	<input type="checkbox"/>	If there is no separate annex, which parts?	

If you want part of your response, your name or your organisation not to be published, can Ofcom still publish a reference to the contents of your response (including, for any confidential parts, a general summary that does not disclose the specific information or enable you to be identified)?

DECLARATION

I confirm that the correspondence supplied with this cover sheet is a formal consultation response that Ofcom can publish. However, in supplying this response, I understand that Ofcom may need to publish all responses, including those which are marked as confidential, in order to meet legal obligations. If I have sent my response by email, Ofcom can disregard any standard e-mail text about not disclosing email contents and attachments.

Ofcom seeks to publish responses on receipt. If your response is non-confidential (in whole or in part), and you would prefer us to publish your response only once the consultation has ended, please tick here.

Name

Signed (if hard copy)

Annex 4

Consultation questions

A4.1 We have asked the questions set out below in this consultation.

Section 4

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.

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.*

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.*

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.*

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.*

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.

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.

Section 5

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

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

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

Section 6

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

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

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

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

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

Section 7

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

Annex 5

Regulatory framework

A5.1 In this Annex, we provide an overview of Ofcom's duties and powers under the Communications Act 2003 ('the Act') and the requirements and procedure to be met before Ofcom can introduce new general conditions or modify any existing conditions. We also provide an overview of the existing general conditions that regulate switching processes.

The legal framework

A5.2 Ofcom regulates the communications sector under, and in accordance with, the framework established by the Act and European Community requirements for regulation. The Department for Business, Innovation and Skills ('BIS') is due to issue a consultation shortly on the implementation of the revised EU Framework. A number of the new provisions are relevant to consumer switching.

Ofcom's general duties

A5.3 Section 3(1) of the Act states that:

'it shall be the principal duty of Ofcom, in carrying out their functions:-

- to further the interests of citizens in relation to communication matters; and
- to further the interests of consumers in relevant markets, where appropriate by promoting competition'.

A5.4 Section 3(2) of the Act states that Ofcom is required, when carrying out its functions, amongst other things, to secure the availability throughout the UK of a wide range of electronic communications services.

A5.5 Section 3(3) of the Act requires Ofcom, when performing its duties, to have regard to the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed; and any other principles appearing to Ofcom to represent best regulatory practice.

A5.6 Section 3(4) of the Act states that in performing its duties, Ofcom must also have regard to a number of matters as appears to be relevant in the circumstances which we consider include in the current context, in particular:

- the desirability of promoting competition in relevant markets;
- the desirability of promoting and facilitating the development and use of effective forms of self-regulation;
- the desirability of encouraging investment and innovation in relevant markets;
- the needs of persons with disabilities, of the elderly and of those on low incomes; and

- the opinions of consumers in relevant markets and of members of the public generally.

European Community requirements for regulation

A5.7 Section 4 of the Act requires Ofcom to act in accordance with the six European Community requirements. In summary these requirements are to:

- promote competition in the provision of electronic communications networks and services, associated facilities and the supply of directories;
- contribute to the development of the European internal market;
- promote the interests of all persons who are citizens of the European Union;
- not favour one form of or means of providing electronic communications networks or services, i.e. to be technologically neutral;
- encourage the provision of network access and service interoperability for the purpose of securing:
 - efficient and sustainable competition; and
 - the maximum benefit for customers of CPs; and
 - encourage compliance with certain standards in order to facilitate service interoperability and secure freedom of choice for the customers of CPs.

A5.8 In doing so, Ofcom has to read these requirements in accordance with the requirements of Art. 8 of the Framework Directive.¹³⁴ These include, in particular, the obligation to:

- ensure that users, including disabled users, elderly users and users with special needs derive maximum benefit in terms of choice, price and quality (Art. 8(2) (a));
- ensure a high level of protection for consumers in their dealings with suppliers (Art. 8(4)(b)); and
- promote the provision of clear information, in particular requiring transparency of tariffs and conditions for using publicly available electronic communications services (Art 8(4)(d)).

A5.9 Other relevant considerations are contained in Article 30 of the Universal Services Directive¹³⁵ which states at (4) and (6) that:

- Competent national authorities shall also take into account, where necessary, measures ensuring that subscribers are protected throughout the switching process and are not switched to another provider against their will.

¹³⁴ 2002/21/EC

¹³⁵ 2002/22/EC

- Without prejudice to any minimum contractual period, Member States shall ensure that conditions and procedures for contract termination do not act as a disincentive against changing service provider.

Powers and duties in relation to the General Conditions

- A5.10 Ofcom currently regulates through setting General Conditions to which all CPs in the category specified in that Condition (e.g. providers of publicly available telephone services) must comply, although the specific requirements will depend on the nature of the service and the type of customer.
- A5.11 Section 45 of the Act gives Ofcom the power to set General Conditions which can only contain provisions authorised or required by one or more of sections 51, 52, 57, 58 or 64 of the Act.
- A5.12 Ofcom can only set or modify a General Condition where it is satisfied that the modification meets the test in section 47(2) of the Act, which is that it is:
- ‘objectively justifiable in relation to the networks, services, facilities, apparatus or directories to which it relates;
 - not such as to discriminate unduly against particular persons or against a particular description of persons;
 - proportionate to what the modification is intended to achieve; and
- a) in relation to what it is intended to achieve, transparent’.
- A5.13 Before setting or modifying conditions, Section 48(2) requires us to publish a notification:
- ‘stating that they are proposing to set, modify or revoke the conditions that are specified in the notification;
 - setting out the effect of those conditions, modifications or revocations;
 - giving their reasons for making the proposal; and
 - specifying the period within which representations may be made to Ofcom about their proposal’.
- A5.14 Ofcom can give effect to proposals to make or modify conditions only where, in accordance with section 48(5) of the Act, we have considered each representation made during the consultation period and provided we have had regard to any international obligation notified to us by the Secretary of State.

Existing General Conditions which relate to switching

- A5.15 Ofcom has invested significant resources in tackling a range of issues with today's switching processes and has introduced, and enforced against, a number of GC's to address these. Further detail regarding the existing general conditions and Ofcom's enforcement and monitoring programmes is set out below.

Number Portability (General Condition 18)

- A5.16 GC 18 currently sets out the obligations on providers to allow subscribers to retain their telephone number(s) when they change providers. GC18.1 requires providers to provide 'number portability as soon as is reasonably practicable on reasonable terms'.
- A5.17 On 30 June 2009, Ofcom opened an industry-wide pre-enforcement programme to monitor trends and examine complaints received by the OAT in relation to compliance with GC18. Since opening the programme, industry wide complaints relating to PACs fell significantly, some specific areas of concern had been addressed by the MNOs and others were considered as part of the GC18 review. Therefore, this programme was closed on 29 June 2010. Ofcom will informally continue to monitor the complaints, and enforcement will be on a case by case basis.
- A5.18 Ofcom has recently modified the General Condition 18 by issuing the statement 'Changes to the Mobile Number Portability'¹³⁶ in July 2010. With this statement, Ofcom decided not to change the way in which MNP works (i.e. it retained the current LPL (donor-led) process) but to shorten the time taken to port a number to a new mobile provider from two to one working day. The new rules stipulate the way in which the donor provider must release PACs to consumers. In particular, Ofcom requires providers to give the PAC to consumers who ask for it either immediately over the phone or by SMS within two hours. The changes will come into force in April 2011. This is to allow operators enough time to agree on the implementation details and adapt their systems.
- A5.19 The decision is also likely to be in line with the revised EU Framework.¹³⁷ As noted in paragraph A5.2, BIS is due to issue a consultation document on the implementation of the revised EU Framework shortly.

Broadband migrations (General Condition 22)

- A5.20 GC22 requires all providers in the value chain (retail and wholesale providers), amongst other requirements, to:
- to comply with the MAC process and, in particular, supply MACs to customers wanting to switch providers; and
 - ensure a positive experience of migrations for broadband customers (particularly relevant where the MAC process does not apply).
- A5.21 GC22 came into force on 14 February 2007. On the same day Ofcom opened an industry-wide monitoring and enforcement programme in relation to ISP's compliance with GC22. Ofcom closed down this programme in November 2009 in light of significantly reducing complaint levels. Future enforcement will now be on a case by case basis.

¹³⁶ <http://stakeholders.ofcom.org.uk/consultations/mnp/>

¹³⁷ Art. 30 Universal Service Directive) which requires all operators in member states to reduce the time to port to one working day by the end of May 2011.

Sales and marketing of Mobile Telephony Services (General Condition 23)

A5.22 GC23 prohibits Mobile Service Providers (MSPs) from engaging in dishonest, misleading or deceptive conduct, aggressive conduct or contacting the customer in an inappropriate manner. Amongst other things, GC23 also sets requirements on MSPs:

- to give customers the accurate information they need when they buy the product;
- to check the customer is authorised to, and intends to, enter into a contract;
- to train staff appropriately;
- to carry out due diligence and a number of checks in respect of their retailers to ensure that they are fit and proper to sell the services on the MSPs behalf; and
- to check that the terms and conditions of sales incentives offered by their retailers are not unduly restrictive.

A5.23 GC23 came in to force on 16 September 2009. On the same day Ofcom opened a monitoring and enforcement programme to monitor trends and examine complaints received by the OAT in relation to MSP's compliance with GC23.

Sales and marketing of Fixed-Line Telephony Services (General Condition 24)

A5.24 GC24 places obligations on fixed-line providers regarding the way in which they engage in their sales and marketing activity in order to prevent consumers from having their services switched without their express knowledge or consent. GC24 came into force on 18 March 2010 and superseded GC14.5. Amongst other things, GC24:

- explicitly prohibits inappropriate sales and marketing activity;
- confirms the type and level of information that needs to be made available to new customers both at the point of sale and after the sale has been concluded (but before the service has actually been transferred). This includes providing important information about the key terms and conditions of the service, including contractual liabilities and cancellation rights;
- introduces new rules to make clear when providers are allowed to cancel orders placed by others to protect their customers from slamming (known in the industry as 'Cancel Other') – cancelling orders in this way for purposes other than those 'slamming' reasons expressly specified by the regulations will be prohibited; and
- clarifies existing general record-keeping requirements for sales and marketing activities.

A5.25 Ofcom opened an industry-wide monitoring and enforcement programme under GC14.5 on 27 May 2005. The GC24 monitoring and enforcement programme was opened when the new regulations came into force on 18 March 2010. This programme remains open.

Annex 6

Switching costs and Price discrimination

Save activity under LPL and price discrimination in competitive environments

- A6.1 In section 5, we have briefly presented the economics of save activity in a LPL process. This targeted save activity has not been the subject of any specific academic research. However, there are two key elements in save activity under LPL both of which have received some attention from the literature. These are price discrimination and price-matching guarantees. In this annex, we present a slightly more extended account of the economics of price discrimination than that presented in Section 5.¹³⁸
- A6.2 There are several types of price discrimination, which are not necessarily mutually exclusive. This annex will focus on “behaviour-based price discrimination” (BBPD) as it makes up much of the literature on price discrimination in competitive environments. It arises where price discrimination is based not on intrinsic consumer characteristics (e.g. willingness to pay, elasticity of demand or geographic location) but on the consumer’s observed behaviour. The most well-covered form of BBPD in the literature is price discrimination by purchase history (e.g. based on whether consumers purchased from firm A or B in the past), in particular between existing consumers (often referred to as ‘old’ consumers) and ‘new’ consumers.
- A6.3 Price discrimination between existing consumers and new consumers has received various names in the literature: “paying customers to switch”, “paying customers to stay” or “customer poaching”.¹³⁹ The main objective of this pricing strategy is “to generate profitable incremental sales without damaging the profits a firm can extract from its own customer base.”¹⁴⁰
- A6.4 In competitive environments, price discrimination may lead to three potential outcomes. The classical and most commonly known outcome is that some consumers pay a higher price while other consumers pay a lower price compared to a uniform price. However, recent literature has identified two other potential outcomes which occur mostly in BBPD models: price discrimination may lead to all prices being below the uniform price or all prices being above the uniform price.¹⁴¹ The latter two outcomes have been termed “all-out competition” and “all-out prices increases” respectively.

¹³⁸ For an extended account of the economics of price matching guarantees, see

http://www.uea.ac.uk/polopoly_fs/1.170059!Summary%20of%20LPG%20literature%20Final.pdf.

¹³⁹ See respectively Y. Chen (1997), “Paying customers to switch”, *Journal of Economics and Management Strategy*, 6, 877-897; G. Shaffer and Z. Zhang (2000), “Pay to switch or pay to stay: preference-based price discrimination in markets with switching costs”, *Journal of Economics and Management Strategy*, 9, 397-424; and D. Fudenberg and J. Tirole (2000), “Customer poaching and brand switching”, *Rand Journal of Economics*, 31, 634-657.

¹⁴⁰ R. B. Esteves (2009) “A Survey on the economics of behaviour-based price discrimination”, *Working paper*, NIPE-WP 5/2009.

¹⁴¹ See K. Corts (1998), “Third-degree price discrimination in oligopoly: All-out competition and strategic commitment”, *Rand Journal of Economics*, 29, 306-323.

A6.5 There are quite a few comprehensive surveys on price discrimination in competitive environments. Armstrong (2006),¹⁴² Stole (2007),¹⁴³ Fudenberg and Villas-Boas (2007),¹⁴⁴ and Esteves (2009)¹⁴⁵ provide a good account of that literature (the latter two focus on BBPD).¹⁴⁶ We have heavily relied on these surveys to produce this annex.

Outcomes of price discrimination in competitive environments

A6.6 The main result that emerges from price discrimination in monopolistic settings is that a monopolist can do at least as well when price discriminating as when pricing uniformly. Therefore we would always expect a monopolist to price discriminate when it is not restricted by law or regulation. This result does not extend to competitive settings. The reason for this is that unlike in the monopoly case, where price discrimination only serves to extract consumers' surplus, in a competitive environment it does more than that. It also allows firms to steal business from their rivals. The 'surplus extraction effect' increases profits. The 'business stealing effect' intensifies competition hence decreases firms' profits. In competitive settings, whether price discrimination leads to either of the three outcomes described above and generally whether it benefits consumers or not depends on which of the two effects dominate.

A6.7 So far, the above is of very little practical help as, simply stated, any outcome can occur under price discrimination and, indeed, various pieces of research have in turn obtained each of the three outcomes. The literature¹⁴⁷ has however identified certain conditions under which each of the three outcomes may occur. These theoretical conditions, however, do not always easily translate into practical terms.

Prices increase for some consumers, decrease for others

A6.8 The classical outcome (where the uniform price is between the discriminating prices) arises in situations where firms have the same ranking of various segments of the market in terms of their relative strength in those segments. Firms are often able to segment their markets, and may have different strengths in these segments in the following sense: roughly speaking, a firm's strong segment is where it would

¹⁴² M. Armstrong (2006), "Recent developments in the economics of price discrimination" in *Advances in Economics and Econometrics: Theory and Applications: Ninth World Congress of the Econometric Society*, ed. by R. Blundell, W. Newey, and T. Persson, Cambridge University Press, Cambridge, UK.

¹⁴³ L. Stole (2007), "Price discrimination and competition", in Armstrong, M. and R. Porter, eds., *The Handbook of Industrial Organization*, Vol.3, Amsterdam: North-Holland.

¹⁴⁴ D. Fudenberg and M. Villas-Boas (2007), "Behavior-based price discrimination and customer recognition", in *Handbook on Economics and Information Systems*, ed. by T. Hendershott, North-Holland, Amsterdam.

¹⁴⁵ Esteves (2009, *ibid*).

¹⁴⁶ NERA (2003, *ibid*), and Farrell and Klemperer (2007, *ibid*) also provide a survey of price discrimination models in the presence of switching costs. In fact, switching costs and price discrimination have often been analysed together. The literature on switching costs is broadly divided between models that include price discrimination (typically between existing consumers of a firm and new consumers) and models with uniform pricing. Similarly, the literature on price discrimination in competitive environments is also broadly divided between models with switching costs (and homogeneous goods) and models without switching costs (but with product differentiation).

¹⁴⁷ *Ibid*

like to set a 'high' price and its weak segment is where it would like to set a 'low' price.¹⁴⁸

- A6.9 It is easy to imagine situations where firms would have similar rankings of identified segments in the sense defined above. For example, many communications markets are easily segmented into business and residential users and communications providers are likely to have the same rankings of these segments.¹⁴⁹ The same is likely to hold true for airlines between business and leisure travellers. In these situations, price discrimination leads to some segments paying a higher price while others pay a lower price compared to a uniform price. This situation, in which all firms have the same rankings of the various consumer segments in a market is known in the literature as "best-response symmetry".¹⁵⁰
- A6.10 In best-response symmetry environments, price discrimination does not necessarily result in increased competition compared to uniform pricing.¹⁵¹ In particular, the effect of price discrimination on consumer surplus and total welfare is ambiguous. It is however well-accepted by now that if price discrimination leads to an increase in output then it will generally increase total welfare, though not necessarily consumer surplus. In relation to firms' profits, recent research suggests that, taken together, the findings from that literature "strengthens the sense that price discrimination typically increases firms' profits in settings of best-response symmetry with sufficient competition."¹⁵²
- A6.11 Therefore, in environments of best-response symmetry, price discrimination is not so much used as a tool for stealing business from competitors (and intensifying competition) but more as a tool for tempting the marginal consumer into the market. The reason is that, as we shall see next, competition is more likely to intensify when firms have opposing pricing incentives in the various segments of the market.

Prices increase or decrease for all consumers

- A6.12 The outcomes that price discrimination leads to all prices increasing ("all-out prices increases") or all prices decreasing ("all-out competition") compared to uniform pricing are more likely to occur where firms have opposite rankings of their strength in the various segments in a market. For example, in the case of two firms and two segments of consumers, all-out competition or all-out prices increases are more

¹⁴⁸ This holds true for any uniform price set by other firms. In the case of a monopoly, the strong segment is the one with the low price-elasticity of demand (a measure of the variation in the demand cause by a variation in price) and the weak segment is the one with the high price elasticity of demand. In a non-monopoly environment, this is not necessarily the case and the definition of strong and weak segments is slightly more complex. This is because in setting its price in each segment, a firm in a non-monopoly environment takes into account not the price elasticity of demand in each segment, but the firm's elasticity of demand, which is sum of the price elasticity of demand in that segment plus the cross-price elasticity of demand (i.e. a measure of the demand that would be lost to its rivals if it increased its price). See Corts (1998), and Stole (2007, section 3.3).

¹⁴⁹ This is true to the extent that all firms serve both segments. Obviously, some firms may target one of these segments only.

¹⁵⁰ Corts (1998, *ibid*).

¹⁵¹ See T. Holmes (1989), "The effects of third-degree price discrimination in oligopoly", *American Economic Review*, 79, 244-250.

¹⁵² Stole (2007, Section 3.3). The seminal paper by Holmes (1989, *ibid*) showed that the effect of price discrimination on profits is ambiguous, just as for welfare and consumer's surplus. M. Armstrong and J. Vickers (2001, "Competitive price discrimination," *Rand Journal of Economics*, 32, 579-605) however show that Holmes' result that price discrimination may decrease firms' profits in environments of best-response symmetry is not robust to a change in the assumption about the intensity of competition (Holmes considers a duopoly in his model).

likely to occur if one firm's strong segment is the rival's weak segment and vice versa.¹⁵³ Therefore, in each segment of the market, one of the firms would like to set a high price while its rival would like to set a low price. The outcome can tip either towards some sort of collusion (i.e. the former firm 'prevails') or competition (i.e. the latter firm 'prevails').

- A6.13 This situation where firms have opposite rankings of their consumers' segments is known in the literature as best-response asymmetry and is characteristic of markets where consumers have strong brand preferences or face non-negligible switching costs and hence tend to stay with one firm for several periods of time. This includes the communications markets where consumers generally sign a contract that binds them with a particular provider and tend to stay with that provider even after the expiration of their minimum contract period.
- A6.14 In these situations, each firm tends to view its existing consumer base as its strong segment as it is likely composed of consumers who have either expressed a strong preference for the firm's brand/product through their choice of the firm and/or are unlikely to switch if there are switching costs. For the same reason, a firm is likely to view a rival's consumer base as the weak segment as it would need to make highly attractive offers to tempt them to switch away from their preferred brand/product and/or incur switching costs. It is therefore not a coincidence that most of the literature on price discrimination in best-response asymmetry environments considers price discrimination between existing and new consumers.
- A6.15 In best-response asymmetry environments, whether all-out competition or all-out prices increase is more likely to emerge further depends on how strong the asymmetry in firms ranking of the segments is. Generally, in the two-firm (say A,B) and two-segment (say 1,2) example, if firm A views segment 1 as 'sufficiently' stronger than segment 2 and firm B has opposite views, then all-out competition is more likely to occur. Otherwise, all-out prices increases are more likely. This is likely to be of little help in providing guidance as to how to predict in practice which outcome is likely to occur. A practical assessment of whether one segment is 'sufficiently' stronger than the other is likely to be difficult, if at all feasible.
- A6.16 So far however, the literature findings suggest that a price decrease to all consumers is more likely to occur in environments of best-response asymmetry. This literature, which is relatively recent and appears to be in a developing phase, has considered a relatively wide range of models mainly with BBPD.¹⁵⁴ With a very few exceptions, all-out competition appears to be the outcome obtained irrespective

¹⁵³ The vast majority of the literature on price discrimination in a non-monopoly environment assumes a duopoly, i.e. that there are only two firms in the market.

¹⁵⁴ See e.g., J. Thisse and X. Vives (1988, "On the strategic choice of spatial price policy", *American Economic Review*, 78, 122-137) for a model of spatial location, and the more recent literature on price discrimination based on purchase history (often referred to as "behaviour-based price discrimination"—see D. Fudenberg and M. Villas-Boas (2006, *ibid*) and R.B. Esteves (2009, *ibid*) for a survey). This recent literature can be broadly divided into two broad strands: markets with homogeneous good and exogenous switching costs (see e.g. T. Nilsen (1992, "Two kinds of consumer switching costs", *Rand Journal of Economics*, 23, 579-589) Y. Chen (1997, *ibid*), and C. Taylor (2003, "Supplier surfing: competition and consumer behaviour in subscription markets", *Rand Journal of Economics*, 34, 223-246)) and markets with product differentiation and no exogenous switching costs (see e.g. R. Caminal and C. Mattutes (1990, "Endogenous switching costs in a duopoly", *International Journal of Industrial Organization*, 8, 353-373) M. Villas-Boas (1999, "Dynamic competition with customer recognition", *Rand Journal of Economics*, 30, 604-631) D. Fudenberg and J. Tirole (2000, "Customer poaching and brand switching", *Rand Journal of Economics*, 31, 634-657)). All these papers find that all-out competition arises as the outcome of competition with price discrimination.

of the class of models used and price discrimination appears to reduce firms profits compared to uniform pricing. This implies that the confrontation in each segment between a firm that would like to set a high price and one that would like to set a low price yields an outcome that is mainly driven by the latter. In other words, the business-stealing effect of price discrimination dominates the surplus extraction effect, thereby leading to some form of competitive rather than collusive outcome in each segment.

- A6.17 It is however important to discuss the exceptions in the BBPD literature which argue that price discrimination increases firms' profits.¹⁵⁵ The main theme of this very recent research is that customer segmentation is not 'offered on a plate' and in competitive settings, the ability to identify segments of a market (e.g. loyal consumers) provides a firm with a competitive advantage as it will allow it to price discriminate and be more effective at poaching rivals' consumers. One way for firms to identify these segments ("customer recognition") is to charge initially 'high' prices. Given the high prices, consumers that do not look to switch are identified as the loyal consumers. Once the consumers are identified, firms can better tailor their prices, hence continuing charging higher prices to loyal consumers.¹⁵⁶ As a result, the pursuit of price discrimination softens competition and firms make higher profits.
- A6.18 What these exceptions suggest is that the findings that price discrimination is more likely to intensify competition is not robust to situations where firms have a segment of loyal (or inert) consumers who are highly unlikely to switch.¹⁵⁷ In this case price discrimination is more likely to increase firms' profits in environments of best-response asymmetry. This literature is however in a developing phase and more research needs to be done before one can predict the outcome of price discrimination with relative confidence.
- A6.19 In contrast to best-response symmetry, the welfare effects of price discrimination in best-response asymmetry environments are unambiguous under either outcome.¹⁵⁸ Under all-out competition, industry profits are lower and consumer surplus is generally higher compared to uniform pricing.¹⁵⁹ Under all-out prices increases, the reverse occurs. Total welfare is however lower under price discrimination than under uniform pricing irrespective of the outcome (i.e. this holds true even under all-out competition). Academics have however warned against drawing policy implications from the results on total welfare effects in this literature, essentially because of a few simplifying but unsatisfactory assumptions that are typically used.¹⁶⁰

¹⁵⁵ See Y. Chen and Z. Zhang (2009), "Dynamic targeted pricing with strategic consumers." *International Journal of Industrial Organization*, 27, 43-50; and R.B. Esteves (2009), "Customer poaching and advertising", *Journal of Industrial Economics* 57 (1), 112-146.

¹⁵⁶ However, 'all-out prices increases' does not necessarily occur as future prices to non-loyal consumers are not necessarily above the uniform price.

¹⁵⁷ For instance, Chen and Zhang (2009, *ibid*) depart from the standard assumption used in the literature that all consumers are potential switchers. Instead, they assume that each firm has a proportion of highly loyal consumers, i.e. consumers who never switch no matter the price they are paying and that of rival firms as long as such a price is below their willingness to pay.

¹⁵⁸ Corts (1998, *ibid*)

¹⁵⁹ Consumer surplus may be lower if there is 'too much' switching (see Chen 1997). In that literature, switching is considered to be socially inefficient although it may be profitable for the consumer who switches. The reason is that in these models, switching is costly and does not affect the total surplus in the market (it merely affects the distribution of surplus between firms and consumers).

¹⁶⁰ See Stole (2007, *ibid*). For example, in the majority of these models, a simplifying assumption on the demand functions (the "unit-demand model") implies that price discrimination has no effect at all

Save activity under LPL and price discrimination

- A6.20 Taken as a price discrimination tool, save activity under LPL could, in light of the above, lead either to more intense competition or to a softening of competition. This would depend on whether save activity falls under best-response symmetry or best-response asymmetry, if it falls under either of these categories at all. Save activity under LPL is highly unlikely to fall under best-response symmetry because it is not price discrimination between existing and new consumers but between the existing consumers of the same firm: those who intend to switch and those who do not. Therefore, while we would expect a firm to rank these segments of its own customers differently (with the 'active' segment being the likely weak market and the 'inactive' segment being the likely strong market), its rivals would rank equally these two segments (most likely as their weak segment-they are another firm's customers) as they cannot identify them separately. For the same reasons, save activity is unlikely to fall under best-response asymmetry.¹⁶¹
- A6.21 More generally, save activity is not price discrimination between segments of a market that are identifiable by all firms, which is the working assumption of much of the literature discussed above. Under save activity in a LPL process, one firm is able to price discriminate between segments of consumers (its existing customer base) while its rivals are not able to do so and can only charge a uniform price to these consumers (i.e. a price to new consumers).
- A6.22 The context of save activity under LPL appears to be closer to those models discussed above in which firms have a segment of highly loyal consumers. The strategies described in those models for identifying loyal consumers are even more credible in a LPL system because setting a 'high' price to reveal who are the loyal (or inert) consumers and who are the active consumers is relatively risk-free under LPL. Unlike in the models discussed above, firms in a LPL process are made aware of consumers' intention to switch before any switching happens.
- A6.23 In summary, the theory on price discrimination in competitive environments may not be directly applicable to save activity in a LPL process.

on output. This assumption implies that, excluding switching costs, welfare is constant and unaffected whether firms' price discriminate or charge uniform prices. This assumption makes welfare comparison straightforward because only switching costs affect welfare in these models hence 'net' welfare is lower in the pricing regime that induces more switching. It is the price discrimination regime as firms have better tools to poach each other consumers, which explains that in these models total welfare is lower than under uniform pricing even under all-out competition.

¹⁶¹ Consider the example of two firms (say A and B). The relevant segments where price discrimination occurs are, for each firm, the segment of consumers who want to switch (say segment S) and those who are 'passive' (say segment P). Consider the consumers of firm A. Arguably, segment P is firm A's strong segment and segment S is its weak segment. For firm B, both segments of firm A's consumer base are weak because all these consumers have chosen firm A in the first place and although segment S wants to switch away from firm A, firm B cannot identify that segment (unlike firm A, thanks to the LPL process). Therefore, it is not clear if this is an environment of best-response asymmetry (which would have required that firm B considers segment S as its strong segment so that the two firms would have opposite rankings of the two segments) or of best-response symmetry (which would have required that firm B considers segment P as its strong segment so that both firms have the same ranking of both segments).

Annex 7

Glossary

Act: means the Communications Act 2003

Automatically renewable contracts (ARCs): contracts where consumers receive a benefit (e.g. a discount or additional call features) in exchange for signing up to a minimum contract period (usually of 12 months) that are automatically renewed unless the consumer contacts their provider to inform them of their intention to switch to a different plan (or to a different provider) once their existing contract term expires.

Broadband: a service or connection which is capable of supporting 'always-on' services which provide the end-user with high data transfer speeds.

BT: British Telecommunications plc.

Bundle: Where a consumer purchases two or more services from the same provider and gets only one bill from the provider. The consumer may or may not receive a discount.

Cable Network: means a hybrid fibre-coax Electronic Communications Network that uses a combination of optical fibres and coaxial cable.

Cancel Other: is the industry term for a functionality that enables the Provider losing the customer to cancel wholesale orders (during the switchover period) placed by an alternative Provider where slamming has been alleged by the customer.

Communications Provider (CP): a person who provides an Electronic Communications Network or provides an Electronic Communications Service, as defined in the Act.

Carrier Pre-Selection (CPS): means a facility which allows a Subscriber to whom a Publicly Available Telephone Service is provided by means of a Public Telephone Network to select which Pre-selected Provider of such Services provided wholly or partly by means of that Network is the Pre-selected Provider he wishes to use to carry his calls by designating in advance the selection that is to apply on every occasion when there has been no selection of Provider by use of a Telephone Number.

Cease and Re-provide (C&R): the consumer terminates their contract with the losing provider and requests a new service from the gaining provider, not necessarily in this order (i.e. the consumer may request a new service first before terminating their contract).

Competitive neutrality: In the context of this consultation this refers to a situation where some providers do not enjoy a competitive advantage over others simply by virtue of the switching process associated with the service(s) they provide.

Consumer: any natural person who uses or requests a publicly available electronic communications service for purposes which are outside his or her trade, business or profession (the definition provided by the EU Framework Directive).

Considerers: consumers that have considered switching in the last year but subsequently decided not to.

DSL (Digital Subscriber Line): means a family of technologies generally referred to as

DSL, xDSL, capable of transforming ordinary phone lines (also known as 'twister copper pairs') into high speed lines.

Early Termination Charge (ETC): a charge for consumers who terminate their contract before the end of any Minimum Contract Period (or Subsequent Minimum Contract Period).

Erroneous transfers: where a customer's service is transferred as a result of a process failure.

Fixed-line: means Narrowband call and/or line rental services provided to consumers and small business consumers.

Full LLU: means services where the provision of access to the copper wires from the customer premises to a BT exchange allows a competing provider to provide the customer with both voice and data services over such copper wires.

Gaining Provider: Provider to whom the customer is transferring.

Gaining Provider Led (GPL) process: Switching process where the consumer only needs to contact the provider they are transferring to in order to switch.

General Conditions: a set of regulations that apply to anyone who provides an electronic communication service or an electronic communications network.

Greenfield: situations where there are no existing switching processes already in place and we are starting from first principles (for example with the rollout of next generation access networks, new switching processes need to be developed).

Inactive: those that have neither switched nor considered switching in the last year.

Inappropriate save: relates to inappropriate activity on the part of the CP to retain their customer and is contrary to General Condition 1.2.

IPstream: wholesale broadband product provided by BT.

Local loop: The access network connection between the customer's premises and the local serving exchange, usually comprised of two copper wires twisted together.

Losing Provider: Provider from whom the customer is transferring.

Losing Provider Led (LPL) process: Switching process where the consumer needs to contact the provider they are transferring away from as well as the provider they are transferring to in order to switch.

Metal Path Facility (MPF): a way for providers to gain full control of the local loop connecting to end users to deliver both voice and broadband.

Mobile network operator (MNO): a person who provides mobile services.

Migration Authorisation Code (MAC): a unique code that a customer obtains from the losing broadband service provider and gives to the gaining provider, that allows the service to be transferred from an existing service provider seamlessly and with little or no disruption of service.

Minimum contract period (MCP): a minimum (fixed-term) contractual period set at the start

of a contract (often for 12 to 24 months).

Mis-selling: Irresponsible sales and marketing activities, such as the provision of false or misleading information, applying unacceptable pressure to change CPs and where customers are switched without their express consent.

Narrowband: means services provided over a traditional Public Telephone Network, excluding services provided over a Cable Network.

Notification of Transfer ('NoT') process: the consumer only has to contact their gaining provider in order to switch, and is informed of an impending switch before it happens (through receipt of letters) and involves a 10-day switchover period

Ofcom: Office of Communications. The regulator for the communications industries, created by the Office of Communications Act 2002.

OAT (Ofcom Advisory Team): the team within Ofcom responsible for dealing with complaints and enquiries from members of the public.

Openreach: BT's access services division.

Porting Authorisation Code (PAC): the process used if a consumer wishes to change mobile network operator but retain their existing phone number. The consumers must first speak to their existing provider and request a code which they then give to their new provider.

Price discrimination: where a provider sells the same good or service at a different price to different consumers.

Price guarantees: incentives offered by firms to retain or attract customers for example a firm may offer to match or beat any lower price a consumer finds at competing rivals or where a firm promises either to match the better terms offered by a rival or to release the customer so that they can take up the better offer without penalties.

Public Telephone Network: means an Electronic Communications Network which is used to provide Publicly Available Telephone Services; it supports the transfer between Network Termination Points of speech communications, and also other forms of communication, such as facsimile and data.

PSTN: Public Switched Telephone Network.

Save: where the LP offers the consumer an incentive not to switch.

Slamming means where a request for CPS, WLR and/or LLU has been made without the Customer's express knowledge and/or consent; that is in the following circumstances:

- (i) where the Customer has never been contacted by the Gaining Communications Provider;
- (ii) where the Customer has been contacted by the Gaining Communications Provider, but has not given the Gaining Communications Provider authorisation to transfer some or all of their telephone calls and/or line rental to the Gaining Communications Provider;
- (iii) where the Customer has agreed to purchase a product or service from the Gaining

Communications Provider and the Gaining Communications Provider has submitted a request for a different product or service which the Customer has not agreed to purchase; or

- (iv) where the Customer has agreed to transfer some or all of their telephone calls and/or line rental to the Gaining Communications Provider having understood, as a result of a deliberate attempt by the Gaining Communications Provider to mislead, that they are making an agreement with a different Communications Provider.

Shared Metal Path Facility (SMPF): a way for providers to gain partial control of the local loop connecting to end users.

Small business consumers: businesses with up to ten employees.

Switching costs: Costs incurred by changing supplier that are not incurred by remaining with the current provider. There are several types of switching costs including transaction costs, compatibility costs, learning costs, contractual costs, equipment costs, uncertainty costs, psychological costs, shopping costs and search costs.

Switchers: consumers that have switched their provider in the last year.

Targeted save activity: where the switching process allows LPs to identify active consumers (those willing to switch) and offer those consumers an incentive not to switch. This is also referred to as save activity within an LPL environment.

Third Party Validation (TPV): where the switch is validated by a third party other than the gaining or losing provider before the switch can happen.

Wholesale Line Rental (WLR): a facility by which BT provides other CPs with the ability to offer monthly line rental and associated services (such as fault repair) on the BT line.