O2

23 October 2009

Elizabeth Gannon
Consumer Policy Executive
Ofcom
Riverside House,
2a Southwark Bridge Road
London,SE1 9HA

Dear Elizabeth,

Mobile Number Portability – Review of the Porting Process

1. Telefónica O2 UK Limited ('O2') welcomes the opportunity to respond to Ofcom's review of the mobile number porting process.

Summary

2. This review has highlighted concerns with provider behaviour prior to the porting process; these should be addressed urgently and, in any event, before proper consideration of a change to the process can take place.

3. O2 supports a *customer*-controlled porting process; a system which puts the customer at the heart of it and of which the customer has full control of when to port. And, Ofcom should bear in mind that more and more of those customers are purchasing online.

4. It essential that this review gives particular consideration to the experience of the online customer, in order to progress towards a 'Digital Britain'.

    "*For the country to reap the maximum benefits, we need to put people at the centre of all our digital thinking. The changes we propose in this Report are intended to improve social mobility, promote UK business competitiveness and to improve our everyday lives ……*"[1].

    Our assessment is that recipient-led porting presents a risk to online customers of being without service or facing more inconvenience. O2 supports a process which can meet the needs of all customers with a consistently good experience and the least exposure to risk.

5. Accordingly we support donor-led porting which requires near instant PAC supply. We also consider that 1-day porting is the best option to deliver certainty to customers, whilst being the most cost-effective.

O2

6. O2 is the largest mobile operator in the UK with nearly 21 million customers. Over the last five years we have been on a journey to become number 1 in the UK in an ever crowded market place on every measure: number of customers; revenue; levels of customer satisfaction.

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[1] Digital Britain – Final Report. Chapter 2, Para. 1.
http://www.culture.gov.uk/images/publications/digitalbritain-finalreport-jun09.pdf

A *Telefónica* company

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7.   O2's success is illustrated in Ofcom's 'Mostly Mobile' report, demonstrating that O2 increased its share of subscriptions whilst our main competitors' fell. Despite 2009 being a tough year, in a flat to declining market we have outperformed the competition again with net mobile customer additions of 252,268 in the last three months to 30 June 2009.

8.   The result is that more and more customers are switching and porting into O2 than porting out. O2 is a net recipient of switchers and those that port their number. It follows that an effective porting regime is in O2's interest.
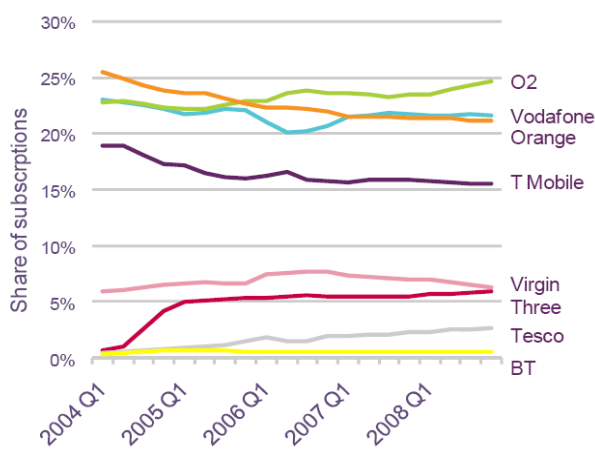
Source: Ofcom/operators

2 *Note: Includes estimates where Ofcom does not receive data from operators*

Customer insight

9.   Our success has been driven by a simple but, in terms of the mobile market, radical, approach: to put the customer first.

10.   We've introduced rewards for loyal customers; challenged existing processes and ways of working; and led a drive within customer service to *get it right first time.* It has been this relentless focus on customer needs and customer insights that has enabled us to win in the market.

11.   This commitment is not limited to new or long-term customers, but also to those with whom we are parting company. We actively demonstrated this commitment by voluntarily taking steps to supply requesting customers with PACs by text, 97% of which are delivered within 2 hours and 100% within 4 hours.

12.   We approach this consultation with the same ambition: to put customers first.

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2 Mostly Mobile, P.50, Figure 14

<u>What's the problem?</u>

13.   O2 notes that Ofcom's research demonstrated that the majority of those who had ported were satisfied with the overall process[3], and that 8 out of 10 participants though the process of obtaining a PAC was clear and straightforward[4].

14.   Despite such encouraging results, we were disturbed to read about the complaints made to the Ofcom Advisory Team ('OAT') which centred on the experience of obtaining a PAC prior to the porting process. The problems are identified as:

- Excessive or unwanted 'save' activity when requesting a PAC
- Wrongful refusal to supply a PAC
- Delays delivering a PAC

<u>Fixing the problem</u>

15.   It is apparent from Ofcom's research[5] that the process itself is not the root cause of the problems here but rather the behaviours of less customer-centric providers. In this response we explain why we consider that 'reinventing the wheel' and choosing a recipient-led process would not be the right response to the problems that Ofcom has identified and would be likely to lead to other problems, arguably more severe. Accordingly, we do not think that seeking to amend General Condition 18 to give effect to recipient led porting would be consistent with the duties and tests set out in the Communications Act.

16.   Instead, a simpler, targeted approach should be adopted, which allows the industry to retain the best of the existing donor-led process with the least disruption (and cost) to consumer and industry. In summary, we consider that these problems could be resolved by:

- Segregating 'save' activity from PAC supply. This would address concerns about unwanted save activity whilst retaining the benefits demonstrated by the 50%[6] of customers who negotiated and successfully obtained a better deal. It would allow customers to continue to be aware of existing liabilities in a personal and easy to understand way, whilst providing them with a built in safeguard and alert to 'slamming' and mis-selling activities. It would treat individual and multi-line ports alike in all but the length of time, making it, we suspect, easier for customers to understand and easier for industry to manage;

- A requirement to supply PACs almost instantly. This would address concerns about delays to the process, that some providers have caused either purposefully or inadvertently, whilst retaining the benefit of proper and satisfactory verification of the customer; and

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[3] TNS, Omnibus Survey, December 2008.
[4] Synovate, PAC Mystery Shopping, April 2009.
[5] Jigsaw Research: Review of Number Porting, Expectations and Experiences Among Residential and Business Customers.
[6] Consumer Experience Research Dec 08 P.87 http://www.ofcom.org.uk/research/tce/ce07/research07.pdf

- Robust and quick enforcement action against those providers that fail to fulfil legitimate requests for PACs, whilst regaining confidence in the regulatory framework from those providers that work hard to deliver the best to customers.

17.   As we have explained, O2 has voluntarily developed a PAC supply process that favours the customer. It seems clear that others have not followed suit. At the very least, we would have expected our competitors to maintain minimum levels of industry-agreed compliance and for Ofcom to have taken urgent steps to address these matters before they escalated to the level of seriousness suggested in the consultation.

The right starting point

18.   It is important that Ofcom recognises the existing compliance failures, when formulating policy in this area. The essential question to be answered is: to what extent are the identified problems the result of a breach of the current rules, and to what extent are they due to a deficiency in the current rules? In our view, much of the consumer detriment identified by Ofcom can and should be addressed through the proper enforcement of General Condition 18. O2 stands ready to assist Ofcom in this through, for example, the sharing of information about possible breaches provided to us by customers switching to O2.

19.   The corollary is that the current regime *as properly enforced* is the counter factual against which Ofcom should consider changes to General Condition 18. Breaches of the present regime do not justify its amendment, merely proper enforcement of it.

The balancing act

20.   Once Ofcom has accurately assessed the counter-factual, only then can it properly assess its options for resolving consumer harm and improving the consumer experience with proposed amendments to General Condition 18. It is essential that the proposals for change satisfy the duties and tests set out in the Communications Act 2003.

21.   We note that in order to amend the General Condition, any successful proposal must have regard to:

i.   The principles of transparency, accountability, proportionality and consistency as well as ensure that actions are targeted only at cases in which action is needed[7].

ii.   The desirability of promoting competition as well as encouraging investment and innovation in relevant markets[8]

iii.   The interests of those consumers [whose interests Ofcom is seeking to further] in respect of choice, price, quality of service and value for money[9].

22.   In addition, any revised condition must be objectively justifiable, non-discriminatory, proportionate and transparent[10].

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[7] Section 3(3) Communications Act 2003
[8] Section 3(4) Communications Act 2003
[9] Section 3(5) Communications Act 2003

23.   O2 believes that a reformed donor-led regime is best for customers and satisfies the relevant statutory tests.

<ins>Benefits of a donor-led process</ins>

24.   We consider that the donor-led process is best for customers. It provides a consistent, familiar process which, whilst undoubtedly needing refinement and improvement, delivers 80%[11] satisfaction scores even with the difficulties experienced by consumers when obtaining a PAC.

Targeted action

25.   Given Ofcom's duty to have regard to "*consistency*" and to target action "*only at cases in which action is needed[12]*" it seems appropriate for Ofcom to do its utmost to retain the benefits of the existing process whilst it also seeks to improve it.

Customer control

26.   The current donor-led porting process gives the customer control. The customer has the opportunity to obtain a PAC before even considering switching, to change their mind and not use the PAC at all, to negotiate with their originating provider to reward their loyalty, to be reminded of contractual liabilities and added value that they may not have properly considered and to be protected from mis-leading sales practices and harm caused by slamming.

Certainty over speed

27.   The recent Communications Consumer Panel ('CCP') stakeholder workshop on migrations, at which Ofcom were present, heard many consumer groups highlight certainty as the key priority when it comes to switching, far over and above the need for speed.

<ins>Concerns about a recipient-led process</ins>

28.   Moving to a recipient-led regime is a radical proposal for a mature and developed porting environment. There are a range of complexities and system developments that can only be addressed at significant cost. But, more importantly, it brings with it a whole new set of risks and harm for consumers that must be fully considered in order to determine whether it really does further the interest of consumers and citizens. We consider that there is a lot to lose by moving to a recipient-led regime.

Another experience of slamming

- The experience in fixed line service provides a salutary lesson. As Ofcom is aware, that sector has been plagued by increasingly high numbers of complaints and instances of 'slamming'. Whilst the mobile industry has also suffered to a lesser extent, the effects have

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[10] Section 47 Communications Act 2003
[11] TNS, OmniBus Survey, December 2008
[12] Section 3(3) Communications Act 2003

been minimised by the voluntary Code of Practice (superseded by General Condition 23) and by early identification of slamming behaviour by customer service and retention teams when customers request a PAC. In the fixed line world, we have seen no equivalent downward trend. Ofcom should consider whether the inherent risks associated with a recipient-led process has contributed to this.

Loss of customer control

- In a recipient-led regime the customer must relinquish control. Once they have initiated the process by informing the recipient, they have no opportunity to change their mind, to 'cool off'. This limits the customer's ability to benefit from 'try before you buy' policies.

Disadvantaging passive customers

- As a consequence of the recipient-led process initiating the technical port on the customers' first instruction, it seems that the benefits of 'save' activity and negotiation *prior* to porting will be limited to those who are confident enough to pro-actively contact the donor. Contact with the donor prior to porting, allows customers the opportunity to make a fully informed purchase decision. It is likely that the recipient-led process prevents passive customers from the opportunity to negotiate and make savings until *after* they have initiated porting at which point the 'hassle' of trying to reverse the process may itself act as a barrier to these passive customers achieving added value from their original provider. If, as Ofcom suspects, customers in the lower socio-economic group are more likely to be passive, then their interests are not furthered by the adoption of a recipient-led process.

The grass is not always greener

- Furthermore, if we look to countries such as Ireland and Slovakia to see how recipient-led porting works in practice, we observe that there is a retail charge for porting (up to 13 Euros in Slovakia). It is Ofcom's duty to ensure that any changes to the porting regime does not disincentivise porting.

- With reference to the Irish porting process, it also appears that operators can reject customer porting where a debt has accrued on the account. UK customers currently enjoy independence and distinction between porting rights and their debt liabilities.

Poor customer experience

- For those choosing to switch online or via telesales, a recipient-led process also risks some loss of service, particularly in the timescales proposed. A customer choosing to purchase and port at the same time could face the risk of being ported before their equipment has been delivered. The alternative is that the customer waits for delivery before initiating the port, but this too then offers no more convenience to the customer (in terms of number of contact points) than a donor-led process. By giving the customer a PAC they remain in total control over when they want the porting process to begin.

The modern telecoms sector is, as are all industries, increasingly developing their online channels and services as the most efficient and cost effective means of serving customers. Whilst most handsets are delivered within one working day, this still exceeds the 2-hour

porting options considered by Ofcom. Accordingly, both the recipient-led and 2-hour porting options (options A – C)are potentially disruptive for customers.

Faster is not always better

29.   As we observed, at the CCP stakeholder forum, consumer groups preferred longer migration periods if it provided certainty that the process will work. We are therefore surprised that Ofcom have placed such emphasis on a 2-hour porting process, a time-scale beyond that which is proposed by the EU Telecoms Package.

30.   Putting desirability for a faster process to one side, however, we are concerned that the 2-hour process proposed by Ofcom generates far higher costs, but in practice makes little difference to the consumer than the proposal to complete porting within the next working day[13]. The consequence is that the 2-hour process carries the risk of disappointing customer expectations and damaging confidence in the process.

Solutions

31.   We have briefly set out how improvements to the existing donor-led system and the implementation of a near-instant PAC supply requirement can resolve the consumer harm identified by Ofcom as well as improve the existing process whilst retaining all its benefits. We consider that a donor-led option with 1-day porting meets all Ofcom's objectives for this review and satisfies the required legal tests.

Ofcom sets out its objectives in this review as follows[14]. To:

- minimise the potential for consumer harm identified by complaints received through the Ofcom Advisory Team ('OAT')
- improve the consumer experience of the current MNP process.

In setting out its analysis, Ofcom has also considered:

- the costs and benefits involved with each proposal.

In this response, we have sought to address the issues under theses headings. We respond specifically to consultation questions at **Appendix 1**.

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[13] In reality the 2-hour options can operate only between fixed working hours (9-5, Monday to Friday excluding bank holidays). Consequently, for many it will not be as 'instant' as the title suggests and in fact may often be the next working day. Given the significantly higher costs involved to deliver 2-hour porting, the limited marginal benefit it could achieve appears to be disproportionate.

[14] Review of the porting process, p.36, para.5.6

Part 1: Addressing consumer harm

32.   Ofcom points to three clear causes of harm arising from the existing process, namely[15]:

      a. excessive or unwanted 'save' activity on request of a PAC,
      b. Illegitimate refusal of a PAC,
      c. Delays to the delivery of a PAC

The effects of enforcement

33.   We agree with Ofcom's view that consumer harm caused by these problems are unacceptable and must be resolved. However we are concerned that Ofcom's approach appears to involve changing the rules, rather than simply enforcing the current ones. Most of the proposals Ofcom suggest fail to provide an effective and efficient means of preventing immediate harm even in the near future. Three of the four options (Options A to C) proposed by Ofcom require deeply complex changes that will inevitably take a long time to implement. Ofcom's own timeline suggests that implementation would be expected in 2010-2011. It is untenable that consumer harm of the type described by Ofcom should be permitted to continue for so long.

34.   Not only is this continued behaviour a bad experience for consumers, but the actions of a few operators casts a distasteful shadow across the reputation of the entire industry. Ofcom must use its enforcement powers to act now and with some urgency to ensure that consumer harm is eradicated or at least minimised to those beyond which Ofcom cannot act. If Ofcom believe that porting encourages switching and that switching is a sign of healthy competition, then it must also conclude that failure to enforce the current regime has distorted competition.

35.   We understand that the pre-enforcement programme to which Ofcom refers in paragraph 4.54 of its consultation document is now underway, but that it will not conclude prior to the date that the consultation closes nor, in fact, prior to the end of 2009. We are disappointed that Ofcom let an investigation, into what appears to be causing a 'significant minority' of consumers harm, drift without firm action being taken. If O2's competitors are abusing the current process, Ofcom must act firmly and decisively. Otherwise, we can only infer that Ofcom's protestations of consumer harm are over dramatised. It seems to us that immediate action from Ofcom to address potential breaches of General Condition 18.1 may have resolved, at least, two concerns (a and b) to the extent that it may not have been necessary to address them in this consultation – focusing instead on improvements to the current regime only.

36.   Furthermore, it is the porting landscape *after* enforcement action has been taken that should act as the base-line counter-factual from which the other proposals should be assessed, not, the existing process without the benefit of adequate enforcement action, as Ofcom have assumed.

37.   We consider this to be the appropriate assessment because the existing regime, and in fact any which follow it, is built around the fact that enforcement powers exist and will be used to correct any infractions. To assess the current process with infringements against

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[15] Review of the porting process, P.24, para.4.7.

alternative 'ideal' forms without infringement provides an unbalanced and inaccurate result of net benefits.

38. We consider that the harm caused by failing to supply PACs and aggressive 'save' activity could be resolved under the existing regime (and in the latter instance, also by employing powers under General Condition 23) and accordingly are not implicit to the existing process – but a digression from it, for the purpose of cost-benefit analysis. Consequently, the net-benefit of the other proposals in addressing these two issues has been over-stated and must be reviewed. The only instance in which these harms should be included are those where enforcement action has proved to be ineffective. To do otherwise could be considered to be a disproportionate and inconsistent approach to the analysis, thereby failing Ofcom's adherence to its general duties.

39. At paragraph 4.56 of the consultation document Ofcom suggest that …"*if enforcement of the current regulation does not prove an effective way of addressing consumer harm experienced in the PAC request process, then we may look at whether it is necessary to revisit this issue in future*". Whilst this statement suggests that Ofcom intended to use the correct approach (by setting aside these harms which can be resolved by enforcement) it is inconsistent with a later statement at paragraph 5.22 which affirms that the harms were not set aside; "*Given the consumer harm we have identified in Section 4.…we consider that all of the four options would have the potential to deliver incremental benefit over and above the current arrangements.*"

40. Our concern with Ofcom's approach to enforcement in this area so far is that it does not appear to be properly aligned with this consultation process (we understand that target operators have been given six months to December 2009, to correct their behaviours) such that is insufficient opportunity for Ofcom to properly determine the effects of enforcement on the counter-factual scenario.

41. Given Ofcom's proposed timelines for this consultation, assessment and re-consultation we do not consider that Ofcom has allowed itself sufficient opportunity to carefully and objectively determine whether enforcement action has been effective or not. Ofcom's pre-enforcement programme must provide transparent and robust data to demonstrate whether it is effective or not. Ofcom suggests that it will monitor complaint numbers to make this assessment, at the same time that it intends to make a final decision of the process review, due to be published in Spring 2010. However, it appears that Ofcom may not have properly accounted for the fact that often there is a time-lag between enforcement action and the effect on complaints. Such a time-lag was clearly apparent with the MNOs voluntary code on mis-selling of mobile services which took more than 6 months to see a significant decrease in complaints. Ofcom will need at least the same amount of time to safely assess whether complaints have, in fact, decreased and whether corrective action is maintained. In retrospect, it would have been better if Ofcom had insisted on a shorter lead-time for target operators to take corrective action. In the absence of those lead-times, we believe that Ofcom is obliged to provide solid data on the effects of enforcement in order to accurately calculate the counter-factual scenario.

Alternatives to enforcement

42.   Ofcom considers that one option to address the harm is to remove the part of the process which creates the risk altogether, by introducing a recipient-led regime, which requires no PAC. We urge caution with this approach.

43.   While a recipient-led regime could deliver resolutions to all the harms identified by Ofcom, we do not agree that it provides the *best* resolution, because it would lead to other problems and would be costly to implement. In our view the whole process would make for a worse overall customer experience. Accordingly, we think that options A and C fall foul of Ofcom's statutory duties to have regard to proportionality and consistency as well as consumer choice, price, quality of service and value for money.

Losing the value of save activity

44.   Ofcom briefly acknowledges the benefits that some customers achieve through save activity (50% of customers who negotiate achieve positive results) but it fails to appreciate the detrimental effect that recipient-led porting would have on these customers. Furthermore, the act of contacting customers (engaged and passive) raises their awareness of their ability to negotiate a better deal. In a recipient-led world, customers would have to proactively contact their original provider to negotiate which requires a level of confidence usually displayed by actively engaged customers only. We note that Ofcom has no evidence to demonstrate that wanted save activity has any detrimental impact.

45.   In any event, a recipient-led process will not be able to resolve all cases of unwanted or excessive sales tactics it merely shifts the event from pre-porting to post-porting an effect that can be equally achieved, and at less cost, within the existing donor-led process.

46.   The barrier caused by aggressive save activity can easily be resolved by segregating save activity from the PAC supply process.

47.   In a recipient-led world it is likely that the majority of customers, particularly passive customers, would only have access to save activity after they have given the instruction to port their number. In the case that 50% of these customers have a positive and successful experience and would save money from staying with their existing network, they would be unable to realise that benefit easily, as they would be unable to halt the porting process. The recipient-led world removes the opportunity for the customer to change their mind and consequently fails to fulfil the Ofcom duty to have proper regard for consumer choice and value for money.

Preventing customers' from changing their minds

48.   We also note that recipient-led processes, which limits consumer choice, do not appear to be consistent with the CCP's recent proposals on change of mind policies and 'try before you buy'. Ofcom's own research refers to 'hassle' in the existing process. We are concerned that a recipient-led process simply creates a new type of 'hassle' – that of trying to reverse a process that is out of the consumer's control.

49.   Our data shows 35% of customers who request a PAC don't use it. They changed their mind. The reasons for changing could be numerous, but there is no evidence to suggest

that un-utilised PACs have a detrimental impact. Further, these customers would have suffered no ancillary detrimental effects of not using their PAC, as the porting process hasn't started.

50.   In a recipient-led world the equivalent effect would be 35% of customers trying to reverse a process that has already begun. It seems that it does not further the interests of consumers or citizens if regulation results in a significant minority of customers being unable to enjoy the freedom and control of changing their mind.

51.   On the other hand, a reformed donor-led process which offers near instant PAC supply would keep the customer in control. The goal of segregating the 'save' activity from the porting process would still be achieved, but in a manner that retains the benefits of permitting the *opportunity* to negotiate with the existing provider *prior* to initiating the porting process, thus maintaining consumer choice. This benefit cannot be replicated with a recipient-led process. A donor-led process with near-instant PAC supply resolves the harm that Ofcom is seeking to address whilst being proportionate in terms of cost (the complexity of moving to a recipient-led process results in significant costs which in turn discourages investment and innovation in other areas).

52.   We accept that a recipient-led process could minimise the risk of delay in the supply of a PAC, but we feel that the sacrifice to customer control in the process is not sufficient for it to be justifiable, nor does it have regard for customer choice.

Increasing the number of port rejections

53.   Furthermore, a recipient-led process may well remove the opportunities for operators to refuse legitimate PAC requests, it simply increases the opportunity for legitimate porting requests to be refused. This is because it would rely heavily on automated systems of customer identification and validation. The recipient network would need to understanding all the various standards of validation required by each other network, and apply them consistently. It also relies on customers having to hand all the information that they need to validate who they are, including account information. Any glitch or omission in any of these steps is likely to produce an automated rejection from the donor operator. We invite Ofcom to consider the rejection rates in the recipient-led fixed-line sector to inform their thinking on this issue.

54.   Human interaction, empathy and determination to help the customer is what makes the customer experience of any service 'better'. A purely automated service is likely to result in frustration to customers who are 'rejected' by process failures.

55.   Anecdotal experience from our call centres indicates that many customers 'forget' passwords and validation information and that prepay customers, in particular, frequently fail basic data protection checks. Donor operators that hold the account information and which have an existing relationship with the customer, have more opportunities to use human interaction and discretion to validate the customer and provide a PAC. A recipient-led process, or automated phone line similar to the French system, offers no such 'customer service'. We invite Ofcom to evaluate the extent of this risk further before deciding its preferred solution.

56.   Alternatively, a donor-led process which insists on near-instant PAC supply achieves Ofcom's aim of minimising the circumstances in which legitimate requests can be refused whilst ensuring that no additional risks of harm or frustrated customers have been created. Furthermore a refinement of the existing process is less costly and consequently a more proportionate response, to achieve the same ends.

57.   We also note that our Irish colleagues, who operate what appears to be considered the 'ideal' recipient-led process, may reject a customer from porting should they have an outstanding debt. UK customers are not currently frustrated by this condition. UK customers have much greater freedom to port and choose when to port under the current system than we envisage would be the case under a recipient-led process.

58.   We think that a donor-led process offers a proportionate response to the harm identified by Ofcom; it addresses the problem, whilst retaining the benefits of the existing process. Furthermore, a donor-led process with 1-day porting could be implemented far more quickly than the other options, tackling the problems sooner.

Learn from experience

59.   Given the evidence of harm that Ofcom refer to in Section 4 of the consultation document, we suggest that it is not the process that is the problem but behaviours adopted *prior* to the process. As a result, it appears to be disproportionate and unjustifiable to introduce a radical new process to combat the harm, where the risk of harm can be mitigated faster, at less cost and more efficiently with refinements to the existing process.

60.   Whilst the recipient-led process clearly carries the possibility of resolving the harm, it would come at a pecuniary cost, a risk of other harms and a cost to the customer in terms of losing control and choice and, accordingly, would not be objectively justifiable.

61.   There are inherent benefits to industry, regulator and customers from evolving an existing process rather than revolutionising it and, effectively starting from scratch. Moving to a recipient-led process offers many more 'unknowns' than 'knowns' and whilst the porting process in other countries can be pointed to as a reference, there is no clear evidence of the consequences of moving from a donor-led to a recipient-led regime at such a mature stage.

62.   We understand that 45% of switchers in each of the last two years ported their number. Whilst the low level may not appear satisfactory in terms of overall porting, Ofcom has failed to consider the value that that 45% of switchers gained from becoming familiar with the existing process.

63.   Any 'new' system of access results in customers having to be re-educated about the process. Although, Ofcom may have concerns that awareness of porting is low now, it can be relied upon that over time, word of mouth and familiarity will mean that awareness will increase. A new process will, however, mean that awareness is set back to zero.

64.   Industry and the regulator are also familiar with the existing process. This offers the benefit of experience upon which to improve the existing process whilst making sure that opportunities for exploitation are minimised.

65. To illustrate, the OSG's Industry Porting Manual prescribed that all PACs must be sent within two days. It set out the minimum standards by which the PAC must be supplied, but allowed operators to differentiate and compete in terms of the method of delivery and in terms of timing. O2 took this opportunity to offer a better customer service and deliver near-instant PACs by text. However, it is it clear now that two days is, perhaps, too generous a minimum standard, but nonetheless the same principles can easily be maintained whilst lowering the minimum standard to two hours for PAC supply. This allows operators an opportunity to differentiate, but in a manner that cannot be exploited to the consumers' detriment, and Ofcom would always retain the right to approve the process.

66. At paragraph 5.4 of the consultation document Ofcom state that their objective is "*to minimise the potential for consumer harm outlined in Section 4, and to improve the consumer experience of the current MNP process'*. We consider that Ofcom's objective can be best delivered by retaining the benefits of the existing process and evolving those elements of it that experience shows to be sub-optimal.

The French model

67. Ofcom suggest a similar model to that used in France could be considered, in terms of an automated free phone line. However, we consider that a 'new' and different prescribed method of delivering a PAC could still result in risks to the consumer. It would provide wilful operators with an opportunity to limit hours of access and obscure the prominence of the phone number to continue to frustrate consumers wishing to port and it offers a 'cold' unfriendly automated service to customers of networks who aim to deliver high quality customer service, empathy and personal interaction. For these customers, an automated PAC line operates contrary to the expectations they have of the service brand.

Part 2: Room for improvement

68. In considering how it may improve the consumer experience of porting Ofcom appear to have focused on the length of time taken to complete end to end porting, (both to obtain a PAC and the technical porting window) including. However, Ofcom appear to offer no evidence that customers actually want a reduced porting window or that it would improve the overall customer experience. Instead, Ofcom appears to justify its proposals on the grounds of the EU Telecoms Package *proposals*, which refer to one day porting.

69. In contrast, we note that during the recent CCP stakeholder workshop on migrations, consumer groups prioritised certainty over speed. This is certainly consistent with our experience. As we explain below, we are not convinced that either a recipient-led process or a 2-hour process would deliver the level of certainty demanded by consumers.

Recipient-Led Process (Options A and C).

70. Earlier in this response, we highlighted some reasons why the recipient-led process does not offer the best overall customer experience. Ofcom's assessment of the recipient-led processes is justified only by its ability to remove the difficulties consumers face from obtaining a PAC. It fails to evidence any proportionate means of dealing with the harm or any effort to retain existing safeguards and benefits for consumers.

71. But beyond this, in our view, weak justification that the recipient-led process would minimise consumer harm (to which we have invited Ofcom to consider donor-led alternatives) there is no evidence of any tangible customer benefit that can be achieved by adopting a recipient-led process, which in itself carries a number of unacceptable customer risks.

Evidence of a consumer preference

72. Ofcom points to its supporting research as the basis for the assumption that customers prefer a recipient-led process, as it is requires less intervention on their part. But we are concerned that method of questioning and explanation of the recipient-led process may have resulted in an unbalanced result.

73. Our concern begins with the questions posed to consumer in the CAPI OmniBus research[16] which sets out the donor-led process as:

   "*you contact your current mobile network telling them that you want to take your existing phone number to a new network, then contact your new network for them to complete the process*".

   The recipient process is described as:
   "*your new mobile network automatically contacts your existing network to complete the process*".

74. We do not consider that the recipient-led process has been accurately described in this statement and that consequently customer expectations of recipient-led porting as a result of this statement are incorrect.

75. We consider that the statement is inaccurate to the extent that it disguises the fact that the customer must still initiate the process (and that the method of contact to initiate that process may be limited) and that the new mobile network will need to carry out checks and validations before they can 'automatically' contact the existing network. It fails to explain that validation failures will result in an inability to port their number.

76. It is essential that participants have some understanding of 'real world' scenarios and what the recipient-led process means in practice. One example is the fact that a recipient-led process will result in different porting methods for different people and the number and type of steps a customer must take to port their number will depend on the number of lines they wish to port and the channel of sale they wish to use.

Different processes for different people

77. Ofcom's proposals for a recipient-led porting process fail to consider the full context of the customer experience, evidenced by Ofcom's failure to include the point of sale as a 'stage' in the porting process[17].

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[16] Table 24, Q14, page 72
[17] Figure 2, page 19, Consultation Document.

78.   The recipient-led 'ideal' could offer consumers a one-stop-shop. They could purchase and request that the number be ported in one 'go' with a view to achieving a seamless crossover. But in practice, this 'ideal' can only be achieved with an in-store purchase.

79.   However, customers choosing to complete a distance-purchase are unlikely to ever achieve the 'ideal' scenario, as demonstrated at Appendix 2, Figure 2. In fact, if a distance purchaser were to follow their expectations and choose to port their number at point of sale, there is a significant danger that the port would occur whilst their sim card / goods are still in transit – risking a complete loss of service. In order to achieve continuity of service, these customers will continue to need a two-stage interaction in order initiate and complete porting of their number. Consequently any marginal benefit to consumers of recipient-led being a 'quicker' process is limited to in-store retail customers only.

80.   The concern here is that recipient-led porting as described to participants of the Capi OmniBus research and in the consultation document, set a customer expectation that it is simpler when, it seems, that is not necessarily the case and risks a loss of confidence in the porting process when expectations are not met.

Different processes for businesses

81.   Any confusion for consumers is exacerbated for small business customers who, if a recipient-led process is adopted, would have to apply different processes depending on their size (it is envisaged that multi-line ports over 25 numbers will continue to use the existing donor-led process). The requirement to run two entirely different processes also raises complexities and costs for the business that appear unnecessary.

82.   The current donor-led process offers one consistent process for all. The only difference between customers (individuals or businesses) is the time it takes to complete a port. The 'routine' of donor-led porting is already familiar to those who have ported before and improvements to that system will ensure that the value of that current awareness is not lost and customer expectations can be better managed.

Risk of slamming

83.   The mobile operators and Ofcom have worked hard to reduce complaints and risks of slamming and mis-selling in the mobile industry. Those efforts are being rewarded by a significant reduction in complaints[18]. In light of such success we urge Ofcom to consider carefully whether it is prepared to risk this by creating new opportunities for customers to be slammed.

84.   The requirement for a customer to return to their original provider has been a useful method of identifying and capturing 'slammed' customers before their rights under distance selling regulations have expired. By requesting a PAC these customers are alerting donor operators to the fact that irresponsible sales behaviour is occurring in the marketplace and customers realise that they have been duped. A recipient-led world provides no such safety net for the customer, as the process is entirely in the control of the benefiting provider. The donor-led process acts as a method of prevention rather than cure to slamming (for which

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[18] OAT complaints data. http://www.ofcom.org.uk/telecoms/ioi/bulletins/complaints/complaints_june09.pdf

customers now have GC23 for protection) and, admittedly, is therefore hard to quantify. However, a glimpse at the fixed line telecoms sector may be informative.

85.   The risks of slamming in a recipient-led world are apparent by the number of consistently high complaints apparent in the fixed-line telecoms industry. The fixed line process relies on a recipient operator to initiate the porting request. In order to reduce the possibility of slamming and raise customer awareness of existing liabilities, donor and recipient operators are under separate obligations to send letters to the customer within prescribed timeframes. Additionally donor operators are able to cancel a live order where slamming is suspected.

86.   It is interesting to note that this recipient-led process has given rise to the extensive problems, described in Ofcom's consultation "*Protecting Consumers from the mis-selling of fixed line telecommunications services*"[19] Ofcom wrote:

"Based on our analysis of the existing regulations and our experience from our enforcement work, we identified the following issues:

- *some providers are genuinely confused about what is expected of them;*
- *the Code of Practice approach may not be the most effective way of securing compliance and enabling effective enforcement;*
- *some consumers have been switched without realising or recalling they had existing contractual liabilities with their existing provider;*
- *the Cancel Other process has been abused in order to prevent customers from switching. Cancel Other allows a customers existing provider to cancel a live order before a transfer takes place. However, it can only be used to prevent a transfer taking place where the customer alleges slamming; and*
- *there is variability in the quality of sales records made, and retained, across the industry, as a result of which we have found it difficult, on occasion, to enforce the rules".*

87.   Indeed, it seems that any 'fixes' Ofcom have implemented to try and minimise the risk of slamming (like 'cancel other') are proving confusing to customers and industry alike, as well as creating a further opportunity for operators to delay the porting process. We observe with interest that this process is currently under Ofcom consultation for improvement.

88.   The consumer harms that Ofcom identify as apparent in the existing process are, of course, unacceptable but it is also unacceptable to trade those harms for one which has already caused anxiety, loss of trust and real financial hardship to many UK consumers.

89.   We consider that to adopt a process which heightens the risk of consumer harm cannot be objectively justified, nor can it further the interests of consumers and citizens. Whilst Ofcom may suggest that processes can be put in place to manage these risks, the evidence from the fixed line sector demonstrates that no such process has been developed yet.

Loss of customer control

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[19] http://www.ofcom.org.uk/consult/condocs/protecting_consumers_misselling/summary/

90.   Ofcom's research states *"……in moving to this [recipient-led] approach, the consumer effectively relinquishes control to the network provider and this could make it more difficult to sort things out if something goes wrong……"*[20]

91.   This research and the CCP workshop on migrations provide good evidence that customers value retaining control over a process, when it starts and when it ends. A recipient-led process requires customers to relinquish that control and provides customers with no opportunity to halt the process should they find a better deal or simply change their mind.

92.   Given 35% of customers who requested a PAC form O2 choose not to activate it, it is possible that an equivalent percentage of customers would initiate porting but, under a recipient-led world would be unable to change their mind. A PAC gives the customer a choice and room to consider, at their own pace, what is best for them in the circumstances.

93.   Ofcom accepts that *"…..a consumer may decide, for a variety of reasons, not to use their PAC immediately (or, potentially, at all). There is no evidence of consumer harm arising from long-held or unused PACs ………"*[21] Given this finding, it would seem to be a disproportionate measure to remove the control and benefits delivered by the process of obtaining and surrendering a PAC at the customer's convenience in favour of a process in which a customer must surrender their control.

Cooling Off

94.   The loss of customer control under a recipient-led process is exacerbated by the loss of customer choice and their ability to exercise a 'change of mind'. The current donor-led process 'builds in' a type of cooling off period. Given the CCP's enthusiasm for 'try before you buy' options for consumers, it follows that the porting process should be consist with their thinking. A recipient-led process is inconsistent with those operators that employ generous change of mind policies.

95.   We are pleased to offer what we consider to be the most generous change of mind policy in the industry[22]. This policy allows us to differentiate from competitors. The existing donor-led porting process is consistent with this approach. The customer can obtain their PAC at the point of sale if they choose and hold onto it until the change of mind policy expires before instigating a transfer.

96.   A recipient-led process offers no satisfactory equivalent. Customers under the current system might manage this by requesting a PAC whilst their service is still active and then making their purchase at a date that suits them. As the PAC is valid for 30 days the customer has the opportunity to enjoy the full extent of our change of mind policy and then activate the PAC. In a recipient-led world, the customer would instinctively port before they

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[20] Jigsaw Research, p.25, para 7.2.5
[21] Review of the porting process, Para. 3.17

[22] Within 14 days a customer may cancel their contract and return the SIM and handset to us

In addition, for both fixed and mobile broadband, where coverage/speed can be more of an issue, we offer a 30 day Happiness Guarantee, which allows customers to try the service at home and in their local area. If they are not happy, they can cancel the service within 30 days of purchase with no termination fees and the costs of purchasing their modem will be refunded.

had fully benefited from the change of mind period. Additionally, as we have explained above, the recipient-led process is not as 'easy' for customers to change their minds. In the donor-led process if a customer changes their mind they simply choose not to activate their PAC. In a recipient-led world, the porting process is initiated on the customer's first instruction giving them no room to consider fully the implications, benefits and consequences of their move. Some customers who have ported quickly may feel reluctant to exercise their ability to change their mind if it means they have to try and 'reverse' the process.

Customer Liabilities

97.   One other benefit of the current donor-led system, is that donor operators can remind customers of any liabilities that the customer would have if they switch, for example, the existence of the remainder of a minimum term. Customers may therefore make an informed decision whether to switch provider.

98.   The opportunity to inform customers of this type of information would be lost if a recipient led process were adopted. Ofcom does not appear to have taken this into account in presenting its options.

99.   We believe that the current donor-led process works well for customers not only because it gives them some 'breathing space' and control, but also because it gives the opportunity for the customer to have such liabilities *explained* to them, not just notified to them. The human interaction allows customers of all sensibilities a chance to have important terms brought to their attention in a manner that cannot be ignored.

100.   A generic text, email or letter does have the same impact on a consumer. We have seen evidence of this in Ofcom's consultation in fixed line telecoms and also in recent research in the energy market notifying complaining customers about their right to ADR. Energy retailers are obliged to notify customers of ADR rights by letter, and yet that research demonstrated that only 6% of energy customers were aware of their rights via this medium.

101.   We consider that terms that have a tangible financial impact on customers are even more important and customers must have the time and opportunity to resolve these issues, before they can make a truly informed decision to do so. A recipient-led process offers no such opportunity before making the decision and activating the port as in the recipient-led process these two activities are not separated.

Bundled Value

102.   In addition to contractual liabilities and handset costs, there are other financial considerations that may impact a customer, including the value they may lose when un-bundling services.

103.   To illustrate our concerns, we envisage the scenario where a customer is attracted by mobile deal that is £5 cheaper a month than their existing arrangement. They are informed of contractual liabilities by text and decide to switch and instruct the recipient to port their number. There is no opportunity in this scenario for the donor to explain to the customer that his next broadband bill (also provided by the donor) will now be £10 more, as it is no longer bundled with the mobile service. The customer expected to be £5 a month better off.

In fact he is £5 a month worse off and will, undoubtedly question why he wasn't reminded of the change to 'broadband price' when he was informed of his strictly contractual liabilities.

104. It is surely preferable that customers make informed decisions to switch providers While a recipient-led process may seem intuitively appealing, we believe that it would not afford customers a satisfactory level of protection or a consistently good overall experience. Given the inherent risks in a recipient led process, and that these appear to be very difficult to mitigate against, we do not support this method of porting.

Customers pay for recipient porting

105. UK customers currently enjoy the facility to port free of charge. We are firmly of the view that a change to recipient led porting would require significant expenditure. UK operators might reasonably wish to recover such costs in retail charges for porting. It is no surprise that operators in some countries with recipient-led porting also impose charges for this service. Donor operators in Ireland can charge up to 2 Euros to port out. We note that in Slovakia the retail cost to port is 13 Euros. It seems that whilst some customers may be willing to pay for faster porting, it does not appear to further the interests of all citizens, particularly those in lower socio-economic groups, to impose additional costs. Ofcom needs to factor the possibility and effect of retail charges into its thinking.

Awareness of the right to port

106. At paragraph.4.47-4.48 of the consultation document Ofcom consider that a donor-led regime does not offer an incentive for recipient operators to promote porting. This is not true. We have benefited from being a recipient operator more frequently than a donating one and the fact that the porting rights are heavily advertised to customers from the point of sale does not support Ofcom's theory.

107. We invite Ofcom to review our various customer-facing literature that makes customers aware of their right to port. We are concerned that Ofcom have made such assumptions without fully researching and testing this theory. Without doing so and reporting its findings in a transparent fashion, we cannot accept that this is an argument on which Ofcom can objectively justify moving to a recipient-led regime.

A 2-hour process (Options A & B)

108. Ofcom suggest that the 2-day porting window creates an unnecessary level of anxiety for some and impedes their ability to plan and we recognise that a shorter porting window offers more certainty. However, at this stage we are concerned that the 2-hour option, as it is presented by Ofcom, may set the wrong expectations of customers and consumer groups.

It's not 2-hours for everyone

109. In practice the 2-hour options operate only between fixed working hours (9-5, Monday to Friday excluding bank holidays). For many it will not be as 'instant' as the title suggests and in fact may often be the next working day. Consequently, we would like to see Ofcom explore this further in order to understand whether a 2-hour regime would, in reality, have a significant marginal benefit to customers beyond that which is promised with a 1/next

working day process. If, as we suspect, the majority of customers would still actually port the next working day then we cannot see how the cost and complexities that arise from 2-hour porting can be justified.

110. We want to ensure that customers have realistic expectations about porting and if customers' expectations of 2-hour porting are not realised, then this carries the risk that customers will lose faith in the industry and regulator.

Certainty versus speed

111. We are also conscious of the consensus of consumer groups to seek a certain outcome rather than a quick one. 2-hour porting leaves little room for errors to be identified and corrected, again risking the possibility that customer expectation will be damaged.

112. At this stage we cannot see that the benefits of 2-hour porting outweigh the costs and risks involved, however, we are open to exploring this option further with Ofcom, in the context of a donor-led process. We would welcome further research from Ofcom that would answer the concerns we have raised here.

A one-day process (Options C & D)

113. We are confident that we could complete the majority of ports within 1 working day with relative ease and low cost and consequently we consider that this option can be delivered quickly to the benefit of customers.

The trade offs

114. With all near-instant process – and particularly those relying on complex systems to interact with each other – the margin for error is extremely narrow. As stated earlier, consumer groups were supportive of a more certain migration process, rather than speed. Customers in energy markets were satisfied with 6-8 weeks to change energy supply, as long as the process was completed within customer expectations of timescales and completed correctly.

115. Ofcom's research finding, that 10% of ported customers were dissatisfied with the time it took to port, should be considered in the context of the risks of problems occurring inherent in reducing the time, or that advertised porting times might not be realised.

Managing expectations

116. O2 will would not wish to be put in a position of making promises to customers it cannot necessarily keep and, as stated earlier, we are concerned that a 2-hour process puts all operators at some risk of higher error counts. We are confident that our systems and processes could deliver customers porting within the 'next working day' window and that any errors that may occur during this time can be identified and corrected. It is not at all clear that we could offer the same assurance with any near-instant system.

117. Ofcom notes that 2-hour porting is available in other countries, but again we urge Ofcom to consider these in more detail. It is our understanding that, in practice, 2-hours could still well mean the next working day.

Consumer Choice

118. Although porting in Ireland is said to be 2 hours, in some respects, Irish customers have less choice. Formally, customers may only port by visiting retail store. Consequently a 2-hour porting window comes to consumers at the cost of their convenience and time – it can only be initiated when the customer has time and ability to visit a retail store. This exacerbates the inconvenience to customers who want to try and reverse the process or change their mind. Not only do they have to find the time to go into store to initiate the port, but should any problems arise, they now have to find time to revisit a store from their donor operator to try and reverse it.

Part 3: Costs and Benefits

119. Notwithstanding Ofcom's view that some consumer benefits have not yet been captured or quantified, we consider that the outcome of Ofcom's initial assessment is broadly correct and that the highest net benefit will be produced by Option D (Donor-led, 1-day porting).

120. We have set out the reasons why we consider that improvements and development of the existing process (that includes near-instant PAC supply and 1-day porting) would deliver the same benefits to customers as recipient-led porting, whilst delivering greater protection and safeguards.

Analysing Consumer demand

121. We understand that Ofcom aims to quantify the extent to which customers would pay for a recipient-led process, but we urge caution in how this option presented to customers. It is essential that participants are aware of all the variant possibilities that could exist for them in a recipient-led world (retail connection versus distance purchase) as well as the risks that could be involved. As we have explained recipient-led is not just a one-stop shop for customers. It may be more informative to understand whether participants would prefer a process which safeguards them against slamming and delivers an inbuilt 'cooling off' period rather than one in which the process is out of their control.

122. Additionally, it is essential that Ofcom consider whether customers would pay for recipient led porting, if the alternative was an improved current process to ensure near-instant PAC delivery and any 'save' activity is implicitly segregated from the PAC supply process. At the very least, Ofcom should present the recipient-led option alongside the current process in its compliant form – the position of the industry should Ofcom have dealt with existing non-compliant practices.

The effect on competition

123. Ofcom suggests that a donor-led process provides a means for operators to target discounts to certain groups of consumers, and accordingly acts as a barrier to entry for new entrants who could not match such deals. O2 disagrees with this assertion, and notes that no evidence has been provided in support of it. In any event, we cannot see how a recipient-led process would resolve this concern for Ofcom. Operators, whether in a recipient or donor-led world, will continue to reward customers for their loyalty and it is in

customers' best interests for this to continue. Certainly there have been a number of new entrants, MVNOs in particular, in the current donor-led world.

124. We note with interest that switching rates in the fixed line industry appear to be the broadly equal to those in mobile[23], despite employing a recipient-led porting process, suggesting that there is no evidence to suggest that a customer preference for recipient or donor-led porting has any direct influence on switching levels, nor does either process appear to act as a barrier to switching. This is consistent with the findings of Ofcom's own Jigsaw Research which, at page 22. states:

"…..it is the problems within the process, rather than the process itself that can influence the decision…..[to switch]".
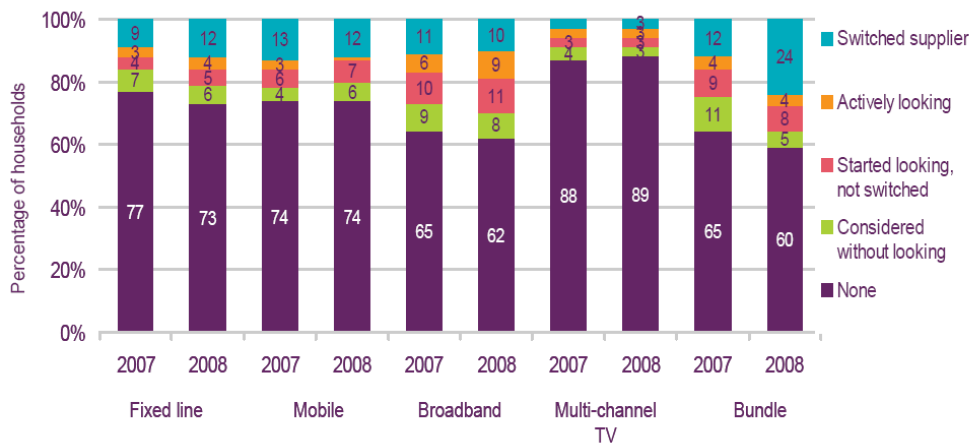
A better service or just a different one?

125. Given these findings we also consider that changing the process itself is not necessarily an improvement. It is merely different. Where the existing porting landscape is mature and offering the majority of consumers a certain, positive and – importantly – free of charge, service, O2's primary concern is to find a process which improves the existing satisfaction rates rather than just changes them; improves the customers' experience without exposing them to risk of even greater harm; and offers the best and most straightforward experience whilst allowing the customer to remain in control.

126. To date, there is no evidence that the donor-led process has had a detrimental effect on competition. In the absence of such evidence and in light of evidence of a competitive, diverse market we cannot accept that moving to a recipient-led process would be objectively justifiable on the grounds that Ofcom presents

127. Further, Ofcom's research supports the view that there is little evidence that the porting process has any discernible effect on switching. Consequently changing the process cannot be objectively justified as a means of promoting competition.

128. At paragraph 5.132 of the consultation documentation, Ofcom make the assumption that the recipient-led process would raise awareness of the porting process. We have already

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[23] Mostly Mobile, P.56

set out why we do not agree with Ofcom's view that a donor-led process is a disincentive to promote porting. For the same reasons, we do not agree that there is any marginal benefit to consumers in raising their awareness of porting from a recipient-led process over a donor-led process.

129.   Ofcom rests its view on the assumption that a recipient-led world would minimise save activity. In fact, a recipient-led world merely segregates any save activity from the porting process – something which is equally achieved (and therefore carries equal benefits) to a near-instant PAC supply system. On this basis, we do not consider that Ofcom can apportion any greater level of benefit to recipient-led options than it can to the donor-led options presented.

Capital and operational expenditure

130.   Given the limited time and resources available to us to consider the full extent of the costs involved for each option, we have estimated our own costs for each option, based on the preparatory work for the actual implementation of the decision in November 2007 decision. In each case we consider that Ofcom has significantly underestimated the costs.

131.   We have estimated our costs as follows:

Option A (Recipient-Led, 2-Hour)

[✂]

Option B (Donor-Led, 2-Hour)
[✂]

Option C: (Recipient-Led, 1-day)
[✂]

Option D: (Donor-Led, 1-day)
[✂]

We should be happy to explain in more detail how we have arrived at these estimates, if Ofcom would find that helpful.

New entrants

Ofcom questions whether the costs of configuring a new entrant into the proposed porting process would be significantly more or less than the costs currently incurred by the donor-led porting regime. Unfortunately it is difficult to determine whether those costs would be any more or less complex and costly than it currently stands until a firm proposal and solution has been designed. Only once a design is established can the full assessment of costs be properly established. We suspect that a new entrant porting via O2 ("piggy-backing" on our own processes) will not result in any significantly greater incremental costs (currently [✂]). However, we suspect that for new entrants who wish to port directly incremental costs may be significantly higher.

Conclusion

132. In order to demonstrate that a move to recipient-led porting process is objectively justifiable, proportionate and furthers the interests of citizens and consumers, we consider that Ofcom must produce evidence to show that a refined, tighter donor-led process cannot deliver all the benefits of a speedy, efficient porting process, whilst retaining all the safety nets and protections for customers that would otherwise be sacrificed. We have explained in this response, how a donor-led process can protect consumers and how evolving the existing process is favourable to replacing it.

133. Given the costs involved, it appears to be disproportionate to replace the existing process when equal benefits and less harm can arise from investment in developing and improving the existing process.

134. Indeed where 80% of ported customers show satisfaction with the current process, it is difficult to justify its complete eradication, particularly at such high cost.

Appendix 1
Responses to consultation questions

A.1 Do you agree that the bulk porting (over 25 numbers) process should not be included in this review and should be left to industry agreement?

We agree that bulk porting is not as simple as single-number porting. The recipient-led and 2-hour options considered by Ofcom cannot be applied to bulk-porting. However, this does not mean that the *impact* of the bulk-porting process should not be considered as part of this review, as the process adopted for bulk-porting will necessarily have an effect on internal processes, systems and costs for single-number porting.

The current bulk-porting process operates in much the same way as the consumer donor-led process – the only key difference being the time to port. This offers consumers and businesses alike a 'familiar' process that is easy to understand and to apply.

By failing to give some consideration to the bulk porting process, there is a risk that:
  a. significant costs are ignored (namely the cost of operating two separate and distinct porting processes), and
  b. confusion arising from variant processes for different types of customer resulting in a greater possibility of error.

The consumer process can be informed by the business process as it is the most complex to deliver – in terms of verification, technical delivery and administration. Getting the business process – which provides the most complexity - right, makes the consumer process simpler both internally and for the end-user.

A2.Do you agree with Ofcom's view that the evidence suggests consumers would prefer a faster porting process?

O2 is not convinced that the evidence relied upon by Ofcom suggests a faster porting process is preferred. Qualitative research[24] that shows a majority of respondents satisfied with the time it took to port does not support the view that there is a preference for faster porting.

The research indicates that it was consumers feeling that they were not 'in control' that prompted their dissatisfaction and confusion, not necessarily that porting would take place over 2 days. Ofcom must probe further on this element of its research to gain a better understanding of the marginal benefit a faster porting process would provide for a minority of customers.

Notwithstanding the demand for faster porting times must be evidenced, a refined, evolving donor-led process can provide a shorter porting lead time for customers. In real terms, the majority of the 'work' involved to port customers is completed within a 1 day period. Concentrating resources to reschedule the porting timetable would satisfy that minority of consumers who would prefer faster lead times, whilst allowing them to remain in control of the process.

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[24] Synovate, PAC Mystery Shopping, April 2009

On the evidence available it does not appear that 2-hour porting is in particular demand, nor can justified by the significant costs required to implement it. Should Ofcom discover evidence which can demonstrate a significant benefit to consumers we would be open to considering this option further, but only in the context of a donor-led solution.

The lack of control that customers fear can only be exacerbated by a recipient-led process. A donor-led approach gives the customer the choice to decide when it is convenient for them to port: a choice to port at the point of purchase; to obtain a PAC prior to purchase or to port up to 30 days after purchase. It would, perhaps, be more informative for Ofcom to ask customers if they would prefer choice and control or marginally less customer involvement.

A3. Do you agree with Ofcom's view that the current process does not work well for all mobile customers?

O2 is deeply concerned that there are abuses of the current process, and indeed, operators who exploit the current process to the detriment of some consumers. We agree that these shortfalls can make the customer experience unsatisfactory for some.

But we also consider that the current process can be fixed and improved such that it provides a good experience for all customers. We have raised our concerns that the employment of a recipient-led process to try and address consumer harm is like throwing the baby out with the bath water. Prompt and robust enforcement of those who abuse the process is absolutely necessary. This, coupled with refinements (in terms of delivering near instant PACs and the segregation of save activity from the PAC supply process), can address all the concerns about consumer harm whilst retaining all the benefit of the existing process.

A4. Are there any other areas of consumer harm that have not been identified? Do you have any evidence to demonstrate other areas of consumer harm?

We are concerned that Ofcom has not considered the full extent of the harm that could arise from implementing a recipient-led processes. Whilst the risk of slamming is mentioned, there is no apparent consideration of the complexities of verification and the risk of porting fraud and identity theft, the cost to consumers and effects on citizens from the possibility of paying a retail charge for porting, the cost to consumers of a lack of awareness of bundled-services value and the financial consequences of unbundling and lack of awareness of customer liability for handset costs over and above contractual liabilities for subscription charges.

It does not further the interests of consumers or citizens if all the potential consumer harm that could arise is not fully considered and assessed.

A6. Do you agree that Ofcom should intervene to introduce changes to the current MNP process to address the harm identified?

O2 supports Ofcom's intervention to refine the existing MNP process. Evolution not revolution offers customers a safe, familiar system with added benefits.

A7. Do you agree with Ofcom's view that the 'do nothing' option is unlikely to be appropriate in light of (i) evidence of consumer harm and (ii) noting the proposed one working day porting requirement under the New Telecoms Package? If not, please give reasons for your views.

O2 agrees that if abuses to the existing process are taking place that Ofcom must take action. To 'do nothing' in the face of explicit consumer harm is not an acceptable approach.

However, we also consider that the 'do nothing' option can only be objectively compared to the other options when the consumer harm identified has been tested with enforcement action. Early enforcement action would eliminate two of the three harms identified and this is the basis from which the cost – benefit analysis of the four proposed change options should be considered.

A8. Do you agree with the range of potential options Ofcom has set out?

O2 considers it is wise to consider the range of options, if only to truly understand the complexities and consumer trade-offs that apply to the recipient-led process.

O2 hopes to offer the best customer experience. Our view is that departing customers should be provided with continued excellent service so that at some point in the future we can hope to re-form a relationship with that customer. We too, have therefore considered in great detail the customer benefits of a recipient-led regime but do not find that it provides the ideal customer experience and, from a commercial perspective carries the highest risk of increased returns and the greatest risk of disappointing customer expectation.

A9. Do you consider that there are additional options that Ofcom should have considered? If yes, please explain what option(s) should have been considered and why.

It may be helpful for Ofcom to have considered in more detail how it may work with the OSG to improve the existing donor-led, 2-day process. It would have been possible to encourage near-instant PAC delivery through this avenue whilst addressing consumer harm through enforcement. The primary benefit of this option is that it can be delivered and implemented far more quickly, leaving the consultation process to focus on the issue of marginal benefits of improvement above and beyond that can be delivered by an already improved existing process, absent of consumer harm.

A10. Do you agree that a two hour timeframe in which to issue the PACs for options B and D is appropriate? If not, please give reasons for your views.

O2 strongly supports near instant PAC delivery. O2 can confidently state that despite the minimum industry standard requiring PAC supply within 2 days, O2 send 100% of PACs to customers within 4 hours, of which 97% are sent within 2 hours.

It is undoubted that if a donor-led process is maintained that a better customer experience must be delivered in terms of PAC supply and that requires a near instant obligation.

A11. Do you agree there should be a difference between how the recipient-led processes in Option A and C should work for single account versus multi-account porting requests? Do you consider that the proposed authentication process (described in paragraph 5.41) for multi-line accounts is sufficient? Please explain any other differences you would expect to see whilst ensuring that any differences are still consistent with the overall objectives the options are trying to achieve.

In looking at options A and C, it is clear that they are not appropriate for multi-line accounts. Authentication of multi-line accounts is incredibly complex even with customers who have had a

long relationship with us. We cannot see that it would feasible for a recipient network to be in a position to accurately collect all the relevant information needed to verify identity and seek authorisation from the donor. The result would be that more porting requests would be refused, which is undesirable.

The objective is to ensure that as many people who wish to port can do so. Recipient-led porting implements greater risk into the process that users cannot be authorised exacerbated by the complexities of delivering near-instant technical porting. It is common for customers, both individuals and businesses, to remember and retain all their authorisation details. Passwords are forgotten. Account holders move on. The donor has access to additional data that allows the customer to be verify who they are outside the traditional and prescriptive limits of a 'checklist'. This allows all these customers to port under the current system.

Using a recipient led process for both single and multi-line accounts risks all these customers being refused porting or having to take an even more complex route to porting. Alternatively, providers will be required to run a recipient led system for consumers and a donor-led system for multi-line accounts. This is not an efficient means of delivering porting. Whilst we accept that there are differences between the multi-line and single account ports under the present porting regime, the underlying operating principles are similar. The only significant difference is the time taken to port.

The verification process suggested by Ofcom, allows the donor to contact the customer to confirm identity. This option gives willful providers an opportunity to delay the process by waiting for as long as possible to contact and verify them. The only process that should be considered seriously is one that puts control in the hands of the customer and limits the opportunities for exploitation. We believe this to be a donor-led process for both individual and multi-line accounts.

An improved donor-led system for consumers is essentially the same process, differing only by the length of time taken to port. This provides those customers who have already ported with the familiarity of an existing process. A donor-led option of one-day porting allows consistency for:

- Individuals regardless of sales channel – They can purchase from recipient, obtain PAC (either before or after purchase) and at the customer's convenience, submit the PAC the recipient to port within 1 day (under option d).

- Multi-Line accounts – They can purchase from recipient, obtain a PAC (either before or after purchase) and at the customer's convenience the PAC is submitted to the recipient to port at a date and time of their choosing.

A12. For each of the options set out, do you consider that Ofcom has captured all the appropriate categories of cost likely to be incurred? If not, explain what categories you disagree with / believe are missing.

Without further detail about the precise methods of validation, notification of obligations and delivery that Ofcom expects, and in the time available, it is difficult to determine whether all appropriate categories of cost have been identified.

A13. Do you agree with Ofcom's analysis of costs for each cost category? If not, please explain why. Please also state whether you are able to provide Ofcom with a more accurate view of costs and if

so, please submit your assessment, together with supporting evidence with your response to this consultation.

Our cost assessment differs. We believe Ofcom has underestimated the costs involved across MNOs and has failed to consider the costs that will or should be borne by new entrants or existing SPs and MVNOs. We have disclosed our broad cost assessments and invite Ofcom to meet with us to discuss our assumptions and which cost types we have captured within these estimates.

A14. In the case of new entrant MNOs, what additional costs are likely to be incurred internally within each of the networks for each of the options? Please submit your estimates in your response to Ofcom.

It is difficult to determine whether bringing in a new entrant would be any more or less complex or costly for options A-C until we understand the design of each solution. If the entrant's porting process is via O2 (i.e. piggy-backing O2's systems) then costs are likely to be equivalent to those incurred under the existing porting process. However, if new entrant MNOs wish to port directly then we expect costs would be much higher. We also consider that these costs would be bourn by the new entrant unless incorporated within commercial arrangements and accordingly we are concerned that such high costs may present a barrier to entry.

A15. Do you agree with Ofcom's analysis of benefits for each option? If not, please explain why?

O2 considers that Ofcom has failed to take into account the full extent of the benefits available to customers from a donor-led system, such as:

- The current donor-led system is free to customers
- The protection afforded against slamming
- Raising awareness of potential loss of bundled value and understanding of contractual liabilities,
- The value of customer choice about when they want to submit their PAC
- The value of consistency across customer types
- The value in delivering certainty over speed

A16. Please state whether you consider that Ofcom should take any additional benefits into account and explain how. To the extent possible, please provide any estimates of these benefits and the supporting evidence.

We have set out in response to A15 and in the main body of our response, the additional benefits that Ofcom should take into account. We appreciate that many of benefits are difficult to quantify, but detailed and balanced research along with a forensic look at the practical effects of porting in other countries where recipient-led or 2-hour processes are in place, their complaint levels and customer satisfaction scores would be informative.

A18. Please state which option(s) you prefer and why?

Our preferred option is Option D – a donor-led process with near instant PAC supply which offers a porting window of one day.

In the main body of our response we have explained that the donor-led process with quick PAC supply provides all the benefits of a recipient-led process but without the risks and inconsistent

consumer experience that a recipient-led process will deliver. Additionally, it retains all the protections and familiarity that consumers have so far enjoyed from the existing process.

We consider that, based on the evidence available, no other of the four options presented can satisfy the legal tests which Ofcom are required to meet when amending a General Condition. Both recipient-led options and 2-hour porting options demand significant costs which cannot be justified when the same results can be achieved through a more refined donor-led option.

A.19 What do you consider a reasonable implementation period for each of the options and why?

Options A, B and C all require system development to enable instant communication between operators. As a consequence, they will require much longer to implement than Option D. The exact time required has not been assessed as yet and is unlikely to be available until there are more specifics available about the design solution.

However in either of Options A,B and C the level of investment required to deliver them means that there would be a significant opportunity cost involved particularly if implementation were required in less than one year. In order to minimise the impact of abandoning planned projects in order to deliver changes to the porting process. it is essential that Ofcom deliver a decision with as much notice as possible.

Our view is that Option D could be implemented very quickly.

A.20 Do you agree that it is appropriate for Ofcom to appoint a qualified independent consultant (s) to work with industry to develop cost estimates for different implementation options? If not, please state why?

O2 certainly considers that a thorough understanding of the likely cost impact is necessary, but must reserve its view on whether a consultant is appropriate until we better understand how the costs that could be incurred will be sourced.

A.26 Do you have any comments on the proposed timings for reaching a conclusion for this review?

It is essential that the immediate harms be addressed by robust enforcement from Ofcom. Provided the most immediate consumer harm is not allowed to continue, we are satisfied with the proposed timings of the review.

FIGURE 1: Recipient-Led In-store Purchase

DAY ONE

2 Hrs later (option a)
1 day later (option c)

Customer purchases and advises recipient to request port at point of sale.	Recipient submits port request on behalf of consumer	Donor transfers consumer to recipient	PORTING COMPLETE
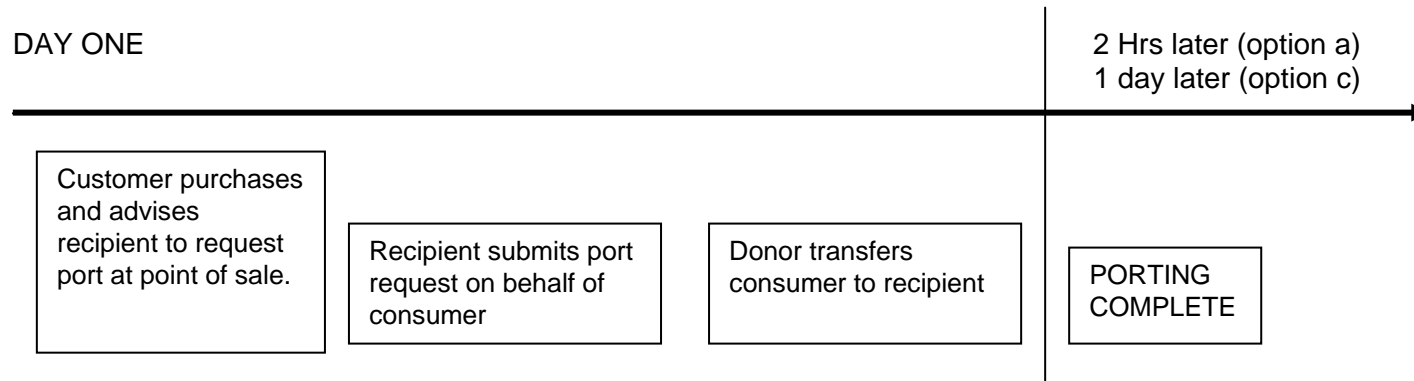
FIGURE 2: Recipient-Led Distance Purchase

DAY ONE

2 Hrs Later (option a)
1 day later (option c)

approx 2 -3 days later

Customer purchases and advises recipient to request port at point of sale.

CUSTOMER AWAITS DELIVERY

Customer without service

Customer has access to

Recipient submits port request on behalf of consumer	Donor transfers consumer to recipient.	PORTING COMPLETE	Sim delivered.

One customer contact point, but indefinite period of service absence
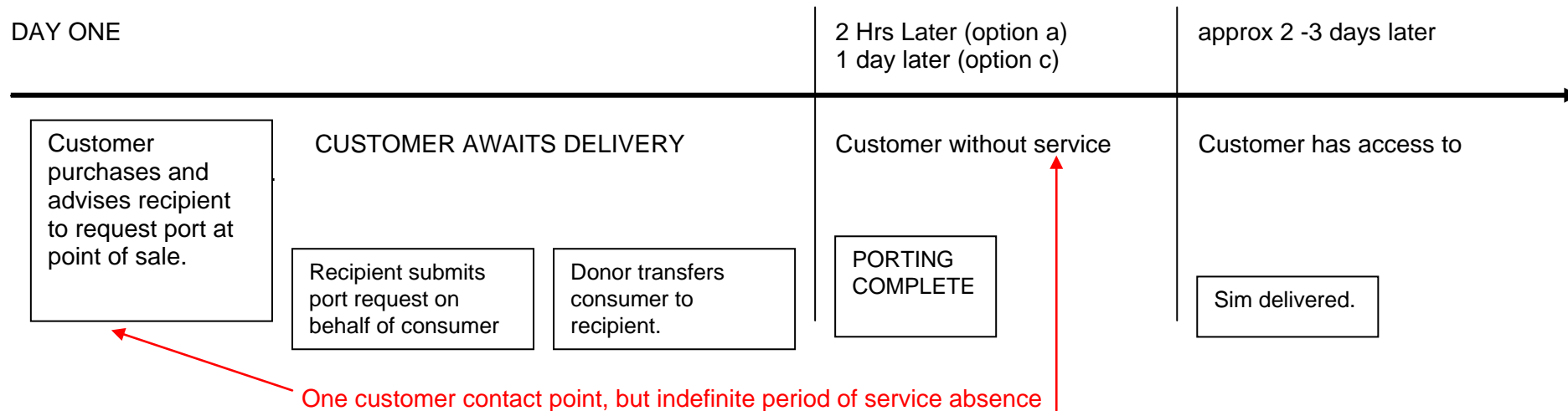
A Telefónica company

FIGURE 3: Recipient-Led Distance Purchase (alternative)

| DAY ONE (option a) 1 day later (option c) | Approx 2 -3 days later | | | | 2 Hrs Later |

| Customer purchases | | Customer advises recipient to request port at point of sale. | | | |
| | Sim delivered. | | Recipient submits port request on behalf of consumer | Donor transfers consumer to recipient. | PORTING COMPLETE |

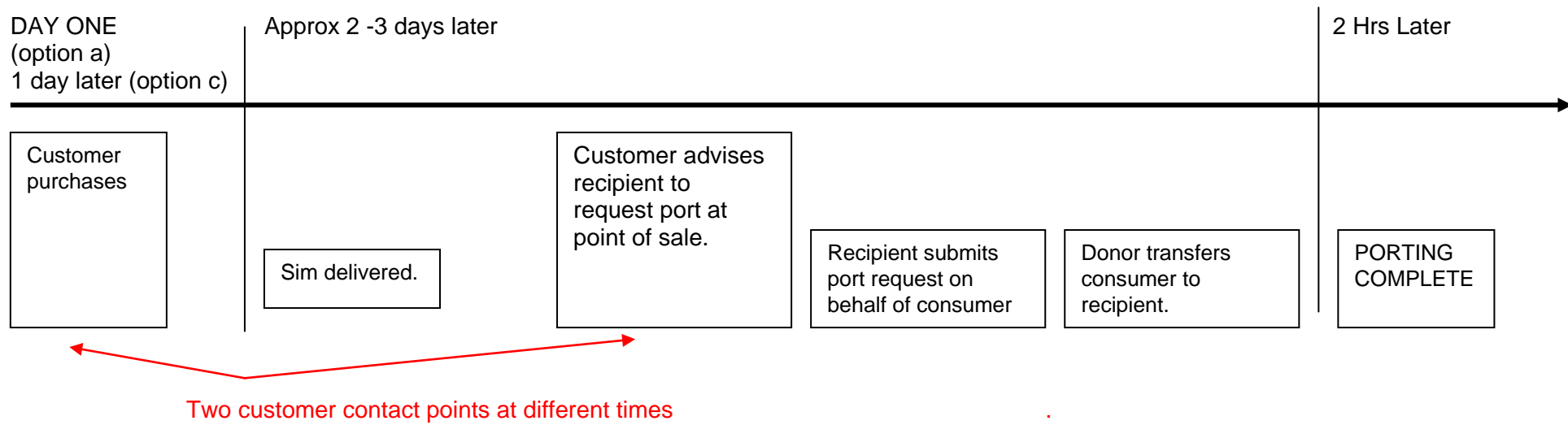Two customer contact points at different times   .

FIGURE 4: Donor-Led – All Sales Channel Purchases

| DAY ONE | | | | | Within 2 days (usually 1 day) |

| Customer purchases. Instant PAC requested before or after purchase. | Customer delivers PAC and requests recipient to request port at point of sale. | | | | |
| | | Recipient submits port request on behalf of consumer | Donor transfers consumer to recipient. | PORTING COMPLETE | |

Two customer contact points..