

Hutchison 3G UK Limited
Star House
20 Grenfell Road
Maidenhead SL6 1EH
United Kingdom

T +44(0)1628 765000
F +44(0)1628 765796
www.three.co.uk



Hutchison 3G UK Limited

Response to

Mobile Number Portability

A review of the porting process

NON-CONFIDENTIAL
Redactions indicated by “[<]”

26 October 2009



BASIC DETAILS

Consultation title: Mobile Number Portability- A review of the porting process

To (Ofcom contact): Elizabeth.Gannon@ofcom.org.uk

Name of respondent: Jane Jellis

Representing: Hutchison 3G UK Limited

Address: Star House, 20 Grenfell Road, Maidenhead, SL6 1EH

CONFIDENTIALITY

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

Nothing

Name/contact details/job title

Whole response

Organisation

Part of the response

If there is no separate annex, which parts?

The following confidential information has been redacted in this response (indicated by "[§<]"):

- 1. Data or other commercial information which is not public and business secrets or other commercially sensitive information.*
- 2. Explanations of 3UK's intent or future plans which are not in the public domain and which, if disclosed, would provide commercially sensitive information to third parties, including 3UK's competitors.*

If you want part of your response, your name or your organisation not to be published, can Ofcom still publish a reference to the contents of your response (including, for any confidential parts, a general summary that does not disclose the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

Yes.

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.

Jane Jellis

Signed (if hard copy)



Executive Summary

Ofcom recognised more than two years ago that the current number portability system is not fit for purpose. 3UK fully supported its decision to implement the changes needed to bring the portability system into line with porting best practice by introducing near instant recipient-led porting. It is unfortunate that Ofcom's principled decision has been resisted, and the implementation of a change which consumers want and need has been needlessly delayed. Change is now overdue.

UK consumers are missing out the benefits of effective porting enjoyed elsewhere

Certain mobile numbers included in Ofcom's UK National Telephone Numbering Plan can already be ported using a fast recipient-led system. The Channel Islands adopted recipient-led MNP on 1 December 2008, and the Isle of Man adopted a similar system on 29 June 2009. This is a striking paradox, and we urge Ofcom to push ahead with the adoption of a similar system in mainland UK as soon as possible. Other jurisdictions, including Ireland, have also moved ahead and adopted faster recipient-led porting systems.

Consumers in these countries are now enjoying the benefits of easier switching and enhanced competition which would have been available to UK consumers from September this year, had Ofcom's decision not been challenged. We are aware of no other major economy or European jurisdiction which requires its mobile consumers to phone or write to their current network for permission to move their number to a new network. Yet most of these jurisdictions, if not all, introduced their porting systems after the UK. They each chose not to follow the example of the existing UK donor-led system, but instead adopted recipient-led systems¹.

The UK porting process remains systemically flawed

By contrast, as Ofcom's own thorough research has demonstrated, there are serious flaws in the current UK system, which are operating against consumers' interests and hindering effective mobile porting and switching in the UK. The current system suffers from delays. It relies on complicated messages being communicated to customers in a manner which is ripe for confusion and on occasion leads to misinformation. It facilitates save activity which the majority of customers do not welcome. Ofcom's findings support 3UK's long held view that the current system is not fit for purpose.

The current UK system places no incentive on operators to raise consumer awareness of portability: this is one of the most striking features of the UK market. Ofcom's research shows that most customers want to port their number when they switch supplier². However, it also shows that in the UK only 45% of those who switched also ported their number³. Compare this to the Republic of Ireland, which has a recipient, near instant system, where 75% of those who switched also ported⁴.

¹ With the exception of France, which has since moved to a system equivalent to a recipient-led system.

² TNS GB Omnibus Survey, December 2008

³ Ibid.

⁴ TNS ROI Omnibus Survey, February 2009



These figures speak for themselves. Moreover, in the UK 35% of mobile customers are unaware that they can port their number when they switch⁵. It is nonsensical that an operator who has just successfully persuaded a customer to switch, would then encourage that customer to make contact with their current operator to obtain their PAC to move their number. Yet we know that keeping their existing number is important to most customers who want to switch. The current situation is unsatisfactory and not working well for consumers.

There is a clear consumer mandate for change

We now have a fresh opportunity to make the right choice. Ofcom's own research has demonstrated that customers highly value the ability to take their number with them when they switch operators. Customers want the ability to do this quickly; so much so that they are prepared to pay more for faster porting. They want the "hassle" to be removed from the porting process. Most tellingly of all, Ofcom's research reveals that the majority of consumers would prefer a recipient-led system. There is a clear customer mandate for the industry to adopt a near instant recipient-led process. This in itself should be sufficient reason to move forward.

The EU requires change

There is now renewed urgency to adopt a faster process, with the likely adoption of stricter European law requirements for porting within one day. The European Commission has recognised that it is not sufficient for Member States simply to have adopted some form of number portability system, irrespective of whether it works or not. Rather they are concerned that all customers should have the benefit of effective number portability "within the shortest possible time". Long experience under a donor-led system in the UK has amply demonstrated that such aspirations (soon to become legal duties) can only be achieved under a recipient-led process.

Attempts to "fix" the donor-led system will not work

An approach which seeks to meet the new EU legal requirements and customer demand through adoption of a "tighter" donor-led system (as anticipated by Options B and D in the Consultation), will not work because it does not address the underlying flaws in the current system. These flaws can be summarised as follows:

- **Donor operators have little incentive to make the porting process work:** The donor-led system is heavily reliant on regulation to force donor operators to do the right thing by consumers. It requires them to work against their commercial best interests.
- **Policing burden:** Any form of donor-led system requires strong policing by Ofcom to make it work. However, an approach which regulates itself is much more consistent with Ofcom's legal duties.
- **Speed of porting:** Donor-led porting can never be as fast as recipient-led, because it consists of a two-stage process. Any system which requires consumers to actively obtain a PAC rather than empowering their new operator to activate the port on their behalf will always be prone to delays.

⁵ TNS GB Omnibus Survey, December 2008



- **“hassle-factor”**: The consumer has to manage the process, and ask their current network for permission for what is effectively theirs by right. Ofcom’s research shows that the majority of customers understandably want to avoid this.
- **Sub-optimal competitive effects**: Operators will continue to target their best deals at the small number of customers who are considering switching, or are savvy enough to play the system, rather than offer better all round deals to the whole market. Competition will continue to operate at a sub-optimal level rather than to the benefit of all consumers. This is a particular concern within the context of market consolidation where it becomes ever more important to promote effective competition.
- **System is inherently complex and causes a barrier to porting**: A donor-led system requires operators to deliver complex messages to consumers, which are prone to cause confusion and misunderstanding, especially to vulnerable consumers. This confusion is likely to be a barrier to porting in some instances.
- **Unwanted save activity**: The opportunity for unwanted save activity remains. However, Ofcom’s research shows that many customers do not value save activity when they request a PAC, they simply want to leave.

The case for recipient-led near instant porting is made on a cost-benefit analysis

Option A is a proportionate response to the shortcomings of the current system. The cost-benefit model in Ofcom’s Consultation, in its current form represents a worst case scenario for recipient-led, near instant porting (Option A) and a best case scenario for donor-led, one day porting (Option D). If a deeper assessment of costs and benefits were undertaken we are confident that the current rankings would be reversed. Recipient-led, near instant porting would emerge the best option on a quantitative as well as a qualitative assessment.

Ofcom has estimated that the capital expenditure costs of Options A-C range from [3<]. The cost estimates prepared by Ofcom show that the cost of moving to a near instant recipient-led system (Option A) is broadly comparable with that of each of the other options apart from one day donor-led (Option D).

3UK believes it is highly likely that the costs of implementing a porting hub have been over-stated, because they are based on the NICC⁶ solution developed at UKPorting. These costs would be lower if the industry adopts a commercial off-the-shelf solution, rather than building the hub from scratch using an NICC solution.

Additionally, Ofcom’s costs estimates do not take into account the synergies between building a porting hub for recipient-led porting and a centralised database for direct routing. The same system could be designed to perform both tasks, meaning that the costs of moving to a recipient-led system could significantly reduce if it is implemented alongside a move to direct routing.

^{6 6} NICC Standards Limited- The UK Interoperability Standards Organisation. see <http://www.niccstandards.org.uk/>



The current cost-benefit model takes no account of the benefits of a recipient-led system over a donor-led system, yet these are likely to have a decisive impact on the model. In particular, the model takes no account of:

- the wider benefits to competition of a recipient-led system
- the benefits to consumer welfare of a recipient-led system.

Yet economic literature points to the very significant benefits (in quantified terms) of effective switching and porting models. It is clear from what is set out above that effective porting, and thus the full economic benefits of porting, can only be achieved through a recipient-led model. And the additional effect of moving to recipient-led need only be very small for its impact to reverse the ranking of the options within the CBA.

UK consumers' clear preference for recipient-led porting should be assessed and fed into the model, for example, by estimating the opportunity cost to consumers of the extra delay created by a donor-led system or the hassle involved in having to go back to their previous operator to get their number. However, in 3UK's view the case (on the basis of a cost-benefit model alone) will already have been made for recipient-led porting if wider competition and welfare benefits are properly taken into account.

Only recipient-led porting delivers tangible benefits

Moving to an automated, near instant recipient-led MNP system would address all of the flaws with a donor-led system outlined above. It would be in line with Ofcom's primary duty, namely "*to further the interests of consumers in relevant markets, where appropriate by promoting competition*". It would be consistent with Ofcom's duty, when implementing EU legislation as is the case here, to encourage service interoperability so as to promote efficiency and sustainable competition and to maximise benefits for consumers and operators.

It would meet Ofcom's criteria for easy and reliable switching and access to the information needed to get a good deal. It would be a proportionate, and indeed the only adequate, response to the issues identified in Ofcom's Consultation. If faster, easier, more effective porting is the aim, then it is better to entrust its delivery to those incentivised to make it work.

Only under an automated recipient-led system is it possible to achieve true near instant porting. There is no need for active participation on the part of the donor and the recipient operator has every incentive to undertake the process as quickly and efficiently as possible as this forms part of their customer acquisition process. Therefore, delays are far less likely to occur.

Recipient-led porting carries less, not more, risk

Mobile slamming and mis-selling have much more to do with the sales process, than with the porting process. Mobile slamming or fraud is no greater a risk under a recipient-led system than under a donor-led system. Moreover, the move to a recipient-led system presents the opportunity to build safeguards into the system to mitigate this risk. Furthermore, Ofcom's guidance on Additional Charges and the new



General Condition 23 should ensure that consumer harm arising from “bill shock” issues is now largely addressed.

Change can and should be implemented without delay

3UK notes that reform is long overdue and has already been delayed by several years. Therefore, 3UK supports Ofcom’s desire to set specific deadlines for each step of the consultation process. However, 3UK remains concerned about slippage in timescales for changes to be implemented. We urge Ofcom to take a decision as early as it reasonably can, and to pro-actively manage any delays that the other MNOs seek to introduce to the process.

3UK believes that Option A could be adopted by Ofcom within a relatively short timescale if an off the shelf near instant, recipient-led solution is implemented (instead of an NICC standard based solution). Quicker implementation will minimise consumer exposure to the shortcomings of the existing system, which have been identified and discussed at length by Ofcom in the Consultation.

3UK welcomes Ofcom’s attempts to impose time limits on the next stage of the decision process. In particular, it encourages the three-month timeframe for the evaluation of costs by an independent consultant or advisor to be rigorously enforced. To this end, 3UK commits to engaging with the consultant or advisor and other stakeholders to provide such information as is requested to enable a timely and constructive result.



Contents

| | |
|--|-----------|
| EXECUTIVE SUMMARY | 2 |
| 1. INTRODUCTION..... | 10 |
| 1.1. Structure of this response | 11 |
| 2. THE CURRENT MNP PROCESS AND WHY IT DOES NOT WORK WELL FOR CONSUMERS..... | 12 |
| 2.1. Introduction..... | 12 |
| 2.2. Consumer harm caused by aggressive save activity, misinformation and delays | 12 |
| 2.3. Speed of porting under the current system | 13 |
| 2.4. Customer confusion and uncertainty (confuse request for PAC with termination of contract, notice periods) | 14 |
| 2.5. Awareness of porting- barrier to porting and switching | 15 |
| 2.6. Mobile slamming and fraud | 16 |
| 2.7. Bilateral framework with associated documentary burden | 16 |
| 2.8. International best practice: the UK is out of step..... | 17 |
| Table 1: Porting times achieved in countries where Hutchison Whampoa Limited has 3G operations | 17 |
| 2.9. Market consolidation | 18 |
| 2.10. Changes to the current MNP process must now be made as soon as possible | 18 |
| 2.11. Bulk porting..... | 19 |
| 3. 3UK'S VIEWS ON OPTIONS FOR CHANGING THE CURRENT PROCESS AND THE COSTS OF THOSE OPTIONS | 20 |
| 3.1. Introduction..... | 20 |
| 3.2. Option A: recipient-led process with porting completed within two hours...21 | |
| 3.2.1. The proposed process..... | 21 |
| 3.2.2. Assessment of costs..... | 23 |
| 3.3. Option B: donor-led process with porting completed within two hours.....24 | |
| 3.3.1. The proposed process..... | 24 |
| 3.3.2. Assessment of costs..... | 25 |
| 3.4. Option C: recipient-led process with porting completed the next working day | 25 |
| 3.4.1. The proposed process..... | 25 |
| 3.4.2. Assessment of costs..... | 26 |
| 3.5. Option D: donor-led process with porting completed the next working day26 | |
| 3.5.1. The proposed process..... | 26 |
| 3.5.2. Assessment of costs..... | 27 |
| 3.6. Ofcom's proposal for 2 hour PAC provision deadline..... | 27 |
| 3.6.1. Operators could achieve this already but often do not | 28 |



| | |
|--|-----------|
| 3.6.2. However, Ofcom's proposal will not resolve any of the consumer harm Ofcom has identified | 28 |
| 4. 3UK'S VIEWS ON HOW BEST TO EVALUATE THE BENEFITS OF EACH OPTION | 30 |
| 4.1. Introduction..... | 30 |
| 4.2. Unmeasured "Benefits to the market"..... | 32 |
| 4.2.1. Advantages of recipient-led MNP | 34 |
| Table 2: Expected value of Option A relative to Option D under different probability and quantity assumptions for unmeasured Type 2 benefits | 37 |
| 4.3. Benefits to individuals..... | 38 |
| 4.3.1. Constant porting rate assumptions..... | 38 |
| Table 3: NPV of Option A versus Option D using different porting rate assumptions | 40 |
| 4.3.2. Customer valuation of recipient-led porting | 40 |
| 4.4. Importance of MNP in a changing market..... | 41 |
| 4.5. Suggestions for additional areas of research | 42 |
| 4.6. Conclusion..... | 42 |
| 5. WHY ARGUMENTS AGAINST A TWO-HOUR, RECIPIENT-LED APPROACH DO NOT HOLD WATER..... | 43 |
| 5.1. Introduction..... | 43 |
| 5.2. Win-back activity | 43 |
| 5.3. Bill-shock and Early termination charges – Contractual Liabilities | 44 |
| 5.4. Arguments regarding mobile-slamming and fraud..... | 45 |
| 5.4.1. Slamming and mis-selling relate to switching rather than porting | 46 |
| 5.4.2. Mobile Mis-selling – General Condition 23 | 46 |
| 5.4.3. New recipient-led system can be specifically designed to build in safeguards | 47 |
| 5.4.4. A near-instant porting process would allow erroneous ports to be ported back far more quickly | 49 |
| 6. 3UK'S VIEWS ON THE PROPOSED NEXT STEPS..... | 50 |
| 6.1. Assessment of benefits by Ofcom | 50 |
| 6.2. Assessment of costs and appointment of an independent advisor/consultant | 50 |
| 6.2.1. Suggestions as to who Ofcom should appoint to carry out this task .. | 50 |
| 6.2.2. Remit and timescale | 51 |
| 6.3. Implementation periods for each option | 51 |
| ANNEX 1: ANSWERS TO CONSULTATION QUESTIONS | 53 |



1. Introduction

3UK welcomes Ofcom's consultation on "*Mobile Number Portability- A review of the porting process*", published on 3 August 2009 (the "Consultation") and the opportunity for the industry to re-commit to a move to near instant recipient-led porting; a system which is in the best interests of consumers.

We agree with Ofcom that the current system is not fit for purpose, and we consider that the donor-led options put forward in Ofcom's consultation would also fall short, because of the systemic flaws of a donor-led approach. We have summarised the reasons why the current donor-led porting system is not working well for consumers in section 2 of this response.

In the Consultation, Ofcom proposes four possible options for changing the current UK MNP process. Each option involves reducing the time taken to port a number from the current two working day process. The options consist of two variables, namely process of porting and speed of porting. The options are:

- **Option A:** recipient-led process with porting completed within two hours
- **Option B:** donor-led process with porting completed within two hours
- **Option C:** recipient-led process with porting completed the next working day
- **Option D:** donor-led process with porting completed the next working day

3UK strongly supports the option to move to a near instant recipient-led porting process (Option A), and believes that there are significant benefits that would be derived from a move to such a system compared to all other options, as described in section 3 of this response. In our view, this is the option most aligned with the EU's proposed requirements for one day porting, and for porting in any event to happen in the shortest possible time. In section 3, we also look at the initial costs estimates proposed by Ofcom, and commented on where further work needs to be carried out.

With regard to the benefits of each option, we recognise that these can be difficult to capture. Academic literature and economic theory shows that the benefits of reducing switching costs are very significant⁷. Moving to a new recipient-led system will result in a reduction of switching costs and therefore bring significant benefits, as detailed in section 4 of our response. Clear effective recipient-led is the most effective switching model, as can be seen from the experience reported by Irish consumers⁸. Ofcom has acknowledged that some benefits may be unquantifiable or very difficult to quantify. However, this does not mean that they should be ignored or discounted.

We are aware that certain concerns have been raised by other industry stakeholders about a move to a recipient-led system, and they have identified issues which they have claimed should prevent a move to a recipient-led process. However, all of these issues can be successfully dealt with or resolved, through simple measures, as discussed in section 5 of this response. In our view none of these concerns hold any water, and are certainly not sufficient to prevent a move to a recipient-led process.

⁷ See section 4 of this response.

⁸ TNS ROI Omnibus Survey, February 2009



3UK shall respond separately to Ofcom's consultation on "*Routing calls to ported telephone numbers- Consultation on proposals*", which was also published on 3 August 2009⁹. However, 3UK notes that there is significant overlap between the subject matter of these two consultations, and so they should not be looked at in isolation. In particular, the outcomes of each consultation process may have an impact on the costs of implementing each option. 3UK urges Ofcom to take account of these overlapping costs when deciding which of the four porting options to mandate.

1.1. Structure of this response

In Section 2 we describe the problems with the current MNP system in the UK and its adverse affects on competition in the mobile sector. We also demonstrate the reasons why changes to the current process are now urgently required.

In Section 3 we consider Ofcom's four options for changing the current system and analyse the costs attributed to each option by Ofcom.

Section 4 discusses how Ofcom can approach the task of evaluating the benefits of each option.

In Section 5, we address some of the perceived problems of a recipient-led process that other operators have raised in the past, together with our proposed solutions.

Section 6 details our views regarding the next steps proposed by Ofcom. Finally, 3UK's responses to the specific questions asked by Ofcom in the Consultation are contained in Annex 1.

⁹ http://www.ofcom.org.uk/consult/condocs/gc18_routing/



2. The current MNP process and why it does not work well for consumers

2.1. Introduction

The current MNP process is not working well for consumers. In this section of our response we examine the findings of Ofcom's research and the benefit of our own experience operating a mobile network in the UK, to comment on the shortcomings of the current MNP process. These shortcomings are systematic flaws of a donor-led system, and mean that a donor-led system, in any form, will never be capable of being fit for purpose. The flaws we discuss in this section fall within the following categories:

- Consumer harm caused by delays, misinformation and aggressive save activity
- Speed of porting
- Customer confusion and uncertainty
- Awareness of porting
- Mobile slamming and fraud
- Bi-lateral framework with associated documentary burden
- Out of step with international best practice

The likelihood of an imminent market consolidation and the proposals for a new EU regulatory framework to include requirements for faster porting are also reasons for changes to be made to the current process. We discuss each of these in sections 2.9 and 2.10 respectively. We have also briefly commented on Ofcom's views regarding bulk porting in section 2.11.

In summary, the barriers to switching inherent in the current system are incompatible with Ofcom's primary duty to further the interests of consumers, where appropriate by promoting competition. They are also incompatible with Ofcom's duty, in implementing EU legislation, to encourage service interoperability so as to promote efficiency and sustainable competition and to maximise benefits for consumers and operators. The benefits of "winback" are illusory. And promotion of effective competition is even more important within the context of market consolidation. 3UK believes that the systemic flaws of the current donor-led system can only be successfully overcome through the mandated adoption of a new recipient-led mobile porting process.

2.2. Consumer harm caused by aggressive save activity, misinformation and delays

The three activities evident in Ofcom's mystery shopping research have been prevalent in the mobile industry for many years¹⁰. In many circumstances, these activities will give rise to significant consumer harm. These activities are:

- unwanted or aggressive save activity by the donor network when Porting Authorisation Code ("PAC") is requested;

¹⁰ Synovate PAC Mystery Shopping research, commissioned by Ofcom, April 2009



- refusal or failure to issue PACs to consumers, despite receipt of valid request; and
- delays that extended the length of end-to-end porting process.

In 3UK's view, the nature of a donor-led porting system allows each of these activities to occur. It forces customers to speak to their donor network, highlighting that they intend to leave the network. This provides the donor operator with an opportunity to engage in retention activity.

According to Ofcom's recent Mostly Mobile Report Ofcom should "continue to play a role in ensuring that mobile consumers are empowered and equipped to get a good deal"¹¹. However, the current system of MNP means that all the 'good deals' are hidden under the counter and reserved for retentions activity by the customer's existing operator.

The tariff offered by the existing operator will not usually be available in the market, so no matter how empowered, consumers cannot currently get the "best deal" as mobile operators reserve these for customers who have already made the decision to switch. 3UK has obtained evidence of this practice through its own research regarding the PAC provision processes of other operators. This evidence has already been provided to Ofcom separate to this response.

In effect the current MNP system limits switching and disincentives providers from putting their best deals into the market. It provides significant opportunities for the donor operator to engage in aggressive save activity and build in delays. Ultimately, it is the consumer who loses out under the donor-led system.

In a near instant recipient-led system, however, there would be no opportunity for the donor operator to engage in delays or aggressive activity, because the consumer makes the porting request directly to the recipient operator.

2.3. Speed of porting under the current system

Ofcom's research illustrates that a quicker porting process is supported by consumers (for example, the results of the willingness to pay survey). However, a donor-led system will never be capable of being as fast as a recipient-led system because it consists of the following two-stage process:

- the customer must request a PAC from their existing mobile operator ("Stage 1").
- Once the PAC has been issued, the customer must give it to their new operator to initiate the port ("Stage 2").

The timeframe for Stage 1, that the operator must issue the PAC within two working days, is set by the MNP Porting Process Manual ("Industry Manual")¹². The timeframe for Stage 2, that the donor operator shall port the number within two business days of receiving the recipient operator's request, is set by General Condition 18.2. Therefore, under the current MNP system, it can take a minimum of

¹¹ Ofcom Mostly Mobile Report, published 8 July 2009, paragraph 6.2

¹² See http://www.ofcom.org.uk/telecoms/loi/numbers/num_port_info/mob_num_portab/mnp.pdf



four working days to port a number, assuming that the customer gives their PAC immediately to their new operator.

This delay has a direct impact on switching levels. Ofcom's research reveals that there is a significant minority of consumers who have not ported their number because they perceive that the process takes too long. In the TNS Omnibus Survey commissioned by Ofcom in December 2008, customers who had switched without porting their number were prompted as to why they had not ported their existing number. 9% said it would have taken too long to arrange to keep number.

The existence of significant unmet demand for porting in the UK is supported by the results of the quantitative surveys carried out by Ofcom. When prompted, 17% of mobile consumers who had never switched agreed with the statement "it takes so long to change to another mobile phone network that it puts me off from doing so"¹³. Given that the same survey found that of all those who owned a mobile phone, 45% had never changed mobile network, it is clear that speed is a factor in the switching decision for a significant minority of consumers, whether this be the speed of porting or switching. Perceived delays in the MNP system act as both a barrier to porting and a barrier to switching.

When the speed of the UK process is compared to international examples, it becomes clear that the current process is not fit for purpose. Near-instant porting processes work well in other countries, including Ireland and Australia. We agree with Ofcom that we can "see no reason why there are any special conditions that exist in the UK market that should prevent us similarly achieving faster porting times"¹⁴.

2.4. Customer confusion and uncertainty (confuse request for PAC with termination of contract, notice periods)

Ofcom has reported that some customers have been confused or misled when seeking to port their numbers under the current system. Much can and is being done to ensure that customers requesting a PAC are given the correct information by the donor operator on the process and consequences of number porting. However, the system is complicated and some of the information which operators need to pass on to customers to ensure they are properly informed is apt to cause confusion.

For instance, under the current system, activation of a PAC cancels the customer's contract with the donor operator. If a customer ports within a minimum term contract, activation of the port will cancel the contract and trigger a requirement to pay an early termination charge. Ofcom's guidance on Additional Charges requires the donor network to advise the customer of any early termination charges that are due when the customer requests a PAC, and indeed, this is a requirement of the current Industry Manual. In passing on this message, the operator is explaining the consequence of cancelling early, and not seeking to require the customer to pay an early termination charge in order to have the right to port. However, the distinction is a subtle one and may not be clear to all customers.

¹³ TNS GB Omnibus Survey, December 2008

¹⁴ paragraph 4.45 of the Consultation



In comparison, under a recipient-led system, no such confusing messaging would need to be passed on. There would be no question of an up front payment of an early termination charge for the right to port because the porting process would be undertaken by the recipient operator. Of course, the customer would still need to be told that porting would cancel any existing contract and to contact its current operator about the financial consequences of that. Section 5 discusses how this would be achieved effectively in a recipient-led process.

Similarly, the current system requires the PAC to be valid for 30 days from issuance. During this period, the customer can activate the port. The requirement for a long PAC validity period is partly because some operators send PACs through the post rather than via a near-instant SMS.

Ports can only be made from active accounts, so problems can arise if the PAC validity period does not align with the customer's notice to cancel their contract. For instance, if the customer has previously issued a notice to cancel, and only requests a PAC some time later, their notice to cancel must be revoked to allow for the requisite 30 day PAC validity period. In practice, this means that the customer ends up paying the donor operator more than would be required had the previous notice to cancel prevailed.

This is a cause of some customer frustration. It can be partially mitigated by informing customers at the time of cancellation of their right to port. However, not all customers take up the offer, and only later decide to move their number to a new operator.

In a near instant recipient-led system, however, there would be no need to extend any notice period in order to accommodate a port.

2.5. Awareness of porting- barrier to porting and switching

It is clear from the results of the TNS Omnibus Survey that in the UK there is a certain level of confusion amongst consumers about the porting process and how it works. In fact, the research found that a significant number of consumers are not even aware of their right to port. The survey results show that there are systematic flaws in the current porting process, which are especially apparent from the inter-play between the following statistics:

- 45% of those who own a mobile phone have never switched network.
- 35% of those who own a mobile phone are not aware of their right to keep their mobile number if they switch networks.
- 71% of those who own a mobile phone think that mobile portability is important or very important when you switch network.
- And yet, only 45% of those who have switched networks in the past kept their existing number.

Given the reported importance that consumers attach to the need to keep their number when switching provider, it is obvious to us that the efficiency of the porting system can have an impact on switching rates and the perceived ease of switching. As such we disagree with Ofcom's assertion in the Consultation that there is "little



evidence to suggest that the porting process in particular was acting as a significant barrier to switching¹⁵.

Most customers want to port their number when they switch supplier. As highlighted above, Ofcom's research shows that in the UK only 45% of those who switched also ported their number. Compare this to the Republic of Ireland, which has a recipient-led, near instant system, where 75% of those who switched also ported. Clearly, Ireland benefits from higher levels of awareness of porting amongst its mobile consumers.

The inherent problem is that the donor-led process provides no incentive to operators to publicise the porting process to their customers, because of the risk of retention activity. In fact, the current system can be said to actively discourage porting. In comparison, a recipient-led process will provide incentives to all operators to promote portability, and will raise awareness of the porting process.

When the importance to customers of porting is taken together with the relatively high numbers of consumers who are apparently unaware of the ability to port their number when they switch, it becomes clear that a faster, more efficient porting process which provides positive incentives on operators to raise awareness of porting, will have the effect of increasing switching rates, and bring significant competitive benefits to the mobile market. We urge Ofcom to consider carrying out further research and analysis on this issue.

2.6. Mobile slamming and fraud

Over the past three years Ofcom has devoted significant time and resource to resolving issues of mobile mis-selling (including slamming). New General Condition 23 specifically targets mobile mis-selling and places requirements on mobile operators to ensure their products and services are sold responsibly. 3UK assumes that the extensive discussion and consultation on the regulation of mobile mis-selling, has enabled Ofcom to ensure that the New General Condition 23 is future proof and can regulate to protect consumers from mis-selling regardless of the type of porting system being operated.

In any event it is already possible for consumers to be defrauded or slammed under the current donor-led system. Indeed complaints about mis-selling to the Ofcom Advisory Team indicate that complaints about slamming, accounts set up without authorisation and ID theft already occur. 3UK is therefore unclear how a change to the porting process would exacerbate these issues. On the contrary there is an opportunity for Ofcom to deliver additional consumer protection from mis-selling whilst revising the porting process.

2.7. Bilateral framework with associated documentary burden

The current donor-led system operates on a bilateral basis, rather than using a centralised porting hub system. This means that each new entrant operator must engage both commercially and technically with all existing operators that currently support MNP.

¹⁵ paragraph 4.6



For new entrants, these complexities inevitably means higher costs of entry and delays to launching their porting capability. In some instances, the costs of separately negotiating MNP agreements with each operator may be so high that they act as a complete barrier to entry. For existing operators, there are significant costs too. They must engage with each new entrant who requests portability and negotiate individual MNP agreements, sustaining a cost of doing business that could be eradicated if a centralised porting hub was adopted.

Under a recipient-led process with a centralised hub solution, existing and new entrant operators would only be required to have contractual arrangements with the hub provider, which would act as a clearing house for port requests. This would facilitate faster entry onto the MNP system for new entrants, and significantly reduce the MNP documentary burden for existing operators, together with the associated cost savings.

2.8. International best practice: the UK is out of step

Same-day recipient-led porting is both European and international best practice. A porting process along the lines of that proposed as Option A has been successfully implemented in many countries worldwide. The telecommunications division of Hutchison Whampoa Limited also operates 3G networks in Australia, Austria, Denmark, Hong Kong, Ireland, Italy and Sweden.

All of these jurisdictions have a recipient-led process. As demonstrated in Table 1 below, in all of these countries, except for the UK and Sweden, the port lead times regularly achieved are within the same day, and well within the maximum time limits required in these countries. In comparison, Ofcom's research shows that, because of the additional time taken for a customer to obtain their PAC from their existing operator under the UK porting process, maximum time limits are exceeded and/or mis-stated. This clearly shows that changes need to be made to the current system.

Table 1: Porting times achieved in countries where Hutchison Whampoa Limited has 3G operations

| Country | Maximum Port Lead Time | Achieved Porting Time in Practice |
|----------------|----------------------------|------------------------------------|
| Australia | 2 days | 2 hours |
| Austria | 3 working days | 2 hours |
| Denmark | 10 working days | 24 hours |
| Hong Kong | 2.5 days | 2 hours |
| Ireland | 1 day | 20 mins |
| Italy | 5 working days | 3.5 hours (for technical handover) |
| Sweden | 3 working days | 3 days |
| United Kingdom | 2 working + 2 working days | 5 working days |



2.9. Market consolidation

The need for an efficient and effective number portability system in the UK will become all the more important as the market consolidates. The likelihood of significant consolidation has increased dramatically with Deutsche Telecom and France Telecom's recent announcement of their intention to merge T-Mobile and Orange in the UK. In the scenario of a considerably more concentrated market it is vital to ensure that all steps are taken to ensure effective competition is maintained, to the benefit of consumers.

Barriers to switching increase the ability of larger players to protect themselves from the consequences of poor customer experience or price competition. The shortcomings of the current donor-led system can be exploited to great effect (through win-back, customer confusion, delay or just general "hassle factor") to retain customers who would otherwise wish to leave for a better service or lower prices. By contrast, an efficient and effective MNP system would help to remove this protection, and thereby mitigate some of the effects of increased market concentration.

Consequently, it is now more important than ever that Ofcom strives to promote competition within the market. One of the means of achieving this is by mandating a recipient-led porting process.

2.10. Changes to the current MNP process must now be made as soon as possible

For various reasons, the changes that are required to the UK porting system have been delayed for several years. As demonstrated above, the current system is inefficient and not fit for purpose. It is difficult to see how it fulfils the requirements of the current Article 30 of the Universal Service Directive¹⁶ which requires Member States to "ensure that all subscribers of publicly available telephone services, including mobile services, who so request can retain their number(s) independently of the undertaking providing the service..."¹⁷ Experience of the current system shows that it cannot guarantee compliance with this provision. Nor can it be said in any way to operate independently of the undertaking providing the system.

The proposals for a new EU regulatory framework, which Ofcom discusses in detail in the Consultation, intensify the need for change¹⁸. 3UK agrees that the EU proposals should inform the way that Ofcom deals with reform of the MNP process. However, we query whether all of the options proposed by Ofcom in the Consultation actually conform with Commissioner Reding's vision of being able to switch operator within "one single day"¹⁹. In particular, we feel that Option D may be vulnerable to challenge if it is adopted, primarily because it still consists of a two-stage process, and the end-to-end timings are likely to exceed the total porting time proposed by the EU.

¹⁶ Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive) Official Journal 108 of 24 April 2002

¹⁷ Emphasis added.

¹⁸ European Commission proposals to update the EU Regulatory Framework for electronic communications, adopted on 13 November 2007, and due to be approved by the EU by the end of the year (the "New Telecoms Package")

¹⁹ See http://ec.europa.eu/commission_barroso/reding/video/text/message_20090323.pdf



It is also questionable whether any option other than Option A is capable of conforming to the proposed requirements. This is because the EU's proposed new legislation would require that "porting of numbers and their subsequent activation shall be carried out within the shortest possible time"²⁰. For the reasons we discuss below, Option A would result in significantly faster porting than any of the other options.

2.11. Bulk porting

3UK understands Ofcom's decision to focus solely on consumer porting at this stage of the Consultation process, and agrees that business customers may not necessarily need the same protections in order to preserve their right to port as ordinary consumers. It considers, however, that this matter should be kept under review [3<].

²⁰ The text is available here: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P6-TA-2009-0360+0+DOC+XML+V0//EN&language=EN#BKMD-15>



3. 3UK's views on options for changing the current process and the costs of those options

3.1. Introduction

In the Consultation, Ofcom proposes four possible options for changing the current UK MNP process. Each option involves reducing the time taken to port a number from the current two working day process. The options consist of two variables, namely process of porting and speed of porting, and are categorised as follows:

- **Option A:** recipient-led process with porting completed within two hours
- **Option B:** donor-led process with porting completed within two hours
- **Option C:** recipient-led process with porting completed the next working day
- **Option D:** donor-led process with porting completed the next working day

In this section, 3UK has examined each of the proposed processes in turn, providing our views as to the validity of the proposed process, and what we perceive to be the limitations of each option. 3UK has also evaluated whether each option will resolve the areas of consumer harm identified by Ofcom as failings of the current system.

3UK strongly supports the option to move to a near instant recipient-led porting process (Option A), and believes that there are significant benefits that would be derived from a move to such a system. On the basis of our analysis of the benefits that would accrue under such a system, 3UK is confident that Option A would give a positive NPV (as described in more detail in Section 4 of this response). 3UK also believes that Option A could be adopted by Ofcom within a relatively short timescale if an off the shelf near-instant, recipient-led solution is implemented (instead of an NICC standard based solution). Moreover, on a deeper analysis of relative costs and benefits, 3UK believes that current rankings of options would be reversed and a clear case would be shown for Option A as the proportionate response to current system shortcomings.

We have incorporated our comments regarding the costs of each option within this section of the response, as they provide a useful counterpoint when discussing the relative merits. We feel that the issues surrounding identification of the benefits of the options are more complex, and have, therefore, included our discussion of these benefits in section 4. These two sections should be read together as a discussion of the elements of Ofcom's cost-benefit analysis for each option.

3UK welcomes Ofcom's decision to use the "do-nothing" option as a counter-factual, and strongly supports Ofcom's view that it is not a reliable alternative going forward. 3UK has long been of the view that the current donor-led process is not in consumers' best interests, is damaging to competition and encourages aggressive retention activity by operators. 3UK's reasons for this view are based on the problems that we have identified with the current system in section 2 above, including:

- Strong evidence of consumer harm caused by delays, misinformation and aggressive save activity.
- High level of customer confusion and uncertainty.



- Bi-lateral framework with associated documentary burden.
- EU proposals for 1 working day maximum time limit.
- Sub-optimal competition effects.

The interplay between the porting and routing processes is significant, and it is highly likely that the costs of any solution adopted to change one process will have a direct impact on the costs of any change to the other. Therefore, we urge Ofcom to consider the costs for each porting option in two different contexts: a) if the current indirect routing process is maintained; and b) if a direct routing process is adopted.

Additionally, if either of the donor-led options (Options B and D) is adopted, Ofcom has proposed that then they will also change the time within which a donor operator must issue a PAC to a customer once a request for a PAC has been made (i.e. Stage 1). The Ofcom proposal is for this timeframe to be reduced from 2 working days to 2 hours. Currently, although the maximum timeframe for providing a PAC is set at 2 working days, these timescales are often exceeded by operators, meaning that porting can take in excess of five days²¹. This clearly exceeds the EU proposed timeframe for porting and is the root of significant consumer harm.

Although 3UK welcomes Ofcom's attempts to speed up the porting process with this proposal, it has serious doubts as to whether the proposal will actually serve to resolve the areas of harm caused by the donor-led system. 3UK also has concerns about how a 2 hour timeframe will be implemented in practice (i.e. when will the clock start ticking), and how Ofcom propose to police it. We discuss our views on this proposal in further detail below in section 3.6.

3.2. Option A: recipient-led process with porting completed within two hours

3.2.1. The proposed process

Option A is our preferred option, because this is the only option proposed by Ofcom that is capable of ensuring a truly near instant experience for consumers. It addresses each of the elements of consumer harm caused by the current process, as identified by Ofcom, and will lead to the elimination of any opportunity for the donor operator to delay the process. As such, Option A is especially attractive because it is self-regulating, and removes a substantial policing burden from Ofcom.

We note Ofcom's duty to have regard to the desirability to promote and facilitate the development of effective forms of self-regulation²². Replacement of a donor-led system with a recipient-led system provides a text-book application of this principle. Rather than relying upon regulation to encourage donors to operate against their commercial best interests, a recipient-led system entrusts the operation of the porting system (and therefore compliance with European law) to the operator incentivised to make porting work.

It is also the option most consistent with the EU New Telecoms Package's requirements for 1 day porting and porting "within the shortest possible time". As

²¹ Supported by Ofcom's mystery shopping research carried out in April 2009 by Synovate

²² Communications Act 2003, section 3(4)(c)



explained below, it is the fastest (and most reliably so) of the four options tabled by Ofcom. It is also the option most aligned to Ofcom's primary duty to further the interests of consumers, where appropriate by promoting competition. Finally, it is the option most compatible with Ofcom's duty, in implementing EU legislation, to encourage service interoperability so as to promote efficiency and sustainable competition and to maximise benefits for consumers and operators.

The benefits offered by a move to a near instant recipient-led process are discussed in further detail in section 4 below. In short, the benefits offered by a move to Option A will include the removal of almost all consumer uncertainty regarding when the port would take place. It would:

- **Eliminate consumer harm caused by delays:** recipients are incentivised to make the system work as efficiently as possible as it is part of the customer acquisition process.
- **Eliminate confusion, misinformation and aggressive sales activity:** customers would no longer need to ask the donor operator for permission to port, so there would no longer be an opportunity for the porting process to be used as a retention tool. This will particularly protect the interests of more vulnerable customers.
- **Promote effective competition:** a recipient-led system will improve switching, which studies have shown as bringing very sizable benefits, compared with the sub-optimal benefits of hidden discounting under a donor-led system which is retention driven.
- **Raise awareness of porting:** operators would no longer be disincentivised to promote the porting process because it no longer meant encouraging your new customer to have one final conversation with its old network.
- **Address mobile-slamming concerns:** Enables industry to add safeguards against mobile slamming and fraud.
- **Remove entry barriers:** replacement of the current bi-lateral framework with a centralised system would remove a significant entry burden for new entrants.

Ideally, Option A would be able to work in the same way as the Irish porting system. In Ireland, by the time a customer takes their new phone home and charges it up, the port has almost always already taken place.

The UK is out of step with international best practice. All other countries known to 3UK to have MNP, have implemented recipient-led systems with the exception of the France (although we note that France has moved to a quasi-recipient-led process, with automated PAC issuance). In addition, the porting times being achieved in these jurisdictions are often much shorter than the maximum port lead time stipulated by the national regulator²³, demonstrating that, where the recipient is in control of the process, they have a strong incentive to deliver fast porting.

Compellingly, certain mobile numbers included in Ofcom's UK National Telephone Numbering Plan can already be ported using a fast recipient-led system. The

²³ See Table 1 in section 2 of this response.



Channel Islands adopted recipient-led MNP on 1 December 2008²⁴, and the Isle of Man adopted a similar system on 29 June 2009²⁵. We understand that average actual porting times of between 5 and 15 minutes are being achieved in these jurisdictions. This paradox is striking, and we urge Ofcom to push ahead with the adoption of a similar system in mainland UK as soon as possible.

We also agree with Ofcom's proposal for dealing with requests to port received from multi-line accounts. In paragraph 5.30 of the Consultation, Ofcom has recognised that, for multi-line accounts, the user of a particular number is unlikely to be the account holder. We agree that a process whereby the donor operator contacts the registered account holder to verify the port request is a suitable solution.

However, we note that Ofcom has not addressed the question of the timeframes to attach to such a process. Whilst we appreciate that it may not be possible to complete this process within the two hour timeframe proposed for individual ports, it is not appropriate for the clock to stop indefinitely whilst the donor operator verifies these multi-line account port requests. 3UK believes that this is an unsatisfactory solution, and would lead to a quasi-donor-led system, whereby the donor operator could build in delays to the port. We urge Ofcom to consider the model adopted in Ireland for multi-line account port requests, where the timeframe for the port is extended from 2 hours to 8 hours, and, if the recipient operator has not received a response from the donor operator objecting to the port within that timeframe, it proceeds with the port.

3.2.2. Assessment of costs

With regard to the costs of Option A, we agree with Ofcom that the costings used in UKPorting are relevant. However, we note that the UKPorting figures were initially calculated on the basis of adopting both direct routing and a recipient-led process. It is unclear to us how Ofcom has apportioned the UKPorting costs when considering only a move to recipient-led porting in this Consultation.

We further note that the UKPorting solution was based on the NICC specification which was overly complex and intricate. It was a bespoke solution developed by the NICC. Much of this complexity was as a result of trying to adequately meet the needs and concerns of the fixed line industry, and so, given the refined scope of the Consultation, many of these concerns are no longer relevant. We note that, off-the-shelf recipient-led porting solutions are available and can be significantly lower in cost and complexity. We urged Ofcom in our response to Ofcom's previous MNP Consultation in July 2007²⁶ to consider using an off-the-shelf solution, and our concerns regarding a bespoke NICC solution still remain. We further note Ofcom's comments in the Routing Consultation that the NICC solution proposed in UKPorting was reported to be "over-engineered"²⁷. Against this background, 3UK believes that

²⁴ For description of recipient-led process in the Channel Islands, see Jersey Telecom's Consumer Code of Practice, version 5.0 March 2009, pages 13-14 at:

http://www.jerseytelecom.com/upload/documents/about_us/JT_Code_of_Practice_v5.0_March_09.pdf

²⁵ For description of recipient-led process in the Isle of Man, see Manx Telecom's webpage regarding Mobile Number Portability: *Transferring to another Mobile Provider* at:

<http://www.manxtelecom.com/support/mobile/number-portability/porting-process.aspx>

²⁶ Arrangements for porting phone numbers when customers switch supplier- A review of General Condition 18, published 17 July 2007

²⁷ See paragraph 4.17 of http://www.ofcom.org.uk/consult/condocs/gc18_routing/routing.pdf



the costs attributed to Option A in the Consultation are over-stated and should be taken as a maximum cost.

Additionally, we disagree with Ofcom's assertion that a central database is only required if direct routing of calls is also implemented. For a recipient-led process to operate in the most useful way, the porting hub would need to have access to a central database that contains details of the current owner of each number in order to route the porting request to the correct donor operator. If the porting hub didn't operate in this way, then problems would inevitably arise when transmitting porting requests.

There is a direct connection here with direct routing because this technical capability would replicate much of what would be needed to implement a direct routing process. If the porting hub is able to provide details of the current owner of each mobile number, then it can effectively behave as a central database, thus emphasising the importance of considering the routing solution when calculating the costs of Option A.

[redacted].

Ofcom has assumed when calculating costs that "the process and system changes necessary to introduce near-instant porting can be implemented without the simultaneous adoption of direct routing"²⁸. In our view this means that some of the costs of moving to a recipient-led process may have been overstated if, following the outcome of the Routing Consultation, a direct routing solution is adopted.

Finally, we note Ofcom's assumption that the operational expenditure for Option A will be additional to the costs that operators already incur when operating the current donor-led porting system. In fact, switching to a new recipient-led system will accrue some costs savings, and not all opex will be incremental. The PAC issuance process under the donor-led system is resource-intensive because the vast majority of PACs are requested by telephone. Savings will accrue to operators if they no longer need to provide resource for this service.

We have estimated that 3UK's operational cost savings of moving to the Option A system, where the porting process is automated, will be £[redacted] per annum²⁹. These cost savings primarily accrue through our call centres based off-shore. We assume that the cost savings for other MNOs of moving to a recipient-led process may be significantly higher, especially where they have UK-based call centre operations and given their larger market share. We urge Ofcom to take account of these savings in its CBA calculations.

3.3. Option B: donor-led process with porting completed within two hours

3.3.1. The proposed process

Our primary concern with Option B is that it retains the systematic flaws of a donor-led process. It is an unnecessarily complex process, because it retains the two stages, namely: a) provision of PAC to customer; and b) subsequent porting request.

²⁸ Paragraph 5.33 of the Consultation.

²⁹ Calculation based on: [redacted].



Ofcom states in the Consultation that “this option would also enable much of the existing porting process to be retained, for example the process of issuing PACs.” However, this is a false benefit, given that the costs of switching to Option B are estimated to be broadly the same as those for Option A.

Option B seems to us to be a compromise solution, but it is a compromise that will cost a similar sum to implement as a solution which can be built to address all of the problems with the current system. If concerns are raised in regard to a recipient-led system on the basis of cost, then it is difficult to see how Option B can be supported instead, as there would appear to be no advantages of donor-led systems over recipient-led systems. In particular, as we discuss later, recipient-led systems:

- carry no greater risk than a donor-led system of fraud or slamming, and actually provide an opportunity for improved safeguards; and
- actually place those customers who wish to arbitrage between operators to get a better deal from their current operator in a stronger bargaining position than under a donor-led system.

We can see many downside risks in adopting Option B over Option A because it will do nothing to eliminate the significant opportunities for consumer harm to be inflicted. It does not change the incentives on donor operators to cause delays or engage in unwanted save activity. As described in section 3.6 below, the secondary proposal to reduce the PAC provision timeframe (i.e. Stage 1 of the donor-led process) to 2 hours is unlikely to address the problems we face with the current system, which is not working well for a significant minority of consumers.

3.3.2. *Assessment of costs*

We agree with Ofcom that a new porting hub will be required to implement the 2 hour porting time for Option B. The comments we made with regard to the cost of implementing a porting hub for Option A will also apply to Option B. In particular, the significant overlap between the functionality of a porting hub and a centralised database and the impact of the choice of routing solution on costs of implementation equally apply to Option B.

Option B has been categorised as near instant in the willingness to pay surveys, however, it is in reality, 4 hours end to end, and could be at least twice the length of Option A. As such, it is not correct to attribute them with the same timeframe for the purpose of calculating attributable benefits.

We also note that the cost savings of moving to a recipient-led process, as discussed above for Option A, will not accrue under Option B, because the need for customers to call their donor operator to request their PAC will remain.

3.4. Option C: recipient-led process with porting completed the next working day

3.4.1. *The proposed process*

We strongly support Ofcom’s assertion that, under a recipient-led process “any delays around consumers obtaining a PAC that might result from [the process of



obtaining PAC] would be removed”³⁰. It is clear to us that the benefits of a recipient-led system will be significant, as we describe in more detail in section 4. Given the immense benefits that are likely to result if a recipient-led process is adopted, Option C is our preferred alternative option.

On balance, although the speed of porting is clearly important to customers, the risk of consumer harm continuing to be sustained under a donor-led process means that we cannot support either Option B or Option D.

Notwithstanding this, from our experience at the UKPorting discussions, as well as information of MNP systems operating in Ireland, Australia and elsewhere, we know that it is technically possible to implement a near instant recipient-led solution in the UK. Additionally, as noted above, the estimated costs of Option C are only marginally lower than those of Option A.

Therefore, we struggle to understand why Option C would be adopted ahead of Option A. Option A offers most benefits and is achievable for relatively little additional cost to Option C. Option C is a compromise option, which would potentially lead to a situation where delays are artificially built into the automated verification and porting process. This cannot be in consumers’ best interests.

Against this background, should Ofcom decide to mandate a move to Option C, we strongly suggest that the mandated timeframes are kept under review, and the system be moved to a near instant recipient-led system as soon as technically possible.

3.4.2. Assessment of costs

We agree with Ofcom that a new porting hub will be required to implement the 1 working day porting time for Option C. The comments we made with regard to the cost of implementing a porting hub for Option A will also apply to Option C. In particular, the significant overlap between the functionality of a porting hub and a centralised database and the impact of the choice of routing solution on costs of implementation equally apply to Option C.

3.5. Option D: donor-led process with porting completed the next working day

3.5.1. The proposed process

Although this option shortens the overall timeframe for porting under a donor-led system, this Option is largely similar to the current porting system. As a result, the vast majority of the shortcomings of the current system (as described in section 2 above) will remain.

Ofcom’s survey data reveals entrenched views amongst consumers who have never ported about their right to port and the porting times which apply. We query whether just shortening the timeframe to one working day but maintaining the current donor-

³⁰ paragraph 5.43 of the Consultation.



led system will address any of the consumer harm Ofcom has identified or produce any significant increase in consumers' awareness to port.

Option D represents the least change from the current system. Ofcom's research has identified that the current system is not working well for a significant minority of consumers. We are not convinced that simply shortening the timeframe for the port to take place will adequately address any of the areas for consumer harm which are systemic under a donor-led process, as identified by Ofcom. A move to adopt Option D would maintain almost all of the problems that exist under the current process, would intensify the policing burden on Ofcom, and would not be in line with Ofcom's primary duty "*to further the interests of consumers in relevant markets, where appropriate by promoting competition*". It would remain a system reliant on interventionist regulation on the part of Ofcom, rather than promoting self regulation in accordance with Ofcom's duty in this regard.

Nor would this option fulfil Ofcom's duties in regard to best regulation³¹. Adoption of Option D would require change and cost to be incurred, but would not address the fundamental problems with the current system which operate against consumers' interests and put compliance with EU law requirements at risk. It is difficult to see, therefore, how such intervention could be viewed as proportionate or targeted, given that it would be largely ineffective.

3.5.2. Assessment of costs

We note that the costs are lower for Option D. However, whilst a centralised database and porting hub is unlikely to be required if Option D is adopted, and indirect routing is maintained, it is worth exploring the cost implications of a switch to direct routing. It would lead to a nonsensical system if a centralised database capable of near instantaneous changes to call routing is adopted, but this additional technical capability is not harnessed for use in the porting process too. This would result in an extremely unsatisfactory result for consumers, and amount to an enormous missed opportunity to significantly improve the operation of the UK porting process.

3.6. Ofcom's proposal for 2 hour PAC provision deadline

Ofcom has proposed that, if either of the options which maintain the donor-led system are chosen, the timeframe in which the donor operator can issue the PAC to the customer once a request is made will be reduced from 2 working days to 2 hours. 3UK maintains its view that this proposal will not be enough to address the consumer harm that Ofcom has identified. Against this background, 3UK notes that:

- Many operators are already able to issue a PAC within a 2 hour timeframe yet do not always achieve this.
- Ofcom's proposal will not resolve any of the consumer harm Ofcom has identified.

We discuss these thoughts in more detail below.

³¹ Communications Act 2003, section 3(3)



3.6.1. Operators could achieve this already but often do not

3UK agrees that 2 hours is a reasonable timeframe, and that this is preferable to the current 2 working days. We see no reason why PAC cannot be issued immediately after the request is received and identity has been verified. A maximum 2 hour timeframe will allow for any technical issues which might occasionally arise.

As Ofcom's mystery shopping exercise identified, several operators are already performing within this proposed timeframe, at least some of the time. Of the PACs requested during the mystery shopping exercise, 47% were issued over the phone and 28% were issued by SMS. There is a considerable customer benefit in having certainty as to how and when PAC will be issued. Incidentally, 3UK issues the vast majority of PACs via SMS, which is delivered to the customer's handset within the proposed 2 hour timeframe. The mystery shopper exercise demonstrates that it is a goal within the capabilities of operators.

Ofcom's mystery shopping exercise also demonstrates that issuing a PAC by post causes unacceptable delay. For the 22% of PACs that were issued by post, the average time taken for the consumer to receive their PAC was an unacceptable 4 days. Operators who choose to issue PACs by post argue that they do so because it gives them an opportunity to explain the porting process to their customers and ensure that they are made of any outstanding contractual liabilities (e.g. early termination charges). Yet the same operators issue PACs on phone or by SMS to their pre-pay customers. We do not think, therefore, that this argument is sustainable in a system where more than 75% of PACs are issued by different means. We agree with Ofcom that "the opportunity to explain the process and provide any necessary information to the consumer is unlikely to be lost if PACs are only issued over the phone or via SMS"³². This information can still be given to customers when they request their PAC.

Evidently, there are no technical or security issues which would prevent the proposed reduction from being implemented more quickly than the other elements of the Consultation. Ofcom also recognises that, for operators who do not already have this process in place, there will be only modest cost implications of moving to such a system.

[3<]

Given this, we urge Ofcom to introduce a shorter PAC provision timeframe without waiting for the final outcome of this Consultation process. This would be a useful interim measure to mitigate some of the faults of the current donor-led system.

3.6.2. However, Ofcom's proposal will not resolve any of the consumer harm Ofcom has identified

However, for the reasons we describe in section 2 above, a simple requirement for porting within 2 hours under a donor-led system will not address the customer harm Ofcom has identified in the Consultation, or lead to the benefits of improved awareness of porting and more effective competition as we discuss later. It is clear

³² paragraph 5.37 of the Consultation



that while many operators can provide PACs in 2 hours already, in reality this does not happen in all cases. There are a number of reasons for this.

Under a donor-led system the “clock” does not “start ticking” until the end of the customer’s conversation with their donor operator. This means it will not start until after the donor has had the opportunity to have a save conversation with the customer (and it is difficult to see how the system could work any other way). Moving to a requirement for 2 hour porting is unlikely to improve rates of aggressive save activity or PAC avoidance caused by misinformation or confusion of customers.

Whilst shortening the timeframe for PACs to be issued may go some way to mitigating consumer uncertainty around the current donor-led process, there may be significant problems with enforcing the timeframe, which Ofcom has not yet considered. Yet donor-led systems already impose a greater (and more complex) compliance burden on operators than recipient-led systems. They require subtle judgements to be made in relation to – legitimate – winback activity to distinguish between those customers seeking a negotiation from those who just want to port. They require complex messages around billing to be conveyed to customers which takes time.

Given the difficulties of policing the timeframe, the additional compliance concerns of donor-led systems, and the fact that many operators are capable of issuing PACs within a 2 hour timeframe, 3UK strongly believes that formally shortening the timeframe for PAC provision is only an interim measure and should not be seen by Ofcom as providing a long-term solution to the inherent systematic flaws of a donor-led MNP process.



4. 3UK'S views on how best to evaluate the benefits of each option

4.1. Introduction

We discussed in the previous section the work that Ofcom has undertaken to analyse the costs of its four options. Ofcom has also undertaken initial analysis into the benefits of these options. It recognises that the work done to date does not fully capture all of their relative benefits, particularly those relating to benefits that might accrue from moving to a recipient-led process.

As a result, the types of benefits that Ofcom has quantified, together with its assumptions underlying those benefits, renders its calculations of benefits a “worst case scenario”. This would be less important if the impact of the “unmeasured” benefits associated with each of the options was similar across all these options. However, as discussed below, evidence suggests that a best-practice MNP solution will generate incremental competitive benefits as well as incremental benefits to porting individuals that would not be realisable under donor-led porting.

As we explain in this section, even small differentials in annual benefits such as in the range of £3m to £5m would change the rankings of options as estimated by Ofcom’s cost-benefit model. Yet such differential of benefits between options are highly likely, given previous quantification of market benefits associated with MNP. The difficulty of accurately capturing certain types of benefits does not obviate the importance of at least addressing these to the extent that is feasible.

In addition, as discussed in Section 4.4 further below, Ofcom’s view of switching costs in the UK mobile market may prove to be too optimistic given some of the trends evident in the UK mobile sector such as market consolidation. A best-practice MNP solution offers a non-distortionary policy instrument that would be an important safeguard for consumers in a complex and changing market environment.

The benefits of implementing MNP, or implementing a quicker and more streamlined version of MNP, can be classified as follows³³:

- Type 1 benefits which accrue to consumers who port their number;
- Type 2 benefits are economy-wide efficiency benefits realised from greater competition, lower barriers to entry, lower call prices, etc, which are facilitated by an MNP process that makes consumer switching significantly easier; and
- Type 3 benefits are benefits that accrue to those who call customers who have switched their numbers.

In its current work, Ofcom’s consumer survey only attempts to capture the Type 1 benefits. Following previous regulatory precedent — as in the Ovum study of mobile number portability conducted for Ofcom in 1997 — Ofcom has chosen not to attempt to quantify Type 2 benefits at this stage, although it discusses the nature of these benefits. However, whereas in the 1997 MNP proceedings, Type 2 benefits were not

³³ This typology of benefits was used by NERA for OFTEL in the initial consultation on fixed-line number portability.



required to be quantified in order to demonstrate that implementing MNP had a positive net present value for society (benefits less costs exceeded zero on an NPV basis), in the current context Ofcom's ranking of options that will drive the outcome of this consultation process can be directly and significantly impacted by Type 2 benefits. It is, therefore, critical to identify likely Type 2 benefits and assess how these might vary under the different options.

Ofcom's ranking of the four options is problematic and does not currently provide a reliable basis for policy action. Specifically, the annual estimated benefits are very modest with respect to the size of the UK mobile telephony market and the likely annual consumer welfare gain from mobile services. Current revenues in the UK market are roughly £15 billion per annum, and Ofcom itself reports approximately 50 million unique UK mobile consumers. In light of this, estimated benefits of about £10m or less under all the MNP options represents a welfare gain of less than 0.1% of mobile telephony expenditure.

Even if Ofcom's estimates are of the right order of magnitude, they are extremely vulnerable to the benefits that have not been captured. For instance, if the "unmeasured" Type 2 benefits are essentially zero under Option D, but £3m a year under Option A, then this reverses the rankings of Options A and D. At the same time, £3m is a very small amount in the context of the aggregate UK market, and represents a welfare gain of less than 1p per consumer per month. In this light, we believe that the failure to capture Type 2 benefits and the potential differential in these benefits between different MNP options invalidates the current ranking of MNP options.

In addition, even if one confined oneself to Ofcom's estimates of Type 1 benefits, one would have to take account of the fact that:

- Ofcom's "base case" calculations assume a constant porting rate, while its own survey research shows that porting rates and porting awareness are much lower in the UK than in countries such as Ireland which have a prompt recipient-led MNP system. Ofcom itself acknowledges that recipient-led porting could lead to higher porting rates than donor-led porting processes;
- Ofcom, by its own admission, does not capture the fact that consumers prefer recipient-led MNP to donor-led MNP, and does not yet capture this consumer preference in its "willingness-to-pay" estimates.

Given the above, there is simply too much room for error and omission in the estimation of benefits to render the current rankings of MNP options an appropriate basis for policy action. While it is difficult to capture Type 2 benefits, 3UK considers that it is incumbent upon Ofcom to establish whether there is a *reasonable probability* of these benefits: (a) being significantly different as between other MNP options; and (b) being sufficiently large so as to upset the rankings of its options. Additionally, Ofcom can certainly take measures to make its current calculation of Type 1 benefits more rigorous.

In the remainder of this section, we discuss:

- The hypothesised competitive benefits of recipient-led MNP relative to donor-led MNP, and then relate these hypothesised benefits to the incremental "benefits to competition" that might be realisable under recipient-led MNP. We



draw upon evidence from other studies of number portability and switching costs in telecommunications to illustrate the significance of currently unmeasured Type 2 benefits;

- The need for Ofcom to further refine its calculations of Type 1 benefits;
- The need for Ofcom to consider MNP as a non-distortionary policy intervention that may become more significant in light of current and prospective market developments.

At present, it would appear to us that the cost-benefit calculations presented by Ofcom in Table 12, p.64 of the Consultation, represent a “worst case” scenario for the recipient-led options it is considering, since it has not quantified or even adequately considered Type 2 competitive benefits that might result from such options, or fully translated its survey research findings regarding consumer preference for recipient-led portability into its “willingness-to-pay” assessment.

4.2. Unmeasured “Benefits to the market”

The “number portability” issue falls under the general heading of “switching costs.” Making it easier for consumers to port their number when they switch operators may significantly reduce switching costs. It can also facilitate greater competition and entry in the market, leading to lower prices and a more operationally efficient industry — for instance, prior to introducing number portability, it might be impossible for new entrants to compete for some customers (e.g., people who do not want to switch unless they can take their number with them), while competing for other consumers might involve increased marketing expenditures. Moving from a lengthy number portability process to a much shorter, stream-lined process has qualitatively *similar* effects as introducing number portability in the first place.

Thus leaving aside the welfare gains to individual consumers from having MNP or a “better” form of MNP, there are benefits to the aggregate market and to aggregate economic surplus from improving number portability. Quantifying such benefits has proved difficult. However, one may gain some idea of the quantitative significance of such benefits from studies of number portability and of switching costs:

- Switching costs, including “search costs”³⁴, are a very significant category of costs. Knittel³⁵ (1997) finds that the benefits of introducing competition in the US long-distance market between 1984 and 1995 were almost entirely negated by the existence of search and switching costs.³⁶ A recent study from Hungary³⁷ finds that switching costs might be as high as one third of annual expenditure on mobile telephone service.³⁸ Grzybowski and

³⁴ Search costs refer to the time spent acquiring sufficient information about alternative calling plans, data packages, etc. Such costs are likely to be significant in the mobile industry, which features a bewildering array of tariffs.

³⁵ Interstate Long Distance Rates: Search Costs, Switching Costs, and Market Power, Christopher R. Knittel, Department of Economics, University of California, Berkeley, CA, U.S.A., 1997.

³⁶ During the period that Knittel’s study covered, there was actually a switching fee in place for changing operators. This fee was around \$5. There was no number portability available at the time.

³⁷ Switching costs in telecommunications: conclusions from a Hungarian survey, László Lórinicz and Péter Nagy, Hungarian Competition Authority, 2007, available at http://infrapont.hu/dokumentumok/switching_costs.pdf

³⁸ However, the authors report that Hungarian switching costs are likely to be significantly higher than UK switching costs, at least if switching costs are (as they must be) correlated with the perceived difficulty of switching.



Pereira³⁹ (2008) found that eliminating all switching costs would mean a welfare gain of 45% to Portuguese mobile consumers.⁴⁰

- Number porting is an important element of switching costs. NERA (1998) in its cost-benefit analysis of MNP for OFTA in Hong Kong found that 60% of users said that the lack of number portability was the greatest barrier they would face if they switched operators.⁴¹ Srinuan and Bohlin⁴² (2009) estimate switching costs in the Swedish mobile market, and find that these switching costs have fallen by more than 60% for customers of the incumbent (Telia) since MNP was introduced. Lyons⁴³ (2006), finds that MNP has a significant effect in increasing churn rates (the long-term increase in churn rates is 35%).

All of these studies suggest that reducing switching costs could have a significant effect on consumer welfare. Number portability is an important dimension of switching costs, and that MNP appears to be an effective policy instrument in reducing switching costs and increasing churn.

With specific respect to the UK:

- NERA⁴⁴ (1997) studied fixed-line number portability for OFTEL and found that Type 2 benefits (mostly resulting from improved efficiency of BT) had a NPV of £1,280m, and constituted 70% of estimated benefits;
- While emphasising that their calculations were purely illustrative and that there was much less rigour attached to the quantification of Type 2 benefits than of other benefits, Ovum (1998) found (in a study for OFTEL) that the NPV of Type 2 benefits was £360m, and exceeded the NPV of the other benefit categories.

While the findings of these studies on switching costs and MNP would need to be updated and analysed in the context of the current consultation we note that the size of the telecommunications market has increased very significantly since then and that therefore the incremental benefits of further reducing current switching costs are likely to be significant.

Although Ofcom's own research suggests that the existing UK MNP solution works well for some consumers there is also evidence that switching costs related to portability remain an issue for many. Thus introducing a MNP solution that meets

³⁹ Subscription Choices and Switching Costs in Mobile Telephony, Lukasz Grzybowski (Competition Commission, UK) and Pedro Pereira (Autoridade da Concorrenca, Portugal), NET Institute Working Paper #07-12, September 2007

⁴⁰ Their results, however, may reflect a failure to fully capture brand preferences and unobserved product differentiation, although they make efforts to incorporate these factors into their econometric modelling. At any rate, it is not likely that the welfare gain from eliminating all switching costs in the UK is likely to be this large as the UK market has higher switching rates and greater competition than the Portuguese market.

⁴¹ See <http://www.ofta.gov.hk/en/tas/mobile/ta980609.pdf>

⁴² Mobile Number Portability: Evaluating the Swedish Mobile Market, Pratompong Srinuan, Erik Bohlin, Division of Technology and Society Department of Technology Management and Economics Chalmers University of Technology, Göteborg, Sweden 19 March, 2009. We note that they do not use an econometric methodology to separate out the impact of MNP versus the impact of changes in market structure or the impact of other policy instruments. Therefore, it is not possible to attribute all of this gain to MNP itself, nor is it possible to isolate the impact of MNP from other factors, much less gauge the impact of different MNP processes

⁴³ Measuring the Benefits of Mobile Number Portability, Sean Lyons, Department of Economics, Trinity College, 27 July 2006.

⁴⁴ NERA and Ovum findings can be found in Ofcom's online archives. See for example: http://www.ofcom.org.uk/static/archive/ofcom/ind_info/numbering/ovumapp2.htm#Benefits



international best-practice would carry additional competitive benefits. While these benefits may be modest in relation to the overall benefits associated with introducing MNP in the 1990s marketplace (at least in percentage terms) these benefits are likely to be very significant in light of Ofcom's current calculations and ranking of options. Additionally, most of the attempts at calculating Type 2 benefits concentrated on static efficiency gains, whereas a recipient-led MNP system could have some impact on fostering entry that leads to significant dynamic efficiency gains, as explained below.

4.2.1. Advantages of recipient-led MNP

Ofcom notes that a donor-led process could serve to ossify barriers to entry in a saturated market⁴⁵. Indeed, under a donor-led process, incumbent operators may engage in targeted marketing and retention activities that the entrants cannot replicate. In addition, the current process allows a significant period of time and significant potential for customer retention activity that is not welfare-enhancing, but is competition-reducing; and importantly, potential switching customers may not have information available to them on options to port.

A recipient-led system will still allow scope for valuable "win back" and retention activity but may eliminate some of the anti-competitive implications that arise from the fact that the success of the porting process currently depends on the cooperation of incumbent operators. One might wish to distinguish between those tactics of mobile operators that increase "lock-in" and switching costs, such as offering generous handset subsidies for customers willing to take a longer-term contract, versus those harmful and destructive tactics (not informing the consumer of their options to port their number, obstructing the consumer in their ability to obtain a PAC, etc). The former offer *some* benefits to the consumer, whereas the latter creates barriers to switching akin to additional costs born by consumers. To the extent that a recipient-led MNP system leads to greater symmetry between the incumbent and the competitor inasmuch as the incumbent can no longer hold-up competition via its control of the customer number, and to the extent that it fosters greater awareness of porting options among consumers, one might expect to see *greater competition* at the point of customer acquisition and retention than is currently the case.

Added to this, more and more operators are now offering bundled services, which consist of two or more services supplied by the same provider. As Ofcom noted in its most recent Communications Market Report, these bundled services often offer "the advantage of a price discount and the convenience of receiving a single bill for several services"⁴⁶. Figure 1.7 of The Communications Market Report (inserted below) shows the bundled services available from major suppliers in the UK. It is clear from this table that mobile phone services are one of the services being bundled by operators. Ofcom research has also shown an increase in the number of households taking bundled services.

⁴⁵ Paragraph 5.138 of the Consultation.

⁴⁶ Paragraph 1.2.8, The Communications Market Report, published by Ofcom, 6 August 2009



Figure 1.7 Bundled service offers from major suppliers⁴⁷

| | 3 | AOL | Be | BT | O2 | Orange | PlusNet | BSkyB | T-Mobile | TalkTalk | Tesco | Tiscali | Virgin Media | Vodafone |
|------------------------------------|---|-----|----|----|----|--------|---------|-------|----------|----------|-------|---------|--------------|----------|
| Standalone broadband | | Y | Y | Y | Y | Y | Y | Y | | Y | Y | Y | Y | Y |
| Broadband and phone | | Y | | Y | | Y | Y | Y | | Y | Y | Y | Y | Y |
| Broadband and mobile | | | | | Y | Y | | | | | Y | | Y | Y |
| Phone and mobile | | | | | | Y | | | | | Y | | Y | Y |
| Phone and TV | | | | Y | | | | Y | | | | Y | Y | |
| Broadband, phone and TV | | | | Y | | | | Y | | | | Y | Y | |
| Broadband, phone & mobile | | | | | | Y | | | | | Y | | Y | Y |
| Phone, TV and mobile | | | | | | | | | | | | | Y | |
| Broadband, TV and mobile | | | | | | | | | | | | | Y | |
| Broadband, phone, TV & mobile | | | | | | | | | | | | | Y | |
| Converged | | | | | | | | | | | | | | |
| Converged offers | | | | Y | | | | | | | | | | |
| MBB | | | | | | | | | | | | | | |
| Standalone mobile broadband | Y | | | Y | Y | Y | | | Y | | | | Y | Y |

Source: Pure Pricing, June 2009

Note: Highlighted box denotes that the combination of services requires the purchase of additional services.

In the Consultation, Ofcom notes that a recipient-led process might be particularly valuable if individuals are switching to bundled services⁴⁸. While Ofcom makes this observation in the context of willingness-to-pay estimates, there is also a potential competition-related dimension. Bundled services may become increasingly important entry strategies for new competitors in the mobile market. Such competitors have strong incentives to make up for their lack of incumbency in the mobile market through leveraging their other assets via “bundles” or “triple-play” and “quadruple-play” offerings. In that context an efficient MNP solution would form an important part of a seamless switching process.

Such entry leads to significant benefits for competition and consumers. These benefits might properly be termed “dynamic efficiencies” as they involve the introduction of innovative service offerings and products over time. The dynamic welfare gains from innovation and new products might well be larger still than any static efficiency gains of improved competition (even though these may still be very substantial).⁴⁹ At the same time, as the complexity of product offerings increases, so do potential switching and “search” costs for consumers. Thus while it is very difficult to estimate the precise quantitative relationship between a recipient-led MNP system and market entry and innovation, we believe that there could be some impact from the type of MNP available on entry by firms offering mobile services as part of a bundle.

⁴⁷ page 19, The Communications Market Report, published by Ofcom, 6 August 2009

⁴⁸ Paragraph 5.126 of the Consultation.

⁴⁹ See Thomas O. Barnett (U.S. Department of Justice), “Maximizing Welfare through Technological Innovation”, Presentation to the George Mason Law Review 11th Annual Symposium on Antitrust, Washington May 2008. A number of scholars in the antitrust area consider that the dynamic efficiency gains from new product introduction and service innovation are far larger than static efficiency gains from regulatory policy that attempts to mimic competition by regulating prices.



Taken together, the aggregate effects of the pro-competitive aspects of recipient-led MNP are likely to be significant enough that it has a great impact on the ranking of the MNP options that have been evaluated by Ofcom.

For example, if unmeasured Type 2 benefits are zero under Options B and D, but are £3m a year under Option A, this increases the NPV of benefits under Option A by £24m. If these benefits are £5m a year, the NPV of benefits increases by £45m. If the benefits are £10m a year, the NPV of benefits increases by £80m. Put in light of the estimated NPV of Type 2 benefits related to MNP in the 1990s (£360m), all of these numbers would appear to be well within a range of credible impacts that one could anticipate as a result of moving to a best-practice MNP system.⁵⁰

Alternatively, benefits of £3m⁵¹ a year represent an increase in economic surplus of around 6p per mobile subscriber per year⁵²; benefits of £5m a year represent an increase of 10p per subscriber per year; benefits of £10m a year represent an increase of 20p per subscriber per year. Thus such gains may arise without representing a fundamental transformation in the competitive dynamics of the UK market.

Table 2 shows the NPV of Option A relative to Option D, if one assumes that the benefits from Option D are correctly measured, but one allows for Type 2 benefits to arise under Option A. We show the expected value of Option A relative to Option D under different probability assumptions attached to the Type 2 benefits: thus, we show that if the probability of £5m of annual Type 2 benefits is 0.5, the expected (NPV) value of Option A exceeds that of Option D. Thus even if we allow for significant uncertainty with a modest estimate of Type 2 benefits, their significance cannot be ignored.

Table 2 underscores that even if Ofcom cannot precisely quantify the Type 2 benefits, and even if it is especially difficult to quantify the increment in Type 2 benefits as between (say) Option A and Option D, it is nevertheless extremely important to establish some type of confidence interval around these types of benefits. If there is even a reasonable probability (25%) of these incremental benefits being £10m a year or greater (not a large sum in the context of the UK mobile market), then the rankings of options changes.

⁵⁰ It would appear that these studies concentrated on efficiency gains arising from improvements in industry efficiency (leading to lower costs and lower call prices), and did not include the potentially important dynamic gains from new entry by players offering innovation at the product and service levels.

⁵¹ There may be adverse impacts on industry profitability as a result of greater competition; since a social planner (such as Ofcom) needs to factor in both consumer and producer surplus, aggregate economic surplus would be the conceptual metric to use in gauging the impact of a policy. When we refer to "benefits" these benefits are assumed to be net improvements in aggregate surplus, not just consumer surplus.

⁵² There are roughly 50m individual subscribers to mobile services in the UK, although reported numbers of connections are much higher owing to individuals using multiple SIM cards.



Table 2: Expected value of Option A relative to Option D under different probability and quantity assumptions for unmeasured Type 2 benefits⁵³

| <i>Annual Type Benefit of Option A</i> | <i>2 of NPV of Option A</i> | <i>Benefit Probability</i> | <i>Expected Increase in NPV Benefit</i> | <i>Expected NPV of Option A (Benefits less costs)</i> | <i>Expected NPV of A less D</i> |
|--|-----------------------------|----------------------------|---|---|---------------------------------|
| <i>[A]</i> | <i>[B]</i> | <i>[C]</i> | <i>[D] = [C] x [B]</i> | <i>[E] = [D] + NPV A</i> | <i>[F] = [E] - NPV D</i> |
| £3,000,000 | £24,106,102 | 0.25 | £6,026,526 | £42,026,526 | -£11,473,474 |
| £3,000,000 | £24,106,102 | 0.50 | £12,053,051 | £48,053,051 | -£5,446,949 |
| £3,000,000 | £24,106,102 | 0.75 | £18,079,577 | £54,079,577 | £579,577 |
| £5,000,000 | £40,176,837 | 0.25 | £10,044,209 | £46,044,209 | -£7,455,791 |
| £5,000,000 | £40,176,837 | 0.50 | £20,088,419 | £56,088,419 | £2,588,419 |
| £5,000,000 | £40,176,837 | 0.75 | £30,132,628 | £66,132,628 | £12,632,628 |
| £10,000,000 | £80,353,675 | 0.25 | £20,088,419 | £56,088,419 | £2,588,419 |
| £10,000,000 | £80,353,675 | 0.50 | £40,176,837 | £76,176,837 | £22,676,837 |
| £10,000,000 | £80,353,675 | 0.75 | £60,265,256 | £96,265,256 | £42,765,256 |

Note: grey shading indicates that value of Option A exceeds that of Option D.

A 2-hour recipient-led MNP system represents international best practice. The costs of introducing it may be higher than the costs associated with a 1-day donor-led process. However, the “upside” in terms of competitive effects in the wider market could well outstrip the benefits that Ofcom has thus far measured and reported. Other studies — such as those used in the fixed-line number portability proceedings in the UK in the 1990s — suggest that unmeasured competitive benefits from improving number portability could indeed be very large.

Even after acknowledging the difficulty of extrapolating from these studies (which mostly refer to benefits gained relative to a “no number portability” situation) they do suggest an urgent need for Ofcom to explore the competition-related “upside” that might result from implementing a recipient-led best practice solution before ruling it out. This upside should be viewed against the fact that Ofcom’s current cost-benefit calculations (see p.64) essentially represent a “worst case” scenario in terms of the benefits of recipient-led porting processes.

⁵³ Assumptions underlying Table 2 are: (a) benefits begin to be realised in 2012, at a constant annual rate until 2021, (b) the benefits arise under Option A and are additive to the “high case” benefits of Option A reported in Table 12 of Ofcom’s consultation document, but do not arise under Option D, and (c) the discount rate used is 3.5% as used by Ofcom, and (d) NPV relative to Option D is calculated by using the “high case” value of benefits under Option D.



In fact, this is arguably still the case even if one ignores the Type 2 benefits and concentrates just on the Type 1 benefit calculations, wherein Ofcom does not yet account for higher porting rates under recipient-led options, or higher consumer willingness-to-pay for recipient-led porting⁵⁴. Implementing an MNP solution in the UK that does not match international best practice would require a strong rationale as to the reason why such best practice is not adapted to the UK than is currently provided by Ofcom's cost-benefit analysis.

4.3. Benefits to individuals

The sensitivity of its "ranking" of options to relatively small differences ("relative" to the size of the UK mobile market) means that it is imperative for Ofcom to reconsider some aspects of its calculation of Type 1 benefits. A failure properly to take these benefits into account would lead to the wrong conclusion being reached on what is the most proportionate and targeted response to the shortcomings of the current system. It could mean that Ofcom fails to put in place the option best aligned to its statutory duties and European law obligations.

4.3.1. Constant porting rate assumptions

In particular, a crucial assumption that Ofcom makes is that the rate of porting remains constant. Thus the population of "porting customers" who stand to benefit from a smoother porting process is held constant at 45%. Additionally, the switching rate is held constant at 14%. Based on these assumptions, Ofcom estimates that 2.6 million consumers a year in the UK will port their number, even after substantial changes to the MNP process are implemented.

It is likely that the move to a shorter porting period will generate significantly more porting and perhaps higher switching rates. Additionally, it is also likely that a 2-hour porting process wherein consumers do not have to take action to obtain a PAC and are not hostage to the goodwill of their incumbent operator would generate incremental benefits to a 1-day recipient-led porting process. For example, if UK porting rates approached those of Ireland, the porting rate would almost double (from 45% to 85%), and the number of porting customers would be close to 5 million a year. It is admittedly difficult to gauge what proportion of the difference between the UK and Ireland owes to the much shorter porting time in Ireland relative to the UK, and what proportion owes to the recipient-led nature of the Irish process.

However, it is instructive to note that in several other jurisdictions in which 3 operates porting times achieved in practice are significantly below the mandatory porting period laid out by national regulators⁵⁵. For example, in Australia, although operators have up to 2 days to complete the porting process, porting is typically achieved within 2 hours. In Ireland operators have 1 day to complete the porting process, porting is typically achieved within 20 minutes. Further, awareness of the porting option in the UK is much lower than in Ireland, as Ofcom itself notes.

All of these factors suggest that a donor-led process that puts the emphasis on a combination of the porting consumer and their current provider leads to slower

⁵⁴ Although, we note that Ofcom does perform some sensitivity tests that partially address these criticisms. As Ofcom recognised at paragraph A5.10 of the Consultation, if consumer willingness-to-pay for Option A exceeds that of Option D by 30%, Option A becomes the highest-ranked of its options. It acknowledges the need for further research into the extent of this consumer preference for recipient-led porting.

⁵⁵ See Table 1 in section 2 of this response



porting times in practice and a less convenient porting process. It also reduces the incentives for the industry to inform consumers about their right to port. While mandating the industry to move towards a 1-day porting period would put a cap on the delay that a donor operator can impose on the porting process, there may still be substantial improvements in porting rates and associated consumer benefits associated with:

- greater customer awareness of MNP under a recipient-led system;
- reduction in unwanted save activity that may deter customers from porting their numbers;
- less need for the consumer to take action personally; and
- greater ease of switching for those customers that wish to take bundled services.

Table 3 shows one potential “benefits” scenario under which porting rates increase to 70% under Option A, and to 60% under Option D, assuming the base case discount rate of 3.5%. The area under the demand curves increases in proportion to the increase in the porting rate. This calculation shows that Ofcom’s assumption of constant porting rates with no differential increases in porting rates between the various options strongly influences the ranking of the options. The NPV of underlying costs is held constant in these calculations. If the porting rate increases to 70% under Option A, but only 60% under Option D, Option A produces greater benefits than Option D. While it is very hard to be determinative of the type of porting rate differential that might arise as a result of recipient-led porting, these calculations emphasise the fact that such differential effects should be included in the analysis.



Table 3: NPV of Option A versus Option D using different porting rate assumptions⁵⁶

| <i>Increase in value of Option A with 70% porting rate</i> | | |
|--|--|-------|
| [1] | Annual benefits of Option A with 45% porting rate (£m) | 10.2 |
| [2] | Annual benefits of Option A with 70% porting rate (£m) | 15.9 |
| [3] | NPV of benefits under [1] (£m) | 79.5 |
| [4] | NPV of benefits under [2] (£m) | 123.7 |
| [5] = [4] – [3] | Increase in NPV of Option A (£m) | 44.2 |
| <i>Increase in value of Option D with 60% porting rate</i> | | |
| [6] | Annual benefits of Option D with 45% porting rate (£m) | 8.7 |
| [7] | Annual benefits of Option D with 60% porting rate (£m) | 11.6 |
| [8] | NPV of benefits under [6] (£m) | 67.3 |
| [9] | NPV of benefits under [7] (£m) | 89.7 |
| [10] = [9] – [8] | Increase in NPV of Option D (£m) | 22.4 |
| [11] | Difference in NPV increase of A versus D (£m) | 21.7 |
| [12] | Difference in initial NPV of A versus D (£m) | -17.5 |
| [13] | Difference between value of Option A and D (£m) | 4.2 |

4.3.2. Customer valuation of recipient-led porting

Ofcom acknowledges the possibility that its willingness-to-pay results do not currently capture consumer preference for a recipient-led process. In Annex 5, Ofcom's sensitivity analysis shows that Option A becomes the highest-valued option for consumers if their willingness-to-pay for recipient-led porting is 30% higher than their willingness-to-pay for donor-led porting. However, if we allow for both somewhat higher porting rates under recipient-led porting as well as higher customer willingness-to-pay, then the NPV of Option A exceeds the NPV of Option D without requiring quite such a higher incremental willingness-to-pay.

These analyses show that Ofcom's current analysis of benefits to individuals requires further investigation of:

- potential significance of differential increases in porting rates under recipient-led options relative to donor-led options; and

⁵⁶ In these NPV calculations, we have assumed that benefits begin to accrue in 2012, and that the appropriate end-date for the valuation is 2021. We replicated the NPV values reported by Ofcom as a base for our analysis and modelled the impact of a range of assumptions on the rankings outcome.



- potential significance of higher willingness-to-pay for recipient-led options.

4.4. Importance of MNP in a changing market

Finally, some of Ofcom's conclusions regarding the impact of portability on switching rates and thus on overall competition appear to be based on the current situation in the UK market. However, we believe that Ofcom's current view may be overly optimistic.

Imminent consolidation in the UK mobile sector could serve to reduce competition and increase barriers to entry. In particular, the types of "strategic discounting" effects under donor-led porting that Ofcom notes could become more pronounced in a more concentrated market, as it is easier for larger firms to sustain exclusionary strategies that smaller firms cannot replicate.

Other forms of "lock-in" might become more pervasive given both general market trends and the prospect of a major consolidation in the sector. If other switching costs and search costs increase, then the porting process could become a more important or pivotal factor in switching behaviour of some customers. The existence of switching costs essentially means that in order to attract a customer away from his or her existing provider, additional marketing effort is required or the customer needs to be compensated (by a larger price differential between the incumbent and new provider). However, if such switching costs are excessively high, it may not be feasible for the competing provider to attract some customers. Yet many switching costs such as contractual terms, handset subsidy terms and the like might be rather harder to control via regulatory measures or legislation; further, attempting to be overly prescriptive on such measures might result in unintended consequences.⁵⁷ Implementing a best-practice MNP solution in the UK does not, however, carry the same types of unintended consequences, while providing a potentially important means of lowering overall switching costs and possibly proving to be a pivotal factor in at least some switching behaviour.

There is evidence of increasing polarisation across different market segments. Thus some customers are on 30-day contracts, while others are now on 24-month contracts. Clearly for customers who churn frequently, the absence of a best-practice number portability process could prove significantly disruptive, and thus factors such as lack of awareness of porting and perceived difficulty of switching could deter switching among this customer group. The case of "long-haul contract customers", typically generating the highest ARPU, is more complex. Competition for such customers at the time of contract expiry is likely to be especially fierce.

However, the full benefits of such "ex-ante" competition are likely to be best realised under conditions of full information, and where the incumbent operator has fewer opportunities to use its control of the customer number as a weapon against competitors. Indeed, price and product-based competition (including retention efforts by the incumbent operator) are likely to be stronger with a level playing field, in which

⁵⁷ For example, countries that attempted to ban handset subsidies on the grounds that they could lead to excessive lock-in and anti-competitive consequences found that such measures may have slowed down the introduction of new products. Prominent examples include Finland, which rescinded a ban on handset subsidies when it realised that this was hampering operators' incentives to offer 3G handsets and services. Similarly, the European Commission recently overturned a Belgian ban on handset subsidies. Prior to this EC decision, the result of this Belgian ban had been that the iPhone cost more than \$800 in Belgium.



the consumer is fully aware of his or her options for switching. This level playing field is more likely to arise under a recipient-led MNP process than a donor-led process.

4.5. Suggestions for additional areas of research

A fundamental question that could be explored with further research is the level of consumer awareness of the current MNP process. Some of the TNS Omnibus Survey data can be extrapolated to give a partial view of awareness, but we do not think it is complete. In particular, we believe there is more work which could be done here to ensure that questionnaire questions and analysis are not biased, and give the clearest possible picture. For example, the TNS Omnibus Survey does not question in detail those customers who have not switched.

Ofcom, when doing their surveys, have not stratified their dataset to account for vulnerable social groups, e.g. elderly and disabled consumers. Vulnerable customers could potentially be severely affected by a difficult or complex porting process. Aggressive save activities could be especially traumatic or intimidating for these vulnerable groups.

A more targeted Stated Preference survey may shed more light on what the market as a whole would prefer from a porting process. For example, the Synovate Mystery Shopping Exercise did not look at the porting alternatives and consumers were not approached with other options, like a recipient-led process. A Stated Preference based survey may have given more weight to whether a particular option was preferred over another. A Stated Preference survey could also explore each of the proposed options in more detail to get a better indication of market needs and the level of preference for a recipient-led process.

4.6. Conclusion

Ofcom recognises that its evaluation of the four MNP options is incomplete. So far it has not sufficiently distinguished between the difficulty of quantifying certain types of benefits and the importance of doing so. Almost certainly, the types of benefits that Ofcom has thus far quantified and the assumptions it has used in quantifying those benefits renders its calculations of benefits unreasonably conservative. A closer and fuller analysis of respective benefits will demonstrate that a clear case is made for recipient-led, near instant MNP under a cost-benefit analysis.



5. Why arguments against a two-hour, recipient-led approach do not hold water

5.1. Introduction

During the course of the on-going industry discussions about the UK MNP process, three specific arguments have been used in support of donor-led porting, and against recipient-led porting. These arguments are:

- a) **Win-back activity:** it has been argued that for certain customers, win-back conversations with their donor operator are a good thing, and that this arbitrage opportunity will be lost under a recipient-led system;
- b) **Bill-shock:** it has been argued that, under a recipient-led system, there will be greater risk of bill-shock, because customers will not be told about early termination charges at the time they request a PAC;
- c) **Mobile-slamming and fraud:** it has been claimed that, under a recipient-led system, there will be an increased risk of a customer being slammed (i.e. being switched to another network without their permission).

We do not agree that any of these arguments hold water. For some of these points, the issues are not actually related to the recipient-led process. For others, there are several safeguards that have already been discussed at industry level that can be implemented under a recipient-led system to guard against any risks.

We have set out below the reasons why a move to recipient-led porting should not be prevented on the basis of any of these arguments.

5.2. Win-back activity

Under the current donor-led system, consumers contact their existing network to request a PAC before they can switch operator. In our experience this PAC request usually results in the existing network making offers to encourage the consumer to stay on the network.

This “win-back” or retention activity is common-place, as demonstrated by the Synovate mystery shopping research in April 2009, where 60% of those who requested their PAC experienced retention activity. Ofcom has expressed the view that, “being offered more favourable terms as part of ‘save’ activity is not, of course, necessarily a negative experience for consumers” (paragraph 4.10 of the Consultation).

However, these opportunities will not disappear if Ofcom mandates a recipient-led porting process. A customer’s motivation to request a PAC falls into one of three categories:

- a) **Desire to leave network:** want to leave regardless of any alternative offers that are made, and are more likely to be frustrated by win-back activity (“Type A”);



- b) **Open to a discussion:** think they want to leave, and although open to a discussion regarding win-back offers, this is not their primary motivation for calling (“Type B”); and
- c) **Arbitrage opportunity:** using the PAC request as a means to negotiate a better deal, but don’t actually intend to switch operator (“Type C”).

Under a recipient-led system, Type A consumers, will be able to avoid win-back activity entirely, thus reducing one of the categories of consumer harm identified by Ofcom (see section 2 of this response). Type B consumers will be empowered by a recipient-led system. Instead of being beholden to their existing operator to give them the PAC, they will be able to port their number via a separate process. Before they actually decide to port their number, Type B customers will be able to call their existing network and discuss with them their decision to leave, and use this to negotiate, if they wish to. They have more control over the process, because if they are not interested in the offers made, they can just walk away and port their number. Type C customers will also benefit. Instead of using the sham of a PAC request to prompt their operator to provide arbitrage opportunities, they will be able to just call and say they wish to terminate their contract.

We agree with Ofcom that this is not a “clear-cut issue” (para 4.11 of the Consultation), however, as demonstrated above, moving to a recipient-led porting process would eliminate the consumer harm suffered through aggressive save activity, without removing the consumer’s ability to negotiate a better deal.

5.3. Bill-shock and Early termination charges – Contractual Liabilities

3UK is aware that the perceived link between porting and contractual liabilities was a topic of much discussion at the UKPorting meetings [3<]. However, this link is incorrectly perceived, because porting is incidental to the decision to switch and does not create or add to the contractual liabilities owed to an old supplier. Furthermore Ofcom already regulates to ensure that consumers are informed of early termination charges both through enforcement of GC23 and Ofcom’s guidance on Additional Charges.

The fundamental requirement (as also explicitly stated by Ofcom in the November Decision⁵⁸) of a porting process should be that customers are made aware that they may face continuing contractual liabilities to their old supplier even after porting away. 3UK believes that this could be effectively achieved under a recipient-led process through the following simple and technology-free methods:

- A prominent statement to the customer on a porting form (which they are required to sign) stating that they may face continuing liabilities to their old supplier.
- A requirement at the point of porting to explicitly inform customers that they may face continuing liabilities to their old supplier and advising them to contact their existing supplier if in doubt.

3UK is aware that these methods are successfully applied in Ireland, Australia, the Channel Islands and the Isle of Man.

⁵⁸ See, for example, 1.22 of November Decision



In addition, a donor operator would also be able to optionally inform the customer of their exact liabilities by using technology which is already available, for example by:

- sending a standard SMS notification to the customer;
- showing the remaining term of the contract each month on the customer's bill;
- highlighting it the terms and conditions in service contracts that customers transferring their number to another supplier will continue to be liable for fulfilling any contractual obligations.

This experience would be in line with other retail experiences, for example, when a consumer re-mortgages or takes a finance agreement for a new car. It is particularly interesting to note that this is in line with what happens when a customer takes out a new mobile contract without porting their number.

Alternative solutions proposed at the UKPorting meetings included a mandatory two-stage porting process. During the first stage, the donor operator would send, either via the recipient operator or by SMS to the customer, a message or indicator showing whether the customer is still within the minimum term of a contract. For the former, Data Protection legislation requires the recipient operator to obtain the customer's consent before the information can be requested from the donor operator, which results in additional cost and complexity, and creates an unnecessary burden on the recipient operator. The second stage would involve either a pro-active or timeout based confirmation by the customer to proceed with the port, adding further delay and complexity to the process. Further refinements of the process were proposed including additional details in the message, for example the remaining contract term or 'buy-out' cost.

3UK believes that these alternative proposals are both more costly and more complex than is required, and go far beyond what is needed of a porting process. These measures are not necessary to ensure awareness of contractual liabilities. 3UK urges Ofcom to reject these should it decide to mandate a move to a recipient-led process.

Further, as noted by Ofcom in the November Decision (para 3.123), even though the current PAC process could be seen as an opportunity for the donor operator to inform customers of their existing contractual liabilities, this advantage is only incidental to the purpose of the PAC process i.e. to validly accept or reject a port request. The PAC request conversation is now increasingly used by the donor operator to invalidly reject or frustrate port requests by misinforming the customer of their contractual liabilities. Examples of such misconduct include misinforming the customer that they cannot port until the end of their minimum contract term, or that they cannot port unless they pay upfront the remaining liabilities. A move to a recipient-led process would bring significant consumer benefits by eliminating such opportunities to engage in such misconduct.

5.4. Arguments regarding mobile-slamming and fraud

Some stakeholders in the mobile industry have suggested that a recipient-led system will increase the rates of mobile slamming and fraudulent porting in the UK. 3UK



believes that this is categorically not the case, for several reasons discussed in more detail below.

5.4.1. *Slamming and mis-selling relate to switching rather than porting*

In practice, mobile slamming and mis-selling have much more to do with the sales process than with the porting process. This is because, unlike other utilities like gas, electricity and fixed landlines, switching between mobile providers inherently involves a change of handset or SIM card, and receipt of a welcome pack from the new service provider. Therefore, it is not possible for a customer to be switched from one operator to another without discovering the switch has taken place⁵⁹. Whether or not this switching involves porting of the customer's mobile number makes the change no less visible to a customer.

To the extent however that these problems could be linked to porting of mobile numbers, 3UK believes that mobile slamming and mis-selling are not a symptom of a recipient-led process, but are rather a problem with the current process and the lack of adequate safeguards therein. The current donor-led process does not have, and was never designed to have, safeguards against the occurrence of slamming, for example, by means of industry standard procedures to inform the customer during the course of porting that they are being moved to a new supplier. It does not follow that the threat of slamming should be a deciding factor to prevent a move to a recipient-led process. In fact, it will be an advantage of moving to recipient-led porting if the process is designed from the outset to guard against the potential occurrence of slamming. Section 5.4.3 illustrates how such a process could be designed and was indeed being designed at the UKPorting discussions.

By contrast, amendments to the existing donor-led process to counter slamming would arguably be less effective, more difficult to implement, and sub-optimal at this stage from a customer experience point of view.

5.4.2. *Mobile Mis-selling – General Condition 23*

As noted above, 3UK believes that it is important for Ofcom and other stakeholders to distinguish between typical slamming and slamming which involves porting. Ofcom's survey into mobile mis-selling conducted in August 2008⁶⁰ found that:

“Most mis-selling appeared to be due to incorrect information being given about tariffs and packages being more expensive than advertised. Around a third of those who said they had been mis-sold to said the package they signed up to was more expensive than they had been advised it would be. Others said they were paying for elements of their package that they had been advised were free (around a fifth of people who had been mis-sold to). Around one in ten mentioned an aspect of their agreement which had not materialised (e.g. an upgrade was promised) and a similar proportion said the provider did not take the action they had promised (e.g. cancel an existing service).”

⁵⁹ For instance, recipient-led porting is in place in Ireland, the US, Canada and Brazil, and we understand that mobile slamming is not a problem in those jurisdictions, for these reasons. Nor are we aware of it being a problem in any other recipient-led jurisdiction.

⁶⁰ A9.14 of <http://www.ofcom.org.uk/consult/condocs/mobmisselling/statement/statement.pdf>



It is difficult to see what role, if any, porting has in causing or facilitating the problem of mis-selling and/or slamming. Even if porting could cause or facilitate mis-selling and/or slamming, it has to be noted that Ofcom's findings have been made against the current donor-led regime.

Nevertheless, following its review of mobile mis-selling, Ofcom has concluded⁶¹ that the root-cause of slamming and mis-selling should be addressed by means of a new General Condition 23 ("GC23") which prohibits providers from engaging in dishonest, misleading or deceptive conduct, aggressive conduct or contacting the customer in an inappropriate manner. Amongst other things, GC23 sets requirements on mobile providers:

- to give customers the accurate information (including information about early termination charges) 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 mobile service provider's behalf; and
- to check that the terms and conditions of sales incentives offered by their retailers are not unduly restrictive.

3UK also notes Ofcom's efforts to raise awareness of the threat of slamming with customers, for example in its guidance entitled "How to avoid being 'slammed'", published on 28 September 2009. However, it is evident as highlighted by this guidance, that under the current regime there remains a significant onus on the consumer to be vigilant and aware of the associated risks of slamming. 3UK strongly believes that adopting a recipient-led process, which has been specifically designed to protect against slamming, will significantly benefit consumers as illustrated below.

5.4.3. New recipient-led system can be specifically designed to build in safeguards

During the UK Porting process, several measures were discussed and scoped regarding the security measures that would be built into a recipient-led process to protect customers against fraudulent mobile porting and mobile slamming. These include, amongst others:

- Proof of ID check by recipient operator when processing a request to port. The recipient must be able to prove after the event that the ID check was carried out (i.e. data must be retained). Examples of the items which could be used as proof of ID include Credit/debit card, Driver's licence, Passport, Proof of address (to supplement the ID checks). In case of a business or organisation, the recipient operator may ask for an original purchase order (requesting MSISDNs to be ported in), or may instead carry out an individual ID check on the account administrator requesting the port. Details provided for the ID check must match those which the customer intends to use for the

⁶¹ *ibid*



port request. Such an ID check to be carried out for both post and pre-pay (registered and un-registered) accounts.

- Provision of information by customer of the account type and number (in case of post pay accounts) held with the donor operator.
- Filling and signing by customer of a porting form which would record information regarding porting, and highlight the terms and conditions of porting including a prominent statement regarding contractual liabilities that may be owed to the donor operator.
- A Possession Check Code (“PC Code”) to prove possession by customer of the MSISDN to be ported. The customer would be responsible for initiating the possession check by sending a key word, for example, PORT, to a free-of-charge SMS short code number. A central system (envisaged to be part of a porting clearing house hub facility) would create and send the PC Code back to the MSISDN which initiated the request, via a SMS message. When the PC code is submitted by recipient operator with the port request, it would be validated by the central system to ensure the porting number matches the MSISDN which initiated the possession check. The SMS message would contain the PC Code, information on its validity (envisaged to be 24 hours), and could additionally include information informing customer of the purpose of the code and advice that the use of code may result in service switching over to a new supplier. In addition, a maximum limit would be imposed on the number of attempts to pass a possession check (envisaged to be 3) after which the MSISDN would be blocked from porting for the period of PC Code validity. Such a possession check that is missing in the current donor-led process would form a key deterrent against fraudulent porting and slamming.
- An SMS message to the porting MSISDN containing information of customer’s contractual liabilities, and/or information advising the customer of port taking place sent optionally by the donor operator in response to a porting request.
- A Customer Initiated Block facility which would allow a customer to request a block on porting via their current provider, if the provider has chosen to support this functionality (evidence to be retained proving that the customer made this request). The current provider would continue to block the MSISDN from porting until the customer requests the block be lifted.
- A limit on maximum number of port attempts that may be imposed optionally by a donor operator to block a MSISDN from porting if the donor operator has previously rejected a certain number of consecutive porting requests (envisaged to be 5) for the same MSISDN. donor operator may continue to block the MSISDN from porting until the donor operator and account holder/administrator mutually agree to unblock.
- Standard processes for swift cancellation and reversal of ports as a result of a fraudulent activity (theft, slamming etc) or a change of mind.



3UK is aware of proposals made at UKPorting by some operators which advocated the use of Pin/Passwords and registration details for validation of pre-pay porting. These proposals, which failed to gain consensus, were escalated to Ofcom which rightly rejected them. Even though only nine months had passed since Ofcom's November Decision, several key issues regarding the design of a recipient-led process had been discussed and agreed via UKPorting. It is extremely regrettable that such a productive project was derailed at such a late stage. 3UK urges Ofcom to remain with its original goal of creating a new and effective near instant recipient-led MNP Process in the UK - a process which delivers the best customer experience, and one which best balances ease of switching with protection from mis-selling and slamming.

5.4.4. A near-instant porting process would allow erroneous ports to be ported back far more quickly

Despite the measures discussed above, were it to be found that a port was carried out erroneously either as a result of fraudulent activity or an inadvertent port (discussed further below), standard processes for cancellation and reversal would allow the MSISDN to be ported back swiftly under a near instant recipient-led process.



6. 3UK's views on the proposed next steps

6.1. Assessment of benefits by Ofcom

We recognise that Ofcom plans to do further work quantifying the benefits offered by each of the four options. We urge Ofcom to capture all such benefits, and point to our work in section 4 of this response, which we hope will be of assistance to Ofcom going forward.

We also note that Ofcom has acknowledged that there may be benefits which are unquantifiable but which, nonetheless, need to be taken in to consideration.

6.2. Assessment of costs and appointment of an independent advisor/consultant

3UK is broadly in support of Ofcom's suggestion to appoint an independent expert or consultancy for a three-month period to work with the operators to better define the costs and technical impact of each options. As highlighted in previous sections of this response, there are several factors which have not yet been taken into account within the CBA, and appointing an expert or consultant to assist with quantifying the costs will be beneficial.

Following our experience with the UKPorting process, we strongly urge Ofcom to stay close to the process once the consultant or advisor is appointed. It is vital that Ofcom remains involved in the process, and that representatives of Ofcom attend all meeting between industry stakeholders and the consultant or advisor. This is especially important in this instance, because of the parallel exercise that Ofcom will be carrying out regarding quantification of benefits. These two elements have strong synergies, and so Ofcom will need to be fully aware of the on-going work of the consultant or advisor, because this will inform its own analysis. Ofcom's active involvement would also make it more likely that decisions can be made more quickly, and that Ofcom's proposed timeframes are met.

It is vital that the representatives sent by each stakeholder are authorised to make decisions and commitments at the meetings. Unacceptable delays will occur if even the smallest decisions have to be taken back for sign-off by each participant after each meeting. Further, Ofcom should consider requiring operators and other stakeholders to commit to providing nominated personnel to engage with the independent consultant or advisor for the whole three month period. From our experiences at the UKPorting discussions, we have learnt how conducive consistency of resource will be to the decision-making process.

6.2.1. *Suggestions as to who Ofcom should appoint to carry out this task*

Our suggestion is [redacted].

We also urge Ofcom to allow stakeholders to have the opportunity to veto Ofcom's choice of appointee in certain limited circumstances. This is necessary given the



nature of the information that stakeholders will be expected to disclose to the appointee.

We would envisage that the reason for the veto would need to be disclosed to Ofcom, and that a stakeholder would need to provide sufficient justification for its decision. Examples of valid reasons to veto might include: a) if the stakeholder has had previous unsatisfactory dealings with the proposed appointee; or b) a recent dispute with the proposed appointee regarding their professional advice.

6.2.2. Remit and timescale

As we understand it, the proposed remit is as set out in para 6.13, and involves analysing in detail the cost implications of all four options. We are concerned that this proposed remit will involve the consultant and stakeholders unnecessarily engaging to produce technical specifications for three options which will never be used. We believe that the three month time period will be most productive if the number of options that are considered is reduced to two.

3UK strongly believes that these two options should be Option A (recipient-led near instant porting) and Option D (donor-led one working day porting). This is because the costs of implementing a porting hub for Options A-C are likely to be broadly the same, because they will be based on the same basic porting hub system. Also, for the reasons set out above, 3UK does not anticipate other stakeholders supporting a move to either Option B or C ahead of Option A, because Option A represents the gold-standard for porting, and should be the obvious choice between the three, given that costs are estimated to be broadly comparable.

Against the background of this revised remit, 3UK agrees that a three month engagement is appropriate for the consultant or expert to complete all stated tasks, and that this is adequate time to have a full discussion of the issues between the consultant or expert, the stakeholders or Ofcom.

However, 3UK is very concerned that this appointment will be used by certain stakeholders as a means of slowing down the process for changes to the MNP process to be implemented. As such, 3UK agrees with Ofcom that the process should be strictly time bound, and urges Ofcom to ensure that the three month timescale is rigorously enforced. To this end, 3UK commits to engaging with the advisor or consultant and other stakeholders to provide such information as is requested to enable a timely and constructive result.

Given the significant delays that have already occurred, it is vital that the independent consultant's work is completed accurately and efficiently, and that Ofcom moves quickly, within the timescales proposed within the Consultation to issue a further consultation regarding its proposed mandated solution.

6.3. Implementation periods for each option

As demonstrated in this response, improvements to the porting system in the UK are now long overdue. 3UK urges Ofcom to act as quickly as possible to bring about much needed changes. We note that Ofcom cannot allow these timescales to slip,



and run the risk of not being able to implement a faster, more efficient porting process ahead of the EU's New Telecoms Package being adopted.

We broadly agree with the implementation periods envisaged in the Consultation. We can see no reason why our preferred option of a near instant recipient-led system could not be in place by 2011.



ANNEX 1: ANSWERS TO CONSULTATION QUESTIONS

Set out below are 3UK's responses to the specific questions asked by Ofcom in annex 4 of the Consultation. These answers should be read in the context of 3UK's response as a whole.

Question 3.1: Do you agree that the bulk porting process should not be included in this review and should be left to industry agreement?

Yes. However, 3UK considers that this matter should be kept under review, as discussed in section 2.11 of our response.

Question 4.1: Do you agree with Ofcom's view that the evidence suggests consumers would prefer a faster porting process?

Yes, please see section 2 of our response.

Question 4.2: Do you agree with Ofcom's view that the current process does not work well for all mobile consumers?

Yes, for the reasons set out in section 2 of our response.

Question 4.3: 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?

Yes, please see our discussion of the consumer harm caused by the current system in section 2 of our response.

Question 4.4: Do you agree that Ofcom should intervene to introduce changes to the current MNP process to address the harm identified?

Yes. Ofcom has a regulatory duty to intervene, and the EU proposals for faster porting also mean that Ofcom must act now.

Also, the alternative to Ofcom intervention is potential industry deadlock, as demonstrated by previous industry attempts to agree change in this area. It is highly unlikely that the consumer harm identified by Ofcom will be resolved if the industry is left to find a solution.

Question 5.1: 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.

Yes, for the reasons outlined in section 2 of our response. The level of consumer harm caused by the current donor led porting means that current system is flawed, open to abuse and generally not fit for purpose.



Question 5.2: Do you agree with the range of potential options Ofcom has set out?

Yes.

Question 5.3: 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. Is anything missing?

No, not at this stage.

Question 5.4: 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.

Whilst we welcome any attempt to speed up the current process, 3UK does not believe that this shorter timeframe will actually resolve any of the elements of consumer harm identified in Ofcom's research. We discuss our views on this proposal further in section 3.6 of our response.

Question 5.5: 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.

We agree that 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, and in principle agree with Ofcom's proposal. However, we note that Ofcom has not addressed the question of the timeframes to attach to such a process. We discuss this matter further in section 3.2.1 of our response.

Incidentally, we have also assumed that the paragraph referenced in Ofcom's question should be paragraph 5.30 of the Consultation, not paragraph 5.41.

Question 5.6: 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.

See section 3 of our response.

Question 5.7: 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.

See section 3 of our response.



Question 5.8: 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.

We have discussed one element of the costs associated with the current system which disproportionately affects new entrant MNOs, namely the documentary burden of the bi-lateral framework, in section 2.7 of our response. However, we have not provided specific costs estimates with regard to new entrant MNOs.

Question 5.9: Do you agree with Ofcom's analysis of benefits for each option? If not, please explain why.

No. Although Ofcom has undertaken initial analysis of the benefits offered by each of the options, 3UK believes there is significant further research that can and must be done. We discuss this in further detail in section 4 of our response.

Question 5.10: 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.

Yes, 3UK believes there are additional benefits of a recipient-led porting process that Ofcom has not yet captured or attempted to quantify. It is imperative on Ofcom to carry out further analysis and research in this area. Please see section 4 of our response.

Question 5.11: Please explain whether you agree with Ofcom's assessment of the pros and cons of each option and if not, why not.

See section 3 of our response.

Question 5.12: Please state which option(s) you favour and why?

3UK's preferred option is near instant recipient-led porting (Option A), and our preferred alternative option is recipient-led, 1 working day (Option C). For the reasons detailed in sections 3 and 4 of our response, we believe that only a recipient-led system can eliminate the consumer harm identified by Ofcom, promote effective competition, raise awareness of porting and remove barriers to entry whilst delivering the best customer experience and protection from mis-selling and slamming. Therefore, we can see no justification for maintaining any form of donor-led process.

Question 5.13: What do you consider a reasonable implementation period for each of the options and why?

If Ofcom's previous decision had not been challenged, UK consumers would already be benefitting from a very fast, recipient-led system. Given the significant delays that have already occurred, it is vital that the mandated option is implemented accurately and efficiently.

Against this background, we agree with the timeframes proposed by Ofcom in the Consultation, but urge Ofcom to be vigilant to prevent delays being built into the next



stages of the consultation process. We can see no reason why a near instant recipient-led system could not be in place by 2011.

We also note the timing requirements of the EU's New Telecoms Package.

Question 6.1: 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.

Yes. However, we have concerns about remit and timescale, as discussed in section 6.2.2 of our response.

Question 6.2: Do you agree with the remit set out above for the consultant/expert? If not, please state why.

No. We believe the remit should be narrowed, as discussed in section 6.2.2 of our response.

Question 6.3: If you would like to recommend suitable experts / consultancies to Ofcom, please do so on a confidential basis.

[3<].

Question 6.4: Do you agree that three months is an appropriate period of time for this feasibility assessment to be undertaken? If not, please explain why and what you consider to be an appropriate timescale.

Yes, 3UK agrees that a three month engagement is adequate time to have a full discussion of the issues between the consultant or expert, the stakeholder or Ofcom. However, as discussed in section 6.2.2 of our response, we believe that the three month time period will be most productive if the number of options that are considered is reduced to two.

Question 6.5: Do you agree that the criteria for making this process effective as outlined under paragraphs 6.14 to 6.16 is appropriate? What else is required to make this process constructive?

Our concern is that it is not clear how the consultant or advisor will report their findings, and what consideration Ofcom will give to these findings in the next stages of the consultation process.

Question 6.6: Do you agree with Ofcom's proposed next steps following responses to this consultation? If not, how do you consider Ofcom should complete its cost-benefit analysis and proceed to an implementation of one of the four options?

We note that only fairly limited information has been given about the proposals for next steps. However, we agree in principle with the need to complete further detailed research on the costs and benefits of each option. We also agree that it is necessary for Ofcom to issue a second consultation regarding its final choice of option.



Question 6.7: Do you have any comments on the proposed timings for reaching a conclusion for this review?

We can see no reason why our preferred option of a near instant recipient-led system could not be in place by 2011. Given the delays that have already occurred, we urge Ofcom to maintain momentum throughout the next steps of this review.