



Call for Evidence: Switching Principles

Ofcom response to the Department of Business,
Innovation and Skills consultation

4 December 2015

1. Introduction

- 1.1. Ofcom welcomes this opportunity to submit evidence to the Department for Business, Innovation and Skills' (BIS) call for evidence on their proposed switching principles.
- 1.2. Ofcom is the regulator for the UK's communication sector. We regulate telecoms, broadcasting, the radio spectrum and postal markets. One of our principal duties is to "further the interests of consumers in relevant markets, where appropriate by promoting competition." In Ofcom's view, well-functioning, competitive markets are the best means of delivering good outcomes for all consumers. However, even in competitive markets, there can be factors which prevent consumers getting the best from markets – for example because they find it difficult to compare offerings, or face barriers to switching.
- 1.3. This risks outcomes that can result in ineffective consumer choice, harm to consumers or the exclusion of some groups. To address these risks, we have an approach to consumer policy based on three pillars: empowerment, protection and participation. The ease with which a consumer can switch falls predominately under the empowerment aspect of our work. Our empowerment strategy is focused on ensuring consumers have the information, tools and processes they need to navigate and secure benefit from markets for themselves.
- 1.4. Our response to the call for evidence, therefore, reflects Ofcom's experience of how some of these principles have been adopted in practice in the sectors we regulate, and also how they might be adopted going forwards. Where possible, we have signposted the previously published work and other evidence we have collected to help inform switching discussions generally. We have not responded to the Consultation on a "question by question" basis, but have set out our general views in relation to the overall switching principles. We are keen to continue engaging with BIS and contribute to the policy debate around the principles.

2. The Switching Principles

- 2.1. Ofcom agrees that good switching processes are very important to the consumer experience of switching, and to healthy competition. If people cannot switch easily between providers, or are put off even attempting to do so, their ability to choose the most appropriate service is effectively reduced, and so too is competition. We have implemented many aspects of the proposed switching principles as part of our own consumer empowerment work and welcome the government's recent announcements on switching, in '*A better deal: boosting competition to bring down bills for families and firms*', that included commitments to:
 - Legislating for easier and quicker switching;
 - working towards a switching guarantee in communications markets; and
 - ensuring consumers have easy access to their consumption data and can authorise price comparison websites to access this data.
- 2.2. We would, however, stress that policy makers do need to consider carefully when and where the principles are adopted. We will discuss this further below.

Switching processes should be free to the customer, unless they are aware of and have consented to fair and reasonable restrictions and charges to do so.

- 2.3. Ofcom agrees that customers should be made aware of any exit charges before they sign up and/or renew their contract with a provider. Consumers may face legitimate early termination charges (ETCs) if they leave their provider before the end of the minimum contract period¹. For this reason, it is important that consumers are made aware of ETCs prior to any switch being completed. For instance, for switching between services on the Openreach Network, Ofcom has requirements in place to ensure losing providers send notification letters to their customers who are switching to another provider. These letters include information to warn customers if they are liable for ETCs (more on this below).² The letter should arrive in time for the customer to be made aware of any ETCs, and still have time to cancel the new services if they consider it desirable to do so.
- 2.4. Ofcom is aware that some consumers, who wish to switch to another mobile network operator, and take their existing handset with them, may face an unlocking charge.³ We are concerned that unlocking charges may be an unreasonable deterrent to switching, and we are looking at them as part of our own-initiative monitoring and enforcement programme into difficulties experienced by consumers trying to exit their communications service contract.⁴ We note that the Government has recently announced that it will consult on handset unlocking.⁵

Switching processes should be quick, and at an agreed date.

- 2.5. Ofcom agrees that the switching process should be as quick as possible. Some services are likely to take longer to switch than others. For example, porting a mobile number - currently 1 business day maximum⁶ - is likely to be quicker than arranging a fixed bundle switch, where it may be necessary to arrange a convenient time for an engineer to install equipment at a customer's home.
- 2.6. Customers should also have enough time to change their minds if they decide the switch is not in their interest.⁷ Customers who wish to switch fixed voice and broadband services to and from providers on the Openreach network don't have to contact their losing provider before leaving. The gaining provider alerts the losing provider of the customer's intention to switch, and the losing provider notifies the customer of any ETCs in writing. If the customer is alerted to their liability to ETCs, and as a result decides to change their mind, they are given time to cancel their order before incurring charges with their new provider. Allowing for a 'cooling off period' before the switch is initiated is therefore beneficial to the consumer, albeit this potentially delays completion of the switch over process.

¹ Consumers also have protections from unfair contractual terms under the Consumer Rights Act 2015

² General Condition 22.12 http://stakeholders.ofcom.org.uk/binaries/telecoms/ga/General_Condition_22_Service_migrations_and_Home-moves.pdf

³ MNOs' locking policies vary – details on the policies can be found here.

⁴ http://stakeholders.ofcom.org.uk/enforcement/competition-bulletins/open-cases/all-open-cases/cw_01158/?utm_source=updates&utm_medium=email&utm_campaign=cw_01158

⁵ Paragraph 3.5

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/480797/a_better_deal_for_families_and_firms_print.pdf

⁶ General Condition 18.3 (a)

⁷ See Ofcom statement [Consumer Switching - A statement on the GPL NoT+ elements](#) (December 2013), for details of the requirements for the harmonisation of landline and broadband switching to the Gaining Provider Led (GPL) Notice of Transfer (NoT) process came into effect on 20 June 2015.

2.7. At present, the Transfer Period, (the period of time before a customer's order can be activated) is 10 working days. We are in the process of examining the experience of consumers switching their services beyond the Openreach network (for example, moving to and from the cable network). This should help us inform our thinking on whether consumers face undue harm from delays or loss of service from switches that fall outside existing regulations.

The switching process should be led by the organisation with most interest in making the switching process work effectively – the gaining provider.

2.8. In Ofcom's 2010 Strategic Review of Consumer Switching⁸, we set out our "green field" preference, in principle, for switching processes to be led by the provider to whom the customer is moving (the 'gaining provider'), since they have a greater incentive to make the switching process work well. In our 2010 Review, we said we would seek to achieve this where appropriate, taking account of the costs and benefits of changes in any given case.

2.9. In 2013, following an assessment of voice and broadband switches made over the Openreach copper network, we decided to harmonise switching processes to a single process based on the existing Gaining Provider Led (NoT model) (GPL). The implementation of this decision was completed in June 2015. The NoT Model is a specific version of a GPL process and designed to address a particular set of issues faced by consumers switching fixed voice and broadband services on the Openreach network. There are other versions of GPL processes that may be more appropriate to other sets of circumstances.

2.10. We plan to consult on possible reform to mobile switching processes early in 2016. We are also currently considering consumers' experiences of switching triple play services (landline, broadband and pay TV) and whether there are potential improvements which could be made. If so, we would expect to consult next year.

Consumers should have access to their consumption or transaction data. This should be in a format that can be easily reused ("midata") and they should be able to authorise third parties such as comparison sites to access their data to help them to switch.

2.11. Having the right information is a fundamental element of consumer empowerment, enabling consumers to exercise choice and switch providers. From this perspective, easier access to midata could bring benefits to consumers in our sector.

2.12. In particular, where the availability of data encourages a flourishing, independent intermediary market, it may significantly improve consumers' ability to search the market and make better decisions when choosing a supplier. It may be helpful for government to discuss with intermediaries how they may use such data and the extent to which it will help the intermediary market develop.

⁸ Ofcom Strategic Review of Consumer Switching 10 September 2010

<http://stakeholders.ofcom.org.uk/binaries/consultations/consumerswitching/summary/switching.pdf>

2.13. We have noted that the midata principles have been adopted by firms and intermediaries more in energy markets than in communications. There may be features of the energy market that make midata more appealing to consumers. For example, consumers' usage of energy services is not likely to change significantly from one period to another, so awareness of previous usage would be useful to know for future reference. We would note that one of our accredited price comparison sites, billmonitor.com,⁹ already provides a service (free of charge) that allows consumers to search for mobile phone tariffs based on their previous consumption data. We will be looking to examine how the features of the midata initiative may help consumers' ability to assess alternative suppliers and services when using price comparison sites (this is discussed further in the next section).

2.14. We are also conscious that the potential benefits might go beyond empowerment of consumers in communications markets – the availability of data may, for instance, encourage product and market innovations.

Sites and tools providing comparisons to consumers that receive payments from suppliers should make clear where this affects the presentation of results.

2.15. Ofcom supports this principle. We recognise the challenges that consumers can face when trying to make price comparisons across the wide variety of suppliers, products and services in this sector. Ofcom already has experience of working with price comparison websites through our price comparison accreditation Scheme.

2.16. Since 2006, we have operated a voluntary accreditation scheme for price comparison calculators under which we run regular audits of the accredited price comparison websites. Audits ensure that their service remains accessible, accurate, up to date, transparent and comprehensive. One of the requirements of the Scheme is that accredited sites must make clear how they make money. In addition, the service must enable the consumer to sort the results of any price calculation by different metrics and the default sort order must use an appropriate price based metric. As a consequence, the ranking of results is price-based and cannot lead to price comparison websites listing certain providers higher in their ranking than they should be because of other factors, such as commission arrangements.

2.17. We are likely to say more about our future approach to price comparison sites in the context of the Digital Communications Review.¹⁰ This is likely to include an examination about what price comparison sites can do to enable consumers to make more effective choices. We will also pay close attention to the analysis of price comparison websites which the CMA will carry out in 2016.

There should be an effective process for consumers to get redress if anything goes wrong in the switching process.

2.18. Ofcom agrees that consumers should be able to access redress when things go wrong during the switching process. As the *Call for Evidence* suggests, greater

⁹ <http://consumers.ofcom.org.uk/news/billmonitor-reaccredited/>

¹⁰ <http://stakeholders.ofcom.org.uk/consultations/dcr-discussion/>

awareness that redress is available could encourage consumers to be more confident about engaging with the switching process.

- 2.19. Consumers in communications markets have a right to a redress process if things go wrong with the switching process. Ofcom requires communications providers to have procedures in place which conform to the Ofcom Approved Code of Practice for Complaints Handling, and they must comply with these procedures. The Code requires that procedures must be transparent, accessible and effective¹¹. This is the first port of call for all complaints.
- 2.20. If a complaint to a communications provider is not resolved satisfactorily, consumers can seek redress for most issues through an Alternative Dispute Resolution (ADR) process. Communications providers are required to have an ADR scheme in place for their customers.¹² ADR schemes have the benefit of being free and impartial and, in certain cases, allow consumers the opportunity to gain individual redress. Complaints are dealt with on a case by case basis, and decisions made on the facts and circumstances of each individual claim¹³. If the ADR scheme decides to make an award, the communications provider must take the action that they require. This might include a service or a practical action (for example removal of charges incorrectly billed), an apology or explanation of what has happened; or a financial award.

3. Summary

- 3.1. Ofcom supports the government's commitment to improving switching across sectors and believes that these principles should be considered as a means to enhance consumer empowerment. We are keen to contribute further to these on-going debates and would be happy to share our expertise more widely, as well as learn from other sectors whose interventions to empower consumers have been effective.

¹¹ http://stakeholders.ofcom.org.uk/binaries/consultations/complaints_procedures/statement/statement.pdf

¹² General Condition 14.5

¹³ Cases at the ADR Schemes, including those about switching, are dealt with on an individual basis and customers who make a claim are not entitled to automatic compensation.