



Consumer Switching

Everything Everywhere response to Ofcom consultation on proposals for switching fixed voice and broadband providers on the Openreach copper network

Non-confidential version

08 May 2012



Table of contents

1	Executive Summary.....	3
2	Introduction	4
3	EE's view on the urgent need for immediate changes to be implemented ahead of any strategic solution	4
3.1	MACs to be issued immediately within the next 6 months	5
3.2	Interim use of the MAC process for all broadband switches	5
4	Everything Everywhere's view on existing fixed switching processes	7
4.1	Multiple switching processes and the impact on competition.....	7
4.2	Multiple switching processes and the impact on consumers	8
5	EE's analysis of Ofcom's switching options for fixed voice and broadband	9
5.1	Assessment of Ofcom's preferred option	9
5.1.1	An economic perspective	9
5.1.2	A consumer perspective	12
5.1.3	An operational and commercial implementation perspective.....	14
5.1.4	An industry governance perspective	14
5.2	EE's preferred option	15
5.2.1	Single switching process	16
5.2.2	Risk of slamming and the need to ensure customer consent	16
5.2.3	Customer awareness of switching implications	17
5.2.4	Cost and hassle of switching	17
5.2.5	Back end system deficiencies	19
5.2.6	"Reactive save" activity	20
6	EE's response to Ofcom questions	20
6.1	Questions on Section 3 – current switching processes.....	20
6.2	Questions on Section 4 – Problems with the current switching processes	20
6.3	Questions on section 5 – Save activity.....	24
6.4	Questions on section 6 – Options.....	25
6.5	Questions on section 7 – Assessment of the options	30

- The prevailing multiplicity of fixed switching processes in the UK continues to be detrimental to consumers and competition.
- We agree wholeheartedly with Ofcom's view that switching processes and systems should be capable of providing good competition and consumer outcomes and that change to the status quo is therefore needed.
- However, it is essential for Ofcom to focus on what it can do to ensure these outcomes right now, not merely at some point the future - by which time irreparable damage will already have been done.
- Failure by Ofcom to address the already pressing concerns with the current processes for an extended further period of time is not acceptable. If Ofcom does so it will directly neglect its principal duty under the Communications Act 2003 ("Act") to further the interests of consumers by promoting competition.
- Ofcom needs to take firmer and faster action to address the harm to consumers and competition. At a minimum, Ofcom must consider immediate improvements to the switching process alongside a long term solution. Specifically, whilst it continues to strive towards a long term strategic solution for switching, we believe that Ofcom must consider interim step-change improvements to current processes including:
 - Requiring that MACs be issued immediately upon request by consumers; and
 - Quick and cost-effective interim harmonisation of MAC processes being extended to all fixed voice and broadband switches.
- Over the longer term, we believe that an evolutionary rather than a revolutionary approach is more likely to deliver the necessary benefits quickly and cost effectively.
- We believe that the current MAC process offers a solid foundation for developing an enhanced process for all fixed voice and broadband switches, along the lines of option 3. This is primarily because:
 - It offers superior protection against slamming (when compared with the GPL processes presented)
 - It ensures customers are informed of switching implications before the switching process commences.
 - It balances the need to reduce hassle and switching timescales with the protections above
 - Coupled with a TxC process in the back-end – a MAC based process can help overcome issues with erroneous transfers
- Ofcom's preferred GPL + TPV option on the other hand, will be extremely costly and time consuming to implement, yet offer no incremental benefit. The following issues will need to be addressed at a minimum: governance arrangements, funding, design and tendering for the centralised elements, data integrity and security issues, and integration with CPs' sales systems.
- TPV also risks increasing customer hassle and confusion, and perpetuating existing NoT process deficiencies in terms of the provision of information on switching implications only after the customer has committed to a switch.
- We believe that Ofcom's focus on TPV stems from its view that save activity is an integral part of the existing LPL switching process. This is incorrect - save activity is a separate issue - it occurs equally under both GPL and LPL options over the lifetime of the customer's contract. It is wrong to design a switching process around a desire to address what is a parallel issue.

2 Introduction

Everything Everywhere Limited ("EE") welcomes the opportunity to respond to Ofcom's consultation on proposals for switching fixed voice and broadband providers on the Openreach copper network (the "Consultation"). As a SMPF+WLR based provider in the UK, this issue is of vital commercial and competitive significance for the success of EE's Orange Home fixed voice and broadband business.

For the avoidance of doubt, the views which we set out here reflect our experiences of being a fixed voice and broadband provider only. Mobile switching processes are rightly outside the scope of this Consultation and it cannot be assumed that any solution proposed by Ofcom for switching on the Openreach copper network will be appropriate or necessary for mobile without a separate consultation process.

EE has long advocated the need for a review of fixed switching processes. The lack of a single fixed switching process has been damaging for both competition and customer experience. We therefore support Ofcom's review objectives to address current problems. We do understand the benefits of doing this through the implementation of a long term, strategic solution. However, as set out below, we strongly believe that this objective should not come at the expense of faster, short term improvements. We believe that it is incumbent upon Ofcom to at least explore these options, which the current Consultation entirely fails to do.

We also consider that expediency and cost effectiveness of implementation must remain key attributes of any long term strategic solution adopted by Ofcom, especially when such benefits can be gained with minimal, if any, impairment to Ofcom's consumer protection and ease of switching goals. For these reasons, as set out below, we support the use of the current MAC process as offering a solid foundation for developing an enhanced long term switching process for all fixed voice and broadband switches, along the lines of option 3.

3 EE's view on the urgent need for immediate changes to be implemented ahead of any strategic solution

EE is amazed that Ofcom seems to consider that it would be an acceptable outcome for consumers and industry participants to, potentially, do absolutely nothing to address the problems with the current switching processes for a further period of up to 3 years until Ofcom's preferred ultimate switching solution is put in place (and we believe this timescale is ambitious). Even more worryingly, EE notes that the negative impact of such neglect is likely to be compounded, as the broadband industry is currently at a crucial juncture when all providers are trying to build a critical mass of customers to support the rollout of high-speed NGA based services. There is accordingly a significant risk that the "winners" under the current switching system will be able to leverage these advantages into the new NGA world, and that the "losers" will be left so far behind that they will never be able to catch up, even when the playing field is (hopefully) eventually levelled with Ofcom's ultimate solution.

Inaction by Ofcom for such an extended further period of time is therefore liable to directly neglect Ofcom's principal duty under the Act to further the interests of consumers by promoting competition, as well as being in clear violation of Ofcom's obligations under the Act to promote investment and innovation; to encourage the availability and use of high speed data transfer services in the UK; and not to favour one means of providing a service or facility over another.

Regardless of the ultimate switching solution that Ofcom chooses to adopt, it is imperative for Ofcom to dedicate effort in its next consultation to consideration of what interim steps Ofcom can put in place to address immediately the harmful impact on competition and consumers being caused by the current asymmetric multiple switching process regime.

As set out below, we believe that there are several ways in which Ofcom could facilitate rapid, real improvements to the current situation on an interim basis, with minimal additional cost to the industry (and any costs would be balanced out by the benefits in any case). In particular, we believe that Ofcom should explore the interim use of the MAC process for all broadband switches and look in the even shorter term to seek to align the MAC and NoT processes wherever possible.

3.1 MACs to be issued immediately within the next 6 months

EE believes that there are likely to be ways in which Ofcom could rapidly bring the current MAC and NoT processes closer together in terms of their effect on competition and consumers, in advance of the adoption of any harmonised process. The most obvious change is the reduction in the amount of time it takes to dispatch a MAC. EE believes that it should be achievable for industry, and hence entirely proportionate and justifiable for Ofcom to mandate, that a MAC must be issued in less than the current 5 working day period (cf Figure 4). In the mobile context, PACs are now required to be issued within just 2 hours (and this was achieved in just 9 months on both occasions¹). Therefore EE does not understand why it would not be possible for Ofcom to mandate that the MAC must be issued to the customer on a similar basis (i.e. immediately over the phone or within 2 hours via email. MACs are generated by Openreach, and in the vast majority of cases can be provided in a few minutes via the EMP platform, which all operators have access to. EE would be prepared to issue MAC codes more quickly if all operators were required to do the same. We believe that this could be achieved within 6 months.

3.2 Interim use of the MAC process for all broadband switches

As Ofcom notes in the Consultation, all copper based fixed providers currently use WLR+SMPF technologies in some parts of their network, hence all providers are currently already obliged to support the LPL MAC process for broadband switches (Figure 6).

Purely as a quick, efficient and effective interim means of levelling the competitive playing field between MPF based and SMPF based providers, EE does not see why Ofcom could not simply oblige all copper based broadband providers to use the LPL MAC process in respect of switches between MPF and SMPF based providers and between MPF based providers, in addition to the existing obligation to use this process in respect of switches between SMPF based providers².

EE does not consider that the implementation costs of such an approach would be significant. Harmonising on this basis would involve significantly less implementation cost (utilising one of the pre-existing processes) than any of the options set out in the Consultation, which all revolve around new or upgraded processes.

As all operators currently already need to comply with the existing MAC process, this approach would simply involve swapping increased existing resources to the MAC process from the NoT process. A priori, EE therefore does not see why such an approach could not be implemented quickly or why it would involve more than minimal CAPEX or retraining of call centre staff. EE certainly does not have staff dedicated specifically to dealing with only NoT or MAC transfers, and would expect other operators to be in a similar position.

Obviously, the change from the existing process would need to be explained to customers. However, as the Consultation demonstrates that most customers are unclear about what the current processes are and in what circumstances they will apply to the customer in any event, we do not

¹ <http://media.ofcom.org.uk/2007/07/17/a-smarter-quicker-process-for-transferring-mobile-telephone-numbers/> and <http://stakeholders.ofcom.org.uk/binaries/consultations/mnp/statement/mnp.pdf>

² EE considers that there are unambiguous gains from moving rapidly to a harmonised approach. Moving to an interim approach based on the existing NoT process would likely increase slamming issues as set out in the Consultation, which means that EE considers moving to a harmonised approach based on the existing MAC process, at least in the short term, should be preferred.

see this as involving any material downside, To the extent that operator websites and customer service procedures / information are technology specific in the way in which they explain the switching process to customers, then this material may need to be changed. However, as the change simply involves explaining that one of the pre-existing processes now applies in more situations than before, we do not think that this should be unduly burdensome to execute. Indeed, it should help streamline and clarify existing communications, which would be a welcome step.

While such an approach may not deal with all of Ofcom's longer term policy goals, EE considers that the immediate benefits of such an approach should be considered and that this should be a valuable "stepping-stone" improvement. In particular, we note that Ofcom's cost benefit analysis (as discussed below) only compares the cost and benefits of different approaches based on the same implementation date. As such, Ofcom's approach and its balancing of the relative costs and benefits of different approaches ignore the additional benefits which would accrue if an interim solution is able to be introduced sooner than other longer term solutions.

If the analysis in the Consultation concerning the relative benefits and costs of each approach is accepted, the principal (probably only) drawback of achieving rapid harmonisation would be the impact on save activity, which the Consultation maintains has an adverse competitive impact. EE's view is that save activity is independent of the switching process used, and exists under both the LPL and GPL processes, albeit in different forms.³ As set out in the answer to Consultation question 37, EE does not agree with Ofcom's position on "reactive save". Notwithstanding this, even if Ofcom's position on the competition effects of "reactive save" (as set out in section 5 of the Consultation) were accepted, this is only one set of competition effects. The lack of harmonisation on switching between different technologies in itself creates a more immediate and pressing competition effect, at the very least in the short term. EE considers that the inequality created by having different switching processes has a greater adverse impact on competition than any impact which could be considered to occur from "reactive save". This is a fortiori the case where the move to a harmonised MAC process would be for a limited interim period only.

One key competition impact which Ofcom identifies as occurring with "reactive save" is that it creates a greater cost for smaller, later entrant operators to acquire customers. This means that they take longer to achieve scale which, Ofcom contends, further harms competition. EE considers that the benefits to competition from having a harmonised process would counteract any such impact and lead to a net gain to competition, even if Ofcom's views on the impact of "reactive save" in the longer term are accepted. Placing operators in a situation where they are unable to undertake "reactive save" on a significant proportion of their own leavers, while facing the prospect of "reactive save" activity on a significant proportion of the customers they are attempting to gain from the same providers is a far greater short term risk to effective competition than would the risk created by any increase in "reactive save" from moving all switches to a MAC LPL process.

Put simply, the improvement in competition which would be created by a level playing field in the short term would far outweigh the detrimental impacts on competition of a short term increase in the amount of "reactive save" in the market overall. Given the significant concerns which slamming creates and the fact that, even under a GPL process, many (if not most) customers will need to separately contact their losing provider proactively in any event to understand if there are any switching implications, it seems clear to EE that a short term cost benefit analysis must come down in favour of moving rapidly to a harmonised MAC process, while any longer term changes are considered⁴.

³ Under the GPL process, for example, the Gaining Provider may encourage an inbound call from the customer through the "sorry to see you go" letter, while remaining completely in line with the regulation. We are not suggesting that this should be prohibited - and we do not think that it would be possible to regulate for customer behaviour - but we wish to point out that "reactive save activity" can equally happen as a by product of either process.

⁴ As we believe that, in the long term, option 3 would be the optimal switching solution, this would also be a logical step towards that goal.

EE accepts that this process may not work in cases where the customer's telephone number has been issued by the MPF provider, and hence the correct line may not be able to be identified (3.7; 4.47-4.49) – in which case a "cease and re-provide" process would need to be used⁵. However, this situation would be no worse than it is currently, and it would be a relatively easy exception to explain to customers: "In all cases you will need to go to your existing provider to get a MAC code. In some cases where you have received a new telephone number from your existing provider, it may be necessary to cease your service with your existing provider before you can start your new service. In this situation there may be a period where you have no service before your new service starts." This would at least be a consistent message regardless of who the LP and GP are and the underlying technology. Furthermore, the incidence of such exceptions may also be able to be reduced with the work that the OTA is already undertaking with MPF on the establishment of an MPF CLI helpline facility (4.49).

4 Everything Everywhere's view on existing fixed switching processes

The biggest problem lies not in the construction of either of the switching processes per se, but in the continued parallel existence of two processes. This causes customer confusion and has a crippling effect on the market as it favours MPF based providers over SMPF+WLR based providers.

Ofcom and EE both agree that the existing fixed switching processes are seriously hampering competition and the customer experience, and that process alignment is imperative. However, there is a disconnect between our preferred approaches to achieving this end: while EE believes that the seriousness of the issue merits immediate attention; Ofcom prefers to take a more long term approach. EE's concerns are pragmatically motivated. We currently operate in a fast paced market - by the time Ofcom's strategic approach is implemented, the market could look completely different and the damage may be irreparable. For the reasons set out above, we therefore believe that interim solutions should be - and can be - urgently put in place. Following the same pragmatic approach focused on practical and tangible deliverables to consumers and industry competition rather than on potential hypothetical economic benefits, EE believes that Ofcom should also adopt a long term solution that is based on incremental changes to the existing LPL process, rather than the adoption of an untested "greenfield" TPV solution. We elaborate on these views below, focusing on actual industry and customer experience today.

4.1 Multiple switching processes and the impact on competition

As correctly identified in the Consultation, the asymmetries between the current switching processes used by WLR+SMPF based providers as compared with MPF (and cable) based providers have for far too long now placed SMPF+WLR based providers at a competitive disadvantage to MPF (and cable) based providers in seeking to gain and retain customers (4.37-4.40). We fully agree with Ofcom's observations that these competitive disadvantages relate in a large part to the higher degree of wasted marketing costs we are likely to face when, for example, competing with an MPF based provider such as TalkTalk for an SMPF based BT retail customer (in which case the customer would need a MAC to migrate to us but not to TalkTalk), combined with the lack of any opportunity that we have to try to save any of our own customers when they are considering switching to an MPF based alternative operator (4.37-4.39). Our concern is not with the construction of either process per se, but the fact that their parallel existence distorts the market.

We also agree with the comment that a very important element of this competitive disadvantage stems from the multiple migration processes that SMPF+WLR based providers must follow and pay for when we seek to gain an MPF based customer, as compared to the single process applicable to MPF based providers when they seek to gain one of our SMPF+WLR based customers (4.40). As

⁵ Of course, this issue would disappear with the implementation of option 3, where all fixed switches would be subject to the same switching processes.

set out in Figure 14 of the Consultation, these dual switching processes and costs result in SMPF+WLR based providers facing migration charges of circa £68.40 and a risk of customer loss of service if there are problems with the linked order (which is an additional process requiring additional investment), as compared with the circa only £33.54 migration charge and no risk to service continuity faced by MPF based providers.

It is therefore imperative that Ofcom takes immediate action to address these harmful competitive impacts in the short term. The longer this situation persists whereby smaller (SMPF) operators have to finance the impact of the asymmetrical process supported by Ofcom, the less likely they will be able to become effective competitors in the longer term - and the lesser the incentive will be to invest further, because of the lack of support to reach an efficient scale in the shorter term.

Looking forwards, this uneven competitive playing field is likely to create even more severe and lasting competitive distortions, as the industry is at a critical juncture when each operator is trying to build a critical mass of customers to support the rollout of high-speed NGA based services.

Regardless of which switching solution is ultimately adopted by Ofcom, EE considers that it is absolutely crucial that Ofcom ensures a completely level playing field for all providers of fixed copper based voice and broadband bundles in terms of (i) the number of switching steps/processes that each must undertake to gain a new customer from another such operator and (ii) the cost to the operator of these steps/processes.

4.2 Multiple switching processes and the impact on consumers

In 4.13-4.41 of the Consultation, Ofcom correctly identifies myriad problems resulting from the current system of multiple processes for switching the same type of service. Clearly, the current system of using different switching processes based upon factors that are not visible to the consumer, such as the underlying technology used by the losing and gaining provider, makes it difficult for operators to give immediate, coherent and easy to use advice to consumers about how to switch, and increases the complexity and costs to the consumer (and CP) of the switching process. Consumers accordingly both perceive and experience the process as being “hard”, especially before they start to go through the process. The obvious flow on effect, which is being experienced in the UK right now, is that consumers are not receiving the benefits from fixed voice and broadband competition that they should be able to expect.

Ofcom has now articulated the consumer confusion caused by having multiple switching processes in both switching consultations. It is therefore of significant concern that Ofcom is not moving more quickly to address the issues identified⁶.

It is worth summarising again the current switching landscape from a customer's perspective to emphasise the level of sheer incoherence that exists today: currently, when a customer decides that they want to switch broadband provider, they are faced with a confusing set of circumstances: do they do or do they not need a MAC code? Frequently, consumers do not understand the difference in underlying technology and, from a day-to-day perspective, have no need to understand it. Consumers understand that they have “fixed voice” and “fixed broadband”; whether their provider uses the BT network, cable network, MPF or SMPF means very little to the average customer. Multiple processes are more difficult for consumers to manage. For example, a consumer who proposes to switch from Orange broadband to Post Office broadband will need to use the MAC process. To move his or her fixed line between the same two providers, the notification of transfer process (“NoT”) will be used. However, if the move is to Sky MPF, NoT is used for both services. If

⁶ We note that Ofcom's reason for not reviewing fixed number portability lead times sooner has been that this issue would be dealt with as part of the switching review (see e.g. 1.13 of 2006 consultation <http://stakeholders.ofcom.org.uk/binaries/consultations/gc18/summary/gc18r.pdf>). We are astounded that Ofcom still has not considered this matter despite identifying it as an issue 6 years ago.

the consumer ultimately decides to move to Virgin Media, he or she will need to arrange a cessation of service (with Orange) and a new provision of service (from Virgin). A savvy consumer may well understand the difference between a service provided over BT's copper infrastructure as against one provided over Virgin Media's HFC infrastructure, but the distinction between full metallic path facility and shared metallic path facility is likely to be lost on almost all but the most technologically interested consumers. Yet even understanding this does not bring process clarity - if the customer moves to a non-cabled Virgin area, or a non MPF Sky area, they will still need to use the MAC process. The culmination of this is a bewildering consumer experience, which stokes the perception that switching is difficult - and may deter customers from switching in the future.

In order to address this imbalance, we do not believe that we need to invest in yet another new switching process, which will just add another layer to the sense of bafflement to those who have switched or considered switching before. We note that, whilst having two processes is confusing for customers, the evidence shows that switchers do consider the existing processes to be simple and reasonably quick⁷. Removing the perception that switching processes are complicated by aligning the existing processes will help to improve customer experience. It therefore seems logical to us to seek to pick one of these options, make the necessary changes, and roll this out across the whole BT footprint. Any longer term solution would then build on this solid foundation.

In our view, the existing MAC process is preferable to the NoT process because of the superior ability to ensure sufficient customer consent and awareness of the implications of switching, qualities which we believe are fundamental to the customer experience (see below).

5 EE's analysis of Ofcom's switching options for fixed voice and broadband

In this section, we first seek to provide our views on Ofcom's preferred option - GPL-TPV. We have considered this from an economic and consumer angle. We then explain how our preferred option for a long term solution- a variant of the LPL+ALT, which would be an evolution of an enhanced MAC process (as described at part 3 of our response) - is likely to be more effective at addressing the current issues with switching.

5.1 Assessment of Ofcom's preferred option

5.1.1 An economic perspective

Ofcom effectively base their assessment on two broad pieces of analysis. First there is the qualitative analysis of the performance of each of the options in relation to each of the identified "problems" which Ofcom has raised. This uses a "traffic light analysis" to rate each option on a three point (red/amber/green) scale in terms of the extent to which the option does or does not deal with the relevant issue. The results of this analysis are summarised in Figure 36. Second, Ofcom undertakes a partial quantitative analysis on those identified problems which it has been able to quantify to compare annualised NPV of costs and benefits of the main options. This is summarised in Figure 38 (and discussed in more detail in annex 8 of the Consultation).

Ofcom's qualitative analysis

The qualitative analysis does not provide a firm basis for the conclusions which Ofcom reaches. In particular it does not provide any explicit ranking or weighting to the different problems. Some indication of the relative size of the different issues is provided by the quantitative analysis, but this is partial, as is acknowledged in the Consultation (see, for example, figure 39). Given that the

⁷ http://stakeholders.ofcom.org.uk/binaries/consultations/switching-fixed-voice-broadband/annexes/broadband_slidpack2.pdf

quantitative analysis does not provide a firm answer (or suggest the conclusion which Ofcom has in fact drawn that the TPV option is to be preferred) significant weight is clearly being placed on the qualitative assessment of the different options. However, without clearly indicating the relative importance placed on each of the identified problems this analysis is not sufficient for the purpose Ofcom purports to use it for.

Further, the simple red / amber / green classification does not appear to be a sufficiently nuanced scale on which to base a robust decision between the different options. Ofcom's "shortlisted" options are hard to distinguish in relation to most of the relevant issues. Ultimately, the choice between a GPL TPV system and the LPL systems appears to be based on the one clear difference between them identified in the Consultation. This is the final row in figure 36: "reactive save".

As is clear from figure 39 this is one of the issues where Ofcom has not attempted quantification. The figures provided in figure 40 and discussed in paragraphs 7.164-65 are entirely arbitrary and illustrative. Ofcom is therefore assuming (on the basis of its arguments in section 5 of the Consultation) that removing the opportunity for "reactive save" will increase competition and hence reduce prices by some appreciable amount. This impact is then assumed, on the basis of very high level calculations, to outweigh any other effects which Ofcom has quantified. Other potential competition impacts have not been assessed or ignored (importantly including the competitive benefits of moving more quickly to a harmonised system discussed below).

What is more, the actual difference between a LPL system where "reactive save" is not allowed - option 3(a) – and option 2(d) is not clear. The former is graded "amber" while the latter is graded "green". However, save should not occur under either approach. The difference appears to be due to Ofcom's view that a LPL will inherently lead to save activity which will not be possible completely to remove. However, this seems a very grey area, which is not properly captured by the apparently clear distinction into amber and green. Contact with the losing provider is likely to occur under either approach⁸ and it is not clear why any save activity which could still occur under one system would have a lower net social cost than under the other system. Any individual customer changing their mind under a GPL system will likely create greater confusion and cost (see 5.1.2).

Ofcom has not identified the mechanism by which removing "reactive save" will reduce prices. It has simply argued that it harms competition and therefore its removal will strengthen competition which will reduce prices. Ultimately, therefore, Ofcom's conclusion that the GPL TPV process should be the preferred option is a leap of faith. Ofcom has not provided any quantification or transmission mechanism by which average prices will be reduced. Removing "reactive save" will presumably lead to an increase in prices to customers who would otherwise have received a "save deal". Overall, according to Ofcom's arguments, prices to all other customers will be reduced. However, Ofcom has not undertaken detailed analysis balancing the relative strength of these effects to be sure that its proposed conclusion is robust⁹. In short, we believe that Ofcom is focusing too much on trying to justify the removal of save activity in order to validate its preferred option rather than performing a more rational analysis and focusing on the real issues causing customer harm - a multiplicity of switching processes in the fixed space, slamming and customer awareness of the implications of switching, for example.

Ofcom's quantitative analysis

Turning to the quantitative analysis, the first point to note is that Ofcom's own figures suggest that one of the LPL systems should be the preferred option. The overall impact in terms of annuitised NPV reported in the bottom row of figure 38 is highest for option 3 (the two LPL options). Even if consumer benefits are given greater weight compared to CP benefits and costs, then the difference

⁸ For example, customers will proactively contact their LP to find out about switching offers and switching implications

⁹ EE also believes that Ofcom's views on "reactive save" activity are not in themselves correct, as discussed in the answer to consultation question 37, which would further undermine this conclusion.

between option 2(d) (the GPL TPV approach) and the LPL options is very marginal. It may be the case that other factors are considered to tip the scales in favour of 2(d) but this raises the problems of the qualitative analysis discussed above.

The higher consumer benefits under option 2(d) are in fact illusory. Inspection of Figure 38 shows that the difference between options 3 and option 2(d) are largely driven by:

- The better performance in averting ETs; and
- Ofcom's argument that the TPV system will involve less hassle and consumer time spent on the switching process.

EE does not consider that Ofcom's position that a TPV system will be superior bears close scrutiny.

Erroneous transfers can be considered in two different categories. First, there are those relating to house moves, which is a specific circumstance with its own issues. Second, there are those other occasions when system deficiencies or other reasons lead to customers being switched in error. As the Consultation identifies, this reliability issue is more of a problem with the NoT process than the MAC process currently (see paragraph 4.45). It is therefore not clear that there would be any difference between non home mover ETs between Ofcom's options 2(d) and 3.

However, home moves are, as Ofcom states in paragraph 7.26, the main cause of ETs. Here Ofcom considers that a TPV system will largely deal with the issue (green under the qualitative analysis) and that there will be a positive benefit to this approach (as identified in figure 38). The LPL options are considered to only partly deal with the issue (amber in the qualitative analysis) and provide no additional benefit in the quantitative analysis. The key point with a homemover situation is that the customer is effectively moving the asset (the line) rather than moving between providers. The competition aspects are therefore less important and the benefits of a harmonised approach may be less clear. Notwithstanding this, the quantitative analysis on which Ofcom is relying here essentially boils down to the observation in paragraph A8.47 that Ofcom considers a TPV system deals with around 80% of the "root causes" of ETs. It is unclear to EE what underlies this and why it is assumed that a GPL system will remove such ETs whereas a LPL system cannot. We note that the Switching Working Group has only recently convened to discuss this issue in earnest; therefore Ofcom's conclusions would appear premature.

The other significant difference between the TPV approach and the LPL options in Ofcom's quantitative analysis arises from the estimates of consumer costs (in terms of time and hassle spent on the switching process). The creation of a TPV step in the process leads to an increase in the amount of time spent on the phone, but this is outweighed in Ofcom's analysis by the overall increase in time which would be spent if all switches moved to a LPL process. As is clear from Annex 8 this is driven by Ofcom's assumption that the relevant calls will be significantly longer under a LPL approach. EE considers that the basis for this assumption is misguided and unclear. First, there is clearly no current basis for knowing average call lengths to a TPV system as no such system yet exists. It is not clear if Ofcom has included the likely additional time involved in explaining why a TPV process needs to occur both by staff from the gaining provider and the TPV operator staff themselves. Such a system will request some form of personal details, which consumers are likely to question, and customers will wish to understand the reasons behind such a request for information. As discussed below, these practical aspects of how a TPV system would work in practice suggest that it may increase the time and hassle factor more than Ofcom has currently assumed.

Turning to the LPL options, the length of call assumed appears to be based on additional time involved in implementing the LPL TxC process to current average call times (see paragraph A8.75). However, such current call times may include an element of save activity. If "reactive save" activity

is removed then it is not clear why these call times would be as long, which would significantly reduce the additional cost assumed in figure 38 (of £1.4 million per year)¹⁰.

Correcting these issues would therefore even further improve the net benefits from moving to a harmonised LPL system compared to those from moving to a harmonised GPL TPV system. The greater costs of the TPV system would therefore lead to the conclusion that the quantitative benefits analysis supports a move to a LPL system. If the benefits of a LPL system being able to be implemented faster (with incremental improvements possible within a matter of months) are also taken into account, this leads to the conclusion that such a system would be the best long term solution. In conjunction with EE's proposal for a rapid harmonised approach (based on the existing MAC system) this would also be a natural evolution, reducing both implementation costs and consumer confusion. The alternative approach would lead to significant upheaval for both the industry and consumers which is costly in itself.

5.1.2 A consumer perspective

We do not believe that Ofcom has fully explored or understood the consumer experience issues a GPL TPV solution would raise. Ofcom's analysis of the options focuses on how the process would work at a hypothetical level and does not consider how the process would operate in a real life scenario. We have some concern that this may be because Ofcom has already pre-determined the type of solution it wants to see implemented (GPL) and is trying to justify this, rather than genuinely and open-mindedly considering how best to fix the problems identified - and quickly. Our main concern is that the TPV option will not meet the basic criteria of a good switching process: it will not reduce slamming, consumer ignorance of switching implications or hassle. We believe that these criteria - along with the need for a single process - are the most important from a customer perspective.

A TPV will not reduce slamming or ensure that consumers are aware of switching implications

We believe that consumers need to understand the implications of switching - before they commit to a switch - so that this can inform their purchasing decision. While Ofcom recognises the need for consumers to make informed decisions, we believe that Ofcom does not place sufficient attention on this point, as it assumes (wrongly) that it is simply an excuse for justifying save activity (and, rightly or wrongly, the elimination of "reactive save" activity appears to be Ofcom's priority).

However, a TPV option will not ensure that consumers are fully informed about switching implications, because the information would only be presented after the consumer has decided to switch to another provider. Even if the switch can be reversed at this time, consumer inconvenience - or even distress - will already have been caused. At best, the customer will have wasted valuable time shopping around for a service that they may no longer wish to take (and which they, perhaps, wouldn't have pursued had they had this information to begin with). At worst, the customer may incur time and other costs to reverse their switch but find that they can no longer go back onto the plan they had with their previous supplier.

It is also possible that the customer might have selected a different service provider to switch to in the first place had they had information about the implications of the switch to begin with (yet the same customer may not want to cancel their switch and start the process again because of the hassle, and therefore miss out on the benefits of switching). For example, if a customer had been reminded beforehand that their line rental would increase if their calls package was switched

¹⁰ We note that, at A.8.75, Ofcom conflates the discussion around save activity under an LPL process with the discussion about switching implications. Ofcom is wrong to think the benefits of the LPL process in terms of the provision of information about switching implications will disappear if a customer chooses not to listen to a "reactive save" offer. Just because save activity is banned does not mean that no discussion will happen about switching implications - which is a service rather than a sales message

elsewhere, they might have signed up to a different provider who could offer a better bundle discount (rather than switching the services separately). A customer cannot be expected to make the best switching decisions if they do not have all the information they need when they are shopping around.

Similarly, when a customer finds out about ETCs belatedly, they may choose to simply pay this rather than incur the costs of undoing the switch (particularly where these costs are low). Ofcom implies customers' willingness to do this means that it is less important to provide customers with ETC information BEFORE they switch. However, that ignores the fact that they may have preferred to have waited a few more months in order not to have to incur this charge at all. This stance also goes against Ofcom's position, e.g. on non geographic numbers, that customers may be paying more than they would wish to, but in such small increments that it is not worth their while complaining. Ofcom has cited concerns about the aggregate value of this harm elsewhere.

We are also not convinced that the TPV would be as effective at preventing slamming as Ofcom might suggest. Unless the customer is required to provide information on a "shared secret" to the TPV (e.g. password, mother's maiden name), which is not currently being proposed, anyone could pass the verification test. Yet adding these fields of personal data to the process (and bearing in mind each network will likely have a different means of customer authentication), is likely to increase the costs of managing the database substantially because the database will need to be larger and more flexible, but more importantly because the data security risks would be even higher.

As Ofcom duly acknowledges in its Consultation, many consumers fail to be informed about the implications of switching until after they have switched and/or receive potentially misleading information about these implications (1.22-1.24), largely as a result of the nature of the GPL NoT process (4.146). We therefore struggle to understand why Ofcom would persist in trying to make TPV meet the switching implications requirement using ineffective, NoT based workarounds and try to justify this as being the most robust option.

A TPV will increase hassle for consumers

Ofcom rates the TPV option as "green" under the "varying and unnecessary switching costs/hassle" category. On the contrary, we believe that TPV will significantly increase the level of inconvenience and cost for consumers.

First of all, the TPV introduces a new touch point to the switching process. One of Ofcom's main concerns about any LPL option is that it requires the customer to contact both the GP and the LP. Ofcom suggests that the GPL process reduces the number of touch points for customers because the customer only has "to make one call to the GP, and then at the end of the call is transferred to the TPV for confirmation" (7.86). Ofcom categorises the discussion with the GP and TPV as one contact. However, from a customer's point of view, this will very much be two separate points of contact because:

- The TPV is not branded by the GP and operates as an independent body with its own identity;
- The call happens after the sale has been concluded with the GP sales advisor (while Ofcom may say that we should not be portraying the sale as completed until the customer has spoken to the TPV, in the customer's eyes, once they have concluded the sales discussion, they just want the operator to carry out their request - they do not want to speak to yet another person)
- In a retail context, the hassle factor will be multiplied because, even though the customer is physically in the store talking face to face with a sales advisor, they are still being expected to have a conversation with a third party over the telephone
- If the customer has any questions about the order when talking to the TPV, the TPV will not be in a position to answer these questions and the customer will have to go back to the gaining/losing provider.

Second, the TPV is an unknown entity to the customer. We are very concerned that customers will not want to speak to this third party - because they do not recognise the "brand" and do not know who/what the TPV is. Customers are suspicious of speaking to entities that they do not know. For example, they may assume that this entity will try to "sell them something". Customers will not understand why they are being required to provide the same information twice - to two separate entities. We therefore believe that the amount of time spent on the telephone under the TPV variant could well be longer than Ofcom anticipates, as a certain amount of time will need to be spent explaining what the TPV is, who it represents and why the process is in place. It is not implausible that customers will query this process - and it could affect their propensity to go through with the sale. If the customer does drop out of the sale and does not contact the GP again proactively, the GP may never know why they never fulfilled the sales request and the sale will be lost (unless the GP remains on the call - but the problems with this are described at Q22). The customer's confidence in the switching process could also be dampened, therefore reducing switching. While Ofcom may argue that familiarity with the TPV may increase as the years progress, we think this is unlikely: outside of this brief, annual/bi-annual conversation of the TPV, there will be no brand awareness of this body as it simply performs the customer authentication process for fixed switches.

5.1.3 An operational and commercial implementation perspective

From an operational perspective, the TPV option also has serious flaws.

EE spends millions of pounds every year promoting and protecting its brand. Everything from our window displays to our tone of voice reflects our brand values and shapes our relationship with our customers. We keep very close control over how we communicate with our customers, as this needs to reflect our unique corporate identity. It is therefore unpalatable from an operational and brand perspective to introduce a third party into the sales process - which may be the first opportunity we have to build a relationship with the customer - where the tone of voice is not "on-brand" and the quality of the call is not directly controlled by us (but by committee).

As discussed above, from a customer perspective, it also does not make sense to require a customer to make a phone call if the sale is made face to face. In a retail environment, it would be more logical to use an online system, as proposed for web transactions, which we could then integrate into our sales process. Of course, this could, arguably, undermine the anti-slamming benefits which the TPV process is supposed to provide as an unscrupulous retail agent could perform the verification themselves¹¹.

Thirdly, while the TPV will very much be portrayed as a separate, independent entity from a process perspective, our systems are likely to be required to integrate with the TPV. Not only will we need to be able to interconnect with a centralised hub for the transfer codes; we are likely to also need to ensure that our sales and customer service systems can talk to the centralised TPV elements. We believe this will be an extremely costly and complex process. It is difficult to provide further detail at this stage, because we do not know the specifications for the TPV.

5.1.4 An industry governance perspective

While Ofcom recognises that option 3 will be the most intrusive to implement as it requires the highest level of co-ordination (7.147), we are concerned that Ofcom is underestimating the actual level of industry co-ordination and planning that will be required to implement a TPV. While it is true that all the options on the table (with the exception of option 1 and 2a) will require a level of industry

¹¹ That said, unless a shared secret is held within the TPV (e.g. username/password), this will always be a concern, even when confirmation happens over the telephone - it will simply be too easy to pass the checks. We note that these would be "secrets" shared with the losing provider, but that the TPV will need to have access to this information to confirm consent on behalf of the GPL, which may raise additional data protection/privacy concerns.

co-operation, the extent of the co-operation required to implement TPV would be far greater in terms of time, resource and cost.

We would remind Ofcom of the experience of UKPorting in 2008/9, which offers an example of the level of co-ordination required and the difficulty that we might be faced with. An unprecedented level of industry co-ordination was required to set up UKPorting and to start working on the specifications and tendering processes. Despite this significant investment in resources (and before the CAT had made its decision on the proportionality of the then number portability requirements) it soon became clear that the challenge was far too great and that more time would be needed to iron out key issues. This was despite meetings happening almost daily at a commercial, regulatory and technical level and with the direct involvement of senior industry representatives. This experience should give Ofcom an insight into the amount of co-ordination that will be needed in order to deliver the TPV option. It should also remind Ofcom that realistic timescales are necessary and that regulatory deadlines (designed to ensure that anticipated benefits are actually realised) risk being missed by all providers if this is not the case. The cost of implementation will likely be lessened with more realistic deadlines for each phase of the process, but the pro-quid pro will be yet further delays in gaining any benefits from the new process.

Our initial view is also that the technical integration complexity of any of the GPL processes is also far greater than that which was envisaged under UKPorting. The GPL options proposed do not only require central databases to be created, implemented, populated, maintained and integrated with our networks but they also require integration with our frontline sales systems - which are the back bone of our business. Changes to our sales systems can be extremely costly and complex and we cannot afford any mistakes to occur or for testing to continue for long periods of time. Also, it is not only the fixed networks that would need to access the TPV, but also all retailers.

5.2 EE's preferred option

EE believes that Ofcom needs to focus on what is broken and causing harm now. This means that Ofcom should review and augment the existing processes - and pick one of these to apply to all fixed switches in the interim - rather than seeking to re-design and build a brand new architecture. Therefore, looking further ahead, we believe that an option 3 variant would be the most practical way forwards, because it would be an evolution of the MAC process, which we believe offers superior qualities to NoT. This is a preferable solution because it would mean that a simple and optimised process could be implemented within one year¹² rather than at a yet to be specified date in the future (which is unlikely to be any less than 3 years away from the final statement; the publication of the statement itself is also likely to be delayed if Ofcom chooses the more complicated solution, and implementation may be delayed if there are any legal challenges). In the interim period, we believe MAC can be rolled out more extensively and incremental changes can be made to speed up MAC issuance (this could happen within months). Other benefits of our preferred option include the fact that:

- This solution could be implemented at minimal cost to industry, because it would be an evolution of the MAC process, which is already supported by all providers.
- Less time would be needed to agree governance processes and for co-ordinating and scoping a hub/database and the relevant interfaces and standards.
- These processes are already understood by consumers (whereas the TPV/USN process would be completely different from a customer perspective).
- The benefits of this enhanced process can be brought to the market and consumers on a gradual basis - we do not need to wait the full 12 months to see the positive change. Some

¹² We note that in their proposal for a LP ALT option, the signatories suggested an 18 month timescale. We would suggest that changes could be implemented more quickly and we note that the signatories already noted that a phased approach to implementation would be possible. http://stakeholders.ofcom.org.uk/binaries/consultations/switching-fixed-voice-broadband/annexes/option_proposal.pdf

elements of the process can be changed fairly quickly - for example, MAC codes can already be issued immediately (see below for more details).

The following section describes why we think our preferred option is the better means of bringing benefits to consumers and industry, as set against Ofcom's criteria.

Ofcom identifies 6 key elements that need to be addressed by any new switching process:

- Single switching processes across fixed voice and broadband - we have covered our concerns about the current problems in section 4. Our views on how the processes can be brought closer together in the short term are explained at section 3.
- Risk of slamming minimised;
- Customer awareness of switching implications maximised;
- Cost and hassle of switching minimised;
- Back end system deficiencies minimised;
- "reactive save" activity removed.

Ofcom has not sought to rank these criteria in order of importance explicitly. Implicitly, both the way the preferred solution has been designed and the amount of time dedicated to the issue in Ofcom's Consultation document would point to the elimination of "reactive save" as being the most important criteria. However, in our view, this is the least important criteria - and certainly the other items cause the most direct harm to consumers and competition. Moreover, we think it is wrong to focus so intently on "reactive save" in this Consultation, because save is not a fundamental part of the switching process, rather it is a separate issue in so much as, for example, the level of ETCs or customer service at point of termination would be. While we do not agree with the inclusion of "reactive save" activity as an appropriate criterion against which to measure each option, we have briefly included this in our consideration below to illustrate how focusing on save has distorted Ofcom's analysis.

In EE's view, first and foremost, the issue of process multiplicity needs to be dealt with. Any new process must then ensure that customer protection and safeguards are built in, namely customer consent and awareness of switching implications. These are the key factors that should drive the design of any final solution. The next step will be to ensure that the process ensures low cost and hassle. Finally, of course, it must actually work and be used in practice by all of the intended industry participants.

5.2.1 Single switching process

This is essential and is integral to our preferred solution. We would refer Ofcom to our analysis in section 4. There is no point in pursuing any of the options unless this basic criterion is met.

5.2.2 Risk of slamming and the need to ensure customer consent

It is of paramount importance that consumers are only switched when they actively and consciously choose to do so. Clearly, slamming results in a highly undesirable distortion of a healthy competitive switching process. EE accordingly fully agrees with Ofcom that it is vitally important that the risk of slamming is reduced to a minimum under the chosen ultimate switching solution.

Ofcom clearly states that "upfront protection" is the only reliable way of preventing slamming and notes that only a small proportion of slamming complaints are from consumers who use the MAC process (7.56). The intrinsic benefit of the LPL variants is the slamming protection offered by upfront customer authentication and identification. Because the provider with the existing relationship with the customer knows which exact services the customer has subscribed to and has permission to switch, slamming is a much rarer occurrence under the MAC process (e.g. at 4.101). Even under a TPV variant, the only reason why the TPV can confirm customer consent is because the information comes from the LP. The most logical and cost effective means of preventing

slamming would therefore be to ensure that the party with the best information to stop this is able to provide this information directly to the customer.

However, Ofcom's focus is on preventing save activity rather than preventing slamming and the process is being designed accordingly. Thus Ofcom has concluded that both of the proposed LPL processes (LPL TxC and LPL ALT) as well as Ofcom's preferred TPV solution "largely deal" with this important issue (7.54 onwards). However it is notable that the LPL processes are expected to deliver greater benefits in this regard than Ofcom's preferred TPV solution (Figure 38).

We believe the focus on eradicating save is mis-placed and leads to Ofcom drawing incorrect conclusions. For example, Ofcom looks to the utilities sector for evidence that a GPL process, with no save option, encourages higher level of switching. However, the numbers alone do not tell the full story - Ofcom is not really comparing like for like: if a customer is slammed in the fixed voice/broadband world, the customer could lose their services completely, unlike in the electricity sector where the customer might not even notice. The potential for customer harm is therefore much higher in fixed telecoms, because there could be a total loss of service. It is therefore more important to ensure consumer consent is secured upfront in the fixed line communications sector.

5.2.3 Customer awareness of switching implications

The intrinsic benefit of the current MAC process and proposed LPL variants is that it allows for the simultaneous provision of information about switching implications at the point at which this is of most relevance for the customer (i.e. at the point at which the customer is considering/wanting to switch and asking questions about this process (4.141)). Additionally, this information is being provided by the party with the most complete set of information in this regard - the losing provider. This means the customer can be given upfront and exact information about any outstanding charges i.e. customers are not just told that outstanding charges may apply, but the exact level of these charges. They can also be provided with details about the impact of the switch on other services (content or discounts, for example). In a world of increasingly rich offers and bundles, these details are key and could be worth more in value than ETCs.

Under EE's preferred option, the customer is fully informed about the implications of switching before the order is placed, which reduces the likelihood of a change of mind once the switch is underway, thus lessening costs and hassle for consumer. Also, once the customer has their MAC/TxC code, they are empowered to shop around, fully conscious of their contractual obligations (if any) until they find a provider that can satisfy their requirements.

Ofcom tries to suggest that the benefits of upfront switching information under an LPL process are limited in two ways. First, Ofcom suggests that this information needs to be given in writing or the consumer might not fully understand the switching implications (4.142). Ofcom provides no evidence of this being the case. In relation to initial contract information, the General Conditions anticipate many acceptable ways in which this important information can be effectively conveyed to customers without it necessarily having to be given in writing - the context of the information is also relevant (e.g. Ofcom considers that some information is better provided in advertising and promotional material, and others as part of the sales process). Second, Ofcom believes that customers obtaining the TxC online may not get the requisite detail about switching implications, which would therefore provide an opportunity for save activity (7.73). EE believes that this concern is unfounded. It is in an LP's interests to provide clear information regarding the customer's contractual liabilities to it. Further, if Ofcom does have concerns in this regard, they can readily set out guidelines regarding what information MUST be provided in the online/digital environment.

5.2.4 Cost and hassle of switching

Making it quick and easy to switch between providers will only help facilitate sustainably competitive fixed voice and broadband markets when customers are also (i) fully informed of the implications of

switching before deciding to switch and (ii) protected against being switched without their knowledge and consent. We therefore believe this should be the next most important category of issue for Ofcom to address when trying to accommodate all the requirements for a switching process.

When considering whether a process minimises hassle and duration, we also believe that it is important for Ofcom to not just consider the amount of time the customer is required to spend on the phone talking to the LP and GP, but the length of time it takes to process the switch. Looking at the proposed high level processes holistically, we believe that our preferred option is much more efficient.

Most notably, unlike with the GPL processes, under an LPL process there is no real requirement to build in a "switch over" freeze period to allow the customer time to receive the anti-slamming/switching implications letter before the switch is completed. This information will already have been provided directly to the customer, usually over the phone but also potentially in store and online. It is therefore our view that the proposed LPL processes offer faster end to end switching than Ofcom's preferred TPV option¹³.

Even if we were to accept that the TPV version is the fastest option (which we do not), Ofcom would still need to assess whether this time difference is significant vis-à-vis the other options before considering this as a deciding factor. Ofcom's research has previously confirmed that while customers will always want processes to happen more quickly, there comes a point at which they no longer appreciate the difference, because the time difference is not material. Pace and ease are both relative measures. For example, reducing the current period that it takes to issue a MAC down from 5 working days may make a noticeable difference to consumers. However, once this period has been reduced down to a period of say, 1 working day, reducing the period by a further period of hours or minutes may not make any relevant difference to the willingness of the average consumer to switch¹⁴. What must be determined is what is an "acceptable" level of speed and ease to the average consumer.

Furthermore, as Ofcom has rightly acknowledged in the Consultation, some of the steps involved in the switching process that may be perceived as unnecessary "hassle" or "red-tape" by consumers are in fact vitally important to protect consumers from harm as a result of the switching process (e.g. slamming) (4.165). Accordingly "hassle" cannot be measured in absolute terms, but must be weighted according to the associated risk of increasing the level of harm to the consumer and the competitive process. Ofcom cannot simply assume that because consumers say the MAC process requires two phone calls instead of one and therefore involves some additional hassle that it is an unnecessary step and that it would be preferable for them to only have to make one call. The implications of making only one call also need to be considered - and once they are, under the TPV process you come back to single phone call that in terms of the core elements required to be covered will take at least as long as the 2 calls under the MAC process and will similarly involve conversations with two separate entities, plus the customer is likely in most cases to need/want to

¹³ However, we note that Ofcom suggests that under an LPL process, LPs would still be required to send a communication about switching implications to customers after giving them the MAC/TxC. We do not believe that it is necessary to introduce mandatory LP letters, as this would add unnecessary cost to the LP process. However, there should be nothing to stop the LP from sending an optional letter. If Ofcom remains of the view that this is necessary, it should nonetheless not result in a switching freeze/transfer period being introduced into the LPL process, because the information has already been given to the customer and the LP letter would only serve as additional confirmation of the switching implications. If Ofcom is concerned that insufficient detail is being provided to the customer, it would be more cost effective, to require that customer service agents follow a set script when providing this information to customers (obviously the exact content of this cannot and should not be defined by regulation, but Ofcom could set out the parameters and require that a script exist).

¹⁴ For example, Ofcom's own research in 2007 on the impact of reduced port lead times on consumers' propensity to switch found that: "When those who had accepted a new number were asked whether, had they known that they could keep their old number, they would have preferred to have kept it, 40% said this was likely if the process was expected to take 3 days (rising to nearly 50% if the process was expected to take just one day)". 2.11
<http://stakeholders.ofcom.org.uk/binaries/consultations/gc18review/statement/statement.pdf>

call their LP separately in any event to understand their contractual liabilities and other switching implications.

Finally, in terms of the level of perceived hassle being experienced by consumers in relation to the current switching processes, EE notes that it is important for Ofcom to distinguish between elements of this hassle that may be intrinsic to a particular switching process (e.g. the need to contact two separate entities in the LPL process or TPV process), and those that there may be room to improve upon within a particular process – e.g. to reduce the time period for issuing MACs within the current LPL MAC process, or to give the customer the option to receive a MAC without hearing a save offer under the LPL ALT process. As we describe above, we believe that there is scope to do more on the latter category of differences immediately.

5.2.5 Back end system deficiencies

Ofcom's main concern on this point is Erroneous Transfers (ETs). EE fully agrees with Ofcom that ETs are highly undesirable from both a consumer and competition perspective. While we agree that this is an important issue to resolve, we do not think that it is a criterion that should dictate the design of the switching solution; rather the solution needs to seek to minimise occurrence of ETs.

That being said, both of the proposed LPL processes (LPL TxC and LPL ALT) perform as strongly as Ofcom's preferred TPV solution in terms of largely dealing with erroneous transfers relating to unavailability /invisibility of CLI, having several services on the same asset and mismatches between the CLI and the correct asset ID (7.33). EE is therefore surprised that Ofcom has concluded that the LPL processes will result in zero benefits to consumers and CPs as a result of reductions in erroneous transfers, whereas the TPV process will result in benefits in this regard of between £3.4 and £4m per year (Figure 38).

This is particularly surprising because the LP is best placed to validate the identity of the customer and to ensure the correct services are switched. No such validation is possible under a GP context.

Also, as an SMPF + WLR provider, we have to invest significant time and resource in putting processes in place to reduce the chances of ET when switching a WLR service (multiple checks to correct errors in address matching databases, validation of sale to evidence mis-selling claims, timely dispatch of NoT letters, resourcing of call centres to deal with queries following receipt of NoT letters, corrective action following an ET – mainly due to customers not reading/understanding NoT letters). Conversely, almost no time is required to ensure that the correct SMPF asset is switched (standard customer authentication techniques are used, and MAC code is generated via Openreach portal). Yet, even though the effort deployed in reducing ET is so much less under the MAC process, in our experience, ET in a MAC context is almost impossible. We believe this is down to the fact that the LP is validating the customer and ensuring the correct services are switched. This would therefore suggest that LPL processes are more likely to prevent ETs and therefore loss of service.

EE understands that Ofcom has concluded that the LPL processes as currently proposed would not be able to deal as effectively as Ofcom's proposed TPV solution with homemover ETs (7.34-7.35)¹⁵. Ofcom's concern is that the process relies on the customer moving out of the property to ask for the TxC and to leave this for the inbound customer. While it may be unlikely that the outbound customer will have any incentives to do this if it is not convenient to them, it is very likely that the incumbent operator at this address will have every incentive to ensure that the inbound customer has the TxC and uses the housemove as an opportunity to switch (to them). While we note that the homemover scenario is unique in that it is not a switch (and therefore should not determine the switching process adopted, we would suggest that the process could accommodate homemoves by including

¹⁵ We would first point out that, while this is an important issue, it does not relate to switching per se (the LP and the GP are the same in the customers' eyes). Therefore, the homemover scenario should not determine Ofcom's decisions around switching processes.

a requirement on the incumbent operator to 1) record whether a transfer was a housemove 2) in a housemove scenario, ensure that the TxC is sent to the new occupier. We note that such a process would likely be more cost effective to implement and equally effective as the proposal under the TPV option to require the inbound CP to query the database to ensure the prevention of ET (as described above, the establishment of this hub and the access criteria will be a costly process).

More generally, in terms of ensuring that the switching process minimises loss of service, we believe that this will be resolved by any unified voice and broadband switching process with the Transfer Code as its basis. This could be implemented under any of the options proposed - including under the existing processes. A unified process will help to eliminate loss of services issues, because most of these are likely to arise due to the line and broadband switch not being co-ordinated and following separate processes.

5.2.6 "Reactive save" activity

It is clear that EE's and Ofcom's views on the customer and competitive pros and cons of save activity differ. It is also clear that Ofcom puts the removal of "reactive save" activity at the heart of its switching Consultation, even though save activity is not integral to the switching process. Save activity is not a feature of switching; this could take place at any point in the customer's lifecycle (including at point of termination under a GPL or an LPL). Our concern is that Ofcom's principled stance on "reactive save" activity is eclipsing the purpose of the Consultation, which is not to regulate save activity, but to ensure a competition boosting and customer friendly switching process. We believe Ofcom needs to take a step back and reassess the analysis and options without this focus on removing save.

That being said, we have had a look at how the LPL processes could address the "reactive save" issue, since Ofcom purports to say that this is a priority issue. We would stress that the focus must be on removing unwanted save at point of termination and not save activity per se (which, as mentioned above, is a separate issue). We believe that requiring MAC/TxC codes to be issued immediately by LPs, ensuring the customer is given the option not to hear save offers and a clear indication that Ofcom is monitoring complaints will help ensure that switching implications are explained, whilst minimising the scope for unwanted save activity.

We would also note that, in our experience, it is not "reactive save" activity which causes the most delay to the process but the fact that LPs have such extended periods of time to issue MAC codes. Shortening MAC code issuance times would immediately remove this element of hassle and delay whilst at the same time, from Ofcom's perspective, minimise the opportunity for "reactive save" activity at point of switching.

6 EE's response to Ofcom questions

6.1 Questions on Section 3 – current switching processes

- Question 1: Do providers support (i) each of the different order type processes (ii) Linked Orders (iii) Parallel Orders processes? Where providers do not support each of these individual processes, please explain why you think this is the case? Please provide evidence to support your view. (Page 32)

Support for both these processes will be provided from the end of May 2012.

6.2 Questions on Section 4 – Problems with the current switching processes

- Question 2: Are gaining providers currently able to correctly advise consumers at the point of sale on the correct switching process to follow (e.g. do agents have access to and the ability to

use Dialogue Services and have access to information on which technology will be used to supply the service to the customer)? Please provide any evidence you have to support your views. (page 43)

Agents do have access to Dialogue Services (DS) at point of sale, but this is not a foolproof means of ensuring we correctly advise consumers on the correct switching process to follow, as Ofcom also notes (4.27). We cannot always assume that because the CLI is not in the system that the customer is on MPF, as mismatches between the address provided by the customer and addresses on DS are not uncommon. Furthermore, even if the prospective customer were to say that they know their current provider is an MPF provider, this does not necessarily mean the customer is on the MPF network. We are also reliant on customers providing us with the correct data in the first place (although we appreciate that it is difficult to create a process that would mitigate against this possibility). The limitations of DS will only continue to grow with the deployment of new technologies.

- Question 3: Do you agree it will become more difficult for Gaining Providers to advise consumers at the point of sale on the correct switching process to follow as new technologies or new combinations of existing technologies are rolled out? Please provide any evidence you have to support your views (page 43).

Yes. As above, it is already difficult to advise on the correct switching process - and this will only get worse, because of the existence of multiple processes in the fixed space. For example, current industry best practice from the OTA includes a table describing which process should be used to switch phone line and broadband between MPF, SMPF+WLR and cable providers. This has 98 rows to cover the differing scenarios. The addition of fibre, TV etc will grow the number of scenarios exponentially.

The introduction of NGA has already further confused the switching market. It is virtually impossible for customers to move from fibre to ADSL with a different provider - because ADSL and fibre MAC keys are not "interoperable".

- Question 4: Do you agree there is lack of competitive neutrality from having multiple processes? Please provide any evidence you have to support your views.(page 45)

Yes. As set out in more detail in the main body of this response, EE considers that Ofcom correctly identifies that the current system of using different switching processes based upon factors that are not visible to the consumer is likely to have the flow on effect, which we firmly believe is being experienced in the UK right now, that consumers are not receiving the benefits from fixed voice and broadband competition that they should be able to expect.

The Consultation correctly observes that the asymmetries between the current switching processes used by WLR+SMPF based providers as compared with MPF (and cable) based providers place SMPF+WLR based providers at a competitive disadvantage in seeking to gain and retain customers, for the reasons set out at 4.37-4.39¹⁶.

We also strongly agree with the comment that a very important element of this competitive disadvantage stems from the multiple migration processes that SMPF+WLR based providers must follow and pay for when we seek to gain an MPF based customer, as compared to the single process applicable to MPF based providers when they seek to gain one of our SMPF+WLR based

¹⁶ To be clear: our concern is not around the construction of the processes per se (they both work well; albeit the MAC is superior from a customer protection perspective); but rather the fact that two parallel processes exist with one offering competitive advantages over the other. It is a level playing field which we are calling for.

customers (4.40). As set out in Figure 14 of the Consultation, these dual switching processes and costs result in SMPF+WLR based providers facing migration charges of circa £68.40 and a risk of customer loss of service if there are problems with the linked order, as compared with the circa only £33.54 migration charge and no risk to service continuity faced by MPF based providers.

Looking forwards, this uneven competitive playing field is likely to create even more severe and lasting competitive distortions, as the industry is at a critical juncture in time when each operator is trying to build a critical mass of customers to support the rollout of high-speed NGA based services.

In terms of furtherance of Ofcom's competition related duties under the Act there is accordingly no question that harmonisation of switching processes for all fixed voice and broadband services is urgently required.

- Question 5: Do you agree with our assessment of Problem 1: Multiple switching processes? If not, please explain why you disagree. (page 46)

Yes. As we set out in the body of our response, the existence of multiple switching processes is detrimental to consumers and competition. Ofcom needs to reduce this process duplication as a matter of priority in order to curb customer and commercial harm. Ofcom needs to justify any delays to making changes now in favour of a more complex, strategic solution, which could take years to implement. Consumer harm would continue to be experienced in the meantime. If Ofcom decides not to mandate immediate changes, it needs to justify this.

- Question 6: Do you agree that the current switching processes are likely to become less reliable in the future? Please explain your answer and provide any evidence you have to support your views.(page 51)

See response to Question 3. We believe that the multiplicity of processes is not sustainable going forwards.

- Question 7: Do you agree with our assessment of Problem 2: Back end system deficiencies? If not, please state why you disagree. (page 57)

Yes. We agree with Ofcom's assessment. The biggest driver of back end issues is the lack of coherent identifiers for assets, which could be mitigated by having TxCs.

However, we appreciate that the reliability and loss of service issues today are more a result of commercial prioritisation in terms of optional systems enhancements rather than a failure in the nature of the process itself. Over the past 12 months, EE has invested in a number of service changes in order to mitigate consumer frustration caused by erroneous transfers and inaccurate address data. As described in response to question1, we are implementing LOs and POs later this year in order to minimise loss of service issues for our bundle customers. We have seen the number of cases of erroneous transfer fall as a result and we continue to monitor the situation. It is not in our commercial interests as a gaining provider to switch the wrong customer (thus leaving our new customer without service) or to delay the process for our new customer. The back end issues can therefore be mitigated now rather than requiring a whole new process to resolve. Having a level playing field would further incentivise these changes.

Ofcom should also do more to put pressure on MPF providers to implement a central system that gives visibility of MPF CLIs. We therefore support the OTA's suggestion of the creation of an MPF CLI help line facility (4.49).

In terms of the lack of technological neutrality, we think that the MAC process could be extended to other fixed technology and infrastructure. However, we agree that until such time as a full review is conducted of the costs and feasibilities of doing so, it is impossible to say with any certainty whether any of the existing or proposed options could be extended to other fixed technologies.

- Question 8: Do you have evidence to suggest that the incidence of slamming has changed significantly? Please provide any evidence you have to support your views (page 63).

No.

- Question 9: Is there further action you think could be taken to help tackle slamming (e.g. preventative measures to stop it from occurring or enforcement activities after it has happened to act as a deterrent) under the existing processes? Please explain your answer. (page 66)

We do not have anything further to add at this stage, although we note that if the MAC process were to be extended to all switches, slamming incidences would likely fall significantly.

- Question 10: Do you think it would be more appropriate to introduce stronger upfront consumer protections within the switching process or continue with the current reliance on enforcement to tackle slamming? Please explain your answer. (page 66)

We remain firmly of the view that the only way to prevent slamming is through stronger upfront consumer protection measures and that the existing MAC process and proposed option 3 offer the most secure, customer friendly and cost efficient means of doing this.

As switching increasingly involves bundles, some of which could be quite complex, the risk of slamming (including inadvertent slamming owing to communications issues between the gaining provider and customer) will increase (footnote 109). We agree with Ofcom that "...where customer consent checks are not carried out upfront, we do not think that it will be possible to deal with the totality of the problem through enforcement activity alone" (4.138). Upfront checks performed by someone with a direct interest in protecting the customer interest are essential.

Please note that we are not advocating that this means save activity is essential/integral to the sales process because we advocate CP contact. On the contrary, we are suggesting that the party who wants to leave a lasting, good impression with the customer, who has an existing relationship with the customer, and who holds all the relevant data about the full range of switching implications is best placed to give the customer all the relevant information about switching and to check that the customer is authorised - and wishes - to do so.

- Question 11: Do you agree with our assessment of Problem 3: Insufficient customer consent? If not, please explain why you disagree. (page 67)

Yes. We note and fully agree with Ofcom that the most successful means of preventing slamming is through upfront customer consent checks. Performing the checks post sale (e.g. under NoT and the other GPL processes, bar TPV) means that costs will still be incurred by industry where slams have to be reversed. The only way these upfront checks can be properly achieved is where a "shared secret" can be used to verify the identity and authority of the customer. However, unless this level of identity check is done by the customer's current provider, who already shares this information with the customer, the costs of doing this could be prohibitive. We note, though, that the TPV does not contemplate this level of checks. However, absent this level of verification, customer consent mechanisms will not be sufficiently robust and may still be open to abuse.

- Question 12: Do you agree with our assessment of Problem 4: Lack of awareness of the implications of switching? If not, please explain why you disagree.(page 73)

Yes, although we believe that Ofcom wrongly plays down the significance of this issue by saying that it is only important to have this information as part of the switching process - not before they commit to the switch. Because Ofcom is unable to quantify the harm caused by customers being ignorant of switching implications, and because the quantifiable harm caused by customers having to pay an unexpected ETC after terminating their previous contract is deemed to be at an acceptably low level (by implication), Ofcom appears to conclude that it is not essential for the customer to have this information before they switch. While these other switching costs will vary qualitatively from customer to customer and provider to provider and is therefore it is hard to quantify the impact, it is difficult to ignore the value of this information to customers before making their switching decisions. We therefore disagree with Ofcom's conclusion in this regard,

We are also confused by Ofcom's suggestion that the level of harm caused by not being aware of ETC at time of switching is acceptable because customers do not seem too concerned about incurring this unexpected cost. This is an unusual argument as it would suggest that Ofcom only thinks transparency is imperative where the customer experiences unexpectedly high bills that they are unwilling to pay; Ofcom is less concerned where the customer finds out that they have incurred this charge after the event because it is a "low level charge" (4.162).

- Question 13: Do you agree with our assessment of Problem 5 Unnecessary switching costs/hassle? If not, please explain why. (page 78)

We agree that switching processes should be as hassle free and straightforward as possible - but this requirement does need to be weighed up against the other criteria (particularly the need to ensure customer consent and the awareness of switching implications). Arguably, a marginally longer process which ensures that customers are not miss-sold to and are able to make informed decisions is better than a slightly shorter process which does not have in-built slamming protections and does not allow for the relevant information about switching implications to be shared before the customer commits to a switch. In our view, customers value a fair, robust and clear process, which protects them from fraud, to a process which is almost immediate but is open to abuse - the harm caused by miss-selling/miss-information is arguably far worse than the inconvenience caused by a slight but necessary time lag. We agree that switching costs need to be minimised but customers have to accept that there will be a level of necessary cost incurred where there is an objectively justifiable reason for procedural steps, such as upfront customer verification). As the process for acquiring MAC is necessary for account verification and ETC communication purpose, we believe that the "hassle" factor described by Ofcom here is over stated. In any case, as we have noted elsewhere in the document, we do believe that improvements can be made to the existing MAC process

- Question 14: Are there any other key problems with the existing Notification of Transfer and Migration Authorisation Code processes that we have not identified? Please provide evidence to support your answer.(page 79)

We do not have any additional comments at this stage.

6.3 Questions on section 5 – Save activity

- Question 15: Do you agree with our assessment that a prohibition on "reactive save" activity under the LPL process would be difficult to enforce effectively? Can you suggest how enforcement of a prohibition on "reactive save" may be made effective? (page 93)

We do not agree with Ofcom's assessment. There is no reason to believe that providers would be less likely to comply with any such regulatory requirement vis-à-vis any other and why Ofcom would find it difficult to identify non compliance. For instance, this would be no different to the enforcement of the current prohibition of save under the NoT process and there is no evidence that there is widespread non compliance with this obligation or that enforcement by Ofcom has been difficult. The opportunity to save reactively under the GPL is just as prevalent as it is under any LPL - under both scenarios, the LPL will be informed as to whether or not a customer intends to switch; the only difference is whether this information is provided by the customer or by the gaining provider.

Similarly, we disagree with the suggestion that automation of the LPL process is the only means of ensuring compliance. If a provider is determined to flaunt the regulation, there could still be the possibility - as there would be under any GPL process - that the LPL would use this information to contact the customer.

We also disagree that Ofcom is less likely to be alerted to non compliance by the losing provider in an LPL context as saved customers are less likely to complain (5.62). Providers for one have market intelligence which can help to detect such issues. For instance, we are currently able to detect if/when a competitor is reluctant to issue MAC codes through our testing of competitor services.

Ultimately, Ofcom needs to show a visible commitment to enforcement in order to deter non compliance. Compliance testing usually focuses on the more well known and reputable providers, Ofcom perhaps needs to ensure that the net is cast wider. Moreover, Ofcom's ability (in terms of resource) should not determine process outcomes; rather the practicalities and benefits of each process option from a consumer and competition perspective should take centre stage.

6.4 Questions on section 6 – Options

- Question 16: Are there other enhancements that you think should be included in the Enhanced NoT specification to help protect consumers both now and in the future? Please explain your answer and provide any supporting evidence. (page 98)

No. This proposal would not satisfy the basic requirement of ensuring a single switching process across all fixed voice and broadband services.

- Question 17: Do you think strengthening record keeping obligations for consent validation would increase protection against slamming? Would this be adequate to safeguard consumers now and in the future? Please explain your answer and provide any supporting evidence.(page 99)

No. We do not believe that introducing additional record keeping requirements would increase protection against slamming. Call recording would not enhance consent validation as such but would simply facilitate Ofcom enforcement (and providers' demonstration of compliance). The vast majority of recordings would not be used; hence the investment would be wasted (unless call recordings are used for standard business purposes). The cost of doing this could indeed be prohibitive for those fixed CPs who do not have call recording in place. Ofcom must remember that it is not just the recording and storage of these that needs to be considered but also how these can be retrieved upon request. Investment should only be required where there will be a tangible benefit to customers in terms of the quality of service that they receive.

- Question 18: Do you think that the introduction of a requirement to include specific information about early termination charges (ETC) and/or minimum contract periods (MCPs) in bills should form part of the enhancements to the current NoT process? What are the likely costs and benefits of such an approach? Please provide any evidence to support your answer. (page 100)

No. We agree with Ofcom that it is not necessary to impose such a requirement and that the focus should be on ensuring customers get information about ETCs at the point at which this information is going to be useful to them (i.e. at the point at which they actually wish to switch). In addition, there may be other financial implications of switching a service which cannot be readily communicated via bills. For example where bundled services are provided, the switch of one service may increase the price of the other provided services. We believe that putting these amounts on customer's bills would be confusing, or at best ignored. Information that would allow customers to find out their contract length/upgrade date is already included in customer bills.

- Question 19: Do you agree that Cancel Other call recording obligations should not form part of the Enhanced NoT model? What are the likely costs and benefits of introducing Cancel Other call recordings? Please provide any evidence to support your answer(s). (page 100)

Yes. We would refer Ofcom to our response to question 17.

- Question 20: How can Ofcom best address competition concerns relating to "reactive save" activity through enhancements to the MAC process? What are the likely costs and benefits of such an approach? Please provide any evidence to support your answer. (page 102)

We would refer Ofcom to our response to question 37, which sets out our views on the impact on competition of "reactive save" activity (we do not believe that "reactive save" activity harms competition to the extent suggested in the Consultation).

We believe that giving customers the option to listen to "reactive save" is the best way of addressing Ofcom's competition concerns, whilst balancing the need to meet customer preferences¹⁷. Unwanted save activity should be minimised, but "reactive save" activity in itself should not be banned as part of the switching process (it is a separate issue that requires separate consideration).

We also do not believe that the means by which this option should be presented to the customer should be prescribed by Ofcom, as each operator will have a different operating model. Ofcom should, however, offer guidance as to what may be acceptable. EE suggests that the following means of issuing MACs without save would be effective: a web based option which allows a customer to validate their identity and retrieve their MAC/TxC without having to engage in a discussion with the LP, the ability to request a MAC/TxC via email and/or a dedicated IVR option to retrieve a MAC.

We note Ofcom's concerns that those consumers who are most likely to accept a save offer are also the most likely to opt-in to listening to a "reactive save" offer. This might suggest that our preferred option would not address Ofcom's concerns about the impact of "reactive save" offers on the market. However, as previously mentioned, "reactive save" offers are not just a feature of switching - we do not think that banning "reactive save" offers completely would change this situation: those customers who want to be given a counter offer will always seek those out.

- Question 21: Are there any particular issues that you think would need to be considered in establishing the hub and database under any of the GPL options (e.g. general practicability setting up and/or ongoing operation)? Please explain your answer. (page 103)

There are a large number of issues that will need to be considered in establishing the central infrastructure:

¹⁷ We note that Ofcom's own research has also found consumers' preference for save activity - a lack thereof can make them feel undervalued as a customer. E.g. 4.10 of 3 August 2009 consultation.
http://stakeholders.ofcom.org.uk/binaries/consultations/gc18_mnp/summary/mnpcondoc.pdf

- a) Governance: how will decisions be made on the design, sourcing, and implementation of the centralised infrastructure and how will we ensure a proportionate apportionment of costs (CAPEX and OPEX)? Before any work can begin in earnest on the solution itself, we need to ensure that we have an agreed governance structure in place. A central project office will likely need to be set up to facilitate this process (which will also need to be centrally sourced and funded). This is a task that may in itself take several months.
- b) Data reliability: we will need to ensure processes are developed for the uploading of data to the central systems and to ensure the centralised databases are up to date. This is key, as we are concerned that reliance on a central database of retailer information is inefficient, costly and also error-prone. As Ofcom also notes (e.g. 7.36), the customer harm that can be caused by data reliability issues could be significant¹⁸.
- c) Data Security: How will we ensure the integrity of the database and that the information is only accessible by those with the authority to do so and in accordance with data protection legislation? The data security aspect could add significantly to the cost of the system
- d) Integration with operator networks and systems: Integration cannot begin in earnest until the central elements are defined. However, this will be an important consideration and each operation's system will have different requirements.

- Question 22: Do you agree that the GP staying on the TPV call should not be a mandated part of the TPV model? Do you think there are significant benefits from the GP closing the call with the customer after the TPV conversation? Please explain your answer(s) and provide any supporting evidence. (page 107)

EE disagrees with the introduction of a TPV in the sales process for reasons set out in previous questions. We do not believe that customers will understand why they have to speak to an unknown third party and that this may have a detrimental impact on switching. Should Ofcom persist with this option, we would agree that there should be no requirement on the GP to stay on the call under the TPV model (because of cost implications). However, we note that, in reality, there are likely to be operational benefits of doing this and of closing the call. It will allow us to answer any questions that may have arisen from/during discussions with the TPV; if there were problems with the TPV process, it helps us try to address these without simply losing the prospective customer completely (because if the customer does not complete the TPV process and the customer does not contact us again, we could lose the sale - and the customer may be deterred from switching in future); it helps us maintain our personal relationship with the customer. That being said, the costs of keeping an agent on the line could be prohibitive (so we would need to sacrifice customer experience for regulatory compliance).

We will clearly be faced with a conundrum: if we do not stay on the call, we risk leakage and wasted customer acquisition costs; yet if we do stay on the call the sales process will be longer and the cost of acquisition will increase.

- Question 23: Are there any particular data protection and/or privacy related issues that you think would need to be considered under the GPL TxC and/or the GPL TPV options? Are these issues likely to be significantly different to the issues that need to be considered under the current processes? Please explain your answer. (page 110)

We believe that the GPL TxC and especially the GPL TPV options pose data protection/privacy issues, which need to be explored before work commences on either option (if Ofcom remains of

¹⁸ We note that Ofcom believes that enforcement action should help to ensure that CPs are properly maintaining the database (Although we note that, on other issues in the LP environment, Ofcom has shown a reluctance to use enforcement action as a means of ensuring compliance).

the view that the GPL TPV option is to be pursued). The basic difference between GPL TxC and the present day NoT process is that the latter does not require any complicated centralised infrastructure, but is managed via inter company communications. Fundamentally, any centralised system will need to be secure and resistant to attack. A central database with customer data from the entire UK (name, address, telephone number, address and postcode) may be subject to attack by hackers. A similar database was proposed by copyright holders during DEA discussions and this was rejected on security grounds.

It is extremely important that we are able to fulfil our data protection duties. If anything goes wrong, it will be the customers' network who will be held to account even if the processing is undertaken by a third party acting as data processor. Additional issues could be raised in the event that the processor is an international company and their employees from outside of the EEA have access to the data (as this would be deemed to be an international transfer with additional regulatory obligations and risks of disclosures to foreign governments).

Any central database poses privacy risks to users and these risks also need to be weighed up against Ofcom's preferred option. This issue should not be treated as an afterthought.

- Question 24: Are there circumstances in which you can envisage that consumers would be likely to be distressed and/or harmed by the sharing of their personal data as required under the GPL TxC and/or the GPL TPV options? Do you think that consumers will object to the sharing of their data in this way? Please explain your answer.(Page 110)

Please see above response. In an extreme case, consumers may be harmed by the sharing of data, should this database/hub be hacked by a third party. There is also the distinct possibility that incorrect information on the systems leads to the wrong customer being switched or other switching problems, which causes distress. In a less extreme case, we are not convinced that customers will be comfortable talking to an unknown third party about the details of their account or migration. If customers do object to the sharing of their data in this way, they may be deterred from switching in the future. Ofcom needs to also seek the views of consumer groups on this point, explaining the full extent of the data that might be collected, how it might be used and how this database is different from any of the other databases proposed by government (before being rejected) in recent years.

- Question 25: Are there any particular issues that you think would need to be considered in terms of the practicalities involved in setting up the TPV body and its ongoing operation under the GPL option? Please explain your answer.(page 110)

Please see our response to question 21. In the case of the TPV, the issues raised above are amplified. Additionally, in a TPV scenario, we need to consider:

- Access and funding issues: this will be complicated by the fact retailers/resellers will also need access to the TPV system - not just the networks.
 - Set up issues: we would not only be setting up a joint piece of infrastructure, but a central call centre. This is no small task and the ongoing management of a call centre requires careful planning.
 - Training and process: detailed consideration of how TPV agents will communicate with consumers will need to be had. There will need to be a rigorous training programme for agents.
 - Quality control: How will oversight of the TPV be managed and how can we ensure quality of service for all users?
-
- Question 26: Are there any particular issues that you think would need to be considered in terms of the practicalities involved in setting up the Transfer Code Issuing Authority and its

ongoing operation under the Losing Provider Led options? Please explain your answer. (page 113)

There will be governance issues to be considered, however, the extent of these will be much lighter than for any of the GPL options: the TCIA will simply be issuing randomly generated codes rather than being a central database of customer information which needs to integrate with our customer systems and be sufficiently robust to deal with data protection requirements. We believe this option will be much easier to implement.

- Question 27: Do you agree with the proposed specifications for each of the options? If not, please specify what changes you consider should be made to the specifications and the basis for this. (page 113)

The specifications need to be considered again from a customer experience and operational perspective. For example, in the case of the TPV option, the proposal is that the retail customer must speak to the TPV over the telephone in order to validate consent. It would not be a good customer experience or operationally workable to require a customer in a store to have a conversation with a third party over the telephone. The customer has decided to make their purchase in store because they prefer a face to face experience. From EE's perspective, it would be more logical for the customer to complete the TPV web form in-store, since the sales process will likely be completed in front of an in-store computer in any case to ensure that the customer has visibility of the order completion process.

- Question 28: Are you able to provide an estimate of the time it would take to make the necessary changes to your systems and processes to implement each of the options? Please explain your answer.

It is difficult to provide estimates without an understanding of how the centralised elements of each option would work. Clearly, the options which require changes to existing processes will be quickest to implement. We certainly believe that option 3 processes could be implemented within 1 year, because all networks already have the capability to issue MACs (the signatories of the proposal for LPL ALT have already stated that 18 months is possible, and we believe that timescale can be accelerated). It would simply involving changes to ensure MACs could be issued more quickly and that the system can handle an increase in volume of MACs being generated/used.

We believe interim changes could be implemented more quickly. For instance, the lead times for issuing MACs could be shortened within 2-3 months as no systems changes are required (as a guide, we note that Ofcom required PAC issuance timescales to be shortened over a 6 month period).

Options which require extensive industry debate and discussion are likely to take much longer. We believe that it will take at least 6 months to agree and implement the governance structure for the GPL options and the design of centralised elements being done by industry committee will mean that it's a much longer process (at least another 6-12 months to draw up the specifications). There would then need to be a tender award process before detailed specifications are finalised and internal project work can even begin. We cannot see the TPV option being implemented any sooner than 3 years after the statement has been published - and we believe that even this could be ambitious (particularly if the solution is subject to legal challenge).

We also believe that the statement will take longer to go through Ofcom's internal processes if a TPV option is selected, which means we may not see a statement until the end of the year. So, a TPV solution may not emerge before 2017 - 7 years after the first Consultation was published.

- Question 29: How could the switching process options be used (or amended) to support the WLTO process to deal with the problem of ETs in the context of a homemove? Please explain your answer. (page115)

We do not have any further details to add at this time. This is quite a detailed process question, which can only be properly answered once the specifications are in place and understood. There are a number of approaches which could be explored (both in the context of the current and future processes). While dealing with the problem of ETs in the context of a homemove is an important issue, it should not drive the decision on a switching process (because the customer is not switching provider).

6.5 Questions on section 7 – Assessment of the options

- Question 30: Do you agree with our assessment of the options regarding multiple switching processes? If not, please explain why you disagree (page119).

Yes.

- Question 31: Do you agree that the Options 2b (GPL TxC) and 2d (TPV) are likely in practice to deal effectively with homemove ETs? Can you foresee any problems with adopting this process for homemoves? Please explain your answer (page 120).

In our view, the LP is best placed to validate the identity of the customer. A GPL process is less likely to effectively deal with homemove ETs because they are less able to validate the customer identity and ensure the right services are switched. The LPL variants, on the other hand, can guarantee the correct identification of the asset (broadband service), meaning that it is highly unlikely that ET can occur.

That being said, we note that the concept of LP and GP does not exist in a homemover context (unless the customer is also switching at the same time as moving).

Also, we cannot see how outgoing occupier consent can be determined under a GPL option. Under an LPL scenario, the outgoing customer's consent is ascertained via direct contact with the incumbent provider at the property. A TxC will not be generated and sent to the address unless it has been requested by the outgoing customer.

In a GP environment, the control lies solely with the inbound customer. This risks the outbound customer losing service before they are ready to do so. The NoT process seeks to prevent this to an extent, but the inconvenience/distress caused to the outbound customer (if he is indeed outbound) will already have happened by this point and the outbound customer will now have to spend time resolving the issue. It is preferable to have an active interaction with the outbound customer as well to ascertain consent rather than relying on the customer reading and taking note of a more passive communication. We cannot assume that the incoming customer will give the correct address details.

- Question 32: Do you agree that the Option 2c USN and Options 3a-b LPL TxC and LPL ALT are unable in practice to deal with homemove ETs? If not, please explain how these options could be used to deal with homemove ETs? (page 122)

Homemove ETs is a complex issue that is not unique to any switching process. Indeed, it is not a "switching" issue per se (since the LP and GP are the same entity from a customer's perspective). We believe that all options will require industry discussion to understand how ETs can be minimised.

- Question 33: Do you agree with our assessment of the options regarding back end processes? If not, please explain why you disagree (page 125).

We do not have anything further to add to the comments made elsewhere in the response.

- Question 34: Do you agree with our assessment of the options regarding consumer consent? If not, please explain why you disagree (pg 128).

We do not agree that the TPV will sufficiently guarantee consumer consent. Unless the TPV provides for a "shared secret" to be confirmed with the customer, the consumer consent solution is too easy to circumvent. Therefore we believe this option should be graded amber rather than green. We also believe that the USN option should be graded red rather than yellow - the information required to confirm customer consent is too easy to acquire and use without the customer's knowledge.

We would also stress again that the option 3 variants do, on the other hand, ensure full customer verification, and at a much lower cost than TPV.

- Question 35: Do you agree with our assessment of the options regarding the implications of switching? If not, please explain why you disagree (pg 130).

We believe that Ofcom does not put enough emphasis on the need for the customer to be made aware of switching implications before they commit to a switch. While Ofcom seems to note that this would be preferable, they believe that information provided before the switch has been completed would partially, and therefore sufficiently, deal with the issue (because Ofcom does not seem to deem this to be an important criteria). We disagree with this suggestion. Providing information about switching implications after the customer has committed to a move risks hassle and missed opportunities for the customer, who will either have to reverse the decision if the implications are material or resign themselves to having to pay a fee/lose benefits. Ofcom's view that harm is minimised because the switch has not yet completed and the customer can still reverse the decision completely misses the point from a customer experience perspective.

We would also make the following general observations about the proposals:

- Ofcom's suggestion that CPs who choose to provide TxC online as part of LPL process may mean less good communication of implications is wrong. Ofcom can easily specify requirements for information to be provided online and LPs are incentivised to provide full information (7.73)
- We are not convinced of the need for a requirement to provide written confirmation under LPL processes - this will increase the costs of the solution but for little benefit.
- Question 36: Do you agree with our assessment of the options regarding unnecessary switching costs/hassle? If not, please explain why you disagree (page 135).

No. We do not agree that a TPV deals with issues around switching costs and hassle better than option 3 variants.

First, Ofcom refers to its high level view that GPL processes are easier for consumers to navigate as there are fewer touch points. What this fails to recognise is that the TPV process introduces a new touch point for customers - the TPV. We also note that the portion of time Ofcom expects the customer to speak to the TPV - a third party - represents almost half the amount of time the customer would spend talking to us. Ofcom suggests that the impact of this 5 minute conversation is minimal, but it represents a third of the sales process being dealt with by a third party (7.86). This is not ideal from a customer experience and brand perspective.

Second, Ofcom suggests that the process will work well across sales channels. This shows a lack of understanding of the customer sales experience and operational realities. The suggestion that it would be feasible to integrate a phone call into a customer retail sales scenario is unacceptable. The customer has come to the store to get a personal, face to face sales experience, it would be odd to require them to speak to a third party over the telephone about the sale when they are in the shop. It also means the end to end sales experience is outside of our control - we would be reliant on a third party call centre to answer the call without delay and to deal courteously with our customer in line with our brand values.

Third, the end to end switching process under a TPV will be longer. Under an LPL process, it is true that the customer will need to speak to the LP first. However, overall call times are faster as there is no need to build in a Transfer Period when customer consent and information is provided upfront.

- Question 37: Do you agree with our assessment of the options regarding "reactive save" activity? If not, please explain why you disagree. (page 137)

EE remains firmly of the view that Ofcom has not presented compelling evidence that "reactive save" is likely to harm overall economic welfare nor that LPL (including with "reactive save" ability) could not achieve interim benefits until (more costly) GPL harmonisation can take place.

Ofcom concludes:

"We consider that "reactive save" favours incumbents over entrants to the detriment of overall competition". (5.65)

Ofcom cite higher customer acquisition costs, thwarting lower entry prices through selective pricing and adverse selection (i.e. letting new entrants acquire only low value customers) in support of this conclusion.

Ofcom also concludes that "reactive save" is particularly of concern under LPL process:

"Under an LPL process, all switching consumers would contact the LP, providing an in-built opportunity for save activity. "reactive save" offers are also more likely to be successful under an LPL process as, in contrast to a GPL process they would be made before a consumer has formally signed up to a new provider". (5.67)

EE considers that Ofcom's findings are inconclusive and a decision based on such finding could preclude early benefits to consumers through the extension of the existing MAC process to all switches.

Ofcom overstates the case that "reactive save" activity harms competition and understates the efficiency benefits to switchers getting better deals

Broadly, price discrimination can be considered economically efficient where it leads to fixed and common cost recovery from customers who are most price elastic (i.e. Ramsey pricing principles). The price discrimination which arises from "reactive save" activity (reducing prices to customers more likely to switch, who are by definition more price elastic) is therefore likely to lead to an allocative efficiency gain. Further, it would be incorrect to characterise this as increasing prices to existing customers, who may well be in contract and who would have the opportunity to take advantage of lower prices at another time when they become switchers at the end of their contract. These benefits need to be considered against any competition effects.

EE accepts that prima facie there will be some barriers to entry suffered by small entrants from retaining "reactive save", all else being equal. However, EE considers that there are some significant offsetting benefits which make the picture more complex and which means Ofcom cannot be as conclusive or definitive on the likely negative effect of adverse selection. Ofcom therefore overstates the likely negative impact of adverse selection on competition.

Principally, Ofcom's analysis assumes distinct (or binary) sets of consumers, including non-switchers and switchers and high value and low value customers.

But consumers do not exhibit these fixed or permanent states in practice.

For instance, most consumers are arguably non-switchers while in contract, but may become more receptive to advertising shouts and offers closer to the contract MCP winding up. In this way consumers are likely to be sticky for the majority of the MCP but many will become less sticky toward the end of the MCP. Additionally, from a marketing perspective, fixed operators are always looking at ways to dislodge customers from their competitors, and new offers are designed to continually gain for these groups (e.g. ETC buyouts) and niches as consumer tastes and preferences change over time.

Equally mobility across income levels and social groups means that many low value customers who may be "let go" by an incumbent may become higher value after being taken up by a new entrant. For example in the mobile industry, all MNOs actively target university students, noting that these customers - although low value in early years - may become higher value loyal customers in later years (as they move into the workforce and increase their earnings).

Ofcom also argues that new entrants cannot compete as they cannot cross subsidise the cost of acquiring new customers from an existing profitable customer base.

Again EE does not disagree that in principle a higher proportion of potential customer gains to the entrant will switch back with "reactive save" activity, but Ofcom significantly overstates the degree of effectiveness of such activity. For instance, Ofcom itself concedes in footnote 174 that the survey finding that 80% of new entrant acquisitions switch back to the incumbent under "reactive save" is based on a small sample and that this is indicative only. However, Ofcom then presents the result as a robust finding in Figure 23 and at further passages in the main text (e.g. A7.31). Given that other stakeholders provide (albeit incomplete) evidence of significantly lower rates of save success (A7.21-A7.23), these two imperfect pieces of evidence should be weighed up in a more balanced fashion. Instead Ofcom relies fully on its "indicative" sample while dismissing other stakeholders' evidence as partial or incomplete. Given both sets of evidence are essentially imperfect it seems unfair to assess in such a way and introduces bias into this finding.

EE also notes that at 5.25, the statistic showing only 20% of customers are acquired under a MAC code process but that 80% are without a MAC code process is based on 45 sales for one entrant in September 2010. Again EE is not suggesting there is no differential, but the sample is not representative of the fixed voice and broadband retail services generally and the difference could in reality be significantly less depending on the entrant's acquisition strategy and target customer.

The fact that two indicative pieces of survey data give similar results does not improve the statistical reliability of the finding.

Other factors

Ofcom claims that the majority of fixed voice (58%) and broadband (54%) customers are not under a MCP (i.e. on rolling contracts) and that therefore "reactive save" is not a substitute for save during MCP (A7.17 based on CP data from March 2011).

For these reasons Ofcom cannot be reasonably sure that that majority (i.e. >50%) of fixed voice and broadband customers will not be under a MCP going forward.

We argue that Ofcom must confirm this finding with at least a further data point, preferably taken from March 2012 for consistency. We do not think this will be onerous as Ofcom can simply request the data in the same format as for the previous request.

In any event, and more importantly, EE does not agree that substitutability is the relevant benchmark against which to assess the benefit of "reactive save". EE notes that Ofcom only

responds to one stakeholder on this point (A7.13), when in fact the argument that is more relevant is that "reactive save" is complementary to rather than substitutable for save during the MCP by providing additional opportunities for CPs to offer better deals where a necessarily finite set of tariff offers have not met each and every customers' requirements and which have not been identified in the MCP.

EE considers that the most important competition detriment arises from having an asymmetric process whereby the costs of acquisition are not the same for different providers based solely on the technology which they use. Removing this competitive detriment will have significant beneficial effects on competition. Any additional competition benefits from removing "reactive save" would need to be set against any resulting allocative efficiency losses. Overall, EE does not consider that "reactive save" creates as significant competition adverse effects as Ofcom alleges in section 5 of the Consultation and that Ofcom has placed undue weight on this issue.

- Question 38: Do you agree that we should discard options 1a (status quo), 1b (enhanced NoT and MAC unharmonised) and 2a (enhanced NoT harmonised) on the basis that they fail to adequately address the current and anticipated future problems? If not, please provide your reasoning.

Yes. Although, we believe that Ofcom needs to consider the implementation of harmonised MAC in the short term in order to address current issues caused by the multiplicity of switching options.

We also note that Ofcom says that it would not be possible to extend the MAC process to different technologies in the future though no explanation is provided as to why (7.122). We disagree that this is the case - MAC fibre keys already exist.

- Question 39: Do you think that the payment of a TPV fee for each sale is likely to be a significant barrier to entry for smaller CPs? Please provide any supporting evidence.

We are surprised that Ofcom considers that the introduction of a £2.70 cost would not be a barrier to entry and this contradicts recent decisions made on wholesale charges. The TPV fee is currently assumed to be set at around £2.70 per switch (7.143). By way of comparison, EE notes that Ofcom has found in the context of its most recent WLR and LLU Charge Control Statement issued on 7 March 2012 (4.114-4.115) that:

"... we consider that LLU Cease services can have an impact on competition for customers, and can be levied as ETCs to retail consumers. We therefore prefer charge structures which do not include Cease charges, as long as it is economically efficient to do so.

Having considered stakeholder comments, we retain that preference and therefore, we have decided to set MPF Cease and SMPF Cease service charges to zero and to recover the respective CCA FACs from the respective MPF rental and SMPF rental services, to allow appropriate recovery of incurred costs."

This charge was set at £3.09, which is only 39p higher than the newly proposed TPV charge (figure 4.5). A decision was made to set the weighted average SMPF and MPF cease charge at zero and instead recover from line rental in order to avoid dampening incentives for customers to switch (since this charged would be passed onto end customers). It is therefore baffling that Ofcom is now proposing to introduce a new switching cost, at about the same level, and that it considers this to be too small to matter.

EE is accordingly concerned that the improvements to the competitive switching process so recently made by Ofcom under its WLR and LLU charge control review will essentially be completely nullified if Ofcom proceeds to adopt the expensive TPV solution.

- Question 40: We welcome stakeholder views on whether the additional cost of the TPV option over the GPL TxC option is justified due to the superior protection against slamming?

EE remains unconvinced that the TPV can prevent slamming without further discussions about how customer identification is going to be carried out. We therefore disagree that the additional costs of the TPV are justified as we do not believe that it will be effectual. We would remind Ofcom again that LPL offers upfront customer identification at a much lower cost - and it is a proven mechanism. EE can see no adequate justification for either putting stakeholders (and ultimately consumers) to unnecessary expense under the TPV option, or putting consumers at risk of harm from slamming under the GPL TxC option.

- Question 41: Do you agree with our assessment that the TPV option should be preferred to the USN option. If not, please provide your reasoning.

We do not believe that either option can offer good customer and competitive outcomes. Neither option meets the key criteria of a good switching process, namely prevention of slamming, communication of switching implications, and ensuring a low cost and hassle free process.

- Question 42: Do you agree with our assessment that the TPV option is pro-competitive relative to the LPL TxC option? If not, please explain why you disagree.

Ofcom suggests that the TPV option is pro-competitive relative to the LPL TxC option for two reasons:

- Lower switching costs; and
- less incentive and opportunity to engage in "reactive save" (7.613)

However, we do not believe that the LPL TxC option necessarily involves any higher switching costs for customers than the TPV option (see question 37). This assessment assumes that removing save will mean more switching, which in turn means customers will save more money. This is not necessarily true. Individual customers who could have saved more with a save offer will miss out on those offers, but that does not mean that other customers will get cheaper offers overall.

Moreover, we believe there is an argument that competition benefits from save activity: it gives providers, especially small / new entrant providers, the opportunity to engage in "reactive save" activity that they are prevented from engaging in under the current asymmetric switching processes.

We also believe that the likely anti-competitive effects of "reactive save" activity (where this opportunity is afforded to both incumbents and new entrants alike, regardless of which technology they are using) have been overstated in the Consultation. For example, as a new entrant / small provider in the competitive UK fixed broadband market, EE must in any event offer highly attractive pricing offers to the market in order to be able to have any hope of attracting new customers - it is not true that we are to any material extent undercut by "stealth" incumbent "reactive save" offers which do not simply match the level of competitive pricing already being offered out in the market by other new entrant/small providers (and thus which EE has already sought to match competitively with its original offer)

Coupled with the ineffective slamming and customer information mechanisms proposed under the TPV, which undermine competition as they mean costs are wasted on customers who do not wish to switch (whether because they change their minds or because we have to restore service to a slammed customer), we accordingly do not agree with Ofcom's assessment that the TPV option is likely to be pro-competitive relative to the LPL TxC option.

- Question 43: Do you agree that the TPV is the most proportionate way to deal with the problems identified? If not, please provide your reasoning

No. We believe that the TPV option is a disproportionate means of achieving Ofcom's policy objectives as there are alternatives that would achieve the same aim more quickly and more effectively.

As set out at section 5.1.2, in particular, we are concerned that the TPV will open the door to slamming (unless it gathers a more detailed subset of customer data in order to ensure customer consent; but we do not believe that this would be proportionate) and it will not address the current shortcomings of the NoT/"Slamming/customer information" letter. Even if the requirements for this letter are extended, this will be insufficient as the information is delivered to the customer too late in the process i.e. after the customer has started the switching process. Furthermore, we do not believe that Ofcom has considered the customer experience issues that a TPV would engender.

- Question 44: Do you have any other comments on our option assessment?

As set out in the main body of this response, we consider it to be a material deficiency with the current Consultation that it does not set out any options for more rapidly addressing at least some of the problems with the current switching process (e.g. uneven competitive playing field due to multiple switching processes) on an interim basis.