

OFCOM'S SWITCHING CONSULTATION
VIRGIN MEDIA RESPONSE

EXECUTIVE SUMMARY

- Virgin Media considers that there is clear evidence consumers have plenty of choice from a variety of retail providers competing aggressively with one another in the UK, providing national broadband and telephony services across the Openreach copper network.
- The existing framework in which customers switch providers is demonstrably successful. Virgin Media saw high levels of disconnection and acquisition in 2011 from customers exercising their ability to choose different providers and switch.
- Virgin Media sees the proposal to move from the current switching processes to a Gaining Provider Led Third Party Verification ("**GPL-TPV**") approach as based on an inadequate understanding of the high levels of competition in the market. As also set out in this document, analysis shows that these proposals will lead to a worse outcome for consumers.
- Ofcom's negative view of reactive save is not justified. Contrary to Ofcom's views, economic experts find that consumers may well be better off where reactive save activities are permitted.
- Ofcom's analysis evidences that the net benefits to consumers from its proposals will be less than one-twentieth of one per cent of total fixed line and broadband revenues¹ of just £7m (annuitised) but its proposals will cost communications providers between £90 million and £195 million which consumers will ultimately have to pay.
- [X].
- Ofcom has not considered what consumers want - Virgin Media's research shows that consumers prefer a Losing Provider Led ("**LPL**") Transfer Code ("**TxC**") process over a GPL-TPV process.
- Ofcom has not demonstrated that:
 - the intervention is likely to lead to any increase in the number of consumers switching
 - the costs and benefits to consumers justify intervention
 - it is in the interests of the customer to ban reactive save offers.
- Virgin Media concludes that the proposed interventions are not a proportionate way to address genuine issues where they exist e.g. slamming. Where such issues exists, Virgin Media is committed to resolving these

¹ Data on total retail fixed voice revenues (£9.3 billion) and residential broadband revenues (£2.5 billion) are from Ofcom, *Communications Market Report 2011*, Figure 5.39 (page 283) and Figure 5.57 (page 294).

issues either by improving existing processes or by adopting a LPL Tx/C switching process which allows consumers the benefits of reactive save offers.

- On the basis of the conclusions set out above, Virgin Media does not consider that Ofcom should proceed with the proposals as contemplated.

VIRGIN MEDIA CONCLUSIONS

Virgin Media has considered Ofcom's consultation on proposals to change the processes for switching fixed voice and broadband providers on the Openreach copper network ("the **Consultation**") and has concluded that Ofcom should not proceed with the current proposals. The market for telephone and broadband products is already highly competitive with providers in vigorous competition to win customers with little evidence of reduced or barriers to switching.

Virgin Media has identified substantial cost implications in the changes proposed by Ofcom and that Ofcom's proposals are not supported by a clear understanding of how the market will react to such intervention or robust analysis of costs and benefits. Virgin Media considers there are some issues that Ofcom might usefully consider how to address, for example in relation to slamming and erroneous transfers in relation to the Notice of Transfer ("**NoT**") process, however the level of market intervention proposed in the Consultation is disproportionate to addressing such issues.

Ofcom should not therefore proceed unless it has considered:

- whether Ofcom's proposed intervention will in fact increase the number of consumers switching (in an already highly competitive market) and whether this is inherently desirable given that the level of switching per se does not evidence whether a market works for consumers;
- whether the overall costs and benefits to consumers and CPs justify such intervention. Leaving aside whether Ofcom has correctly quantified the costs/benefits of the proposed options, Ofcom's impact assessment shows little quantifiable justification for intervention. Specifically any benefit is *de minimis* when considered against the overall value of the broadband and telephony market. The quantified net benefits to consumers represent less than one-twentieth of one per cent of retail fixed voice and broadband revenues. Of that total benefit c.81% of the benefit derives entirely from a reduction in CP costs relating to slamming. If the overwhelming benefit evidenced by the impact assessment is to prevent slamming, then the starting point of the analysis should focus on how to reduce slamming.
- not only whether "reactive save" leads to consumer harm but the counterfactual if it is prohibited. In short whether a ban would lead to a benefit to consumers.

Ofcom's failure to consider these critical issues adequately, particularly reactive save, means that it is proposing a costly, intrusive and unwieldy GPL-TPV switching process over the simpler, cheaper and timelier LPL² process.

² Either the existing LPL MAC process or the harmonised LPL Tx/C or LPL ALT

Ofcom rejects LPL options primarily on the grounds that they are not effective against reactive save but Ofcom does not provide any empirical or theoretically robust evidence to suggest better outcomes would arise for consumers if firms were banned from reactive save. Independent economic experts commissioned to review Ofcom's analysis of reactive save have found the reverse may well be true.³ Specifically that reactive save can have a welfare enhancing effect as reactive save offers may force competitors to compete harder leading to lower average prices paid by consumers. Furthermore, Ofcom cannot assume that if reactive save activities were prohibited that CPs would direct their resource to securing beneficial outcomes for consumers. Ofcom gives inadequate consideration in the Consultation to the counterfactual. Virgin Media considers it likely that CPs may offer longer contract lengths or offer certain customers at risk of switching better deals than others. However, without any analysis of CPs likely response, Ofcom cannot conclude if banning reactive save would bring about an increase in consumer welfare.

PwC's independent analysis shows that Ofcom's proposed GPL-TPV solution will cost the industry between £90,103,000 and £195,663,000⁴ when the costs of setting up and running the hub and database over a 10 year period are quantified. [X]⁵ Virgin Media's national business is a small player in the broadband and telephony market so the imposition of such sizeable cost across a small customer base is a significant barrier to entry for smaller players (which cannot be a desirable outcome).

Virgin Media considers that the evidence set out in the attached reports demonstrates conclusively that the impact assessment for Ofcom's proposed intervention does not meet the required standard. The EC's Impact Assessment Guidelines of January 2009 require: "*[g]ood quality data – facts as well as figures – are an essential part of any IA. You need to define the problem and the baseline scenario, and to identify the impacts of alternative options for dealing with the problem. Particular attention needs to be paid to quality and credibility of data*". The CAT's decision in *Vodafone v Ofcom* requires that an impact assessment must be able to withstand "*profound and rigorous scrutiny*".

On the basis of the evidence set out by Ofcom in its Consultation, Ofcom has not, and cannot demonstrate that: (1) its proposals will lead to an increase in consumer switching and this will increase consumer welfare; (2) that its impact assessment demonstrates real economic benefits to consumers and CPs alike; or (3) that its theories on reactive save reflect industry practice and current economic literature. Ofcom cannot therefore conclude that a move away from the current processes to a GPL-TPV switching process is justified.

Expert independent evidence and analysis have been commissioned by Virgin Media (jointly with Sky and BT) to assess the robustness, feasibility and assumptions of the work on which Ofcom bases its proposals. These parties also jointly commissioned market research by Ipsos MORI into consumer experiences and preferences regarding switching of landline telephone and broadband services⁶. Their conclusions are set out below and attached with this submission.

³ Virgin Media along with BT and Sky commissioned Charles River Associates to analyse Ofcom's view of reactive save.

⁴ Virgin Media along with BT and Sky commissioned PwC to independently assess the cost of setting up the GPL-TPV. Please see Attachment 3 for PwC's Report

⁵ [X]

⁶ This online research amongst panellists surveyed 2,000 respondents who were selected so as to give a balance of age, gender, geographic location.

OFCOM'S THEORIES RELATING TO REACTIVE SAVE

CHARLES RIVER ASSOCIATES⁷

Ofcom concluded in the Consultation that reactive save activity harms both consumers and competitors and therefore should be banned. Ofcom bases its rejection of all LPL processes and desire to adopt more costly GPL process on this premise. However, following detailed analysis and consideration, CRA finds:

- *"Ofcom's analysis of reactive save activity to be limited and partial, unsubstantiated by empirical evidence and reliant on a number of assumptions and analogies rather than robust economic analysis⁸".*

Among CRA's findings are that:

- The conceptual economic arguments invoked by Ofcom to argue that reactive save activity dampens competition are not robust.
- The evidence used to support Ofcom's theory of how reactive save works within the market is *"very narrow and uninformative"* and does not provide a robust basis on which to conclude that reactive save is harmful for consumers.
- Ofcom does not explain what kind of entry it would expect to see in the market and how this would increase competition between suppliers.
- Ofcom conflates the issue of the impact of reactive save on switching and resulting consumer harm. Even if lower consumer switching was to result from 'successful' reactive save there is no inherent reason why a market with more switching offers higher consumer welfare.
- Drawing on relevant economic literature, CRA find that consumers may well be better off where reactive save activities are permitted.
- Finally, Ofcom has not adequately considered the counterfactual, including how CPs would react if reactive save were banned and if this would be in the best interests of consumers.

Overall the CRA Reactive Save Report finds that Ofcom's analysis does not justify its negative view of reactive save activity, a view which in turn significantly motivates its position that LPL processes are "detrimental" to competition and the GPL-TPV option should be adopted instead⁹.

OFCOM'S IMPACT ASSESSMENT

CHARLES RIVER ASSOCIATES

⁷ The team assessing Ofcom's theory of reactive save is headed up by Dr Cristina Caffarra supported by PhD qualified economists with extensive experience with competition and regulatory matters.

⁸ See paragraph 10 of CRA's Reactive Save Report

⁹ See paragraph 5.17 of the Consultation

Virgin Media (jointly with BT and Sky) asked CRA to independently assess Ofcom's impact assessment (both qualitative and quantitative aspects) of the likely costs and benefits associated with its proposed options for switching and how well each of these alternatives deals with the switching problems identified by Ofcom relative to the status quo and each other.

Virgin Media refers Ofcom to the findings in CRA's full report which is set out at Attachment 2 but wishes to highlight the following key findings of CRA:

- the impact assessment *"fails to clear the hurdle set by Ofcom for overcoming its bias against intervention"*¹⁰;
- the impact assessment systematically overstates the benefits of the GPL processes;
- the impact assessment understates the benefits of the harmonised LPL processes;
- Ofcom's traffic light analytical method is *"largely uninformative and inadequate as a tool to justify the finding in favour of the GPL-TPV process"*¹¹;
- Ofcom's modelling is *"not robust to plausible alternative assumptions with respect to a number of parameters"*¹²;
- the quantitative assessment provides *"no support for Ofcom's proposal to move from the status quo to the GPL-TPV option"*¹³.
- Ofcom's quantitative analysis hinges on reducing the costs to consumers and CPs of slamming (indeed, plausible alternative assumptions on the incidence of slamming can result in negative net benefits for all the processes) and Ofcom's qualitative assessment hinges on Ofcom's view of reactive save activity. However, the problems of slamming are only one of a number of concerns discussed by Ofcom in the Consultation (and is not one of the concerns mentioned in Ofcom's introductory paragraphs to the Consultation) and Ofcom's reactive save conclusions lack a sound economic foundation.

CRA finds that the quantifiable net benefits of the harmonised LPL options once various errors, omissions and modelling deficiencies are rectified are greater than for the harmonised GPL options. In particular:

- Under the "CRA Base Case", which adjusts Ofcom's quantitative model to address a number of the errors and omissions that CRA identified (which tend to overstate the benefits of the GPL-TPV option and understate the benefits of the harmonised LPL options), CRA estimates the net benefits of the harmonised LPL options to be between £14.0 and £17.3m annuitised¹⁴.

¹⁰ See paragraph 15 of the CRA report on Ofcom's Impact Assessment

¹¹ See paragraph 5 of the CRA report on Ofcom's Impact Assessment

¹² See paragraph 11 of the CRA report on Ofcom's Impact Assessment

¹³ See paragraph 12 of the CRA report on Ofcom's Impact Assessment

¹⁴ See table 9 of the CRA report on Ofcom's Impact Assessment

- When considering the net benefits just to consumers, the harmonised LPL processes under the CRA Base Case provide the most benefit to consumers of between £3.1 and £6.5m annuitised¹⁵.
- When using the 2010 lower bound estimate of slamming (1.19%), the net benefits of all the options turn negative when starting from the Ofcom Base Case. Using the 2010 mean (1.84%) all the harmonised GPL options turn negative on the low case scenario under the Ofcom Base Case and the CRA Base Case¹⁶.
- When applying PwC's higher estimate of the implementation cost of the GPL-TPV process, the estimated net benefit of the GPL TPV on the 'likely case' is between £-2.1m to £1.2m annuitised when starting from the CRA Base Case¹⁷.
- Assuming implementation time frames of more than a year reduces the net benefit of all options compared to Ofcom's base case¹⁸.
- Reducing the period over which the benefits/costs are assessed from 10 years to 5 years reduces the net benefit of all options¹⁹.
- Using an alternative discount rate for CPs costs and benefits of 6.5% (based on the return expected to be generated by BT as a regulated telecoms operator) instead of the social discount rate of 3.5% reduces in all cases the net benefits²⁰.

In conclusion CRA states that *"Ofcom needs to exercise much greater caution in appraising the costs and risks of the various options that it is consulting on, particularly those that are the most intrusive and costly. The net benefits that Ofcom quantifies in this Consultation Document are entirely dominated by reducing the costs of slamming, while the qualitative assessment is dominated by Ofcom's negative view of reactive save activity. Since slamming is only one of a number of concerns with switching processes discussed by Ofcom, and the rejection of reactive save activity is not soundly based in economics, this seems an unsatisfactory basis on which to reach a policy decision"*²¹.

OFCOM COST ASSESSMENT OF THE GPL-TPV MODEL

PWC

Virgin Media (jointly with BT and Sky) asked PwC to produce an independent and thorough cost assessment of setting up and running the GPL TPV process based on the GPL-TPV model provided by Ofcom together with the SWG specifications²².

¹⁵ See table 10 of the CRA report on Ofcom's Impact Assessment

¹⁶ See table 15 of the CRA report on Ofcom's Impact Assessment

¹⁷ See table 17 of the CRA report on Ofcom's Impact Assessment

¹⁸ Please see table 11 of the CRA report on Ofcom's Impact Assessment

¹⁹ Please see table 13 of the CRA report on Ofcom's Impact Assessment

²⁰ Please see table 16 of the CRA report on Ofcom's Impact Assessment

²¹ See paragraph 14 of the CRA report on Ofcom's Impact Assessment

²² PwC's team consisted of five experts with a combined experience of designing contact centre operations and IT solution, business planning and telecoms of over 80 years (see Table 2-2).

PwC concludes that the GPL-TPV model will cost between £90,103,000 and £195,663,000 to set up and run for a 10 year period.

PwC's 10 year 'Base Scenario' of Net Present Costs (using a discount rate of 3.5%) for operating the GPL TPV is £139,29,000 which is much higher than CSMG's independent estimate NPC of £97,997,000. The key variances²³ are explained as follows:

- Industry costs (set up): CSMG's assessment of industry costs was based on 5 CPs responses. Even ignoring statistical variance, using 5 CPs to calculate industry costs (given the breadth of size/scale of players in the market) led to an unsatisfactory calculation. It is also unclear how CSMG accurately captured the impact of the costs of creating B2B interfaces.
- TPV services (including ServCo): The variance is explained in the underlying volume of switches and an adjustment is made over the top for cancellations. PwC use the figure for the number of cancellations derived from the current rate of cancellations under the NoT process which is more accurately likely to reflect the number of switches under the TPV. To maintain an acceptable quality of service PwC estimate call abandonment to be below 1%, a commonly accepted industry standard for sales contact centres and 90% of calls answered within 10 seconds. This compares to CSMG's estimate of 5% abandonment of calls and calls answered within 25 seconds.
- Hub services set up: The variance is explained primarily by the programme management requirements to set up and run such a project. PwC have based their estimate based on similar projects.
- Commissioning Board: This is a central body to commission and coordinate the programme across the industry. CSMG made no reference to a Commissioning Board which is an omission given the complexity of setting up the GPL TPV.
- Hub services ongoing: PwC has taken a more granular approach and assessed the usable life of IT assets based on industry expertise to factor in specific hardware and software support requirements.
- Industry costs ongoing: PwC has taken a more granular approach and factored in additional maintenance and support for B2B interfaces and additional headcount to support problems arising.

Given the significant variance in costs between PwC's and CSMG's cost estimates, Virgin Media considers that the CSMG report can not be relied upon to give an accurate estimate of the likely costs which will be incurred in relation to Ofcom's proposed GPL-TPV.

²³ Please see table 5-1 of the PwC Report

VIRGIN MEDIA RESPONSES TO OFCOM'S QUESTIONS

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.

Virgin Media, along with the majority of UK CPs, has invested heavily in software and switching processes to make switching as customer friendly as possible. We therefore support each of the process orders described in Figure 6 of the Consultation, including Linked Orders and Parallel Orders.

Ofcom suggests that there are many CPs who do not currently use the switching processes. Ofcom has not specified the extent of this problem or which size/type of CPs do not use the processes. It is therefore difficult for Virgin Media as a CP to explain why other CPs have not consumed these processes, however, it is likely to be smaller CPs who do not support these process due to cost. This would indicate that additional cost imposed on the industry through the GPL-TPV is likely to have a disproportionate impact on smaller CPs.

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.

Ofcom concludes that the status quo of the NoT, MAC and cease and re-provide processes for the switching of voice and broadband is not satisfactory, particularly in light of new technologies which will make understanding the switching processes more complex.

Virgin Media agrees that complexity has been introduced into the system through different technologies being used to switch fixed voice/broadband provider. However, Virgin Media does not consider this has made it difficult for GPs to advise customers on the switching process to follow. Rather, Virgin Media considers that many of the issues currently relating to switching are not the processes per se but rather that the incorrect process are being followed by front line staff.

GPs need to know which technology a customer is currently using to advise on the correct switching process. This information should be obtainable by having sufficiently skilled staff who can ask the correct questions. For example, if a service is not on Openreach, an inference can be made that the line is currently MPF or cable. A further question can easily establish whether the customer is in fact with cable (i.e. "is your service with Virgin Media").

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.

Virgin Media does not fully understand Ofcom's assertion that switching processes will become more difficult as a result of new technologies or new combinations of new technologies. FTTC will be built on current switching processes and has already been incorporated into existing processes. As set out in Virgin Media's response to

question 2, it will therefore be as easy/difficult to advise the customer on the correct switching process as is currently the case.

In relation to FTTP, Virgin Media does not think it would be any more difficult to advise a customer on the correct process to follow than in relation to switching from copper to Cable.

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

Ofcom asserts at paragraph 4.37 that *"Multiple switching processes can distort competition between providers. All else being equal, a firm which mainly gains customers through a GPL process can expect to have lower acquisition costs than one which mainly gains customers through an LPL process"*. Ofcom further states that *"firms whose customers switch away under a LPL process can expect a lower churn rate than those whose customers switch away under a GPL process when all else is equal"*.

Ofcom's concern regarding the lack of competitive neutrality from having multiple processes is primarily driven by its view that reactive save dampens competition. However, this is not the view of CRA or Virgin Media's experience of reactive save activities. Virgin Media refers Ofcom to CRA's Reactive Save Report at Attachment 1, where it analyses in significant detail the evidence and theories Ofcom relies on to support its view on reactive save.

By contrast, Virgin Media considers that a lack competitive neutrality could develop in the communications market if an overly expensive switching system is introduced which requires costly technology, software and process changes for CPs. Injecting cost into an already highly competitive market may result in less potential for new entrants to enter the market and will mean that small providers are significantly disadvantaged by not being able to compete and spread the cost of the new switching system amongst a larger customer base.

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

Ofcom sets out in the Consultation that the issue of multiple switching processes causes the following issues:

Lack of clarity and level of hassle faced by the customer

Virgin Media agrees that consumers can perceive a lack of clarity about the exact process to follow when switching broadband and telephony services. However, just because, as Ofcom's states that a *"significant minority of those consumers who had not changed providers expressed confusion about the switching process"*²⁴ does not mean that this actually prevented them from switching. As Ofcom notes in the footnote²⁵ of the Consultation, only a small proportion of those customers (i.e. 1% to 2%) mentioned lack of clarity about being concerned about what steps they would need to take as a reason not to switch.

²⁴ Paragraph 4.19 of the Consultation

²⁵ Footnote 63, paragraph 4.19

Furthermore, with reference to Ofcom's Broadband Customer Research 2011 that 8% of people who are considering switching broadband as a standalone service were "*worried about the process*"²⁶, without knowing which aspects of the process consumers were referring to, it is difficult to know whether the concern related to multiple switching processes or just generally a concern about how the process is going to work given people's reliance on their broadband and that switching broadband relies on a customer having to change internal end user equipment.

Finally, the Saville Rossiter-Base research indicates²⁷ that for inactive customers, the key reason for not switching was inertia rather than any lack of clarity over what steps to take.

The evidence therefore provided by Ofcom does not justify its conclusion at paragraph 4.23 that "*the evidence therefore suggests to some extent that the confusion generated by the use of multiple processes could lead to a lower proportion of customers actively thinking about moving*".

Increased costs to providers which may ultimately be borne by consumers

At paragraph 4.36 of the Consultation, Ofcom sets out that additional resource is spent by CPs due to multiple switching processes in relation to:

- providing MAC codes when not required;
- figuring out the correct switching process;
- trying to identify the customer CLI and address on Openreach;
- responding to additional consumer calls where a customer has been incorrectly advised by the GP or LP; and
- having to reverse a process which turns out to be incorrect.

Virgin Media agrees that costs are generated by the above, however, we consider that these costs are minimal compared to the costs of introducing a Hub and TPV GPL process.

For example, in March 2012, Virgin Media generated [X] MAC codes of which [X][X] were not used. This equates to an average cost per month of [X] which is de minimis compared to the costs envisaged to change Virgin Media's processes and systems to interface with the hub and TPV. Furthermore, it is unlikely that all these "wasted" MAC codes were generated because it was unclear what the switching process was to the agent. Most likely, the wasted MAC codes arose due to consumers changing their mind about leaving.

In relation to the other factors Ofcom lists as additional wasted resource, Virgin Media considers that there are no significant additional costs to a CP (other than correct staff training) involved in ascertaining the correct switching process and identifying the customer CLI and address on Openreach. Accordingly, having correct procedures in place will mitigate the risk of incorrectly advising the customer or having to reverse a process which turns out to be incorrect.

Lack of competitive neutrality

²⁶ See paragraph 4.20 of the Consultation

²⁷ See figures 24 (page 33)

As stated in response to question 4, Ofcom's assertion that there is a lack of competitive neutrality is based on its view of the anti competitive effects of reactive save. Virgin Media refers Ofcom to the CRA Reactive Save Report at Attachment 1.

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.

Virgin Media disagrees that the current switching processes will become more unreliable in regards to FTTC as the same switching models are being deployed for FTTC, i.e. NoT for the voice and MAC for broadband.

There is a potential that the situation will become more complex in the case of FTTP solutions where multiple CPs terminate on ports on the same fibre router (the FTTP router will have 6 voice and 6 broadband ports so that one household can have multiple providers coming in). Ensuring that any switch in this case is on the right port could be difficult, but without sufficient evidence that such issues will arise in the future it is difficult to conclude decisively regarding whether the current switching processes will become less reliable in future.

One of the main advantages specified by Ofcom of the Hub under the GPL processes is that it will remove the reliance on CLI. However, Virgin Media considers this is unlikely to be the case in relation to FTTP. The Hub will contain the name, address, current provider, account reference and CLI but if a customer has multiple lines coming into a house, the only way to identify the particular line without any termination or line access details is by the CLI. Therefore, the Hub will not remove reliance on CLI. If Ofcom wants to remove reliance on CLI from the process, then some form of terminating or line identifier needs to be introduced into the process.

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

Ofcom identifies at paragraph 4.44, three problems in relation to back end deficiencies which currently occur and are likely to occur in the future:

- Lack of reliability meaning that the wrong line can be switched;
- Loss of service particularly where consumers are switching broadband services;
- Lack of technological neutrality as it is more difficult to switch away from certain types of technology.

Virgin Media sets out its views on each of the issues below:

Lack of reliability

Reliance on CLI's under the current NoT process

Ofcom notes that "the MAC process currently appears to provide a reliable method of ensuring correct service and asset identification at present for broadband switches where both the GP and LP use IPstream or SMPF technologies"²⁸. The NoT process is identified as significantly less reliable. Virgin Media agrees with Ofcom's assessment that the MAC process is a reliable way to identify an asset. In relation to the current NoT process, there is a possibility that the GP may not be able to

²⁸ See paragraph 4.45 of the Consultation

correctly match the address in relation to MPF lines as the CLI will not be available on Openreach, however, as stated above with correct staff training to ask the correct questions, this potential issue can be largely overcome.

Reliance on CLIs in the future

In relation to technological developments, Ofcom identifies that both the MAC and the NoT processes are likely to become significantly less reliable in future. We agree that in relation to the NoT process, a customer may have multiple services coming through any line and that it would be difficult under the NoT process to identify a particular line to be switched. However, unless the proposed Hub also contains a line identifier this issue will remain. By contrast, an LPL process removes the reliance on CLI now and in the future, as the LP will have the data available to be able to correctly identify the line to be switched. There is no reason to suspect that a MAC or TxC LPL process will become any less reliable in the future.

Reliance on address

Ofcom notes that the Openreach systems may not have the up to date address for customers as PAF users are only able to update data on a six monthly basis. The difficulty of maintaining correct data is highlighted by Openreach's indication that inaccurate historic information is still a significant issue. Openreach have stated that it is near impossible to identify these lines on a proactive basis. Virgin Media agrees that this is an issue for accurate address identification.

However, this problem may still remain even under the Hub system. Searching by the address given by the customer may not always result in the correct identification of the line particularly in circumstances where the customer gives the postal address to the GP/TPV but the service address is logged on the Hub.

Erroneous Transfers

In relation to ETs arising out of the WLTO process, Virgin Media is unsure why Ofcom has included the issue of ETs due to homemoves in a switching consultation. Homemover issues relate to ensuring a smooth transition path from one home to another rather than the ease of switching from one provider to another. The issue of homemovers is therefore strictly beyond the scope of the consultation on switching.

In relation to erroneous transfers due to back-end deficiencies and CP errors unrelated to the WLTO process, it needs to be made clear in the Consultation that these type of ETs do not occur under the LPL processes because the LP can correctly identify the asset. As Ofcom acknowledges ETs are "*caused by an over-reliance on address-matching tools to identify the correct assets*"²⁹. The GPL processes (TxC and TPV) also rely on address matching tools and therefore will be of no assistance where the homemover moving in does not know the name, account number or CLI of the homemover moving out.

The only way to significantly reduce the risk of ETs is for the homemover moving in to obtain the necessary information to accurately identify the line and this will require significant cooperation from the homemover moving out. In this regard, it should be noted that Ofcom has assigned no benefit to the LPL options in relation to ETs in the impact assessment because of the cooperation required (i.e. the passing of a TxC from a homemover moving out to the homemover moving in) but then does not

²⁹ See A8.7 of the Consultation

assume that cooperation is also required under the GPL processes. Virgin Media considers this is an incorrect assumption and refers Ofcom to section 6.1 of CRA's Impact Assessment which sets out a thorough analysis of ETs.

Loss of service particularly where consumers are switching broadband services

Virgin Media notes Ofcom's comment that many providers do not support LOs/POs and that it has been their choice not to do so. Ofcom also notes that many providers have not updated their systems to be able to seamlessly switch a bundle of services. Virgin Media agrees that if providers have not implemented correct procedures, staff training etc, there is an increased likelihood of loss of service.

Virgin Media notes that Ofcom's proposed TPV-GPL solution will require providers to update their systems and processes and also provide accurate data to the Hub. Virgin Media suggests that those CPs which have not incorporated these switching enhancements to their systems as it is too difficult/complex/costly are the same CPs which are likely to struggle to upload and maintain accurate data. Unless Ofcom continually monitors data integrity on the Hub, Virgin Media considers it will quickly become inaccurate and undermine the very reason why Ofcom wants to transition to a harmonised switching process.

Lack of technological neutrality as it is more difficult to switch away from certain types of technology and as the central back end switching systems are currently limited to the Openreach managed copper network.

Virgin Media has set out its view in question 7 to this question.

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.

Virgin Media agrees with Ofcom that slamming is only an issue in relation to the GPL NoT process. However, the data does not allow Ofcom to draw any long term conclusions around the incidence of slamming given:

- the small sample sizes in the research;
- the difference in data between 2011 and 2010 which evidences respectively 2.5% and 1.84% of slamming occurrences;
- that consumers may confuse incidents of mis-selling with slamming.

Given the issues with calculating the level of slamming, it is inconclusive whether the level of slamming has significantly changed. If anything, Virgin Media considers it could have decreased. The May 2012 telephone and broadband market study found that out of 2000 respondents to the online survey only 12 (i.e 0.6%) reported being slammed in the previous 12 months.

Virgin Media would caution Ofcom against relying on data which is inconclusive at best and likely to indicate the reverse (i.e. that slamming is reducing) to justify a move away from the current processes.

Finally, Virgin Media notes that Ofcom states in the Consultation it cannot regulate the 252 providers *who "each generated 10 or fewer slamming complaints"*³⁰. Virgin

³⁰ Paragraph 4.112

Media questions how Ofcom will regulate those same CPs to provide accurate and timely data to the Hub.

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.

Virgin Media does not propose to respond to this question.

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.

Virgin Media considers that if the primary justification for changing the switching process (as is evidenced by the quantitative assessment) is to prevent slamming, Ofcom should give serious consideration to LPL processes which avoid slamming altogether compared to GPL processes. Moreover, because slamming under a LPL process is not possible, this will reduce Ofcom's enforcement costs and difficulties associated with its current enforcement activity around slamming.

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

Virgin Media agrees that there have been issues with the NoT process regarding insufficient customer consent. However, we dispute whether the research is reliable enough to conclude that Ofcom enforcement activity could not continue to drive numbers down³¹.

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.

The LPL processes offer the benefit that a consumer is able to switch more quickly than under the GPL process. Under a LPL process the switch can occur immediately or within a few days to a week. Under all the harmonised GPL processes, switches will not be able to complete until 10 working days have expired.

Furthermore, the LPL processes facilitate the provision of information about a consumer's contractual liabilities and general implications of switching at the start of the process which prevents wasted CP and consumer time and costs dealing with cancelled orders.

The significant financial and non-financial benefits to both consumers and CPs from receiving early information about the implications of switching under the LPL processes and therefore being able to more quickly switch have not been properly reflected in the Consultation³².

Consumer benefit of understanding the implications of switching earlier in the process

³¹ Please see response to question 8

³² For a full discussion of the costs due to lack of awareness of the implications of switching please see section 7.1 of the CRA Impact Assessment

LPL processes have the significant advantage that they inform consumers about loss of bundling discounts, features of the service, email address etc at the outset of the process. As evidenced by the Saville Rossiter-Base September 2010 research “one in five or fewer broadband switchers or considers used and wanted to continue to use an email address from their broadband provider³³” which would indicate that consumers highly value understanding the implications of switching at the outset of the process. Similarly, when consumers were asked in the May 2012 telephone and broadband market study whether they wanted to have all the information about the consequences of switching before they placed the order to switch or would prefer to switch and then be informed by their current provider about the consequences a few days later, but be given the opportunity to cancel the switch at no cost, 88% preferred to have all the information about the consequences of switching before they switched³⁴. This study also found that in response to a question regarding what length of time consumers thought would be reasonable to have to wait for their landline and broadband to be switched, in relation to both services over 80% of respondents answered “seven days” or fewer and over 90% answered “10 days” or fewer, with 92% of respondents to the survey reporting that the time to switch is important to them.

Ofcom needs to adequately reflect in its analysis the importance consumers place on the length of time it takes to switch and having all the information on the implications of switching at the outset of the process.

Reduction in costs of cancelled orders and finding out too late about the implications of switching

As Ofcom notes in its Broadband consumer research 2011, 42% of switchers who experienced an ETC said they found out about the charge after they had signed up/placed an order with a new provider. Furthermore, 21% of broadband switchers who paid an ETC were unaware of the charge before they had committed to switch³⁵.

Virgin Media disagrees that Ofcom has properly quantified the cost to consumers and CPs of not finding out about the implications of switching at just £0.4m³⁶. Consumer harm arises not only where the consumer is required to pay a charge they were not aware of (which Ofcom’s analysis is restricted to) but also the costs of cancelled orders to both CPs and consumers and the cost of loss of bundled discounts and non-financial harm such as loss of email accounts, special features where consumers have found out about the implications of switching too late in the process. In relation to Virgin Media, based on an analysis of the [X] orders cancelled in Q1 in 2012, we estimate that [X] of customers were in “contract” which would indicate that the cancellation arose as a result of finding out about the implications of switching after the switching process had commenced.

Virgin Media disagrees with Ofcom that all consumers require information to be disseminated by way of a paper letter unless otherwise agreed. Ofcom should benchmark what is current practice in other industries and what consumer preferences are in this regard. For example, when switching other products such as car/home insurance consumers only receive information about the implications of switching orally over the phone and do not expect this information to be provided in

³³ See page 3 of the Executive Summary

³⁴ See question 14

³⁵ Please see paragraph 4.156 of the Consultation

³⁶ Please see also section 7.1 of CRA’s Impact Assessment

writing. For some customers, information about ETCs can be most appropriately disseminated over the phone and, as proposed under the LPL –ALT process, all consumers should then have an option for this to be followed up in writing, either by way of letter or email.

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

Virgin Media notes that Ofcom considers that: (i) the MAC process is associated with higher switching costs than the NoT process; and (ii) there is an opportunity for the LP to frustrate the process through not providing a MAC or through the abuse of Cancel Other.

MAC process is associated with higher switching costs than the NoT process

Ofcom has not substantiated that unnecessary switching costs and hassle has led to less switching than is optimal and certainly on the level which would justify the level of intervention proposed by Ofcom. The need for regulatory intervention to change the switching process needs to be carefully balanced against customer research that no switching process is likely to be rated as difficult by consumers.

According to the 2010 Saville Rossiter-Base ("**SRB**") research "*no single switching process is likely to be rated as difficult by switchers*"³⁷. Moreover, the SRB report found that "*switchers who used the NoT or MAC/PAC process are more likely to switch in future compared to those using C&R. Intentions among those switching using MAC and those switching using PAC do not differ significantly*"³⁸. It is therefore just a matter of which process, as compared to another, is likely to be rated easier/more complex. However, this does not mean objectively there is considerable cost/hassle in switching.

LP frustrating the process

In relation to the LP frustrating the MAC process, Ofcom notes that it deals with about 30 customer complaints per month but "*representations from the industry*" suggests that the issue of Cancel Other is more of an issue than consumer complaints data would indicate³⁹. Virgin Media suggests that Ofcom provide the evidence it has gathered in this regard. Virgin Media notes that LPs may use Cancel Other for a variety of reasons (including to prevent slamming) and not just to frustrate a switching process and therefore careful analysis needs to be undertaken before any conclusions can be drawn in this regard.

Finally, Ofcom has also not assumed there is any hassle in relation to GPL-TPV options. We consider there is hassle and cost associated with this process, including having to speak to both the GP and the TPV (i.e. two separate processes) and then still not being advised until 10 days later of the implications of switching. As part of the May 2012 telephone and broadband market study, respondents were asked how strongly they agreed with the statement "*[y]ou would be happy to be put through to a third party to confirm what you've agreed with your new provider, in order to ensure you cannot be switched without your consent*" (using a scale of 1 to 10 where 1 was disagree strongly disagree and 10 was strongly agree). Views were quite varied with 26% tending to disagree (scoring 1-4) and 42% tending to agree (scoring 7-10). By

³⁷ See page 1 of the SRB executive summary

³⁸ See page 3 of the SRB executive summary

³⁹ See paragraph 4.172 of the Consultation

contrast, when asked how strongly they agree with the following statement “*You would be happy to contact your current provider to get a transfer code as confirmation you want to leave, in order to ensure you cannot be switched without your consent*”, there was a higher level of agreement amongst respondents – just 11% tending to disagree (scoring 1-4) and 63% tending to agree (scoring 7-10).

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.

Virgin Media does not propose to respond to this question.

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?

Virgin Media refutes that a ban on reactive save maximises consumer benefits. We refer Ofcom to CRA’s Reactive Save Report at Attachment 1.

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.

Virgin Media does not propose to respond to this question.

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.

Virgin Media does not propose to respond to this question.

Question 18: Do you think that the introduction 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.

Virgin Media strongly considers that information about the implications of switching is best discussed by the customer over the phone so they fully understand the implications of their choice. Having information about ETCs or MCPs on a bill may inadvertently give a consumer a false impression that ETCs/MCPs are the only issues they will have to consider. There are other switching issues which a consumer may have to consider such as a loss of bundling discount/email account etc.

From a logistical standpoint, having such information on bills will add further complexity and software enhancements for CPs to ensure that on a monthly basis the correct data is provided.

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).

Virgin Media had [3<] Cancelled Other requests for April 2012. It is entirely disproportionate to have to introduce call recording for such a tiny number of cancelled orders.

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.

Virgin Media refers Ofcom to CRA's Reactive Save Report where it disputes that reactive save is anticompetitive and causes consumer harm.

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.

Virgin Media refers Ofcom to Table 8⁴⁰ of the PwC Report which sets out the required GPL TPV model service components. As Ofcom will note, the setting up of the GPL-TPV is complex, requiring significant organisational, outsourcing and technological expertise with each component of the model requiring investment, testing and trialling and CP cooperation. Ofcom has not factored into its calculations the considerable complexity likely to be created from setting up such a system, many of which are likely to years to iron out.

We consider that the following issues are likely to cause significant practical and operational issues:

Commissioning Board

The Commissioning Board is an industry controlled and funded body, responsible for the setting up the GPL TPV model and providing oversight on an on-going basis. In relation to the Commissioning Board, at a high level, we foresee that the following issues are likely to arise:

- How will industry agree on the level/split of funding to be provided to the Commissioning Board;
- How will Ofcom ensure that all CPs contribute to the funding of the Commissioning Board;
- How will the Commissioning Board agree (presumably on the basis it has to act in the best interests of all CPs) the standard interface, software etc for an industry-wide database.

The ServCo

To operate effectively, ServCo will require a small management team to manage the day-to-day running of the business, be accountable for delivering services at the required service levels and, when required, make decisions on organisational changes and investments to reflect the changing needs of the GPL TPV model. In relation to ServCo, we foresee that the following issues are likely to arise:

- We refer Ofcom to figure 3-9 and Table 9 of the PwC report setting out the ServCo organisation for delivery of Hub and TPV services and TPV provider

⁴⁰ Page 22

roles and responsibilities. PwC have identified that 14 key positions will be required in addition to 2 support roles. The scale of resource required to set up the TPV is similar to that of a small company. It will take time to recruit and agree on the responsibilities and remuneration for these experts.

The Hub Services

- All CPs will need to adjust their systems to be able to send information to the Hub in the same format and for their systems to be able to “speak” to the Hub. Virgin Media questions how CPs will agree these granular operational details including which date the “switchover” from the current processes to the hub will go live etc;
- How will Ofcom enforce accuracy of data? Ofcom needs to ensure that not only is accurate data provided at the outset to the Hub but also on an ongoing basis. Virgin Media notes, in relation to G.C 4.2 (the requirement to provide accurate CLI to the emergency services), there have been continual issues with the accuracy of data (and this just requires a transfer of data from a CP to a call handling agent) which has meant that Ofcom is committed to conducting a lengthy and ongoing enforcement programme.

The TPV services

Virgin Media notes that Ofcom’s proposed TPV specification means that the GP will not stay on the call where the customer is transferred to the TPV. However, this is likely to cause a number of issues:

- What happens if the customer has a query which the TPV agent is not able to answer;
- Will the TPV agent be able to transfer the call back to the CP;
- Will the customer be able to speak to the same agent;
- What happens if the customer cannot pass the TPV process, will the TPV refer the customer back to the GP;
- How will the TPV integrate with off-shore CP centres;
- What if the hub is not available to probe or a CP is unable to pass the customer to the TPV for any reason?
- How will each individual CP engage with the TPV to ensure quality of service? What contractual relationship will each CP have with the TPV if they are not happy with the level of service provided?
- How will the TPV be able to proactively react to levels of demand given that it is unlikely that CPs will be able to give advance warning of any increase in calls?

Changes to industry processes and interfaces

Virgin Media refers Ofcom to Attachment 6 which diagrammatically explains:

1. Virgin Media’s current process flow for switching under both the NoT and MAC processes
2. The new investment (both IT and non IT related) and processes Virgin Media would have to adopt in relation to the GPL-TPV, where Virgin Media is the GP
3. The new investment (both IT and non IT related) and processes Virgin Media would have to adopt in relation to the GPL-TPV, where Virgin Media is the LP

4. The new investment (both IT and non IT related) and processes Virgin Media would have to adopt in relation to the LPL processes, where Virgin Media is the GP
5. The new investment (both IT and non IT related) and processes Virgin Media would have to adopt in relation to the LPL processes, where Virgin Media is the LP

As Ofcom will note the cost of implementing process/IT changes required to set up the GPL-TPV total [X] compared to a cost of [X] to introduce any of the harmonised LPL options⁴¹.

[X].

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.

As set out in response to question 21, considerable practical issues arise from not having the GP remain on the TPV call. However, having the GP on the call adds considerable cost, as set out in the CSMG report. The net present cost of the TPV and the GP staying on the call was £12.8m compared to £9.8m annuitised if the GP did not stay on the call (i.e. a reduction of £3m a year)⁴². If Ofcom included the cost of the GP staying on the call this would further reduce the benefit of the GPL-TPV under the impact assessment to nearly zero under Ofcom's low case scenario. Virgin Media considers that it is impractical and a bad customer experience not to have the GP remaining on the call, however, the impact assessment does not justify the alternative.

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.

Virgin Media does not propose to comment on specific data protection issues as Ofcom must take its own legal advice, however such a process is likely to be unpopular with consumers. The May 2012 telephone and broadband market study found that 57% of people said they would not be happy for their details to be stored on a central database⁴³. Furthermore, a number of freehand comments indicated customer's concerns about their personal data being handed over to a third party:

"I don't like the idea of a third party having access to my information. I think the transfer code process gives the customer much more control."

"Don't know who the third party would be and do not want more of my information stored somewhere."

⁴¹ The costs include system automated exception case handling in all new communication areas, but not operational costs.

⁴² Please see Figure 2 of the CSMG report on Switching Options: An Assessment of Potential Costs

⁴³ Question 33

"I do not like the idea of a third party having some of my personal details and the Transfer Code process seems a lot safer, is quicker and requires less effort⁴⁴."

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.

Virgin Media refers Ofcom to its response to question 23.

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.

Virgin Media refers Ofcom to its response to question 21.

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.

Ofcom has mischaracterised the need for a "Transfer Code Issuing Authority". The Issuing Authority is simply a piece of software which issues TxC at the time the customer requests a switch. This code is only valid for the time of the switch and therefore, unlike the GPL options, does not require a database of every retail broadband and telephony service on Openreach to be maintained at all times in the event there is a switch. It is therefore far more efficient.

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.

Virgin Media does not consider that any of the GPL options can be simplified and cost stripped out to render the NPV cost benefit analysis sufficiently positive to provide a justification for Ofcom to move away from the current switching 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.

Virgin Media estimates that the harmonised LPL processes could be in operation 18 months from the final Ofcom decision. By contrast, Virgin Media estimates that the Hub is likely to take considerably longer. In fact, in relation to number portability a similar database was proposed which envisaged the industry taking approximately five years to have the database fully populated and operational.

⁴⁴ After having both processes described, those who indicated a preference were asked to give reasons for their choice and were asked to enter everything they liked about that process and why they chose it over the alternative. The comments cited above - regarding concerns about a third party having access to information - were all left by respondents choosing the Transfer Code Process

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.

If the LPL-ALT TxC becomes the designated switching process, we believe that incorporating the WLTO process into the wider switching process would bring about some benefit. Virgin Media refers to Attachment 4 where we set out Virgin Media's, BT's and Sky's view on the WLTO processes and the proposed switching options.

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

Virgin Media agrees that all the proposed GPL and LPL options deal with the issue of multiple switching processes. However, with reference to our response to questions 2 and 3 where we set out our view that the issue of multiple switching processes may be due in large part to CPs following incorrect procedures as opposed to errors created by having multiple switching processes.

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.

Virgin Media disagrees with Ofcom's assertion that Options 2b and 2d deal effectively with homemovers and that the LPL processes do not. We refer Ofcom to section 6.1 of the CRA Report and Attachment 4 where we set out Virgin Media's, BT's and Sky's view on the WLTO processes and the proposed switching options.

Ofcom identifies that the centralised databases created in the GPL processes could deal with erroneous transfers ("**ETs**") arising from homemoves. Ofcom asserts that the GPL- TxC and TPV processes would eliminate ETs by 80% but ascribes zero benefit to the LPL processes. This is unlikely to be correct given that ETs can still occur under a GPL TPV process and that some benefit should be ascribed under the LPL process where the customer is willing to hand over the TxC or where the TxC is passed on through CP cooperation.

In relation to ETs unrelated to WLTOs, the harmonised LPL processes would entirely address these issues and therefore some benefit should be ascribed to it.

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?

Virgin Media disagrees with Ofcom's assertion that Options 2b and 2d deal effectively with homemovers and that the LPL processes do not. We refer Ofcom to section 6.1 of the CRA Report and Attachment 4 where we set out Virgin Media's, BT's and Sky's view on the WLTO processes and the proposed switching options.

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

Virgin Media agrees that a harmonised switching system would address instances where some customers are incorrectly advised by the GP of how to switch. However, Virgin Media does not consider that this on its own justifies a move from the current switching processes under the impact assessment.

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

Virgin Media disagrees that the TPV process would necessarily resolve the issues of slamming. Although the TPV would provide assurance that the person on the line actually understands the implications of switching, it cannot authenticate the end user (i.e. the person is who they say they are) without further adding complexity to the database by requiring the customer to provide a password to the TPV agent.

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

Virgin Media disagrees that the GPL processes satisfactorily deal with the issues relating to the implications of switching⁴⁵.

Question 36: Do you agree with our assessment of the options regarding unnecessary switching costs/hassle? If not, please explain why you disagree.

As set out in CRA's Impact Assessment⁴⁶, there are a number of factors which would indicate greater switching costs and hassle under the GPL-TPV processes associated with:

- The customer still calling the LP in the vast majority of cases;
- The time customers will have to spend reviewing written communications from the LP regarding the implications of switching;
- Harms associated with more cancelled orders as consumers unwillingly lose bundle discounts and access to emails; and
- Failed TPV calls.

Virgin Media considers that although there may be some hassle associated with different switching processes, this has not led to consumer harm. In the May 2012 telephone and broadband market study, of those who had switched landline provider, 76% of respondents (i.e. the majority) rated the process as 7+ (on a scale of 1 to 10 where 1 was poor and 10 was excellent). The majority were therefore broadly satisfied with the process. There was a similar statistic of 72% satisfaction rating (rating 7+ on a scale of 1 to 10) for broadband⁴⁷.

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

Virgin Media refers Ofcom to the CRA Reactive Save Report.

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.

Virgin Media disagrees that the current/enhanced MAC and NoT processes should be automatically disregarded because they do not deal with, in Ofcom's view, the current and future switching problems, without reference to whether the impact

⁴⁵ See Virgin Media's response to question 12 above

⁴⁶ See section 6.4 of the CRA Impact Assessment

⁴⁷ See question 9a and 9b

assessment justifies such an approach and the relative impact of the harms identified by Ofcom.

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.

Ofcom states that each sale is likely to incur an extra £2.70 of TPV fee but notes that this cost is "small" in relation to potential average customer revenues of £251 per year in 2010⁴⁸. This is a meaningless calculation as what is relevant is the amount of margin per customer not the revenue. Moreover, Ofcom must also factor in the costs to providers of amending their current processes and investing in new software to interact with the Hub. Such a cost is likely to disproportionately affect smaller providers. This is aside from any contribution a CP will need to make to the set up and maintenance of the Hub and TPV system. Ofcom's analysis needs to be broadened to fully take account of the cost implications of the GPL-TPV to both smaller and larger CPs.

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?

Virgin Media considers that it is entirely disproportionate to impose a GPL-TPV solution which is likely to cost the industry between £90,103,000 and £195,663,000⁴⁹ to set up and run for a 10 year period to resolve a tiny percentage of customers who get slammed (i.e. at most 2.5% of customers). The GPL TxC does not offer superior protection against slamming compared to all the LPL options given that the Hub will not authenticate the end user unless it contains a password/specific account details, which will further add to the complexity of the GPL-TPV 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.

Virgin Media considers all the harmonised GPL options to be inferior to either the existing switching processes or the harmonised LPL processes. In relation to the USN option, Virgin Media refers Ofcom to CRA's scenario and sensitivity analysis in its Impact Assessment which indicates that the benefits in relation to the USN model is negative or near zero.

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.

Virgin Media notes at figure 40 of the Consultation that Ofcom explains that the TPV only needs to generate a relatively small benefit through improved competitiveness relative to the LPL TxC options. The hypothesis is that if the TPV delivered a one off price reduction of £1 (due to no reactive save) then the annuitised NPV would be larger than that for the LPL TxC. Leaving aside the issues relating to Ofcom's impact assessment and the various omissions and errors, Virgin Media cannot understand how Ofcom has come up with its analysis that banning of reactive save would bring about a decrease in consumer bills of £1. CRA's modelling indicates the converse,

⁴⁸ See paragraph 7.143 of the Consultation

⁴⁹ According to PwC's Report

i.e. that the average price paid by consumers may be lower when reactive save offers are permitted⁵⁰.

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.

Ofcom states that: *"Taking into account estimated costs to providers of implementing each option, we currently believe that the Third Party Verification option delivers the highest net benefit to consumers (considering both our quantitative and qualitative assessment of the costs and benefits of the options)" ... "Therefore, our preliminary view, subject to consultation, is that the Third Party Verification option is the most proportionate way of dealing with the problems identified"*⁵¹.

Under the Communications Act 2003, Ofcom is required only to impose conditions or modifications to the general conditions which are proportionate and in accordance with Ofcom's regulatory principles⁵² such that Ofcom will *"operate with a bias against intervention"*, ensure that its *"interventions will be evidence-based, proportionate, consistent, accountable and transparent in both deliberation and outcome"* and *"will always seek the least intrusive regulatory mechanisms to achieve its policy objectives"*.

The Revised ERG Common Position on the approach to appropriate remedies in the ECNS regulatory framework states that *"[i]n considering the imposition of several remedies the NRA will also have to consider the potential interaction of the series of remedies to ensure that there are no unintended consequences that would frustrate the regulatory goals or lead to a disproportionate burden being placed on the market players"*

Ofcom has not satisfied these basic principles of regulatory intervention such that:

- the impact assessment understates the benefits of the harmonised LPL processes and overstates the benefits of the harmonised GPL processes such that the justification for intervention is not evidence based and unbiased;
- hypothesised competition concerns regarding reactive save are not grounded in market reality and instead, according to economic experts, based on intuition;
- a lack of consideration has been given to *"unintended consequences that would frustrate regulatory goals"* or how CPs would react if reactive save were banned and whether this would benefit consumers;
- inadequate consideration has been given regarding the significant cost implications the GPL-TPV will have on smaller providers, whether this is proportionate and whether a less intrusive form of regulation could equally achieve Ofcom's policy aims.

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

In relation to Ofcom's enforcement activity, Ofcom asserts that its monitoring costs for the LPL options could be significant (due to its erroneous assumption to monitor reactive save), whereas it has not commented on the level of monitoring required for the GPL processes. However, given that the harmonised GPL options require data to

⁵⁰ See the Annex to CRA's Reactive Save Report.

⁵¹ Please see paragraph 1.37 of the Consultation

⁵² <http://www.ofcom.org.uk/about/what-is-ofcom/statutory-duties-and-regulatory-principles/>

be uploaded to the Hub and constantly updated, it is likely that Ofcom will have to undertake considerable monitoring and enforcement activity. Ofcom needs to reflect the likelihood of such enforcement activity (and associated costs) in its analysis of the harmonised GPL options.

ATTACHMENTS

Attachment 1

Charles Rivers Associates' report on Ofcom's assessment of the use of reactive save activity by suppliers of fixed voice and broadband Services: An Economic Analysis (the "**CRA Reactive Save Report**");

Attachment 2

Charles Rivers Associates' report on Ofcom's Impact Assessment of Changes to Switching Options for Fixed Voice/Broadband Lines (the "**CRA Impact Assessment**");

Attachment 3

PwC's independent cost assessment of the alternative GPL TPV model (the "**PwC Report**");

Attachment 4

Virgin Media's, BT and Sky's view on WLTO and the various switching processes;

Attachment 5

Relevant documents related to the Ipsos MORI market study ("**the May 2012 telephone and broadband market study**");

Attachment 6

[X]

