



# Response to Ofcom Quick, easy and reliable switching Consultation

April 2021



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## Response summary

Hyperoptic welcome the opportunity to respond to the Ofcom consultation on Quick, easy and reliable switching. Hyperoptic have long championed the need to extend current industry switching processes beyond Openreach's and Kcom's networks, as well as to update it to reflect changes in consumer behaviour and technology. We are strongly in favour of the preferred Ofcom approach, namely One Touch Switch, as we not only believe that this approach is the most pro-consumer approach to switching, but that it is also the only option that complies with the obligations of the European Electronic Communications Code.

Given that this Consultation does not close until the end of March, with an Ofcom Statement not likely before Q2 2021, the proposed implementation date of December 2022 looks exceedingly ambitious at best.

Even though the current status quo has a dampening effect on customer acquisition for providers outside of the OR/Kcom networks, making Hyperoptic a beneficiary of any process improvement, we are concerned of the consequences if a more realistic implementation timeframe is not set by Ofcom. We believe this will lead to either a suboptimal solution deployed to meet the deadline or that the entirety of the fixed-line and broadband Industry will be unable to comply with the amended GCs. The former option would be an extremely poor outcome for consumers, as they would not receive the full benefits of a fully functional switching process, but there will be no Industry drive to improve things, as the box for complying will have been ticked, and incumbent providers may be reluctant to make it simpler for customer to churn away.

## Introduction

As an alternative infrastructure provider, Hyperoptic have long been aware of the additional barrier faced by customers wishing to switch their telecommunication services to a service on alternative infrastructure, when compared to the process faced by customers wishing to switch between services on ORs / Kcom networks. To redress this imbalance, we have supported previous attempts to create a truly



cross-platform switching process and we wholeheartedly endorse the ambition to make cross-platform switching simple for consumers to engage in, whilst also improving the current Openreach mandated switching process.

More recently, we were active participants in the OTA-led discussions seeking to agree a switching model to recommend to Ofcom. As set out in the Consultation it is unfortunate that Industry was unable to reach a consensus, but we nonetheless believe that the process resulted in two well thought through models being submitted to Ofcom for consideration. We are pleased that this process has now culminated in Ofcom setting out its preferred switching option clearly and unequivocally, including the reasons why One Touch Switching was chosen and Code to Switch was rejected. This is a key step towards implementation of a switching process that meets the requirements under the EECC as well as Ofcom's policy objectives.

We concur with Ofcom's assessment that One Touch Switch fully meets Ofcom's interpretation of the EECC obligations, and will make switching easier, more reliable and quicker for consumers, whilst also helping vulnerable consumers and protecting them from harm.

We set out the reasons why we agree with the proposal to require providers to develop and implement the One Touch Switch process as well as our related concerns as to the feasibility of the current implementation timeline in the remainder of this response.

## The options

The assessment framework that Ofcom used to evaluate the two options examined their ease of use, quickness, reliability and that should be based on informed consent.

We agree with Ofcom that One Touch Switching is a simpler model for consumers to understand, both in respect of voice and broadband as well as for customers with bundles. It is only natural for a customer looking to switch a service that they would contact a provider that they wished to switch services to. From that point onward, they are guided by the gaining provider, who will arrange everything on their behalf. Not only is this the case, but mobile switching aside, this switching model is also broadly consistent with most other switching processes that customers go through, e.g., utilities and banking. The complexity of potentially having to obtain two codes (for dual play customers) and more for triple play customers demonstrates clearly that Code to Switch is not as simple to understand and follow as is the case with One



Touch Switch. Given the fact that according to Ofcom data from The Communications Market 2020 shows that more than 85% of customers consume differing combinations of services, the additional complexity of Code to Switch will impact on a material % of the UK population.

When examining whether the switching process is led by the gaining provider and enhances customer control, Ofcom consider that both options “should be able to address a number of the components needed to ensure a process is led by the gaining provider”. We disagree that both options equate to a gaining provider led process. Whilst it is true that both options would remove the need for the consumer to coordinate the switch between the two providers (including the need to contact their losing provider to terminate the contract), allow the consumer to choose communication method and control the timing of the switch, this does not equate to gaining provider led switching. The obligation is introduced in Recital 281 to the European Electronic Communications Code as “In order to facilitate a one-stop-shop enabling a seamless switching experience for end- users, the switching process should be led by the receiving provider of electronic communications to the public”. A plain reading of the recital suggests that the purpose of Article 106 is to facilitate a one-stop-shop, meaning a place where a customer can have all their needs met – in this case their switching needs. Ofcom have made clear that the current Auto Switch process for mobile meets these requirements, we note that there are substantial differences between the Auto Switch and Code to Switch processes mean that the same cannot be said of Code to Switch. This is particularly the case given that by default there is a cohort of customers who have a voice only service (10% of UK households), have difficulties using online services or prefer to engage with providers by phone. Vulnerable customers are also likely to be disproportionately represented within this group of customers.

As a result of the above, not only do we agree with Ofcom’s conclusion that Code to Switch would not meet the policy objective of ensuring that customers can switch their fixed voice and broadband services using an effective and efficient process that complies with the new switching rules, but we also believe that it does not meet the obligation imposed under Article 106 of a one-stop-shop led by the receiving provider.

Ofcom go on to reference stats from research and previous work on switching that demonstrate the difficulties associated with a switching process that requires a customer to contact the losing provider.



The difficulties that Ofcom cite relate predominantly to issues with having to contact one or more losing provider and unwanted save activity<sup>1</sup>. The fact that the data and research relate to a period across several years only serves to emphasise the validity of the conclusions drawn by Ofcom. Rather than comment on the data and research cited in the Consultation (with which agree) we would point to a further research recently<sup>2</sup> carried out by USwitch which shows that 19.5% of households have not switched broadband providers because they cannot be 'bothered with the hassle of switching' or are worried that the switching process will leave them without service when switching, 22% have never changed provider. Due to the prevalence of switching between providers on the OR network, it is likely that a higher % would be dissuaded from a complicated process that required them to be in contact with multiple service providers.

We do not believe that the inclusion of a requirement for an IVR platform to facilitate customers receipt of the switch under Code to Switch materially reduces the difficulties associated with having to contact a losing provider. Use of IVRs was mooted in the 2010 Strategic review of consumer switching to split out provision of a switching code from any save activity. The reasons for rejecting this approach apply equally to the use of an IVR as part of Code to Switch. As Ofcom set out in paras 5.57-5.58 of the current consultation, one of the main differences between Code to Switch and Auto-Switch is the lack of an equivalent to request and receive the switching code via text. Not only is this a minimal touchpoint for the customer under Auto-Switch, but the process incorporates customer authentication, service identification and consent in a system that is universally accessible for mobile customers, easy to use and which limits the interaction with the losing provider. Use of an IVR in no way replicates this ease of use. No detail has been provided to-date on how the IVR will authenticate customers and easily allow them to select the relevant service or obtain all the relevant information required to permit informed consent. The use of an IVR also does nothing to reduce the friction Code to Switch builds into the switching journey as it would still require a customer to interrupt signing up to a new service, initiate a call to their current provider, locate whatever information is required to provide customer authentication, go through all the steps to obtain the code, write it down and then finally use it to confirm their consent to switch. As above,

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<sup>1</sup> We have no issue per se with save activity as it can serve to ensure that customers decisions are fully informed. The concern is where the save activity is unwanted and forced upon the customer by the switching process itself rather than customer initiated.

<sup>2</sup> Study carried out for USwitch by Opinium in Devcember 2020



this is magnified in complex switching scenarios. The ability for providers to authenticate customers – particularly in a way that is effective for customers with no alternative method of switching - in order to permit consent to switching will require development that has not been factored into the estimated costs of Code to Switch.

It appears that the IVR element has been suggested as a way to mitigate against the fact that the original Code to Switch process inherently requires some customers to speak to a CP agent. However, research from both the UK<sup>3</sup> and USA<sup>4</sup> shows that customers perception of IVR is poor. In a 2019 study by Vonage, 54% of UK customers felt that use of an IVR “poisons the customer experience”, whilst only 15% felt it provided a positive experience. Reasons listed by customers for the poor perception of IVRs include: - 45% felt they were forced to listen to irrelevant options; 37% the menus are too long and 35% it wastes my time. It is also likely that landline only customers as well as vulnerable customers will be disproportionately impacted by these issues, with the result that the inclusion of an IVR option will do little to improve their switching journey under Code to Switch.

Ofcom note at para 5.54 that “in our view the losing provider might not have a clear incentive to effectively design their systems and processes to achieve this, given the interaction would lead to them losing a customer. There would remain an incentive for the losing provider to try to retain the customer when they contact them to request a code and a risk that they may seek to frustrate the switching process in other ways. Therefore, Code to Switch is likely to rely on compliance with rules supported by enforcement action to work effectively.” This reasoning is applicable to an IVR as well. The route through various menus could be designed to add friction to the customer journey and force customers to listen to irrelevant information or retention activity in the form of ‘latest offers’ etc. It would require strict rules on how the IVR can be implemented, including the number of menus and steps to reach the code as well as policing to ensure compliance with such a key element of the switching process.

One Touch Switch removes the concerns relating to contacting the losing provider as at no point in the proposed switching process is the customer required to contact their losing provider in any way, whether

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<sup>3</sup> <https://www.businesswire.com/news/home/20190926005037/en/Vonage-Research-Reveals-IVR-Horror-Costs-Businesses-%C2%A3130-Per-Customer-Each-Year>

<sup>4</sup> <https://www.prnewswire.com/news-releases/vonage-research-reveals-ivr-horror-costs-businesses-262-per-customer-each-year-300925404.html>



via phone call, or having to remember account details when logging into their customer portal. Customers can of course contact their losing provider should they wish to discuss their options with them. They may be prompted to do so upon receipt of either end of contract notifications or the mandated losing provider switching information, the difference being that the choice remains with the customer to initiate contact should they wish to do so. One Touch Switching also has less touchpoints for the consumer with service providers, so even in a very simple scenario of a customer wishing to switch their sole service to a new provider, One Touch Switching requires less effort by the customer, further removing deterrents to switching. This difference is magnified when customers are switching a more complex bundle of services.

We are in agreement with Ofcom that there is little to choose between One Touch Switching and Code to Switch in relation to how quickly a customer will be able to switch or the reliability of the respective models. Speed of switching is more likely to be determined by the availability of network and engineering resource in the event that a visit is required. Reliability in respect of the switch happening when the customer is told it will happen, minimising loss of service and / or errors are not factors that are impacted by the method that the consumer uses to initiate a switch. However, an additional benefit of One Touch Switch is that initiating a switch involves only one provider, the customer will be in no doubt as to who they should contact during the switch if they wish to discuss any element of it.

The last element of the assessment framework that Ofcom used is whether the switch can be based on informed consent, which Ofcom explain to include that a switch only occurs where a customer has expressly agreed to it and that information is provided enabling customers to make an informed choice. Ofcom set out their view that both options would enable gaining providers to ensure a customer has expressly agreed to a switch, but also mention that Code to Switch may have stronger protections against certain types of slamming than One Touch Switch. It is true that where the customer has obtained a code it is a strong indication that they have communicated with their current provider and, having been provided with the switching information, wish to switch their service away. However, the use of the code has no bearing on the nature of the discussion between the customer and the gaining provider, or on



what the customer agreed to purchase. This being the case, there is still ample scope under Code to Switch for various subcategories of slamming to occur. Experience of fraud<sup>5</sup>

in the UK premium rate market also suggests that, given the prevalence of service provider apps, it is not inconceivable for a bad industry actor to generate switch codes and use these to initiate non-contact switches.

Ofcom also set out their view that both options would provide information in a way that would enable customers to make informed switching choices because under both options customers would be given switching information from both providers prior to agreeing to the switch. We agree with this assessment, but also believe that there is an additional benefit to One Touch Switch over Code to Switch.

Ofcom have Under the current GCs, customers should have been provided with the relevant switching information by their current provider at a number of points. Firstly, when agreeing their initial contract with them (and confirmed any time the contract was amended with new services and / or minimum commitment periods). They should receive the same information subsequently, upon receipt of the end of contract notification or equivalent for those outside of a minimum commitment period. The code is valid for 30 days, it could have been obtained over four weeks prior to a customer initiating their switch with the gaining provider, there is no guarantee that the switching information will be any fresher in their mind than is the case for the information previously received. This suggests that the Code to Switch may not add very much in respect of ensuring customers are fully informed by their losing operator than would be the case upon receipt of the end of contract notification. By contrast, under One Touch Switch, customers will receive the switch information from both providers together, this allows them to consider and compare both sets of information, resulting in a more fully informed customer providing properly informed consent.

For the reasons set out above, we agree with the Ofcom proposal to require providers to develop the One Touch Switch process.

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<sup>5</sup> Where malware was used to generate fraudulent premium rate revenue from mobile phones without the phone owner being aware



## Implementation

We have strong reservations about the feasibility of being able to deliver such a monumental industry wide development in the implementation period to December 2022. Ofcom note that providers will need to update or adopt new systems and processes irrespective of the switching process option that is put in place. Given the nature of the required changes together with the fact that unlike recent mobile switching changes, neither a hub nor governance arrangements are in place, December 2022 would be an extremely ambitious and challenging target even had Ofcom already published their statement. Ofcom believe that it would be helpful for industry to begin preparatory work for implementation prior to the publication of our policy statement.

We agree with Ofcom that it would be helpful were industry able to begin preparatory work prior to the publication of an Ofcom statement, however, in the absence of a firm policy statement, the scope of what providers are able to do (both collectively and individually) is limited. For companies it is not possible to obtain budget sign off and allocate required development resource until there is a policy statement from Ofcom. Ofcom permitted an amendment to the Code to Switch proposal requiring an extension to the response deadline, rather than requiring the proposal to be submitted as part of individual responses. We believe that this approach would bolster Ofcom's position in the event of a legal challenge by proponents of Code to Switch on procedural grounds. However, the submission of an amendment at such a late stage in the process highlights the current uncertainty faced by industry and underscores the limits of what work can be realistically undertaken absent a final legally binding position. As set out in the consultation, Ofcom already engaged in discussions with both industry groups to seek improvements to proposals. The fact that this proposal has been submitted so late, suggests that supporters of Code to Switch will do everything they can to push for their model, further delaying a final position. Much has been discussed collectively and bilaterally with Ofcom about what steps industry can take to resolve things like hub ownership and governance. However, until there is certainty about the switching process it is hard to even begin to work through these issues in depth, as there are key differences between the models and the interaction with a hub. E.g., will only infrastructure providers (a relatively small group more akin to the mobile arrangements) interface with a hub or will all retail providers (a much larger number of providers) be required to have a hub interface? The governance arrangements will be different by default because



of the structural differences between the two models. As far as we understand it, a hub will effectively replace ORs Equivalence Management Platform in serving as the messaging interface between providers when fulfilling their GC obligations in respect of switching. It is not clear whether by ownership of the hub, Ofcom also mean control of switching arrangements. Our overriding concern is that whichever governance structure is implemented, it cannot permit a small number of providers to control what is effectively an industry wide process.

With regard to the December 2022 implementation deadline, we note that in the October 2020 Statement on Fair treatment and easier switching for broadband and mobile customers, Ofcom stated that they will give providers 24 months from the final notification to implement the new requirements on switching. Since Ofcom intend to publish a policy decision in Q2 2021 and consult further on GCs requiring providers to implement Ofcom's preferred process with a statement on any necessary GC changes to be published in Q3 2021, we suggest that the 24-month implementation timeframe cannot begin until the final policy statement has been published at the very earliest.

## Conclusion

Hyperoptic are firmly behind Ofcom's choice of One Touch Switch as the preferred option for the new industry switching process. We believe that the difficulties presenting if switching via Code to Switch can constrain customer choice and create barriers that may prevent customers switching altogether. This can be harmful both to individual customers and equally as important to competition in general. Ofcom's principal duty is to further the interests of citizens in relation to communications matters and to further the interests of consumers in relevant markets, where appropriate by promoting competition. To meet this objective, Ofcom should choose a switching model that facilitates more intense competition between providers. This in turn, can benefit consumers overall in the form of lower prices, higher quality of service, choice and innovation. Any steps that help create a more fully competitive UK telecoms market will also support the massive investment currently being made to upgrade the UK's network infrastructure which serves to further achieve Ofcom's objective of encouraging competition and innovation by promoting long term investment in fibre networks.



Despite the fact that a fully functioning cross platform switching process would serve our business model well, we believe that an implementation deadline of December 2022 is unrealistic. Instead, the minimum Ofcom should allow industry for implementation is the full 24 months after the publication of the policy statement and final notification of the revised GCs. We remain concerned that too short an implementation timeframe could lead to a suboptimal solution deployed to meet the deadline. That would be an extremely poor outcome for consumers, as they will not receive the full benefits of a fully functional switching process, but there will be no Industry drive to improve things, as the box for complying will have been ticked, and incumbent providers may be reluctant to make it simpler for customer to churn away.