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**Ofcom 3 Feb 2021 "Quick, easy and reliable switching" Consultation
Response from the Mobile Number Portability Operator Steering Group**

About the MNP OSG

1. The Mobile Number Portability Operator Steering Group ('MNP OSG') acts as a forum for mobile network and service providers to agree the arrangements necessary to ensure that, at a practical, technological and procedural level, they can fulfil their obligations to provide MNP, as set out in Ofcom's General Condition C7.

Introduction

2. The European Electronic Communications Code ('EECC') contains a number of consumer protection provisions. Articles 106 and 107 concern provider switching and number portability requirements.
3. In July 2020, Government set out its requirement¹ that Ofcom should fully transpose these provisions.
4. In December 2019, Ofcom consulted on its implementation of the EECC². In October 2020 it published its statement on this³, and in February 2021 it published a further consultation on proposals for a new landline and broadband switching process and to improve information for mobile switching.⁴

¹ [Government response to the public consultation on implementing the EECC.](#)

² [Fair treatment and easier switching for broadband and mobile customers. Proposals to implement the new European Electronic Communications Code.](#)

³ [Fair treatment and easier switching for broadband and mobile customers Implementation of the new European Electronic Communications Code.](#)

⁴ [Quick, easy and reliable switching Proposals for a new landline and broadband switching process and to improve information for mobile switching](#)

Scope of this response

5. This response to Ofcom's February 2021 consultation is concerned solely with the proposed new information requirements for mobile switching. It does not consider the merits of Ofcom's proposals, but is concerned with how they should be implemented by mobile network and service providers, and the consequences of this on consumer consent to switch.

Ofcom's approach to consent and switching information

6. EECC106 (6) requires that:
 - the receiving provider must not "*port numbers or switch end-users without the end-users' explicit consent*".
 - "*National regulatory authorities shall also take appropriate measures ensuring that end-users are adequately informed and protected throughout the switching and porting processes and are not switched to another provider without their consent.*"
7. In 2020, Ofcom addressed the EECC (106) "explicit consent" and "adequately informed" requirements by introducing new rules which require gaining providers to take all reasonable steps to ensure they do not switch customers without their express consent (GC C7.9a), and to ensure a customer is authorised to request a switch and intends to enter into a contract for the switched services (GC C7.9b).
8. In this context, Ofcom noted that the decision to switch involves both a decision to accept a contract for new services with the new provider, and a decision to cancel a contract for services with the old provider. It says it follows from these provisions that the customer needs to have been given information about their new services, and also about the consequences of their decision to cancel their old services.⁵
9. For mobile switches, Ofcom previously distinguished between "*the core potential costs of switching that consumers would need to weigh up before deciding whether and when to switch*"⁶, and non-core contractual elements, such as loss of bundle discounts⁷.
10. This is reflected in current GCs, which require that 'core' information must be provided within the body of a PAC text, but that other contractual information can be provided via a link to an online account embedded in this text.

⁵ Ofcom 3 Feb 2021 consultation: Quick, easy and reliable switching 3.32

⁶ Dec 2017 Mobile switching statement 4.57

⁷ Ibid 4.65

- **Core information** concerns early termination charges and outstanding pre-pay credit balances. These are quantifiable figures that change over time. This information must be included within the body of the PAC text.
 - **Contractual information** includes changes to contractual terms and conditions arising from the switch, such as loss of discounts arising from service bundles, where only one component of the bundle is switched out. The PAC must contain an embedded web link to the customer's account log-in page, but it is at each provider's discretion what / how much information they provide on this page.
11. This distinction between core and contractual information is critical to informed decision-making and to the swift operation of the mobile switching process.
- It means that customers requesting a PAC by text cannot not receive or use the code without also seeing the core information, because this information is included in the body of the PAC text. This helps ensure all customers have "adequate" information before they switch.
 - It speeds up the process. For those that wish to read it, contractual information is available via an online account (accessible via the embedded PAC link), or by phoning the donor (in which case it can be given verbally and sent by email or letter), or by going into a shop (in which case it can be given both verbally and in print-out form).
12. Because contractual information is discretionary, the customer does not currently need to be able to access this information in order to give their informed consent to switch. In fact customers who request a PAC remotely but don't have internet access, and those with fixed internet access but without a smartphone, *cannot* currently access contractual switching information in durable medium before they receive the PAC text. These customers can therefore use the PAC before they receive contractual switching information.
13. This is because:
- a) They can't click through from the embedded text link.
 - b) Current Ofcom rules do not allow donors to wait until such customers have accessed the contractual information via another means. They must send the PAC within one minute of the request text or call.

Ofcom's new proposals on mobile switching information

14. Ofcom is now proposing that mobile providers must take “*all reasonable steps*” to ensure that residential customers are provided with the both core and contractual switching information (GC C7.12) in durable medium (GC C7.13(b)).
15. Ofcom recognises that the new information, particularly GC C7.12(d) relating to information about changes to Ts & Cs of unswitched services, is too complex to include within the body of a text message. It therefore proposes that providers can set this out elsewhere on another durable medium, provided the customer can access this via an embedded web link within the PAC text. This is the same approach that is currently used to provide customers with access to contractual information.

The issues this raises

16. Our concern with this is that not all switchers can access an online account from their handset. Some may not have smartphones, and therefore cannot access embedded text links. Others may not have an online account (e.g. some Pay As You Go customers). Others, may choose or have to access their online account by another means, such as a laptop.
17. Under current rules, this does not matter, as contractual information is discretionary and is not considered core to the switching decision. But under the new proposals, our understanding is that where a customer cannot access information about the consequences of their decision to cancel their services with the losing provider, they cannot consent to switch.
18. Ofcom seeks to address this point by saying: "*We note that the majority of mobile customers have smartphones which are able to access the internet, but acknowledge that a minority of customers may not be able to access a link via their device. Losing providers would need to ensure they provide all switching customers with the information they require to enable them to make an informed decision to switch or not. As is the case currently, if a provider is aware that a particular customer does not have a smartphone, or is subsequently alerted to the fact that a customer is unable to access their switching information via a link in a text, we would expect them to provide this switching information via an alternative channel.*"⁸
19. The problem with this is that losing providers can always *provide* contractual information via an embedded weblink, but, they cannot *always* ensure that *all* switching customers can *access* this information. Providers generally do not know which customers have smartphones. They cannot tell handset capabilities from the PAC request text, or whether internet settings are correctly configured.
20. Furthermore, even if a provider was alerted to the fact that a customer cannot access embedded weblinks, current regulations require that they provide the PAC within one minute of a request. This means that, even if a provider is able to provide

⁸ Ofcom 3 Feb 2021 consultation, 6.25

the information via an alternative channel, this can only come after the PAC has been sent. It may therefore come after the customer has given their consent to switch.

Our asks of Ofcom

21. We appreciate that the obligation is for providers to take “*all reasonable steps*” to ensure that customers are provided with the required information. We ask that Ofcom give substantially more detail about what it considers these steps to be in its final statement.
22. We also seek clarity on the status of a customer whose provider took all reasonable steps to provide the required information but who could not access this, and then went on to use the PAC. Has this customer consented? If not, does Ofcom accept that the provider has no liability for this?

Yours sincerely,

Justin Le Patourel