



EE's response to Ofcom's Consumer Switching Call for Inputs

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Introduction and summary

EE Limited (EE) welcomes Ofcom's further Call for Inputs (CfI) on consumer switching, published on 17 July 2014. Ofcom has taken a significant amount of time and resources to put in place new rules for switching on the Openreach copper network. Going forward, Ofcom needs to prioritise its work in this area based on two considerations:

1. The extent to which a difference in process for switching provider leads to a competitive disparity between communications providers (CPs), i.e. whether some CPs are given an inappropriate competitive advantage over others simply because of the technology used to supply the service; and
2. The consumer harm related to the switching process and the relative marginal costs and benefits associated with changing the process.

Driven by these two considerations, we remain of the view set out in EE's response to Ofcom's Strategic Review of Consumer Switching in 2010¹ that it is essential that each individual service operates under a single migration process, irrespective of the technology that is used to provide the service. In our view, this is the only way to avoid competitive distortion.

In contrast, we do not consider that the limited potential benefits of developing a single process for switching *different services* would outweigh the likely material costs of so doing. We consider that to do so would be disproportionate. For example, consumers are clearly capable of understanding that they may need to use a different process to port their mobile number as compared to switching broadband provider, and it remains the exception rather than the norm that these services are switched simultaneously. As long as all providers, for the same service and in the same circumstances, are subject to the same switching regime, then this should ensure there is a level playing field between different CPs and therefore that the switching regime does not distort competition. There is also limited scope for customer confusion if there is only one process used per service – especially where these are most commonly switched on a standalone basis.

In the CfI, Ofcom distinguishes at a high level between Gaining Provider Led (GPL), Losing Provider Led (LPL) and Cease and Reprovide (C&R) processes and sets out that in its opinion, GPL processes are more effective in dealing with a number of issues observed in fixed switching processes. We do not consider that the high level distinction between GPL, LPL and C&R processes is a meaningful one; there are many variants of each process that could be adopted, and EE considers that it is the details in the processes which ultimately determine the costs and benefits of the switching process for consumers and competition.

Proposed priorities:

In terms of fixed services, Ofcom mandated GPL switching for services offered over the Openreach copper network and took a first step to moving to a single migration process for fixed line and broadband services. EE strongly supports this harmonisation, as fixed line and broadband services are very commonly both supplied and switched together, with the use of a single process

¹The EE response can be found at http://stakeholders.ofcom.org.uk/binaries/consultations/consumer-switching/responses/Everything_Everywhere.pdf.

accordingly imperative to avoid competitive distortion. However, there are still fixed services (using different technologies) which are not subject to the new GPL process. EE considers that the lack of a single switching process for the same service creates both consumer confusion and a competitive disadvantage for certain CPs. EE believes that Ofcom needs to address this remaining area of consumer and competitive harm as its next area of focus.

Applying the two considerations above, the next area that EE considers Ofcom should address is the switching of fixed bundles including Pay TV services. Pay TV services are frequently supplied and switched together with fixed line and broadband services, yet from June 2015 will be subject to a different C&R switching process to the GPL process that will be used to switch the fixed line and broadband services. This is liable to cause both consumer confusion and competitive distortion (with losing fixed and broadband CPs who can bundle those services with Pay TV services in a different position in terms of reactive save opportunity to those who cannot).

Of the services included in Ofcom's proposed scope, switching mobile services takes place in a symmetric environment (i.e. all providers are subject to the same rules) where one provider does not have an advantage over another and the Cfl reveals a far lower likelihood of consumer harm being generated by the current switching processes than for fixed services (e.g. no/extremely low incidences and risks of erroneous transfers, and an LPL process "*designed to minimise transition time and facilitate a near seamless transfer*" (Cfl, section 4.30)). Accordingly, we do not believe that the evidence warrants inclusion of mobile switching processes within Ofcom's next phase of switching reforms. We would also be very concerned if this disproportionate expansion of scope caused further delays to the harmonisation of the switching process for all fixed line and broadband services, given the clear consumer and competitive harm that the current discrepancies according to technology are causing.

Competitive disparity

We consider that switching processes for the same service, in the same circumstances, should be the same irrespective of the technology over which the service is offered. If different processes are used when the customer wishes to switch the same service to one CP as compared to another based purely on the technologies used by the gaining and losing providers, some providers could have a significant and inappropriate competitive advantage over others and could more easily acquire customers from other providers, and more easily hold on to their own customers. This has the potential to distort competition and reduce the competitive pressure from new entrants. We assess the competitive disparity caused by switching processes for each of the services included in Ofcom's Cfl below.

Services offered over cable:

In our response to Ofcom's last switching statement and consultation we welcomed Ofcom's decision to move to a harmonised fixed switching process.² This harmonised process will take effect from September 2014 for fixed lines and from June 2015 for fixed broadband services offered over the Openreach network. As set out in Ofcom's Cfl, fixed services offered over cable use a C&R switching process whereby the customer needs to contact both their current provider to cancel their current service, and their new provider for the new

² EE's response can be found at http://stakeholders.ofcom.org.uk/binaries/consultations/consumer-switching-review/responses/Everything_Everywhere.pdf.

service, if they want to switch. In contrast, customers of non-cable fixed service providers will not need to contact their losing provider when they switch. This means that cable providers will have the possibility to have a save conversation with their customers before they switch, an opportunity non-cable operators do not have. We comment in more detail on this in our response to question 2 ('Reactive save' section). We set out that we are not concerned about reactive save activity as such, but mainly where there is an imbalance in the degree to which save activity can be deployed by different providers, offering the same service. This imbalance creates a competitive disparity. This difference is also likely to lead to consumer confusion around which process to follow.

Pay TV:

According to Ofcom's Consumer Experience 2013 report³, two-thirds of fixed line customers and three-quarters fixed broadband customers purchase these services as part of a bundle. In addition, the share of bundles including fixed line, fixed broadband and Pay TV has grown steadily, from 12% in 2008, to 21% in 2013.⁴ Switching bundles can be quite complex for consumers, for example where they have a bundle of fixed line and broadband offered over the Openreach platform, and Pay TV services over a different platform. Customers with this type of bundle will have to use the GPL process for their fixed line and broadband (from June 2015 onwards). If they want to switch their Pay TV however, they will need to contact their losing provider, which will allow that CP to carry out save activities in relation to the other services as well. The same arguments we used in our analysis of fixed and broadband services provided over cable apply here. There is a competitive disparity, since providers offering the Pay TV part of their bundle over a non-Openreach platform are subject to a LPL process when it comes to their own customers switching, and to a GPL where they want to acquire customers from other provider. This disparity is made more acute due to some pay TV providers setting very high early termination charges on devices which are not regulated under general conditions (e.g. TV equipment). This acts as an additional deterrent to switching. We consider that Ofcom needs to address these issues in order to create a level playing field for bundles.

Evidence of consumer harm

The second factor Ofcom should take into account when determining priorities is actual consumer harm. Ofcom's research published in the 2013 Consumer Experience report gives an indication of issues identified per service. We believe it is important to quantify these issues with the most recently available information, in order to be able to carry out a thorough cost-benefit analysis. Ofcom's Communications Market report 2013⁵ provides further background into market players and price levels, and sets out the competitive landscape for the services.

Erroneous transfers (ETs)

³ <http://stakeholders.ofcom.org.uk/binaries/research/consumer-experience/tce-13/4-choice-value.pdf>, page 93.

⁴ Ibid., page 92.

⁵ This can be found at <http://stakeholders.ofcom.org.uk/market-data-research/market-data/communications-market-reports/cmr13/>.

In its December 2013⁶ switching statement, Ofcom proposed that the second stage of its work on switching reforms would consider whether it is appropriate to make further changes in order to address the extent and cause of ETs. Ofcom estimated that 75% of ETs arose as a result of Working Line Take Over orders, when a consumer is moving home to a property that has a working line; with the remaining 25% caused by consumers switching from one provider to another. Ofcom estimated that the total cost of ETs was around £3.5m (£1m to consumers, and £2.5 to providers). In order to assess the current harm related to ETs we consider that as part of a next step, Ofcom should assess more recent ET data, split into different causes, and quantify the harm related to ETs. The level of harm should then be compared to other levels of harm, set out below, and taken into account when determining Ofcom's overall switching reform priorities.

In our responses to Ofcom's questions we have, where relevant, included parts of Ofcom's research.

Ofcom's questions

Q1: Do you agree with our characterisation of the switching processes and practices for the networks and services in scope for this phase of work? Are there aspects of such processes that you consider have significant consequences for consumers' experiences of switching or the functioning of markets?

Whilst we broadly agree with the characterisation of the switching processes we believe it would be helpful to add some further details to the description of the mobile processes, which we believe positively impact the customer experience of switching. These include:

- The speed with which mobile switching is carried out: A customer can call their current provider, ask for a PAC code if they want to retain their number (which needs to be provided within two hours), contact their new provider, and be transferred the next day. There is an almost seamless transition from one mobile operator (whether a mobile network operator (MNO) or mobile virtual network operator (MVNO)) to the other, and the customer is be fully informed of the details of switching with regard to their current contract. If they don't want to retain their number, they can contact their current mobile operator to cancel, and enter into a new contract with their new provider whenever they want (even before they cancel their existing contract). Therefore not only is the loss of mobile service very short/non-existent but consumer harm in the form of consumers' time is also minimal under the current mobile switching regime. This is in stark contrast to fixed broadband switching, for instance. The current LPL Migration Access Code (MAC) process requires the losing CP to provide a MAC code only within 5 working days following a customer's request. The Default Migration Date, as set out in Ofcom's General Condition 22.3 (i) means 5 working days after the MAC has been provided to the new provider. The current GPL NoT process only requires migration to take place 'within a reasonable time period'.
- Because of the current near seamless mobile switching process, loss of service in mobile switching is typically limited to a very short time period. Again, this is in contrast to the loss of service in fixed switching. Ofcom's

⁶ This can be found at <http://stakeholders.ofcom.org.uk/consultations/consumer-switching-review/>.

August 2013 statement⁷ includes loss of service information for fixed bundled switching from 2011 and 2012. The 2011 research showed that over 20% of fixed broadband switchers (being subject to both GPL and LPL processes) suffered a loss of service and that the average loss of service was around a week. Further research carried out in 2012 showed a similar result, loss of service was one of the most common issues suffered by fixed switchers. Whereas Ofcom describe mobile switching with and without porting as two different processes (LPL and C&R), we believe mobile consumers tend to know that in mobile, irrespective of whether they want to port their number or not, they will need to contact their losing provider. We do not believe that mobile consumers would necessarily see this as two different processes. We have set out before that we do not believe Ofcom's classification of processes into LPL, GPL and C&R is very meaningful. The way individual processes are designed, and their impact of this on the customer experience is what matters.

- Mobile switching is carried out in a fully symmetric market; all mobile providers are subject to the same switching process, which means there is a limited competitive advantage for some providers over others.
- 'Shopping around' for mobile services is different from shopping around for (bundles of) fixed services (including Pay TV). The strong physical presence of a variety of different mobile offerings on the high street makes it easy to enter mobile phone stores, try handsets, and get advice from staff, both about the details of handsets or services, or the switching process. In fact retailers can even assist customers through the switching process while they are in the retail store, making it simple and convenient to switch. The same level of physical switching support in-store is less common for fixed line, fixed broadband services and Pay TV services, which are more commonly sold through telesales or online.

EE considers that this may contribute less to a large extent to the findings of Ofcom's Consumer Experience Report 2013⁸ which showed that mobile switching leads to fewer issues and less hassle than fixed line and broadband switching.

Ofcom also mentions 'reactive save' in the context of mobile switching. Ofcom's research shows that even where the switching process does not require contacting the losing provider, many consumers will still call their current provider to see what they can offer them before deciding to switch. We already set out that we do not believe the distinction between GPL, LPL and C&R is very meaningful. Indeed, save activities can be carried out in all three processes. We discuss this in more detail in question 2 ("Reactive Save" section).

Q2: Do you consider that the eight issues that we identified in section 4 in relation to switches on the Openreach network are relevant for the networks and services in scope for this phase of work? If so, that what extent are they relevant and why? Are there other issues we should also consider?

As we set out above, we consider Ofcom's priorities going forward should be determined by competitive disparity and consumer harm. The issues identified in fixed switching are a starting point to look at consumer harm. An alternative or additional approach would be to define requirements for switching

⁷ This can be found at http://stakeholders.ofcom.org.uk/binaries/consultations/consumer-switching-review/summary/Consumer_Switching.pdf, pages 105 and 109.

⁸ This can be found at <http://stakeholders.ofcom.org.uk/binaries/research/consumer-experience/tce-13/5-interest-activity.pdf>, on page 124 for instance.

processes, and see to which extent existing processes meet those requirements. Below we discuss each of the eight issues in more detail.

1. Multiple processes for switches

We consider that the same services should be subject to the same switching processes, irrespective of underlying technology adopted by the CP supplying the service. This limits the extent to which certain providers are able to take a competitive advantage based on the difference in processes, and gives consumers clarity on what to do if they want to switch their service. Consumers are able to understand that a different process may have to be followed depending on the service they want to switch. Consumers are not necessarily able to make that distinction on the level of technology, and will often not be aware which technology is used to provide their service. The existence of multiple processes for switching the same service can therefore make it difficult for consumers to know what to do.

Fixed line and broadband services:

As set out above, even when the changes mandated by Ofcom on the Openreach network switching process come into force, there will be still be multiple processes in place for switching broadband services provided over cable, and for Pay TV. Some providers will therefore have a competitive advantage over others, which is likely to distort competition and cause consumer harm.

Bundles:

Under the section Pay TV above, we included Ofcom research data about bundles. This research⁹ showed that only 6% of mobile customers buy their mobile service as part of a bundle and even in these instances, it is not necessarily the case that the services would be switched together. For example, while the majority of EE's fixed broadband customers also purchase mobile services from EE, it is very often the case that these customers had their mobile services from EE before they started purchasing fixed broadband services from EE and common for EE customers who switch their fixed broadband services to another CP nevertheless to still retain their EE mobile services. In addition, there has been an increase in the share of customers who buy their fixed line, fixed broadband and Pay TV as part of a bundle over the past 4 years. This is not the case for mobile, where the share of customers who buy their service as part of bundle has remained stable. In terms of scope, we therefore agree with Ofcom's proposal to only include the most prevalent bundles available in the market, and to focus on bundles of fixed voice and broadband, or fixed voice, broadband and Pay TV.

In the consultation Ofcom explain that, depending on the services included in the bundle, and the technologies over which these services are offered, multiple processes may be needed to switch. As set out above in the 'Competitive Disparity' section we consider that bundles made up of the same combination of services should be subject to the same switching processes, similar to our reasoning for switching individual services. We also believe that all services within the bundle should be subject to the same switching regime. Without a single switching regime for bundled services there will be a competitive disparity between providers (i.e. a significant an inappropriate competitive

⁹ This can be found at <http://stakeholders.ofcom.org.uk/binaries/research/consumer-experience/tce-13/4-choice-value.pdf>, page 94.

advantage for some providers over others) but also a lack transparency and significant confusion for consumers.

Mobile:

In their Cfl Ofcom state that mobile switching is subject to either LPL or GPL processes. Whilst we do not believe the distinction to be very meaningful, we question the existence of a GPL for mobile switching. In any event, our response to question 1 above explains how the process works in the case of mobile switching with and without porting. Ofcom distinguish between the two, but we believe that from a customer point of view, the difference is relatively insignificant between the two processes. As explained, the switching process is the same for all providers so there is no competitive disparity because of process. In addition, we believe mobile consumers are aware of the process they have to use to switch, either with or without porting.

2. Consumer difficulty and unnecessary switching costs

Ofcom state in the Cfl that their research and evidence suggested that LPL and C&R switching processes are associated with higher switching costs than GPL processes. We consider it is not possible to make such general statements and that Ofcom should look at the consumer experience for each process by service and assess and quantify the harm. For example, both the fixed broadband MAC process and the mobile PAC process are LPL led processes, but they are designed very differently. Under question 1 above we provided some further features of the mobile switching process which we believe positively impact the consumer experience and which explain that although both MAC and PAC processes are labelled 'LPL' by Ofcom, there are significant differences.

Research, included in Ofcom's Strategic Switching Review¹⁰ (2010), which compares the MAC and PAC processes, showed that 5% of customers found mobile switching with a PAC process difficult, compared to 23% of customers using a MAC process for fixed broadband services. We consider Ofcom should renew this analysis since this data dates back to 2010. As briefly touched on in the section on Consumer Harm above, based on Ofcom's more recent research¹¹, the greatest difficulty in the market with actual switching is currently with fixed broadband (13%), and fixed line, where the fixed line is part of a bundle (14%) followed by mobile (8%). Perceived difficulty of switching gives a similar picture: it is lowest in the mobile market, at 11%, and significantly higher in the fixed voice (20%) and fixed broadband markets (21%). Since fixed broadband switching is for a large part GPL (75% of switches in 2010, according to Ofcom consumer research from 2010), this indicates that GPL processes do not necessarily deal better with a number of issues.

We agree that under a LPL process a customer has to contact both the losing provider and the gaining provider, but, as evidenced by Ofcom's research, the current GPL processes in the fixed market appear to lead to greater difficulty in switching than the LPL processes. We therefore consider Ofcom should analyse processes and go beyond the 'number of touch points' per process, and map the entire switching experience for a customer.

¹⁰ This can be found at <http://stakeholders.ofcom.org.uk/binaries/consultations/consumer-switching/summary/switching.pdf>, page 42.

¹¹ This can be found at <http://stakeholders.ofcom.org.uk/binaries/research/consumer-experience/tce-13/5-interest-activity.pdf>, on pages 124, 137-139.

3. Lack of consumer awareness of the implications of switching

We agree that LPL processes better inform consumers about the implications of switching. A losing provider will have all relevant details of the customer's contract, including any information relating to their outstanding bill, the time remaining on their existing contract and any multi-product discounts they receive. The LPL process allows the LP to inform the customer about the final billing settlement, any early termination charges (where the customer is still in contract), and any multi-product discounts that may no longer apply if the customer chooses to switch. This means that the consumer is better informed about the implications of switching. [36]. The LPL process allows the LP to notify the customer of any discounts that no longer apply if they choose to switch one device, and therefore allows them to make a more informed decision, with a better understanding of the implications of switching

Ofcom set out that under the GPL NoT process, LPs are required to write to their customers to inform them about the implications of switching and that according to Ofcom that process is effective in informing them prior to switching. However by the time the customer receives the letter, they will have started the process of entering into a contract with their new provider. If, based on the information provided in that LP letter, the customer decides that they do not want to go ahead with the switch, they will have to cancel their new contract by contacting the GP. As a result there is an additional touch point for the consumer which is costly in terms of their time.

We also note that given that customers are likely to be less informed about the implications of switching under a GPL process, they are more likely to cancel their new contract with the GP within the 14 day cooling-off period under this process than under the LPL process (where they are better informed about the implications of switching). In the case of mobile (more so than fixed and pay TV) the costs of customers cancelling their contract in the 14 day cooling off period and returning their handsets to the GP are significant. [37]. This means that under the GPL process there are likely to be significant costs to the mobile industry if the switching process leads to more customers cancelling their contracts within the cooling off period (due to a lack of awareness about the implications of switching). These costs are far less significant for fixed line, broadband and digital TV providers since the devices being provided are less expensive than mobile handsets.

The LPL switching process clearly has the benefit of ensuring customers are made aware of the implications of switching. However, Ofcom now requires LPs to provide more precise information within the Notification of Transfer letter which includes a list of all "communications services" that will be transferred, all those that will be directly or indirectly affected by the transfer, and all those which the provider reasonably expects to remain unaffected by the transfer. EE considers that further guidance is required as to what constitutes a "communications service". For example, a provider may well offer a TV service that is separate from a broadband and landline service, but charged to the same bill. It should be clear that in the event that a customer wishes to switch their broadband and landline service, the price and content of the TV service will be unaffected.

We also consider that given that the GPL process is less likely to create the same level of consumer awareness around the implications of switching (compared to LPL process), CPs that are subject to the GPL process should be required to clearly explain, at the point of sale, the implications of switching in terms of early termination charges and, in the case of bundles, the discounts that would no longer apply should they choose to switch provider for one or

more services (i.e. greater transparency around the individual prices of bundled services). Greater transparency around pricing and discounting of bundles services will allow customers receiving bundled services to make more informed decisions about switching.

4. *Insufficient customer consent and the problem of slamming*

We agree that processes whereby a customer needs to contact their current provider will minimise the risk of slamming. Losing providers (for either mobile or fixed services) typically carry out authentication checks to make sure that the customer is who they claim they are, and that indeed they intend to enter into a contract with another provider. We therefore do not see 'slamming' as a significant risk with current LPL processes. There are a number of provisions in General Condition 23 and 22 (previously 24) which ensure that a provider ensures that a customer has the intention to enter into a contract.

Ofcom's Consumer Experience report 2013 contains mis-selling complaints numbers¹² (which include slamming complaints) and set out that overall fixed-line miss-selling complaints averaged 442 per month for 2013. For mobile, this number was around 190 a month in 2013. With part of the fixed line market already being subject to GPL switching processes, it shows that LPL switching processes appear to deal better with miss-selling and slamming related issues.

5. *Erroneous transfers*

We agree that the issue of Erroneous Transfers (ETs) is specific to the fixed market and almost non-existent in the mobile market. Where customers migrate from a service offered over a non-Openreach network, they can only provide their address to the Gaining Provider, because the CLI cannot be identified by Openreach. Whenever the Openreach database is not up to date, or whenever there are any errors in the exact address details provided, this could lead to an ET. We believe ETs are still a major issue impacting the customer's experience, and causing unnecessary costs to both consumers and providers. In the section 'Evidence of harm' we already set out that Ofcom should update their research on ETs in the fixed market, to assess to what extent ETs still exist, and to quantify the harm associated with it. Further research into ETs should bring this to light.

6. *Loss of service*

Loss of service, or, related to this, the need to pay for two services in order to ensure service, are important switching related issues. Loss of service is likely to lead to both consumer dissatisfaction and consumer harm. Ofcom compare the C&R process in the mobile market with the C&R process in the fixed market. Again, whilst both processes are labelled as C&R, there are significant differences, and few similarities, between the two processes.

In the fixed line and broadband market, there is a frequent need for an engineer to visit a customer's home to provision the service (either from a cable provider to Openreach or vice versa). This typically leads to a delay in provisioning the service, which, in certain cases, can be substantial. Loss of service and coordinating start and stop dates is a significant issue in the fixed line and broadband market, particularly between Openreach copper and Virgin cable networks. Ofcom's Consumer Experience report showed that, of the consumers

¹² This can be found at <http://stakeholders.ofcom.org.uk/binaries/research/consumer-experience/tce-13/6-protection.pdf>, on page 161.

who switched their fixed broadband, 18% said they suffered 'Temporary loss of service' and 16% stated that they had difficulty arranging start and stop dates. In order to 'insure' themselves against a possible loss of service, customers may decide to have a period where they pay for two services, which leads to consumer harm in the form of double payments. In contrast, in the mobile market, there are no continuity issues, because the new service can be provided immediately.

7. Lack of platform neutrality

In the section on Competitive Disparity we set out in detail our concerns where switching processes for the same service differ because of a difference in underlying technology. This disparity leads to some providers having a significant and inappropriate competitive advantage over others, which is, as we have explained above, undesirable.

Ofcom also discuss mobile switching, with and without porting. We are not sure what lack of platform neutrality has to do with these processes. The services are offered over the same platform, and the only difference between is the PAC code. In our response to question 1 above, we gave further details about the difference between the switching process with and without porting. We believe that in practice these processes are very similar for a consumer, given that for both processes the switch can be completed very quickly (immediately where customers do not want to port their number, and within one working day where customers do port their number). Customers will contact their current provider and their new provider to give them the PAC, or to take out a new contract, under both processes. We do not see how the existence of these processes distorts competition, especially since all providers are subject to the same processes.

8. Reactive save

Ofcom define Reactive save as follows:

'Reactive save' occurs when the LP is able to identify, as a result of the formal switching process, that a consumer has taken active steps to switch, and the LP makes a targeted retention offer'¹³.

Ofcom's definition of reactive save suggests that it believes that in the context of mobile, operators may reserve specific offers for customers actively looking to switch, which could potentially be harmful to consumers. [X].

Furthermore, Ofcom's research showed that under a GPL process, many customers still contact their provider, even where this is not required. They may 'shop around' to see what their current provider offers. They may also have made up their mind that they wish to switch, but still call their provider to discuss the implications of switching. In the mobile market, with the prevalence of 18-24 months contracts, it is not unreasonable for a customer not to recall when exactly they entered into a contract, or the exact terms for that contract and to contact their current provider to ask for this information. This again shows that the classification of processes in these broad terms is artificial, and does not represent the way customers behave when switching provider.

In addition, Ofcom have previously stated that reactive save under the LPL regime creates a barrier to entry and dampens effective competition. In the

¹³ CFI on consumer switching 2014, para 4.38.

August 2013 consultation on consumer switching on the Openreach copper network Ofcom stated:

"We [Ofcom] consider that a system which systematically allowed reactive save for all switches would risk a dampening effect on competition. We have identified three potential risks:

- *a reduction in competitive pressure from entrants and smaller players over time, because incumbents can make selective discounts only to customers in the process of switching;*
- *a reduction in competitive pressure from entrants and smaller players over time, because customer acquisition costs would be higher; and*
- *a reduction in the overall competitiveness of the voice and broadband markets over time, because there would be less pressure to keep headline prices competitive in order to pre-empt switching".*

EE note that Ofcom has to date not demonstrated that a LPL process and any related reactive save activity leads to a reduction in competitive pressure or overall competitiveness in the market. The mobile market, in which switching is subject to a LPL process, is highly competitive, as evidenced by a number of indicators including:

(i) *Actual switching levels in the mobile market are relatively high:*

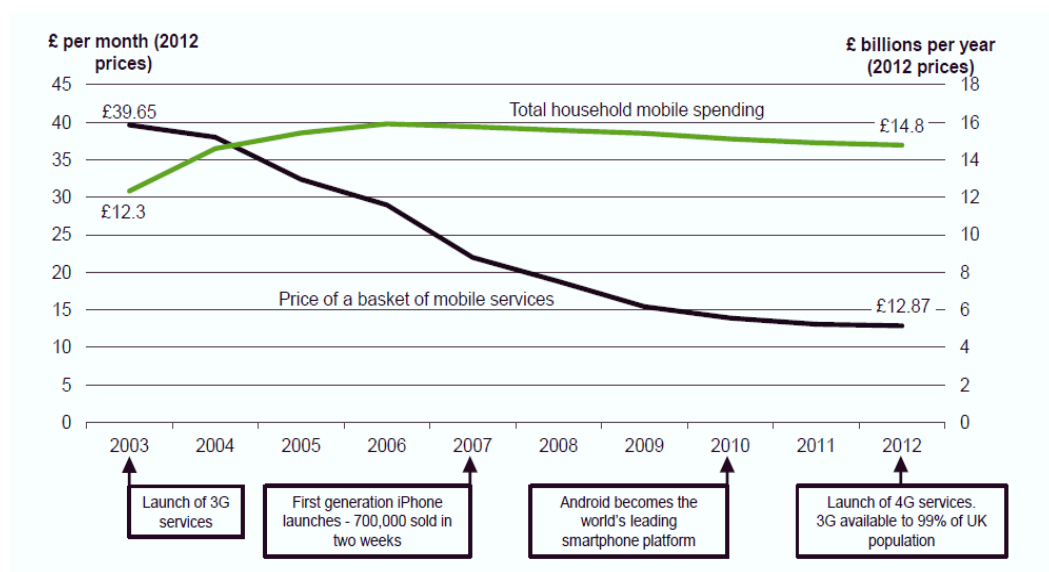
Switching levels are higher for mobile services than for fixed and digital TV in particular. For mobile services switching levels are at 11% compared to 9% for fixed and broadband services, and 3% for digital TV.

Ofcom also uses 'engagement' as a measure of participation in the market. Engagement is highest in the mobile market, at 20%, followed by fixed broadband (18%), fixed line (17%) and digital TV (12%).

(ii) *Mobile pricing levels over time:*

Figure 1 below shows the price development of mobile basket of mobile services from 2003 – 2013 in real terms. This shows that the price has decreased by 65% over a 9 year time period.

Figure 1 Typical mobile prices and residential spending on mobile services



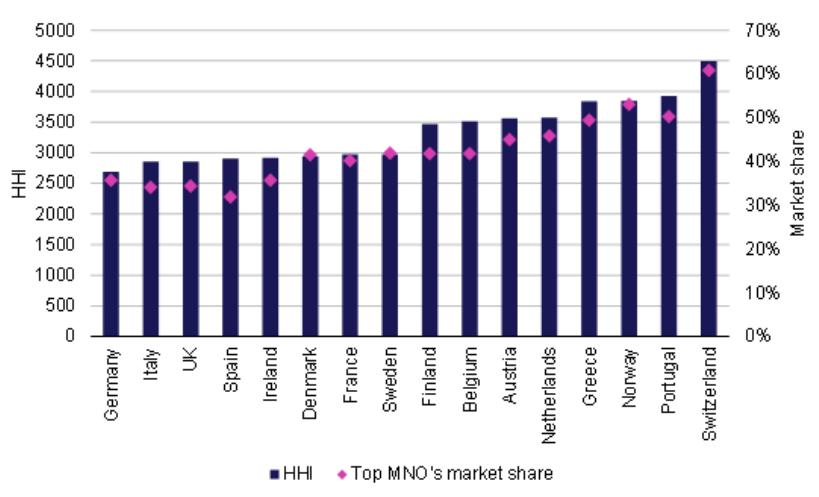
Source: Cost and value of communications services in the UK, Ofcom 2014.

Market concentration levels in the UK mobile market

Market concentration levels can reveal the extent to which a market is dominated by one or more providers. The Herfindahl–Hirschman Index (HHI) is an established method which measures market concentration and is a recognised indicator of the level of competitiveness in a market.

Figure 2 shows the HHI index for mobile markets in Europe. The HHI in the UK mobile sector is amongst the lowest in Europe (only Germany and Italy have a lower HHI). This indicates that the UK mobile sector has a relatively low concentration level and therefore is arguably a relatively more competitive market.

Figure 2. HHI for European countries



Source: AnalysysMason

These indicators suggest that there may be greater effective competitive pressure in the mobile sector compared to fixed line, fixed broadband and digital TV sectors.

As set out above, EE consider that reactive save in itself tends to be beneficial for consumers. We believe that there are two situations where reactive save could distort the market, or lead to consumer harm:

1. Where there is an imbalance in the degree to which save activity can be deployed by different providers offering the same services, competition will be distorted. As Ofcom notes in the consultation, the lack of a single switching process, as in the case of triple play bundles, is likely to create asymmetric reactive save opportunities. This means that some providers can acquire their customers through a GPL process (where the losing provider does not have a reactive save activity) and is subject to a LPL process for their own customers (where they can carry out reactive save activities).

2. Consumer harm may be caused where save activity is excessive and unwanted. Ofcom research¹⁴ showed that 'Provider persuasion to stay' was in both fixed broadband and mobile markets the main issue for customers who had experienced difficulties when they switched. This was higher in the fixed broadband markets (21%) than in the mobile market (15%). There are currently provisions around mis-selling in General Conditions 23 (mobile mis-selling) and 22 (Fixed migration). We believe Ofcom could use these provisions to address excessive save activity. Ofcom's review of save activity should therefore be focused on redressing these imbalances in the switching process in the fixed, pay TV and BB markets, but also implementing processes that mitigate against unwanted and excessive reactive save. It is predominantly in situations where there are multiple switching processes with different rules on save activity that save activity in itself significantly impacts on competition.

Q3: Could the current switching processes for the networks and services in scope be modified to result in a better experience for or protection of consumers, and/or more effective competition? If so, why and how should they be modified? Are any modifications in your view available that might be implemented relatively quickly and easily? What risks and costs might be associated with these revisions or modifications?

We firmly believe that the same switching processes should apply to the same service, both from a competition point of view and from a consumer experience point of view. In the fixed line and fixed broadband market, Ofcom have decided to use the NoT+ process for all switched on the Openreach copper network. Having taken this step, it would make sense to use these processes for the remaining fixed line and broadband services, which are not offered on the Openreach copper network.

We believe the same principles should apply to bundles of fixed line, broadband and Pay TV. Since fixed line and broadband will be subject to the NoT process, from a competition and consumer experience point of view, we consider the switching processes for bundles should be subject to the same regime.

Where, based on consumer research, reactive save is unwanted, we believe Ofcom should try and use existing mis-selling provisions under GC23 and GC22 to prevent providers from using excessive persuasion powers.

Q4: Is there anything that you consider is relevant to the switching of networks and services in scope for this phase of work that we have not set out in this document?

Since this is a high level Call for Input, which should help Ofcom determine its priorities for the next phase, the level of detail and evidence is relatively limited. Ofcom has mainly assessed consumer switching on the Openreach copper network and throughout the document, parallels are made to the fixed market. We believe that Ofcom should carry out further research, and make the analysis more relevant for bundles and mobile services.

Conclusion

We consider that two main factors should determine Ofcom's priorities in switching:

¹⁴ At <http://stakeholders.ofcom.org.uk/binaries/research/consumer-experience/tce-13/5-interest-activity.pdf>, pages 139-140.

- Competitive disparity caused by a difference in switching processes for the same service; and
- Consumer harm.

Based on our assessment of the services in scope we consider that the highest competitive disparity exists in the fixed line and fixed broadband services offered over non-Openreach infrastructure, and bundles of fixed line, fixed broadband and Pay TV services.

According to Ofcom's research, the greatest harm currently exists in switching fixed broadband, and bundles of fixed line and fixed broadband.

We have summarised our assessment of the extent to which the issues identified by Ofcom in the fixed switching processes apply to other switching processes in table 1 below.

Table 1. Assessment of switching processes across markets against issues identified by Ofcom

Issue	Fixed line and fixed BB services	Bundles (with or without Pay TV)	Mobile
Multiple processes for switches	H	H	L
Consumer difficulty and unnecessary switching costs	M	H	L
Lack of consumer awareness of the implications of switching	H	H	L
Insufficient customer consent and the problem of slamming	M	M	L
Erroneous transfers	H	H	L
Loss of service	M	H	L
Lack of platform neutrality	H	H	L
Reactive save	M	M	M

Note: 'H', 'M', and 'L' denote high, medium and low level of harm

The benefits of moving to a GPL process for mobile are likely to be minimal, given the relatively small levels of reactive save activity and the strong competitive environment in the mobile sector. In addition, there may be significant costs and risks associated with making changes to this switching process. A more urgent and pressing task, that will reap greater benefits, is to ensure that for each service and bundle, there is a single switching process in place which reduces complexity for consumers and ensures that there is a more even playing field between operators.

Based on this, we consider Ofcom's switching activities going forward should focus on the following services:

- Aligning the processes for those fixed and broadband services which are still subject to losing provider led processes (fixed line voice and fixed broadband); and
- Addressing the lack of a single switching regime for bundles of fixed line and broadband, and fixed line, broadband and Pay TV, where part or all of the bundle may still be subject to the losing provider processes.