



**BRITISH SKY BROADCASTING LIMITED'S RESPONSE TO
OFCOM'S CONSUMER SWITCHING CALL FOR INPUTS OF 17 JULY 2014**

1. Executive Summary

- 1.1 Ofcom's Call for Inputs in relation to consumer switching (the "CFI") states that it is keen to understand the impact of processes used to switch providers of bundles of fixed voice, broadband and pay TV services (including triple play) on the Openreach, cable, and Sky satellite platforms, and mobile voice and data services, on the consumer experience of switching and on competition.
- 1.2 Ofcom's stated objectives for switching are to ensure that:
 - (i) it is easy and convenient for consumers, now and in the future, to change their communications provider where they wish to do so;
 - (ii) consumers are appropriately protected throughout the switching process; and
 - (iii) switching processes do not act as a barrier to competition.
- 1.3 It is Sky's view that in relation to switching providers of bundled voice, broadband and subscription pay TV services, Ofcom's stated objectives are already met. Instead, Ofcom should prioritise and focus its resources on issues which give rise to serious consumer harm or adverse effects on competition (such as Openreach provisioning and repair delays) and where its intervention could have the greatest impact.
- 1.4 The current switching processes for voice, broadband and pay TV services ("triple play") work well for consumers. There is no evidence of serious consumer harm; nor is there any evidence of any adverse effects on competition, whether in the provision of bundles, or of individual services.
- 1.5 Current processes for changing TV provider are simple and well understood by consumers. Consumers are better informed than ever about the choices available to them, and about how to find the best deal.
- 1.6 Ofcom has addressed its concerns in relation to switching fixed voice and broadband services over the Openreach network. As far as pay TV services are concerned, the evidence is that switching pay TV services, whether or not as part of a bundle, is easy and convenient. Indeed, Ofcom's own survey evidence found that 92% of consumers did not find switching pay TV difficult, with 80% finding it "totally easy".
- 1.7 It is important to note that the gaining provider-led ("GPL") process now in place for fixed voice and broadband switching on Openreach's network resulted specifically from the fact that such switching took place over a shared network infrastructure, with a multiplicity of switching processes. By contrast, there is no shared infrastructure requiring coordination of the physical changeover of a customer's line in the provision of pay TV services, and there are further other significant differences between the switching of fixed line telecommunications services and the switching of pay TV services.

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- 1.8 Although Sky accepted Ofcom's limited extension of the GPL switching process to cover fixed voice and broadband over the Openreach network (not least as the vast majority of broadband and telephony switches already followed the GPL process), we did not support Ofcom's intervention. Further, as Sky made clear at the time, Sky's acceptance did not amount to support for the possible extension of the GPL process to other services or for more intrusive regulation.
- 1.9 Retaining customers is important for all providers and the making of targeted retention offers to consumers during a switching process (so-called "reactive save" activity) is commonplace in relation to pay TV services. Consumers benefit from reactive save activity, because those that take up a targeted retention offer from their existing provider rather than switching will be benefitting. Not surprisingly therefore, Ofcom's own evidence found that the large majority of consumers who were subject to save activity reported a "positive experience" with the practice.
- 1.10 Any steps to prevent reactive save activity in relation to switching of bundles including pay TV services, will disempower consumers and remove the leverage they have when contacting their provider to switch and receive an offer. Such steps would increase the cost of living for those consumers who would have benefited from that choice.
- 1.11 There is no logical basis for a hypothesis that banning reactive save for triple play bundles would result in lower prices overall for such bundles or for the individual elements of them. It is unrealistic to think that a blanket reduction in prices would be the outcome of such a ban. In reality, a provider may well choose to spend the savings elsewhere, such as on increased marketing, or on targeting offers at those consumers who are considered the most likely to leave for another provider in the future.
- 1.12 Moreover, preventing consumers from exercising their choice to benefit from targeted retention offers during the switching process could dampen consumers' incentives to seek better offers more generally, leading to a reduction in search and switch activity, and overall to a reduction in competitive pressure.
- 1.13 A ban on reactive save, therefore, rather than resulting in lower prices to consumers, would be likely to deprive consumers of choice and lower prices, and risks reducing the competitive pressure between firms, to the detriment of consumers.
- 1.14 Interfering with current switching processes that work well for consumers risks causing significant consumer harm. The Sky pay TV service is supplied independently of broadband and talk and under current processes can be provided very quickly. There is no risk of slamming or loss of service, and therefore a lengthy notification of transfer process ("NoT") is not necessary. Moving to a GPL process for bundles including pay TV services would inject unnecessary complexity into the process, including the risk of slamming, and put in jeopardy the benefits of the current system.
- 1.15 As far as pay TV is concerned, Ofcom's focus appears to be on the switching of bundles of services between "traditional" pay TV retailers such as Sky, TalkTalk, BT and Virgin Media. This narrow approach does not reflect the way markets operate in practice. First, [CONFIDENTIAL] of television customers leaving Sky do not do so for another traditional pay TV provider, but cease taking subscription pay TV services altogether, with [CONFIDENTIAL] reverting to free to air ("FTA") television. There is no technical "switch" at all in these cases and therefore a harmonised GPL process would be of no effect. Secondly, in the CFI, Ofcom appears to ignore the rise of the over the top TV ("OTT") operators such as Netflix, Amazon Prime and Blinkbox, both in terms of the increased competition and customer choice they provide, and also in terms of their impact on the complexity of customer decisions and the switching process.
- 1.16 In considering its future policy for switching bundles, Ofcom must act with technological neutrality and with a careful eye on the development of competition in the future. A

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harmonised GPL process for switching of bundles of services that applied to “traditional” pay TV retailers such as Sky and Virgin, but did not capture OTT pay TV operators, would risk seriously distorting competition in favour of such operators.

- 1.17 Ofcom states that one of its objectives is to ensure that “switching processes do not act as a barrier to competition”. There is no evidence that this is the case. The competitive backdrop is very healthy. TalkTalk has rapidly grown its pay TV business since its re-launch in 2013 and now has over 1.1 million customers, BT has over 1 million pay TV customers and Virgin Media has over 3.7 million TV customers. There is also considerable and growing competition from the OTT players in addition to FTA television. Consumers have a wide range of choice of competing audio-visual services to choose from, which requires pay TV providers to innovate and differentiate their services in order to persuade consumers to take up and remain with their services.
- 1.18 Furthermore, Ofcom itself notes that only 23% of customers choose to take a bundle of fixed line, broadband and pay TV. Accordingly, given that the vast majority of consumers do not take a triple play bundle it is difficult to conceive how the current switching processes for bundles of these services could be capable of having a significant adverse impact on competition.
- 1.19 The reality is that Sky operates in a dynamic and competitive environment and it must continue to invest and innovate in order to persuade existing customers to stay with Sky and new customers to choose Sky. Sky works tirelessly to keep its customers happy with a view to keeping as many of them as possible. In addition to investing significant sums in original content, and providing new and improved services like Sky+, HD, and Sky Go, Sky makes huge efforts “behind the scenes” to keep its customers happy. For example, Sky invests heavily in customer service and in keeping customer satisfaction levels high and we closely monitor our “Net Promoter Score” which measures how likely Sky customers are to recommend Sky to others. In addition, Sky has made great strides in recent years in improving the customer experience through investing in its engineering workforce and in developing its goal of dealing with issues and faults “Right First Time”.
- 1.20 Against a backdrop of high levels of customer satisfaction, achieved through sustained effort and investment; rapid expansion in the choices available to customers; and a lack of clear evidence either of significant issues arising from the switching of triple play bundles, or of any issues causing serious consumer harm or a lessening of competition, there is no case for intervention. Further, in light of its duty to intervene only where necessary on the basis of cogent analysis and evidence capable of withstanding profound and rigorous scrutiny, the onus is on Ofcom to establish a clear case for intervention. Therefore, Ofcom must consider its next steps carefully and with an open mind.
- 1.21 The remainder of this response comprises the following sections:

- Section 2. Why switching is different in fixed line telecoms services and pay TV**
- Section 3. Current switching processes work well for consumers**
- Section 4. Current switching processes are not a barrier to competition**
- Section 5. No evidence of serious consumer harm and no adverse effects on competition to justify further intervention**
- Section 6. Conclusion**

2. Why switching is different in fixed line telecoms services and pay TV

- 2.1 Ofcom must ensure that it does not simply assume that the problems with switching providers operating on BT Openreach's network are relevant to switching of bundles that include pay TV services, or pay TV services considered alone. There are numerous significant differences that affect issues related to switching of fixed line telecommunications services and switching of such services in conjunction with pay TV, or pay TV on its own.

(i) The UK fixed line telecommunications sector began with a single firm supplying all consumers

- 2.2 Like other privatised industries, the fixed line telecoms sector began with one firm having 100% of the market. The task facing new entrants was to attract customers away from that firm – for example via lower prices or better service. At the same time, the incumbent had many ways of frustrating such switching, and therefore frustrating the development of a competitive market. Accordingly, there has been a strong focus in telecoms regulation (as well as regulation in other utility sectors) on making it easy for consumers to switch supplier, and to ensure that the incumbent is not able unfairly to thwart such switching.
- 2.3 The pay TV sector is fundamentally different. Pay TV retailers like Sky and Virgin Media have built their subscriber bases over the course of many years, in the face of strong competition from FTA television. Sky has built its significant subscriber base through significant effort, investment and innovation – and above all by offering consumers products and services that they value sufficiently to choose to pay for.

(ii) There is no shared infrastructure in pay TV

- 2.4 With the introduction of local loop unbundling, other operators now provide fixed line telephony services over Openreach's network. Customer switching in this case requires the co-ordination of the physical changeover of a customer's line from one operator to another, to ensure a continuous telephone and broadband service. Plainly, no such physical co-ordination is required when switching pay TV supplier.

(iii) Consideration of switching in pay TV must include cancellations

- 2.5 The key competitors to suppliers of telecommunications services are other suppliers of those same services. Relatively few consumers choose to go without fixed line telephony and broadband services. Indeed, recent research conducted by Ofcom has confirmed that consumers regard internet access as essential.¹ Accordingly, if consumers choose to switch supplier, they normally choose another supplier providing the same type of service they already purchase.
- 2.6 The television sector is fundamentally different. In television, leaving aside the myriad of other ways that consumers can access audio-visual services², consumers have a choice of two different types of service: (i) FTA television only; or (ii) a combination of FTA television and pay TV³. As Ofcom is well aware, the UK has an extremely strong FTA television sector, with the licence fee funded BBC at its heart. As a result, pay TV retailers face strong competition from two sources: (i) other pay TV retailers; and (ii) consumers opting to rely on FTA television for consumption of TV services. Pay TV retailers face constant pressure

¹ <http://media.ofcom.org.uk/news/2014/essential-comms-services/>

² For example, via PPV services, electronic sell through ("EST") services and on DVD and Blu-Ray discs.

³ We include in this category non-broadcast subscription audio-visual services, such as Netflix, Amazon Prime and NOW TV.

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to encourage FTA-only households to take up a pay TV subscription and from the threat of existing subscribers cancelling their pay TV subscription and relying primarily on FTA television.

- 2.7 It is evident that the latter threat is a key part of the competition facing pay TV retailers. For example, Sky's [CONFIDENTIAL] Survey shows that [CONFIDENTIAL] of respondents state that the main way they plan to watch television on cancelling their Sky TV subscription is FTA television.⁴
- 2.8 Accordingly, a key part of 'switching' in relation to pay TV services is not switching in its traditional sense of replacing one supplier with another. Rather, it involves subscribers *cancelling* their pay TV subscription. Any analysis of switching in relation to pay TV services that excludes this type of consumer choice will be significantly incomplete.

(iv) Pay TV services are more highly differentiated than fixed line telephony services

- 2.9 Telecoms services are essentially homogeneous services.⁵ Telephone calls and internet access are the same product, whether they are delivered by BT, TalkTalk, Sky or Virgin Media (or any of the other players in the market). The telecoms sector shares this characteristic with other utility sectors, such as water, gas and electricity, where the key dimensions of retail competition are price and service quality.
- 2.10 Competition in pay TV services is fundamentally different. In pay TV, firms compete via their product set as well as price and service quality. Often this is a function of their choice of delivery technology as well as strategic and commercial choices. Other than differences in prices and service quality, significant differences among pay TV retailers include differences in:
- content (e.g. differences in television channel line ups);
 - packaging;
 - delivery technology (cable, satellite, IPTV OTT);⁶
 - EPGs;
 - PVR functionality;
 - HD TV availability;
 - mobile TV services;
 - online applications, such as remote recording apps;
 - on demand and catch-up TV services; and
 - pay per view services.
- 2.11 This means that consumers are attracted to different pay TV retailers' services as a result of the particular services that they offer, which other retailers potentially do not offer. Concomitantly, they may be disinclined to switch to an alternative pay TV retailer because they prefer the services offered by their current supplier.

(v) Temporary loss of service is more significant for broadband and telephony services

- 2.12 Continuity of service is likely to be a critical issue when switching telephony and broadband supplier, in order to ensure that a household has an ability to make telephone

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⁵ We recognise that there is a degree of product differentiation, such as in relation to broadband speed, usage caps and call allowances. Nevertheless, the main providers of fixed line telecoms services in the UK tend to have a similar product set.

⁶ Whilst it is unlikely that consumers have strong preferences in relation to the type of technology used to receive pay TV services (other than cost of set up and reliability), their choice of service may be affected by constraints they face in receiving different types of service, for example due to planning restrictions, living in rented properties, or due to the speed of broadband available to them.

calls and use the internet. This is less of an issue in relation to pay TV services. Even if consumers experience a period where they are not receiving subscription pay TV services, they still have numerous options for watching FTA television and other audio-visual services – such as DVDs, online TV services, and pay per view services.

- 2.13 If consumers value continuity of service when switching among pay TV providers, the cease and re-provide (“C&R”) process allows consumers to time when their current service ends and their new service begins.

(vi) Consumers increasingly subscribe to more than one pay TV service

- 2.14 Finally, it is rarely the case that households take fixed line telephony services from more than one supplier. This means that switching is normally a total switch – the replacement of one supplier by another. It is increasingly the case, however, that households may take pay TV services from more than one supplier. For example, Sky believes that many subscribers to BT’s service on its DTH satellite platform are also Sky subscribers. Similarly, we believe that a substantial number of Netflix subscribers also subscribe to other pay TV services (including Sky’s). This makes ‘switching’ of pay TV services a different type of consumer decision to the one which they face in relation to fixed line broadband and telephony services.

3. Current switching processes work well for consumers

3 (A) Consumer choice is essential

- 3.1 The current switching processes for bundles of voice, broadband and pay TV services work well for consumers. There is no evidence of serious consumer harm and consumers are better informed than ever about the choices available to them and about how to find the best deal.
- 3.2 It is imperative that Ofcom empowers consumers to exercise their own choice about their fixed voice and broadband and pay TV services. Further, we consider that consumers are well placed to make this decision. Indeed, Ofcom’s Consumer Engagement Study suggests that the majority of consumers – the groups of consumers described in the Ofcom research as “pioneers”, “deal seekers”, “slip streamers” and “socialisers” (together 59% of consumers)⁷ are switched on and savvy. These consumers are characterised as having a switching mind-set, being either “very” or “fairly” likely to switch⁸. Consumers also have access to a variety of ways to obtain the information necessary to make an informed decision. The tools available to consumers to “compare the market” and encourage switching have proliferated in recent years. The abundance of radio, TV and outdoor advertising for the various comparison websites attests to consumers’ ability to access information to enable them to choose between providers. USwitch, Which? and Moneysavingexpert.com also provide commentaries on products and services as well as on the switching process.
- 3.3 Separate from these sources of information, in the communications sector, Ofcom also currently accredits five price comparison schemes: BillMonitor, broadbandchoices.co.uk, SimplifyDigital, Cable.co.uk and Broadband.co.uk. These websites have their price comparison services audited to ensure that the information provided to consumers is accessible, accurate, transparent, comprehensive and up to date.⁹

⁷ Pages 20-21, Ofcom’s Consumer Experience Research Report 2013 (published January 2014) (the “Ofcom Consumer Research Report 2013”) Available at: http://stakeholders.ofcom.org.uk/binaries/research/consumer-experience/tce-13/TCE_Research_final.pdf.

⁸ Ibid.

⁹ <http://consumers.ofcom.org.uk/tv-radio/price-comparison/>

- 3.4 Ofcom's Consumer Experience Research Report 2013 cites a 2013 Firebrand Insight survey entitled "*Customers in Britain*" which shows that the use of comparison websites is increasing, as well as consumers' desire to shop around:

"The importance to consumers of seeking a good 'deal' and using the internet and personal recommendations as trusted sources of information is also illustrated in this survey. Four in five (81%) participants stated that they agreed with the statement: "I make more of an effort than in the past to find the best deal". As shown in Figure 165 below, two-thirds (66%) of consumers stated that price comparison websites had 'a fair amount' or 'a great deal' of influence on their purchasing decisions".¹⁰

- 3.5 A recent report commissioned by Ofgem entitled "*The Changing Consumer Empowerment Landscape*" finds that "consumer empowerment is in flux thanks to the emergence of new Third Party Intermediary (TPI) business models that see 'empowering the consumer' as a new business opportunity".¹¹ The report states that these TPIs are changing the ways that markets work in multiple ways, including:

- "Providing new ways to help consumers access and use information, reducing many of the barriers to effective consumer empowerment; and
- Giving consumers voice as well as choice: Choice between products and services is not the only market mechanism. Reputations are also important, and consumers can increasingly exercise influence over suppliers and markets by expressing views and opinions which affect suppliers' and other parties' reputations."¹²

- 3.6 Companies ignore consumers' views at their peril and are constantly engaged with TPIs and monitoring consumer forums and blogsites. Companies are investing millions in their services and striving to provide good value for money and excellent customer service to differentiate themselves from their competitors.
- 3.7 Sky must continue to invest and innovate to persuade consumers to choose Sky. Sky works tirelessly to keep its customers happy and as part of this invests heavily in customer service and into keeping customer satisfaction levels high. More detail is provided in section 4 below.
- 3.8 In making their decision about pay TV services, all consumers should benefit from the ability to strike good deals in a variety of ways. Some consumers research deals themselves, some use the comparison websites referred to above to inform their choices and others prefer to speak to their existing provider (especially during the switching process as this gives them more leverage over the provider to try to obtain a better deal). Sky does not consider that restricting any of these choices would benefit consumers. To the contrary, Ofcom should trust and empower consumers to make the right choice to suit their needs.

3 (B) No evidence of serious consumer harm

(i) It is easy and convenient for consumers to change their communications provider

- 3.9 Ofcom has addressed its concerns in relation to switching fixed voice and broadband services over the Openreach network.

¹⁰ *Customers in Britain* 2013, Firebrand Insight, cited at page 158 of the Ofcom Consumer Research Evaluation Report 2013.

¹¹ Page 4, Control Shift report commissioned by Ofgem – The Changing Consumer Empowerment Landscape <https://www.ofgem.gov.uk/ofgem-publications/89234/ctrl-shift-thechangingconsumerempowermentlandscape.pdf>.

¹² Ibid.

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- 3.10 The process for switching supplier of pay TV services in the UK works well, whether pay TV is supplied as part of a bundle or not, and this is borne out by the evidence. Ofcom will recall that its own evidence provided by the research from Saville Rossiter-Base in September 2010 (“the Saville-Rossiter-Base Research”¹³) found that 92% of consumers did not find switching pay TV difficult (80% of those questioned found switching pay TV “totally easy” with a further 12% in the “neither easy nor difficult” category)¹⁴.
- 3.11 Further, more recently Ofcom’s Consumer Experience Research Report 2013 states that:
*“The majority of switchers (between 84% and 92%) considered it very or fairly easy to switch provider.”*¹⁵
- 3.12 Interestingly, the Saville Rossiter-Base Research showed that contractual barriers and process issues did not appear to be a problem for pay TV subscribers. In particular, only 7% agreed that a process concern was the reason why they had not switched providers. Further, no pay TV consumers considered lack of knowledge of the switching process for pay TV to be a factor in their decision not to switch.¹⁶
- 3.13 Accordingly, it would appear that Ofcom’s primary objective as set out in the CFI¹⁷ to *“ensure that it is easy and convenient for consumers, now and in the future to change their communications provider”* is met and no further intervention is required.¹⁸
- 3.14 It is also notable that the sector with the highest switching levels is car insurance¹⁹ which follows a cease and re-provide process where consumers have two touch points, one with their existing provider and one with the new provider and possibly with a comparison website involved too. This suggests that there are other factors at play when it comes to consumers’ decisions to switch or stay with their current providers in various industry sectors.
- 3.15 Ofcom’s study on Consumer Engagement²⁰ cited in the Consumer Experience Research Report 2013 notes the differences between demographic groups and their propensity to switch and suggests that switching is not simply related to a “process”.²¹ As discussed above, Ofcom’s study suggests that 59% of those consumers questioned are either fairly likely or very likely to switch providers and that this is tied to their attitudes to technology and/or the reasons they use it.
- 3.16 We also note that since Ofcom began publishing complaints data for pay TV as well as telecoms in December 2012, Ofcom’s quarterly complaints publication has not indicated changing providers as an issue when it comes to pay TV whereas it is an area for concern with broadband and talk services.

¹³ Saville Rossiter-Base Consumer Switching and Bundling report September 2010 commissioned by Ofcom <http://stakeholders.ofcom.org.uk/binaries/consultations/consumer-switching/annexes/switching-bundling.pdf>

¹⁴ Figure 10, page 20.

¹⁵ Page 8, Ofcom Consumer Research Evaluation Report 2013.

¹⁶ Figure 23 page 32, Saville Rossiter-Base Research.

¹⁷ “Consumer switching – next steps and call for inputs” dated 17 July 2014 (the “CFI”). All paragraph references in this response are to the CFI unless otherwise stated.

¹⁸ Paragraph 1.2.

¹⁹ Page 141, Figure 145 – Ofcom Consumer Research Evaluation Report 2013.

²⁰ Pages 19-23, Ofcom Consumer Research Evaluation Report 2013.

²¹ Page 19, Saville Rossiter-Base Research.

(ii) Customer satisfaction levels are high

- 3.17 It is crucial that Ofcom has regard to the evidence of high levels of customer satisfaction, particularly in relation to pay TV services, before deciding to proceed with the next stage of its work on switching. Customer satisfaction levels are important for two reasons: (a) high satisfaction levels can be an important reason for consumers choosing to stay with their current provider and not switching to a competing provider, rather than an indicator of barriers to switching; and (b) Ofcom should be wary of interfering in the way providers run their businesses, because doing so may jeopardise customer satisfaction levels and leave customers worse off.
- 3.18 In terms of the evidence, the Saville Rossiter-Base Research showed high levels of satisfaction with pay TV, finding that 77% of consumers questioned rated their satisfaction level at 4 or 5 out of 5²².
- 3.19 In the case of inactive customers (neither switched nor considered switching providers) the Saville Rossiter-Base Research found that for pay TV, 84% cited being "happy" with their current provider as the reason they had not switched.²³
- 3.20 Sky's [CONFIDENTIAL] Survey, conducted by Ipsos Mori, Apr-Jun 2014 shows that [CONFIDENTIAL] of Sky TV customers grade their likelihood to recommend Sky to others at between [CONFIDENTIAL] with [CONFIDENTIAL] grading at [CONFIDENTIAL].²⁴
- 3.21 More recently, Ofcom's Consumer Experience Policy Evaluation Report 2013 found that there are many different reasons why people do or do not switch, and in the case of pay TV - as noted by Ofcom in the Consumer Experience Report 2013 - one key reason is choice of channels.²⁵
- 3.22 Given the variety of reasons that consumers switch or remain with their current provider, it would be incorrect to assume that changing the *process* for switching pay TV would suddenly result in increased switching activity. Ofcom's Consumer Experience Research Report 2013 notes that the "*stated ease of switching utilities is comparable with telecoms markets*".²⁶ Ofcom will be aware that the energy sector uses the GPL process which suggests that the GPL process makes little difference to the levels of switching.

(iii) Consumers are appropriately protected throughout the current switching processes and there is no risk of slamming and erroneous transfers

- 3.23 Ofcom's previous concerns about slamming and erroneous transfers for communications services are not relevant for pay TV due to the technological differences between fixed voice and broadband and pay TV services.
- 3.24 As explained in section 2, changing pay TV providers works very differently to fixed voice and broadband switches over the Openreach network because there is no shared infrastructure between these services and therefore no need to coordinate the switch between the use of a physical shared asset.
- 3.25 Slamming and erroneous transfers are therefore not a serious issue. There is negligible experience of mis-selling, with pay TV subscribers comprising 0.5% of consumers who had

²² Figure 49, Page 64, Saville Rossiter-Base Research.

²³ Page 33, Figure 24 Saville Rossiter-Base Research.

²⁴ The Sky [CONFIDENTIAL] Survey, conducted by Ipsos Mori, Apr-Jun 2014. Base: Sky TV customers.

²⁵ Figure 28, Page 78, Ofcom's Consumer Policy Evaluation Report 2013 (published January 2014) (the "Ofcom Consumer Policy Evaluation Report."). (http://stakeholders.ofcom.org.uk/binaries/research/consumer-experience/tce-13/TCE_Policy_Final.pdf)

²⁶ Page 141, paragraph 8.4.2 - Consumer Experience Research Report 2013.

experienced slamming in the Saville Rossiter-Base Research²⁷. This is unsurprising because it would be difficult for a provider to cease one pay TV service and provision another without the consumer's knowledge or authority. The lack of a shared infrastructure means that the new provider would need to run a cable into the house or affix a satellite dish to the wall, which is unlikely to happen without the customer's knowledge and consent.

- 3.26 If a GPL process were to be introduced for pay TV, this would increase the risk of mis-selling and slamming. Currently, either (a) a customer contacts their existing provider to cancel, so with appropriate identification and verification, there is no doubt as to whose service is to be cancelled, or (b) a customer cancels their subscription by cancelling their payments, which only the customer themselves can do. However, under a GPL process the new provider would contact the losing provider and advise them that a customer wished to leave them. As there is nothing to identify the losing customer other than the name and address (unlike the Openreach database which can cross check access line IDs or telephone numbers with the address) it would be likely that, on occasion, errors would result in the incorrect customers having their service cancelled.
- 3.27 Consumers also want to know the implications of switching before they leave, in particular because of early termination charges ("ETCs"). The consumer survey commissioned by BT, Sky and Virgin Media supporting our response to Ofcom's 2012 Consultation²⁸ shows a clear preference from respondents for prior knowledge of the full implications of switching providers. When asked whether respondents would prefer to have all the information about the consequences of switching before they placed the order to switch or whether they would prefer to switch and then be informed by their current provider what the consequences of the switch were a few days later, but be given the opportunity to cancel the order at no cost to them, 88% of respondents preferred to receive information regarding their switch before they placed their order and only 8% opted for receiving information after placing the order.²⁹ The introduction of the GPL process would override this clear consumer preference.

(iv) Changes would introduce delay and complexity

- 3.28 Applying a GPL process to pay TV would result in the provisioning of pay TV taking far longer than necessary. Currently, Sky aims to provision its TV customers within three days where possible. If pay TV were subject to the GPL process this would inject further complexity and time into the switching process - an NoT letter would need to be generated and sent to the customer by their losing provider which would add a further week into the process (a minimum of ten working days under GPL).
- 3.29 The results of the 2012 Survey show that when consumers were asked how important the length of time it takes to switch providers is in their decision to switch, 86% of respondents rated the importance between 7-10 out of 10. When respondents were asked the length of time they thought would be reasonable to have to wait for their landline telephone and broadband services to be switched from one provider to another, the most common response for both services was "three days". Based on our aim to install pay TV within three days for new Sky customers, we do not think it unreasonable to assume that customers would feel similarly about such a reasonable lead time for a "switch" of their pay TV service.

²⁷ Page 48, Paragraph 7.1 - Saville Rossiter-Base Research.

²⁸ Ofcom: Consumer Switching, A consultation on proposals to change the processes for switching fixed voice and broadband providers on the Openreach copper network, published 9 February 2012 (the "2012 Consultation") (<http://stakeholders.ofcom.org.uk/binaries/consultations/switching-fixed-voice-broadband/summary/condoc.pdf>).

²⁹ Table 35, 2012 Survey.

3 (C) Intervention risks causing consumer harm - A ban on reactive save activity would reduce choice and make consumers worse off

- 3.30 Consumers benefit from reactive save activity, because a consumer who takes up a targeted retention offer from its existing provider rather than switching, will be saving money. Not surprisingly therefore, Ofcom's own evidence found that the large majority of consumers who were subject to save activity reported a "positive experience" with the practice.³⁰
- 3.31 Any steps to prevent reactive save activity in relation to switching of bundles including pay TV services, will disempower consumers and result in them being unable to exercise leverage with their current provider and achieve a lower price. Such steps would increase the cost of living for those consumers who would have benefited from that choice.
- 3.32 The 2012 Survey found that of the customers who said that they would contact their losing provider even if they were not required to do so, 60% stated that they would make contact in order to see if their current provider could make them a better offer than the new provider had offered.³¹
- 3.33 It is important to distinguish between unwanted and wanted save activity. Ofcom refers to unwanted save activity being a source of consumer harm. Ofcom should, however, be mindful of the fact that moving to a GPL process would not prevent only 'unwanted' save activity, it would also prevent all reactive save activity, much of which is appreciated and in fact sought after by consumers as outlined above.

4. Current switching processes are not a barrier to competition

- 4.1 In order to justify intervention Ofcom must identify either serious consumer harm or a significant adverse impact on competition stemming from the current switching processes for bundles of fixed voice, broadband and pay TV services. As explained above in section 3, there is no evidence of serious consumer harm; nor is there any significant adverse impact on competition, as explained below.
- 4.2 Ofcom itself notes that only 23% of customers choose to take a bundle of fixed line, broadband and pay TV.³² Given that the vast majority of consumers do not take a triple play bundle³³ it is difficult to conceive how the current switching processes for bundles of these services could be capable of having a significant adverse impact on competition.

4(A) The impact on competition must be analysed within a clear frame of reference

- 4.3 In the CFI Ofcom notes its principal duty to further the interests of consumers in relevant markets, where appropriate by promoting competition³⁴. In light of this duty, Ofcom also states that one of its primary objectives in relation to switching is to ensure that switching processes do not act as a barrier to competition.
- 4.4 Ofcom has not stated the services in relation to which it would assess competition, nor between which providers that competition takes place. In the CFI, Ofcom refers to switching of 'bundles of fixed voice, broadband and pay TV services', but it is not clear exactly what Ofcom considers the scope of any such 'bundles' to include.

³⁰ Paragraph 5.94 of Ofcom's 2010 Consultation, where Ofcom stated that "*the large majority of consumers who were subject to save activity reported a positive experience with the practice*". Also, the Saville Rossiter Base Research Report found that 80% of those with a bundle (any bundle) said that they were not put under any pressure to stay (Figure 35, page 45).

³¹ Table 40, 2012 Survey.

³² Paragraph 3.8.

³³ And, as noted in section 3, the majority of those who do find switching easy.

³⁴ Paragraph 1.2 and Section 3(1)(b) of the Communication Act 2003 ("CA03").

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- 4.5 The CFI does not make clear if Ofcom is solely considering the situation where these services are sold together as one product/under linked contracts, as is the case with BT, Virgin Media and TalkTalk; or whether Ofcom is also considering the situation when a customer chooses to take all three products from the same provider, albeit those services are packaged separately and potentially taken out separately, at different times with different minimum terms and different contract expiry dates; and/or the situation when a customer chooses to move all three services at the same time but to different providers.
- 4.6 Ofcom notes that BT and TalkTalk³⁵ link their TV offering to their broadband service and that when the customer switches their broadband, the pay TV element falls away because BT and TalkTalk's services are delivered over broadband.³⁶ Whereas a customer leaving Sky must contact Sky to cancel its TV subscription because *"Sky TV is provided by satellite and hence not subject to the GPL NoT+ process which applies to voice and broadband switches on the Openreach network."*³⁷
- 4.7 In fact, not all customers leaving Sky contact us to cancel their subscription - [CONFIDENTIAL] of customers leave Sky by simply cancelling their direct debit.
- 4.8 In any event, Ofcom states that the current process means that switching from BT or TalkTalk TV is easier than leaving Sky TV and seeks to demonstrate this in Table 1 at paragraph 3.19 of the CFI. This table is, however, misleading for two reasons. First, Ofcom fails to recognise that there are [CONFIDENTIAL] BT Sport customers on the Sky satellite platform who would have to call BT to cancel their BT Sport subscription if they choose to leave Sky³⁸. This would be the case irrespective of whether these customers were required to call Sky or not.
- 4.9 Moreover, Ofcom incorrectly characterises the difference in switching between BT or TalkTalk and Sky as a *platform* issue rather than a contractual issue. BT and TalkTalk currently choose to link their TV element to their broadband, but there is no reason why they could not decouple the TV element from the broadband element in the future should they choose to do so and offer it independently over any broadband service.³⁹ Whilst BT and TalkTalk may choose to offer pay TV in linked contracts, that is their choice. It should not be for Ofcom to prefer one commercial arrangement over another – commercial and product differentiation within a competitive market is to be welcomed.
- 4.10 Further, Ofcom notes that consumers have to follow multiple processes to switch pay TV services⁴⁰ either standalone or in a bundle and Table 1 compares pay TV with the single harmonised GPL process adopted for fixed voice and broadband services over the Openreach network. However, Ofcom fails to recognise the significant differences

³⁵ Sky notes that BT's website appears to say that TalkTalk customers follow a GPL process for broadband and voice and a C&R process to cancel their pay TV service with TalkTalk. See <http://www.productsandservices.bt.com/consumerProducts/displayTopic.do?topicId=25764&isp=talktalk>. However, Ofcom, in paragraph 3.17 of the CFI assumes that all three services follow the GPL process. Sky considers that Ofcom should verify the current processes described in Table 1 with operators..

³⁶ Paragraph 3.17.

³⁷ Paragraph 3.18.

³⁸ This error derives from Ofcom's failure to recognise the open nature of Sky's DTH satellite platform and BT's role as a retailer of pay TV services on that platform. In setting out its understanding of switching processes in relation to pay TV services, Ofcom states: *"BT and TalkTalk both offer Pay TV subscriptions using the Openreach network to consumers who subscribe to their broadband service."* (Paragraph 3.15) Ofcom fails to observe that BT also retails pay TV services on Sky's DTH satellite platform.

³⁹ Sky notes that in the CFI Ofcom highlights an asymmetry in the way customers switch to and away from Sky, stating that consumers need two separate processes to switch fixed voice, broadband and pay TV away from Sky whereas consumers need one process to switch all three services to Sky. In addition to the fact that this arises from the way in which BT and TalkTalk elect to package and market their broadband and talk services, Sky observes that symmetry is not in and of itself a valid reason to favour one process over another.

⁴⁰ Paragraph 3.18.

between fixed line communications services and pay TV (as described in section 2 above). The multiple processes in switching pay TV supplier are due to the existence of multiple platforms unlike switching over the Openreach network where there are multiple processes over a single network infrastructure.

4(B) Strong competition from a wide range of platforms and services - Ofcom has adopted an unduly narrow focus on traditional pay TV platforms.

- 4.11 There is no evidence that the current switching processes act as a barrier to competition.
- 4.12 Consumers have a wide range of choice of competing audio-visual services to choose from and Sky faces strong competition from other pay TV providers, FTA services and, increasingly, from non-traditional platforms.
- 4.13 In the traditional pay TV space, TalkTalk has rapidly grown its pay TV business since its re-launch in 2013 and now has over 1.1 million customers⁴¹. BT has over 1 million pay TV customers⁴² and Virgin Media has over 3.7 million TV subscribers⁴³.
- 4.14 **Annex 1** provides examples of recent customer offers illustrating the highly competitive nature of the broadband, telephony and TV sector.
- 4.15 Sky and these other traditional pay TV services face significant competition from FTA channels/broadcasters, Freeview, YouView and Freesat. The UK has an extremely strong FTA television sector and pay TV retailers face constant pressure to encourage their subscribers to maintain a pay TV subscription rather than primarily reverting to watching FTA television, as explained in section 2. Indeed, a recent report for Ofcom prepared by Mediatique, entitled *The development of free-to-view television in the UK by 2024*⁴⁴, contained the following statements:
- *"The platform market in the UK is supplied by many players, across a range of distribution technologies; the propositions offered by these providers include a mix of free and pay services, breadth and depth of channels"*⁴⁵
 - *"These trends are creating complexity in the platform market, enabling new routes to market and reducing barriers to entry ...likewise, we have seen an acceleration in multi-platform and multi-device convergence"*⁴⁶
- 4.16 There is also considerable and growing competition from OTT players (including Amazon Prime, Netflix, Blinkbox and Google). For example, since its launch in the UK in 2012, Sky estimates that Netflix has acquired a base of at least [CONFIDENTIAL] subscribers. Similarly, Sky estimates that Amazon Prime has around [CONFIDENTIAL] subscribers in the UK. Ofcom notes in its Communications Market Report 2013 that *"the subscription model for online audio-visual content access saw continued growth in 2013, as its revenue grew 76% to reach £62m, an indication that services such as Netflix and Amazon Prime Instant Video (formerly LoveFilm) may be gaining traction in the UK market."*⁴⁷
- 4.17 Against this background, it is imperative that Ofcom includes FTA television and OTT players in its analysis. Since Ofcom has already addressed switching of fixed voice and

⁴¹ <http://www.talktalkgroup.com/press/press-releases/2014/q1-ims-2014.aspx>

⁴² <http://www.btplc.com/news/articles/showarticle.cfm?ArticleID=b37789ab-6ae4-4dbf-861d-ef6f8e07f8e0>

⁴³ <http://investors.virginmedia.com/phoenix.zhtml?c=135485&p=irol-newsarticle&ID=1899958>

⁴⁴ <http://stakeholders.ofcom.org.uk/binaries/consultations/700MHz/discussion/Mediatique.pdf>

⁴⁵ Ibid, slide 15.

⁴⁶ Ibid, slide 19.

⁴⁷ Page 130, Ofcom Communications Market Report published August 2014 2013
http://stakeholders.ofcom.org.uk/binaries/research/cmr/cmr14/2014_UK_CMV.pdf.

broadband services the reality is that, should Ofcom seek to extend regulation to bundles of fixed voice, broadband and pay TV services, the main impact will be on pay TV services and potentially only a narrow subset of those services if Ofcom limits its focus to traditional pay TV platforms offering subscription products.

- 4.18 In considering its future policy for switching bundles, Ofcom must act with technological neutrality and with a careful eye on the development of competition in the future. A harmonised GPL process for switching of bundles of services that applied to “traditional” pay TV retailers such as Sky and Virgin, but which did not capture OTT pay TV operators, would risk seriously distorting competition in favour of such operators.

4(C) Switching levels of pay TV are not an appropriate measure of intensity of competition

- 4.19 In its previous review of switching on the Openreach copper network, Ofcom confused switching levels with the intensity of competition. Ofcom should be mindful of repeating this error. It cannot be assumed that a sector in which there is more switching is more competitive than one that exhibits less switching.

- 4.20 Customers may choose not to switch simply because they are happy with their existing product. As detailed in section 3(B), survey evidence shows that satisfaction is a key reason that customers cite for not switching. Customer satisfaction generally stems from the fact that providers offer a good product set at an attractive price and good levels of customer service, things that are generally found in a competitive market.

- 4.21 Indeed, in the context of the competitive sector in which it operates, Sky invests heavily in its proposition and works hard to offer an overall package that provides customers with good value (not only in terms of price, but also considering the content and services included in that package) as well as excellent customer service, mindful of the various competing audio-visual services including FTA television and OTT services. It is essential that switching levels are considered against this context.

- 4.22 In addition, as stated in section 2 above, in examining switching between pay TV providers (including OTT players), Ofcom must also not ignore the strong competition from FTA television. Consideration of the level of cancellation of pay TV subscriptions to FTA television is essential to any switching analysis and any analysis of switching levels that excludes this choice will be significantly incomplete.

4(D) Sky operates in a dynamic and competitive environment and must continue to invest and innovate

- 4.23 Moreover, given the dynamic and competitive landscape in which Sky operates, it is essential that Sky maintains high levels of investment and a commitment to customer service in order to persuade existing customers to stay with Sky and new customers to choose Sky.

- 4.24 Sky has built up its customer base from scratch and has to work tirelessly to maintain it. Given Sky’s net annual churn rate⁴⁸ for the last full financial year was 10.8%⁴⁹, Sky needs to acquire over one million new customers a year just to maintain its current subscriber levels. Sky therefore works hard to keep its customers happy with a view to keeping as many of them as possible and has to innovate and differentiate its services from those of its competitors in order to persuade consumers to take Sky’s services.

⁴⁸ Churn represents the number of total customers over a given period who terminated their subscriptions, net of former customers who reinstated their subscription within 12 months of terminating their original subscription.

⁴⁹ For FY 2013 Sky’s churn rate was 10.8%. See Sky’s Annual Review p.9 http://annualreview.sky.com/downloads/BSkyB_Annual_Report_2013.pdf.

- 4.25 Sky makes substantial investments in original content and constantly innovates to provide consumers with new and improved services like Sky+, HD, and Sky Go. Sky also makes significant efforts “behind the scenes” to keep its customers happy. For example, Sky invests heavily in customer service and in keeping customer satisfaction levels high and we closely monitor our key performance indicators, the “Net Promoter Score” which measures how likely Sky customers are to recommend Sky to others.
- 4.26 Further, Sky has made great strides in recent years in improving the customer experience through investing in its engineering workforce and in developing the concept of dealing with issues and faults at the first opportunity – or “Right First Time”.
- 4.27 We have also recently implemented our One Service Pilot which provides:
- a 'human' concierge service, putting customers through to an expert who can deal with their query;
 - a new area within Sky.com called ‘new MySky’ where we can see customer issues right through to resolution, interacting through social media to keep them up to date;
 - a new tool for advisors and engineers called ‘My Help Request’ where, in addition to history, they also see all outstanding customer issues, helping them with calls or preparing for visits; and
 - giving iPads to engineers so they can take customers through Sky Go and other apps to show them the true value in their Sky package.
- 4.28 We strive to offer the best possible customer service to keep our customers happy and to attract new joiners by differentiating ourselves from our competitors when it comes to customer service.

4(E) Reactive save activity does not dampen competition and in reality benefits competition

(i) Ofcom’s objections to reactive save are unfounded

- 4.29 In the CFI, Ofcom summarises its previous conclusions on the effect of reactive save activity on switching in the fixed voice and broadband sector. Ofcom found ‘reactive save’ activity to be a “*particular form of customer retention activity linked to switching processes that could be harmful to consumers in the longer term.*”⁵⁰ This conclusion appears to be based on the premise that reactive save activity results in “*less pressure for CP’s to maintain price competitiveness for all consumers across the market in order to pre-empt switching*”⁵¹, leading to reduced competitive intensity. Ofcom also considered that “*a switching process that systematically allows reactive save risks reducing competitive pressure from entrants and smaller players*”, because it enables “*incumbents to make selective discounts to consumers in the process of switching and because customer acquisition costs would be higher.*”⁵²
- 4.30 By restating these conclusions in the CFI, Ofcom appears to be acting on the assumption that there is automatic read-across from its previous review to the current one. Those conclusions were reached based on the specific set of facts applicable to switching processes on the Openreach copper network (including the existence of shared infrastructure and the presence of a former state monopoly) and Ofcom cannot extrapolate from this a general principle as to the effects of reactive save activity on

⁵⁰ Paragraph 4.38.

⁵¹ Paragraph 4.39.

⁵² Ibid.

competition. Ofcom should consider this issue afresh and with an open mind before considering whether any further steps are required.

- 4.31 In any event, the analysis of reactive save activity, carried out by Charles River Associates in 2012⁵³ at **Annex 2**, analysed these premises and showed why these conclusions were unsound in many respects, not only in relation to switches of fixed voice and broadband services, but also from a broader economic perspective. The report concluded that Ofcom “provides no credible basis for supporting Ofcom’s negative assessment of reactive save”⁵⁴.
- 4.32 Ofcom failed to properly address the findings of the CRA Report in its August 2013 statement⁵⁵, merely noting and dismissing these conclusions without any proper analysis or providing any supporting evidence to support its position. In the absence of further evidence from Ofcom, Sky continues to rely upon these findings, which remain equally valid today.

(ii) No reduction in competitive intensity or dampening of competition between existing firms

- 4.33 As quoted above, in the CFI Ofcom states that their previous review identified that reactive save activity results in a reduction in competitive intensity as there is less pressure for providers to maintain price competitiveness across all consumers⁵⁶. Sky notes that in its 2012 Consultation, Ofcom also asserted that reactive save activity is likely to ‘dampen competition’ among existing players⁵⁷, but failed to provide cogent evidence to support this assertion. Sky is not aware of any such evidence. In fact the evidence cited in the CRA Report, supports the fact that reactive save activity increases, rather than reduces competition.
- 4.34 For providers of television services, retaining subscribers is as important as attracting new subscribers. In the highly competitive audio-visual sector described above this is no small task, particularly when considered against the backdrop of the high degree of visibility as to different providers’ offers that consumers have. This visibility, which, as explained in Section 3(A) increasingly stemming from blogs, specialist discussion groups and money saving emails that are dedicated to reporting the most successful stories of save offers obtained from providers, enables consumers to call their existing provider and request a better deal, either on the basis of their awareness of deals available from competing providers or their own provider. Targeted save activity is therefore an integral part of competition between firms for existing customers and exercises a very real constraint on market pricing and practices of providers, leading to better outcomes for consumers.
- 4.35 In its previous review, Ofcom hypothesised that banning reactive save activity would improve competition between firms and lead to an improvement in customer welfare as it would induce providers to spread the benefits of competition across the whole market through lower prices to all customers, rather than just those who identify themselves through switching.

⁵³ Ofcom’s Assessment of the Use of Reactive Save Activity by Suppliers of Fixed Voice and Broadband Services: An Economic Analysis, prepared for Sky, BT and Virgin Media by Charles River Associated, May 2012 (the “CRA Report”).

⁵⁴ Paragraph 10, CRA Report.

⁵⁵ Ofcom: Consumer Switching, A Statement and Consultation on the processes for switching fixed voice and broadband providers on the Openreach copper network, published 8 August 2013 (the “2013 Statement”) http://stakeholders.ofcom.org.uk/binaries/consultations/consumer-switching-review/summary/Consumer_Switching.pdf.

⁵⁶ Paragraph 4.39.

⁵⁷ For example, see paragraph 5.24 of the 2012 Consultation.

- 4.36 In fact, a prohibition on reactive save may well have the opposite effect in terms of the net effect on prices since it may, itself, dampen competition among suppliers. If a ban on reactive save activity led to higher churn/switching levels (as Ofcom assumes) this would reduce average customer lifetimes. This, in turn, would reduce customer net present values ("NPV's") and make it difficult for providers to be able to make attractively priced introductory offers to new customers. Accordingly, a prohibition on reactive save could in fact result in the ability of firms to compete for new customers being restricted and customers overall being worse off. Separately, given that customer churn requires providers, including Sky, to acquire a significant number of customers a year (in Sky's case at least one million new subscribers a year) just to maintain existing customer levels, any suggestion that reactive save activity today restricts providers' incentives to offer all customers a good deal is misplaced.
- 4.37 Moreover, Ofcom's hypothesis fails to consider the different reactions that a ban on reactive save activity may provoke, both from consumers and providers.
- 4.38 First, it is unrealistic to think that a blanket reduction in prices would be the outcome of such a ban. Given the importance to providers of retaining customers, in reality, a provider may well choose to spend the savings elsewhere, such as on increased marketing to existing customers, or on targeting offers at those consumers who are considered the most likely to leave for another provider in the future. CRA also noted that limiting reactive save activity could well lead to the introduction by suppliers of other retention measures, for example by replacing these retention activities with longer minimum contract periods⁵⁸. Were providers to be restricted from increasing contract minimum terms, customer lifetimes would again decrease, impacting on customer NPVs and likely resulting in an effective price increase for new customers, as described above.
- 4.39 Second, in terms of possible consumer responses, a report by Plum Consulting⁵⁹ (at **Annex 3**) into the effects of reactive save activity found that Ofcom had ignored the impact of consumer behaviour and the prospect that reducing the rewards of reactive save activity may dampen consumers' incentives to seek better offers more generally through search and switch activity, leading in fact to a reduction in competitive pressure between firms.
- 4.40 Finally, Ofcom over-states the effect of price-related activity on competition. Consumers switch for a variety of reasons and therefore to assume that the ability to conduct reactive save activity acts as a lock-in mechanism or provides one provider with a competitive advantage over another is overly simplistic.
- 4.41 As described in sections 2 and 4 above, pay TV products and services are highly differentiated and providers compete across a number of variables including content available to consumers and additional services, such as Sky Go. Traditional pay TV platforms are also increasingly competing with OTT providers in addition to FTA television. This means that price is not the only factor on which pay TV providers compete. As the Plum Report found this is particularly the case where bundles are concerned, as it will not always be possible for providers to replicate bundles offered by competitors and thus providers are unlikely to rely solely on save activity to retain customers⁶⁰.

(iii) No reduction in competitive pressure from entrants

- 4.42 Ofcom considers that reactive save activity risks reducing competitive pressure from entrants and smaller players, because it enables incumbents to make selective discounts, thereby raising customer acquisition costs for these other players. The CRA Report,

⁵⁸ Paragraph 186, CRA Report.

⁵⁹ Ofcom Strategic Review of consumer switching – appraisal of save activity, Plum Consulting, November 2010 (the "Plum Report").

⁶⁰ Paragraph 2.4, Plum Report.

however, found that even if Ofcom were correct that reactive save activity raises customer acquisition costs, its impact on entry incentives is ambiguous. This is because, following Ofcom's thinking, it has two effects: (i) making it harder initially to attract customers but also (ii) making it easier to retain customers once they have been acquired.⁶¹ Ofcom's analysis only focuses on the first of these effects.

- 4.43 Moreover, any suggestion that reactive save activity reduces competitive pressure in the sector by raising barriers to entry to insurmountable levels, fails to have regard to real market circumstances. As explained above, the pay TV sector is evolving and Sky faces increasing competition from a growing range of competing retailers since barriers to entry in the retail pay TV sector are low.
- 4.44 In light of this, it is difficult to conceive how Ofcom could find that the concerns it identified over four years ago in relation to barriers to entry in the fixed voice and broadband sector are applicable to today's dynamic television landscape.

(iv) The positive effects of reactive save activity

- 4.45 In order to consider policy intervention, it is not enough to set out the potential effects that reactive save might have on competition; Ofcom must also consider the welfare effects that such activity might have and the consequences of prevention of such activity.
- 4.46 Save activity can be both welfare enhancing and pro-competitive. As explained above at section 3(C), a consumer who takes a reactive save offer from a provider directly benefits from having gained a better deal and, as explained earlier in this section, save activity is an integral part of competition between firms. Indeed, using a framework for the competition between an incumbent and an entrant based on some simple assumptions, CRA found that total consumer surplus is higher when reactive save activity is allowed than when it is not⁶². Further, the detailed economic modelling carried out by CRA, which can be found in the annex of the CRA Report, shows that most categories of consumers are generally better off where reactive save activities are permitted.
- 4.47 Moreover, there are benefits of reactive save activity in terms of avoided switching costs and risk of loss of service. The Plum Report found that the avoided costs of switching, which may be considerable and include the time and costs of completing the switching process, engineer site visits and new equipment installation, is a direct benefit to the consumer and the economy of save activity. This is particularly pertinent to the pay TV sector, where a new set-top box would need to be acquired and installed in the consumer's home, often by an engineer.

(i) Ofcom's duties

- 5.1 Ofcom's principal duty is to further the interests of consumers in relevant markets, where appropriate by promoting competition. As Ofcom is well aware, in performing its principal duty under section 3(1) CA03, Ofcom must have regard to section 3(3) CA03, which requires Ofcom to adhere to strict principles under which its regulatory activities should be "*transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed*". In addition, Under s3(3)(b) CA03, Ofcom must also have regard to best regulatory practice, which Ofcom has stated includes:

- operating with a bias against intervention;⁶³

⁶¹ Paragraphs 112 and 142, CRA Report.

⁶² Paragraphs 60 and 160, CRA Report.

⁶³ Ofcom also must have regard to its duty under s.6(1) CA03 that it must carry out its functions with a view to securing that regulation does not involve the imposition of burdens that are unnecessary.

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- striving to ensure its interventions are evidence-based, proportionate, consistent, accountable and transparent in both deliberation and outcome;
- always seeking the least intrusive regulatory mechanisms to achieve its policy objectives; and
- consulting widely with all relevant stakeholders and assess the impact of regulatory action before imposing regulation upon a consulting widely with all relevant stakeholders and assess the impact of regulatory action before imposing regulation upon a market.⁶⁴

5.2 These principles require any regulatory intervention to be based on cogent evidence which is capable of withstanding profound and rigorous scrutiny. Therefore, before Ofcom can proceed with the next phase of its work on consumer switching, it is incumbent on Ofcom to identify clear problems caused by the current switching processes for bundles of voice, broadband and pay TV services. Absent any compelling evidence, Ofcom should operate with a bias against intervention and direct its resources where there is evidence of serious consumer harm.

5.3 As set out above, Sky considers that intervention in relation to consumer switching for triple play bundles is not warranted at this time. There is no evidence of serious consumer harm, nor any significant adverse effects on competition caused by the current switching process. Taking each of Ofcom's stated objectives set out at paragraph 1.2 of the CFI in relation to consumer switching in turn:

- Switching of pay TV services **is easy and convenient** and Ofcom has already addressed any concerns it had in relation to consumers seeking to change their communications providers;
- Consumers **are already appropriately protected** throughout the switching process; and
- The current switching processes for voice and broadband bundles including pay TV **do not act as a barrier to competition**.

5.4 It should also be noted that Sky accepted the GPL switching process for fixed voice and broadband because it was less intrusive and costly than other Ofcom proposals and the vast majority of broadband and telephony switches already followed a GPL process. Therefore, Sky considered at the time, the solution proposed by Ofcom was a proportionate response to the issues identified. As Sky made clear at the time, however, Sky's acceptance of the harmonised approach to broadband and telephony did not amount to support for the extension of those processes to other services or for more intrusive regulation.

(ii) Ofcom must consider matters afresh and with an open mind

Given the long history of Ofcom's engagement in relation to consumer switching, it is important for Ofcom to consider matters afresh and with an open mind.⁶⁵ Ofcom should

⁶⁴ In addition to Ofcom's duty to act in a proportionate manner it must also conduct an impact assessment pursuant to section 7 CA03. In this regard from work to date, Sky expects that the actual costs of implementing the new GPL NoT+ process will be higher than those estimated by Ofcom.

⁶⁵ Ofcom first examined mobile number portability in 2006 - <http://stakeholders.ofcom.org.uk/binaries/consultations/gc18/summary/gc18r.pdf> and then commenced its review of consumer switching more widely in 2010.

not be influenced by the policy changes it introduced to harmonise the switching process for fixed voice and broadband services over the Openreach network.⁶⁶

- 5.5 Ofcom is inviting views on the original eight principal problems that it identified in its earlier phase of work which led to changes in the switching process of fixed voice and broadband services over the Openreach network. Sky is concerned that simply recycling these problems may hinder Ofcom from thinking with an open mind about the need for regulatory intervention in relation to switching of bundles of fixed voice, broadband and pay TV services. Instead, Ofcom should start with a clean sheet and identify afresh whether there are any problems with the current switching processes rather than clouding its thinking with previously identified potential problems.
- 5.6 It is also important that Ofcom conducts its consumer research and analysis objectively and with an open mind. Ofcom should not, for example, automatically read across conclusions from fixed telecoms to pay TV given the critical differences outlined above.

(iii) Ofcom must be transparent

- 5.7 In accordance with its regulatory obligations, Ofcom must also act transparently. In this regard, it is disappointing that Ofcom declined to consult stakeholders on the scope and focus (including the draft questionnaires) of its proposed further research on consumer switching referred to in the CFI.⁶⁷ Sky considers that going forward it is essential for Ofcom to share the results of its research and engage fully with stakeholders should it consider it necessary to proceed with the next phase of its consumer switching work. In particular, Sky would urge Ofcom to engage with stakeholders at an early stage should Ofcom identify any problems and consult on those problems before it formulates any policy proposals.

6. Conclusion

- 6.1 It is imperative that Ofcom looks at consumer switching in relation to triple play bundles with an open mind and does not simply seek to extend its previous analysis which was limited to broadband and talk switching over the Openreach network. Before Ofcom can proceed with the next phase of its work on consumer switching, it must identify clear problems caused by the current switching processes for bundles of voice, broadband and pay TV services, based on cogent analysis and evidence capable of withstanding profound and rigorous scrutiny.
- 6.2 Considered in this way, it is clear that there is no case for further intervention. Ofcom's objectives in relation to switching are already satisfied - Switching is easy and convenient; consumers are appropriately protected throughout the switching process; and switching does not act as a barrier to competition. The current switching processes work well for consumers, customer satisfaction is high and competition is strong. Put simply, there is no evidence of serious consumer harm, nor any evidence of any adverse effects on competition arising from the current switching processes to justify Ofcom continuing with the next phase of its work on consumer switching.
- 6.3 Sky considers that the current CFI is premature and Ofcom should allow the new GPL NoT+ process to take effect from June 2015 and monitor developments closely before engaging in any further work on consumer switching. Instead, Ofcom should prioritise and focus its resources on issues which give rise to serious consumer harm or adverse effects on

⁶⁶ Sky notes Ed Richards' speech of 11 October 2012 on "*the internet and consumer protection in the digital*" where it was stated that Ofcom "*will complete [its strategic review of consumer switching] in 2013, and then extend this to bundled services*" (emphasis added). This is concerning as Ofcom should approach the next phase of its work with an open mind. (<http://media.ofcom.org.uk/speeches/2012/speech-on-the-internet-and-consumer-protection-in-the-digital-age/>) We note that Sky wrote to Claudio Pollack of Ofcom on 22 November 2012 expressing these concerns.

⁶⁷ Paragraph 1.10 and see Ofcom's letter to Sky of 15 August 2014 declining Sky's request of 8 August 2014.

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competition (such as, Openreach provisioning and repair delays) and where its intervention could have the greatest impact.

Sky

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Annex 1

Offers from BT, Virgin Media & TalkTalk

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Annex 2

Ofcom's Assessment of the Use of Reactive Save Activity by Suppliers of Fixed Voice and Broadband Services: An Economic Analysis

A report by Charles River Associates

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Annex 3

Ofcom Strategic review of consumer switching - appraisal of save activity

A Report by Plum Consulting