
**STRATEGIC REVIEW OF CONSUMER
SWITCHING: COLT'S RESPONSE TO THE OFCOM
CONSULTATION ON CONSUMER SWITCHING PROCESSES.**

Non-Confidential

26 November 2010

1 INTRODUCTION

Colt is the leading information delivery platform for European business, enabling its customers to share, process and store their vital business information. An established leader in delivering integrated networking and IT managed services to major organisations, midsized businesses and wholesale customers, Colt operates a 19 country, 25,000 km network that includes metropolitan area networks in 34 major European cities with direct fibre connections into 17,000 buildings and 19 Colt data centres. Colt has made a £4 billion pan-European investment in its next generation fibre network infrastructure.

In the UK Colt provides voice and data services exclusively to business customers. The only form of 'switching' activities that Colt is involved in is where a business customer ports-in or ports-out their geographic and NTS numbers.

This consultation is concerned with consumer switching. Colt welcomes any measures that are designed to protect the interests of consumers.

Colt is very keen to ensure that regulation designed to protect the interests of consumers does not inadvertently 'spill over' into the business marketplace. As providers of communication services to medium sized and larger businesses have noted in previous consultations there have been several instances in the past where consumer regulation has unnecessarily affected business providers costs and resources.

Colt therefore urges Ofcom to be more targeted and specific when consumer protection remedies are applied so that unintended consequences and costs are not inadvertently and unnecessarily incurred.

2 BUSINESS CUSTOMER SWITCHING

Table 1 in the Consultation summarises the four types of switching that affect the consumer marketplace. Of the four switching types, business providers such as Colt are involved in only the first – Fixed-line geographic number porting. The table excludes the number porting of NTS numbers since these are used in the Business to Business (B2B) marketplace only.

In the consultation Ofcom reviews the needs of number portability and other types of switching in the consumer market place. These aspects include:

- Negative consumer experience ("hassle") in previous switching causing reluctance to switch again
- Targeted 'save' activities from the losing provider
- Merits of Losing or Gaining Provider Led ('LPL' & 'GPL') process
- Protection against mis-selling ('slamming')
- Minimal End-User touch points

In the BEREC consultation of June 2010¹ (page 71) the following trade-offs are identified in relation to the switching process:

a. ease of switching vs. consumer protection;

b. ease of switching vs. well informed consumers (number of contact points);

c. speed vs. reliability;

d. costs vs. risks;

¹ http://www.erg.eu.int/doc/consult/bor_10_34_switching.pdf

e. costs vs. time to implement; and

f. control vs. engagement.

It is revealing to consider how these aspects of the switching processes affect consumers and businesses differently; often they are the opposite of the scale.

Ease of Switching

To a consumer, ease of switching means an experience which does not require complexity or engagement and which takes place quickly.

For a business Number porting is a complex matter. Ease of switching means that, whilst the technicalities and risks must be fully understood by the customer, they are actually handled by the gaining CP who will plan and manage the switching process.

Speed vs. Reliability

For a consumer, speed of switching is important. Once a decision has been made there is no reason to delay; contract overlap should be minimised and 'save' activities should be avoided.

For a business, however, the decision to switch must be followed by careful planning in order to maintain continuity of service. The switch over will affect multiple lines and up to 10,000 numbers. The switch over time is usually set to be out of hours and both the gaining and losing CPs are on standby to ensure that the switch has taken place successfully. If the testing is unsuccessful roll back will take place until another attempt can be made. Such activities are carefully planned and project-managed. In most cases, inefficiencies in the porting process are subject to specific, individually agreed SLAs; business customers do not require additional protection.

Costs vs. Risks

A consumer will expect to be able to switch CP at no cost. Where cost does exist (such as overlapping contract periods) it is minimised by a rapid process. The consumer does not perceive risk in the porting process.

For a business, minimising the risk of lack of business continuity is paramount. Switchovers require careful planning and contingency plans which may come at internal costs to the customer. Minimising risk is therefore more important than saving cost.

Minimal End User Touch Points

To achieve maximum ease of switching a consumer requires the minimum of 'touch points'. In a gaining provider led process this may be as few as just one touch point.

A business however requires as much 'hand holding' by the gaining provider as is required to ensure a trouble free switchover.

Losing vs. Gaining Led Process

It is generally considered that a GPL process is better for consumers since it involves fewer touch points, is quicker and it reduces 'save' activities.

For business customers it is far less important whether the process is LPL or GPL since a business will generally appoint its new provider using a tendering process and once this decision is made the switch will go ahead within the planned timescales with little prospect of 'save' activities by the losing provider having any effect.

Mis-selling

Mis-selling is a problem almost exclusively associated with the consumer market, and it is appropriate that there should be consumer protection against slamming and other forms of mis-selling.

Slamming is possible in certain small sectors of the business market and it is good practice, for example, for a losing provider to send customers 'cease' notices if their WLR connection is to be migrated to another CP. However, it is inappropriate and unnecessarily costly to apply consumer protection to businesses who are fully able to look after their own interests.

3 EUROPEAN UNION FRAMEWORK

The scope of the EU framework and recommendations in relation to 'end user' and 'subscriber' interests is easily misunderstood. The difficulties arise from the interpretation of the terms 'end user' and 'subscriber' and to which types of customer they are intended to apply: consumers; micro enterprises; small and medium enterprises; corporate customers; multi-nationals.

Large business customers are at the opposite end of the scale from consumers. They exercise considerable buying power and they are generally in a position to negotiate their contracts of sale. The large businesses are technically astute, well informed and well represented. They are often considerably larger than their supplier. It is a buyer's market

The consumer however has choice but little buying power. They have only the choice of standard offers. Consumers must be protected against unfair practices which they do not have the expertise to guard themselves against.

In law and regulation the terms 'customer', 'subscriber', 'user', 'end user' and 'consumer' are used arbitrarily and interchangeably. However, in the EU Framework the context in which the term is used usually indicates that it is consumers that are referred to.

The Universal Service Directive

The Universal Service Directive² (USD) primarily aims to protect consumers. As revised in 2009 it also provides protection for micro enterprises and SMEs under certain circumstances. The objective is not to protect large corporate customers.

The distinction between consumers and large business was not 'defined' in the USD but the text makes the distinction clear. For instance the second sentence of recital 30 states:

Specifically, consumers should enjoy a minimum level of legal certainty in respect of their contractual relations with their direct telephone service provider, such that the contractual terms, conditions, quality of service, condition for termination of the contract and the service, compensation measures and dispute resolution are specified in their contracts. ... The measures to ensure transparency on prices, tariffs, terms and conditions will increase the ability of consumers to optimise their choices and thus to benefit fully from competition.

(Emphasis added)

It is clear that this passage refers to consumer interests only and neither here nor elsewhere in the directive is any consideration given to large business users.

SMEs are mentioned at Recital 49:

² Directive 2002/22/EC of the European parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive) (OJ L 108, 24.4.2002)

This Directive should provide for elements of consumer protection, including clear contract terms and dispute resolution, and tariff transparency for consumers. It should also encourage the extension of such benefits to other categories of end-users, in particular small and medium-sized enterprises.

(Emphasis added)

The Civil Rights Directive

However, the recitals of the Civil Rights Directive³ provides clearer interpretation. Recital 21 states:

Provisions on contracts should apply not only to consumers but also to other end-users, primarily micro enterprises and small and medium-sized enterprises (SMEs), which may prefer a contract adapted to consumer needs. To avoid unnecessary administrative burdens for providers and the complexity related to the definition of SMEs, the provisions on contracts should not apply automatically to those other end-users, but only where they so request

(Emphasis added)

This recital confirms the status of ‘consumers’ and then provides for the possibility of a similar level of protection to SME’s and micro-enterprises. However, the legislation is reluctant to stretch consumer protection to micro enterprises and SMEs automatically: it is there only if and when the customer requests it. This provision is crucial in preventing unnecessary administrative burdens and inefficiencies.

Recital 47 to the Civil Rights Directive stresses the fact that the new measures against unnecessary long-term contracts are aimed to protect consumers, and consumers alone:

In order to take full advantage of the competitive environment, consumers should be able to make informed choices and to change providers when it is in their interests. It is essential to ensure that they can do so without being hindered by legal, technical or practical obstacles, including contractual conditions, procedures, charges and so on. This does not preclude the imposition of reasonable minimum contractual periods in consumer contracts.

(Emphasis added)

Conclusion

All the considerations above refer to the ‘consumer’ as an object of protection, with only the specific mention of mention SME’s and micro-enterprises in one passage. The large business user is not mentioned at all.

EU Framework occasionally uses the term ‘subscriber’ for example in recital 27 of the Civil Rights Directive, and in article 20, paragraph 2, of the revised Universal Service Directive. Similarly the term ‘user’ is also used.

It would be incorrect to interpret these terms as applying to all business customers including medium and large businesses. Colt agrees that small business users who are subject to similar terms and conditions as residential consumers and with little or no buying power, require protection in the same way as consumers. However we believe it would be wrong for Ofcom to

³ Directive 2009/136/EC of the European Parliament and of the Council of 25 November 2009 (OJ L 337)

(inadvertently) apply this protection to larger businesses and providers of electronic communications services to businesses.