

Strategic Review of Consumer Switching – Ofcom Consultation

Response by Everything Everywhere

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1. About Everything Everywhere Limited

Everything Everywhere Limited (“EE”) welcomes the opportunity to respond to the first stage of Ofcom’s Strategic Review of Consumer Switching.

EE is the joint venture company running two of the UK’s most famous brands: T-Mobile (UK) and Orange (UK). Owned jointly by Deutsche Telekom AG and France Telecom SA, EE provides mobile, broadband, fixed, business and entertainment services in the UK. EE provides high quality GSM coverage to 99% of the UK population. EE is also a major retailer of fixed and mobile broadband services.

EE is the UK’s biggest communications company, with a combined customer base of over 30 million people and 700 retail stores across the country.

Further information about EE can be found on the EE website at www.everythingeverywhere.com.

2. Executive summary

This strategic review has been several years in the making and it is past time for the regulator to look at switching in the fixed line and broadband markets and to try to make something of the disparate processes that have developed since the establishment of competition in this part of the communications sector.

EE’s views on the key issues arising out of this review are:

- EE supports the exclusion of mobile number porting from the proposed reforms in light of the changes that are already taking place to that process. We believe that decision is well supported by the evidence Ofcom has collected in relation to ease of switching with the PAC process being regarded as “difficult” by the smallest percentage (5%) of consumers for any process, even before the latest round of changes have been implemented.
- EE does not have a view on whether a gaining provider led (GPL) or losing provider led (LPL) process in itself should be preferred in a “greenfield” situation. We do not believe that the simple distinction between GPL and LPL is meaningful without taking into account a wide array of related factors, which will have a much greater effect on the consumer's experience e.g. is the customer informed about the implications of the switching process. In other words, Ofcom should be focused on setting out the requirements that the process should be designed to meet, rather than determining that requirements be retro-fitted into a predefined process.
- This is supported by the fact that none of the identified “switching principles” are exclusive to either the GPL or LPL process. For example, both the GPL and LPL processes can be devised to include/exclude save activity or include/exclude a mechanism to remind the customer of switching implications.
- EE believes it is essential that each service utilises a single migration process irrespective of the technology that is used to provide the service. Where services are technologically

connected (for example, DSL broadband being provided over a PSTN line) it would be highly preferable for those services to utilise the same migration process.

- Arising from the preceding point, the anomalous disparity in switching processes between services provided using metallic path facility (MPF) and shared metallic path facility (SMPF) must be removed.
- Similarly, migrations to and from cable services should form part of this review.
- The migration process which is implemented must allow for consumers to be advised of their existing contractual obligations *before* they implement a decision to switch.
- It is in consumers' interests for them to be permitted to receive a save offer. To deny consumers the ability to receive save offers is to deny them the ability to make a decision based on all the relevant facts. The minimum position that we would support is one in which the consumer is permitted to choose whether to receive a save offer or not.
- Any proposed migration process must result in only a minimal gap in service (at most, a matter of hours).

3. Focus of the review

EE agrees with Ofcom's broad approach to the review and particularly that it has focussed on ensuring that switching is easy for consumers and that switching processes do not hinder providers competing vigorously with each other.

4. GPL v. LPL

EE can clearly see the advantages and disadvantages of GPL and LPL processes. The process through which Ofcom has gone to identify GPL as the preferred approach in a greenfield setting was useful to identify those advantages and disadvantages. However, Ofcom's survey results, in relation to MAC and PAC, exemplify that one type of process (i.e. LPL) can be implemented in different ways thus giving rise to very different outcomes. To EE, that means that the rudimentary statement "GPL is better than LPL" ignores so many details that it is almost pointless to make. An obvious omission from the consultation document is a consideration of combining save activity with GPL.

5. Consistency of processes amongst fixed line services

EE supports reducing the number of processes that need to be used by consumers to switch fixed line services. Confusion is caused when different processes are used to migrate services which form part of a technologically linked bundle or worse still, where different processes are used to migrate the same service with the differentiator being that the service is provided using a different underlying technology. Frequently, consumers do not understand the difference in underlying technology and, from a day-to-day perspective, have no need to understand it.

We believe that consistency of processes is critical from two perspectives – both of which are identified by Ofcom.

First, multiple processes are more difficult for consumers to manage. For example, a consumer who proposes to switch from Orange broadband to Post Office broadband will need to use the MAC process. To move his or her fixed line between the same two providers the notification of transfer process (“NoT”) will be used. However, if the move is to Sky MPF, NoT is used for both services. If the consumer ultimately decides to move to Virgin Media, he or she will need to arrange a cessation of service (with Orange) and a new provision of service (from Virgin).

Secondly, as Ofcom acknowledges (at paras 2.42 and 5.106), there is a competitive advantage to being able to acquire customers using a GPL when others are using a LPL process. There is an obvious absence of competitive neutrality when one group of providers is able to acquire customers more easily or cheaply than another group – purely as a consequence of the applicable migration process.

We are encouraged that Ofcom’s consultation document canvasses unifying migration processes with a view to removing the anomaly that exists for transfers to and from MPF. However, Ofcom’s consultation is deficient in not proposing that migrations to and from cable fixed line telephony and cable broadband services should, for the same reasons, be included.

An essential part of any proposal for reform must involve the use of identical processes for switching services which fall within the same market and are regarded in the same manner by consumers.

6. Existing obligations and consequences of termination

Consumers should be reminded of their existing contractual obligations before they switch provider. The prevalence of 12 to 24 month contracts for communications services means that it is not unreasonable for a consumer to fail to recall either the time at which they commenced a particular contract for services or the terms of that contract. Furthermore, the gaining provider has no incentive to mention this potential deal breaker to the customer. Any resulting bill shock will be considered an issue for the losing provider. With that in mind, EE believes that it is in consumers’ interests for the losing provider to notify a customer who is proposing to terminate his or her contract, of the consequences of that proposal, before the customer’s proposed decision is acted upon. Ofcom has for some time raised concerns with providers in relation to “bill shock”, which is experienced for a variety of reasons. Ensuring that consumers have all relevant information available when they make a switching decision will guard against such problems.

7. Save activity

EE is of the view that losing providers should be permitted to make a counter offer to a customer before he or she acts upon a proposed decision to switch. Ofcom offers no substantive evidence to demonstrate that save activity produces bad economic outcomes.

EE believe that save activity is in a consumer’s interest. Even a smooth switching process has the potential to cause inconvenience to, and require effort on the part of, a consumer. Save activity provides scope for consumers to receive a competitive offer (potentially one which is even better than the one to which they propose to move) and avoid switching costs. The fact

that customers choose not to switch when they are presented with a better offer is not indicative of a barrier to competition – consumers are not being tied to their existing provider; they are being compelled to stay by market leading offers.

The alternate position is to allow consumers to decide whether they wish to receive a save offer. To deny giving consumers at least the option of receiving a save offer from their existing provider will result in many consumers unnecessarily incurring switching costs and not receiving a better offer. We do not believe that Ofcom can consider prohibiting save activity without understanding the welfare cost to consumers of being refused the opportunity of a better offer from their existing provider at point of switching.

8. Responses to consultation questions

Question 1: Do you think hassle is a key issue we should tackle in this review?

EE thinks that Ofcom should consider the consumer experience as a whole rather than focussing on any particular element. It is noteworthy at figure 16 (page 42) of the consultation document that only 5% of consumers found mobile switching with the PAC process difficult and 83% found it to be easy (and this is before the current round of changes to the process have been implemented). In contrast the MAC process was regarded by 23% of consumers as difficult and by only 58% as easy. That seems to indicate that notwithstanding that the processes have a similar basis; namely, LPL, their differing implementation by broadband versus mobile providers has lead to a very different consumer experience. Indeed the PAC process ease of use percentages (5% and 83%) are comparable to the fixed line NoT (9% and 86%) and broadband NoT (8% and 86%) ease of use percentages.

In EE's view, that data contradicts any attempt to conclude that GPL processes are necessarily easier than LPL processes for consumers to navigate.

However, Ofcom on this very point and using the same data, makes the statement that:

In section 4 we discussed our research which showed that switchers were more likely to rate the GPL process as easy compared to the LPL processes... (at paragraph 6.49 (on page 95) of the consultation)

By aggregating the results for PAC and MAC, Ofcom makes a statement which is simply misleading. When comparing the NoT and PAC processes, the results, mentioned above, are almost equal – indeed some might argue that PAC fares better than NoT with only 5% finding it difficult.

In EE's view, these numbers evidence that a much more significant determinant of ease of use is the detailed implementation of a process rather than simply whether it is LPL or GPL. As examples, the PAC process involves the code being issued more quickly and a subsequent shorter transfer period than the NoT process. Additionally Ofcom's figure 17 (page 44) makes it clear that contacting a mobile provider to obtain a PAC is considerably easier than contacting a broadband provider to obtain a MAC.

Question 2: Do you agree there is a lack of clarity about the switching processes that consumers need to go through to switch and this may create a barrier to switching?

EE is not necessarily surprised that when asked a specific question about a migration process, a consumer will not know the answer. There are many processes and rules which impact consumers' lives about which consumers will be unaware unless and until they have the need to understand them. It is when that need arises that the complexity of the process makes a difference to a consumer being able to quickly understand and undertake the process to achieve the outcome he or she desires.

We can again contrast porting a mobile number with migrating a broadband service. There is only one process for porting a mobile number and explaining the PAC process to a consumer is relatively uncomplicated¹. Choosing a new broadband provider could result in the consumer needing to understand any one of three completely different processes – NoT (MPF), MAC (SMPF) and C&R (cable). A savvy consumer may well understand the difference between a service provided over BT's copper infrastructure as against one provided over Virgin Media's HFC infrastructure but the distinction between full metallic path facility and shared metallic path facility is likely to be lost on almost all but the most technologically interested consumers.

A single process for switching *different* services is not necessary to reduce consumer confusion. Consumers are capable of understanding that they may need to undertake a different process to port their mobile number as compared to switching broadband provider. However, when it comes to switching a particular service or a service which is dependant on another service (e.g. DSL broadband and fixed telephony) it can only assist consumers for there to be a single process irrespective of the underlying technology. For that reason, we believe that it is crucial that the MPF and SMPF process disparity is resolved and the process for moving to and from services provided over cable is also harmonised with the other services in the same market.

Question 3: Do you think clarity is a key issue we should tackle in this review?

As noted in our comment on question 2, for EE, the first step to improving clarity is unifying the processes that sit under each service, so as to minimise the number of different processes.

We do not believe that it is for this review to set as an objective that all consumers should be proactively educated on the switching process for all their communications services. Instead, consumers should find it easy to find out the process applicable to each service they may wish to switch and should not have to understand the technology used to provide their service.

¹ It may be argued that there are actually two process for switching (as opposed to porting) a mobile service, namely PAC process and C&R. However, the latter cannot really be described as a process. The ease with which a customer can be provided with a mobile service (i.e. immediately) must be contrasted with the fact a customer may need to wait days before they are provided with a new fixed voice/broadband service. Moreover, the customer will still need to understand when a C&R, MAC or NoT is required in the first place. A customer moving from Orange to T-Mobile without porting will always use C&R. A customer moving from BT to Virgin won't always use C&R; the customer may choose Virgin, but in a non cabled area, and therefore need to use the NoT/MAC process.

In relation to consumers' awareness of their contractual arrangements, as previously mentioned, EE believes that consumers should be reminded of their existing contractual obligations before they switch provider.

Question 4: Do you think continuity of service (including unwanted breaks and double billing) is a key issue we should tackle in this review?

This is an element of any migration process which EE believes is fundamental. Any coordinated migration process should aim to minimise the period during which a customer has no service and to ensure customers do not feel the need to pay for two services in order to ensure they are not without service. Gaps in service have the potential not only to cause real consumer dissatisfaction but also to cause real consumer harm. A proper migration process will reliably result in only a minimal gap in service.

In fact, we believe that Ofcom is avoiding the likely most significant cause of gaps in service or double payment – which we believe to be transfers using the C&R process to and from Virgin Media's infrastructure.

This situation can be contrasted with the use of the C&R process in the mobile market, where there are no continuity issues, because the service can be provided immediately. In the fixed and broadband market, there is frequently a need for an engineer to visit a customer's home to provision the service, hence leading to customers experiencing long delays (as per Ofcom's research, an average of 12 days (6.29)). Because there is this potential for a long break in service in the fixed and broadband market, it is crucial that this customer harm and frustration is mitigated through a single, co-ordinated switching process.

Question 5: Do you think the ability of providers to frustrate the switching process is a key issue we should tackle in this review?

Ofcom's discussion of this issue refers to two separate matters – first the ability of a losing provider to delay a consumer from switching during an LPL process and secondly, the ability of a losing provider to cancel a pending transfer during a GPL process.

Ofcom's first point focuses too much on the solution, which detracts from the requirement which any solution would need to meet. Ofcom considers that the upfront customer verification built into existing LPL processes serves as a delay mechanic and is therefore undesirable. Once again, Ofcom concludes that a GPL solution is better for the consumer by dint of the fact that it does not include the losing provider in the process; Ofcom does not consider why the losing provider needs to be involved in the first place. Ofcom has overlooked the role of the losing provider in meeting the fundamental requirement to ensure that any process should minimise the potential for slamming. Ofcom therefore ignores the fact that this requirement could be met either by a GPL or an LPL process, but it will only be delivered if it is built in from the outset and if the LP is able to provide the requisite information to the customer in a cost effective manner.

In a green field situation, it would clearly make more sense to ensure that a new solution meets all high level requirements rather than trying to tweak a pre-determined solution to fit the requirements. It is clearly a key requirement that a customer is fully informed about and agrees to a switch *before* they switch. Ensuring a mechanism is in place to reverse any erroneous switches is necessary to deal with the exception but should not be seen as the means by which slamming can be stopped. Ofcom should focus on prevention, not the cure.

Indeed, an example of where retrospectively building in requirements does not work can be seen in the “cancel other” facility under a GPL process, which is the second issue dealt with by Ofcom in this section. We are concerned about the use of the “cancel other” functionality by losing providers during a GPL process because of the potential lack of visibility of the cancellation to the customer and the very small amount of information that is visible to the gaining provider. “Cancel other” can be, and has been, abused by less than reputable providers to stop their customers from migrating to another provider. That is clearly anti-competitive and causes direct consumer harm. However, “cancel other” is also necessary where there is no upfront verification to help reduce harm caused by slamming under a GPL process. A process which had customer verification built in would have reduced the reliance on a “cancel other” process.

Overall, EE takes the view that Ofcom’s focus should be on the requirements from a policy perspective (i.e. any process must ensure that the customer is properly verified before a switch and any erroneous switch must be reversible) rather than the operational solution (i.e. the process must be GPL and must include “cancel other” functionality).

Question 6: Do you think consumers’ experience of save activity is a key issue we should tackle in this review?

Whilst we agree that save activity is a key issue, we do not agree that the principle of save activity is a policy concern that requires regulatory intervention. Save activity in itself is beneficial to consumers. Consumer harm only arises if save behaviour is excessive and unwanted. Excessive and unwanted save behaviour can be mitigated through the detailed process; it does not need to be, and should not be, prohibited by regulation.

However, where there is an imbalance in the degree to which save activity can be deployed by different providers, then there is clearly a need for review as this impacts upon competition and reduces the consumer benefits of save activity. Such a disparity exists today as the existence of multiple switching processes in the fixed and broadband market means that some operators can perform save activity whilst others are forbidden from doing so. Whether save activity is allowed or not depends on the switching process used (and this process is not a choice). Ofcom’s review of save activity should therefore be focused on redressing this imbalance.

It is only in a situation where there are multiple switching processes with different rules on save activity that save activity in itself hinders competition. Where there is a clear switching process, save activity offers consumers a choice.

Question 7: Are there issues specific to either residential or business consumers' experiences of the switching processes that we should tackle in this review?

EE has no comment in response in this question.

We would just point out that there is no reason to think that business consumers' experience and expectations of save activity would be any different from residential consumers'. Ofcom suggests that business customers *"who are leaving in order to improve their package or deal are typically happy to give their existing provider the opportunity to match this. Those that are leaving because they have had problems with their existing provider (e.g. poor customer service or coverage issues) have already made their decision to leave by the time they call to request their PACs – and accept that the network can do little to retain them"* (4.122). Ofcom therefore appears to conclude that save activity offers significant benefits to the end-user. We note that this same research² suggests that residential experiences are less clear cut in this regard, but there are still a large number of customers who are also in favour of save activity because it helps them seek out the best deal (they may not know what packages their existing customer has to offer until this point). Ofcom therefore cannot conclude that save activity is a barrier to switching and therefore undesirable.

Question 8: Do you agree with our analysis of switching costs?

EE's only comment in relation to switching costs is that it is clear from Ofcom's research that the MAC and C&R processes generate significant switching costs for fixed and broadband customers. However, once again we note that Ofcom is proposing to completely ignore and allow the continuation of the C&R process for transfers to and from cable. That is a significant deficiency of this review.

Question 9: Do you agree with our analysis of save activity?

EE recognises that lower switching costs can be highly desirable for competition in the communications sector.

However, EE strongly disagrees with Ofcom's presumption that save activity permitted within a LPL migration process in the communications sector should necessarily raise greater competition concerns than observed save activity in comparable sectors (paragraphs 5.47-5.48).

Indeed, we are not convinced Ofcom has provided clear evidence that "save activity" in itself (regardless of the process) produces bad economic outcomes. The narrow focus on save activity within a LPL migrations process, to determine whether or not LPL is a desirable process,

² Jigsaw Research

http://stakeholders.ofcom.org.uk/binaries/consultations/gc18_mnp/Jigsaw_qualitative_research1.pdf

without considering the wider costs and benefits of save activity more generally leads to a misleading conclusion.

In the absence of Ofcom identifying a clear prediction on the net welfare gains to society from save activity from the relevant literature review³, Ofcom falls back on its own presumption to suggest that save activity within a LPL migrations process raises too many risks for competition. We consider this undermines Ofcom's remaining summary and interpretation of the existing literature on switching in section 5 and Annex 6 of its consultation document, and its findings.

Specifically, Ofcom suggests that allowing save activity within an LPL migration process may undermine switching and therefore the competitive process, since LPs can target customers upon being prompted by a MAC or PAC code request (paragraph 5.48). Ofcom implies that save activity in an LPL migrations approach would give LPs the ability to price discriminate 'without risk' (paragraphs 5.52-5.58) and offer guaranteed price-matching (paragraphs 5.59-5.66) that risks deterring entry and reducing competition more generally.

We do not consider save activity presents sufficiently greater risks in the communications sector to warrant preventing save activity within the LPL migration process, or indeed any switching process (as there is no reason to believe that only a LPL process would allow save activity).

First, allowing the customer switching process to provide for save activity will not have a significant detrimental impact on competition, because (at least for contract customers) the LP is already aware of when their customers' contracts are coming up for renewal. Accordingly, knowledge that a customer is seeking a PAC or MAC code is unlikely to give significantly more information to LP's about the timing of likely subscriber demand for upgrades or switching than is already known to providers.

[Redacted]

Second, we do not agree that implicit price-matching guarantees (paras 5.59-5.66) through targeted save activity would impact adversely on competition by deterring entry. This would suggest that a communications provider's ability to price match is limitless – it is not.

[Redacted]

Accordingly, the two key features of save activity that Ofcom considers could have negative impacts on competition do not appear directly relevant to the communications services market. Ofcom has failed to provide any substantive evidence for why these save practices pose greater risks for the communications sector than other comparable sectors.

Moreover, potential consumer benefits may also be lost without save activity. Save activity can ensure that subscribers are fully informed and can make significant monetary savings or get better services with retention deals. Ofcom does not appear to place any significant weight on these considerable customer benefits. It is not sufficient to dismiss the benefits of save activity

³ Ofcom notes: "The theory on price discrimination in competitive environments may not be directly applicable to save activity in a LDL process" (Paragraph A6.23).

(which are experienced and welcomed by consumers (5.94)) by simply quoting a hypothetical outcome.

We consider that Ofcom's view that customers with no intention to switch will be likely to be worse off under a LPL process with save activity, such that on *average* customers will be worse off is not supported by Ofcom's own analysis. Ofcom concludes that the academic literature supports its thinking on the one hand, yet it recognises the literature's limitations in offering clear predictions of the detrimental competitive effects of save activity on the other: "*The theory on price discrimination in competitive environments may not be directly applicable to save activity in a LDL process*" (Paragraph A6.23). However, Ofcom chooses to ignore this outcome (e.g. at 5.99).

We consider that Ofcom's own admission at paragraph A6.23 undermines its conclusion at paragraph 5.99.

It is also not clear why save activity within a GPL process has not been considered. For example, it could be that a GPL process does not require the customer to contact the LP, but the LP could potentially contact the customer in response to a request from the GP for a "PAC" or "MAC" code; or the customer could choose to contact the LP. In the event Ofcom chose to move to a GPL approach, it would also need to consider the costs and benefits of GPL with and without allowance for save activity.

Question 10: Do you agree with our analysis around the multiplicity of switching processes?

Ofcom's consideration of the multiplicity of switching processes in paragraphs 5.100 to 5.1110 makes three points.

First, Ofcom notes that multiple processes for the same service can make it difficult for consumers to know what to do to switch. EE agrees with this comment and we refer to our comments in response to question 2.

Secondly, Ofcom refers to the absence of competitive neutrality where multiple switching processes are used for the same service because of the differing ease with which customers can be acquired under different processes. Once again, EE agrees with Ofcom's analysis. The introductory paragraphs of the consultation endeavour to spell out the importance of switching processes in engendering competition. It must follow that if switching processes *are* so important that the use of three different processes for switching the same service is going to impact competition – a fortiori, when two of those processes (MAC and C&R) allow something as critical as save activity by the losing provider but one, (NoT) doesn't.

Thirdly, Ofcom puts the view that save activity weakens firm's incentives to win each other's customers. This point seems entirely out of place under a heading dealing with multiple switching processes because it is not referring to, nor does it seem dependant on, there being multiple processes. More substantively, Ofcom does not attempt to connect its theoretical consideration with reality when it seems to be saying that the broadband and pay monthly

mobile markets are less competitive than they could be because of save activity being permitted as part of the respective switching processes.

We are bemused by paragraph 5.109 where Ofcom recounts evidence provided by one MNO which said that “14% explicitly mentioned ‘competitor better offer’ as the main reason for cancelling”. In other words, if save activity had not been permitted in those 14% of cases, the customer would have proceeded to move to the complaining MNO and would likely have paid a higher price in doing so.

Question 11: Do you agree with the general switching principles we have identified?

On the issue of promoting awareness of the implications of switching, as mentioned in our response to question 3, we believe it is in the consumer’s interest to understand his or her contractual obligation relating to termination of a contract prior to finalising the decision to switch. This is clearly borne out by Ofcom’s research (6.20), which concludes that precise ETC information is crucial not only to ensure the customer understands the implications of switching whilst still in contract, but also because it offers the simplest customer experience. However, Ofcom seems to dismiss these findings by also suggesting that this might be less important if general ETC awareness raising tools were implemented (6.22). We are concerned by this suggestion. As we have stressed to Ofcom in response to recent consultations (for instance in relation to GC 14), information is only useful to the customer if it is provided at the point at which it is needed. Non-targeted messages risk being lost in the mix and can be confusing. We do not believe that it is in the customer’s interests not to be reminded of any outstanding contractual liabilities at point of termination/switching, because of the risk of bill shock and the potential impact on customer credit ratings. If information on any outstanding obligations is considered a determining factor, it is illogical to conclude that it is less important to remind customers of this charge at the point at which it would actually apply.

On the principle of enabling “continuity of the main service”, we are uncertain as to what the qualification “main” is intended to add (at paragraph 6.27). Here we would reiterate our point in relation to switches to cable which we believe must be the most prevalent circumstance in which a consumer either suffers a period without service or needs to pay for two services so as to avoid that outage. It seems hollow to make this principle appear so important yet completely avoiding trying to address it by excluding migrations to and from cable from this review.

Question 12: Do you agree with our proposed tier structure for the general switching principles?

EE is unsure as to the value of creating the two tiers of principles and questions whether Ofcom has created something which could result in endless debate yet add little value to the discussion.

That being said, we believe that the principle of promoting awareness of the implications of consumer switching needs to be “promoted” to a first tier principle. Like slamming, it has the potential to directly and significantly impact the consumer. Unlike Ofcom, we don’t believe that

it can be properly dealt with outside the switching process. Certain key elements – such as a potential early termination charges (ETC) – need to be made known to the consumer so that he or she is properly informed before deciding to switch. Failure to do this could result in bill shock.

The issue of continuity of service also needs to be given a higher priority than Ofcom proposes.

As mentioned in our response to question 4, we believe this is a fundamental element of a consumer friendly switching process. It also clearly has the potential to negatively impact competition if it is widely known that a particular switching process necessarily involves a gap in service or the need to inconveniently utilise a substitute service for a period. This could be a particular issue for business customers and impact their propensity to switch.

Question 13: Do you agree with our proposal that the preferred switching approach assuming a “Greenfield” basis is GPL?

We neither agree nor disagree that GPL is the preferred switching approach and refer to our comments under point 4, “GPL v. LPL” above. We do think Ofcom has not considered all of the relevant variable components of either process.

We believe that Ofcom has taken an overly simplistic approach to assessing the existing processes. Rather than focusing on whether each principle is met by the existing process, thereby drawing conclusions on whether an LPL or GPL supports each principle, Ofcom should be looking at who (gaining provider, losing provider, customer, third party or a combination of all these) is best placed to meet each principle (for example, because they hold the necessary information). We can then develop options that meet these requirements. The necessary consumer protection measures, cost minimisation measures and practicalities can therefore be built in from the outset rather than retro-fitted to meet a pre-defined solution.

Let’s take “Promotes awareness of the implications of switching” as an example. A process could indeed be developed to exclude any direct contact between the LP. But this may not be the best way of delivering the information from a customer experience and cost perspective. Having a GPL process is not a policy outcome; having well informed customers is. We would stress that the most reliable source of ETC information is the LP in this case. It therefore does not make sense that a solution is devised to purposely exclude the LP from doing this.

Question 14: Which of the identified GPL switching options do you support? Please provide an explanation of your answer.

EE believes that it is premature to advocate any particular migrations process when the merits of the basic principles that make up any process are still being debated. That comment applies equally to Ofcom’s proposal to commence its series of switching working groups – even prior to the date for submission of responses to the first consultation of a two stage consultation process.

Question 15: Do you have any information or views on the cost of the switching options outlined above? Please provide supporting evidence

We have no such information available at this stage. Ofcom must also remember that we are not starting from a “Greenfield” position. There are existing systems and processes in place already which would need to be changed to fit any new process. The costs will therefore vary according to provider, platform and switching process. We would need to pull together a project team in order to provide costing information for these options, which we do not think is proportionate or helpful at this stage.

Question 16: Do you agree with our proposals and implementation priorities for taking forward our work in relation to existing switching processes?

At paragraph 7.11 Ofcom discusses why it is only proceeding to consider changes to the current switching processes for fixed-line and broadband services which currently use the NoT and MAC processes. It sets out the “benefits” of that approach at 7.13. However, the benefits listed only justify excluding mobile and pay TV from the review. None of the benefits cited justify the exclusion of migrations to and from cable telephony or broadband. To briefly review the points made:

- Ofcom wishes to focus efforts where there is evidence of greatest harm but the C&R process used for transfer to/from cable causes loss of service and double payment and results in a multiplicity of processes for the same service and is difficult for consumers to coordinate and manage – yet it is ignored. Moreover, it is not made clear *why* such a key element of the fixed and broadband market is being excluded from the review.
- Ofcom asserts that stakeholders have expressed the view that Ofcom needs to provide strategic direction in relation to fixed line and broadband. We’re unclear what that means but surely cable telephony and broadband still fall within that market description.
- Ofcom suggests that a narrow focus will allow it to deliver benefits more quickly. Merely including telephone and broadband switching for cable services would not need to slow the process. It may be that a longer implementation period is needed so that providers could settle back office processes. However, this will be worthwhile, because from a consumer perspective, migrating between cable and copper would appear no different to migrating between copper services - the consumer will still see it as a switch in provider of fixed/telephony services. It is therefore logical to allow a slightly longer implementation period to ensure consumer expectations can be met rather than perpetuating confusion in fixed migrations processes. If cable is excluded from this review, we would anticipate that Ofcom will only have to look at the cable to copper migrations process soon after the completion of this phase of the project, which goes against the grain of conducting a strategic review.
- Ofcom says it will allow them to prioritise harmonising switching processes for the most common type of bundle – without acknowledging that it will leave “unharmonised” a

significant part of the fixed telephony and broadband market, causing consumer frustration and maintaining an uneven playing field. Moreover, Virgin is one of the largest players in the bundling market and the impact on competition of excluding cable could therefore be significant and long lasting.

- Ofcom makes clear that it will allow changes to GC18 to bed down. Whilst we agree with this from a mobile perspective, again it does not impact migrations to and from cable.

Finally, we have some concerns around Ofcom's approach to the "next steps" in the process. Ofcom has already held the first meeting of a working group to discuss options for future switching processes. We believe this is dangerously premature. The working group is being asked, before the responses to the consultation have been received and analysed, to hone down on several gaining led porting processes in order to work on a high level process specification and costings. As we pointed out in the first meeting of the working group, we cannot be expected to undertake this work until our responses have been duly considered and Ofcom has had a chance to refine its thinking. Taking forward this process work would pre-empt the outcome of the consultation, and as we have set out above, we are not convinced that the scope of the work is adequate (i.e. cable must be included within scope), nor do we agree with the focus on a GPL v LPL process.

Whilst we strongly agree that industry, with customer input, is best placed to design any future switching process, we do not believe that it is appropriate to start the design work until everyone's views have been fully taken into account and the potential options properly assessed.