
Three's response to Ofcom's Strategic Review of Consumer Switching Consultation.

Non-confidential

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Executive Summary

- 1 Three welcomes Ofcom's consultation on its "Strategic review of consumer switching – A consultation on switching processes in the UK communications sector", published on 10 September 2010 (the "Consultation") as an opportunity for the communications industry as a whole to re-consider the benefits of reforming the UK's switching and porting processes.
- 2 We strongly support Ofcom's finding that gaining provider-led ("GPL") switching and porting processes hold significant advantages over losing provider-led ("LPL") processes, both in terms of the consumer experience and through encouraging and supporting effective competition. The benefits of GPL processes have been accepted around the world already, and we are pleased that Ofcom has now finally acknowledged them too.
- 3 The switching and porting processes in the UK communications sector have been allowed to develop on an ad hoc basis. Such processes may perform when switching primarily occurs between the incumbent operator and a few other large operators, albeit inadequately. However, the unnecessary complexities of inefficient switching processes constitute a barrier to both competition and switching as the market matures and smaller service providers enter.
- 4 The various switching and porting processes that consumers currently must follow in order to switch between communications providers are unnecessarily complex and confusing. As Ofcom identifies in the Consultation, not only does each communication service have a different switching process, but there are different processes even for the same service, which result in very different consumer experiences.
- 5 For example, a consumer wishing to switch their fixed broadband provider may need to follow either the GPL Notification of Transfer ("NoT") process, the LPL Migrations Authorisations Code process ("MAC") or a Cease and Re-Provide ("C&R") process, depending on what type of infrastructure the relevant losing and gaining providers use. Reform is clearly necessary. Therefore, we welcome Ofcom's desire to develop some form of harmonised process to make switching and porting easier for customers.

- 6 The current UK mobile number portability (“MNP”) system is LPL, which poses opportunities for losing operators to cause delays and provide misinformation, resulting in considerable consumer harm and damage to competition. Significant delays to reform have already occurred and genuine improvements to the MNP system in the UK are now long overdue.
- 7 Ofcom’s Annual Plan sets out Ofcom’s priorities for 2010/11 which include ensuring that consumers can switch between communications providers by removing unnecessary barriers. And yet, Ofcom has chosen to exclude mobile from the next stage of industry discussions and consultation, despite previous assurances that options for MNP reform would form a key part of the consumer switching review.
- 8 Ofcom has missed a significant opportunity to bring the benefits of GPL porting to mobile consumers or make meaningful reform to the mobile porting system, by proposing to focus only on the current processes for switching fixed voice and broadband using the MAC and NoT processes. In our view, this exclusion of mobile is anti-competitive and discriminates against mobile communications providers. We urge Ofcom to reconsider this decision for the reasons set out in section 1.1 of our response.
- 9 The benefits of GPL switching may be difficult to reduce to a single figure. However, the academic literature and economic theory show that the benefits of reducing switching costs are very real and very significant¹. Moving to GPL systems for mobile and broadband technologies will result in a reduction of switching costs and therefore bring significant benefits, as detailed in section 3 of this response. GPL is the most effective switching model, as can be seen from numerous international experiences reported by BEREC (Body of European Regulators for Electronic communications)².
- 10 We are aware that certain concerns have been raised by other industry stakeholders about whether a move to a GPL process may increase the risk of slamming, and whether this should prevent a move to a GPL process. However, as Ofcom has acknowledged in the Consultation, these issues can be successfully dealt with or resolved through simple measures, as discussed in section 2.5 of this response. In our view none of these concerns are sufficient to prevent a move to a GPL switching process.

1 See, for example, Consumer switching: Experimental economics research, prepared for Ofcom by London Economics, June 2010

2 See BEREC’s report on “Slamming and switching validation processes – International Comparison”, published by Ofcom on the Consultation website: <http://stakeholders.ofcom.org.uk/consultations/consumer-switching/>

- 11 As an aside, we also note that, at least in a mobile context, switching and porting are not interchangeable terms because they describe different processes. Namely, switching is the process of moving from one provider to another, whilst porting is the ability to take your telephone number with you when you switch. Apart from MNP, no other “co-ordination” is needed between operators for customers to be able to switch because of the wireless nature of mobile technology. In our view, imposing a separate switching process in the mobile sector in situations where the customer is not porting their number would potentially introduce unnecessary complexity, confuse consumers and have anti-competitive effects.

Structure of Three’s response

- 12 In section 1 we set out in more detail our general comments regarding the scope of Ofcom’s switching review, including our observations regarding exclusion of a review of MNP reform and our views on bundling.
- 13 In section 2 we describe the elements of consumer harm that are most prevalent in a LPL switching or porting process. We also explain why, in our view, a GPL process can overcome these concerns, and provide a better consumer experience. Three’s responses to questions 1 to 7 of the Consultation are also contained in section 2.
- 14 In section 3 we consider the respective competitive effects of LPL and GPL processes, and comment on the economic research regarding switching costs and save activity that Ofcom has commissioned to date. Three’s responses to questions 8 to 10 of the Consultation are also contained in section 3.
- 15 In section 4 we analyse Ofcom’s ‘greenfield’ proposal for a GPL switching process, and comment on the switching principles that Ofcom has identified. Three’s responses to questions 11 to 15 of the Consultation are also contained in section 4.
- 16 In section 5 we look at Ofcom’s proposed timeframe for further consideration of GPL switching and porting processes, and highlight the reasons why reform of mobile number portability is so long overdue and should be considered as part of Ofcom’s consumer switching review now. Three’s response to question 16 of the Consultation is also contained in section 5.

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1. Three's general comments about Ofcom's approach and identified scope.

- 17 We broadly accept many of Ofcom's findings and support much of the research effort that Ofcom has made. We acknowledge the scale of Ofcom's task in reviewing all switching processes across the communications sector, and welcome Ofcom's rigorous analysis.
- 18 However, there are a few key issues that we believe require further consideration and research. These comprise:
- consideration of MNP reform in this consumer switching review;
 - the associated failings of Ofcom's interim decision to shorten the MNP LPL process; and
 - bundling and the changing communications market.
- 19 We discuss each of these topics in further detail in this section. We have also commented briefly on the recent report regarding Ofcom's effectiveness published by the National Audit Office ("NAO"), and its impact on this Consultation.

1.1 Ofcom's decision to exclude consideration of MNP reform from the Switching Review

- 20 Ofcom's proposal only to focus on changes to current switching processes for fixed-line and broadband services (including switching bundles of the two) in the next round of industry discussions and consultation is very concerning. We are disappointed that Ofcom has once again fudged the issue of reform of the existing LPL MNP process, even though there have been significant problems with the current MNP process for several years.
- 21 Ofcom's proposal to focus its efforts solely on reform of fixed-line and broadband processes is not justified, for the following reasons:
- **Ofcom ignores the clear deficiencies and problems with the current LPL MNP process:** The research Ofcom has carried out over the past few years has, time and again, highlighted the significant deficiencies in the current MNP process and the method which consumers have to follow to obtain their PAC from their old provider. We have previously presented evidence to Ofcom showing that the current LPL process enables losing operators to engage in unwanted save activity and misinformation causing harm to a significant minority of consumers and anti-competitive effects. As described below in section 1.2, Ofcom's interim decision in the April 2010 Statement did nothing to address these systematic flaws.

- **The MNP process is no better than fixed line or broadband switching processes:** Ofcom justifies its proposal by stating that the consumer evidence and competition evidence has identified fixed line and broadband services as the areas of highest concern, causing the greatest harm. We disagree with this conclusion. Interestingly, Ofcom's own evidence shows that the NoT process is more likely to be rated as easy relative to the PAC process (amongst others). And yet, Ofcom is specifically focusing on fixed and broadband switching processes rather than mobile. We believe that on the basis of the available evidence, Ofcom should not have excluded further consideration of reform to the PAC process.
- **New changes to GC18 do not solve the underlying problems:** Ofcom states that its approach has the benefit of allowing currently planned changes to the PAC process for mobile, due to come into effect on 11 April 2011, to have an effect before considering the need for any further changes in the mobile sector. However, as described in further detail in section 1.2 below, in our view, the changes that Ofcom has introduced to GC18 do not resolve any of the concerns identified with the current MNP system. Moreover, Ofcom's research for the 2009 MNP consultation showed as much, with 53% of mobile consumers stating that they would prefer a GPL porting process for mobile services, with only 20% preferring LPL³.
- **Further delay to reform:** We can see no reason why discussion of whether MNP can become GPL needs to wait until 2012 at the earliest. This introduces further unnecessary delay in excess of a year, before a fully considered review of Ofcom's research regarding GPL switching can be carried out in relation to MNP. Mobile consumers deserve the benefit of this research earlier.
- **Anti-competitive effects of the proposal:** We are also concerned by the competitive effects of Ofcom's decision to focus on harmonising processes for other services that are bundled, but excluding mobile from the reform process. As we explain in section 1.3 below, mobile services are capable of being provided as part of a wider bundled offering and consumers may want this. However, mobile operators will be placed at a competitive disadvantage if switching processes for other services which are capable of being bundled, are harmonised, but the mobile process is excluded from this reform.

3 TNS GB Omnibus Survey, December 2008 commissioned by Ofcom

- **The UK MNP process remains out of step with the rest of the EU:** Persistent delays in the area of MNP reform mean that the consumer benefits of moving to a GPL system have not yet been realised, despite the fact that the UK is now the only EU Member State where LPL MNP is exclusively used. The UK's MNP process is clearly out of step.

²² In our view, Ofcom's proposal is very disappointing, and will compound the customer harm and competitive distortions caused by the current LPL MNP system. We are dismayed that Ofcom have yet again deferred the issue of evaluating the costs and benefits of the GPL MNP system that UK consumers so clearly need. The issue of how the current MNP system is failing customers has to remain on Ofcom's agenda until these deficiencies are adequately addressed.

1.2 Ofcom's "interim decision" and its failings

²³ Three has supported reform of the existing LPL porting process in the UK mobile sector since our launch in 2003, and we have responded to several Ofcom consultations on this topic. Ofcom's latest statement and consultation of 1 April 2010 (the "April 2010 Statement") in relation to MNP set out Ofcom's "interim" decision to:

- a) retain the current LPL arrangements but reduce the time taken to port numbers to one working day;
- b) require Porting Authorisation Codes ("PACs") to be issued either immediately over the phone or by SMS within two hours.

²⁴ In the April 2010 Statement, Ofcom justified its decision not to take forward any further assessment of GPL MNP processes on the basis that Ofcom is "undertaking a separate project on consumer switching, which [will] be looking at the current approach towards switching processes and, amongst other things the strengths and weaknesses of different switching processes in different sectors, including mobile."⁴ Ofcom went on to state that they have "decided to suspend consideration of moving to a [GPL] MNP porting process pending the outcome of our consumer switching work, which we plan to consult on in summer this year. We have therefore not taken forward analysis of the two [GPL] options set out in the August consultation (Options A and C) whilst the consumer switching work is in progress."⁵

⁴ Paragraph 1.9, Ofcom's Statement and Consultation: Changes to the Mobile Number Porting Process, published 1 April 2010, available at: <http://stakeholders.ofcom.org.uk/consultations/mnp/>

⁵ Paragraph 1.10, *ibid.*

1. Three's general comments about Ofcom's approach and identified scope. *continued.*

- 25 Clearly, Ofcom made its interim decision in the April 2010 Statement on the basis that MNP GPL options would be fully considered as part of the consumer switching review. It is internally inconsistent and illogical for Ofcom to now exclude mobile from this review, in order to wait for the interim decision to take effect.
- 26 Waiting to see how these changes 'bed-down' is not a valid reason for delaying industry debate regarding a move to a GPL porting process. From previous experience we know that it will take considerable time for any changes actually to take effect, due to the further rounds of consultations and regulatory statements.
- 27 Ofcom's 'interim' decision in the April 2010 Statement is extremely unsatisfactory and does not address either the systematic flaws in the LPL porting process or the consumer and competition detriments it causes, which Ofcom itself has identified, including:
- **Donor operators have little incentive to make the porting process work:** The LPL system is heavily reliant on regulation to force losing operators to do the right thing by consumers. As Ofcom has now recognised, a LPL system requires operators to work against their commercial best interests.
 - **Policing burden:** Ofcom's interim decision does nothing to reduce the strong Ofcom policing effort required to make it work. In fact, arguably the interim decision increases Ofcom's enforcement burden by increasing obligations on operators. An approach which regulates itself is much more consistent with Ofcom's legal duties.
 - **Delays:** Ofcom's interim decision maintains the existing two-step process for consumers to effect their port. Any system which requires consumers to actively obtain a PAC rather than empowering their new operator to activate the switch on their behalf will always be prone to delays.
 - **The "hassle factor":** In the Consultation, Ofcom has carried out extensive research looking at the way in which hassle factors create a barrier to switching. The interim decision does little to address these factors, because the consumer still has to manage the LPL process, and ask their current network for permission for what is effectively theirs by right. Ofcom's previous research shows that the majority of customers understandably want to avoid this⁶.

6 TNS GB Omnibus Survey, December 2008 commissioned by Ofcom

- **Sub-optimal competitive effects:** The interim decision does not propose any way of ending the save activity that consumers are exposed to under the LPL system. Even with Ofcom's changes, operators can still target their best deals at the small number of customers who are considering switching, or are savvy enough to play the system, rather than offer better all round deals to the whole market. Competition will continue to operate at a sub-optimal level rather than benefit all consumers.
- **Unwanted save activity:** The opportunity for losing providers to engage in unwanted save activity still exists following the interim decision. Simply shortening the timeframes for providing a PAC does not, in itself, realign losing operators' incentives or actively limit potential misinformation or unwanted save activity.

28 An additional concern is that, in our view, the interim decision does not ensure the UK's compliance with Article 30 of the revised Universal Service Directive (the "Revised USD"). Ofcom states in its April 2010 Statement that the interim decision is likely to be compliant with the Revised USD. However, the Revised USD is quite clear that EU Member States must offer porting within the shortest possible time, and in any event, within one working day. The interim decision neither achieves one working day porting nor does it allow for porting within the shortest possible time. In fact, of the four options which Ofcom previously identified as "possible" and likely to produce a positive economic case over time, Ofcom chose to adopt the slowest option. Moreover it failed even to consider the option that would have resulted in the fastest porting experience for the customer. In our view, different processes must be considered as a matter of urgency.

1.3 Bundling and the changing communications market

29 We agree with Ofcom that the communications environment is becoming increasingly complicated, particularly as a result of the growing uptake of bundled services and provision of services through new infrastructures. It is time for Ofcom to act to ensure that switching and porting processes are future-proofed. They must be capable of delivering a good consumer experience and supporting effective competition for many years to come, regardless of technological changes in the industry. We particularly welcome Ofcom's desire to develop a 'greenfield' approach to harmonise switching processes for new technologies.

1. Three's general comments about Ofcom's approach and identified scope. continued.

- 29 We also support the importance that Ofcom has given to bundling of services, and the impact that this has on switching and porting processes. Over the past five years, bundles of communication services have become increasing common. For example, as Ofcom reports in its Communications Market Report 2010⁷, seventeen per cent of households took triple-play services⁸ in Q1 2010, compared to just 3% five years ago.
- 31 Table 1 below, which appeared as Figure 1.7 in Ofcom's Communications Market Report 2009⁹, illustrates the range of bundle combinations that are available to consumers:

Table 1: Bundled service offers from major suppliers.

	3	AOL	Be	BT	O2	Orange	PlusNet	BSkyB	T-Mobile	TalkTalk	Tesco	Tiscali	Virgin Media	Vodafone
Standalone broadband		Y	Y	Y	Y	Y	Y	Y		Y	Y	Y	Y	Y
Broadband and phone		Y		Y		Y	Y	Y		Y	Y	Y	Y	Y
Broadband and mobile					Y	Y					Y		Y	Y
Phone and mobile						Y					Y		Y	Y
Phone and TV				Y				Y				Y	Y	
Broadband, phone and TV				Y				Y				Y	Y	
Broadband, phone and mobile						Y					Y		Y	Y
Phone, TV and mobile													Y	
Broadband, TV and mobile													Y	
Broadband, phone, TV and mobile													Y	
Converged Converged offers				Y										
MBB Standalone mobile broadband	Y			Y	Y	Y			Y				Y	Y

Note: Highlighted box denotes that the combination of services requires the purchase of additional services.

Source: Pure Pricing, June 2009.

- 32 As Table 1 above demonstrates, several providers offer mobile services within bundled offers. For example, Virgin Media offers a quad-play bundle, which includes fixed voice, broadband, TV and mobile services¹⁰. Some mobile providers offer discounted fixed broadband to existing mobile customers – effectively bundling together mobile and fixed broadband services¹¹.

⁷ See page 57 of Ofcom's Communications Market Report published 19 August 2010 available at <http://stakeholders.ofcom.org.uk/market-data-research/market-data/communications-market-reports/cmr10/>

⁸ Triple-play refers to bundles of fixed voice, broadband and pay TV services.

⁹ <http://stakeholders.ofcom.org.uk/market-data-research/market-data/communications-market-reports/cmr09/>

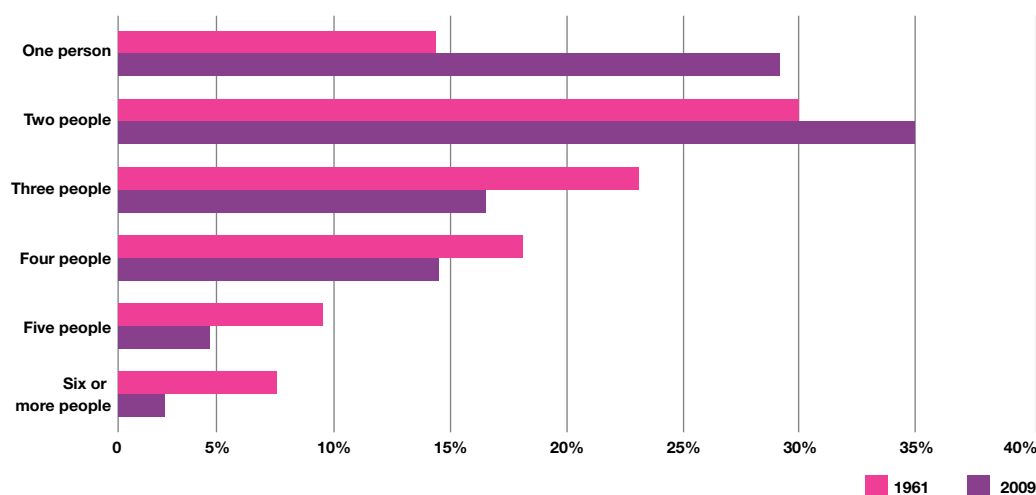
¹⁰ See <http://shop.virginmedia.com/bundles/bundles-with-extras/phm-tvmp-bbl-mobile.html>

¹¹ For example, both Orange and O2 currently offer £5 discounts on fixed broadband prices to their existing mobile customers (see http://shop.orange.co.uk/broadband/simply_broadband and <http://www.o2.co.uk/broadband/>).

1. Three's general comments about Ofcom's approach and identified scope. *continued.*

- 33 Ofcom has suggested that mobile services are arguably the least appropriate service for purchasing in a bundle, on the basis that “a mobile contract is typically a personal purchase whereas broadband, pay-TV and fixed voice are typically household purchases”¹². Ofcom appears to use this as a reason to justify its exclusion of mobile porting from the next stage of its consumer switching review.
- 34 However, these statements are based on a false dichotomy. In fact, many people in the UK live alone or with only one other person. Data from the Office of National Statistics (“ONS”) demonstrates that there has been huge increase in numbers of people who live alone and therefore may benefit from having mobile included in bundle¹³.
- 35 ONS data shows that there were 25.2 million households in Great Britain in Q2 2009. Of these, 29% were one person households, and a further 35% were two person households, as Figure 1 below demonstrates.

Figure 1: Households and families – average household size.



Source: Census, Labour Force Survey, Office for National Statistics, published on 4 December 2009. Crown Copyright.

- 36 Ofcom also overlooks the possibility that the reason why mobile services are not so commonly bundled may be because the porting process for moving mobile numbers is LPL and demands significant customer interaction and co-ordination. Consumers are likely to be discouraged from including their mobile within a bundled offering because of the complexities of the switching processes.

12 See section 1.4.5 of Ofcom's Communications Market Report published 19 August 2010.

13 See <http://www.statistics.gov.uk/cci/nugget.asp?id=2325> and <http://www.statistics.gov.uk/CCI/nugget.asp?ID=1925&Pos=1&ColRank=2&Rank=224>

- 37 Excluding mobile from the next stage of the consumer switching review could lead to an unjustified distortion in the bundling market, because it seeks to align only the switching processes for fixed and broadband services. Arguably this approach gives an unfair market advantage to fixed line providers. It also acts to narrow consumer choice, especially for those UK consumers living alone.

1.4 Ofcom's effectiveness and efficiency as reported by the NAO

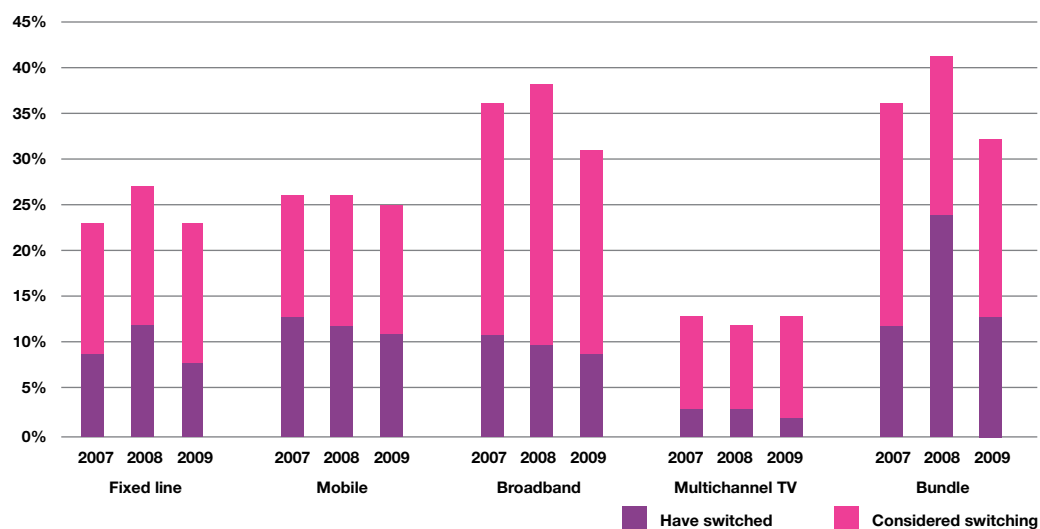
- 38 The NAO has recently published its report entitled: "Ofcom: the Effectiveness of Converged Regulation"¹⁴ (the "NAO report"). Of particular relevance, is that the NAO identifies switching as one of the three areas where there is still scope for improvement by Ofcom, primarily because the "communications market has relatively low switching rates" and the NAO considers that "it is important for Ofcom to understand whether this is through consumer choice or whether they face barriers". The NAO also notes that "twenty-eight per cent of consumers feel it is difficult to switch". Figures 2 and 3 below, taken from the NAO report, show the different rates of switching across communications services and also in comparison to other services, e.g. insurance and utilities.
- 39 Switching rates in mobile are broadly in line with those for fixed and broadband services, and there is a consistent downward trend in switching rates across all communications services. The NAO Report, therefore, gives no indication that mobile is performing significantly better than other services or that mobile ought to be excluded from Ofcom's efforts to tackle barriers to switching.

¹⁴ Published 10 November 2010, available at: <http://www.nao.org.uk/idoc.ashx?docId=076dd996-23da-474a-8e1a-08e84260c82d&version=-1>

1. Three's general comments about Ofcom's approach and identified scope. *continued.*

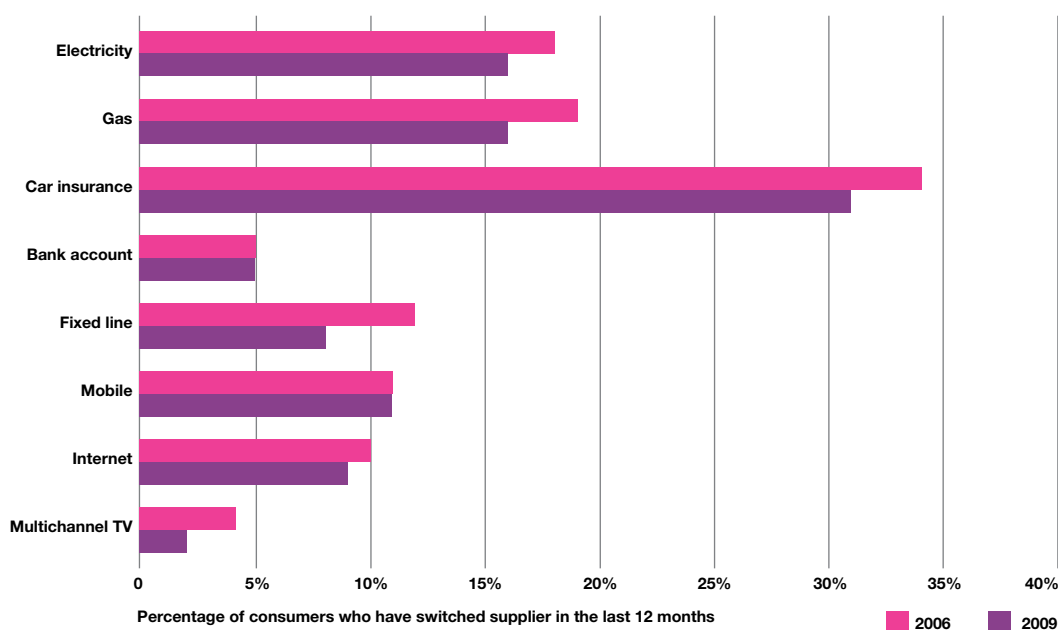
Figure 2: Switching in communications markets¹⁵.

Percentage of consumers switching in the last 12 months



Source: Ofcom

Figure 3: Switching in other markets¹⁶.



Source: Ofcom

¹⁵ Figure 12 from the NAO Report.

¹⁶ Figure 13 from the NAO Report.

2. Consumer harm caused by current switching and porting processes.

2.1 Introduction

- 40 We strongly agree with Ofcom’s finding that, based on its analysis of the evidence on consumers’ switching experiences, “GPL processes result in significantly less hassle and are easier for consumers to navigate”¹⁷. GPL switching processes are widely recognised throughout Europe and the world as providing a significantly better customer experience than LPL switching processes. Three has long argued that the existing LPL MNP process in the UK causes significant consumer harm, and must be replaced with a GPL process to protect consumers from hassle, misinformation and unnecessary delay.
- 41 We disagree with Ofcom’s assertion that there are “particular concerns with the switching processes for fixed-line and broadband services relative to mobile and pay TV services” and that “fixed line and broadband are the services where there is evidence of greatest harm”¹⁸. There is no real justification for excluding mobile porting processes from the current switching review, as explained in section 1.1 above.
- 42 Notwithstanding the fact that Ofcom has decided that MNP is not to be a focus of the switching review, the areas of consumer harm that Ofcom has identified in section 3 of its Consultation are equally applicable to mobile porting. In the course of our previous close involvement with Ofcom regarding MNP reform, we have gathered evidence of the harm caused to consumers by the existing LPL MNP process, and as a result, we are in a position to provide useful responses to Ofcom’s questions. We have looked at each area of consumer harm identified by Ofcom in detail below.

2.2 Hassle

Question 1: *Do you think hassle is a key issue we should tackle in this review? Please provide an explanation for your answer and any supporting evidence.*

- 43 We agree that hassle related to the switching process does “stop some consumers from switching and raises the level of switching costs for others”¹⁹. An effective switching or porting process should minimise unwanted and unnecessary hassle for consumers. Complex and

¹⁷ paragraph 4.123 of the Consultation

¹⁸ *ibid*

¹⁹ paragraph 4.21 of the Consultation

3. Consumer harm caused by current switching and porting processes. continued.

inefficient switching processes may either result in consumers who want to switch not being able to do so successfully or deter consumers from switching providers altogether. Therefore, the level of hassle involved in a particular switching process is likely to be proportional to the overall level of consumer harm and the effectiveness of competition resulting from such a process.

- 44 Ofcom's consumer research 2010, published alongside the Consultation, indicates that there is a general consumer perception that switching communications providers is "too much hassle", and this is especially so when LPL rather than GPL processes are used. For example, 42% of switchers using MAC/PAC processes agreed that "switching suppliers seems like too much hassle" compared to 22% using the NoT process²⁰.
- 45 These findings support our view that a LPL switching process involves considerably more hassle for the consumer. This is because the consumer has to manage the process, and ask their current network for permission (via the PAC or MAC request) for what is effectively theirs by right. Ofcom's research for the 2009 MNP consultation shows that the majority of mobile customers understandably want to avoid this hassle by instead having the gaining operator manage the port for them²¹.
- 46 Simplification of the switching process, particularly by reducing the number of touch points that a consumer must have with each operator to perform the switch, would significantly reduce the level of hassle for consumers. We agree with Ofcom that the number of touch points under an LPL process will be at least two or three, because the customer needs to contact their losing operator to obtain a PAC/MAC before giving this to their new operator. They may also make an initial call to their new operator, if they think that the process is GPL. In comparison, the GPL process need only have one touch point, and in fact this could be incorporated into the existing sales process by the GPL to further minimise hassle for consumers.
- 47 In our view, there is no need to have more than one touch point for what should be a much more straightforward process. Given the range of services and utilities that the average consumer purchases, having to make more than one call to an operator to effect each switch is burdensome, laborious, time-consuming and likely to act as a deterrent

20 Ofcom consumer research 2010, fieldwork carried out by Saville Rossiter-Base in February to March 2010

21 53% of mobile consumers stated that they would prefer a GPL porting process for mobile services, TNS GB Omnibus Survey, December 2008, commissioned by Ofcom

3. Consumer harm caused by current switching and porting processes. continued.

to switching. Therefore, we urge Ofcom to mandate a harmonised switching/porting process that would only involve the customer making one call to the gaining provider.

- 48 If the level of hassle is acting as a barrier to switching, there will be a knock-on effect on competition in the market: consumers will not be able to get the best deals and smaller operators will be restricted in growing their market share. Therefore, Three agrees that hassle for consumers is a key issue that Ofcom should tackle in its review.

2.3 Clarity

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? Please provide an explanation for your answer and any supporting evidence.*

Question 3: *Do you think clarity is a key issue we should tackle in this review? Please provide an explanation for your answer and any supporting evidence.*

- 49 We agree that there is a lack of clarity regarding current switching and porting processes in the UK communications sector. This lack of clarity manifests itself in several ways:
- Consumers are confused by the complexity of the switching process that they need to follow for a particular service (e.g. switching mobile phone provider and porting their number).
 - Consumers are confused by the fact that they must follow different processes for similar services (e.g. they must contact their leaving operator to port their mobile number, but must contact their new provider to port their fixed-line number). This is a particular problem when consumers are switching bundled packages.
- 50 Especially for mobile consumers, this confusion is currently made worse because losing operators have little incentive to clearly explain the steps of the MNP process. Conversely, gaining operators under a LPL MNP system have little incentive to give prominence to information regarding the switching options available due to the risk of save activity. Retail staff with a customer's best interest at heart would make them aware of the process of MNP. However, under an LPL process, any unprompted discussion of number porting at point of sale effectively puts the sale in jeopardy as the

3. Consumer harm caused by current switching and porting processes. *continued.*

customer's PAC request is likely to trigger unsolicited win-back activity by the losing operator.

- 51 It is clear from the results of the TNS Omnibus Survey²² that Ofcom undertook as part of its 2009 MNP Consultation, that in the UK there is a certain level of confusion amongst consumers about the MNP process and how it works. In fact, the research found that a significant number of mobile consumers are not even aware of their right to port. The survey results show that there are systematic flaws in the current MNP process, which are especially apparent from the inter-play between the following statistics:
- 45% of those who own a mobile phone have never switched network.
 - 35% of those who own a mobile phone are not aware of their right to keep their mobile number if they switch networks.
 - 71% of those who own a mobile phone think that mobile portability is important or very important when you switch network.
 - And yet, only 45% of those who have switched networks in the past kept their existing number.
- 52 Given the reported importance that consumers attach to the need to keep their number when switching provider, it is obvious to us that the efficiency of the MNP porting system can have an impact on switching rates and the perceived ease of switching. Most mobile customers want to port their number when they switch supplier. However, as highlighted above, Ofcom's research shows that in the UK only 45% of those who switched also ported their mobile number. Compare this to the Republic of Ireland, which has a GPL MNP system, where 75% of those who switched also ported. Clearly, Ireland benefits from higher levels of awareness of porting amongst its mobile consumers²³.
- 53 The inherent problem is that the LPL porting process provides no incentive to operators to publicise the porting process to their customers, because of the risk of retention activity. In fact, the current system can be said to actively discourage porting. In comparison, a GPL process would provide incentives to all operators to promote portability, and would raise awareness of the MNP process.

²² TNS GB Omnibus Survey, December 2008 commissioned by Ofcom

²³ TNS ROI Omnibus Survey, February 2009, commissioned by Ofcom

3. Consumer harm caused by current switching and porting processes. *continued.*

- 54 When the importance to customers of porting is taken together with the relatively high numbers of mobile consumers who are apparently unaware of the ability to port their number when they switch, it becomes clear that a more efficient porting process which provides positive incentives on operators to raise consumer awareness of porting, will have the effect of reducing switching costs and hassle, and bring significant competitive benefits to the mobile market.
- 55 In addition, having so many different types of switching and porting processes adds to consumers' confusion. We agree with Ofcom's desire to find a harmonised switching process for communication services, which would greatly improve consumers' understanding of their switching and porting rights.
- 56 Therefore, we agree with Ofcom's assertion that 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. We further agree that it is an issue which ought to be addressed further in Ofcom's switching review.

2.4 Continuity of service

Question 4: Do you think continuity of service (including unwanted breaks and double billing) is a key issue we should tackle in this review? Please provide an explanation for your answer and any supporting evidence.

- 57 We note that loss of service is less likely to occur when switching mobile services, because consumers are only porting across their number to their new service provider rather than making changes to physical access infrastructure. When porting their number to their new operator, consumers usually have a temporary number that they can use with their new handset, so the impact of any loss of service is significantly reduced.
- 58 Double-billing is also unlikely to be a concern for mobile pay-as-you-go (PAYG) customers because they are able to use all of their credit on their old handset before porting their number across to their new provider.

2.5 Slamming and its impact on consumers

- 59 Customers should be able to have confidence and trust in the switching and porting processes used by the communications industry. We agree with Ofcom that slamming, where customers are inadvertently or deliberately switched to another service provider without their knowledge or prior consent, causes inconvenience and annoyance to consumers. We further agree that measures should be taken to minimise the risk of slamming and to verify that the customer has a clear intention to switch provider or port their number before the switch or port takes place.
- 60 As a MNO, Three is well placed to comment on the way in which slamming impacts consumers in the mobile industry, although we cannot comment in detail regarding fixed and broadband customers. In our view, slamming of mobile services is no greater a risk under a GPL system than under a LPL system. Particularly in relation to MNP, any move to a GPL system would present mobile operators with the opportunity to build safeguards into the system to mitigate against any slamming risk, as the MNOs previously explored as part of the UKPorting discussions in 2008.
- 61 The findings of BEREC's report on "Slamming and switching validation processes – International Comparison", which was published by Ofcom on the Consultation website, are particularly useful for informing this debate. The report summarises the results of a switching questionnaire issued by BEREC to the relevant national regulatory authorities in certain EU Member States, and highlights which switching processes perform particularly well/poorly in relation to slamming.
- 62 It is clear from BEREC's report that it is possible to build GPL switching processes which contain adequate safeguards against slamming. We urge Ofcom to take account of these international examples when developing further its GPL process proposals. We agree with Ofcom that any threat of slamming should not be a deciding factor to prevent a move to a GPL switching process. In fact, it can be an advantage of moving to a new process if it is designed from the outset to guard against the potential occurrence of slamming.

3. Consumer harm caused by current switching and porting processes. *continued.*

- ⁶³ As we have previously stated, mobile slamming and mis-selling have much more to do with the sales process, than with the porting process. This is because, unlike other utilities like gas, electricity and fixed landlines, switching between mobile providers inherently involves a change of handset or SIM card, and receipt of a welcome pack from the new service provider. Therefore, as the BEREK report recognises, it is not possible for a mobile customer to be switched from one operator to another without discovering the switch has taken place.
- ⁶⁴ With regard to mobile mis-selling more generally, Ofcom has recently concluded that the root-cause of slamming and mis-selling should be addressed by means of General Condition 23 (“GC23”) which prohibits providers from engaging in dishonest, misleading or deceptive conduct, aggressive conduct or contacting the customer in an inappropriate manner. General Condition 24 (“GC24”) has also introduced similar mis-selling requirements relating to fixed line telephony service providers.
- ⁶⁵ Operators, together with Ofcom, have taken great strides towards ensuring that incidents of mis-selling and slamming are eradicated or, at least, significantly reduced in number. However, under the current switching processes there remains a significant onus on the consumer to be vigilant and aware of the associated risks of slamming. If new switching and porting processes are adopted, we would have the opportunity to include measures specifically designed to protect against slamming, which will significantly benefit consumers.
- ⁶⁶ We welcome Ofcom’s focus on developing a suitable method of third party validation (“TPV”) to use within a GPL process, to independently record the consumer’s consent to the switch taking place, and agree that such an approach would safeguard consumers from unwanted switching and slamming. We briefly discuss our views on each of Ofcom’s proposed GPL processes in section 4.5 below.

2.6 Ability of providers to frustrate the 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? Please provide an explanation for your answer and any supporting evidence.

- ⁶⁷ The ability of providers to frustrate the switching process is a key concern with LPL processes, and ought to be tackled by Ofcom as part

3. Consumer harm caused by current switching and porting processes. *continued.*

of this review. Under an LPL process, consumers are forced to contact their existing network to request an authorisation code (e.g. MAC/PAC) before they can switch operator.

- 68 This request provides an opportunity for the existing network to engage in unwanted activities, which were highlighted in Ofcom's 2009 mystery shopping research for the 2009 MNP consultation²⁴. These activities include refusal or failure to issue PACs to consumers, despite receipt of valid request and delays that extended the length of end-to-end porting process. Both of these activities may cause direct harm to consumers and create a barrier to switching.
- 69 We appreciate that GC23 and the revisions to GC18 have gone some way to reducing these activities. However, moving to a process which aligns the interests of consumers with those of the operator controlling the switch is likely to reduce the enforcement burden on Ofcom, remove the opportunity for losing providers to frustrate the switching process and overall, improve the consumer experience. And it is more consistent with a self regulatory approach.

2.7 Save activity

Question 6: *Do you think consumers' experience of save activity is a key issue we should tackle in this review? Please provide an explanation for your answer and any supporting evidence.*

- 70 Yes, we agree that consumers' experience of save activity is a key issue which should be included in this review. This is an area where Ofcom has carried out extensive research in the past, including mystery shopping exercises, and Three has also submitted evidence to Ofcom gathered through our own research activities. The ability to engage in unwanted save activity is a key area of difference between LPL and GPL processes, as explained in further detail below.
- 71 As noted above, under an LPL process, consumers are forced to contact their existing network to request an authorisation code (e.g. MAC/PAC) before they can switch operator. This request also provides an opportunity for the existing network to engage in save activity. This "win-back" or retention activity is common-place, as demonstrated by the

²⁴ Synovate PAC Mystery Shopping research, commissioned by Ofcom, April 2009

3. Consumer harm caused by current switching and porting processes. *continued.*

Synovate mystery shopping research in April 2009, where 60% of those who requested their PAC experienced retention activity²⁵.

- ⁷² In comparison, where the consumer is able to make the switching or porting request directly to the gaining provider (e.g. in a GPL process) there would be no opportunity for the losing provider to engage in aggressive activity. Ultimately, it is the consumer who loses out under the LPL system.
- ⁷³ Save activity also has potentially anti-competitive effects, because the gaining provider is unable to compete on a level playing field. For example, the current MNP system means that the ‘good deals’ are hidden under the counter and reserved for retentions activity by the customer’s existing operator.
- ⁷⁴ Ofcom has expressed the view that save activity “may be viewed as a positive experience that gives customers the opportunity to obtain a favourable offer from their current provider”²⁶. As we highlighted previously in our response to the 2009 MNP consultation, these opportunities will not disappear if Ofcom mandates a GPL process.
- ⁷⁵ A customer’s motivation to request a MAC/PAC falls into one of three categories:
- a)** Desire to leave network: want to leave regardless of any alternative offers that are made, and are more likely to be frustrated by win-back activity (“Type A”);
 - b)** Open to a discussion: think they want to leave, and although open to a discussion regarding win-back offers, this is not their primary motivation for calling (“Type B”); and
 - c)** Arbitrage opportunity: using the MAC/PAC request as a means to negotiate a better deal, but don’t actually intend to switch operator (“Type C”).
- ⁷⁶ Under a GPL system, Type A consumers, will be able to avoid win-back activity entirely, eradicating this form of consumer harm. Type B consumers will be empowered by a GPL system. Instead of being beholden to their existing operator to give them the MAC/PAC, they will be able to switch via a separate process. Before they actually decide to switch, Type B customers will be able to call their existing network and discuss with them their decision to leave, and use this to negotiate, if

²⁵ *ibid.*

²⁶ paragraph 4.100 of the Consultation

3. Consumer harm caused by current switching and porting processes. continued.

they wish to. They have more control over the process, because if they are not interested in the offers made, they can just walk away and port their number independently. Type C customers will also benefit. Instead of using the sham of a MAC/PAC request to prompt their operator to provide arbitrage opportunities, they will be able to just call and say they wish to terminate their contract.

- 77 As demonstrated above, moving to a GPL process would eliminate the consumer harm suffered through aggressive save activity, without removing the consumer's ability to negotiate a better deal.
- 78 In the mobile market, even with the changes to GC18 which must be implemented by operators by April 2011, save activity will undoubtedly still occur because the MNP system remains LPL. We urge Ofcom to look again at this issue urgently.

2.8 Business customers

Question 7: Are there issues specific to either residential or business consumers' experiences of the switching processes that you think we should tackle in this review? Please provide any evidence you have to support your views.

- 79 We have not identified any further specific issues which relate to either residential or business consumers' experience of the switching processes beyond those already identified by Ofcom in the Consultation.

3. Impact that different switching processes have on competition and market structure.

3.1 Introduction

- 80 Switching costs are the costs incurred when a customer changes from one supplier or marketplace to another. The higher these costs are, the more difficult it is to execute the switch. In many markets, including in the mobile market consumers are forced to incur costs when switching from one supplier to another. These switching costs can come in many different forms.
- 81 The process of switching mobile operators can be an expensive proposition that deters consumers who might otherwise consider changing to a new provider. Indeed, consumer switching costs are generally defined as the actual or perceived costs that customers associate with the process of changing from one provider or seller to another and these occur in many markets and for a variety of reasons.
- 82 For example switching costs could include the effort needed to inform friends and relatives about a new telephone number after switching from one operator to another, costs relating to calling a mobile operator to obtain a number porting code i.e. MAC or PAC and costs in terms of time lost due to searching for a better deal in the market place.
- 83 These and other substantial switching costs should concern Ofcom because the use of switching costs as a customer retention tool contradicts key public policy objectives. Indeed, the European Framework relies heavily on competition to assure reasonable prices, maintain quality of service and generally protect mobile phone users. As such, the prevalence and magnitude of consumer switching costs in the mobile marketplace and the fact that switching costs generally harm consumers by increasing prices and making markets less competitive should be considered seriously.
- 84 It is also relevant to consider switching within a wider economic framework as this provides a much broader context to the analysis, including a better understanding of how consumers and firms behave in the marketplace and the impact that different switching processes and features have on competition and consumer welfare as well as entry into the market. Hence it is important to consider switching costs and the extent to which they may act as a barrier to consumer switching. We broadly accept many of Ofcom's findings and support much of the research effort that Ofcom has made.

- 85 Accordingly, in identifying relevant switching costs, it is necessary to focus on the areas of real concern in order to understand which costs impact negatively on the consumer experience and result in direct harm. We will look at how switching costs impact on competition and the market structure addressing the following three topics on switching processes:
- Switching Costs;
 - Save Activity; and
 - Multiple Switching Processes.

3.2 Switching costs

Question 8: *Do you agree with our analysis of switching costs? Please provide any evidence you have to support your views.*

- 86 Ofcom proposes that switching costs can impact the market in the following four ways:
- structure of prices;
 - level of prices;
 - extent of new entry and expansion; and
 - level of consumer welfare and industry profits.
- 87 When a consumer faces switching costs in the mobile market, the rational consumer will not switch to the supplier offering the lowest price if the switching costs in terms of monetary cost, effort, time, uncertainty, and other reasons, outweigh the price differential between the two suppliers. If this happens, the consumer is said to be “locked-in” to the supplier. If a supplier manages to lock-in consumers, the supplier can raise prices to a certain point without fear of losing customers because the additional effects of lock-in (time, effort, etc.) prevent the consumer from switching. Three believes that this affects competition in the market.
- 88 Making it easier for consumers to port their number when they switch operators may significantly reduce switching costs. It can also facilitate greater competition and entry in the market, leading to lower prices and a more operationally efficient industry. For instance, prior to introducing number portability, it might be impossible for new entrants to compete for some customers (e.g. people who do not want to switch unless they can take their number with them), while competing for other consumers might involve increased marketing expenditures. Moving from a lengthy number portability process to a much shorter, stream-lined process has

3. Impact that different switching processes have on competition and market structure. **continued.**

qualitatively similar effects as introducing number portability in the first place.

- 89 Switching costs have been regarded an important factor for consumer retention. For example, the presence of switching costs may mean that some seemingly loyal customers are actually dissatisfied but do not defect because of high switching costs. Thus, the level of switching costs moderates the link between satisfaction and loyalty.
- 90 Inefficiencies in the MNP process are believed to play an important role in increasing switching costs which can decrease the level of competition among providers. It is worth noting that when the MNP porting timescales were reduced from five days to two days there was only a negligible increase in the the number of overall ports recorded on the Syniverse system. This implies that high switching costs remain, and are unlikely to be addressed by the move from two day to one day porting.
- 91 The tariff offered by the existing operator will not usually be available in the market, so no matter how empowered, consumers cannot currently get the “best deal” as mobile operators reserve these for customers who have already made the decision to switch. In effect the current MNP system limits switching and disincentivises providers from putting their best deals into the market. It provides significant opportunities for the donor operator to engage in aggressive save activity and build in delays. Ultimately, it is the consumer who loses out under the LPL system.
- 92 In a near instant GPL system there is no opportunity for the losing provider to engage in delays or aggressive activity, because the consumer makes the porting request directly to the LP.

(a) Structure of prices

- 93 Three already offers very competitive prices, through transparent and comprehensive price plans. At the centre of Three’s new tariff structure is The One Plan. This is an affordable price plan for all, offering all the calls, texts and data that most people are ever likely to need for just £25 a month. £25 currently buys considerably less than this in the UK, as the table below shows²⁷.

27 To get the same as Three’s The One Plan would currently cost over £70 a month from other operators.

3. Impact that different switching processes have on competition and market structure. **continued.**

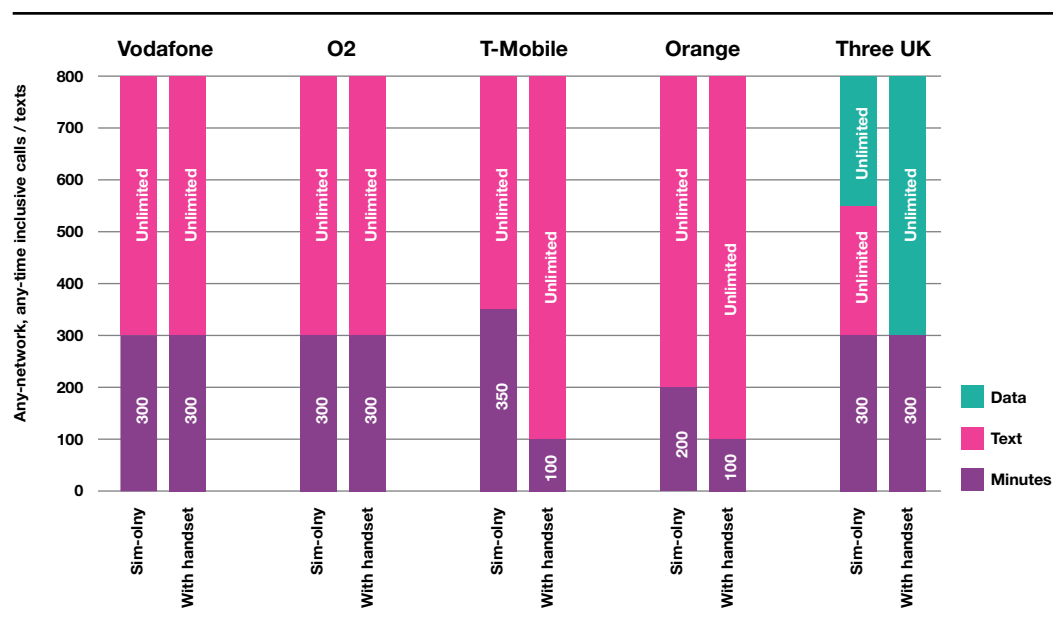
Table 2: Three's The One Plan.

	Three's The One Plan (from July 2010)	Comparable UK tariffs (at June 2010)
£25 a month	3,000 any-network minutes	600-1,200 any-network minutes

Source: Three, Carphone Warehouse.

- 94 The chart below from Ofcom's most recent Market Communications report shows that Three's £15-a-month SIM-only tariff was the most competitive in the market. Three is hampered in its aim of seeking to provide market leading deals to all customers because some of the best offers are "hidden", in that they are only available on retention.

Figure 4: Inclusive any-network, any-time allowances in £15 SIM-only 30-day contracts, and £15 handset-inclusive 24-month contracts, July 2010²⁸.



28 Figure 5.25 in Ofcom's Communications Market Report published 19 August 2010

- 95 In general, we agree with Ofcom that significant switching costs hurt consumers by raising the average price level over time and preventing new providers from entering the market. In markets with switching costs, operators recognize that customers are likely to continue purchasing from their current provider over the long term and even pay higher prices to do so because switching costs make moving to a competitor expensive. This opportunity to charge higher prices to “locked-in” customers creates a strong incentive for operators to offer introductory discounts or otherwise lower prices to encourage new customers to make an initial purchase.

(b) Level of Prices

- 96 Three agrees with Ofcom that small players in the market with a smaller market share have far fewer “locked-in” customers and, therefore, a greater incentive to win customers. Hence, rather than exploiting a small customer base, smaller operators try to win new customers through good value for money pricing plans. A firm with a higher market share will set higher prices because it has a large proportion of locked-in customers and hence can afford not to be as competitive for new customers. This reflects the situation in the current UK mobile market.

(c) Extent of New Entry and Expansion

- 97 Emphasis on customer retention is even more important in industries such as the mobile sector where the rate of subscriber growth has begun to slow. In these industries, securing new customers becomes more difficult and costlier in terms of marketing because there are fewer first-time buyers and the market increasingly focuses on replacement demand.
- 98 We agree with Ofcom’s statement that “incumbents with a large customer base will likely opt for “harvesting” their customer base and not engage in competition for new customers”. Incumbents can harvest existing customers through the LPL process and keep customers locked in. A LPL process (even without save activity), therefore, may be viewed as a process with higher switching costs than GPL processes (e.g. due to multiple touch points, possibility of delay or refusal to provide codes on account of misaligned incentives).

(d) Level of Consumer Welfare and Industry Profits

- 99 We agree with Ofcom that “switching costs” do dampen competition as demonstrated by NERA (2003) through discounting, aggressiveness of competitors and consumer expectation, which in turn reduces consumer welfare.
- 100 Figure 11 in Ofcom’s Consultation shows that 42% of consumers find the PAC process a hassle which means that this is likely to be associated with greater switching costs: therefore consumers are less likely to move thus reducing consumer welfare. As mentioned in the Consultation this was also the strong consensus in the academic workshop held in 2010.
- 101 Ofcom have stated that they have found the MAC process to be more difficult than the PAC process for consumers. However, this does not mean that the PAC process is an adequate process. It is important to note that the PAC process still acts a barrier to entry, especially through incumbent harvesting via the locked-in customer base.
- 102 The BEREC report recognises that portability constitutes a switching cost. In particular the report states:
“Swann and Birke (2006) tried to explain (based upon Ofcom’s market data and surveys on usage patterns) to what extent the individual choices of mobile telephony customers in the UK depend on the network used by other household members. Interestingly, they concluded that part of the difference between the percentage of on-net traffic and the percentage of off-net traffic is not explained solely by the difference on retail prices. It could also be accounted for by the service provider switching costs (e.g. portability), lack of information or consumer inertia.”
- 103 We agree with Ofcom that the potential for providers to segment consumers and practice price discrimination is increased under an LPL process. The experimental economic research carried out by Ofcom supports this further. The study found that consumers fair better under a GPL process than under a LPL process as consumers suffer confusion from multiple contact points and limited attention, hindering them from making a decision about switching providers.

3.3 Save activity

Question 9: *Do you agree with our analysis of save activity? Please provide any evidence you have to support your views.*

- 104 Three agrees with Ofcom that implicit price matching mechanisms under a LPL process mean that lower prices are not offered to the rest of the market to attract new customers. We also agree that these result in pricing strategies more geared towards exploiting their existing customer base, through the PAC process. Save activity does not allow operators to segment consumers in a market, but does allow the losing provider to segment a firm's own consumer base. Three as a new entrant has also found it difficult to build a customer base for this reason. The LPL process is a further disadvantage to new entrants because LPs are well informed of the consumer value and therefore are in a good position to "cherry pick" high value customers and "let go" of low value customers.
- 105 However, price discrimination through customer segmentation is less feasible under a GPL process where there is no requirement explicitly built into the switching process for the consumer to contact the losing provider in order to switch. Hence the opportunity for save activity, whether legitimate or harmful, is intrinsic to an LPL process. In the GPL process the customer is still free to contact their old provider to see if they can get a better deal, but the old provider cannot effectively delay or refuse to provide a PAC code on account of misaligned incentives.
- 106 If customers are able to switch more freely among mobile operators, competitive pressure will encourage operators to compete for customers by offering lower prices, choice and new services.

3.4 Multiplicity of switching processes

Question 10: *Do you agree with our analysis around the multiplicity of switching processes? Please provide any evidence you have to support your views.*

- 107 As the complexity and choice of product offerings increases, so do potential switching and "search" costs for consumers. Therefore, we believe that Ofcom should take a holistic view when looking at switching processes for providers and making sure all operators, products and services have a harmonised switching process. We urge Ofcom not to

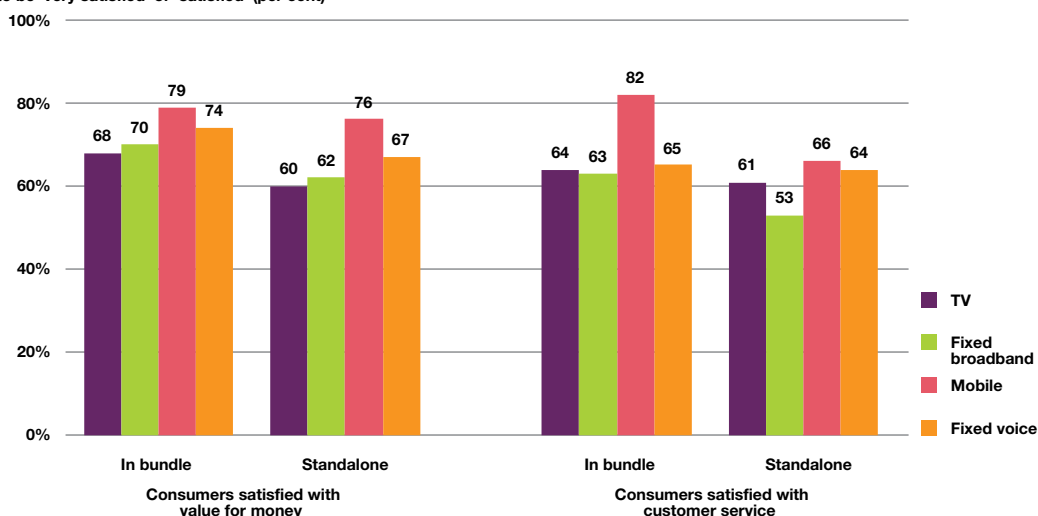
3. Impact that different switching processes have on competition and market structure. **continued.**

exclude the mobile market from the next round of industry consultation, as excluding mobile operators will weaken their position to compete in the bundling market. Multiple switching processes over different service providers will not only increase switching costs for services but also hinder competition through fewer operators offering bundled services in the market.

- 108 The chart below from Ofcom's recent Market Communications report shows that mobile customers are more satisfied with value for money and customer service when bundled as opposed to when purchasing a stand alone product. The chart shows that this is also the general consensus for the other communication services.

Figure 5: Satisfaction with bundled and stand-alone communications services²⁹.

Proportion of all adults with service who claim to be 'very satisfied' or 'satisfied' (per cent)

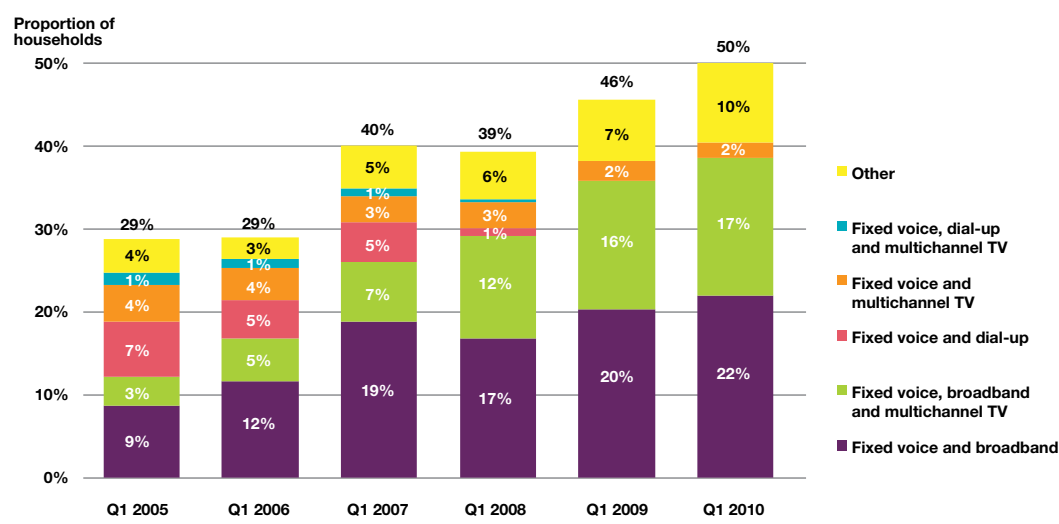


29 Figure 1.49 in Ofcom's Communications Market Report published 19 August 2010

3. Impact that different switching processes have on competition and market structure. **continued.**

109 In the current challenging economic climate, where consumers are ever more “deal savvy”, we expect this trend to continue. A market where bundled products are growing, serves only to reinforce the point that mobile services should not be excluded from competing in this attractive market (see the chart below from Ofcom’s recent Market Communications report). The chart displays that the take-up of bundled services is in fact growing and in Q1 2010, 50% of households purchased some kind of bundled service.

Figure 6: Take-up of bundled services over time³⁰.



110 In light of this trend, Ofcom needs to devise a single switching process for all service providers, undertake the necessary co-ordination required for a single combined switching process and refrain from excluding the mobile industry as an important player in the bundled market.

³⁰ Figure 1.40 in Ofcom’s Communications Market Report published 19 August 2010

4. Proposal for a preferred ‘greenfield’ switching process.

4.1 Introduction

- 111 Three welcomes Ofcom’s analytical framework for assessing consumer switching processes and its work towards identifying a preferred switching process. We believe that these will be useful tools for future discussions regarding reform of current switching and porting processes in the UK.
- 112 In the Consultation, Ofcom sets out seven general switching principles and evaluates each of the existing switching processes against these principles. Ofcom then goes on to identify a preferred switching process, namely a GPL process, which would be preferable in a ‘greenfield’ situation, i.e. where no existing legacy processes are in place.
- 113 We set out Three’s responses to Ofcom’s specific questions relating to the ‘greenfield’ switching process below.

4.2 Ofcom’s general switching principles

Question 11: Do you agree with the general switching principles we have identified? Please provide an explanation for your answer.

- 114 Broadly we agree with the seven general switching principles that Ofcom has identified. We agree that effective switching processes should, at their heart, provide a positive customer experience and have a positive impact on competition and welfare. As such, we welcome Ofcom’s balanced treatment of both consumer and competition issues.
- 115 Looking briefly at each principle in turn:
- 116 **Principle 1: Minimises unnecessary switching costs both for individual services and for bundles:** We agree that unnecessary hassle should be removed from the switching process and that switching costs should be avoided. These areas are considered further in sections 2.2 and 3.2 of this response.
- 117 **Principle 2: Protects against slamming:** We recognise that slamming has been raised as a key concern regarding a move to GPL switching by many operators. However, as many international examples and experiences in other sectors have demonstrated, slamming can be

4. Proposal for a preferred 'greenfield' switching process. continued.

successfully minimised in a GPL system. Therefore, concerns about slamming need not prevent a move to a GPL switching process as adequate safeguards can be put in place, as we discuss in further detail in section 2.5 of this response.

- 118 **Principle 3: Promotes awareness of the implications of switching:** We think this principle should be expanded to cover promoting awareness of the existence of the porting process. This is primarily because under current LPL processes; a) losing operators have little incentive to make the porting process work; and b) gaining operators have little incentive to give prominence to information regarding the switching options available due to the risk of save activity, as we have explained in more detail in section 2.7. This is an important consideration, and in our view it ought to be included within Ofcom's set of principles.
- 119 **Principle 4: Ensures a reliable process with speedy restoration if things go wrong:** We agree that this is a factor to be considered. However, we do not think that they create any insurmountable obstacles to GPL MNP.
- 120 **Principle 5: Enables continuity of the main service(s) being switched:** We agree that this is a factor to be considered. However, we do not think that they create any insurmountable obstacles to GPL MNP.
- 121 **Principle 6: Supports competition in retail markets:** We welcome this principle. This is especially important if a switching process has an in-built opportunity for the losing operator to identify customers who are considering leaving, and then target save activity or better deals at these customers (e.g. under the current LPL MNP process). We discuss these competition effects in further detail in section 3 of this response.
- 122 **Principle 7: Is cost efficient to implement and maintain:** We agree with Ofcom's aim of assessing the cost efficiency of respective switching processes, although we agree that this can be difficult for industry to determine until a detailed specification is drawn up. We also agree that Ofcom's costs of regulation ought to be considered, especially if one process is more likely to reduce the need for enforcement action, for example because the incentives of operators controlling the process are aligned with Ofcom's objectives. In the current economic climate, it is critical that Ofcom strives to adopt regulation which promotes effective competition and self regulation, whilst avoiding unnecessary costs to itself and to industry.

4. Proposal for a preferred ‘greenfield’ switching process. continued.

123 BEREC has recently published its report on best practices to facilitate switching.³¹ BEREC recommends the following six best practices, which relate to supporting a positive consumer experience (best practices 1 to 4) and to encouraging a positive impact on competition and welfare (best practices 5 and 6):

- 1) Minimisation of unnecessary switching costs/barriers, both for individual services and for bundles, so that there should be minimal effort on the part of the consumer in order to switch, including a specified maximum time for the switch.
- 2) Minimisation of instances of mis-selling/slamming and other unfair practices.
- 3) Accurate information on switching to be given to consumers, before and during the switching process, and also immediately after it is concluded, with information being presented clearly and in an easily accessible format.
- 4) Publication of guidance by NRAs that aims to ensure that service providers are aware of, understand, and comply with all obligations relating to national legislation and best practice principles that apply to them.
- 5) Support competition in retail markets.
- 6) Cost efficiency of the switching process.

124 Whilst these principles broadly align with those proposed by Ofcom, we would highlight BEREC’s principle 4 regarding NRAs publishing further guidance for use by service providers. We think this is an area where further materials from Ofcom would be very beneficial to operators, especially once the current switching review is completed and its findings are implemented.

125 Interestingly, BEREC also notes as part of Best Practice Principle 1, that *“in the context of switching to, from and between, bundled services, the most effective method of facilitating switching between service providers, based on the available evidence, is where the process is managed by the new service provider as the primary contact point (GP-led)”*. This supports Ofcom’s initial findings regarding switching of bundled services.

31 BoR (10) 34 Rev1 published October 2010, available at: <http://www.erg.eu/>

4.3 Prioritisation of switching principles

Question 12: *Do you agree with our proposed tier structure for the general switching principles? Please provide an explanation for your answer.*

- 126 We agree with Ofcom that there may be an inherent tension between some of the seven principles, and that it is highly unlikely that any one process will be capable of fully meeting every principle to the same degree. We also agree with the idea of splitting the seven principles into two tiers of importance.
- 127 The principles that we would give highest priority to are: minimising switching costs (principle 1) and supporting competition (principle 6), because these go to the heart of Ofcom's statutory objectives of protecting consumers and promoting competition. Therefore, we agree that these should both be designated as 'first tier principles'.
- 128 Ofcom has also chosen to designate protection against slamming (principle 2) as a first tier principle. Whilst we understand Ofcom's reasons for this decision, we believe that slamming can be successfully dealt with under a GPL process by ensuring adequate safeguards are in place, so we think this is more a consideration for the technical design and implementation stages, rather than in the initial assessment of options. Therefore, in our view, this could be better dealt with as a second tier principle.
- 129 We agree with Ofcom's categorisation of principles 3, 4, 5 and 7 as second tier principles, especially given that elements of these principles may be dealt with outside of the switching process.

4.4 Ofcom's preferred switching approach for 'greenfield' setting

Question 13: *Do you agree with our proposal that the preferred switching approach assuming a 'greenfield' basis is GPL?*

- 130 Yes, we agree that GPL is the preferred switching approach, assuming a 'greenfield' basis. This finding is validated by Ofcom's evaluation of LPL, GPL and C&R processes against the seven general switching principles. Importantly, GPL is the only process which achieves Ofcom's core aims

4. Proposal for a preferred ‘greenfield’ switching process. continued.

of minimising unnecessary hassle and switching costs and supporting effective competition. By comparison, LPL does not support competition because it provides an opportunity for targeted save activity.

131 Ofcom has suggested that LPL is neutral with regard to minimising unnecessary switching costs. However, in our view, the bulk of Ofcom’s evidence points towards LPL causing significant hassle to consumers and high switching costs, particularly because the consumer must actively co-ordinate the switching process. Therefore, we think that LPL should be better classified as not supporting this principle, although we note that this would not change Ofcom’s overall findings.

132 Although Ofcom has determined that GPL processes do not inherently protect against slamming, sufficient safeguards can be built into a GPL switching process. Evidence of international GPL processes suggests that it is easier to remedy slamming issues in a GPL process than to remedy the switching costs and competition issues in a LPL process. Indeed, to remedy a LPL process in this way would likely involve significant resource commitments and investment by Ofcom to enforce regulatory requirements which go against operators’ incentives. As a result, we agree that GPL processes are preferable because they will provide more benefits to consumers and competition.

4.5 Ofcom’s GPL switching options

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

133 In the Consultation, Ofcom sets out 3 GPL options, namely:

- Enhanced GPL (NoT) process;
- Consumer Code on Bill process; and
- Third Party Verification (“TPV”) process.

134 Amongst these options, Three prefers the TPV process, as noted above in paragraph 3.6. In our view, a GPL process with third party validation strikes the right balance between the incentives of all concerned parties to the switching/porting request. A scrupulous gaining operator is incentivised to ensure the switching/porting process is as swift and hassle free as possible. An unscrupulous gaining operator is disincentivised (or prevented altogether) from attempting to slam by

4. Proposal for a preferred 'greenfield' switching process. continued.

third party validation. A losing provider is prevented from engaging in aggressive save activity and/or frustrating switching/porting in any other manner, producing the best outcome for the consumer as a result.

4.6 Costs of Ofcom's GPL switching options

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

- 135 At this stage, it is difficult for us to give any form of detailed costings view because the design and specification of the switching options are not developed. Three commits to engaging with the discussions on costings at the switching working group, in due course once industry consensus regarding options is reached.
- 136 In any event, we note that we could only realistically comment on the costs of moving from the current MNP process to a new GPL process. We would not be able to comment on costs of converting fixed or broadband processes to any harmonised process. Nor could we predict costs of implementing a 'greenfield' switching process with any accuracy.

5. Timeframe for next steps.

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

- 137 We are very concerned by Ofcom's proposal to only focus on changes to current switching processes for fixed-line and broadband services in the next round of industry discussions and consultation. Ofcom has decided not to consider any changes to the MNP process until 2012, at the earliest. This is a very disappointing move, and will compound the customer harm and competitive distortions caused by the current LPL mobile porting system. Ofcom has stated that it has significant concerns with LPL switching processes, and yet is not proposing to include reform of MNP in the next round of consultation. We disagree with Ofcom's proposal, and have set out further reasons why we believe Ofcom should reconsider its decision in section 1.1 of this response.
- 138 We are also concerned by the competitive effects of Ofcom's decision to focus on harmonising processes for other services that are bundled, rather than mobile. As we explain in section 1.3 above, mobile services are included in certain bundled packages and the popularity of these packages may increase if a harmonised switching process can be introduced for fixed-line, broadband and mobile services. Mobile operators will be placed at a competitive disadvantage if switching processes for other services which are capable of being bundled are harmonised, but mobile is excluded.
- 139 Ofcom indicates that the Consultation is just one element of a much wider debate, including discussions with consumers and industry stakeholders. Ofcom's new analytical framework and preference for GPL switching in a 'greenfield' process are a useful starting point for these discussions. In our view, Ofcom's key focus when moving forward ought to be determining how the general switching principles it has identified apply to the existing switching and porting processes for mobile, fixed line and broadband services.
- 140 Whatever Ofcom decides in relation to reform of the MNP process in its next round of consultation, Three ought to be invited to fully participate in the debates and industry focus groups discussing harmonisation of switching processes for fixed line and broadband services. We are clearly an interested party, given that these reforms will inform consideration of changes to MNP processes. Ofcom does not want to close off "plugging in" MNP at a later stage and have openly acknowledged that they need

6. Timeframe for next steps. continued.

to consider the possibility of expanding any harmonised GPL solution to other technologies. Our knowledge and perspective as a MNP supporter of GPL are very important, whether or not MNP is included at this stage.

- 141 Given the significant harm caused by LPL processes that Ofcom has identified, we support Ofcom's proposal to direct stakeholders to only develop detailed specifications and costings for LPL options. Ofcom cannot afford to lose sight of the consumer.
- 142 Following our experience with the UKPorting process, we strongly urge Ofcom to attend all meetings between stakeholders in the next stage of discussions. It is vital that Ofcom is involved in the process, as this will help inform Ofcom's analysis in the second switching review consultation. Ofcom's active involvement would also make it more likely that decisions can be made more quickly, and that Ofcom's proposed timeframes are met.
- 143 It is also vital that the representatives sent by each stakeholder are authorised to make decisions and commitments at the meetings. Unacceptable delays will occur if even the smallest decisions have to be taken back for sign-off by each participant after each meeting. Further, Ofcom should consider requiring operators and other stakeholders to commit to providing nominated personnel to attend every working group meeting. From our experiences at the UKPorting discussions, we have learnt how conducive consistency of resource will be to the process of developing specifications for GPL processes.