

Vodafone's response to Ofcom strategic review of consumer switching¹

Summary and conclusions

1. Vodafone welcomes the opportunity to respond to Ofcom's consultation. We endorse the aim of making sure switching processes work smoothly and reliably, support competition and deliver a good customer experience. This includes providing appropriate protection from abuses such as 'slamming'.
2. We strongly agree that Ofcom's focus should be on fixed line and broadband switching. As Ofcom itself notes at paragraph 1.9 of the Executive summary:

"Our analysis shows that the worst problems arise for fixed-line and broadband switching (including switching bundles of the two). This is where we believe we should first focus our efforts."

Ofcom then proceeds at paragraph 1.13 to summarise the benefits of this approach:

"We believe this approach has a number of benefits:

- *It will focus efforts on those services where there is the evidence of greatest harm.*
- *A narrow focus allows us to move more quickly and deliver benefits to consumers earlier.*
- *It responds to the views of a number of stakeholders in the fixed line and broadband sectors, following years of industry discussions on these issues that Ofcom needs to provide strategic direction in this area.*
- *It will also allow currently planned changes to the Porting Authorisation Code ('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."*

3. We agree that these are good reasons for focusing on fixed and broadband. We note that several Ofcom investigations are in progress relating to apparent cases of slamming in the fixed recipient led process. Ofcom's recent review of the mobile porting process revealed that it already works well by comparison with fixed and broadband, even before the further changes due to come into effect in April 2011. These changes are not merely confined to faster PACs (an issue that Ofcom mentions in this consultation), which will be issued immediately over the phone or by SMS within a maximum of two hours, but also reduce consumer port lead times from two working days to one. Given this, any observations that are made in the current consultation relating to customer surveys on mobile porting, or to reported issues with mobile porting and so forth therefore must be seen in the context of a process that is changing – they cannot relate to what we agree must be considered the baseline for evaluating any further change, i.e. the future process which will be in place from April 2011.

¹ Strategic review of consumer switching – a consultation on switching processes in the UK communications sector, Ofcom September 2010

4. Clearly also these future changes relate to the mobile *porting* process. However as has been well established, mobile switching through porting represents only a small minority of mobile switching and connection activity. This is one of several areas in which mobile subscription varies in nature from fixed and broadband subscription. For example the former relates to an individual and the latter to a household at a fixed location. Also one of the significant reasons for a new mobile subscription or a contract extension is not totally related to the underlying mobile services provided but to the acquisition of a new mobile handset, which will generally be supplied to the subscriber at a subsidy, to be recovered from future revenue.
5. One curious feature of Ofcom's current review is that it focuses almost entirely on whether the process is what Ofcom calls "gaining provider led" (GPL) or "losing provider led" (LPL) and devotes hardly any attention to the question of elapsed time to effect a switch. This is in marked contrast to the preoccupation with port lead times for mobile number portability. We agree with Ofcom's present analysis that the evidence shows that customers value certainty of when a switch will happen over speed at all costs.² This is consistent with all previous evidence and we welcome Ofcom's recognition that speed for its own sake is a questionable objective and not the most important factor for customers.
6. We note that Ofcom's present review contains an annex summarising European Community requirements for regulation which mentions the need to protect customers against slamming and to ensure that procedures for contract termination do not act as a disincentive against changing provider.³ It is notable that Ofcom makes no mention of EC requirements for "one day porting". Since there is no practical chance of any significant change to current fixed and broadband switching processes coming into effect by May 2011 when the new EC requirements come into force, we take it that Ofcom is content that current 10 working day default cycle time for fixed porting is nevertheless consistent with EC requirements (presumably on the basis that the port itself takes place within one working day). This confirms Vodafone's view that while the recent changes to mobile porting due to come into effect in April 2011 are consistent with EC requirements, the new EC rubric is already satisfied by current arrangements.⁴
7. We agree that whatever 'greenfield' options Ofcom wishes to explore next, further work will be required to understand the incremental costs and benefits of change from current processes before any new process is mandated. In this context, we note that the changes recently confirmed for mobile number portability were predicated on a view that they would produce net benefits over a ten year time horizon. Any further change in the short term would carry with it a risk of stranded assets, an additional cost that would need to be taken into account in the cost benefit analysis of any change affecting mobile. Since the recent MNP consultation revealed that moving to a recipient-led process would be substantially more expensive than fine tuning the existing PAC based process for no additional quantified benefit, and since switching bundles of services is far less of an issue for mobile than for fixed and broadband, we are currently sceptical of the benefits of attempting to integrate mobile into any new GPL process devised for fixed and broadband.
8. In any event, Ofcom needs to take full account of differences as well as the similarities between sectors including the fact that the infrastructure to support the present PAC based system for mobile porting is tried and tested and performing well. It is important to remain focussed on where the real problems lie and not adopt a 'one size fits all' approach on doctrinaire grounds that ignore practicality and empirical evidence on performance.

² At 4.64, Ofcom notes: *"Our consumer research 2010 showed that consumers value certainty about when the switch will happen over having the switch occur as quickly as possible. Over half of consumers (55%) preferred a guaranteed date for the switch compared to a quarter (25%) preferring a faster process (19% did not know). The preference for a guaranteed date increased amongst those who had previously switched (64% preferring a guaranteed date) and among considerers (71%)."*

³ See annex 5, A5.9

⁴ Ofcom's analysis in relation to MNP that "one working day" starts from the conclusion of an agreement with the gaining provider is plainly inconsistent with its present approach to fixed line porting where the lag from the conclusion of an agreement with the gaining provider will continue to be 10 working days by default. Fortunately, as Vodafone has previously noted, it is the MNP analysis rather than the present analysis that is in error. Article 30 does not distinguish between fixed and mobile, or between GPL and LPL processes, so it is not open to Ofcom to argue that a "one working day" requirement bites on mobile but not on fixed porting.

9. Our more detailed comments on Ofcom's specific consultation questions follow in the annex below. Since mobile is not the prime focus of the present review, we have at this stage kept our comments brief. However, we do not find Ofcom's present analysis of the competing merits of GPL and LPL processes wholly compelling and persuasive. We have commented previously on the limits of abstract analysis of stylised approaches that take insufficient account of practical detail. A major shortcoming in the current analysis is that Ofcom glosses over major differences in performance between PAC and MAC processes to make invalid generalisations about LPL processes in comparison with the GPL NoT process. Ofcom recognises these differences to the extent that mobile should not be the core focus of this review, but is too ready to overlook them when making casual generalisations about GPL and LPL processes that are not, in fact, supported by the available evidence. We therefore urge Ofcom to maintain an open mind at this stage, and avoid jumping to premature conclusions that are not sufficiently supported by evidence or rigorous analysis.

Vodafone Limited
November 2010

Annex 1: response to Ofcom's specific consultation questions

Section 4

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.

This is a less straightforward question than it first appears.

Ofcom refers to evidence from its Consumer Experience Report 2009, suggesting in its consultation at 4.19 that: "a substantial minority of considerers had not switched due to the hassle factor". However, Figure 147 of that Report reveals substantial differences between sectors with only 15% of respondents mentioning any sort of 'hassle' for mobile compared to around 30% for fixed and bundles (29% and 32% respectively). Indeed the Report actually observes that: "The main reason given for not switching in the mobile, broadband and TV markets relates to a perceived lack of difference in cost, while the most common reason in the fixed-line and bundled markets relates to the hassle involved in switching" (p.114). Care is required before making sweeping generalisations, therefore.

It is also clear that 'hassle' is mentioned more frequently by those who have not even considered switching than by those with actual experience of switching (48% and 31% respectively).

At a high level, therefore, it appears that 'hassle' is interpreted by respondents to Ofcom's survey as something other than degree of ease/ difficulty of any particular process itself. It is not just that perceptions of 'hassle' are higher among non-switchers than those who have actual experience of switching processes. Rather, it appears that reported 'hassle' has less to do with being daunted by perception or experience of any particular process than general lack of motivation and inertia.

As Ofcom reports at 4.23:

"The key reason given by the vast majority of these consumers not even considering switching is satisfaction with their existing supplier/inertia (between 80-86%) with the next reason given, that it was too time consuming going through the process, being significantly lower (up to 9%)."

This picture is broadly consistent with all recent survey findings by Ofcom, including those published as part of last year's review of the mobile porting process.

This is not to say there is no link whatsoever between process and 'hassle'. However, the nature of the process does not appear to be the main reason for any hassle. The key factor, among inactive consumers at least, is searching for information (54%) followed by knowing what steps to take (38%).

In any event, Ofcom cannot safely lump together MAC and PAC processes, as it is apt to do in much of the summary presentation. For example, of those who have experience of switching, Ofcom reports (Fig 11) that switchers who went through the MAC/ PAC or C&R process were significantly more likely to agree that switching seems like too much hassle (42% and 31% respectively) than consumers that went through the NoT process (22%).

The Saville Rossiter-Base (SRB) commentary notes at paragraph 4.7 that the question on which these reported results are based used vague wording about 'my home technology' and that the lack of significant difference observed between PAC and MAC responses on this particular question is at odds with the observation from responses to other more specific questions. These reveal that PAC users are more likely than MAC users to rate the process as easy (79% vs. 67% respectively).

Moreover, SRB notes at 4.5 that the presentation of aggregated MAC and PAC responses in Figure 18, which Ofcom uses to assert that MAC/ PAC is more difficult than NoT, masks significant differences between MAC and PAC. In fact, 23% rate MAC as difficult compared to only 6% for PAC. On closer inspection, therefore, the 6% for PAC is the appropriate comparator with the 8% reported for NoT. While this may indicate particular shortcomings of the MAC process as it operates in practice, these findings hardly support a general claim about superiority of GP led processes, given that the mobile PAC process even before the upcoming process change performs marginally better than fixed NoT.

This strongly suggests that it is unsafe for Ofcom to make sweeping generalisations about LP led processes by lumping MAC and PAC together. This is certainly the case in relation to questions about ease/ difficulty by those who have experience of the process in question. As Ofcom notes at paragraph 4.29:

“The evidence suggests the PAC process is easier for consumers to navigate than the MAC process (see Figure 16). Only a small proportion of mobile consumers said they found the PAC process difficult (5%) and the vast majority (83%) found it easy. By contrast, a significant minority of broadband switchers said they found the MAC process difficult (23%) and substantially fewer consumers found it easy (58%).”

We presume anyway that the upcoming changes to the PAC process will, once bedded down, reduce the degree of any customer impression of the “hassle” of mobile porting – in any case any survey data that has been gathered on the current but soon to be revised mobile porting process has little evidentiary value for determining the need for any further change.

In any event any putative “harm” from hassle must be weighed against other factors, such as the real harm from slamming – adding controls to a process to reduce the slamming opportunity might add to the hassle of a process to the casual switcher, but it is not obvious that this would be to the overall consumer detriment.

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.

Please see 3 below.

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.

There is a lack of clarity about what Ofcom means by ‘clarity’. If the question is whether all consumers have a complete spontaneous understanding of all switching processes, the answer is – unsurprisingly – that they don’t. The more important question, however, is whether customers who want to switch can discover easily how to do so when they need to.

So far as the mobile porting process is concerned we do not believe there is a significant problem in this respect as information on how to port is very straightforward and widely available from MNOs, Ofcom and other sources.

In relation to clarity on early termination charges for contracted mobile services, Vodafone does not believe that Ofcom has attributed sufficient weight to its own evidence and previous policy positions on the harm caused by consumers being unaware of outstanding contractual liabilities, including minimum contract periods and early termination charges. At 4.34 Ofcom observes that:

“The switching processes vary in the number of contact points that consumers need to navigate to switch and therefore affects the level of switching costs. GPL processes (e.g. NoT) require just one contact with the GP to initiate a switch, however, the consumer may also

choose to contact the LP (for example if they want information about any Early Termination Charges ('ETCs'))."

The sentiment that a 'consumer may choose' to find out about his contractual liabilities seems remarkably cavalier – and at odds with previous expressions of concern from Ofcom about the effect of minimum contract periods and early termination charges on consumers.

The outstanding liabilities from a minimum contract period or an early termination charge could be many hundreds of pounds for a high-end device such as a BlackBerry or an iPhone. As Vodafone has argued previously, such a charge is wholly legitimate. As the OFT, we see that intervention should not occur in circumstances where a vendor has subsidised hardware, for example: "*offering a free mobile handset in return for twelve months guaranteed service*"⁵. It is essential however that a consumer is *aware* of his contractual liabilities so that he can make an informed decision; otherwise there is the scope for consumer detriment.

Indeed in Ofcom's 2008 consultation on additional charges, Ofcom's Chief Executive, Ed Richards, expressed the view that: "*there is a concern that some additional charges may fall disproportionately on low-income consumers, increasing their costs or even excluding these consumers from some communication services altogether*"⁶.

In Ofcom's Statement on additional charges in December 2008⁷, Ofcom observed that: "*In the consultation Ofcom set out that as a matter of best practice we would expect suppliers to inform consumers of the ETC at the point that they ask to cancel their contract*" and that: "*we would generally expect that the losing provider has the opportunity to, and should, inform the consumer of any ETC they will incur*".

It is clear that the LP-led model provides an ideal opportunity for the losing provider to notify its customers of all outstanding contractual liabilities. In its 2008 consultation Ofcom reveals that it: "*has received an increasing number of complaints regarding MCPs and ETCs, which are currently around 400 a month... Of these approximately half relate to fixed voice services, a third to broadband and 15% to mobile*". That only 15% of such complaints related to mobile, despite the larger size of the market, is telling and reflects the extra clarity consumers receive on their contractual liabilities from a LP-based model.

Ofcom's contention that consumers 'may choose' to contact the LP to find out about their contractual liabilities sits ill with its own research into consumers' awareness of minimum contract periods and early termination charges⁸. Ofcom's findings were that:

- awareness is highest for mobile phone contracts: 70% for MCP and 36% for ETC
- awareness is lowest for fixed voice services: 26% for MCP and 10% for ETC
- awareness for pay TV is nearly 50% for MCP and nearly 20% for ETC
- awareness for broadband is 50% for both MCP and ETC

Whilst consumer awareness of MCP in mobile is welcome, these levels of awareness militate against any system in which the consumer merely 'may choose' to find out his contractual liabilities. The LP-based system, used by mobile, has demonstrably delivered significantly lower complaint levels than the GP-based system that Ofcom seems so keen to push forward, apparently in the consumer interest, despite its own best evidence to the contrary.

⁵ OFT's Economic Discussion Paper 'Interactions between competition and consumer policy', p.48

⁶ Ofcom review of additional charges: Including non-direct debit charges and early termination charges, consultation, May 2008, foreword

⁷ Ofcom review of additional charges: Including non-direct debit charges and early termination charges, Statement, December 2008, 6.264-6.265

⁸ Ofcom review of additional charges: Including non-direct debit charges and early termination charges, consultation, 5.9

Ofcom observes in its 2008 consultation⁹ that there is little direct evidence that low income consumers are particularly hard hit by MCPs and ETCs, although where a low income consumer does incur an ETC the amount of money will be larger in proportion to income; and it is possible that low income consumers are more likely to face a change in financial circumstances which means they are no longer able to continue monthly payments.

It is surely vital therefore that consumers are always aware of their contractual liabilities and are not caught out by the GP system, where the incentives to get a customer to switch militate against full transparency of existing liabilities. Ofcom should re-consider where the consumer interest lies, based on its own evidence of harm in the GP-led system versus the LP-led system.

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.

We note the key finding reported at 4.64 that consumers value certainty about when the switch will happen over having the switch occur as quickly as possible. This comes as no surprise at all to Vodafone and is entirely consistent with our previous advice, though it does call into question Ofcom's recent pre-occupation with mobile port lead times.

We note also that double billing appears to be less of a concern for consumers than an unwanted break in service by some margin, suggesting it is not a key issue. Paragraph 4.60, in a discussion of unwanted breaks, reports an average unwanted break of 12 days giving the impression that this applies across all services. However, inspection of the underlying research makes it clear that the 12 days relates to pay TV and fixed broadband only (section 8, key findings, first bullet point) and any disaggregated result by individual service is not presented.

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.

We think this is a legitimate issue to consider, but on the evidence presented in the consultation document it does not emerge as a major problem currently. We note, for instance, that most consumers found getting information easy (see 4.87) and that the majority of customers that requested a PAC or MAC from their existing provider obtain it without difficulty (see 4.89).

Ofcom nevertheless refers to difficulties faced by a minority of customers. Insofar as these relate to PACs, the research referred to has of course been overtaken by the decision to mandate a maximum two hour response time from April 2011, a move supported by the vast majority of respondents to the consultation on MNP including Vodafone.

In relation to MACs Ofcom appears to rely on even older research from 2008. It is therefore unclear how far these datasets provide a reliable indicator of current performance. However, we suspect there is room for incremental improvement of the MAC process at modest cost, given that the current requirement is to issue a MAC within five days which looks leisurely compared to mobile where the move to a maximum of two hours is imminent.

We note also that Ofcom has not asked any questions about slamming, which seems a curious omission given that slamming has been among Ofcom's top complaints for many years and is associated much more with gaining provider led processes.

⁹ Op. cit., 5.26

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.

Evidence from previous MNP consultations shows that some customers expect and value save activity and in some cases resent it if it is not offered so it is clear that not all save activity inside the porting process is unwanted.

See also Q9 below.

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.

We note that the overwhelming majority of those who had switched said it was easy (82% for mobile, 80% fixed and 75% broadband). We note also that the proportion of customers who did not find it easy is lowest for mobile (15%) but rises to 18% for fixed line and 22% for internet/ data.

Section 5

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

Not entirely. We note that the discussion is heavily weighted towards discussing theory from the economic literature rather than empirical findings in relation to the practical operation of switching processes.

The empirical results are telling, however. At 5.36 Ofcom repeats its earlier error in aggregating MAC and PAC to generalise about performance relative to NoT, although noting that the PAC process is easier for consumers to navigate than the MAC process. This is unsafe because it is apt to obscure important differences between MAC and PAC. Subsequently, Ofcom notes at 5.41 "within different LPL processes there may be substantial variation in the consumer experience. For example, switchers generally found the PAC process easier to navigate than the MAC process."

Quite so. Indeed, as noted at 5.38 "It appears that while the level of switching costs generated by the NoT and PAC process may not be significant, the opposite appears to be the case for the MAC and C&R processes (mainly in fixed line and broadband for the latter)." (emphasis added). Ofcom then proceeds to discuss the evidence it has on price discrimination, and concludes at 5.40 that "the above findings are consistent with those from our consumer survey which suggests that switching costs are higher under the MAC process for switching broadband and C&R for switching fixed-line than they are under the PAC process for switching mobile telephony services."

At 5.42, Ofcom suggests that the evidence it presents is 'broadly consistent' with the academic workshop that it held. It is not altogether surprising that there was a consensus that switching costs could have an effect on competition and that switching costs associated with the switching process should be minimised. But sandwiched between these two statements is a more mealy-mouthed statement that "the LPL process came across as implying higher switching costs than the GPL processes." It is far from clear, however, that such a sweeping assertion can be considered 'broadly consistent' with the evidence that the variation between MAC and PAC—two supposedly 'LPL' processes—is greater than that between PAC and NoT (a so-called 'GPL' process) and that switching costs are insignificant in both these cases.

This underlines the need for caution when making generalisations from specific data and calls into question the value of casual statements about claimed properties of GPL and LPL processes in abstract. As Vodafone has noted previously in relation to MNP, the devil is in the detail.

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

Not entirely. We note the long discussion in the consultation document. However, in common with the discussion of switching costs above, Ofcom itself presents very little in the way of empirical evidence to support its various theoretical speculations.

Ofcom seems rather too ready to conclude that "...save activity in a LPL environment is likely to weaken competition and reduce the benefits from competition to consumers overall" (5.99) without convincingly demonstrating that this is necessarily the case in practice either for the industry generally or specifically for mobile..

We see significant shortcomings in Ofcom's analysis.

To begin with, Ofcom takes it as axiomatic that 'save' activity can only occur in a LPL process, thus entirely ignoring the possibility of save and retention activity in a GPL process. Vodafone notes that the GPL NoT process has been susceptible not just to 'slamming' by gaining providers but also to 'blocking' by losing providers, for example through abuse of the 'cancel other' process. Simply refusing to let a customer switch is perhaps the most extreme form of 'save' activity. However, other subtler forms of save and retention activity are also possible within any GPL process that provides a sufficient lag between notification of the losing provider and the actual port/ switch itself. It is a wholly unsatisfactory answer to say that 'this is against the rules' under a GPL process, since any such rules could apply equally under a LPL process.

Ofcom's concern seems to be that existing providers can sit back until a customer shows signs of wanting to leave and only then offering incentives to stay. However, while Ofcom describes how this might work in a LPL process where the customer contracts the LPL to obtain a code, for example, it ignores the scope for analogous behaviour by the LPL where alerted of a customer's intention to switch by the GPL rather than the customer him/ herself.

Ofcom's attempt to distinguish between GPL and LPL process on grounds of irrevocable customer commitment is also less clear cut than Ofcom seems to suggest. Mobile customers may also commit to a new provider before contacting their old provider to obtain a PAC. Any 'cooling off' rights if they change their mind are no different in principle to those that might apply to a fixed line customer committing to a new provider for a service to commence once the (elongated) NoT switching process has been completed.

Ofcom also fails to take account of the limits placed on price discrimination by the possibility of 'churn and return' in the mobile context. This substantially limits the ability for MNOs to favour new over existing customers in practice.

Ofcom's position on save activity is further confused by the suggestion that, notwithstanding its stated concerns about the potential effect of price discrimination on competition, targeted save activity may still be acceptable if carried out outside the switching process. It would, of course, be extraordinary for Ofcom to assert that it is illegitimate for communications providers to compete to retain existing customers by proactively making them offers. But if Ofcom accepts that this is pro-competitive *outside* the switching process, it fails to explain what any notional distinction between retention activity inside and outside the switching process means in practice.

A further problem is that Ofcom's discussion fails to distinguish effectively between price discounts on one hand and information about contractual liabilities on the other. While Ofcom expresses concern about price discrimination, elsewhere it stresses the need for customers to have good information on early termination charges, for example. The 'experimental' evidence suggests general warnings about possible liabilities are of little use to customers. But accurate information can only be obtained from existing providers. Yet if all customer contact is banned because Ofcom wishes to stifle save offers, it risks leaving customers uninformed about their contractual position (as discussed in detail under question 3).

Generally, Ofcom's discussion of price discrimination comes a long way short of establishing that it is 'likely' to be bad for customers overall under an LPL process. While Ofcom notes that the effects of price discrimination are ambiguous and highly context dependent, and that save activity could be positive including in an LPL context, it ultimately relies on an 'intuition' that it is nevertheless likely to be bad.

We also think Ofcom's discussion underestimates significant differences between fixed and mobile markets that might lead to different ultimate conclusions on the relative importance of the factors that bear on the overall competitive effect of price discrimination. It is perfectly possible to take out a new mobile subscription either contract or pre-pay without any reference to the existing provider, whereas to do the same for fixed would require the customer to install a second line. The customer's wish for handset substitution, with or without a new subscription, generally at a subsidised price, is also something unique to mobile. Market shares in mobile are also much more evenly distributed than in the fixed market which is still dominated by BT, the former monopoly incumbent.¹⁰

By contrast, the UK mobile market is one of the most competitive in Europe as Ofcom itself has recently recognised in its Mobile Sector Assessment¹¹ despite the existence of a so-called 'donor led' porting process. This hardly lends strong support to the notion that an LPL porting process has any material adverse effect on competition in practice, considering that less competitive fixed and mobile markets in other countries have the supposed 'benefit' of a GPL process.

Finally, we see no acknowledgement by Ofcom of the fact that savvy customers in an LPL environment learn how to 'play the system' as noted in our response to the previous MNP consultation. It is important that active customers can internalise sufficient benefits from their activity in order to reward activity and spur competition. Passive customers will also benefit because perfect price discrimination is not possible in practice.

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

No. Vodafone agrees that there may be genuine confusion about how switching processes work and which process to use in the context of fixed line and broadband services. In relation to bundles in particular, the co-existence of different processes alongside one another may be a source of confusion, as may the many qualifications over the circumstances in which particular processes may be used e.g. to do with whether fixed and broadband services use copper or cable. We are much less convinced there is any significant problem for mobile, which is still primarily sold on a stand alone basis.

More generally, this section takes as its starting point an assumption that save activity is pernicious without adducing any compelling evidence to this effect. We agree with Ofcom when it notes at 5.110 that "cancellations may be motivated by reasons not related to save activity or difficulty navigating the LPL process, for example, learning information about ETCs might also have dissuaded consumers from completing the switch." We do not agree, however, with Ofcom's next statement, namely that "these examples (although limited in nature) do lend weight to the evidence that save activity/ difficulties acquiring customers under LPL processes may materially affect the expansion of new entrants and ultimately deter entry in the market."

Section 6

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

¹⁰ BT's retail market share on analogue lines and IDSN channels was 54.7% at the end of Q1 2010 according to Ofcom's latest Telecommunications Market Data tables.

¹¹ Mobile Evolution, statement, December 2009, section 3

While the outline principles Ofcom lists may be relatively uncontroversial in themselves, we do not agree with much of Ofcom's commentary under each heading for reasons already discussed above.

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

No. We find Ofcom's approach – articulating key principles, then declaring some principles more equal than others – most peculiar. We recognise that there may be tensions and trade offs between competing principles that will need to be weighed in the context of any particular case (similar to the six principles of cost recovery). We seriously doubt the value and validity of attempting to draw general conclusions in abstract, however.

In particular, we query the wisdom of Ofcom's approach to designing an idealised 'greenfield' switching process.

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

Not necessarily, no. The jury is still out on what the best process for fixed and broadband might be, both in a hypothetical 'greenfield' case and in reality where the incremental costs and benefits of change from current processes will also need to be taken into account. No case has been made for any fundamental change to the mobile porting process, which is already due to change in April 2011 with the move to faster PACs and one day porting. This is the new baseline against which any proposals for change would have to be assessed. 'Bundling' is not currently a significant factor for mobile compared with fixed and broadband, so the argument for requiring mobile to align with any new process for fixed and broadband is correspondingly weak. On the other hand, it is already evident that the costs of changing to a recipient led mobile process are vastly in excess of those associated with fine tuning the current donor led process on Ofcom's own analysis, for no additional quantified benefit. Moreover, any further change to mobile processes that resulted in stranding of assets to support the current process would call into question the cost benefit case for the existing decision to mandate donor led one day porting.

It is clearly right that the cost benefit analysis which must support any decision for change should be based on the incremental costs and benefits of change from the "current" starting point, which may be quite different from those that would be incurred if a new process were being devised from scratch in a completely 'greenfield' environment. Even as a theoretical exercise, however, the pros and cons of alternative processes in a greenfield setting should still take some account of costs and benefits in order to weigh the necessary trade offs. For example one cannot arbitrarily assume away the slamming risk of GPL without a clear view on both the "how" and the overall cost of its removal¹², on a service by service basis.

As discussed at length in our previous MNP response, 'GPL/LPL' terminology can obscure as much as it illuminates because the devil lies in the detail. For this reason we believe the summary tables (Figs 26, 27) Ofcom presents in the present consultation are fundamentally flawed because they conflate MAC and PAC as though these were the same in spite of empirical evidence to the contrary.

One of the trade offs that needs to be weighed in the design of any new switching process is between time taken and other considerations. In the present consultation, Ofcom suggests speed is not that important relative to certainty of when the switch will actually take place. This has been a consistent point of Vodafone's throughout a period where Ofcom attempted to argue the exact opposite in relation to mobile porting. We welcome Ofcom's belated recognition that the evidence supports Vodafone's view, though query the inconsistency of approach taken in this consultation compared to recent consultations on MNP. In the alternative, it may be that Ofcom's position that speed is not important relative to certainty is being applied in this consultation primarily in relation

¹² In both process degradation and consumer and operator cost terms

to fixed services, rather than mobile – but the logical corollary of this is that different processes should be applied for different services.

We also caution in any future cost benefit analysis against the risk of overstating any numbers derived from survey evidence of those who may switch as a result of a process change, and hence thus overstating the benefits of any such change. We have commented previously on this point in the MNP process consultation, but Ofcom in a recent decision gives support to this position:

“Survey evidence can be used to inform whether customers who valued different aspects of broadband would be likely to substitute in the face of a SSNIP. Ofcom has treated this evidence with caution, acknowledging that hypothetical questioning tends to overstate actual switching.”¹³

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

We think this question is simply premature. Ofcom is at risk of proceeding on the basis of sweeping assertions and questionable assumptions about LPL processes (including that they are all the same, when the evidence clearly shows major differences in performance between PAC and MAC for example).

If Ofcom is nevertheless intent on excluding LPL options from consideration for fixed and broadband, it makes little sense for it then to rule out ‘Code on bill’ validation options on the grounds that they would not be applicable to mobile prepay. This is the tail wagging the dog. The fact that a particular solution may not read across to prepay mobile (where there is no substantial problem) is a poor excuse for ruling out consideration for fixed and broadband which – and here we agree with Ofcom – is where the current problems lie.

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

No. The options canvassed are as yet too ill-specified to attempt to cost in detail; and in any event Vodafone is not well placed to assess likely costs of as yet unknown processes in relation to fixed and broadband. Vodafone has, however, previously provided indicative costing for the various MNP options Ofcom previously consulted on and we suggest Ofcom might usefully draw on its existing evidence base in this regard.

Section 7

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

Not entirely. We agree that the focus should be on fixed and broadband, not mobile. We do not agree with a general presumption that GPL is better than LPL – especially for mobile.

¹³ Competition Act 1998 – Decision of the Office of Communications, Investigation into BT’s residential broadband pricing, Decision 2nd November 2010