

Vodafone's response to Ofcom's Mobile Number Portability (MNP) process consultation 2010

Summary and conclusions

1. Vodafone welcomes the opportunity to respond to the present consultation ahead of Ofcom's final decision on changes to GC18. The subject has been under almost continual Ofcom review since 2006 and it is time to draw matters to a close.
2. Although we continue to have reservations about some aspects of Ofcom's analysis and approach, the uncertainty has gone on long enough. Industry needs clarity on what the future requirements for MNP will be so it can deliver them consistently to consumers.
3. Our comments below fall in two main areas. Firstly, while we do not intend to labour points discussed more fully in previous rounds of consultation, there are a few general policy issues we think Ofcom should keep in mind, not only for the present MNP proposals but also affecting further work on consumer switching and the implementation of the new EU framework. Secondly, we respond to Ofcom's two specific consultation questions on the rubric of the proposed modification and implementation timescale.

Time to decide

4. We welcome the fact that this particular chapter of the porting process story is finally drawing to a close. It is getting on for four years since Ofcom's 2006 consultation first proposed changes to the MNP process, and already well over a year since Ofcom began its fresh review of these matters following the setting aside by the Competition Appeal Tribunal (CAT) of Ofcom's November 2007 decision.
5. Ofcom acknowledged in the previous consultation that MNP is not actually a burning issue for most consumers but in fact works reasonably well for most people most of the time. Of course, this is not to deny room for further improvement in some areas but does suggest strongly that incremental change building on the PAC-based process is preferable to a wholesale switch to a completely different process with all the attendant costs and risks that would imply. This intuition is also confirmed by the relative ranking of options in Ofcom's cost benefit analysis (CBA).
6. We therefore welcome the abandonment of recipient-led options (at least for the time being) which in Vodafone's view represent a disproportionately costly and disruptive course offering many risks without any sufficiently clear cut consumer benefit in return.

We support PAC reform

7. Ofcom appears to suggest at one point that Vodafone in its consultation response supported 'do nothing', but this is not in fact correct. On the contrary, as Ofcom acknowledges elsewhere, Vodafone argued that PAC reform should proceed as soon as possible. Our remaining comments on Ofcom's present proposal in this respect are therefore confined to points of detail, as discussed further in the section on PAC reform below and at Annex 1.

8. Vodafone's key reservation about the options Ofcom proposed was that they conflated two essentially separate questions about authentication on one hand and port lead times on the other. In Vodafone's view, Ofcom had made a much better case for PAC reform – which Vodafone supported very clearly – than it did for compressing port lead times, for which the case appeared (and still appears) weak by comparison. In particular, Vodafone criticised Ofcom's cost-benefit analysis as not providing a reliable basis for decision, and also queried the apparent claim by Ofcom that the particular change it was proposing was required in any event to meet the new EU 'one day' porting requirement.

Caveats on Ofcom's cost benefit analysis

9. We acknowledge that Ofcom has responded to some of Vodafone's detailed critique of its cost-benefit analysis. While this is welcome so far as it goes, Vodafone continues to find aspects of Ofcom's analysis unconvincing. We remain of the view, based on the evidence Ofcom has presented, that a plausible (and, it appears, uncontroversial) case can be made for the PAC reform aspects of Option D. However, the economic rationale for compressing port lead times remains weak. Few customers appear to attach any significant value to it, and Ofcom's estimates of net benefit are heavily qualified by uncertainty over the reliability of both benefit and cost input assumptions.
10. In this particular case, the fact that the benefits Ofcom expects are marginal need not be fatal if, as Ofcom suggests, there is sufficient consensus to proceed (providing the out-turn costs of implementing Option D are as modest as Ofcom assumes). Vodafone accepts that there are likely to be benefits associated with faster PACs that Ofcom has not so far been able to quantify.¹ However, marginal benefits do not, in the normal course of events, provide a positive case for regulatory intervention – as Ofcom has recognised recently in relation to call routing to ported numbers.
11. While the standard of cost-benefit analysis required may be seen to rise with the magnitude of the decision to be taken, this does not mean cost benefit analysis is superfluous or uninformative in the present case. We remain of the view that the methodology Ofcom has adopted for the present analysis is dubious, both in terms of empirical underpinning and the heroic assumptions Ofcom has used to derive imputed valuations from extremely limited data. As such it does not provide a good model for any future cost-benefit analysis where the stakes are higher.
12. Putting the detail of such criticisms to one side, however, we note that Ofcom's own analysis produces only a marginal benefit. Given our previous comments about the reliability of Ofcom's estimates, it would not be appropriate to attach a high degree of confidence to Ofcom's claim that a material net benefit can still be expected even if the investment horizon is truncated. To the extent that Ofcom seeks to place reliance on the net benefit case it has advanced to justify intervention, it should be mindful that any subsequent intervention that foreshortened the investment horizon would jeopardise the economic case for the present proposal, potentially resulting in stranded assets and customer detriment through additional industry costs.

Consistency with EU requirements

13. Vodafone agrees that Ofcom's Option D is 'likely to be consistent with' the EU requirement that Ofcom invokes but notes that this is subtly different from saying that the change it proposes is positively required in order to satisfy the EU test. Such nuances would be of less practical concern were it not for the fact that Ofcom's discussion of this point could have unfortunate read-across both for bulk porting and for fixed number porting,

¹ Though this simply reinforces the qualitative case already made for faster PACs rather than lending support to compression of port lead times.

neither of which Ofcom has fully considered yet.² As a result, we agree with Ofcom's analysis only in part and urge Ofcom not to pre-empt due consideration by BIS of wider EU implementation requirements.

Need for certainty

14. We note that Ofcom suggests it has not ruled out recipient led porting altogether, merely deferred its consideration which it intends to resume later in the year in the wider context of consumer switching generally. In part this may be a response to those, including Vodafone, who urged Ofcom against pre-empting or pre-judging the outcome of a wider review Ofcom had announced but not commenced in earnest. However, Vodafone's key point was that it would be foolhardy to mandate a mobile-only recipient-led porting process whilst simultaneously seeking to retain the option of wider harmonisation with other switching processes since this would potentially require two major changes in succession unless Ofcom could guarantee up front that mobile would not be required to undergo further change. This conclusion holds true regardless of whether any candidate harmonised process is broadly conceived as gaining or losing provider led.³
15. While it is legitimate to consider to what extent there may be merit in a more uniform approach to porting and switching across fixed, mobile and broadband, it seems highly doubtful that the net benefits of any wider harmonisation are sufficient to justify any further substantial change in respect of mobile on top of those already implemented or now proposed, particularly since mobile is still primarily sold on a stand-alone basis and does not have the same technical dependence on fixed line infrastructure as fixed broadband.

Wider switching harmonisation is not a realistic short term goal

16. It should also be clear that mandating any new uniform process across all channels in all sectors poses substantial practical and logistical challenges which must not be lost sight of in any high level policy appraisal. While this is likely to be true of any new process requiring all industry players to have access to any new (as yet non-existent) common platform to enable any-to-any exchange of information between them, the scale of the challenge would be compounded in the event that a nominally gaining provider led approach necessitated, as seems likely, real-time backwards integration into each losing provider's subscriber management and billing systems to support authentication.
17. Change of this nature and magnitude is clearly not a realistic short term proposition, therefore, and would require careful and detailed economic justification. It is not required in order to meet any new EU mandate, and could not in any case help meet a 'one day' porting requirement by the current mid-2011 implementation deadline. In Vodafone's view, regulatory intervention to mandate radical change to mobile switching processes cannot possibly be justified until the present refinements to the existing process have had a chance to prove their worth. This is the new counterfactual against which any further proposals for change would have to be assessed.
18. The remainder of this response is organised as follows:
 - Section 2 discusses PAC reform aspects of Option D
 - Section 3 discusses one day porting aspects and Ofcom's cost benefit analysis
 - Section 4 discusses EU requirements as they relate to the present proposals
 - Section 5 and Annex 1 addresses Ofcom's specific consultation questions on the proposed wording of GC18 and implementation timescales.

² There appears to be near unanimity of view that there is no case for mandating change to bulk porting arrangements, while the timetable for any consideration of fixed line porting makes it extremely unlikely that the present 10 working day process can be compressed to a single working day by mid-2011 in any event.

³ As Vodafone noted previously, abstract debate about the competing merits of stylised losing/ gaining provider led process options are of limited value since the practical operation of any particular regime depends critically on the supporting detail.

2 PACreform

19. As noted, Vodafone made very clear in its previous response that it supported the proposals to improve the consistency, reliability and speed of PAC issue within the current process. Our remaining comments therefore are confined to points of detail.
20. We see some potential ambiguity in the proposed reformulation of GC18.2 as to whether giving PACs over the phone/ SMS is an either/ or choice and the further suggestion that other means of provision might also fall within a minimum requirement.
21. We understand that Ofcom wishes to encourage the provision of PACs immediately over the phone where possible but nevertheless suggest that it would be prudent to require confirmation to be sent within two hours in any event if only to provide an audit trail in case of any dispute. We also note the reference to the possibility of providing confirmation by other reasonable means other than SMS. While we would welcome operational flexibility to use whatever method of communication is most appropriate in the circumstances (e.g. in relation to business customers who prefer to communicate by e-mail and for whom we already hold validated e-mail contact details) we also see some potential difficulties with any mandatory requirement to provide the PAC confirmation by means other than SMS.
22. Difficulties with such an approach include:
 - Deciding in any particular case what constitutes a reasonable request for another means of confirmation – this necessarily requires individual judgement;
 - Any compulsory discretionary element potentially adds cost and scope for error, militating against automation. For example, there is ample scope for a previously un-validated e-mail address to be mis-heard, mis-transcribed or to fail for some other reason;
 - There is no evidence that the additional costs and risks of such an approach have been taken into account.
23. We agree that communications providers should not be able to decide unilaterally what means other than SMS they use for confirmation, and to that extent welcome the reflection that the customer needs to be involved and understand through what medium they can expect their PAC to be confirmed if methods other than SMS are to be employed. However, we would suggest that even where this is done the PAC should *also* be confirmed by SMS within two hours to provide a consistent customer experience (and audit trail). For the same reason, we think it is sensible to require SMS confirmation even where the PAC has been given out over the phone.
24. We therefore propose some minor drafting amendments to the rubric of GC18.2 to reflect these points and minimise ambiguity at Annex 1.

3 One day porting

25. As noted in our previous response, Vodafone has nothing against faster porting providing it can be achieved at proportionate cost and without deterioration in reliability or other aspects of the customer experience. Cost benefit analysis provides a structured approach to assessing whether any change of this kind represents value for money, so we welcome the fact that Ofcom has attempted an explicit cost-benefit analysis even though we consider the results of that analysis provide questionable support for the stand-alone compression of port lead times they seek to model.
26. Notwithstanding Vodafone's reservations about Ofcom's numbers, we agree – along with many other consultation respondents – that Option D appears to provide a superior return to any of the other Options A-C. However, we do not share Ofcom's apparent confidence that a materially positive net benefit can be expected.

In particular, we continue to find Ofcom's use of 'definitely plus probably' results highly questionable since the literature on this subject suggests that uncertain expressions of willingness to pay cannot be accorded the same weight as apparently more certain ones. We therefore disagree with Ofcom's portrayal of definitely only as a 'lower bound' and definitely plus probably as an 'upper bound'. Accordingly, the framework Ofcom uses for its sensitivity analysis at Annex 6 is apt to give a misleading picture by including 'upper bound' values of dubious validity.

27. We note that Ofcom has made some adjustments in response to Vodafone's critique of the way in which it previously attempted to interpolate willingness to pay from a limited number of discrete data points. However, Ofcom has only partially taken on board Vodafone's criticism.⁴ As we have previously pointed out, on a more conservative basis the unit benefit is 74p, not the 130p adopted by Ofcom. Not surprisingly, a lower unit benefit results in a lower overall net benefit (or larger net cost) everything else being equal.
28. Another key respect in which we consider the sensitivity analysis presented potentially misleading concerns the time horizon. Table A6.1 shows a zero return if the time horizon is reduced to two years, implying two years to break even. In fact, this zero appears to be rounding a negative result of £432k. Table A6.3 shows a negative result of £2m in what Ofcom apparently considers an unlikely 'very worst case' where all pessimistic assumptions are assumed to occur simultaneously. This is misleading, however, because it is not in fact necessary to vary all assumptions simultaneously to achieve a negative result. On the contrary, simply reducing the time horizon to two years in conjunction with a reduced benefit of 20% with no other changes is sufficient to produce a negative PV of £1.49m.⁵ Additional variations make very little difference.
29. Even without adopting any of Vodafone's suggested modifications to Ofcom's modelling approach, using Ofcom's spreadsheet it is possible to examine the projected net PV for any period up to ten years using Ofcom's base case assumptions (including the questionable unit benefit of 130p discussed above). Over ten years the net benefit is under £6m, which might in itself be considered marginal, with an almost linear decline of approximately £700k for every year the time horizon is compressed. Accordingly, even on Ofcom's own analysis the projected net benefit is scarcely material enough to justify intervention when a ten year horizon is adopted and cannot realistically be portrayed as robust against any substantial shortening of the time horizon. It is clear, therefore, that premature further intervention risks jeopardising the economic case for the intervention now proposed.

4 Consistency with EU requirements

30. Ofcom makes various references to the likelihood of Option D being consistent with EU requirements. It would, of course, be extraordinary for Ofcom to mandate something that it believed to be inconsistent with EU requirements, and we have no reason to doubt that Option D is consistent with Article 30 of the USD as it currently stands and will be equally consistent with the revised text applicable from mid 2011.
31. We note, but do not entirely agree with, Ofcom's discussion at paragraphs 3.136 to 3.141. We agree that the revised Directive does not preclude donor led porting. We also agree that the Directive should not be read as binding the recipient operators – particularly in circumstances where the recipient operator does not yet have the customer's PAC. By the same token, however, we do not see how any new 'one day' requirement can conceivably constrain the donor operator until such time as the donor becomes aware of a confirmed request

⁴ Ofcom states that it is now using rectangles instead of straight lines. However, it is apparent from the spreadsheet Ofcom has used to derive its results (not published but supplied to Vodafone after the consultation) that the method Ofcom has used to set the co-ordinates of the rectangles is in fact equivalent to the previous straight line interpolation approach Vodafone criticised and continues to question.

⁵ Ofcom assumes a reduction in volumes to reduce benefit by 20%. However, a 20% reduction in benefit might equally be due to a lower unit benefit. In this context a 20% variation from Ofcom's chosen value of 130p looks modest relative to the much more substantial reduction implied by the alternative 74p value discussed above.

to port to a particular operator. This is *not* coterminous with when the customer provides their PAC to the recipient, however, as the donor will only learn of this some time later. The donor can only be constrained to abide by a timetable *after* receiving the customer's confirmation via the recipient. The obligation to port is clearly an obligation on the *donor* to let the customer take their number elsewhere rather than being an obligation falling on the recipient.

32. This, at least, is how number portability obligations have always previously been interpreted and nothing in the Directive can imply any fundamental change since recipient providers are not under any supply obligation under the EU framework. Ofcom has in the past been quite explicit on this point and nowhere in the previous consultation did it signal any change of approach. Ofcom's view is recorded plainly at 5.51 of the July 2007 Statement confirming (among other things) Ofcom's decision to cut consumer port lead times from five days to two, which is exactly analogous to the present move from two days to one. Ofcom states:

'This statement makes no specific proposals in relation to bulk ports of 25 numbers or more. Ofcom has noted comments received in this regard. Ofcom also notes the comments of respondents with regards to complex ports for business customers involving porting of less than 25 numbers. Ofcom appreciates that certain subscribers may consider broader issues to be of more importance than porting lead times when changing provider. However, the requirement to port numbers within a specified time does not bind the Recipient Provider. Therefore, in the event that a Recipient Provider requires additional time in which to establish the contractual package or to deliver handsets, it may agree a longer porting lead time with the subscriber. The Recipient Provider is able to determine when to make a request to the Donor Provider at which time the obligation under General Condition 18 to port will be applicable.' (Emphasis added)

33. It should be plain, therefore, that the donor's obligation in relation to port lead times cannot sensibly be triggered before the donor is made aware of the confirmed request (through the recipient claiming the PAC). This has implications both for the rubric of the general condition and for Ofcom's speculation about the more detailed timetable that will need to be agreed before new arrangements can come into effect, discussed by Ofcom at Annex 7.
34. This is not the only respect in which we think Ofcom's commentary on the interpretation of Article 30 is open to question. We note Ofcom's apparent rejection of the link between 'one day' and loss of service at 3.140, which Ofcom uses to suggest that the current UK process would not be in line with the EU requirement. Whether or not Ofcom is correct that change is required to meet the new requirement, we would respectfully urge Ofcom to be extremely cautious before concluding that its particular interpretation is uniquely correct. Vodafone remains of the view that other reasonable interpretations are possible⁶, and that it is premature and inappropriate for Ofcom to seek to give a definitive interpretation now in relation to consumer ports when it has plainly not given full consideration to the treatment of bulk ports, nor to the treatment of fixed line porting. Indeed, Ofcom notes that it is BIS rather than Ofcom that will be responsible for transposition of the Directives as a whole, with a consultation expected later in the year. It would be wrong, therefore, for Ofcom to presume that it can be sole arbiter of how the new EU framework should apply, and inappropriate for it to be more definitive than it needs to at this stage.
35. Vodafone looks forward to discussing these matters further in due course. In the meantime, however, we would urge Ofcom not to adopt any definitive interpretation of the new EU requirements prematurely since, by doing so, it risks creating substantial practical and legal difficulties that have not been fully considered to date.

⁶ Indeed, Vodafone understands that in the context of national implementation discussions some other member states appear to be taking a view more akin to that previously outlined by Vodafone.

5 Consultation questions

Question 1: Do you have any comments on the wording of the proposed modifications to GC18 contained in Annex 8?

Yes – please see Annex 1 attached.

Question 2: Which implementation period do respondents consider achievable?

*(c) six months from the publication of the final statement, or
(d) nine months from the publication of the final statement.*

Of the two options Ofcom has proposed, Vodafone considers that nine months would be more reasonable. We note that some respondents submitted that a minimum of 12-18 months would be required. It is unclear on what basis Ofcom has substituted a view of its own that six months is realistic.

Vodafone has previously stated that PAC reform should proceed as soon as possible. Indeed, Vodafone for its part is already a long way down the road to PAC reform ahead of any formal requirement since, unlike compression of port lead times, this does not hinge on co-ordination with other operators. Even so, with the detail of the future mandate still unconfirmed, a bare six months for full implementation of faster PACs may not be realistic for all operators without disproportionate cost and disruption.

In any event, since Option D is not confined to PAC reform but also extends to compression of port lead times, the critical path is not determined solely by the fastest possible timescale for PAC reform. While PAC reform is largely within the domain of individual communications providers, the move to one day porting requires co-ordination between operators.

If detailed implementation arrangements are not settled until sometime after Ofcom's final statement, as seems likely, some allowance needs to be made for this. As this is beyond the control of individual communications providers, Vodafone cannot be confident six months allows sufficient time both to agree and then plan, test and fully implement the necessary changes across industry.

We note that the previous move to two day porting required the full nine months allowed and anticipate that the complexity involved in a further move to one day will be at least as great as that involved in the move to two days. (Indeed, if moving to one day porting were trivial, Ofcom would surely have mandated one day rather than two day porting at the time of the last – though still recent – change.)

Vodafone Limited
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