



# Changes to the Mobile Number Porting Process

Final Statement

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Statement

Publication date:

08 July 2010



# Contents

| Section |   | Page |
|---------|---|------|
| 1       | Executive Summary   | 1    |
| 2       | Introduction and background   | 2    |
| 3       | Comments on the modifications to GC18 and implementation period and Ofcom's conclusions | 8    |
| Annex   |   | Page |
| 1       | Notification of modifications to General Condition 18                                   | 27   |

## Section 1

# Executive Summary

- 1.1 Mobile number portability (“MNP”) is the facility that enables consumers to keep their mobile telephone number whilst switching provider – saving consumers the costs and inconvenience of changing their telephone number.
- 1.2 In April 2010, we decided not to change the way in which MNP works (retaining the current donor-led process) but to shorten the time taken to port a number to a new mobile provider from two to one working day. We also proposed rules requiring providers to give a Porting Authorisation Code (PAC) to consumers who ask for it either immediately over the phone or by SMS within two hours.
- 1.3 To implement our decision, we proposed modifications to General Condition 18 of the General Conditions of Entitlement<sup>1</sup> (“GC18”). We sought comments on the proposed modifications. Those changes would:
  - require communications providers, at a minimum, to accept PAC requests by telephone;
  - where a consumer requests a PAC over the phone, require communications providers to issue the PAC either immediately over the phone or within two hours by SMS (or by another reasonable method if the consumer asks, and the provider agrees); and
  - reduce the porting time from two working days to one working day.
- 1.4 We also sought comments on whether six months was sufficient for mobile service providers to implement these changes (and asked, if not, whether nine months was appropriate).
- 1.5 We have considered the 10 responses we received to the April consultation, and as a result made some amendments to the revised wording of GC18.
- 1.6 Today, we are publishing this statement which confirms the modifications to GC18, with some amendments (set out in Annex 1). We will allow a period of nine months for the implementation of the revised arrangements from the date of publication of this statement.

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<sup>1</sup> [http://www.ofcom.org.uk/telecoms/ioi/g\\_a\\_regime/](http://www.ofcom.org.uk/telecoms/ioi/g_a_regime/).

## Section 2

# Introduction and background

## Introduction

- 2.1 Retaining a mobile telephone number whilst switching from one mobile provider to another, is useful to consumers who choose to utilise this facility. It also benefits all consumers by making competition work more effectively. The facility that enables consumers to keep their number is called mobile number portability (“MNP”).
- 2.2 In April 2010<sup>2</sup> we published a statement and consultation (“the April statement and consultation”) setting out our decision to change the MNP process. We proposed amendments to the wording of the MNP regulations and the implementation period for those changes. That consultation closed on 13 May 2010 and, having assessed the responses, this statement confirms the amendments to General Condition 18 of the General Conditions of Entitlement (“GC 18”) with some modifications, and an implementation period of nine months.

## Ofcom’s policy objective

- 2.3 We want to make it easier for consumers to keep their mobile numbers when switching provider, and to limit any harm to consumers (such as unnecessary cost) arising from the process. This reflects our principal duty in section 3(1) of the Communications Act (“the Act”) to further the interests of citizens and consumers in relation to communication matters.

## Background

- 2.4 This review of the MNP rules began after a November 2007 Ofcom decision was quashed by the Competition Appeals Tribunal (“CAT”).<sup>3</sup> The CAT remitted MNP back to Ofcom for reconsideration in September 2008. We started a fresh review of the MNP process, which led us to publish a first consultation document in August 2009 and then the April statement and consultation.
- 2.5 We have only considered the *mobile* porting process for *individual* consumers. We noted in the August consultation that we were not aware of any evidence of harm arising from the ‘bulk’ porting process, which serves those consumers (that is, organisations) who wish to port more than 25 numbers at once.<sup>4</sup> The Department of

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<sup>2</sup> Ofcom, *Changes to the Mobile Number Porting Process*, 1 April 2010 (“The April consultation”), Available at: [www.ofcom.org.uk/consult/condocs/mnp](http://www.ofcom.org.uk/consult/condocs/mnp)

<sup>3</sup> On 29 November 2007, Ofcom published the statement “*Telephone number portability for consumers switching suppliers*”, which required, amongst other things, mobile providers to implement recipient-led porting and reduce the time to port mobile numbers from two business days to two hours by 1 September 2009. Vodafone (subsequently supported by BT, T-Mobile, Orange and O2) appealed the November 2007 Statement in early 2008, and on 18 September 2008 it was set aside in its entirety by the CAT.

<sup>4</sup> Bulk ports’ involve porting 25 or more numbers and usually involve larger (business) customers. ‘Consumer ports’ typically involves the porting of an individual number although it can also involve multiple ports of less than 25 numbers. The Industry Manual specifies a separate (but similar) process involved with bulk ports, which is intended to recognise the additional work involved for the donor MNO to process ports involving more than 25 numbers. See the August consultation, p. 16, paragraph 3.33.

Business, Innovation and Skills (BIS) is considering the process enabling consumers to keep retain their fixed telephone number when changing provider and the process for mobile 'bulk' porting in light of the requirements of the new EU Regulatory Framework. Alongside this review of the MNP process, we also reviewed the rules governing the routing of calls to ported numbers and published a final statement on this review in April.<sup>5</sup>

- 2.6 We are undertaking a separate project on the wider issues relating to how and why consumers switch communications services, and the role that regulation can play in ensuring that they are able to switch quickly and easily. This project considers the current approach towards switching processes and, amongst other things, the strengths and weaknesses of different switching processes in different sectors, including mobile. We have elected to defer some decisions about changes to MNP until that review is nearer completion.<sup>6</sup>
- 2.7 We provided a summary of the background and history of the UK MNP process in our August consultation.<sup>7</sup> In particular we noted that, following its introduction in January 1999, the process had evolved into a donor-led system. This means that a consumer has to ask their existing operator ('the donor operator') for a PAC and the porting process starts when the PAC is passed to the new provider.
- 2.8 The time taken to complete a port in the UK (from when the new provider requests it on behalf of the subscriber, having been provided with the subscriber's PAC) is two working days for ports involving less than 25 numbers<sup>8</sup>. This was reduced from five working days with effect from April 2008.<sup>9</sup>
- 2.9 The requirement for the porting process to be completed within two working days is set out in GC18. We noted, however, that the fact that the process is donor-led can add to the total time taken to port because of the extra time involved in obtaining a PAC from the consumer's existing provider.<sup>10</sup>

## The August consultation

- 2.10 On 3 August 2009, we set out proposals for making changes to improve MNP<sup>11</sup>.
- 2.11 We published consumer survey evidence suggesting that most consumers were satisfied with the process and that it works well for many people. For example, 80% of consumers who had ported their number said they were satisfied with the process.<sup>12</sup> Nevertheless, our research also identified ways in which the current

<sup>5</sup> [www.ofcom.org.uk/consult/condocs/gc18\\_routing/statement](http://www.ofcom.org.uk/consult/condocs/gc18_routing/statement)

<sup>6</sup> We intend to issue a consultation shortly setting out the results of our programme of research into these issues and our current views on appropriate switching processes. This work was highlighted as one of Ofcom's priorities for 2010/11 in our Annual Plan,

<http://www.ofcom.org.uk/about/annual-reports-and-plans/annual-plans/annual-plan-2010-11/>

<sup>7</sup> The August consultation, pp.6-7

<sup>8</sup> There are currently no specific timing requirements in GC18 relating to ports involving more than 25 numbers. [www.ofcom.org.uk/telecoms/ioi/g\\_a\\_regime/gce/cvogc160909.pdf](http://www.ofcom.org.uk/telecoms/ioi/g_a_regime/gce/cvogc160909.pdf)

<sup>9</sup> Ofcom, *Arrangements for porting phone numbers when consumers switch supplier – a review of General Condition 18*, 17 July 2007. Available at:

[www.ofcom.org.uk/consult/condocs/gc18review/numberportability.pdf](http://www.ofcom.org.uk/consult/condocs/gc18review/numberportability.pdf)

<sup>10</sup> For example, see Figure 4, p.29 of the August consultation.

<sup>11</sup> [www.ofcom.org.uk/consult/condocs/gc18\\_mnp/](http://www.ofcom.org.uk/consult/condocs/gc18_mnp/)

<sup>12</sup> TNS, *Omnibus Survey*, December 2008, Q.9:

[www.ofcom.org.uk/consult/condocs/gc18\\_mnp/research/TNS\\_Omnibus\\_survey\\_data\\_Dec1.pdf](http://www.ofcom.org.uk/consult/condocs/gc18_mnp/research/TNS_Omnibus_survey_data_Dec1.pdf)

process causes difficulties for a significant minority of consumers (as discussed in paragraph 4.7 of the August consultation).

- 2.12 We therefore proposed options to make MNP faster and easier. We presented four options and compared them to a “do nothing” counterfactual.
- **Option A:** recipient-led process with porting completed within two hours;
  - **Option B:** donor-led process with porting completed within two hours;
  - **Option C:** recipient-led process with porting completed the next working day; and
  - **Option D:** donor-led process with porting completed the next working day.
- 2.13 We also proposed that, if the process remained donor-led, consumers should be able to get a PAC quickly and easily. We proposed that if the process was to remain donor-led, PACs would have to be issued either immediately over the phone or by SMS within two hours (as some providers were already doing).

### The April statement and consultation

- 2.14 Several respondents to the August consultation argued that there was insufficient evidence of problems (consumer harm) with the current process to justify a major change. These respondents did not want to move to a recipient-led process, because, they argued, the costs would be high and it would involve significant risks, such as slamming<sup>13</sup> and the customer not being adequately informed of their contractual liabilities. Conversely, other respondents considered that the current donor-led system was inherently flawed because it involved additional steps for the consumer that created ‘hassle’ (in particular, having to deal with a provider whom the consumer had decided to leave) and that this acted as a barrier to porting and switching.
- 2.15 Respondents broadly agreed however, about the overlap between this review of MNP and our consumer switching work. Several felt it was important to consider switching and porting processes across a range of services and whatever was decided for MNP should not hinder a wider cross-service solution.
- 2.16 We agreed with this view. In the April statement and consultation we therefore decided to suspend consideration of moving to a recipient-led MNP porting process, until the outcome of the consumer switching project was clearer.<sup>14</sup> We therefore did not complete our analysis of the two recipient-led options set out in the August consultation (Options A and C).
- 2.17 We also decided to reduce the time taken for porting to one working day and to require operators to provide PACs in response to a customer request over the telephone either immediately during the call or by SMS within two hours (referred to as “Option D”). Most operators considered that this would be easier to implement than some of the other options because it involved fewer changes to the existing process. Virtually all respondents indicated some level of support for this option, either as the most appropriate in the long term or as an interim measure prior to further changes.

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<sup>13</sup> Slamming refers to an extreme form of mis-selling, where customers are simply switched from one company to another without their express knowledge and consent.

<sup>14</sup> See paragraph 1.10 in the April document

- 2.18 Our revised impact assessment and cost-benefit analysis of the two remaining donor-led options, Options B and D, showed that Option D had a higher net present value and a shorter payback period. In addition, we noted that there might be other potential qualitative benefits of improving the porting process which we had not been captured in our cost-benefit analysis. We also noted that our decision to implement Option D and reduce the porting time to one working day will mean that consumer mobile porting in the UK is likely to be in line with the requirements of the new EU Regulatory Framework, which requires the implementation of one working day porting by 25 May 2011.
- 2.19 The April statement and consultation also included the draft Notification setting out the proposed modifications to GC18 in order to implement these changes and further consulted on the appropriate implementation period.

## Legal Framework

- 2.20 Ofcom regulates the communications sector under the framework established by the Communications Act 2003 (“the Act”), which sets out our statutory duties.

### Ofcom’s general duties

- 2.21 Section 3(1) of the Act sets out our general duties and provides that our principal duties are:
- to further the interests of citizens in relation to communications matters; and
  - to further the interests of consumers in relevant markets, where appropriate by promoting competition.
- 2.22 Section 3(2)(b) of the Act requires that, in the carrying out of its functions, Ofcom must secure, inter alia, the availability throughout the UK of a wide range of electronic communications services.
- 2.23 Section 3(3) of the Act provides that, in performing our principal duties, we must in all cases have regard to the principles of transparency, accountability, proportionality and consistency as well as ensure that our actions are targeted only at cases in which action is needed.
- 2.24 Section 3(4) of the Act requires us in performing our principal duties to have regard to a number of factors as appropriate, including the desirability of promoting competition, as well as encouraging investment and innovation in relevant markets.
- 2.25 Section 3(5) specifies that in performing our duty of furthering the interest of consumers we must have regard, in particular, to the interests of those consumers in respect of choice, price, quality of service and value for money.

### The Community requirements

- 2.26 In carrying out our functions, we also have to comply with the six Community requirements set out in section 4 of the Act.
- 2.27 We consider that the following Community requirements are particularly relevant in relation to the consumer process for achieving MNP:



- the requirement to promote competition;<sup>15</sup>
- the requirement to secure that Ofcom’s activities contribute to the development of the European internal market;<sup>16</sup>
- the requirement to promote the interests of all persons who are citizens of the European Union;<sup>17</sup> and
- the requirement to adopt a technologically neutral approach.<sup>18</sup>

## General Condition 18

- 2.28 Number portability is required by Article 30 of Directive 2002/22/EC (the “Universal Service Directive” or “USD”), which has been recently amended by Directive 2009/136/EC (see 2.32 below).
- 2.29 Ofcom has implemented the requirements of Article 30 USD in the UK, prior to its recent amendments, by setting GC18 pursuant to its general powers under section 45 and 48 of the Act.

## The new EU Regulatory Framework

- 2.30 We noted in the April statement and consultation that the new EU Regulatory Framework, which requires the introduction of one working day porting across the EU, had been approved and had to be implemented in all Member States by 25 May 2011.<sup>19</sup>
- 2.31 In relation to the requirement for one day porting, the text of Article 30 USD (4) states:
- “Porting of numbers and their subsequent activation shall be carried out within the shortest possible time. In any case, subscribers who have concluded an agreement to port a number to a new undertaking shall have that number activated within one working day.”
- 2.32 The modifications to GC18 to reduce the porting time to one working day will mean that consumer mobile porting in the UK is likely to be in line with the requirements of the new EU Regulatory Framework.

## Structure of this document

- 2.33 In the next section we have outlined stakeholder comments in response to the consultation aspects of the April statement and consultation, on the proposed specific modifications to GC 18 and the implementation period for those changes. We have set out our response to those comments, our decision and how we consider that decision meets the required legal tests.

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<sup>15</sup> This is the first Community requirement, set out in Section 4(3) of the Act.

<sup>16</sup> This is the second Community requirement, set out in Section 4(4) of the Act.

<sup>17</sup> This is the third Community requirement, set out in Section 4(5) of the Act.

<sup>18</sup> This is the fourth Community requirement, set out in Section 4(6) of the Act.

<sup>19</sup> See paragraphs 2.45-2.48 of the April Statement and Consultation for further details on the new EU Regulatory framework, including the full text of the revised Article 30 USD.

- 2.34 In Section 3 we have also outlined stakeholder comments on other issues and our response to those comments.
- 2.35 Annex 1 includes the formal notification of the modifications to GC18.

## Section 3

# Responses to the April statement and consultation and Ofcom's conclusions

## Introduction

- 3.1 In this section we summarise the comments received in relation to our proposed modifications to GC18 and the implementation period for those changes. We also respond to other comments raised by stakeholders not directly related to the consultation questions.
- 3.2 We received ten responses to the consultation. All the non-confidential responses are available at: [www.ofcom.org.uk/consult/condocs/mnp/responses/](http://www.ofcom.org.uk/consult/condocs/mnp/responses/). Below, we summarise the comments received and set out our response to those comments.
- 3.3 Most respondents welcomed Ofcom's decision to keep the donor-led process and reduce the port-lead time from two to one working day, while reforming the PAC process to make delivery of a PAC to consumers quicker and easier.
- 3.4 With the exception of Hutchinson 3G ("3UK"), the Federation of Communication Providers (FCS) and Consumer Focus, all respondents supported the decision to retain a donor-led process and acknowledged Ofcom's plan to deal with any possible change to a recipient-led process within the wider project looking at consumer switching.
- 3.5 3UK was disappointed by our decision not to implement a recipient-led process, stating that shortening the porting time fails to address the inherent flaws of the current MNP process. 3UK submitted that Ofcom should have at least required operators to set up a dedicated phone line for the PAC provision, in order to separate the PAC release from any retention activity.
- 3.6 FCS continues to favour a central database as set out by Ofcom in 2007<sup>20</sup>, as it set out concerns that the trend towards convergent and bundled service may thwart new entrants.
- 3.7 Consumer Focus reiterated its preference for a recipient-led process on the basis of their consumer research carried out in 2009. In its view, the recipient-led approach provides more incentives to rectify the drawbacks of the current porting process.

## Modification to GC18

- 3.8 We set out our proposed modifications to GC18 to implement these changes in Annex 8 of the April statement and consultation.<sup>21</sup> These modifications were to:
- require communications providers to, at a minimum, accept PAC requests over the phone;

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<sup>20</sup> <http://www.ofcom.org.uk/consult/condocs/gc18review/statement/statement.pdf>

Note that this decision was quashed by the CAT.

<sup>21</sup> See also Section 5 of the April Statement and Consultation for a detailed outline of the proposed changes.

- where the customer requests the PAC over the phone, require PACs to be provided either immediately over the phone or within a maximum of two hours by SMS (or by such other reasonable mechanism as might be requested by the subscriber); and
- reduce the porting time from two working days to one working day from submission of the PAC by the subscriber to the recipient provider.

3.9 We asked the following question:

*Question 1: Do you have any comments on the wording of the proposed modification to GC18?*

### **Changes to the PAC provision proposed in April (GC18.2)**

3.10 We proposed this new provision within GC 18:

*“18.2. In the case of Mobile Portability, where the request is for porting a total of less than 25 Telephone Numbers, the Communications Provider shall:*

*(a) at a minimum, allow Subscribers to request a PAC over the phone; and*

*(b) where a Subscriber contacts the Communications Provider by phone, provide the PAC immediately over the phone where possible or by SMS within a maximum of two hours of the request (or by such other reasonable mechanism as may be specifically requested by the Subscriber)”.*

3.11 Most of the respondents expressed support for our proposal to change the PAC issuance process.

### **Provision of the PAC by SMS as an obligation**

3.12 Vodafone suggested that the PAC should always be sent by SMS to “provide a consistent customer experience (and audit trail)”. It therefore recommended that we should replace “*over the phone where possible or by SMS*” with “*over the phone where possible and by SMS*”.

### **Ofcom response**

3.13 We considered making use of SMS mandatory in the April statement and consultation. We considered that making SMS issuance mandatory would impose a disproportionate burden on smaller providers and new entrants who do not already provide PACs via SMS.<sup>22</sup> Being able to offer PACs over the phone reduced this burden by providing a cheaper and less complex option to smaller operators.

3.14 In practice, we would expect that many providers will choose to provide a PAC via SMS as a matter of course. Some already do so. There are commercial benefits in doing so: sending the PAC by SMS would reduce the number of transcription mistakes that might occur when a consumer writes down the PAC code, and means that consumers have a tangible record of the PAC, thus reducing the number of

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<sup>22</sup> In paragraph 4.24 of the April Statement and Consultation, we stated “*We note Mundio Mobile’s comment that issuing PACs by SMS in two hours might have a greater impact on smaller operators. However as discussed above we are not necessarily requiring PACs to be issued by SMS. It is also acceptable to provide the PAC immediately over the phone.*”

times consumers might contact their provider repeatedly to retrieve a PAC that had been lost. Also, as Vodafone suggested, the sending of the PAC provides a useful audit trail in the event of future disagreements.

- 3.15 We have therefore decided not to revise the wording of GC18 in this regard, although in practice we anticipate that most providers will opt to send an SMS.

### **Provision of the PAC within two *working* hours**

- 3.16 BT & Virgin Media suggested that we should change the obligation to provide the PAC within two hours and instead specify that the PAC should be provided within two “*working*” hours.
- 3.17 BT suggested that such a change “*may allow more robust checks that protect customers*” and said that a PAC requested near the end of the working day might reasonably be fulfilled with a SMS early on the following working day.

### **Ofcom response**

- 3.18 Revising the wording of GC18 to require PAC provision by SMS within two “*working*” hours rather than two elapsed hours would change the nature of Ofcom’s policy proposal, in ways that would harm consumers’ interests. The changes seek to ensure consumers can have rapid access to their PAC on a near-instant basis. Consumers benefit from knowing when they will receive their PAC. Under our proposals, if a consumer makes a request for a PAC during normal working hours, they should expect to receive it either immediately, or within two elapsed hours. Limiting the obligation to provide a PAC such that it was only required within two “*working hours*” might leave consumers in some doubt about whether they would receive the PAC during the same day or the following day.
- 3.19 Issuing the PAC through SMS will, for many operators, be an automated process. Our proposal to allow two elapsed hours for provision of the PAC was designed to allow some flexibility to reflect unusual circumstances (such as a flood of requests during a peak time) and to allow time for the SMS to be sent across the network. In practice, we expect that many PACs sent by SMS will be provided to consumers well within the two hour window.
- 3.20 We have not defined “*normal working hours*” within which operators would accept incoming PAC requests from consumers (and from which point the operator would have two hours to supply the PAC.) This is because, although we note that the current industry porting manual specifies that the normal working day is 09.00 – 17.00 Monday – Friday (excluding local Bank Holidays), we anticipate that some operators may choose to extend the hours during which they will accept PAC requests from customers (while continuing to supply the PAC within two hours).
- 3.21 We have therefore decided to retain the existing wording of GC18 in this regard and not to change it to “*working hours*.”

### **Provision of the PAC by other *reasonable mechanism***

- 3.22 Vodafone, Everything Everywhere (“*EE*” - previously the Orange and T-Mobile Joint Venture)<sup>23</sup> and BT note that the wording proposed by Ofcom in GC 18.2(b) on

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<sup>23</sup> Orange and T-Mobile provided a single consultation response (Orange UK and T-Mobile UK formed ‘Everything Everywhere’ in Q1 2010).

providing the PAC “[...] *by such a reasonable mechanism as may be specifically requested by the Subscriber*” might generate uncertainty on what these mechanisms are and what can be interpreted as reasonable. In particular, it has been pointed out by stakeholders that the clause suggests that the process for issuing the PAC can be defined by the consumer rather than following an operationally agreed process.

- 3.23 Vodafone proposed to amend the text, replacing “*requested by*” with “*agreed with*”.
- 3.24 EE and BT proposed to delete the words “*by such a reasonable mechanism as may be specifically requested by the Subscriber*”.

### **Ofcom response**

- 3.25 We agree that the proposed text does not specify what might be considered a reasonable request from the subscriber. This provides valuable flexibility where it might be helpful to a subscriber to be able to obtain a PAC in a different way from those set out on the face of the revised GC18.
- 3.26 Vodafone proposed to replace “*requested by*” with “*agreed with*”. We agree with stakeholders’ suggestion that the reasonable mechanisms which a subscriber may specifically request should be consented to by the operators and we expect operators not to unreasonably withhold their consent. However, we consider it appropriate to maintain the reference to the subscriber’s request in order to make it clear that operators may not unilaterally impose such alternative mechanisms.
- 3.27 We have therefore decided to add that the request by the subscriber needs also to be “*consented to by the Donor Provider*”.

### **PAC provision through a designated line**

- 3.28 3UK argued that the PAC must be issued through a separate phone line, distinct from the operator’s usual customer service line, in order to ensure that ‘save’ activity would be avoided when customers require the PAC.

### **Ofcom response**

- 3.29 The competitive impact of retention activity is being considered further in the broader consumer switching project.
- 3.30 In the responses to our August consultation, several respondents suggested that a separate phone line for PAC issuance would help to avoid unwanted retention activity. We considered this issue in paragraphs 3.61-3.68 of the April statement and consultation.
- 3.31 As we set out in the April statement and consultation, consumers should be free to obtain a PAC quickly and without being required to listen to counter-offers (“retention activity”) if they do not want to do so. Supply of a PAC should not be conditional upon a consumer listening to “save” activity. We have seen in our mystery shopping evidence that consumers are at risk and in some cases are exposed to unreasonable retention activity, often coupled with substantive refusal to supply a PAC. (This evidence is one reason why rules on the supply of a PAC are required in the first place). In order for a communications provider to provide MNP as “soon as reasonably practicable on reasonable terms” (as required by GC18) consumers should not be subjected to excessive or unwanted retention activity. We have also taken this approach in our recent pre-enforcement programme.

## The new requirements under GC 18.2

3.32 In conclusion, in light of stakeholders' responses, we have decided to introduce this new provision within GC 18:

*18.2 In the case of Mobile Number Portability, where the request is for porting a total of fewer than 25 Mobile Numbers, the Donor Provider shall:*

- (a) allow Subscribers to request a PAC over the phone; and*
- (b) where a Subscriber contacts the Donor Provider by phone, provide the PAC immediately over the phone where possible or by SMS within two hours of the request or by another reasonable mechanism if requested by the Subscriber and consented to by the Donor Provider.*

3.33 We have decided to refer to 'Mobile Number Portability', instead of 'Mobile Portability' (as proposed in April), in order to clarify that GC 18.2 concerns the *consumer's* right to portability, rather than 'a facility which may be provided by a Communications Provider *to another*' in order to enable subscribers to port their number. This is because the issuance of the PAC is a necessary pre-condition for consumers to have their number ported.

3.34 In order to add clarity, we have also decided to refer to:

- 'Mobile Numbers', instead of 'Telephone Numbers' (as proposed in April); and
- 'the Donor Provider' instead of the 'Communications Provider' (as proposed in April), since consumers request the PAC from the Donor Operator.

3.35 For clarity of drafting we made additional drafting amendments to remove the brackets which were previously contained within the draft of 18.2b and we have used the word "if" rather than "as maybe". Further, we have also revised the definition of 'Portability' to clarify that the facility is provided from one Communications Provider "to another Communications Provider".

## Requirement to provide portability within one business day (GC18.3)

3.36 In the April consultation, we proposed to reduce the port lead time to one business<sup>24</sup> day from when the subscriber submits the PAC to the recipient by replacing the reference to "two business days" in the current text of GC 18.2 (which will become GC 18.3) with "one business day from the subscriber's Request for Portability", so that GC 18.3 would require that:

*"In the case of Mobile Portability, where the request is for porting a total of less than 25 Telephone Numbers, the total period for providing Portability in respect of those Telephone Numbers shall not exceed **one business day from the Subscriber Request for Portability**" (emphasis added).*

3.37 We also proposed to define "Subscriber Request for Portability" as "the request to port arising when the Subscriber submits their PAC to the Recipient Provider" (see

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<sup>24</sup> We consider the use of "business day" in the context of GC18 and "working day" in the context of Article 30 USD to be synonymous.

text of GC18.6(q) proposed in April), in addition to further minor operational changes (i.e. the definition of SMS and the renumbering of some paragraphs of GC 18).

- 3.38 In the following paragraphs, we discuss stakeholders' comments in relation to these proposals and explain our conclusions.

### **One working day – trigger event and consistency with Article 30 of the Universal Service Directive**

- 3.39 While EE stated that Ofcom's decision is the most appropriate means to achieve compliance with Article 30 of the USD, Vodafone and Virgin Media raised concerns on the consistency of this decision with the new EU requirements.
- 3.40 Vodafone agreed that Ofcom's decision to reduce the porting time to one working day is likely to be consistent with Article 30 of the USD. However, Vodafone argued that the UK MNOs already comply with the new EU requirement and that in any case the Department of Business and Innovation (BIS) will be the responsible body for transposing the Universal Service Directive into national law. Vodafone reiterated its view that Ofcom's interpretation of Article 30 of the USD<sup>25</sup>, which rejects "*the link between 'one day' and loss of service*", as not "*uniquely correct*".
- 3.41 Vodafone also believes that the "one day" should be counted from the moment when the donor operator is made aware of the confirmed request by the recipient operator: In Vodafone's opinion, the "Subscriber Request for Portability", as defined in the revised text of GC18 proposed in April, cannot be taken as the conclusion of an "*agreement to port*"<sup>26</sup>. More specifically, Vodafone suggested that the customer providing the PAC to the recipient cannot be said to conclude the customer's agreement to port since it is the customer's agreement with the donor which is the relevant agreement.
- 3.42 One operator argued that recipient providers are not under any supply obligation and that placing responsibility on the recipient would be new to the mobile number porting regulation in the UK. The respondent said that it did not believe that it was Ofcom's deliberate intention to create a new obligation on the recipient operator. The operator noted that today the industry practice is to count the two working days from when the recipient notifies the donor.
- 3.43 Virgin Media submitted that the modifications to GC18 proposed by Ofcom pose the obligation only on the donor to provide portability within one working day. In order to comply with one working day, Virgin Media also highlighted that the time within which the recipient must forward the PAC to the donor will be a crucial part of the industry negotiations.
- 3.44 At stake here are two issues: does the recipient provider have an obligation under GC18? And what, if any, are the implications for recipient providers, who are already obliged to do certain things to ensure porting is available to subscribers?

### **Ofcom conclusions**

- 3.45 We discussed the relationship between our decision and the new EU Regulatory Framework in our April statement and consultation (see, for example, paragraphs 2.45 and 3.132).

<sup>25</sup> See paragraph 3.140 of the April Statement and Consultation.

<sup>26</sup> "Agreement to port" is the specific wording used in Art. 30 of the Universal Service Directive.



- 3.46 In relation to Vodafone's point regarding UK compliance with the USD, in paragraph 3.140 of that document we set out our view that the reference to loss of service in Article 30 of the USD is an additional specification which is subordinate to the primary requirement to have the number activated within one working day. Therefore, we still consider that the existing mobile porting arrangements, left unchanged, would be inconsistent with the new one day porting requirement).
- 3.47 In relation to Vodafone's suggestion that the porting lead time should be counted from when the donor is made aware of the PAC by the recipient, we think that correct focus is on the experience of the consumer, not an intermediate (and later) step in the inter-working between operators to deliver portability. In the April statement and consultation, we explained that it is reasonable to assume that the 'one business day' starts when subscribers provide their PAC to the recipient, since the provision of the PAC to the recipient is an essential condition for porting to take place<sup>27</sup>. We consider that the point where the PAC is provided by the consumer to the recipient is an appropriate trigger event, since it ensures that consumers can be sure of the time by which their number will be ported. This is in line with the purpose of Article 30 of the USD to strengthen *consumers'* rights and provide clarity on what the consumer can expect. Therefore, we have ensured that GC18 provides the consumer with the right to port in one working day, and they should also know when this time starts.
- 3.48 We accept that both the recipient and donor operator need to take steps to ensure that a consumer can exercise the right to port within one working day. Previously, GC18 has regulated the steps taken by the donor network; the amended GC18 will make it clear that both providers have some regulatory obligation to facilitate porting within one working day.
- 3.49 In the normal course of business, recipients have an incentive to make the switching process as smooth as possible, as any unnecessary hassle might lead to the consumer deciding not to proceed with the switch. Conversely, the donor has few incentives to provide porting as they are losing the customer. In the past, the main focus of regulation has therefore been to ensure that the donor is obliged to respond promptly to a request for porting which is passed to it by a recipient operator.
- 3.50 Having considered these issues, we have changed the wording of GC18 from that proposed in our April statement and consultation in order to provide greater clarity about this point. In GC18.3 we now set the general obligation (intended for both the recipient and donor providers) to ensure that porting of numbers and their subsequent activation is completed within one working day. In GC18.4 we then specify that the recipient is responsible for forwarding the port request to the donor as soon as it is reasonably practicable, once it receives the PAC from its new subscriber. We have also renamed the 'Subscriber Request for Portability' to the 'Subscriber Request to Port' and clarified its definition. Below is the GC18 amended wording:

*18.3 In the case of Mobile Number Portability, where the request is for porting a total of fewer than 25 Mobile Numbers, porting of these numbers and their subsequent activation shall be completed within one business day from the receipt by the Recipient Provider of the Subscriber Request to Port from its new Subscriber.*

*18.4 Subject to paragraph 18.3, the Recipient Provider shall request porting from the Donor Provider as soon as it is reasonably practicable after receiving the Subscriber Request to Port from its new Subscriber.*

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<sup>27</sup> See paragraph 3.136 of the April statement and consultation.

- 3.51 As set out in the April statement and consultation, Ofcom recognises that industry would implement its revised porting process by retaining the batch operated system. Under this system porting requests provided before a certain cut-off time should be processed such that porting completes the next working day. Ofcom expects that the cut-off time should be agreed by industry, and set out in the industry manual, such that it allows sufficient time for recipients to enter PACs into the Syniverse system to enable the port to take place the following day.
- 3.52 The current industry manual enables recipient providers to make a port request on the Syniverse system up to midnight. In our April statement and consultation we suggested that a 6pm cut-off time for PAC submission would provide operators sufficient time to complete the steps required on the day prior to the port. However, we have not mandated this cut-off time. We see no reason why – given that all operators are both recipients and donors in turn - industry could not jointly agree on a reasonable and appropriate cut-off point by which time the consumer should submit the PAC in order to port the next working day. If that fails to happen in a reasonable time, then we can consider whether regulation is needed.
- 3.53 This means that the processes agreed by industry will provide scope for recipient operators to act both in their own commercial interest and in compliance with an obligation to request portability from the donor as soon as it is reasonably practicable having received a subscriber request for portability.
- 3.54 The industry manual will continue to make clear the timescales and actions that are required of the donor operator, once the port request has been made.
- 3.55 If either donors or recipients fail to comply with the requirement to complete number portability within the following working day, we will adopt a proportionate approach in light of the circumstances of each specific case. Therefore, we will examine the actions of both the recipient and the donor in the context of their respective roles, having regard also to the industry manual. For example, we do not consider that a donor would normally be held responsible for a failure to port within one working day where the responsibility for failure lies with the recipient, and vice-versa.
- 3.56 We do not expect that the obligation on the recipient to '*request porting from the Donor Provider as soon as it is reasonably practicable after receiving the Subscriber Request to Port from its new Subscriber*' should impose significant compliance costs on the recipient provider because:
- The recipient already has a commercial incentive to expedite the porting process (which we expect to be happening swiftly at present); and
  - We would only be likely take enforcement action if there was systemic non-compliance with the requirement.
- 3.57 We also consider that the consumer's request for the PAC, which is then issued by a donor, could not comprise the conclusion of '*an agreement to port a number to a new undertaking*'. The agreement to port must necessarily involve the new provider. This interpretation is confirmed by the fact that consumers may obtain the PAC from the donor and still subsequently decide not to move to a new provider. To make this clear, we have decided to modify the definition of "PAC" proposed in April so that the PAC signifies the donor's '*consent*' (instead of 'agreement') to the subscriber being entitled to request and have their mobile number ported to another provider.

- 3.58 In order to clarify that porting cannot take place unless the consumer and the recipient have concluded an agreement allowing the consumer to receive calls on their mobile handset (i.e until the recipient has taken over the new customer), we have specified that the porting lead time (ie: the period reflecting one working day) will be counted “*from the receipt by the Recipient Provider of the Subscriber Request to Port **from its new Subscriber***” (emphasis added).

### **Practical arrangements to implement the one working day requirement**

- 3.59 One respondent said that the one-working day obligation may cause disruption and loss of service to those subscribers who receive SIM cards by post from their new mobile service provider. Due to the unpredictable nature of the timing of deliveries from the postal service, there would be a significant risk that consumers signing up to a service and providing a PAC at the same time could experience their number being ported to the new provider before they had received the relevant SIM card. The respondent was concerned that this could be inconvenient for the customer and disrupt their service.
- 3.60 Another respondent highlighted other practical issues that arose as a result of the one working day requirement, for example, where a mobile user subscribes to a contract over the phone or pre-orders the handset on the web. In such cases, the respondent argued that it cannot be expected that the despatch and delivery of the new handset and SIM would happen within one working day.
- 3.61 Another issue raised by stakeholders related to the cut-off time to be chosen to accept port requests by subscribers and the cut-off time for recipient operators to make a porting request through the Syniverse system. One respondent suggested that it might be necessary to bring forward the midnight deadline for porting requests to be entered onto the system and that this could have consequential effects for the time during which subscribers could request porting.

### **Ofcom response**

- 3.62 The issues outlined by the respondents in relation to the provision of SIM cards and mobile devices are not created as a result of the requirement for one-day porting.
- 3.63 Any provider that delivers SIMs or handsets through the post and processes a port request before the consumer has confirmed physical receipt of the SIM or handset could leave consumers in a position where they do not have access to the service (nor, consequently, their number) until such time as they have received the handset and/or the SIM through the post. If the operator wishes to eliminate this possibility, then they should inform the customer of the risk of loss of service and allow them to suspend porting until the customer has confirmed physical receipt of the SIM and/or handset.
- 3.64 In Annex 7 of our April statement and consultation (see paragraph A7.13), we outlined that “*The customer may request an alternative port date that is later than the default date but this date must not be later than the PAC expiry date*”.
- 3.65 This provides flexibility for operators and customers (who might be concerned about the risk of a loss of service) to arrange a later activation date and gives the opportunity to create a window within which the consumer could notify the operator to suspend the request for porting if the SIM/handset had not been received. If the

customer still insisted that porting should occur on the next working day, then the operator could make them aware that the use of the postal method of fulfilment for the SIM/handset could mean that there is some disruption to their service.

- 3.66 With regard to the risk that the cut-off time for the submission of the PAC could be restricted by recipients, we note that it is generally in the recipient's commercial interest to offer porting arrangements to new subscribers as flexibly as possible. Generally, it is the donor, not the recipient, which might have commercial incentives to seek to restrict the ability of consumers to request porting.
- 3.67 We have not mandated specific times during which operators must be willing to receive the PAC from subscribers. Likewise, we have not mandated a specific cut off time for recipients to notify donors that porting was required the following working day. We would expect industry to agree cut off times that would enable recipients and donors to provide portability within one working day of the consumer providing their PAC.
- 3.68 The cut off time and process specified in the industry manual should be consistent with consumers experiencing porting within one working day of making a request to a recipient operator, provided that the timeframe within which the recipient operator was requesting porting was also consistent with the expectation of acting as soon as reasonably practical, following receipt of the request from the consumer during the normal working day.
- 3.69 Our draft specification suggested that 6pm might be a reasonable cut off time for consumers to present their PAC if porting of their number is to occur the following working day. We anticipate that industry will wish to agree timescales which facilitate a robust porting process and note that it may be necessary to bring forward the midnight cut off for recipients requesting portability on the Syniverse system to facilitate this.
- 3.70 However, such timescales should still, at a minimum, facilitate porting within one working day for customers who submit their PAC during normal working hours.
- 3.71 Restricting customers to only a narrow window of opportunity during which they could present their PAC and obtain porting the next working day would defeat the objective of providing subscribers with one-day porting. It would also be inconsistent with the incentive of the recipient provider to make porting easy for new subscribers.

### **Arrangements for MVNOs under one day porting**

- 3.72 Virgin Media and another respondent suggested that reducing the porting time to one day presented particular difficulties for MVNOs. Unlike MNOs, their porting process involves a further step in the process, as they have to liaise with the hosting network before porting takes place. Moreover, some MVNOs do not have direct access to the Syniverse system but are reliant on their partner MNO to forward and complete port requests.
- 3.73 Respondents underlined that in order for an MVNO's customer to experience one day-porting, the Operators Steering Group (OSG) has to agree on a porting timescale which is shorter than one day. This is to allow this final step to take place within that same day.

## Ofcom response

- 3.74 As explained above, we would expect that industry would agree a cut-off time for the recipient to request porting from the donor which would be consistent with the recipient operator being able to action requests from consumers which had been made to recipients during that working day. This process should be such that it allows MVNOs to comply with the revised timeframe, where necessary in cooperation with their commercial partners providing the hosting network.

## Portability between networks and portability for the subscriber

- 3.75 EE observed that the proposed wording of 18.3 confuses number porting processes for individual consumers and the agreement required between service providers in order to facilitate porting. This is because GC18 refers to two distinct matters. These are:
- 1) The agreement established between communications providers to set the general processes for numbers to be ported between their networks. In this regard the pre-existing version of GC18 specifies that *“The Communications Provider shall, pursuant to a request from another Communications Provider, provide Portability (other than Paging Portability) as soon as is reasonably practicable in relation to that request on reasonable terms”*
  - 2) The obligations between the mobile providers (both recipient and donor) and subscribers, i.e. the subscriber has the right to port the number out of the donor’s network and reuse it over the recipient network.
- 3.76 EE suggested that the proposed wording could be interpreted as requiring both these different activities to complete within one working day. However, EE argued that the one day requirement was only intended to refer to instances where subscribers requested their number to be ported across networks; it was not intended that operators should be required to establish process agreements with each other within a one day timeframe.
- 3.77 EE thus suggested separating the two obligations and rewording and renumbering GC18 appropriately.
- 3.78 Virgin Media suggested that the reference to “Portability” in the proposed wording of GC18.3 should be replaced with “Number Portability” because “Portability” refers to the provision between operators and not between an operator and a subscriber.

## Ofcom response

- 3.79 We agree with EE that clarity on this point is desirable. For this reason, we consider it appropriate to separate (i) the obligation on both the donor and recipient providers to complete portability within one working day (which will be set out in GC 18.3) from (ii) the obligation to provide portability between networks as soon as is reasonably practicable and on reasonable terms (which will be set out in GC 18.5).
- 3.80 We also agree with Virgin Media’s suggestion that “Portability” should be replaced by “Number Portability” in GC18.3. Therefore, to clarify that the new obligation to provide portability within one working day set out in GC 18,3 refers to the *consumer’s*

right to have their number ported within one business day (instead of ‘a facility which may be provided by a Communications Provider *to another*’ in order to enable subscribers to port their number)<sup>28</sup>, we have decided to:

- replace “Mobile Portability” with “Mobile **Number** Portability” (emphasis added), meaning “*Number Portability relating to Mobile Numbers*”; and
- clarify that from the consumers’ perspective, the porting of their mobile numbers means “*porting of these numbers and their subsequent activation*”.

3.81 Similarly, we have decided to refer to “Mobile Number Portability”, instead of “Mobile Portability”, in GC 18.2, since also that provision concerns the consumers’ right to portability, given that the issuance of the PAC is a necessary pre-condition for consumers to have their number ported.

3.82 Therefore, we have decided to reword and renumber as follows:

*18.3 In the case of Mobile Number Portability, where the request is for porting a total of fewer than 25 Mobile Numbers, porting of these numbers and their subsequent activation shall be completed within one business day from the receipt by the Recipient Provider of the Subscriber Request to Port from its new Subscriber.*

*18.4 Subject to paragraph 18.3, the Recipient Provider shall request porting from the Donor Provider as soon as it is reasonably practicable after receiving the Subscriber Request to Port from its new Subscriber.*

## Implementation Period

3.83 In the April consultation, we stated that our preferred implementation period for the changes outlined above was six months from the publication of the final statement. We considered that a period of six months was likely to be the most proportionate in balancing delivery of consumer benefits as soon as possible while at the same time allowing MNOs to plan appropriately and minimise the costs of implementation. We noted that the measures being introduced were the most easily implemented of those considered in the August consultation and at least some industry responses suggested that a lead time of less than six months would be feasible.

3.84 We asked the following question:

*Question 2: Which implementation period do respondents consider achievable?*

- (a) six months from the publication of the final statement; or  
(b) nine months from the publication of the final statement.*

*Please give reasons, and provide evidence to support your view.*

<sup>28</sup> It is worth noting that GC 18 defines “Number Portability” as “*a facility whereby Subscribers who so request can retain their Telephone Number on a Public Telephone Network, independently of the person providing the service at the Network Termination Point of a Subscriber provided that such retention of a Telephone Number is in accordance with the National Telephone Numbering Plan*”.

Portability” means, instead, “*any facility which may be provided by a Communications Provider to another enabling any Subscriber who requests Number Portability to continue to be provided with any Publicly Available Telephone Service by reference to the same Telephone Number irrespective of the identity of the person providing such a service*” (emphasis added).

## Stakeholder comments

- 3.85 The majority of respondents argued for either nine months or a later date. Among the operators, only 3UK and C&W said that six months would be a feasible implementation time. 3UK argued that 6-9 months would be enough to implement the required changes plus a separate PAC phone line. Consumer Focus and FCS also supported implementation within six months.
- 3.86 Conversely, EE, Vodafone, BT, Virgin Media and another respondent argued for an implementation time of longer than six months. They cited that the implementation of one day porting would require several stages. First, industry needs to discuss and agree on the common changes to implement on Syniverse database by means of the Operators' Steering Group. Once agreed, Syniverse changes are estimated to take 3-6 months. Operators then need to implement the new rules within their internal systems and this involves changes to several IT capabilities, e.g. billing, sales, registration, order management etc.
- 3.87 Vodafone preferred a nine month implementation period because although they are able to meet the requirement for implementation of the new requirements for supplying a PAC via SMS they recognise that others do not have this capability and *"a 6 months requirement would be disruptive"*.
- 3.88 EE think that nine months will be the minimum time required to implement the changes but *"a 12 months deadline is more appropriate"*. [X].
- 3.89 BT suggested setting the 25 May 2011 as the final implementation deadline to align both mobile and fixed one day porting as required by the new EU Regulatory Framework. This would allow those who are both fixed and mobile service providers to make changes to the same deadline. Furthermore, BT proposed splitting the implementation dates into two stages, with a closer date for PAC provision (which is easier to implement and causes major concerns among consumers) and a later date for the one working day porting process.
- 3.90 Virgin Media argued for a 12 month implementation deadline. While they already comply with the PAC provision requirements, as they provide the PAC by phone, Virgin Media argued that one day porting could be difficult to implement in a short timeframe. In addition to the changes required to Syniverse and internal IT systems, Virgin Media said that as a MVNO it would need *"to develop the automated process and agree additional capacity with T-Mobile to accommodate a one day process"* which hosts its mobile service. They suggested that this extra stage meant that more time would be required for implementation.

## Ofcom response

- 3.91 Providers need to deliver two main changes: reducing porting time to one day; and faster PAC provision. We consider that nine months will be sufficient and appropriate to achieve both these changes.
- 3.92 Modifying the porting process and reducing the time from two working days to one working day will require that changes are agreed through the OSG and implemented through Syniverse. Operators will also need to modify internal IT systems such as billing, sales and order to align them with the new process. The substantial majority of respondents suggested that this was achievable within a nine month period, although some argued that a twelve month period would be more appropriate.

- 3.93 On PAC provision, as stated in 4.18-4.25 of our April statement and consultation, we are aware that not all providers already comply with it. [X].
- 3.94 We believe it is therefore not appropriate to set two separate implementation deadlines, i.e. an earlier date for the PAC issuance and a later one for the one working day porting, as suggested by BT. This is because whilst some providers are already compliant with the PAC issuance, others indicated that they would need up to nine months to modify their processes.
- 3.95 We note that Virgin Media stated that it would require time to develop its processes to deal with porting requests, together with its network partner, T-Mobile. However, Virgin Media's position as an MVNO does not appear to be unique and other operators appear to believe that an implementation period of nine months would be sufficient.
- 3.96 Taking into account the responses received, we recognise that nine months is a more appropriate timeframe to implement the changes required. This would allow industry to agree and document the technical specification and revised arrangements, accommodate the process changes required, and provide additional time for those who are not yet compliant with the new PAC issuance requirements. We have therefore decided that the revisions to GC18 will be effective from 11 April 2011.

### Other stakeholders' comments and Ofcom's views

- 3.97 In this section we have summarised other comments received in response to the April consultation which did not directly relate to the specific consultation questions on the wording of GC18 and the implementation period. We have set out Ofcom's views in relation to these comments.

### Economic rationale to compress port lead time

- 3.98 Vodafone notes that we have responded to some of its previous comments on the Cost Benefit Analysis (CBA), and believes a case is made for the PAC reform aspects of Option D. However, Vodafone remains of the view that the economic rationale for compressing the port lead time is weak, because few customers attach significant value to it, and the level of uncertainty associated with the cost and benefit assumptions means the NPV is unreliable.
- 3.99 Vodafone's criticisms are set out below:
- *Stated versus revealed preferences*: The benefits of a faster porting process are assessed by means of a stated preference survey which asked about consumers' willingness to pay<sup>29</sup>. Vodafone argued that the literature on this subject suggests that uncertain expressions of willingness to pay cannot be accorded the same weight as apparently more certain ones, and they argued that this means the willingness to pay may be overstated. In particular, Vodafone commented that the use of those 'definitely and probably' willing to pay for a faster porting as an upper bound in the benefits calculation is questionable.

<sup>29</sup> Consumers were asked how much they would be willing to pay (50p, £5, £10 and £20) for i) an immediate porting process and ii) a 1 day porting process. Consumers were asked to indicate for each value whether they: i) would definitely pay, ii) would probably pay, iii) may or may not pay, iv) would probably not pay or v) would definitely not pay.



- Calculation of average willingness to pay: Vodafone was critical of the methodology used to calculate the average willingness to pay from the survey results (which provided us with four price points). In particular Vodafone argued that we should only derive willingness to pay from the ‘in sample’ price points and that extrapolation beyond the sample points is unsound. It also argued that the method we used to interpolate between the price points is not sufficiently conservative<sup>30</sup>.
- Sensitivity analysis: Vodafone considered that the sensitivity analysis was potentially misleading. We created a ‘low’ and ‘high’ case NPV scenario by changing the input assumptions simultaneously. Vodafone argued that this was misleading because it is not necessary to vary all the input assumptions simultaneously to achieve a negative NPV in the ‘low’ scenario.

## Ofcom response

3.100 In the April statement and consultation we responded to a large number of matters raised in relation to the cost benefit analysis in the August consultation and where appropriate revised or updated our CBA. Below, we set out our response to the points raised in Vodafone’s response to the April consultation and statement.

### Stated versus revealed preferences

- 3.101 We agree that using a survey to assess willingness to pay might lead to ‘hypothetical bias’ where respondents’ true willingness to pay in the real world is lower than their stated willingness to pay in the survey. We presented the net benefit as a range in recognition of this issue, where the lower quantified bound represented benefits for those definitely willing to pay and the upper quantified bound represented the benefits for those definitely and probably willing to pay.
- 3.102 We remain of the view that the lower quantified bound may provide a conservative estimate of the true benefits because as an off-setting effect to some respondents reporting themselves as definitely willing to pay but being subject to hypothetical bias, at least some respondents who indicated that they were probably willing to pay at a given price point might indeed be willing to pay that amount if they had to in reality.
- 3.103 We recognise that the addition of those probably willing to pay for one day porting to create the upper quantified bound will provide an estimate for quantified benefits at the upper end of the scale. However, our intention was to create a range for the plausible benefits and we do not believe that the range created between the lower and the upper quantified bound is implausible.

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<sup>30</sup> Vodafone commented in paragraph 27 of their response to the April consultation that it previously identified 74p as a conservative estimate of the average willingness to pay for one day porting. This estimate relies on deriving willingness to pay only from the four discrete price points in the survey. This appears different from Vodafone’s response to the August consultation where it accepted that it is reasonable to extrapolate between the price points in the survey (See [http://www.ofcom.org.uk/consult/condocs/gc18\\_mnp/responses/Vodafone\\_Annex\\_C.pdf](http://www.ofcom.org.uk/consult/condocs/gc18_mnp/responses/Vodafone_Annex_C.pdf), page 16). In Table C11 of its response to the August consultation Vodafone calculated the average willingness to pay for one day porting as £1.10, and identified this as a reasonable estimate.

3.104 It is also possible that porting might increase if the process was shortened leading to higher consumer benefits. However, as noted in paragraph 4.46 of the April statement and consultation an increase in porting may increase the number of minutes which are onward routed resulting in additional conveyance and transmission costs for mobile operators<sup>31</sup>. Therefore any benefits arising from an increase in the number of people porting would need to be offset against the additional cost of onward routing to arrive at a net benefit.

#### Calculation of average willingness to pay

3.105 We discussed Vodafone's views about the way we calculate the average willingness to pay in the April statement and consultation (see paragraphs 4.67-4.73). Vodafone's suggestions that, first we should only derive willingness to pay for the 'in sample' points; and second that a non-linear function would better fit the data are, in our view, unduly conservative when applied in combination. While it is possible that a curve is a more accurate representation of the demand function over all possible prices, the approach put forward by Vodafone would be inconsistent because if a continuous curve is the best representation of the demand function then a truncation at the end of the 'in sample' points is inconsistent with the likely underlying consumer preferences.

3.106 Nevertheless, following Vodafone's original comments we reviewed our approach and used a more conservative numerical method to estimate consumer surplus in the April statement and consultation. That is, in projecting beyond the sample points, we restricted the willingness to pay to be no more than the highest value from the survey (£20) and restricted the proportion of consumers to the last reported data point in the sample (see paragraph 4.70 of the April statement and consultation)<sup>32</sup>. We believe this approach provides a conservative estimate because it effectively assumes that (i) no consumers are willing to pay above £20 and (ii) no consumers are willing to pay between 0-49p for a faster porting process. It is likely that some consumers will be willing to pay in these ranges.

#### Sensitivity analysis

3.107 Vodafone commented that reducing the time horizon from ten to two years in the 'low' scenario has a more significant impact on the NPV than changing the other variables. Vodafone considered that the scenario analysis is misleading because only two inputs (the time horizon and ports per year) need to be altered simultaneously to the low values to achieve a negative NPV, and additional variations make little difference.

3.108 We recognised in the individual sensitivity analyses<sup>33</sup> that the largest reduction in the NPV arises when the time horizon is shortened from ten to two years - this is because shortening the time horizon by 8 years is a larger proportionate change than for any other variable in the individual sensitivity scenarios. As the NPV is effectively

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<sup>31</sup> Calls to ported numbers are first routed to the provider which originally held the number, and that provider forwards (or *onward routes*) the call to the provider currently serving the subscriber. This is a more complex routing path than calls to non ported numbers, with correspondingly higher conveyance and transmission costs.

<sup>32</sup> This differs from Vodafone's approach in that we consider it appropriate to extrapolate beyond the sample to the point where the proportion of subscribers is zero. That is, Vodafone's original comments implied that there would be no consumers at quantities below the highest reported price point used in the survey.

<sup>33</sup> The individual sensitivity analyses change one input assumption at a time while holding the other inputs at base case values.

zero with a two year time horizon, any further change to the inputs which increases costs and reduces benefits will result in a negative NPV. Regarding Vodafone's final point about additional variations to other inputs having little impact, this is because setting the time horizon to two years means there are only two periods for annual costs and benefits to accrue.

- 3.109 We recognised in the scenario analysis that we could not rule out the possibility of a negative NPV if there was downside variation to a number of variables simultaneously (see paragraph A6.7 of the April statement and consultation). However, it must also be recognised that there is potential for upside variation in the input assumptions, for example, the costs of implementation may be overestimated. In addition it is worth restating that NPV includes costs both for reducing the porting process to one working day and for introducing a requirement for PACs to be issued immediately over the telephone or in a maximum of two hours by SMS, but we have only included the quantifiable benefits from the stated willingness to pay for a one day porting process. If we were to exclude the costs associated with the PAC requirement and assess the case for a one day porting process on a standalone basis then the costs would be reduced, and the net benefit would be higher.
- 3.110 Vodafone also commented in its response to the April consultation<sup>34</sup> that the NPV is under £6m over 10 years, and that this projected net benefit is scarcely material enough to justify intervention. This is a misleading representation because the £6m NPV represented the lower quantified bound, and the upper quantified bound was significantly higher at £32m, therefore our base case NPV lies in the range £6m to £32m.
- 3.111 Overall, we consider that Vodafone's critique relies on a number of assumptions simultaneously taking low case values (relative to the base case), without recognising other potential offsetting factors. We consider such an approach to be unduly conservative.

## Ofcom's conclusions

- 3.112 As detailed above, this statement confirms the amendments to GC18 proposed in April, with some minor changes to reflect some stakeholder comments.
- 3.113 We mandate an implementation period of nine months, taking into account the requests of some mobile providers to allow more time to accommodate the changes.

## Legal tests

- 3.114 Under section 47(2) of the Act, Ofcom may not modify a condition unless it is satisfied that the modification complies with the tests in the Act. We are satisfied that our modifications meet these tests being:
- **objectively justifiable**, in that:
    - it is already standard practice for providers to accept PAC requests over the phone;
    - the introduction of the requirement for PACs to be issued either immediately over the phone or by SMS within a maximum of two hours is likely to reduce consumer harm caused by delays in obtaining a PAC; and

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<sup>34</sup> See paragraph 29 of the Vodafone response.

- reducing the porting time from two working days to one working day from when the recipient receives the subscriber’s request for portability will benefit consumers, as supported by our impact assessment in the April statement and consultation, and is likely to be in line with the new EU one working day porting requirement set out in the revised Article 30(4) USD.
- **not unduly discriminatory**, in that the proposed modifications will apply equally to all mobile service providers.
- **proportionate**, in that:
  - two out of the five MNOs and some MNVOs already comply with the requirement to issue PACs within a maximum of two hours, and this requirement is not expected to generate significant costs; and
  - the reduction of the porting time to one working day will not require significant changes to the current system and will still provide benefits to consumers through a shorter porting process.
  - we assessed that the changes would result in a positive NPV.
- **transparent**, in that policy changes were consulted upon and stakeholders have had full opportunity to comment and express their views on the various options.<sup>35</sup> In addition, in accordance with the statutory process set out in section 48 of Act, we then consulted for at least one month on the proposed modifications to GC18.<sup>36</sup>

## Compliance with Ofcom’s statutory duties

- 3.115 We consider that our decision to modify GC18 to implement Option D is consistent with our general duties in carrying out our functions as set out in sections 3 and 4 of the Act. In particular, we consider that ensuring that PACs are provided within a maximum of two hours, and reducing the port time to one working day, will improve the consumer’s experience of porting compared to the current process. It will make the process quicker and more convenient for consumers. We consider that this will comply with our primary duties under section 3(1) of the Act to further the interests of citizens in relation to communications matters and to further the interests of consumers in relevant markets. It will also comply with our duty to have regard, in particular, to the interests of consumers in respect of quality of service given that consumers will be able to rely on a faster porting process, including obtaining the PAC from their existing operator more quickly.
- 3.116 By introducing a process that is likely to be in line with the one working day porting required by the new EU Regulatory Framework, we are also contributing to the development of the European internal market and the introduction of a faster porting process across Europe.

## Monitoring and enforcement

- 3.117 Once the revised GC18 comes into effect we will actively monitor providers’ compliance with the new requirements and take enforcement action as appropriate.

<sup>35</sup> The August consultation: [www.ofcom.org.uk/consult/condocs/gc18\\_mnp/](http://www.ofcom.org.uk/consult/condocs/gc18_mnp/)

<sup>36</sup> The April Statement and Consultation: [www.ofcom.org.uk/consult/condocs/mnp/](http://www.ofcom.org.uk/consult/condocs/mnp/)

3.118 If we receive complaints about alleged non-compliance with the revised GC18, these will be handled in line with our complaint handling guidelines.<sup>37</sup>

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<sup>37</sup> [www.ofcom.org.uk/bulletins/eu\\_directives/guidelines.pdf](http://www.ofcom.org.uk/bulletins/eu_directives/guidelines.pdf).

## Annex 1

# Notification of modifications to General Condition 18

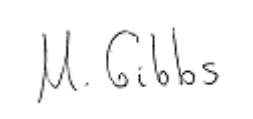
**Notification of modifications to General Condition 18 of Part 2 of the General Conditions regarding number portability, which is set out in the Schedule to the Notification under Section 48(1) of the Communications Act 2003 published by the Director General on 22 July 2003, as amended by the notification made by Ofcom on 30 March 2006 and further amended by the notifications made by Ofcom on 29 March 2007 and 17 July 2007.**

1. OFCOM, in accordance with section 48 of the Act, hereby make the following modifications to General Condition 18 of Part 2 of the General Conditions regarding number portability.
2. The modifications are set out in the Schedule to this Notification.
3. The modifications shall come into effect on 11 April 2011
4. The effect of making the modifications referred to in paragraph 1 above, and OFCOM's reasons for making such modifications, is set out at section 3 of the accompanying explanatory statement.
5. OFCOM consider that the modifications referred to in paragraph 1 above comply with the requirements of sections 45 to 50 of the Act, as appropriate and relevant to each of the proposals.
6. In making the modifications set out in this Notification, OFCOM have considered and acted in accordance with their general duties in section 3 of the Act and the six Community requirements in section 4 of the Act.
7. Copies of this Notification and the accompanying statement have been sent to the Secretary of State in accordance with section 50(1)(a) of the Act and to the European Commission in accordance with section 50(6) of the Act.
8. In this Notification:
  - (i) "the Act" means the Communications Act 2003;
  - (ii) "General Conditions" means as set out in the Schedule to the Notification under Section 48(1) of the Communications Act 2003 published by the Director General on 22 July 2003 as amended from time to time; and
  - (iii) "OFCOM" means the Office of Communications.
9. Except insofar as the context otherwise requires, words or expressions shall have the meaning assigned to them in this Notification and otherwise any word or expression shall have the same meaning as it has in the Act.
10. For the purpose of interpreting this Notification:
  - (i) headings and titles shall be disregarded; and

- (ii) the Interpretation Act 1978 shall apply as if this Notification were an Act of Parliament.

11. The Schedule to this Notification shall form part of this Notification

Signed by



**Marina Gibbs**  
**Competition Policy Director**

A person authorised by Ofcom under paragraph 18 of the Schedule to the Office of Communications Act 2003

8 July 2010

## Schedule

**Modification to General Condition 18 of Part 2 of the General Conditions regarding number portability, which is set out in the Schedule to the Notification under Section 48(1) of the Communications Act 2003 published by the Director General on 22 July 2003 as amended by the notification made by Ofcom on 30 March 2006 and further amended by the notifications made by Ofcom on 29 March 2007 and 17 July 2007.**

General Condition 18 on Number Portability shall be modified as set out below (the deleted text has been struck through and added text underlined, both highlighted in yellow for ease of reference).

18.1 The Communications Provider shall provide Number Portability as soon as it is reasonably practicable on reasonable terms, including charges, to any of its Subscribers who so requests.

**18.2 In the case of Mobile Number Portability, where the request is for porting a total of fewer than 25 Mobile Numbers, the Donor Provider shall:**

**(a) allow Subscribers to request a PAC over the phone; and**

**(b) where a Subscriber contacts the Donor Provider by phone, provide the PAC immediately over the phone where possible or by SMS within two hours of the request or by another reasonable mechanism if requested by the Subscriber and consented to by the Donor Provider.**

**18.3** In the case of Mobile Number Portability, where the request is for porting a total of fewer than 25 Mobile Numbers, porting of these numbers and their subsequent activation shall be completed within one business day from the receipt by the Recipient Provider of the Subscriber Request to Port from its new Subscriber.

**18.4** Subject to paragraph 18.3, the Recipient Provider shall request porting from the Donor Provider as soon as it is reasonably practicable after receiving the Subscriber Request to Port from its new Subscriber.

~~(18.2)~~ **18.5** The Communications Provider shall, pursuant to a request from another Communications Provider, provide Portability (other than Paging Portability) as soon as is reasonably practicable in relation to that request on reasonable terms. In the case of Mobile Portability, where the request is for porting a total of less than 25 Telephone Numbers, the total period for providing Portability in respect of those Telephone Numbers shall not exceed two business days. Any charges for the provision of such Portability shall be made in accordance with the following principles:

- (a) subject always to the requirement of reasonableness, charges shall be cost oriented and based on the incremental costs of providing Portability unless:
  - (i) the Donor Provider and the Recipient Provider have agreed another basis for the charges, or
  - (ii) the Director the Office of Communications has directed that another basis for charges should be used;
- (b) the Donor Provider shall make no charge in relation to System Set-Up Costs or Additional Conveyance Costs;
- (c) in respect of Mobile Portability, the Donor Provider shall make no charge or annual fee for ongoing costs relating to registration of a ported Telephone Number or a Subscriber;
- (d) charges levied by the Donor Provider shall be based on the reasonable costs incurred by it in providing Portability with respect to each Telephone Number.

**18.3 18.6** Where the Communications Provider provides Portability in accordance with paragraph ~~18.2-18.5~~:

- (a) the Recipient Provider; and
- (b) the Transit Provider,

shall, as appropriate, provide Portability (other than Paging Portability) on reasonable terms.

**18.4 18.7** The Communications Provider shall, on the written request of the Director Office of Communications, provide the Director the Office of Communications with a record of each Telephone Number in relation to which it is providing Portability, specifying the relevant Recipient Provider in each case.

**18.5 18.8** For the purposes of this Condition:



- (a) “Additional Conveyance Costs” mean any costs incurred by the Donor Provider associated with resources used in:
  - (i) effecting the switch-processing required to set up each ported call; and
  - (ii) providing the switch and transmission capacity for any part of the duration of each ported call, additional to the costs of conveyance of non-ported calls from the Donor Provider’s network to the Recipient Provider’s network;
- (b) “Communications Provider” means a person who provides an Electronic Communications Network or an Electronic Communications Service;
- (c) “Donor Provider” means a Communications Provider whose Subscriber Numbers are in the process of being, or have been passed or ported to a Recipient Provider ;
- (d) “Mobile Communications Service” means any Publicly Available Telephone Service consisting in the conveyance of Signals by means of a Public Telephone Network where every Signal that has been conveyed thereby has been, or is to be, conveyed through the agency of Wireless Telegraphy to or from a Public Telephone Network which is designed or adapted to be capable of being used in motion;
- ~~(e)~~ (e) “Mobile Number” means a Telephone Number, from a range of numbers in the National Telephone Numbering Plan, that is Adopted or otherwise used to identify Apparatus designed or adapted to be capable of being used while in motion;
- ~~(f)~~ (f) “Mobile Number Portability” means Number Portability relating to Mobile Numbers;
- ~~(e)(g)~~ (g) “Mobile Portability” means Portability relating to Telephone Numbers Allocated for use with Mobile Communications Services;
- ~~(f)(h)~~ (h) “Number Portability” means a facility whereby Subscribers who so request can retain their Telephone Number on a Public Telephone Network, independently of the person providing the service at the Network Termination Point of a Subscriber provided that such retention of a Telephone Number is in accordance with the National Telephone Numbering Plan;
- ~~(i)~~ (i) “PAC” means Porting Authorisation Code, which is a unique code used to signify the Donor Provider’s consent to the Subscriber being entitled to request and have their Mobile Number ported to another Communications Provider;
- ~~(g)(i)~~ (i) “Paging Portability” means Portability relating to Telephone Numbers Allocated for use with Radiopaging Services;
- ~~(h)(k)~~ (k) “Point of Connection” means a point at which one Public Telephone Network is connected to another;
- ~~(i)(l)~~ (l) “Portability” means any facility which may be provided by a Communications Provider to another Communications Provider enabling any Subscriber who requests Number Portability to continue to be provided with any Publicly

Available Telephone Service by reference to the same Telephone Number irrespective of the identity of the person providing such a service;

~~(j)~~ (m) “Publicly Available Telephone Service”:

(a) in relation to a service to be used with a Telephone Number for receiving calls only under the contract between the person and the provider in question, means a Public Electronic Communications Service for only receiving national and international telephone calls through a number or numbers in a national or international telephone numbering plan;

(b) in relation to a service to be used with a Telephone Number for originating and receiving calls and access to Emergency Organisations under the contract between the person and the provider in question, has the meaning ascribed to it under paragraph 1 of Part 1 of this Schedule;

~~(k)~~ (n) “Radiopaging Service” means Electronic Communications Services consisting in the conveyance of Signals by means of Wireless Telegraphy where every Signal, apart from simple acknowledgement, is ultimately transmitted from a station for Wireless Telegraphy comprised in the Communications Provider’s Electronic Communications Network to a station for Wireless Telegraphy or Wireless Telegraphy Apparatus that is not comprised in that network;

~~(l)~~ (o) “Recipient Provider” means a Communications Provider to whom Subscriber Number(s) are in the process of being, or have been passed or ported from a Donor Provider;

(p) “SMS” means Short Message Service, which is a text message delivered to a Subscriber’s handset or, if SMS is superseded or withdrawn, an equivalent text communication sent directly to the Subscriber’s handset;

~~(m)~~ (q) “Subscriber” means any person who is party to a contract with the provider of Publicly Available Telephone Services for the supply of such services in the United Kingdom;

~~(n)~~ (r) “Subscriber Number” means the Telephone Number (or Telephone Numbers) which any Communications Provider’s Public Telephone Network recognises as relating to a particular Subscriber of that Communications Provider;

(s) “Subscriber Request to Port” means the request by a Subscriber to transfer their Mobile Number which occurs when the Subscriber submits their PAC to the Recipient Provider;

~~(o)~~ (t) “System Set-Up Costs” mean costs of the Donor Provider incurred—

(i) in the course of making network and system modifications, configuration and reconfiguration, including adapting or replacing software;

(ii) in the course of testing functionality within that provider’s network and in conjunction with any Recipient Provider’s network,

(iii) thereby establishing the technical and administrative capability to provide Portability;

~~(p)~~ (u) “Transit Provider” means a Communications Provider providing, by agreement, Interconnection between a Donor Provider and Recipient Provider via Points of Connection with both Communications Providers.