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**Virgin Media's Response to Ofcom's Consultation on Mobile Number Portability-
Review of the Porting Process**

Dear Elizabeth,

Virgin Media welcomes the opportunity to comment on Ofcom's consultation on mobile number portability. Our observations and concerns are set out below as well as our responses to the individual questions raised by Ofcom.

Virgin Media's first comment is that it is clear from Ofcom's consultation document that generally speaking the current mobile portability process works well for the vast majority of customers. Whilst some customers have had problems in receiving a PAC code and have been subject to unwanted retention activity or delay in issuing a PAC code these customers are in the minority. Virgin Media believes that this should be at the front of Ofcom's mind when considering any solution.

Ofcom suggests that it is possible to address the issues relating to unwanted or excessive save activity and refusals to issues PACs through enforcement of existing regulation but as yet this has not occurred. Ofcom alternatively suggests that a recipient led process would also address any problems caused by excessive or unwanted retention activity because the consumer would not need to obtain a PAC from their donor operator to port their number.

Virgin Media is strongly of the view that it is unnecessary for Ofcom to be considering a move to a radically different system with attendant costs for operators (and therefore ultimately for consumers) when as Ofcom itself acknowledges enforcement of the current obligations could potentially address these issues. Ofcom's failure to enforce the current regulation and thus address the issue of consumer harm does not provide a justification for a move to a recipient led process.

Virgin Media notes Ofcom's argument that it is not able to address the third area of consumer harm through current regulation. Ofcom identifies the third area of consumer harm as delays that extended the length of the end to end porting process, in particular in MNOs issuing PACs to customers. Virgin Media is not entirely in agreement with Ofcom on this point and suggests that this may also be the subject of enforcement action by Ofcom.

Regardless of whether this could be adequately enforced under current regulation Virgin Media can see that this issue could be addressed by changes to the PAC process which would ensure that customers were provide with their PACs either on the phone or by SMS. Such an approach would be more customer centric and would also make sense in the case of mobile customers. The use of post as a means for providing PACs is both outdated and

unnecessary in relation to mobile customers. Making such small changes would immediately bring about improvements to the end to end porting process and reduce overall delays.

Virgin Media therefore supports a two-pronged approach of Ofcom enforcing the existing regulatory requirements and potentially dealing with the delay issue by making small changes to the current donor led PAC process. This in turn could be coupled with a change to the porting time once the PAC has been submitted by the gaining operator in order to meet the requirements of the revised Framework Directive. We do not believe that the consideration of a recipient led process is necessary either to address the issues of consumer harm nor to meet the requirements of the Framework Directive. The costs and industry disruption of moving to a recipient led process are such that Ofcom should move immediately to rule out these options.

As Virgin Media sets out later on its submission it is concerned that the consultation document has in some respects created a false dichotomy between a recipient led and a donor led process and failed to acknowledge that a properly administered donor led process can effectively mirror the speed and certainty of a recipient led process. Similarly Virgin Media thinks that Ofcom has underestimated the risks of a recipient led process on issues of authentication and ensuring that customers are aware of their contractual commitments prior to porting.

Q3.1 Do you agree that the bulk porting process should not be included in this review and should be left to industry agreement?

Virgin Media agrees that the bulk porting process should not be included in this review and should be left to industry agreement.

Q4.1 Do you agree with Ofcom's view that the evidence suggests consumers would prefer a faster porting process?

Virgin Media does not agree with Ofcom's view that the evidence suggests that consumers would prefer a faster porting process at least in the sense of having the actual port carried out more quickly than the current two day requirement. Rather consumers key concerns seems to be timely delivery of the PAC and certainty. The Jigsaw consumer research for example concludes as follows:

*"Experiences vary considerably but there is a general consensus that a five day port lead time is unacceptably long in this day and age particularly in the context of much faster switchovers in other markets (utilities/banking). Two days is generally more acceptable, although some would not be encouraged to port unless they could be convinced that they would maintain access to their old number throughout the transition. Increasing certainty by providing reassurance about a continuous connection to the old number and providing a more tightly defined switchover slot would be a more considerable improvement"*¹

*"Ideally consumers would like to receive their PAC code more quickly. The idea of receiving it (via text) within ten minutes generally exceeds expectations-within a day would be acceptable and would also represent an improvement on the current process for most consumers."*²

The Jigsaw research indicates that the ideal number porting process includes the following steps:

*Everything happens as expected
Continuous connection to the old number is maintained throughout the process
They can avoid unwanted retention strategies from their existing provider
The PAC code is received quickly and efficiently, ideally not involving postal services;*

¹ Jigsaw Research "Review of Number Porting Expectations and Experiences Among Residential and Business Consumers." 6 March 2009, p 24

² Ibid

*A set date and time for the number transfer is provided, ideally within two days of providing the PAC code to the new provider;
Billing and direct debits go smoothly.*³

Ofcom suggests that the shortest possible timeframe would reduce the possibility of uncertainty and therefore proposes a near instant process. However it is clear from the list above that consumers would be willing to have a near instantaneous PAC process and a one day porting process.

In relation to the quantitative research as Ofcom indicates 78% of those surveyed were happy with the time it took to transfer their number to the new mobile phone network and 10% were unhappy with the time. However it is not entirely clear whether in answering this question customers were considering only the transfer time from delivery of the PAC to the new provider and also whether they were considering this in the context of their experience with a five day or a two day mandated period.

Virgin Media is of the view that Ofcom must address the key concern of customers which is a faster delivery of the PAC and that this can be done through enforcement of the current regulation and if necessary small changes to the current process. It is unnecessary for it to consider a move to a radically different system to address these issues.

Q4.2 Do you agree with Ofcom's view that the current process does not work well for all mobile consumers?

Ofcom outlines its view that there is evidence relating to three areas where the current process is causing problems for a significant minority of consumers. These are:

- unwanted or excessive retention activity imposed on consumers by the donor network at the point of PAC request;
- refusal or failure to issue PACs to consumers on receipt of a valid request; and
- delay that extended the length of the end to end porting process, in particular in MNOs issuing PACs to consumers.

Virgin Media agrees that there is evidence that the current process does not work well for all mobile consumers in the areas outlined above. However Virgin Media suggests the facts also indicate that for the vast majority of consumers the process is satisfactory and that this suggests that Ofcom should concentrate on enforcing the existing regulatory requirements and making amendments to those areas of the process that do not work well rather than trying to radically change the process overall by a switch from a donor led process to a recipient led process.

Virgin Media notes that it currently provides PACs to customers over the phone - in the case of prepaid customers they receive the PAC immediately and in the case of contract customers they are transferred to customer services for a discussion any termination charges that might be applicable and potentially a retention conversation but the PAC is ultimately provided within the same phone call. Virgin Media notes that it could therefore meet a 2 hour deadline for delivery of a PAC and suggests that there is no reason why other operators should not be able to meet similar timeframes. It therefore suggests that it is not necessarily clear why Ofcom could not attempt to enforce faster delivery of the PAC under the requirement to provide porting within a reasonable timeframe.

Q4.3 Are there any other areas of consumer harm that have not been identified? Do you have any evidence to demonstrate other areas of consumer harm?

Virgin Media has no evidence of other areas of consumer harm.

³ Ibid

Q4.4 Do you agree that Ofcom should intervene to introduce changes to the current MNP process to address the harm identified?

As set out in the introduction Virgin Media believes that it should be possible for Ofcom to address the areas of harm by focussing on those providers who are currently behaving in an unreasonable manner.

In Virgin Media's view a robust programme of enforcement would have a chastening effect on the industry and is likely to bring operators who are currently acting unreasonably into line. It is important that rather than turning immediately to making new rules Ofcom should enforce the rules that it currently administers. Only if this proves ineffective does Virgin Media believe that Ofcom should intervene to introduce further changes to the current MNP process.

Virgin Media believes that it is therefore unnecessary to consider a radical move to a recipient led process to address the harm identified. In its view such a move would be unnecessary and disproportionate when the harm that has been identified could be addressed through enforcement and if necessary small changes to the donor led PAC process.

Q5.1 Do you agree with Ofcom's view that the 'do nothing' option is unlikely to be appropriate in light of (i) evidence of consumer harm and (ii) noting the proposed one day porting requirement under the New Telecoms Package? If not please give reasons for your views.

Subject to Virgin Media's comments above about the possibility of robust enforcement action to address the issues of consumer harm, Virgin Media agrees that it is unlikely to be appropriate for Ofcom to take no further action in light of the proposed one day porting requirement under the new Telecoms Package.

Q5.2 Do you agree with the range of potential options Ofcom has set out?

Virgin Media does not agree with the range of potential options that Ofcom has set out. It believes that the moves to a recipient led process are disproportionate and that the areas of consumer harm that are identified by Ofcom could be addressed through enforcement of the current donor led process combined perhaps with small changes to the donor led process. It is unnecessary and disproportionate to move to a recipient led process.

Q5.3 Do you consider that there are additional options that Ofcom should have considered? If yes, please explain what option(s) should have been considered and why.

Q5.4 Do you agree that a two hour timeframe in which to issue the PACs for Options B and D is appropriate? If not, please give reasons for your views.

As set out above Virgin Media currently provides its customers with their PAC on the phone. It is likely that it would therefore already be meeting the 2 hour requirement for issuing the PAC. It is therefore of the view that it is likely that other operators could already currently meet this requirement and believes that enforcement of this under the current GC18.1 would be possible.

Q5.5 Do you agree that there should be a difference between how the recipient led processes in Question A and C should work for single account versus multi account porting requests? Do you consider that the proposed authentication process (described in paragraph 5.41) for multi-line accounts is sufficient? Please explain any other differences you would expect to see whilst ensuring that any differences are still consistent with the overall objectives the options are trying to achieve.

As set out above Virgin Media does not believe that a move to a recipient led process in any form is necessary or proportionate in order to deal with the issues that Ofcom has identified. Virgin Media is concerned that a recipient led process will raise a number of issues including:

- how to quickly and accurately authenticate customers particularly when interworking may be required by MVNOs and MNOs,
- the potential for customers to be slammed;
- how to effectively inform customers of any existing contractual arrangements that they may have with their existing provider.

Virgin Media notes that in relation to the current fixed telephony transfer process which is based on a recipient led process Ofcom has been recently consulting because it takes the view that slamming and customers' lack of awareness of contractual obligations may currently be causing consumers harm within that recipient led process. In Virgin Media's view this strengthens the argument for retaining the current donor led process and addressing any issue of consumer harm within that process rather than moving to a different process with its own attendant problems.

Q5.6 For each of the options set out, do you consider that Ofcom has captured all the appropriate categories of costs likely to be incurred? If not, explain what categories you disagree with/believe are missing.

Virgin Media is not clear from Ofcom's cost analysis whether it has included the costs for example of inter working between MVNOs and their supporting network operator in its costs categories. Implementation of a recipient led process is likely to require new interworking for example between Virgin Mobile and T-Mobile that is not currently required under the current donor led process and would require Virgin Mobile to increase resources for supporting porting. It is not clear that these categories of costs have been factored into Ofcom's decision.

Q5.7 Do you agree with Ofcom's analysis of costs for each cost category? If not please explain why. Please also state whether you are able to provide Ofcom with a more accurate view of costs and if so, please submit your assessment together with supporting evidence with your response to this consultation;

As set out above it is not clear to Virgin Media that in assessing the costs of a recipient led scheme that Ofcom has factored in the interworking that may be required between an MVNO and its network operator.

Q5.8 In the case of new entrant MNOs, what additional costs are likely to be incurred internally within each of the networks for each of the options? Please submit your estimates in your response to Ofcom.

Not applicable.

Q5.9 Do you agree with Ofcom's analysis of benefits for each option? If not please explain why

Virgin Media is not clear that Ofcom's analysis of benefits is correct. Unlike Ofcom, Virgin Media does not believe that consumers are likely to inherently value a recipient led process over a donor led process and therefore does not believe that a move to a recipient led process might increase the number of customers who will port. Nor does Virgin Media believe that a preference for recipient led processes is likely to mean that this would translate into a willingness to pay. In this respect Virgin Media notes that the conclusions of the qualitative research by Jigsaw suggest that it is unlikely that a quicker process would lead to a dramatic increase in current porting levels.

Jigsaw conclude " *Although moving to a recipient led process has the potential to be seen as a significant improvement by Residential consumers, and more in line with their expectations of how the process would work, it would not have a major impact on the decision to port. In other words there is little evidence to suggest that it would encourage porting among those who did not/would not care to keep their number.* "In addition Jigsaw concludes " *that there is little evidence that consumers would be prepared to pay to speed up the porting process.*"

On the basis of this qualitative assessment and its own experience with porting customers Virgin Media believes that Ofcom may have overestimated the benefits that would arise particularly from a recipient led process.

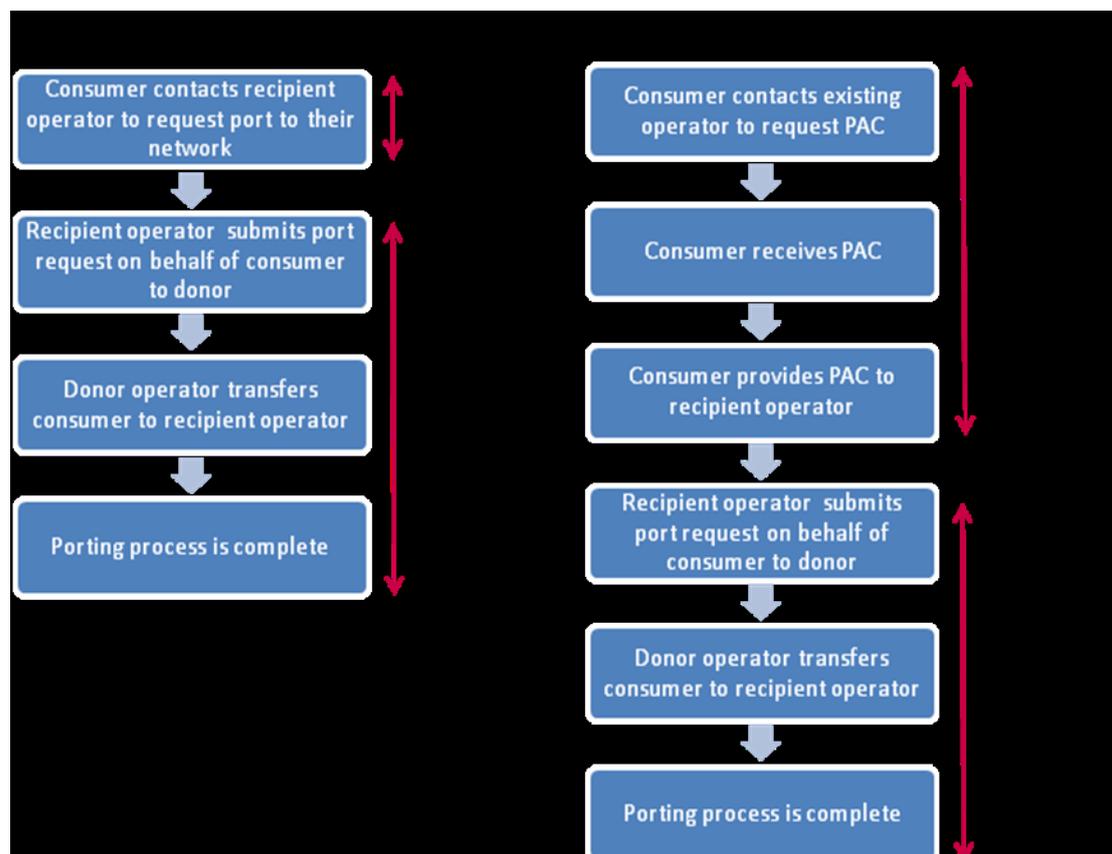
Q5.10 Please state whether you consider that Ofcom should take any additional benefits into account and explain how. To the extent possible, please provide any estimates of these benefits and the supporting evidence.

Virgin Media does not consider that there are additional benefits to take into account.

Q5.11 Please explain whether you agree with Ofcom’s assessment of the pros and cons of each option and if not, why not.

Virgin Media suggests that in considering the pros and cons of each options Ofcom has failed to assess how an improved donor led process can be as quick and as certain as a recipient led process. In this sense Ofcom has created a false dichotomy between a recipient led and a donor led process.

So for example on page 19 of the consultation document Ofcom presents a diagram illustrating its view of the steps in a recipient led process versus the donor led process (see below) and how much customer interaction is required. The obvious conclusion is that the recipient led process is far quicker and requires less customer interaction.



However it is clear that in donor led process whereby a PAC was delivered immediately to a customer over the phone, there is the potential for at steps 1, 2, 3 and even 4 to be collapsed into one step. So for example it is possible to envisage a scenario whereby the customer goes into a store of a new operator, rings their existing operator whilst in the store and receives the PAC over the phone and immediately provides it to the new operator who can then submit the port request. In such a scenario the donor led process would mirror the recipient led process in terms of speed and customer interaction.

In addition Virgin Media also believes that in analysing the recipient led process, Ofcom has failed to adequately consider how the donor operator may effectively contact the customer to inform them of any existing financial obligations that they might have. While Ofcom suggests that under a recipient led process the donor operator could send a SMS to the consumer to inform them of any outstanding contractual liabilities there is no discussion of the issue of whether the customer will actually read the SMS in time. Unless the recipient led process is delayed until there is confirmation from the customer that they have read and understood their financial liabilities and still wish to port there is no guarantee that an SMS will prove a meaningful mechanism for informing customers.

Virgin Media is of the view that customers should be fully informed of their contractual commitments prior to a port taking place and that this is best achieved under a donor led process. To do otherwise risks the scenario of a number of ports either having to be reversed at a cost both to the industry and to consumers generally.

Q5.12 Please state which option(s) you favour and why?

Subject to its comments above Virgin Media favours Option D donor led one working day on the basis that this would deliver benefits to consumers through addressing the areas of consumer harm without the cost of moving to a recipient led process and would also address the requirements of the European Framework.

Virgin Media's view is that given that the EU Framework will only require a one day working process that there is no need for the UK to "gold plate" this requirement to require a near instant requirement given that the consumer harm that has been identified revolves mostly around the PAC process. Virgin Media also believes that the benefits of a donor led process in mitigating the risk of slamming and ensuring that customers are fully informed of their contractual obligations means that Option D is the most proportionate option.

Q 5.13 What do you consider a reasonable implementation period for each of the options and why?

Virgin Media is of the view that Option D could be implemented fairly rapidly because it would require minimum changes to existing processes and is likely to require operators to increase their levels of staffing. Virgin Media believes that the recipient led processes to which it is opposed would require radical reworking of current processes and therefore would require far longer implementation periods.

Q6.1 Do you agree that it is appropriate for Ofcom to appoint a qualified independent consultant(s) to work with industry to develop cost estimates for different implementation options? If not please state why.

Virgin Media is opposed to the recipient led options and does not believe that they are necessary or proportionate. Therefore Virgin Media queries whether it is appropriate for Ofcom to appoint a qualified independent consultant to work with industry to develop cost estimates for these options. Similarly it does not believe that a move to a donor led near instant process is also necessary. Given that option D is in its view the most proportionate option it does not believe that there is a need for an independent consultant to be appointed to assess the costs of the other options.

Q6.2 Do you agree with the remit set out above for the consultant/expert? If not please state why

See Virgins comments above.

Q6.4 Do you agree that three months is an appropriate period of time for this feasibility assessment to be undertaken? If not, please explain why and what you consider to be an appropriate timescale

See Virgin's comments above.

Q6.5 Do you agree that the criteria for making this process effective as outlined under paragraphs 6.14 to 6.15 is appropriate? What else is required to make this process constructive?

If contrary to Virgin Media's view Ofcom does appoint an independent consultant then Virgin Media feels that it is important that the consultant engage with MVNOs as well as MNOs during the process.

Q6.6 Do you agree with Ofcom's proposed next steps following responses to this consultation? If not, how do you consider Ofcom should complete its cost-benefit analysis and proceed to an implementation of one of the four options?

Virgin Media believes that Ofcom should move immediately to rule out the recipient led options on the basis that these are not the least onerous measure required to resolve the issues raised by Ofcom in the consultation and are therefore unlikely to be a proportionate solution to the problems raised by Ofcom.

Q6.7 Do you have any comments on the proposed timings for reaching a conclusion for this review?

As set out above Virgin Media is of the view that Ofcom should immediately move to rule out a move to the recipient led options and could progress the timing from there.

We would be happy to elaborate on any aspect of this letter and/or discuss the matter further. Please do not hesitate to contact me if you would like to do so.

Yours sincerely,

Annemaree McDonough
For & on behalf of Virgin Media.