

OFCOM COVER SHEET

Basic details

Consultation title: **Protecting consumers from mis-selling of fixed-line telecommunications services**

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Representing (self or organisation/s): **BT Group plc**

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Kathy Dean, 27th May 2009



**BT response to Ofcom's consultation document
"Protecting consumers from mis-selling of fixed-line
telecommunications services"**

Published on 17 March 2009

BT welcomes comments on the content of this document, which is available electronically at
<http://www.btplc.com/Thegroup/RegulatoryandPublicaffairs/Consultativeresponses/index.htm>

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BT response to Ofcom's consultation document
"Protecting consumers from mis-selling of fixed-line
telecommunications services"

Published on 17 March 2009

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Executive Summary

1. Mis-selling of fixed line telecommunications services has long been a stain on the telecommunications industry. It harms consumers and brings the whole industry into disrepute. Ofcom estimates that mis-selling affects over half a million households a year and has cost consumers in the last year alone up to £40m. Since 2003, BT alone has received over 800,000 reports (70,000 in the last year alone) from its customers concerning the mis-selling practices of other Communications Providers (CPs). These are exceptionally and unacceptably high levels of consumer detriment.
2. Ofcom's proposals will not solve the mis-selling problem. Whilst BT welcomes Ofcom's desire to take enforcement action against CPs who are mis-selling, we do not believe Ofcom's current proposals to retain the Advice of Transfer (AoT) process will reduce mis-selling by the 52% Ofcom has claimed in the consultation document. Mis-selling cannot seriously be tackled until Ofcom replaces the flawed AoT process, which allows mis-selling to occur and attempts to rectify it after the fact, with a process that prevents mis-selling from occurring in the first place.
3. The level of mis-selling is a matter of Ofcom's policy choice. Ofcom could effectively eliminate mis-selling in fixed line telephony if it chose to, as it has in fixed broadband services. Ofcom's continuing attachment to the AoT process indicates that Ofcom is content to see significant levels of mis-selling continue in future. The continuation of significant levels of mis-selling is an outcome that the whole industry should be seeking to avoid, and risks damaging Ofcom's credibility as a consumer protection champion.
4. The AoT process has enabled mis-selling to thrive. It is fundamentally flawed in two respects. First, it allows mis-selling to occur and seeks only to give consumers a chance to respond to mis-selling. It enables CPs to place transfer orders without the customer's knowledge or consent. The process simply provides the customer with the opportunity – if they take the initiative – to stop the transfer by cancelling the order. But by that point the mis-selling has already occurred. And, as Ofcom is well aware, consumers do not always receive or read the AoT letter, or react to the letter in time to cancel the order before the harm is done. No amount of incremental change to the AoT process can eliminate mis-selling.
5. Second, it does not provide for the accurate identification of the asset to be transferred. Even CPs that are entirely well-intentioned and compliant with all requirements, even in cases where there is clear consumer choice, are unable to effect migrations reliably because the AoT process does not provide all the necessary information accurately – the right name, address, line, service, service provider and so on. Reliable delivery of high levels of customer service in migrations is not possible with the AoT process, and thwarts the intentions of CPs like BT who want to provide an excellent customer experience.
6. BT believes that by not requiring evidence of the customer's positive consent to switch, and by allowing only the provision of publicly available information to initiate a transfer, the existing AoT order process completely eschews normal practice in commercial contracts. The proposed changes to the AoT process places a disproportionate administrative and financial burden on CPs and goes

well beyond the requirements of the general law for consumer protection and also beyond what is needed to promote switching and a competitive market. BT also considers that adequate enforcement of the AoT process would require a step change increase in Ofcom's enforcement activity, to a level of resources and proactivity far beyond what has been Ofcom's practice to date.

7. BT is firmly of the view that rather than requiring the industry to spend millions of pounds, on top of the current process costs, in trying to improve a flawed process, the money would be better spent implementing a new migrations process which prevents mis-selling from occurring in the first place and provides real protection for all customers.
8. Since 2005 BT has set out at length in its responses to Ofcom's various consultations on migrations and mis-selling our preference for a uniform transfer process across all transferable products (calls, lines and broadband). The process should be initiated by the customer and led by the customer's current provider, ensuring the customer is fully informed and has made a positive decision to switch. Such a process would also ensure that the right product, belonging to the right customer, at the right address, was switched reducing the chance of errors. We strongly believe that until such a process is implemented customers will continue to suffer harm. We do not believe Ofcom's fears that a process other than AoT would constitute a barrier to switching are justified: the evidence of switching in broadband demonstrates that high levels of switching continue.
9. Notwithstanding BT's concerns with Ofcom's overall approach, BT supports some elements of Ofcom's proposals. In general we support moves towards a level playing field in regulations, in which all regulations apply to all CPs not just to, or disproportionately to, BT. BT would also like to see further movement towards a rigorous approach to the application of regulations. In particular, we support proposals such as the move from individual Codes of Practice for CPs to a new set of mandatory rules and the application of Cancel Other rules to all CPs.
10. There are other areas of Ofcom's proposals where we have a number of concerns regarding the associated costs and their effectiveness in reducing mis-selling:
 - BT believes the requirement to record 100% (based on best endeavours and never less than 90%) of the calls is unduly burdensome and disproportionate for operators of BT's size. We believe the costs have been significantly underestimated in Ofcom's impact assessment as BT's estimated costs alone would be c.£[3<] one off and c.£ [3<] per annum ongoing¹ which are in excess of the costs estimated by Ofcom for the whole of industry.
 - BT is very concerned that the General Conditions will only apply to Consumer and Small Businesses². BT believes this should be extended to all business customers, irrespective of size. The industry end to end (E2E)

¹ These are BT's preliminary estimates. There are a number of areas of detail which would require further assessment and the actual costs could be significantly higher than the ones quoted.

² Ofcom define Small Businesses as "up to 10 employees".

processes correctly cover all customers and BT strongly suggests that the General Condition should mirror the scope of the E2E processes. BT has recorded an increase in the proportion of the overall mis-selling complaints by business customers and the risks of large business customers being inappropriately transferred are just as serious.

- BT believes that while there is an AoT process in place all CPs should be mandated to use the Cancel Other process as this is the key customer protection mechanism. Not being required to do so enables CPs to avoid using the process and does nothing for the customer experience when things go wrong.
 - BT is concerned that there is no formal linkage between the industry processes and the proposed General Condition. This makes the General Condition unwieldy in places and also weakens the requirements in others, particularly for example around cancellation rights during the transfer period.
 - Ofcom has given no consideration to the additional resources required to police and enforce its proposals. We believe effective and proactive enforcement is the only way that any of the estimated benefits could be achieved.
 - Ofcom has also given no consideration to systems costs that industry, including BT, would incur if changes to the Cancel Other reason codes are required to implement the proposed General Condition.
11. Ofcom has suggested that if its proposals do not deliver reductions in mis-selling of fixed lined services, they will consider other options. BT believes that the time to consider an alternative new process is now, before further resource is spent trying to bolster a flawed process. We would therefore urge Ofcom to consult on a new process as soon as possible. We would be pleased to contribute our own ideas and we outline a possible solution in section 4.

1. Overview of BT position

BT believes mis-selling has continued for far too long. Ofcom has taken some steps over the years in an attempt to reduce mis-selling, such as the adoption of General Condition 14.5 four years ago. However these steps have proved unsuccessful. Mis-selling today remains unacceptably high and this clearly demonstrates that the current AoT process is fundamentally flawed and a new direction is required. In our view, Ofcom's efforts to date to reduce mis-selling have fallen short of its duties under Article 8(4)(b) of the Framework Directive to "*ensure a high level of protection for consumers in their dealings with suppliers*". Continued mis-selling in fixed telecommunication services brings the whole industry into disrepute and severely impacts on consumer confidence. BT believes it is now time for Ofcom and industry to proactively consider the potential for moving to an alternative process, rather than trying to prop up a process proven to be flawed.

In our previous responses to consultations on mis-selling, we have highlighted the continued high levels of mis-selling, with 70,000 complaints received by BT last year alone, and the resulting customer detriment. This was subsequently supported by Ofcom's Schema market research findings in 2005 and 2007. We have also repeatedly suggested the need for an improved migrations process to stop mis-selling for all customers. Customers deserve better protection and should be able to contemplate transferring between providers without inconvenience, distress or detriment.

Ofcom's failure to heed these concerns and the fact that the proposals in the consultation seek merely to prop up the flawed AoT process will result in continued mis-selling and consumer harm. This approach suggests that the level of mis-selling is a matter of Ofcom policy choice. Ofcom's own impact assessment suggests that as many as 526,000 households will have been subjected to mis-selling during the last year, yet Ofcom's proposals are designed to reduce mis-selling by only a maximum of 52% over a 2 year period, thus leaving 252,000 households a year still exposed to possible mis-selling. This approach is unacceptable.

Furthermore, the current AoT process does not allow for the accurate identification of the asset(s) to be transferred. This can result in the inappropriate transfer of a customer's service(s) from their current supplier(s) due to the incorrect processing of orders placed by the gaining provider. However this is not always as a result of a deliberate act by the gaining supplier, but can be due to incorrect information received/held with regard to the service in question or as a result of transposition errors when placing the order. The current AoT process does not require the accurate provision of all the necessary information – the right name, the right address, line, service, service provider etc. which means errors will occur, which the customer is then required to correct. An improved process, which enables the effective identification of these assets at the beginning of the transfer process would stop these errors from occurring and enable CPs to deliver high a level of customer service for transferring customers.

Ofcom's proposals focus on an ex-post enforcement regime which will be costly for the industry, Ofcom and ultimately the customer. Operators deserve a proportionate remedy that is workable and cost effective. BT believes that Ofcom's cost assessment is significantly understated. Our main concern is in regard to the 100% (based on best endeavours and never less than 90%) call recording requirement,

where we estimate that BT's own costs (up to c.£[X] one off and c.£[X] per annum ongoing) are more than Ofcom states for the whole industry. Ofcom has only looked at additional costs to implement these proposals, and has not considered the current cost of running the AoT process. BT therefore urges Ofcom to undertake an unbiased cost benefit evaluation of the total cost of the end to end AoT process, together with the costs associated for alternative solutions such as an improved migrations process. Ofcom should run this assessment as a matter of urgency.

In addition, Ofcom has not considered the full cost to industry which would be incurred in order to realise the perceived benefits as stated in the consultation. A reduction in mis-selling volumes will not be achieved by the act of recording calls alone, but by effective and swift enforcement action by Ofcom. BT estimates action would be needed against more than 20 CPs to achieve Ofcom's intended reduction. Ofcom is not currently resourced to swiftly tackle multiple simultaneous investigations and Ofcom would therefore need to significantly boost the current resources in its investigation team to achieve the desired reduction in mis-selling incidents. Alternatively if Ofcom continues to operate with existing resource levels Ofcom would need to estimate the number of call recordings it can realistically monitor. As a practical matter, there is no point asking for information which Ofcom is not in a position to assess and as a legal matter, to require such information is not a proportionate use of Ofcom's powers.

We are concerned there is currently no easy way for Ofcom to identify which companies should be investigated, an issue which has not been factored into their impact assessment.

In contrast to the above, the new alternative process which BT is developing (see section 4 for further details) would: reduce the number of factors Ofcom would have to monitor; decrease the reliance on call recordings; remove the need for complex data; negate the need for a Cancel Other process; and ease the requirement for Ofcom's additional resource to investigate. However more importantly, it would eliminate slamming and increase consumer confidence in fixed telecommunications services.

This new process, using a replacement for MAC which we refer to as the Consumer Protection Pincode, would have a number of features in common with the current broadband process. It would:

- Ensure that there is a fully informed, clearly consenting customer prior to an order being placed, thus eliminating mis-selling and the potential for customers to be moved without their explicit consent
- Remove the need to facilitate subsequent cancellations where the customer may decide against the transfer due to levying of contractual charges
- Ensure the right product belonging to the right customer at the right address is moved
- Help consumers get the best deal
- Encourage competition as the process increases consumer confidence, reduces the risk of inappropriate save activity and negates any need for rules relating to letter content
- Provide a robust foundation for legal enforcement action which will apply equally across all the transferable products

The process would also improve on the current broadband process through:

- Enhanced regulatory obligations under General Condition 22 by requiring pincodes to be given verbally, in real time and backed up by an optional alternative such as email or text
- Obligations to give the customer the choice as to whether they wish to hear about other potential options, although still ensuring they are made aware of any contractual charges which could be raised
- Obligations to adequately resource the channels responsible for issuing pincodes
- Swift enforcement action and inclusion of adequate deterrence and penalties for non compliance
- A user-friendly format for pincodes to make them easy to record and to avoid transposition errors
- Reduced timescales - CPs would be required to issue pincodes in a much shorter timescale than the current five days for broadband. This could allow the transfer to take place in a shorter timescale than the current AoT 10 working day lead time, subject to the requirements of statutory cancellation periods.

2. Ofcom's proposals

BT supports some elements of Ofcom's proposals, such as the move from individual Codes of Practice for CPs to a new set of mandatory rules and the application of Cancel Other rules to all CPs. But, as identified above, we have concerns with Ofcom's overall approach as well as the following specific concerns and we have put forward some suggestions for improvements.

2.1 Clarifying Ofcom's proposed regulation

In BT's view, mere refinement of the current requirements only serves to prop up an inadequate and discredited process. As previously stated we believe that proposals based on an AoT process fall short of Ofcom's duties under the Framework Directive, go well beyond the requirements of the general law on consumer protection, are disproportionate and place an undue financial burden on CPs.

However if Ofcom were to proceed with these proposals notwithstanding our objections, a number of issues should be clarified. We have documented the key issues below and the finer detail is contained in Section 5 of this response:

- BT strongly believes that the scope of the proposed General Condition provides a significant loophole for mis-selling and mis-cancellation of orders to businesses with more than 10 employees. We are aware that some CPs are already exploiting this differentiation within their current Sales and Marketing Code of Practice and terms and conditions. This could mean customers being charged even though their service was never transferred, by the CP failing to honour the cancellation period, or customers being locked into a supplier that repeatedly cancels pending transfer orders. Such practices are of course in contravention of the industry E2E processes and suggest that all customers should be afforded protection by the revised General Condition. Moreover, BT's records show that businesses are accounting for an increasing proportion (now 25%) of the mis-selling reports. Large business customers face the same risks of being inappropriately transferred, particularly as they often have multiple locations, multiple decision makers and the AoT letter often does not reach the appropriate person during the transfer period. In addition when they are inappropriately transferred, there is a greater resource and cost required to resolve the issue and unpick the transfer.
- BT is concerned that the current E2E processes have not been adequately built into the General Condition and therefore there is no way for Ofcom to take effective enforcement action. This means some of the key requirements of the current AoT process may not be enforceable by Ofcom:
 - Cancellation/transfer periods and rules - the E2E process makes it clear that all customers have the right to change their mind before the switchover period is completed and not be subject to any form of financial penalty. This requirement is currently contained within GC14.5(6.9) which explicitly states *"During the switchover period (i.e. the period before a Customer's order can be activated) there should be "no cost" cancellation for Customers were they change their mind."* This requirement appears not to have been carried through to the proposed

General Condition. This could mean less protection is being afforded to the customer if CPs impose different cancellation periods and thus try to enforce charges even if the customer has not transferred. BT is aware that this has been attempted by some CPs in the past and Ofcom has found against a number of CPs for this type of action.

- No prohibition on slamming - there is no express requirement to gain customer informed consent. BT suggests a simple solution would be to import the definition of slamming from the Cancel Other provisions and put an explicit prohibition on slamming in the new General Condition and have conduct violating this prohibition clearly enforceable under the condition. Moreover, there is no hierarchy of sanctions contained in the new General Condition. For example, failure to maintain 100% of call recordings would represent no less of a breach than mis-selling.
- Face to face sales - Ofcom's focus appears to be on telephone sales and does not require any further audit trail for doorstep, consumer shop and street sales (where the law generally recognises and affords customers additional protection). Ofcom's justification for a call recording is that without it, it is difficult to formulate a clear decision on whether mis-selling has occurred. This is also true for consumer face to face sales, where although a signature may be obtained, it can be forged, misrepresented (signing for information) and it does not verify what the customer has agreed to. We therefore suggest further improvement to the audit trail for consumer face to face sales is needed. BT suggests this could be done via a recorded call back from an independent verifier before an order is placed. However, it is again worth noting that the root cause of the problem is that the AoT process raises a presumption of consent.

2.2 Provision of customer information

BT agrees consumers should be fully informed when they make the decision to switch, especially concerning their current contractual liabilities as these could have, and indeed should have, a significant impact on their decision to transfer.

BT believes that the only way a customer can be sure of any liabilities is to discuss these with their current provider, as the gaining provider will have no visibility or accurate knowledge of these.

The existing gaining provider led AoT process does not enable a customer to be fully informed. The requirement for the customer to speak to the losing provider prior to a transfer ensures they are fully informed of their contractual liabilities prior to an order being placed and is one of the benefits of a process led by the current provider. An improved migrations process would provide the fully informed customer Ofcom is seeking with this proposal.

BT is unsure as to the benefit of requiring the gaining provider to highlight the current provider's potential contractual liabilities in the sales conversation or the gaining provider's letter as:

- If challenged the gaining provider will not know the customers contractual liabilities with the losing provider. We are concerned it may also encourage

CPs to discuss other competitors, and thus increase the possibility of incorrect information being provided. We are already aware of a number of competitors who incorrectly inform our customers that 'BT won't raise termination charges' in order to persuade them to sign up, which causes customer anger and inconvenience when BT subsequently raises the relevant charges

- The customer could become confused with other information provided concerning termination charges relating to the product/service(s) being sold
- There would be little impact if it is just said very swiftly at the end of the call when the customer may not be listening

BT believes the costs Ofcom has put forward in relation to the provision of contractual information during the sales call are understated. We believe the discussion will last longer than 20 seconds as customers are likely to try to seek clarification as to what this means in relation to them personally. In addition Ofcom has failed to include any costs for the inclusion of this information into the gaining provider AoT letter. We note that there is no evidence to support the 1% reduction in mis-selling quoted, and firmly believe that this is unlikely to be achieved by this proposal.

Ofcom appears to believe that the provision of this information in a letter alone is not sufficient (as consumers may not always read or understand the letter, or letters may not always be sent). It is therefore questionable why the AoT letter is considered to be sufficient customer protection when it comes to preventing mis-selling.

2.3 Cancel Other rules

Cancel Other plays a key part in facilitating the customer protection element of the AoT process. However it does not protect a customer from mis-selling. At the point when Cancel Other is used, the mis-selling has already occurred. Cancel Other at best prevents the attempted transfer from taking place to minimise detriment to the customer. It does not prevent any distress or inconvenience the customer may experience by having an order placed by another CP without their knowledge or consent. Moreover, the Cancel Other mechanism is often not effective as customers often do not read the AoT letter or, they may contact their provider too late in the transfer period to cancel the order. Also, as Ofcom has seen, some CPs have abused the Cancel Other process by using it to cancel legitimate orders and thereby prevent their customers from switching suppliers.

With that said, if the AoT process and Cancel Other mechanisms are to remain, BT strongly supports the proposal to withdraw the Cancel Other Direction and incorporate requirements that make Cancel Other rules applicable to all CPs. This change to level the playing field is long overdue, particularly as other CPs now make a greater use of the Cancel Other facility than BT.

Customers need to be better protected from mis-selling and in particular the growing practice of transfer blocking through the mis-cancellation of orders. Over 18 months ago, BT formally complained about the misuse of Cancel Other to Ofcom, and named a number of CPs who were cancelling customer orders to migrate to BT without the customers knowledge or agreement. BT has evidence that there is still significant misuse of Cancel Other by some CPs. In March 2009, 37% of the business customers contacted by BT following the cancellation of their transfer orders by

another CP stated that the cancellation was undertaken without their permission. In addition, BT has strong evidence that CPs are using the Cancel Other facility to cancel orders in a customer change of mind scenario instead of referring the customer back to the gaining provider to cancel, as Ofcom's current Cancel Other guidance requires.

BT has been frustrated by the limited powers Ofcom appears to have to stop the misuse of Cancel Other, and therefore would suggest that the proposed requirements need to be incorporated into a General Condition as soon as possible.

BT is concerned that, unlike the BT Cancel Other Direction, the Cancel Other requirements in the General Condition would now only apply where the customer is a Consumer or a Small Businesses. In BT's view, businesses with greater than 10 employees need the same level of protection against the misuse of the Cancel Other facility as any other consumer. BT's analysis of the use of Cancel Other by other CPs has shown a higher degree of misuse against business customers (large and small), especially where long term contracts are involved, and Cancel Other is used to enforce the contract and prevent the customer from transferring.

BT believes that all CPs should be mandated to use the Cancel Other process appropriately. The absence of a regulatory obligation to do so (as is currently the case) enables CPs to avoid using the process and does nothing for the customer experience when things go wrong. For example a customer who was mis-sold to could be severely impacted where both CPs fail to cancel the order resulting in an unauthorised transfer taking place. Cancel Other data will also only be a reliable indicator of mis-selling if it is used appropriately by all CPs.

BT supports the proposal not to include within the General Condition, the requirement to pass call recordings between CPs following the use of Cancel Other. However, there is still a need for a mechanism to identify which CP has cancelled the order so individual customer issues can be resolved and to enable major abuse to be identified. It is significant that the rationale for the original Cancel Other Direction on BT was a recognition that CPs needed to know why their order was being cancelled and by whom. We note Ofcom has not factored any costs for this into its impact assessment.

BT is disappointed that Ofcom has not taken the opportunity to issue a draft revocation notice for the Cancel Other Direction within the consultation. We do not see that it is appropriate going forward for BT to continue to meet more onerous requirements compared to other industry players, especially as greater volumes of Cancel Other are now actually undertaken by other CPs. We would urge Ofcom therefore to issue the draft revocation notice and move to a General Condition on Cancel Other for all CPs as soon as possible to avoid the continue detriment customers are experiencing when their transfer orders are blocked.

2.3.1 Permitted use of Cancel Other

BT agrees that Cancel Other should not be used to frustrate the transfer process i.e. where the notice period has not been served or there are early termination charges to be raised. We are aware of a number of CPs who appear to be using the notification data to cancel a customer's transfer, either without speaking to the customer or acting against the customers express wishes. Some CPs have been

known to go further and restrict the customer's service on receipt of the transfer notification. This results in significant issues for businesses and they usually agree to stay with their current provider in order to get their service restored as quickly as possible. This type of activity is totally unacceptable sharp practice and as a result many business customers have become disillusioned with the whole process.

BT strongly disagrees with Ofcom's position on internal customer miscommunication. Allowing a non authorised person to agree to the transfer of fixed line services demonstrates the weakness of the AOT process. Even if an order has been placed by the gaining provider in good faith, the losing provider should be allowed to cancel the order, if the named account holder subsequently contacts them and informs them that the person placing an order had no authority to do so. Quite apart from the customer experience implications (especially when some CPs only allow cancellation by their account holder), BT would be in breach of contract with its customer if it did not do so. In the past, Otelo has informed BT that they consider BT to have acted inappropriately in similar situations, as we failed to act on our account holder's direct request. If the gaining provider has submitted the order in good faith, this can't be regarded as a slam, but Cancel Other should be allowed, under a discrete category, as is currently the situation with the use of Cancel Other when the gaining provider has failed to cancel the order at the request of the customer.

2.3.2 Reason codes

BT agrees that there should be one set of industry Cancel Other codes, rather than a separate set for BT. The provision of a separate set of Cancel Other codes for BT Retail's use was introduced when BT undertook the majority of the cancellations. However, as Ofcom statistics show, the Cancel Other facility is now used more extensively by the rest of the industry than BT, so the need for BT Retail cancellations to be uniquely identified is no longer required or justified. However, any change will incur development costs and scheduling which has not been covered in Ofcom's analysis and costing. See section 3 for further detail.

When the Cancel Other Direction was introduced, BT had to invest money and resource into the development of systems, training and monitoring to help the advisor cancel the order correctly and with the appropriate code. BT believes that there is currently a lack of understanding by industry of the various Cancel Other codes and there is a high probability that CPs, even those currently using the facility, may mistakenly use the wrong code or in fact use a 'favoured code'. Therefore there will be additional costs to CPs to introduce similar mechanisms, training, etc but these costs have not been included in Ofcom's impact assessment.

BT suggests an alternative option would be to simplify the codes by slimming down the number to be used, which in turn would reduce the need to select the correct slamming code, although there would still be a requirement to ensure the appropriate questioning had taken place to determine whether mis-selling had taken place.

We do not believe there is a requirement for two 'Failure to Cancel' codes as recommended by Schema. Since the research was undertaken in 2007 all the industry players have the same opportunity to cancel an order on the Order Gateways up to the last possible moment as dictated by the system i.e. point of no return.

2.3.3 Information sharing obligation

BT agrees that the sharing of Cancel Other records is onerous and would question the benefit it could bring. In the past four years BT has provided information for over two thousand cancellations at a significant cost to BT. In most cases this information was requested to help CPs investigate mis-selling allegations against themselves rather than to allege inappropriate use of Cancel Other by BT. In some cases CPs appeared to also use requests offensively as retaliation against BT where BT had made allegations of mis-selling against them.

The lack of information and evidence to enable CPs to tackle individual CP behaviours and attempt to resolve issues bi-laterally puts a greater onus on Ofcom to take swift action when mis-selling or mis-cancellation issues are identified. BT notes that in the recent investigation of Telephonics Integrated Telephony, it took Ofcom over 12 months to issue a notification after the mis-selling reports and inappropriate cancellation issues were first raised. This time lag for investigations is far too long to be considered an effective remedy and during this intervening period customers will continue to be mis-sold or prevented from transferring to another supplier of their choice.

2.4 Record keeping requirement

The requirement to keep an audit trail and provide call recordings is a vital part of Ofcom's proposals. If these were not available it would significantly limit any investigation and the ability of Ofcom to take action. However, BT believes that the cost involved of implementing a 100% (based on best endeavours and never less than 90%) call recording requirement is an undue financial burden and is disproportionate for the larger CPs who not only will have a greater volume of calls to record and store but will also need more sophisticated systems if the calls are taken across a number of sites.

BT believes Ofcom has significantly understated the cost of implementing its proposed option, as BT's estimated costs alone would be c.£[X] one off and c.£[X] per annum ongoing which are in excess of Ofcom's estimate for the entire industry.

Due to the significant investment required we suggest Ofcom should seriously consider using a valid statistical sample for CPs who place a large volume of orders (e.g. over 6k a month). By requesting a random sample, Ofcom would be able to determine whether mis-selling allegations were as a result of an endemic problem or just an isolated incident.

However, even if implemented, we believe call recordings alone will not provide the projected Ofcom reductions in mis-selling of 30% in year 1 and 50% at the end of year 2. The reduction will only be achieved if Ofcom undertakes swift investigative and enforcement action. BT data indicates that action would have to be taken against more than 20 CPs to achieve these reductions and therefore Ofcom will need effective resources to meet this challenge. Recognition of this increased activity and the costs associated with it have not been included in Ofcom's impact assessment.

BT is also concerned that it would appear that failing to meet the target of call recording retrieval appears to have the same penalties as the actual act of mis-selling or mis-cancellation.

Increasingly, a significant volume of sales are undertaken via online media or via face to face contact, so Ofcom's focus on telesales seems inappropriate. BT has found that significant mis-selling occurs to consumers in the face to face arena, including the misrepresentation of their CP's relationship with BT and misinformation on prices or generally about the process. Whilst customers may sign a contract, quite often they do not realise what they are signing up for, or do so on the basis of the misinformation. BT believes that more effective controls are needed for this area particularly as consumer law generally affords more consumer protection for unsolicited face to face sales.

With online sales, there needs to be clearer content describing what the package entails, especially in relation to bundled products such as broadband and calls. The majority of customers who contact us about bundled product offerings state that they had agreed to one element of the offering i.e. mobile, broadband or TV, but were not aware that this involved the transfer of their line or calls packages. This should be made much more explicit to the customer, in easy to understand terminology during the online transaction.

Ofcom appears to have concentrated the audit trail requirements on the use of Cancel Other requests made via a phone call, but customers could submit these requests by other media, particularly email, so the record keeping requirement on Cancel Other needs to be extended to cover other media.

3. Timing and implementation

BT is concerned that Ofcom's consultation process and the proposed 12 month implementation period will mean that mis-selling will not be addressed for another 18 to 24 months. It is likely that following implementation, even if the proposals were to be effective, that they would take some time to take effect. BT suggests that after six years of mis-selling, the industry, and more importantly customers cannot afford to take a gamble, at significant expense, with unproven measures that only purport to address 52% of the problem.

We suggest that before any further substantial investment is contemplated in a flawed process that prolongs the problem of mis-selling, it would be better to concentrate efforts and resources on looking at an alternative single migrations process which is already proven to prevent slamming, such as a process similar to the broadband process (see section 4 for details).

If Ofcom pursues its proposals they should consider a phased implementation timeline. We believe the move to a General Condition should be implemented as soon as possible and that the provision of customer contractual information may take up to 3 months to implement. The proposed call recording requirement could take significantly longer and therefore impact on the achievement of the stated benefits.

In addition Ofcom needs to be aware that some of the proposals outlined could potentially impact wholesale arms of BT such as BT Wholesale and Openreach where any system development required to alter the method of administering the Cancel Other process is likely to affect all CPs systems and particularly those who sell wholesale services. However, it should be noted that Openreach, although not specifically covered by this consultation would be unable to deliver any required system developments within the next 12 to 18 month timeframe due to CAPEX and system development capability restraints. [X] Any future Ofcom requirements must be considered against this background with full recognition of likely industry costs.

4. Other options

We have already explained BT's belief that Ofcom's proposals will not deliver radical reductions in the mis-selling of fixed line telecommunications services. We therefore believe it would make sense to agree and start to develop a new migration process now, so the widespread consumer harm from mis-selling can be stopped as soon as possible.

In contrast, Ofcom's intention is to implement the proposed changes to the current AoT process, but keep under review alternatives that could be pursued if they fail. The document highlights a range of alternatives based on i) ex-ante validation, ii) ex-post validation and iii) the MAC process currently used in broadband.

We believe upfront validation is the key to eliminating mis-selling. Without validation of the customer's identity, the customer's informed intention to switch, and the service or assets to be switched in advance of the order being placed, the root causes of mis-selling will still be present and any process, such as the AoT process, will simply be reactive to mis-selling after the fact. For this reason, BT would oppose a process based on ex-post validation. Such processes could also be user-unfriendly, with end-users having to raise complaints and seek compensation, and expensive to operate, with Ofcom or a third party needing to devote considerable resource to monitoring performance and addressing problems.

The ex-ante validation options raised in the document also appear to be bureaucratic and unwieldy, potentially requiring forms to be filled in or telephone calls to be recorded. Third party validation would likely be just as expensive and bureaucratic in its ex-ante as in its ex-post form. Indeed, previous Ofcom-sponsored investigations have suggested that third party bodies focused on migrations could cost the industry many millions of pounds in both set-up and running costs.

The MAC process used in broadband does not suffer from these problems. Mis-selling is eliminated at the root: the existing provider validates that the person initiating a switch is the customer for the services to be switched: the existing provider has a chance to inform the customer of the consequences of a switch; the validation of the MAC code issued to the existing provider and submitted by the new provider proves the customer's intention to switch; and no third party body is required. The process is also tried and tested.

Nevertheless, BT recognises that the broadband process has a reputational problem among some stakeholders. On occasion there have been problems with obstructive behaviour from CPs who have delayed issuing MACs; consumers may have had difficulty in contacting their existing CPs to obtain a MAC; and customers may have been subjected to a 'hard sell' by CPs trying to persuade them not to leave.

To overcome these problems, BT proposes that a new process which shares many of the features, but addresses the perceived problems of the current broadband process, should be developed and adopted as the future single process for all voice and broadband products.

This new, process, using a replacement for MAC which we refer to as the Customer Protection Pincode would have the following key features:

CPs would be obliged, via a General Condition, to provide:

- a pincode verbally in real time on request by a validated customer and potentially backed up by optional alternatives such as text and email;
- an option for customers to specify whether or not they want to be made aware of alternative offers, with the customer's choice binding on the CP;
- adequate resourcing of pincode issuing channels.

Ofcom could take action on any CP found to have breached these obligations.

To improve the customer experience and avoid errors, pincodes would be in a user-friendly format that made them easy to record and remember and avoided transposition errors.

To ensure operational efficiency, pincodes would be capable of identifying all of the relevant services and assets. This would avoid the problem that may arise with AoT in relation to MPF, where it may not be possible to identify correctly the line to be transferred in a multi-occupancy building.

Pincodes could also be designed to facilitate the migration of bundles of products as well as individual products.

This process would ensure: up-front validation of the customer's identity and intention to switch; accurate identification of the services or assets to be transferred; and the provision of information to the customer on the consequences of switching. This would eliminate mis-selling, reduce mistakes and avoid the cost and complexity that arises now from the need to identify, investigate and cancel spurious orders.

BT is working on proposals for this new process, including our estimates of the costs and timescales that would be involved in implementation. We look forward to discussing these proposals with other stakeholders in the near future.

5. Proposed General Condition

We have reviewed in detail the proposals and wish to highlight to Ofcom a number of conceptual flaws, inconsistencies and general concerns with the scope of the General Condition. In addition there are a number of legal issues that also arise in regard of the proposed General Condition.

5.1 Scope

Scope is a fundamental issue and Ofcom should take the opportunity to ensure that the proposed General Condition is drafted in such a way as to cover all possible areas of mis-selling/transfer abuse. As we have previously mentioned in Sections 2.1 and 2.3, BT believes the proposed General Condition is deficient in that:-

- a) it only covers transfers from Consumers and Small Businesses with less than 10 employees³.
- b) Compliance with industry processes (cancellation periods, sending of notifications etc) is a key part of the consumer protection mechanism and yet there appears to be no incorporation of the key elements of these into the General Condition and hence no enforcement route for Ofcom to take to ensure compliance.
- c) It is clear that the E2E industry processes are intended to address narrowband transfers regardless of type or size of end customer (i.e. not just consumers and small businesses). This ensures that customer protection measures apply to all transfers. For example, the WLR Industry End to End Process *"incorporates a standard transfer period of 10 Working Days, irrespective of the method of sale. This is intended to provide sufficient time for the transfer letter to be received, considered and acted upon by the End User as appropriate. End Users have the right to change their mind before the switchover period is completed, and remain with their current provider, and not be subject to any form of financial penalty...."*⁴.
- d) BT believes that while there is an AoT process in place all CPs should be mandated to use the Cancel Other process as this is the key customer protection mechanism. Not being required to do so enables CPs to avoid using the process and does nothing for the customer experience when things go wrong. It also places the onus solely on the gaining provider for the cancellation of "slammed" orders, yet there is nothing in the General Condition compelling the use of "Cancel Own" in this context.

³ As defined in the Communications Act 2003, s52(6)

⁴ WLR End to End Process Description Issue 3.1
http://www.ofcom.org.uk/telecoms/groups/wholesale_line_rental/working_papers/wlr_e2e.pdf

There are some drafting issues that arise primarily from tension between the industry E2E processes and the proposed General Condition:

- **Post-sales information (24.7).** The requirement is to send a customer a letter within "*three working days of receiving notification*" that customer is transferring. For the purposes of legal certainty Ofcom needs to clarify from whom the notification is due. We also do not believe it is appropriate to stipulate 3 working days as the class of delivery could also have a significant impact on timescales. We would suggest it would be more appropriate to state that the 'letter should be delivered at least 5 working days before transfer takes place'.
- **Customer's termination rights (24.9).** The requirement refers to a cancellation period that runs from 10 working days from the date the contract is made. BT is concerned that the wording is not clear enough as this could for example mean that the gaining provider could satisfy the General Condition by simply not placing the order on the order gateway until the cancellation period expires or by placing the order when it has almost expired. This is already covered in the current GC14.5 (6.9) and covered in the Guidelines for General Condition 24, but we believe Ofcom should clarify what is actually meant by incorporating the current wording in GC14.5 (6.9).
- **Customer's termination rights (24.10).** BT seeks clarification as to what "*without unreasonable effort or expense*" mean. This could be taken to mean at "no expense at all" or "no unreasonable expense". If the latter, it could fall foul of (consumer only) doorstep and distance selling requirements.

5.2 Legal Policy issues

A number of legal policy issues arise from Ofcom's proposed General Condition:

- **Publication of summary of obligations/provision of copies of General Condition (24.5).** BT believes that this proposal goes way too far and cannot think of another example in a commercial/contractual context where a retailer is obliged to make it expressly clear that it will treat its customers responsibly and, if requested, to provide evidence of that in hard copy. If the transfer process were robust, there would be no need for such a requirement: there would simply be a presumption of appropriate conduct on the part of the retailer. Ofcom has given no consideration to the cost associated with this requirement.
- **"Take all reasonable steps" to validate (24.6).** We do not believe that this proposal can be met under a gaining provider led process as beyond asking the customer whether they are entitled to contract for the service, what else can the gaining provider do? This is yet another example of Ofcom recognising the inherent weakness of the AoT process on the one hand and then trying to mitigate with a process that is just not going to be effective. A process led by the current provider has validation at its core.
- **Provision of written information before customer enters into contract (24.6).** BT is concerned that in some circumstances, the requirements of the proposed General Condition go beyond the general law. BT is unclear whether Ofcom has

compared/distinguished these requirements from those that apply to distance and doorstep selling (to consumers)?

- **“Letter must be sent by normal post” (24.8).** We are concerned that this is backward looking; with the growth of the internet and email we are unclear why the customer has to explicitly agree to receive correspondence electronically. We would suggest if there is a history of email correspondence, say, with the losing provider that would be sufficient to signal an acceptance of that communications method. Large business customers who are transferring multiple lines simultaneously, want the option of a single inventory, not multiple letters, where an error may be overlooked.
- **Sales records retention/provision on request to Ofcom (24.11 and 24.12).** We are unclear as to the premise of this proposal as we are unaware of a similar requirement in any other commercial context. Again, we believe this must be a function unique to the AoT process (bearing in mind that the General Condition will not apply except in context of transfers).
- **Cancel Other: records retention (24.18-20).** We believe these requirements are excessive and it is unnecessary to require retention of contact records and reasons for using Cancel Other.
- **Training/monitoring (24.14 and 24.15).** See comments on 24.11 and 12 above.

5.3 Conceptual anomalies and inconsistencies

Migrations and mis-selling have historically been governed only by industry E2E process documents. BT suggests that Ofcom/Industry should carry out a review to identify those provisions that should be harmonised, sit outside the E2E industry processes and therefore made subject to regulation. In broad terms, these should be provisions concerning:

- overall scope of the AoT process
- cancellation/transfer periods and rules surrounding cancellation
- end-user transfer letters and all other communications with end users (number and content)
- any other consumer protection measures (e.g. WLR process refers to sales & marketing codes)

In broad terms, what these provisions have in common is that (i) they are not intrinsically process orientated and (ii) they do not really impact on the commercial relationship between CPs and the upstream provider. Rather, they impact on end users and the relationships between retail CPs and are therefore more suited to regulation than contractual enforcement. In respect of those E2E provisions that are not amenable to regulation (i.e. the vast majority), we suggest that the proposed General Condition could at least refer to them (e.g. “as referred to in the E2E industry process documents, as amended from time to time”). That would at least make the new General Condition more coherent conceptually.

There are a number of other drafting conceptual flaws that we draw Ofcom's attention to:

- **Scope (24.1).** We reiterate our earlier point concerning the gap in the proposal in regard to larger business customers. We urge Ofcom to address this as it leaves larger businesses unprotected from mis-selling.
- **Scope (24.2).** It is unclear from the draft guidelines in what circumstances the General Condition applies. For example, there is an argument that it would not apply to BT when we bring back CPS customers (as we may have an existing relationship for lines and calls). We think this is a drafting issue.
- **Mis-selling prohibition (24.3).** There is still no express prohibition on slamming (for which a definition could be imported from the Cancel Other provisions). We believe this is key to reducing the problem of mis-selling. We suggest that there should be an express requirement to gain the requisite customer consent to transfer their service away from their current supplier.
- **Customer's termination rights (24.10).** The requirement refers to the gaining provider allowing customers to terminate the contract by two of the three contact methods quote: (i) telephone; (ii) e-mail; and (iii) post. This is a reduction of the current requirement where GC14.5 (6.10) states: "*Customers to be permitted to cancel orders and terminate contracts by telephone, in writing, by fax or by e-mail*". This could result in some gaining providers choosing to allow cancellations only by post or e-mail and thus increase the possibility of the order not being cancelled in time and the transfer taking place. We would suggest that the current wording should be changed to allow cancellation by all three contact methods.
- **Cancel Other process (24.15 and 16).** The first stipulation is that Cancel Other process shall only "be permitted" in particular circumstances - in other words, the requirement appears to be absolute. The second one is that losing CPs shall "take reasonable steps" to ensure slamming has taken place. The two are contradictory, and the second is more appropriate, given that it is often not entirely clear what has happened.
- **Cancel Other reasons (24.20).** We are not clear how long the losing provider has to retain record of "reasons" (see 24.18 for requirement to retain contact info for 6 months).
- **Losing provider letter content (24.21).** We suggest there is a drafting issue with this requirement. Communication of neutral/factual information such as early termination charges may "induce" the customer to "terminate" (should be "cancel" in any event) but is clearly permissible. We would suggest it would be better to frame in terms of "neutral/ factual" as per E2E processes.
- **Definition of "Transfer Period" (24.23j).** We suggest that this is only referred to in Cancel Other provisions, and as orders may have a longer lead time than 10 working days, needs to be defined working back from transfer date rather than working forward from date contract made i.e. CRD -1/-2 instead of Working Day 9/8.

6. Impact Assessment

BT believes that any conclusions being drawn from Ofcom's economic modelling as part of the impact assessment are very weak at best and cannot be relied on for a number of reasons. These include:

- The uncertainty over the real impact on mis-selling volumes as a result of Ofcom's proposals - BT does not believe that the reductions will be as high as Ofcom suggest
- Ofcom's underestimate of the significant costs across industry, including BT's, of implementing the proposed changes
- Ofcom's use of a very small customer sample (76 people) to extrapolate estimates for financial loss from mis-selling for all households (21.6 million) means these estimates are subject to huge sampling error

The margin for error in Ofcom's calculated NPVs is significant and therefore these cannot form a robust basis to determine such important and key policy decisions. As highlighted in our executive summary, BT's strong preference is for a uniform transfer process across the different transferable products and one which effectively raises a presumption that a customer has positively agreed to switch from a fully informed position.

BT believes that in the absence of positive consent within this process, the (consumer) protection measures required to prevent slamming place a disproportionate administrative and financial burden on CPs, and go well beyond the requirements of the general law on consumer protection. BT is firmly of the view that rather than spend additional money, on top of the current cost, in trying to improve a flawed process, the money would be better spent on a new migrations process which prevents slamming incidents in the first place and provides protection for all customers.

Please see our response to the specific questions in section 8.

7. Response to specific questions

Question 1 - Based on our analysis of Ofcom's mis-selling complaints data, do you agree that further improvements are achievable, and that both absolute and relative numbers of mis-selling incidences can be reduced? Please provide an explanation to support your response.

Yes numbers can be reduced further.

It is significant that in all this time there is still no accurate figure for the level of mis-selling that takes place. We agree with Ofcom that the current statistics consisting of Ofcom Advisory Team (OAT) complaint data and Cancel Other statistics is only a useful indicator of trend rather than the actual volume of mis-selling. The current process is unlikely to be able to provide an accurate figure without significant changes and cost to the industry, so any figures used could be subject to influence depending on CP behaviour e.g. referring customers to complain to Ofcom, mis cancellation of orders etc.

Whilst BT may have seen an overall decline in mis-selling reports from BT customers in recent years, at 5,000 reports a month this volume is still unacceptably high. Worryingly, BT's Unfair Trading (UFT) data shows that BT's business customers have not seen the same decrease in mis-selling volumes since May 05, as their volumes have only reduced by 25% compared to the overall decrease of 75% for residential customers in the same period.

In addition, BT has strong evidence that CPs are misusing the Cancel Other facility, which could give the impression of a falsely high level of mis-selling by BT. In March 09, 37% of the BT's business customers we contacted following the cancellation of their order to return to BT, informed us they were not aware or had not agreed to the cancellation. Of the 63% who were aware of the cancellation, the majority stated that they had changed their mind mainly due to being informed of their current contract terms and possible termination charges.

BT therefore can only agree that further improvement in the mis-selling volumes and inappropriate cancellations can not only be achieved, but it is vital it is achieved, to reduce the current customer detriment and the harm being caused to the industry. Both mobile and broadband data show if there is an effective process in place, slamming is minimal.

See section 1 for further detail.

Question 2 - Based on our experience of our enforcement activities, do you agree that the regulations should be further strengthened in order to better meet Ofcom's policy objectives and aims? Please provide an explanation to support your response.

BT agrees that Ofcom need to strengthen the regulations to stop mis-selling. The regulations need to be clear as to what behaviour and action is required by CPs, provide a mechanism for swift monitoring and enforcement, include the penalties for non compliance, but most importantly of all protect all consumers (including larger businesses) from mis-selling.

We believe Ofcom's current proposals do not meet all of the stated requirements, so we would urge Ofcom to give full consideration to an early move to a new migrations process which provides a fully informed consenting transfer and removes the need for action after the event.

See section 1 for further detail.

Question 3 - What are your views on appropriate implementation periods for each of the proposed measures we are consulting on as set out in sections, 5, 6, 7 and 8? Please provide an explanation to support your response.

BT is supportive of an immediate move from a Code of Practice to a General Condition and extension of the Cancel Other requirements to cover all CPs. BT believes that it is going to be 12 months or longer before any reduction in mis-selling volumes is seen. However if implementation of these proposed measures requires any system developments, then Openreach would be unable to deliver within the next 12 to 18 month timeframe due to CAPEX and system development capability restraints.

See section 3 for further detail.

Question 4 - To what extent do you consider our assessment of the potential costs and benefits outlined in the IA at Annex 5 is dependent on the implementation periods for each of the proposed measures we are consulting on as set out in sections, 5, 6, 7 and 8? Please provide an explanation to support your response.

BT believes a delay in moving from a Code of Practice to a General Condition and extension of the Cancel Other requirements to cover all CPs will reduce the stated benefits, as any potential mis-selling volume reductions will be further delayed.

The call recording requirement implementation period will affect costs and benefits as BT believes that increasing the implementation period will delay any benefits arising from any reductions in mis-selling volumes. However decreasing the implementation period could also increase the overall costs and reduce the effectiveness of the changes, as CPs may not have adequate time to implement optimal systems both from a cost efficiency and robustness point of view. This could ultimately result in both higher costs and lower impacts on mis-selling volumes.

Question 5 - Do you agree that it is appropriate to modify, or remove, the July 2005 Cancel Other Direction (or any provision saving in effect this Direction) so that any changes take effect before the end of the implementation period for modifications to the General Conditions? Please provide an explanation to support your response.

Yes, if the current guidelines are sufficient for the rest of industry in this period, then BT should be subject to these as well, especially as BT now uses Cancel Other in smaller volumes than the rest of industry. In addition BT is already complying with the requirements which will be set out in the new General Condition and has no intention of changing the current operational processes for the short interim period whilst the General Conditions are being drafted. See section 2.3 for further detail.

Question 6 - Do you agree with our preferred option on clarifying and simplifying the regulations, namely that we should:

*(i) improve clarity of the regulations by redrafting in order to aid understanding and
(ii) simplify the regulations by moving away from a code of practice (process-based) approach to an outcome driven approach based on absolute prohibitions of mis-selling? Please provide an explanation to support your response.*

- (i) Mere clarification and simplification of the existing regulations will not eliminate mis-selling. BT struggles to understand how CPs are unclear as to the current requirements for the sale and cancellation of orders and believes that it is time to review whether the current AoT process can provide effective consumer protection.
- (ii) BT welcomes the move from a Code of Practice approach to a General Condition, having previously voiced the need for a mandatory Code of Practice for all CPs to remove ambiguity and enable consistent and transparent enforcement. These changes would appear to give Ofcom the powers to take effective action against CPs for mis-selling, especially by removing the current anomaly where if a CP has failed to implement a Code of Practice, it cannot be deemed to be in breach of it and thus of mis-selling. However, in making this change to General Conditions, Ofcom needs to ensure that there are no further gaps or loopholes which minimise any action that could be taken against CPs who were not complying e.g. restricting scope to Consumer and Small Businesses, relevant industry requirements not linked to the General Condition etc.

See section 2.1 for further detail.

Question 7 - Do you consider there are other parts of the existing GC14.5 obligations where we could clarify and simplify the regulations, but have not proposed to do so? If so, please explain and set out the reasons for this.

BT would like to see a clear prohibition against mis-selling, which would prevent the occurrence of loopholes when 'new' mis-selling practices emerge which are not explicitly catered for in the current requirements.

See section 2.1 for further detail.

Question 8 - Do you agree with our preferred option to provide better information to consumers on the potential consequences of switching? Please provide an explanation to support your response.

BT does not support Ofcom's preferred option as we believe the costs have been understated and the benefits overstated. In addition, the requirement would be hard to police, could be said in a way to have minimal impact, or alternatively become a long discussion with the increased possibility of mis-selling with the provision of inaccurate information about competitor products. There is also potential for customer confusion with details about the product they have just been sold.

BT believes the only effective way to ensure a fully informed customer at switching is to ensure this conversation happens before agreement is given to transfer, which is the key benefit of a losing provider led process.

See section 2.2 for further detail.

Question 9 - Do you agree that Cancel Other should primarily only be permitted for reasons of slamming, as defined by Ofcom, or are there other circumstances where you feel use of Cancel Other should be permissible?

BT believes that Cancel Other should be used for internal customer miscommunication. This is a result of the weakness of the AoT process which allows a non authorised person to agree to the transfer of fixed line services. Losing providers should be able to act on the instruction of their account holder, if they are informed the person who had agreed to the transfer was not authorised to do so and thus ensure the customers are not transferred against their wishes.

We are aware a number of CPs are suggesting Cancel Other should be extended to allow use of the facility for a Change of Mind situation. We would not at this current stage support a move to using Cancel Other for a Change of Mind situation as this could expose the process to further misuse and make it even more onerous to police the correct use of the facility.

See section 2.3.1 for further detail.

Question 10 - Do you have any other suggestions for improvements to the reliability of the Cancel Other data and, in particular, the existing reason codes?

Any changes to Cancel Other codes will create a cost to the whole industry, thus it may be more effective to look at the best use of existing codes to deliver a better end user experience. BT would also caution any changes to the codes for cosmetic reasons.

Neither BT Wholesale or Openreach's systems currently police the use of the code i.e. prevent the cancellation if an incorrect code is used, so the key players for policing the correct use of Cancel Other are:

- the CPs who will need systems, training and monitoring to enforce correct use and
- Ofcom who will need data of CPs using Cancel Other for relevant enforcement action.

Both of these have associated costs which have not been included in Ofcom's impact assessment.

See section 2.3.2 for further detail.

Question 11 - Do you agree with Ofcom's proposals not to transpose information sharing obligations relating to use of Cancel Other as part of the proposed new General Condition? Please provide an explanation to support your response.

BT agrees that the mandatory sharing of Cancel Other records between CPs is onerous and would question the benefit it could bring.

However, the lack of information and evidence to enable CPs to tackle individual CPs, places a greater onus on Ofcom to take swift action when mis-selling or mis-cancellation issues are identified. BT notes that in the recent investigation of Telephonics Integrated Telephony, it was over 12 months from when mis-selling reports and inappropriate cancellation issues were first raised, to when the notification was issued. This is too long and in this time customers will continue to be mis-sold to or prevented from transferring to another supplier.

Question 12 - Do you agree with our preferred option on record keeping for sales? Please provide an explanation to support your response.

No, BT believes that a 100% (based on best endeavours and never less than 90%) call requirement is disproportionate and Ofcom has significantly understated the costs for implementation and ongoing costs for meeting these requirements.

In BT's case this would require significant investment (up to c.£[redacted] one-off costs and c.£[redacted] ongoing). Therefore we would suggest Ofcom seriously considers using a valid statistical sample for the CPs who place a large volume of orders (e.g. over 6k a month). By requesting a random sample, Ofcom would be able to determine whether mis-selling was an endemic problem or just an isolated incident.

If the total cost of call recordings was calculated, i.e. the costs already incurred by the CPs who currently record their calls to varying levels together with the additional cost to move to 100% (based on best endeavours and never less than 90%) call recording, it would reveal a significant cost for a process which does not stop mis-selling.

See section 2.4 for further detail.

Question 13 - Do you agree with our preferred option on record keeping where Cancel Other is used? Please provide an explanation to support your response.

BT agrees that in order to effectively monitor the use of Cancel Other, a call recording is necessary, however we believe the cost of meeting the proposed option of a 100% (based on best endeavours and never less than 90%) call recording requirement is disproportionate. In addition there needs to be an audit trail for cancellations requested by other media, such as email etc.

See section 2.4 for further detail.

Question 14 - What are your views in relation to consideration of other options described in section 9? Please provide an explanation to support your response.

We have already explained BT's conclusion that Ofcom's proposals will fail to deliver radical reductions in the mis-selling of fixed line telecommunications services. We therefore believe it would make sense to agree and start to develop a new migration process now, so mis-selling is stopped as soon as possible and customers can transfer between providers without inconvenience, distress or detriment.

See section 4 for further detail.

8. Response to Impact Assessment questions

See further commentary in section 6.

Question A5.1: Do you agree with our assessment of the likely magnitude of the costs and benefits of our preferred option? If not, please provide an explanation and evidence to support your response

BT does not agree with Ofcom's assumptions on costs and benefits. Ofcom does not give any basis for its assumption that mis-selling volumes are likely to decrease by 1% per annum. As highlighted in section 2.1 of this response BT believes that the revised draft provisions in their proposed form could cause further confusion and that the likely impact of these changes alone on mis-selling volumes will be negligible until enforcement action is taken. BT is also of the view that any reductions in volumes will not continue at the same level year on year as Ofcom has assumed given the impact of one-off changes is likely to get diluted over time.

BT does not believe the financial loss assumed as part of the benefits calculation is robust as it is based on a very small sample of consumers and open to significant sampling error.

Additionally, BT does not agree that these changes will result in no incremental cost to CPs given CPs are still required to provide this information to customers free of charge, there will be costs to the CPs of updating the material and making the new version available.

Question A5.2: To what extent is it possible to assess the impact that this option might have on the current level of mis-selling in its own right? Please provide an explanation and evidence to support your response.

BT agrees it is difficult to assess the impact this option may have on the current level of mis-selling, however it is no more difficult than accurately assessing the impacts of the other proposals Ofcom has made in this consultation where Ofcom has attempted to estimate impacts.

Additionally, as highlighted in section 2.2, BT is not convinced as to the benefit of requiring the gaining provider to make a brief mention of potential contractual liabilities in the sales conversation or the gaining letter as:

- If challenged the gaining provider will not know the customers contractual liabilities. We are concerned it may also encourage CPs to discuss other competitors, and thus increase the possibility of incorrect information being provided
- The customer could become confused with information provided concerning termination charges relating to the product/service(s) being sold
- There would be little impact if it is just said very swiftly at the end of the call when the customer may not be listening

Question A5.3: Do you agree with our assessment of the likely magnitude of the costs and benefits of our preferred option? Please provide an explanation and evidence to support your response

BT does not agree with the assessment of the likely magnitude of the costs and benefits of Ofcom's preferred option. We have already highlighted issues with the gaining providers providing information in our response to question A5.2 above. Additionally, we do not agree with Ofcom's assumption that changes to AoT letters will incur no incremental cost or that the extra time required to incorporate the extra script will be 20 seconds. In reality this extra information is likely to raise additional queries from customers and the incremental engagement time could be significantly greater than 20 seconds.

Again, Ofcom does not give any basis for its assumption that mis-selling volumes are likely to decrease by 1% per annum. In BT's opinion any reductions in volumes are likely to be minimal and will not continue to reduce at the same level year on year as Ofcom has assumed, given the impact of one-off changes is likely to get diluted over time.

In BT's opinion the financial loss assumed as part of the benefits calculation is not robust as it is based on a very small sample of consumers.

Given the marginal result of Ofcom's estimated NPV and the flaws in the analysis highlighted above (which would make the results more negative) BT does not believe the economic analysis supports Ofcom's proposal. Furthermore, given the potential for confusion caused by information provided regarding losing provider liabilities at the point of sale BT does not believe these proposals are going to have a positive impact on reducing mis-selling volumes.

Question A5.4: Do you agree with our assessment of the likely magnitude of the costs and benefits of our preferred option? Please provide an explanation and evidence to support your response

BT does not agree with Ofcom's assessment of the likely magnitude of costs and benefits of its preferred option. As Ofcom is aware, CPs currently do not use Cancel Other correctly and apply incorrect slamming codes. In BT's view the introduction of obligations within a General Condition will result in CPs having to invest in systems, training and monitoring to ensure correct use which will add additional costs, even for CPs already using Cancel Other. This cost has not been included in Ofcom's cost benefit analysis.

As highlighted in section 2.3.2, BT suggests an alternative option would be to simplify the codes by slimming down the number of codes used. This would reduce the need to select the correct slamming code, although there would still be a requirement to ensure the appropriate questioning had taken place to determine whether mis-selling had taken place, but it would reduce some of costs mentioned above i.e. systems, training and monitoring.

Additionally, Openreach/BT Wholesale will incur costs for any changes to codes and this has also not been taken into account.

BT believes Ofcom's assumption of mis-selling volume reductions is aggressive and unlikely to be achieved. In order to have material reductions in mis-selling volumes Ofcom would need to take swift enforcement action against a significant number of CPs and the cost for this has not been factored into Ofcom's analysis.

Question A5.5: Do you agree that this option will not result in incremental costs to CPs? Please provide an explanation and evidence to support your response.

BT agrees that this option will not result in incremental costs to CPs.

Question A5.6: Do you agree with this proposal in the light of the NPV estimate? Please provide an explanation and evidence to support your response

If Cancel Other is to be retained BT agrees with this proposal as effective enforcement action by the regulator would not be possible without adequate records and audit trail for evidence.

Question A5.7: Do you agree that orders are an appropriate proxy for sales? Please provide an explanation and evidence to support your response

Yes BT agrees that orders are a reasonable proxy for sales.

Question A5.8: Do you agree with our assumption that volume of sales is a key driver of costs? If not, please provide an explanation and evidence to support your response.

BT does not believe volume of sales alone is a key driver of costs as a more relevant driver of on-going cost is the volume and length of potential sales contacts made by consumers. CPs will need to have systems in place to record and monitor all customer contacts irrespective of whether they result in a sale being made or not as it is not possible to pre determine which calls result in actual sales.

The upfront costs for system requirements for call recording and storing are likely to be more fixed in nature with step changes at volume levels that require capacity changes. Therefore changes in volumes between these step changes will not necessarily affect the costs.

Question A5.9: Do you agree that it is reasonable to use a 5-year time period for our NPV analysis? Please provide an explanation and evidence to support your response

BT does not believe a 5-year time period for Ofcom's NPV analysis is reasonable. Given the high levels of uncertainty in Ofcom's costs and benefit estimates, a much shorter period for the NPV analysis should be considered. Additional investment may also be required in the future if the proposed changes are not having the desired effects on mis-selling volumes and further policy changes are imposed on industry.

Question A5.10: Do you consider that costs attributed to changing sales scripts are likely to be one-off in nature? Please provide an explanation and evidence to support your response.

Yes BT considers sales scripts changes to be one-off in nature.

Question A5.11: Do you consider that the options to clarify and simplify the existing regulations and to provide information at the point of sales would each reduce levels of mis-selling by around 1 percent per annum? Please provide an explanation and evidence to support any alternative assumptions

Ofcom provides no basis for the assumption of a 1% per annum reduction in mis-selling levels. BT believes it is impossible to predict with any certainty the impact of these proposals on mis-selling volumes however for reasons highlighted in responses to A5.1 to A5.3 above we believe any impacts of Ofcom's proposals will be negligible and indeed could have a detrimental impact on consumers due to the confusion the proposals may cause.

Question A5.12: Do you consider that the options on call recording for telesales and Cancel Other could reduce mis-selling and Cancel Other requests by 30% in Year 1 and by 50% in Year 2? Please provide an explanation and evidence to support any alternative assumptions

BT does not believe the options on call recording for telesales and Cancel Other requests will reduce mis-selling and Cancel Other requests by 30% in year 1 and by 50% in year 2. Ofcom relies on past experience of effects on mis-selling volumes post the introduction of rules related to mis-selling in May 2005 to support this assumption. However, in BT's view the mere introduction of these rules had very little effect on the levels of mis-selling. It was only when Ofcom took investigative action against CPs at a later stage that the levels of mis-selling volumes began to decline in any significant way.

Simply requiring CPs to record calls is unlikely to have a significant effect on mis-selling volumes. As highlighted, in section 1, in BT's opinion with the increasing volume of smaller competitors involved in mis-selling Ofcom would need to investigate a very large number of competitors, at huge cost to both the regulator and industry to achieve the projected volume reductions.

Question A5.13: Do you agree that it is reasonable to assume that adding such a sales prompt would increase the call length by an additional 20 seconds? Please provide an explanation and evidence to support your response

As noted in our response to question A5.3 BT does not believe it is reasonable to assume the increase in call length for the additional sales prompt is likely to be 20 seconds. In reality this extra information is likely to raise additional queries from customers and the increase in call length required would be significantly greater than 20 seconds.

Question A5.14: Do you feel these assumptions are appropriate? If not, please provide an explanation and evidence to support any alternative assumptions.

As stated in our response to A5.8 BT believes the more relevant driver of call recordings are costs associated with recording all calls relating to potential sales to customers and not just the costs associated with calls resulting in orders being placed. It is not clear to BT if other CPs factored this into their responses regarding costings for call recordings, if they have not then their costs would be much higher.

In BT's opinion Ofcom's extrapolation of costs for the CPs who did not provide a response and the rest of industry is grossly under estimated. BT's estimated costs alone would be c.£[redacted] one off and c.£[redacted] per annum ongoing which are in excess of Ofcom's estimate for the entire industry. As a minimum, Ofcom should add these costs to its analysis.

BT believes the cost involved of implementing a 100% (based on best endeavours and never less than 90%) call recording requirement is an undue financial burden and is disproportionate for the larger CPs who not only will have a greater volume of calls to record and store but need more sophisticated systems if the calls are taken across a number of sites. There is a significant cost invested in call recordings in order to aide investigative work to prove mis-selling and mis-cancellation after the event. BT believes that this money would be better spent on supporting a new migrations process which stops the mis-selling in the first place and therefore does not enable mis-cancellations to occur. This type of process would also reduce the administration costs of Ofcom as it would limit the type of breaches they would need to investigate.

Due to the significant investment required we suggest Ofcom should seriously consider using a valid statistical sample for the CPs who place a large volume of orders (e.g. over 6k a month). By requesting a random sample, Ofcom would be able to determine whether mis-selling was an endemic problem or just an isolated incident.

Question A5.15: Do you agree that these other indirect costs are not significant? If not, please provide an explanation and evidence to support your response

BT agrees that other indirect costs are likely to be small.

Question A5.16: Do you consider that one-off incremental costs per sale of £4.4 and ongoing incremental costs per sale of £0.6 are reasonable assumptions for the rest of the industry? Please provide an explanation and evidence to support any alternative assumptions.

BT does not believe these are reasonable assumptions. Please refer to BT's response to question A5.14 for further detail.

Question A5.17: Do you agree that this option will not result in incremental costs to CPs? If not, please provide an explanation and evidence to support your response

BT agrees that this option will not result in incremental costs for BT. We cannot comment on other CPs costs.

Question A5.18: Do you consider that these estimates are reasonable? If not, please provide an explanation and evidence to support your response.

BT does not believe Ofcom's estimates are reasonable. As already highlighted in our response, BT believes Ofcom's NPV calculations are subject to significant estimation errors. This is further demonstrated by Ofcom's own estimates indicating a wide range of possible results. If the significantly higher implementation costs for CPs, increased Ofcom enforcement costs and different plausible assumptions on benefits achieved were to be reflected in Ofcom's NPV analysis the results would indicate a net cost and thus not support Ofcom's preferred proposals.

Given the significant amount of investment required to implement and enforce Ofcom's preferred proposals and the lack of certainty of any material impacts on mis-selling volumes BT would strongly urge Ofcom to consider moving away from sinking additional money into a flawed process as the money would be better spent on a new migrations process which prevents slamming incidents in the first place and provides protection for all customers.

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