



Broadband migrations: enabling consumer choice

This document includes a consultation on a
notification of a proposed new General Condition on
Service Migrations for broadband services

Consultation

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Contents

Section		Page
1	Summary	1
2	Background	5
3	Broadband migrations: current processes	10
4	Broadband migrations: evidence of consumer harm	19
5	Proposals for further regulation	31
Annex		Page
1	Responding to this consultation	44
2	Ofcom's consultation principles	46
3	Consultation response cover sheet	47
4	Consultation questions	49
5	Impact assessment	50
6	Broadband Service Provider Migration Code of Practice	56
7	Notification	61
8	Comparison of voluntary Code of Practice requirements with proposed General Condition 22 obligations	70
9	Glossary	79

Section 1

Summary

The UK Broadband market

- 1.1 Broadband has had a profound effect on the way that many people live their lives in the UK today. The ways in which we communicate and the ways we access information and entertainment services have been transformed by ‘always-on’ connections to the internet. The availability of increasingly low-cost, high-speed broadband has been a particular spur to mass market takeup of online services. Today over 10 million UK households subscribe to broadband services, and this number continues to grow at a rapid pace.
- 1.2 New regulatory and industry initiatives – for example, the unbundling of the local loop – have created a competitive market in broadband, resulting in the availability of cheaper, better and faster services. However, if consumers are to continue to see the benefits of competition, they must be able to shop around – and, once they have found a good deal, to switch broadband providers without undue effort, disruption or anxiety.
- 1.3 Where consumers don’t have access to processes that let them switch easily, they may suffer inconvenience and distress. If consumers start to think that switching providers carries this kind of risk, the competitive process can be dampened in a way that means all consumers will suffer. Competition is only effective where customers can punish “bad” providers by taking their custom elsewhere, and reward “good” providers by staying where they are. If switching is difficult, competition may, over time, fail to ensure that consumers receive the benefits they should be able to expect.

Broadband migrations

- 1.4 Ofcom therefore considers that it is vital to support consumers’ ability to switch or “migrate” between products and providers – so that customers can consider available options and change broadband service or provider when they want to.
- 1.5 The vast majority of broadband service changes go through seamlessly and with relatively little effort from the customer.
- 1.6 However, Ofcom has seen evidence of increasing numbers of consumers who are finding it difficult to switch between broadband suppliers or to move home without experiencing problems. Customers can find that their broadband service is unavailable for as long as several weeks – and it can take considerable effort on their part to get reconnected.
- 1.7 Over the last year, many thousands of customers have contacted Ofcom to complain about problems related to broadband migration. The distress caused to affected customers can be substantial, and deserves urgent investigation and action.
- 1.8 Increasing numbers of customers have recently decided to subscribe to broadband services for the first time and many are now reaching the end of their initial contract period. With the ever increasing range of new packages and better deals, this means that more and more customers will want to be able to switch provider if they find a better deal. This, in turn, points to a risk that more and more customers may face

difficulty when seeking to change broadband suppliers. Broadband customers may even decide not to switch rather than risk disruption to their service.

Ofcom Broadband Migration Review

- 1.9 Given these issues Ofcom launched the Broadband Migrations Review (“BMR”) in April to understand the situation further and consider whether action could be taken.
- 1.10 At present, most customers who want to switch broadband providers without any downtime need to contact their existing provider to obtain a Migration Authorisation Code (“MAC”) – a unique code that the customer then gives to his new provider, allowing the service to be transferred seamlessly and with little or no disruption.
- 1.11 Without a MAC, the customer has to cancel his existing service and wait several days before he can place an order with a new broadband provider. There will then be a further delay until the new supplier is able to provide a service – meaning customers might face several weeks without a broadband connection.
- 1.12 The MAC process was introduced as part of a self-regulatory initiative, and compliance is voluntary. At present, if a supplier chooses not to sign up to the Code of Practice regulating MACs, or does not fully comply with this Code of Practice, then its customers may face difficulties in transferring to another provider or product.
- 1.13 Ofcom has found evidence of a significant number of customers facing disruption because they have had difficulty obtaining a MAC from their existing supplier. However, the voluntary nature of the MAC process has meant that broadband providers that make it difficult for customers to obtain MACs are unlikely to be in breach of any formal obligations. As a result, Ofcom has, until now, been largely powerless to act.
- 1.14 Problems also arise where a broadband supplier fails to provide its customers with a working broadband service, but then does not respond to customers’ requests for MACs. A particularly acute example of the difficulties that consumers can face when they are unable to get MACs was the recent withdrawal of broadband provider E7even from the consumer market. Two of E7even’s wholesale suppliers, Tiscali and Netservices, were unwilling to release E7even’s customers once E7even had terminated their contracts. They instead gave customers a choice: to move to a specific broadband provider to resume service quickly – by signing up to a 12-month contract costing £19.99 per month which was higher than a number of alternative providers – or in all likelihood to have no broadband service for several weeks.
- 1.15 In this case, Ofcom made it clear to both Tiscali and Netservices that it did not consider it appropriate for wholesale providers to restrict customers’ choice of a new supplier. However, these wholesale providers did not change their course of action, and Ofcom was unable to take formal action to remedy the situation due to the voluntary nature of the MAC process.
- 1.16 Problems with underlying processes have also led to customers facing the risk of loss of service when they want to sign up to a new broadband product, switch broadband suppliers, or are moving home.
- 1.17 The most significant of these problems is “tag on line”. Here, a customer tries to order broadband, but is told by his chosen supplier that he cannot have service because there is a “tag” or “marker” on the line – which may mean that another supplier is already providing service on that line. The customer may have recently

moved home, or may have recently ceased service with a different broadband provider – or may have done neither of these things.

- 1.18 At the beginning of this year, Ofcom's contact centre was receiving over 1,000 calls every week from customers who could not get broadband because of tag on line, and could find no one to turn to help them correct this problem. Following requests by Ofcom to address the problem, BT Wholesale has now established a dedicated helpdesk that is helping customers and their broadband providers get broadband where they are affected by tags.
- 1.19 While longer term work to address the causes of the problem is now underway, Ofcom considers that providers were slow to react to Ofcom's calls to address the problem when it first started to emerge. Despite the serious problems that tag on line was causing consumers, there was no specific obligation on broadband providers that would have required them to take action. Ofcom considers that this may point to a risk that future technical process problems could cause harm to consumers, and that where this happens action may not be taken quickly enough to address the situation.
- 1.20 We are also starting to see further process problems that may cause harm to consumers, and we cannot be confident that action will be taken quickly enough to address these. For example, migration processes for customers on unbundled local loops have not reliably allowed customers to switch suppliers without disruption.

Proposed action

- 1.21 Overall, we are seeing a hugely successful and exciting market for broadband services in which value is being delivered to customers in the form of high-speed services at low prices.
- 1.22 However, a small but significant number of customers are facing severe difficulty with broadband migrations – for example when they want to change supplier or move house – and market developments suggest that this problem may get worse rather than better.
- 1.23 Where problems have emerged, Ofcom has up to now had insufficient powers to encourage or compel providers to address the causes of the customer disruption.
- 1.24 As a result, Ofcom is now proposing to introduce new regulation, in the form of a new General Condition, which will require broadband providers to make sure that customers can obtain broadband service and switch suppliers with minimal disruption.
- 1.25 Ofcom's proposed new regulation would have two parts. First, a series of high-level principles would oblige broadband providers to:
 - facilitate consumer requests for broadband migrations in a manner that is fair and reasonable;
 - ensure that all broadband migrations are carried out within a reasonable period; and
 - ensure that all broadband migrations are carried out with minimal loss of service for the customer.

- 1.26 The proposed new regulation will also require broadband service providers to provide MACs to customers on request and to comply with a specific process for doing so.
- 1.27 Where a broadband service provider is unable or unwilling to provide MACs to its customers, the wholesale broadband providers involved will need to meet their own obligation to facilitate migration requests.
- 1.28 In addition, Ofcom is asking the industry to design a new process to allow customers to obtain a MAC from someone other than their existing broadband provider. Ofcom intends to consult again in six months on proposals to make such a process mandatory.
- 1.29 The new regulation would address each of the three problems identified above. It would require broadband providers to issue MACs to enable customers to switch without disruption. It would require wholesale providers, as well as broadband service providers, to facilitate migrations – helping to address customers’ problems where a broadband service provider refuses or fails to issue MACs, and requiring the whole industry to address any technical systems or process issues which are preventing customers from choosing providers and taking up service without undue effort or disruption.
- 1.30 The consultation period for these proposals is seven weeks. Ofcom’s consultation guidelines¹ permit a shorter consultation period for comments shorter than the usual 10 weeks on urgent issues such as this. The deadline for responses is **5 October 2006**.

¹ *How will Ofcom consult? A guide to our consultation process.*

Section 2

Background

Migrations, switching and mis-selling

- 2.1 In order to benefit from competition and innovation, consumers must be able to move easily between service providers and between products, and must be adequately protected from dishonest sales and marketing behaviour by Communications Providers.
- 2.2 On 16 February 2006 Ofcom published the consultation document *Migrations, switching and mis-selling* (the “Migrations Consultation”)². The Migrations Consultation reviewed current approaches to migrations, switching and mis-selling across transferable voice and broadband products.
- 2.3 Ofcom’s view is that there should be no artificial obstacles in the way of customers who choose to move between service providers and products (although customers need to be aware of the implications of switching on any contractual obligations they may be under). The underlying processes for switching should therefore be swift and efficient, and enable customers to move from one provider or product to another smoothly, ideally with no service interruptions or problems arising from the underlying migrations process.
- 2.4 The primary focus of the Migrations Consultation was on the processes that enable customers to switch between service providers and products. Over time, the industry has developed different processes for different products, which means that the customer experience of switching varies depending on the products involved.
- 2.5 Ofcom’s initial view, as set out in the Migrations Consultation, was that there may be good reasons for moving towards a single switching process applying to all transferable voice and broadband products. The Migrations Consultation therefore invited respondents’ views on three possible forms of the single process, including a process based on the Migrations Authorisation Code (“MAC”) process³ that the industry has developed for broadband migrations.
- 2.6 Ofcom is currently considering responses to the Migrations Consultation, which closed on 28 April 2006, and intends to carry out a further consultation later this year setting out its thinking in more detail. In advance of this, Ofcom is engaged with an industry inter-product transfers working group looking at some of the policy and practical issues raised in the Migrations Consultation associated with current and future harmonised migration processes in more detail. The outputs of this group will feed into Ofcom’s further consultation.

² *Migrations, switching and mis-selling*, published at:
<http://www.ofcom.org.uk/consult/condocs/migrations/migrations.pdf>.

³ The MAC process is a process that enables customers to switch easily between broadband providers with minimal disruption to their service. A MAC is a unique code that the customer obtains from his existing provider and gives to his new provider to arrange a migration. The MAC process was developed by the industry and is currently set out in a voluntary code of practice which is already followed by the majority of broadband SPs. Details of the MAC process are set out from paragraph 3.12 below.

Broadband moves and consumer harm

- 2.7 Over the past year, Ofcom has seen an increase in the number of consumers contacting the Ofcom Contact Centre (“OCC”) about issues related to migration between broadband services. Some of the key issues identified by the OCC are discussed in the following paragraphs.
- 2.8 The biggest source of OCC cases related to broadband migrations (see Section 4) is the MAC process. Although tag on line attracted far more complaints overall, it does not always relate to switching.
- 2.9 The most frequent complaint about the MAC process is that a broadband service provider has failed or refused (for various reasons, including refusal to issue because the customer is still in contract, or because the customer owes it money) to issue a MAC at the customer’s request. While it is less common for customers to experience problems *after* a MAC has been issued, the process does appear to result in harm to customers in some cases, for example where they find, on trying to use the MAC that it is not valid. Problems with the MAC process are discussed in more detail at paragraphs 3.19-3.25 and 4.47-4.62 below.
- 2.10 As the market has changed, problems relating specifically to migrations involving connections based on shared or full unbundled local loops have started to appear as a distinct category. Particular customers appear to be facing difficulty because of the underlying technology used to deliver the service, which would otherwise be invisible (and irrelevant) to the customer. A typical example is difficulty migrating away from LLU⁴, when the customer’s broadband service provider tells him that it cannot issue a MAC. Problems with LLU migrations are discussed in more detailed at paragraphs 3.40-3.42 below.
- 2.11 Because the current MAC process is voluntary, the customer relies on the goodwill of his broadband service provider to be able to migrate. While the majority of broadband connections (over 80%) are provided by broadband service providers that are signatories to the voluntary code of practice that includes the MAC process (see paragraph 3.9 below), this does not, judging by consumer complaints to Ofcom (see paragraph 4.21 below) guarantee compliance, and where the broadband service provider is not a signatory the customer cannot rely on the MAC process at all. Since there is no relevant obligation on broadband service providers to comply, Ofcom has no power to investigate alleged failures to comply or to take action where it finds a breach, whether or not the broadband service provider concerned is a signatory to the code.
- 2.12 In addition, the current voluntary code applies only to broadband service providers that supply end customers directly – it does not set any expectations for what is required of wholesale broadband providers, which means that the only place a customer can obtain a MAC is from their current broadband service provider. This can lead to difficulties where the customer’s broadband service provider fails, or refuses, to issue MACs. A particularly acute example of this is the case of broadband provider E7even discussed in Section 4.

⁴ In this document the term “LLU” (Local Loop Unbundling) is used to refer collectively to connections based on SMPF (Shared Metallic Path Facility) and MPF (Metallic Path Facility), which are both wholesale products based on LLU provided by Openreach. Local Loop Unbundling is a process by which a dominant provider’s local loops are physically disconnected from its network and connected to a competing provider’s networks. This enables Communications Providers other than the incumbent to use the local loop to provide services including broadband to end users.

- 2.13 The broadband issue that has generated most customer concern over the last year is “tag on line”. This term is used by Ofcom and the industry to describe a situation where a consumer cannot order broadband because there is (or appears to be) an incompatible product on his line. The underlying cause may be that there is another broadband service provider already providing broadband on that line, or that there is an incompatible product on the line such as ISDN⁵. People moving house seem to be particularly afflicted, although it can also affect customers who want to switch broadband service providers but have not used the MAC process, and even customers ordering broadband for the first time from a new broadband service provider. Tag on line is strongly related to problems with broadband migrations as both seem to have their source in the underlying processes.
- 2.14 Tag on line became a significant issue for Ofcom in early 2005. The number of consumers contacting OCC about tag on line rose steadily over the course of last year and, by November 2005, represented the most significant issue that OCC was dealing with by call volume. Tag on line is considered in more detail at paragraphs 4.32-4.46 below.

The Broadband Migrations Review

- 2.15 Evidence of consumer harm led Ofcom to consider whether additional regulation is needed to protect consumers who want to switch between broadband service providers or move house and remain with the same broadband service provider (and in some cases, customers ordering broadband for the first time from a new broadband service provider).
- 2.16 As set out above, Ofcom is currently considering possible future changes to migrations processes in its Migrations Consultation. However, the Migrations Consultation is a medium to long term project, and any resulting changes to current migrations processes will not be implemented for some time. In the Migrations Consultation, Ofcom noted that there were hundreds of migration processes for switching between various products, but that it made sense to identify the most important ones, and focus on these first⁶.
- 2.17 In response to large numbers of consumer complaints about broadband migrations issues (see Section 4), Ofcom decided there was a more immediate need to look at current broadband migrations processes (including processes for home moves) with the aim of addressing potential sources of consumer harm in the short term.
- 2.18 In April 2006 Ofcom initiated a new project called the Broadband Migrations Review (“BMR”) to assess the effectiveness of industry-wide processes for customers signing up to, and switching between, broadband service providers⁷.
- 2.19 Ofcom explained that this new project would build on work already underway to assess current migration processes (i.e. the Migrations Consultation), and would consider whether those existing processes are sufficient to meet the future needs of consumers and industry.

⁵ Integrated Services Digital Network: a network evolved from the digital PSTN which provides digital exchange lines to customers and end to end digital connectivity between them.

⁶ *Migrations, switching and mis-selling*, paragraph 1.40.

⁷ http://www.ofcom.org.uk/media/news/2006/04/nr_20060413.

- 2.20 This consultation document sets out the findings of the BMR and recommends changes to the current regulatory framework aimed at ensuring that consumers are adequately protected during all broadband migrations scenarios.
- 2.21 In this document the term “broadband migrations” is used to mean the wider set of processes underlying different types of broadband moves, including ordering broadband for the first time from a new broadband service provider, switching between broadband service providers, switching between broadband products (for example, changing speeds or download allowances) and moving home.

Further work

- 2.22 The BMR has looked only at broadband provided over BT copper loops using DSL technology, i.e. broadband connections based on wholesale products provided by BT Wholesale (IPStream⁸ and DataStream⁹) and Openreach (LLU).
- 2.23 Cable broadband is provided over a different infrastructure, so migrations between cable and DSL broadband require a change of physical access connection. Processes for managing the transfer between the two networks are not within the scope of this relatively short-term exercise. Ofcom is separately considering what approach (if any) it should take in this area. Nor does this consultation consider broadband provided using emerging technologies such as wireless, where the underlying networks are, again, physically distinct from the copper loops over which DSL is provided.
- 2.24 The BMR has also not specifically considered migration processes for complex migrations, by which we mean simultaneous migration of a bundle of products, including, for example, WLR (wholesale line rental) and IPStream/DataStream broadband to full LLU. Complex migrations and bundling are being taken forward as part of the Migrations Consultation work.

Consumer harm arising from current broadband migration processes

- 2.25 This consultation focuses particularly on the following apparent and potential sources of consumer harm related to DSL broadband migrations:
- **the MAC process:** problems arising from failure to sign up to and/or to comply with the current voluntary code of practice (see paragraphs 3.19-3.25 below);
 - **third party provision of MACs:** difficulties arising from the fact that the only source of MACs is currently the customer’s broadband service provider (see paragraphs 4.47-4.62 below);
 - **tag on line** (see paragraphs 4.32-4.46 below);
 - **home movers:** problems, notably tag on line, that particularly affect customers moving home (see paragraphs 3.43-3.50 below);

⁸ IPStream is an intermediate broadband service sold by BT Wholesale to retail broadband services providers to sell on to consumers.

⁹ DataStream is a wholesale interconnection product offered by BT Wholesale to operators allowing them to utilise more of their own networks and compete with it in the provision of intermediate services such as IPStream.

- **LLU migrations:** difficulties specific to migrations paths involving one or more connections based on LLU (see paragraphs 3.40-3.42 below); and
- **potential problems emerging in the future** that cause anxiety or disruption to customer wishing to migrate broadband services.

Outline of this document

- 2.26 Our first step was to assess whether consumers are adequately protected, by looking at current processes for broadband migrations and considering whether there is any evidence that those processes (or weaknesses in those processes) are a source of consumer harm. As part of this exercise, we spoke to a number of broadband service providers about their experiences with migrations processes, and spoke to BT Wholesale about underlying process issues, particularly tag on line. We also commissioned an independent review of OCC complaints data. Ofcom's assessment of current processes and evidence of consumer harm is set out in Sections 3 and 4.
- 2.27 We then considered whether additional targeted regulation would be appropriate to resolve any of the problems we had identified, and if so what form such regulation should take. Our proposals for further regulation are set out at Section 5. An impact assessment of each of the different options is included at Annex 5.
- 2.28 Ofcom welcomes comments on its proposals by 5pm on 5 October 2006. The process for responding is set out at Annex 1.

Section 3

Broadband migrations: current processes

Introduction

- 3.1 Ofcom's view is that there should be no artificial obstacles in the way of customers who choose to move between service providers and products.
- 3.2 This does not mean that switching is necessarily costless for the customer. For example, consumers need to be aware of the implications of switching on any contractual obligations they may be under, as the availability of processes that enable customers to switch to another voice or broadband service provider does not affect the agreement that the customer has entered into with his current service provider. Switching processes also need to strike a balance between ease of switching and consumer protection against slamming and mis-selling¹⁰.
- 3.3 However, underlying processes for switching must be swift and efficient, and must enable customers to move from one provider or product to another smoothly, ideally with no interruptions or problems arising from the underlying migrations process.
- 3.4 This section briefly considers the current regulatory framework, then goes on to discuss the current processes that apply to different types of broadband migrations: the MAC process, processes for migrations involving connections based on LLU, and home moves.

The regulatory framework

- 3.5 Broadband service providers are not currently subject to any regulation specifically relating to broadband migrations, although they are required to comply with general provisions under relevant legislation including the Communications Act 2003, Enterprise Act 2002 and Competition Act 1998. Consumer contracts for broadband services may be reviewed in light of the Unfair Terms in Consumer Contracts Regulations 1999, but again, these regulations are not concerned with the ability to switch from one contract to another.

Current processes

- 3.6 The different broadband migrations scenarios that Ofcom has considered as part of this project¹¹, are where:
- a customer is ordering broadband for the first time from a new broadband service provider;
 - a broadband service provider is changing the underlying wholesale product it uses to supply broadband services to its retail customers, for example where it is migrating its customer base from a BT Wholesale product (IPStream or DataStream) onto LLU products supplied by Openreach;

¹⁰ See also *Migrations, switching and mis-selling*, paragraph 2.3.

¹¹ As noted at paragraphs 2.23-2.24 above, the scope of the project is limited to DSL services provided over BT copper loops.

- a customer is changing from one broadband service to a different broadband service with the same supplier, for example an upgrade to a service with a higher speed or larger download limits;
- a customer is switching from one broadband service provider to another (which may in some cases be because his existing broadband service provider has ceased to provide him with service);
- a customer is moving house and wants to take his broadband with him, so that his current broadband service provider continues to supply him with broadband at the new location.

3.7 The industry has developed underlying processes for some, but not all, of the above scenarios. The customer experience of switching – and the problems customers may experience – will depend on the products and broadband service providers involved. Problems seem to result both from a lack of established and robust processes for some of the above scenarios, and from failure to use processes where they exist.

Self regulation: the MAC process and code of practice

- 3.8 The MAC process, which is used for the majority of customer switches between IPStream and DataStream-based broadband connections, enables customers to move seamlessly from one broadband service provider to another without losing service.
- 3.9 The MAC process is incorporated within a voluntary code of practice, the Broadband Service Provider Migration Code of Practice, which was developed and implemented by the industry. The voluntary code applies to all broadband services provided over BT's copper loops and aims to ensure that broadband migrations are carried out in a way that offers a good experience for customers and is fair and reasonable for broadband service providers. The voluntary code is published on Ofcom's website together with a list of current signatories¹² and is reproduced at Annex 6 of this document.
- 3.10 Ofcom noted in the Migrations Consultation¹³ that while the MAC process has its advantages – notably, it offers protection against slamming¹⁴ – it also suffers from a number of weaknesses. First, the process depends on the participation of both the losing broadband service provider (the customer's current broadband service provider) and the gaining broadband service provider (the broadband service provider the customer wants to move to). Since it is currently voluntary, the MAC process is not therefore available to all broadband customers. Second, the process requires a high degree of interaction from the customer, and levels of switching may therefore be impacted by customer inertia. Finally, the process introduces a potential opportunity for "save" activity¹⁵ by the losing broadband service provider. Ofcom notes that General Condition 1.2 (which in effect prohibits save activity in some other contexts) does not appear to prohibit a losing broadband service provider from using

¹² http://www.ofcom.org.uk/advice/codes/bbm_cop/.

¹³ See *Migrations, switching and mis-selling*, section beginning at paragraph 4.14.

¹⁴ "Slamming" is a form of mis-selling where a customer is simply switched to another company without his express knowledge or consent.

¹⁵ "Save activity" is marketing activity which is undertaken by the losing provider during the switchover period in an attempt to persuade the customer not to switch to a new provider.

MAC requests as an opportunity to attempt to dissuade customers from switching¹⁶. Further, Ofcom acknowledges that save activity may not always be a negative feature in competition terms, although it recognises that such activity may sometimes raise regulatory concerns, for example, if customers are inappropriately discouraged from switching.

- 3.11 The proposals set out in this consultation are designed to address these weaknesses by requiring compliance with the MAC process by all broadband providers. This will improve the customer experience by ensuring a more consistent approach to migrations and, over time, should reduce the extent of customer interaction with losing and gaining broadband service providers. As noted earlier, Ofcom is continuing to look at the design of the migration process and further enhancements will be addressed as part of the longer term work developed in the Migrations Consultation.

How does the MAC process work?

- 3.12 A MAC is a unique code, identifying a particular broadband line, and consisting of four letters that identify the underlying service (BBIP or FTIP for IPStream, BBDS for DataStream) followed by between seven and nine numbers, a slash, and five alphanumeric characters (e.g. BBIP1234567/1F6HT). Connections based on LLU use an LLU MAC, which consists of four initial letters (LLUS), followed by six digits followed by four further digits showing the expiry date (i.e. LLUS123456ddmm).
- 3.13 A MAC is generated by BT Wholesale's systems (except LLU MACs which are generated by Openreach). If it is not used, a MAC expires 30 days after it is issued. If a consumer makes a further request for a MAC during the 30-day validity period (e.g. because he has forgotten the code that his broadband service provider gave him), the broadband service provider will give him the same MAC again – it will not generate a new MAC while there is still a valid unused MAC for that line. Once a MAC is expired BT Wholesale's systems will not accept it.
- 3.14 The MAC process (for migrations between IPStream and DataStream connections) works as follows:
- The customer contacts his chosen new service provider – the gaining service provider ("GSP") – and asks to switch. The GSP explains that the customer needs to contact his existing provider to get a MAC (this is not an integral part of the process, but the GSP is likely to be where the customer first hears about the MAC process – many broadband service providers have information on their websites explaining how customers can join them).

¹⁶ General Condition 1.2 (Information Obtained During Negotiations for Network Access), provides as follows: "Where the Communications Provider acquires information from another Communications Provider before, during or after the process of negotiating Network Access and where such information is acquired in confidence, in connection with and solely for the purpose of such negotiations or arrangements, the Communications Provider shall use that information solely for the purpose for which it was supplied and respect at all times the confidentiality of information transmitted or stored. Such information shall not be passed on to any other party (in particular other departments, subsidiaries or partners) for whom such information could provide a competitive advantage." Accordingly, General Condition 1.2 is concerned specifically with information obtained by one Communications Provider from another Communications Provider, and is not concerned with information which a Communications Provider obtains from its own end-user customers.

- The customer contacts his current broadband service provider – the losing service provider (“LSP”). If the LSP is a signatory to the voluntary code of practice, it will give the customer a MAC in the majority of cases¹⁷.
 - The LSP obtains the MAC from BT Wholesale’s systems in real time and may give the customer the MAC over the phone and/or by e-mail (or by letter).
 - The customer gives the MAC code to the GSP and tells the GSP when he wants the switch to happen (with a minimum of five working days’ lead time).
 - The GSP checks the system to validate the MAC i.e. to confirm that it was issued to that customer, for that particular line.
 - Once the MAC is validated, the GSP puts it into the system and the migration process starts.
 - The precise time that the migration takes will depend on the combination of services being migrated. The standard lead time is five working days.
 - The migration will take place on the date specified by the customer, which can be longer than the five working days, but not less. The connection may be unavailable for a short time, but downtime is minimal and the average user is unlikely to notice it.
- 3.15 The above description of the process assumes that the migration is between two broadband service providers who buy wholesale broadband services direct from BT Wholesale. This is not always the case – BT Wholesale’s customers may act as wholesale broadband providers to resellers further down the chain who supply end customers directly. Where this is the case, the wholesale broadband provider will make its own arrangements with its resellers for obtaining MACs from BT Wholesale and providing them to end customers. The potential for a chain of resellers is acknowledged within the current voluntary code, which states that the obligations attaching to a LSP or GSP should apply collectively to parties as appropriate if there are more than two parties involved in the service supply chain.
- 3.16 The voluntary code of practice states that the LSP may not refuse to issue a MAC on the grounds that the customer is still in contract or owes it money (a practice known as “debt blocking”). The LSP must make alternative provisions for recovering its costs and/or money owed to it by the customer.
- 3.17 At the time of writing there were 42 signatories to the voluntary code. Broadband connections provided by signatories to the code account for over 80% of total IPStream and DataStream broadband connections. A number of signatories have also started to provide services based on LLU. The voluntary code is therefore already widely accepted – although far from universal.
- 3.18 Where the MAC process is not available (for example because one of the broadband service providers involved is not using it), the alternative process is for customers to terminate their existing connection and order a new one. This is known as “cease and reprovide”. A cease order takes around five working days to complete, and the customer cannot place a new order while a cease order is still in progress. Broadband service providers typically advise their customers to allow around 10

¹⁷ Key exceptions are where the customer is unable to demonstrate that he is in fact the account holder, and where the LSP has already submitted an order to BT Wholesale to cease that line.

working days for a new connection to go live. This means that “cease and reprovide” can involve several weeks of downtime for the customer.

Problems with the MAC process

- 3.19 Our discussions with broadband service providers suggest that the MAC process is generally positively viewed by broadband service providers, and that, along with the voluntary code of practice, it is a good example of successful self-regulation that was well suited to the requirements of the broadband sector.
- 3.20 This view was borne out by responses received from three broadband service providers in relation to the Migrations Consultation¹⁸. The majority of responses, however, were not supportive of the current MAC process, and argued that the process acted as a barrier to easy customer switching since it relied on the (voluntary) involvement of the LSP. In particular, of the 14 consumers who responded, 12 complained about the MAC process and the difficulty switching between providers. Antelope Consulting, Citizens Advice and Ofcom’s Consumer Panel were also not supportive of the MAC process. This view was shared by six industry members who argued that the process was flawed because of the lack of adequate incentives on LSPs to support the process. Two industry members argued that the process offered some benefits but that it should be made compulsory so that it is enforceable by Ofcom.
- 3.21 In our discussions, a number of broadband service providers felt that the requirement not to refuse to issue a MAC to a customer in debt was a difficult issue, but generally accepted that other avenues are available to broadband service providers to manage bad debt.
- 3.22 A similar story emerges when looking at complaints about broadband migrations. As illustrated at paragraphs 4.20-4.25 below, the MAC process accounts for the majority of complaints about broadband migrations. The following paragraphs set out what Ofcom considers to be the weaknesses of the current arrangement.
- 3.23 The MAC process and accompanying code of practice are voluntary. This means that Ofcom has no power to compel broadband service providers to follow the process, or to investigate alleged failure by signatories to comply with some or all of the provisions of the code.
- 3.24 As a result, consumers may experience problems, including loss of service, where one or both of the broadband service providers involved is not using the MAC process (because they are not signatories to the code, or because they have signed but are not complying with it). Although the majority of connections are currently provided by signatories to the code, of the cases we looked at (see paragraph 4.21 below), over 50% were about broadband service providers who were signatories to the code at the time the consumer contacted OCC.
- 3.25 The fact that the current voluntary code applies only to broadband service providers that supply end customers directly – it does not set any expectations for what is required of wholesale broadband providers – led to further difficulties in the case of broadband provider E7even.
- 3.26 While the voluntary code of practice extends to connections provided using LLU, the MAC process, as it applies to shared LLU connections, is not currently widely used

18 <http://www.ofcom.org.uk/consult/condocs/migrations/responses/>.

(see paragraph 3.32 below). Processes are not currently available for all migrations paths to and from LLU-based connections (see paragraph 3.42 below).

LLU migrations

- 3.27 The industry, including Openreach and the Office of the Telecommunications Adjudicator¹⁹ has undertaken considerable work to put processes in place to manage transfers (in both directions) between BT Wholesale products and Openreach products.
- 3.28 The industry has successfully implemented a number of processes which have been used for large numbers of transfers (350,000 to date). However, automated processes are not yet available for all migration paths.
- 3.29 The following paragraphs describe different migration paths involving one or more LLU connections.

Service Provider-initiated migrations to LLU from IPStream or DataStream

- 3.30 Processes are available for service providers migrating their customers from wholesale products provided by BT Wholesale (IPStream and DataStream) to LLU, either as “singleton migrations”, where the migration is performed on a per-line basis, or “bulk migrations” where a number of connections are migrated simultaneously. However, further work is needed to ensure those processes do not inadvertently lead to customer harm.

To shared LLU from IPStream or DataStream (customer-initiated)

- 3.31 Where a customer wants to transfer from a broadband service provider offering service based on IPStream or DataStream to another broadband service provider using shared LLU, he can obtain a MAC in the usual way from the LSP and present it to the GSP. The GSP will then use that MAC to effect the migration. The difference between this type of migration and an IPStream/DataStream MAC based migration is that in this case the GSP is using a different system, and the migration order goes via Openreach rather than directly to BT Wholesale.

From shared LLU to IPStream or DataStream (customer-initiated)

- 3.32 For transfers from shared LLU to IPStream or DataStream²⁰, broadband service providers have, since November 2005, been able to join a pilot for using a tactical variant of the MAC process, whereby the customer is issued with an LLU MAC (see paragraph 3.12 above), which he can then present to his chosen GSP.
- 3.33 However, MACs have not been widely used for transfers involving shared LLU. Broadband service providers told us that this is because the tactical process is “clunky”, and not workable because each individual request needs to be processed manually. While some broadband service providers have issued MACs for shared LLU connections (or have issued them at the customer’s specific request), many broadband service providers have not to date accepted them for inbound migrations, and have instead advised customers to cancel their existing connection and re-order. This means a period without service for the customer.

¹⁹ See <http://www.offta.org.uk/>.

²⁰ Migrations from LLU to IPStream and DataStream are frequently referred to as “reverse migrations”.

- 3.34 In recognition of the shortcomings of this arrangement, and its impact on consumers, the industry will shortly begin trialling an automated process that will enable broadband service providers who have not yet migrated onto Openreach's new ordering system (equivalence management platform or "EMP") to issue and accept MACs for shared LLU to IPStream and DataStream migrations²¹.
- 3.35 The new process will enable the LSP to obtain MACs in real time from EMP (although they will need to log onto the system through a web interface until their systems are fully integrated with EMP). The LSP then gives the MAC to the customer, who gives it to his GSP, who can use it in the system used for IPStream and DataStream orders (even though it was generated by a different system).

Between two shared LLU connections (customer-initiated)

- 3.36 While there is already an automated process for migrations between two shared LLU connections, it is only currently available to the minority of service providers that are now using the new LLU ordering system (known as "EMP"). There is currently no process on the ordering system currently used by the majority of broadband service providers (known as "LiSA") for migrating between two broadband service providers that use shared LLU. Customers who want to switch between two broadband service providers using shared LLU are therefore likely to have to cease their current connection and re-order.

To full LLU from IPStream or DataStream (customer-initiated)

- 3.37 Where a customer wants to transfer to full LLU, taking his voice and broadband connection to a new supplier, the current migration process is driven by the voice migration, not the broadband migration. The customer informs the GSP that he wants to switch, and the losing and gaining voice providers will send out letters with details of the switch, giving the customer an opportunity to cancel if he has changed his mind or if he has been slammed²². The broadband LSP will be informed of the change by way of a confirmation that his connection with the customer has been ceased.

From full LLU to IPStream or DataStream (customer-initiated)

- 3.38 There are a number of different migrations processes for moving from full LLU to different combinations of IPStream/DataStream broadband and narrowband (PSTN or WLR). The process used will depend on what combination of services the customer wants to receive.
- 3.39 There are manual processes currently available for some of these migration paths. The industry intends to develop automated migrations processes for a number of others (e.g. between two LLU broadband service providers) for which automated processes are not currently available.

²¹ EMP ("Equivalence Management Platform") is Openreach's strategic system for providing EOI (equivalence of inputs) across LLU, WLR and backhaul. Broadband SPs that have already migrated onto EMP already have access to fully automated processes for shared LLU to IPStream/DataStream migrations (as of July 2006).

²² The "letter facilitation" process is considered in more detail in the Migrations Consultation at paragraph 1.22.

Problems with LLU migrations processes

- 3.40 Ofcom considers that customers on LLU-based connections are entitled to the same expectations as customers on IPStream/DataStream-based connections when they want to switch broadband service providers. They should not be put at a disadvantage because their connection is based on a different underlying technology.
- 3.41 Problems may occur where broadband service providers have not made adequate provision for their customers to switch away. One example of this has been the poor take-up of the tactical process for migrations from shared LLU (see paragraph 3.32 above) – this may have been behind some of the complaints to OCC from LLU customers about the MAC process or about difficulty migrating away from a broadband service provided using LLU. As noted above, the industry has recently introduced a new process designed to address this problem. Ofcom welcomes this development and considers that there is now no reason for broadband service providers not to offer and accept MACs for migrations from shared LLU to IPStream and DataStream.
- 3.42 However, there remain a number of gaps and inconsistencies in underlying processes for broadband migrations involving shared or full LLU (e.g. universal availability of an automated process for reverse migrations from shared LLU, and lack of processes for all migrations paths). While work to develop and implement processes across the board continues, consumers may experience problems with tactical processes – or may have to cease and reorder, which can leave them without service sometimes for several weeks.

Home moves

- 3.43 BT Wholesale offers its broadband service provider customers a product called the Home Movers process for the scenario where a customer is moving home and wants to take his voice and broadband services with him to the new location. If the customer is using different providers for his voice connection and his broadband connection, he needs to contact both of them to arrange the disconnections at his current address and connections at his new address.
- 3.44 Our discussions with broadband service providers suggested that they do not generally use the Home Movers process. Most of the broadband service providers we spoke to have a very negative perception of the Home Movers process, noting that there are multiple possible points of failure and that the process is too complex to be consumer friendly.
- 3.45 Broadband service providers are also concerned that the need for the customer to talk to his broadband and voice supplier separately means that their competitors may use this opportunity to win the customer away from them.
- 3.46 Most broadband service providers therefore advise their customers to cancel their existing service and re-order at the new address. While this takes longer than the timescales envisaged by the Home Movers process, and may involve a period without service and a cost to the broadband service provider, it is considered by broadband service providers to be more predictable, with less risk that the process will fail, and enables them to better manage their customers' expectations.
- 3.47 BT Wholesale has initiated an industry forum to discuss ways to improve the Home Movers process. The first meeting took place earlier in the summer.

Problems with home moves

- 3.48 The overwhelming consensus arising from our meetings with broadband service providers was that the current Home Movers process is unsatisfactory and that home moves cause consumers more problems than other types of broadband migrations.
- 3.49 What this means for consumers is that the majority of broadband service providers advise their customers to terminate their existing connection and re-order when they move. Customers will not therefore be able to order broadband until they move into their new home, and even if they order on the first day may be left without service for two weeks. Even where customers do use the Home Movers process, they may find themselves having to start from scratch once they move in and discover that the process has not gone through properly.
- 3.50 In addition, home movers seem to be particularly affected by tag on the line (see paragraphs 4.32-4.46 below).

Broadband migrations and consumer harm

- 3.51 Section 3 has set out details of current processes and identified the problems specific to different broadband migrations scenarios.
- 3.52 While the precise nature of potential problems (and potential solutions) depends on the migration path, the impact on the customer is likely to be similar. Some of the general problems customers experience are summarised below.
- 3.53 Customers may lose their broadband connection, sometimes for several weeks. Sometimes (if their provider has advised them they need to cease their current connection and re-order) they will have had advance warning of this. Sometimes (if they have just moved into a new home and found that there is a tag on the line that needs to be cleared before they can order) they will not, which can cause additional inconvenience. Loss of service may cause particular problems for consumers who depend on their broadband connection, for example because they work from home, or because they rely on the internet for things like supermarket shopping because of their disabilities.
- 3.54 Customers may experience problems moving to a new provider where their current supplier stops providing them with service for some reason, as in the case of broadband provider E7 even discussed in detail in Section 4.
- 3.55 Customers may find themselves having to make numerous calls to different broadband service providers and different call centres to make their migration happen. If they experience problems *after* they have arranged their migration (for example if their MAC is rejected, or if the Home Movers process doesn't work), they may have to start all over again.
- 3.56 All this is likely to lead to inconvenience, frustration and anxiety for the customer (and possibly monetary loss for some consumers who depend on their broadband connection for work), which is compounded when the customer finds himself unable to resolve his problems by talking to his broadband service provider – at which point he may contact Ofcom for help.
- 3.57 The following section presents evidence suggesting that customers are currently experiencing such harm as a result of these problems.

Section 4

Broadband migrations: evidence of consumer harm

Consumer complaints to Ofcom

- 4.1 As discussed in Section 3, the BMR was prompted by a rise in the number of complaints to Ofcom about issues related to broadband migrations. This section sets out the picture that emerges from trends in consumer complaints to Ofcom, followed by a discussion of two particular issues that have caused harm to consumers over the last year: tag on line and the fact that the only source of MACs is the customer's broadband service provider (which arose as a particular problem following the recent withdrawal of broadband service provider E7even from the consumer broadband market).
- 4.2 OCC is the team within Ofcom responsible for dealing with complaints and enquiries from members of the public. OCC deals with questions and complaints from a broad range of viewers, listeners, customers of telecoms companies and users of wireless communications. Consumers can contact OCC by phone, letter, e-mail or by using the form on Ofcom's website.
- 4.3 As far as telecoms customers are concerned, the primary aim of OCC is to empower consumers by providing them with the information they need to seek redress on their concerns or disputes with service providers.
- 4.4 The OCC records all complaints and enquiries and uses this data to monitor and investigate issues raised. OCC generates a unique record for each contact and those records are assigned to various categories depending on the nature of the complaint or enquiry. Two broad categories, "Broadband" and "LLU", are relevant to this scope of this project.
- 4.5 OCC saw an increase in cases relating to broadband migrations throughout 2005. Over the period 1 May 2005 – 30 April 2006 OCC logged a total of 37,360 cases in the "Broadband" category, of which 27,398 (around 73%) related to migrations – 15,728 of those within the dedicated tag on line category, which was adopted by OCC advisors in October-November 2005. Over the same period, OCC logged a total of 1,570 cases in the "LLU" category, of which 713 (around 45%) related to migrations.
- 4.6 While the vast majority of broadband migrations take place without a hitch, Ofcom was concerned about the experience of the many thousands of customers who had contacted OCC to report problems. Ofcom also considers that the figures set out in the previous paragraph may significantly under-represent the problems experienced by consumers. Not every consumer who experiences these kinds of problems will contact OCC. Some consumers may eventually manage to resolve the problem themselves (after making many phone calls to different places). They may settle for a lower level of service (for example several weeks without a broadband connection) – or even give up trying to migrate altogether.

OCC data audit

- 4.7 In order to obtain an accurate picture of trends in customer complaints, Ofcom commissioned external consultants to undertake a review of OCC complaints data over the past year (1 May 2005 – 30 April 2006). This exercise was designed to correct for a number of factors which may have affected trends in the raw data:
- OCC categories evolve over time. In particular, cases about tag on line were originally assigned to a generic “Broadband” category, until the problem started to generate large numbers of calls, at which point it was assigned a category of its own. The “Broadband” category up to around November 2005 (when the new category was fully adopted by OCC advisors) is therefore dominated by tag on line cases;
 - OCC advisors are responsible for assigning contacts to categories, which could potentially lead to inconsistency in reporting where a case includes different elements that mean it could be assigned to more than one category; and
 - it may be useful to break categories down further. For example, the “MAC” category may include a number of different issues that may require different solutions: the customer’s service provider is not a signatory to the voluntary code of practice; the customer’s service provider is a signatory, but has failed to provide a MAC; the customer is having problems using the MAC, and so on.
- 4.8 The audit analysed a sample of 12.5% of migration cases from the “Broadband” category (908 cases) and 25% of migration cases from the “LLU” Category (158 cases), giving a total sample of 1,066 cases²³. The results were broken into two six-month periods: May to October and November to April.
- 4.9 The consultants adopted a categorisation framework developed by assessing cases and identifying the most significant issue in a particular case. The categories used in the report are set out in Table 1 below.
- 4.10 In many cases (over one-third of the Broadband sample, for example), no service provider was identified. Where the customer did name a specific service provider, it was not always clear whether it was acting as the LSP or the GSP in that particular case. Customers calling OCC about tag on line were unlikely to know which service provider a tag on their line belonged to (57% of tag cases did not name an service provider). Given these considerations, we did not think that a breakdown by service provider would offer an accurate picture of service providers experiencing particular problems, and the results have not therefore been broken down by service provider.

²³ The total sampling population excluded those cases for which the caller had not given permission for the information provided to OCC to be used for purposes other than handling his complaint. The audit selected a larger proportion of LLU cases than of broadband cases to ensure that there would be enough LLU cases for a meaningful analysis given the lower number of LLU cases overall. Cases logged in the dedicated “tag on line” category were excluded from the analysis as the consultants would not have been able to diagnose the reasons for a tag and therefore to break that large category down in a meaningful way.

Table 1: Categories used in OCC data audit

Category	Definition
Tag on line	The existence of a tag, marker or incompatible service on the line
MAC	Problems obtaining or using a MAC
Late	Problems relating to the delivery, transfer, upgrade or cancellation of a new or existing service, where the principal complaint concerns the time taken
Existing Service Issue	Problems relating to the delivery, transfer, upgrade or cancellation of an existing service, where the principal complaint concerns the quality of service or handling by the service provider
Technical Issue	Problems relating to the delivery, upgrade or cancellation of a service, where the principal reason given by the service provider relates to technical problems
DACS	Problems provisioning broadband due to DACS ²⁴
LLU back to PSTN	Problems associated with transferring an LLU based service back to PSTN
Slam	The provision or transfer of service without the customer's consent, including services agreed but cancelled within a legitimate cool-off period
Mis-sell	The provision or transfer of service where the customer has given consent on the basis of false or incomplete information, such that the service delivered differs from the service the customer bought
Misconduct	Cases in which the broadband service provider has been abusive towards customers or has knowingly exploited vulnerable customers
Customer	Cases where the issue or complaint has arisen as the result of the customer's actions, rather than those of a broadband service provider
General	Cases where the customer's complaint or enquiry is of general nature, rather than being specific to a particular incident or broadband service provider
Unclear	Cases where categorisation is not possible owing to insufficient, contradictory or unusually complex information

²⁴ DACS (Digital Access Carrier System) is a piece of equipment deployed in the access network that enables two PSTN telephone services to be deployed over the same copper pair. DACS is incompatible with DSL broadband. However, BT's policy is to remove DACS from lines when broadband is ordered (up to a certain cost limit), so Ofcom did not expect this to emerge as a significant issue.

Results: Broadband

- 4.11 Tag on line was, as expected, by far the largest cause of problems for consumers in this category, accounting for 71% of the cases assessed from May-October (i.e. before the separate tag on line category was fully adopted by OCC advisors). Tag on line only accounted for 11% of cases assessed in the second period, but this was because we excluded the dedicated tag category (which logged over 19,000 cases over the same period, around 70% of the total “Broadband” category) from the sample.
- 4.12 The second most significant category was “MAC”. MAC accounted for only 7% of cases assessed in the first half of the year, rising to 49% of cases in the second half (this reflects a prevalence of tag on line cases in the first period, rather than a leap in the incidence of MAC problems in the second period) and averaging out at 21% of cases over the whole period.
- 4.13 Other significant concerns included “Late”, i.e. late provision or cancellation of broadband services (12% of cases over the full year) and problems with an existing broadband service (7% of cases over the full year).
- 4.14 Mis-selling and slamming – an issue which may be related to broadband migrations because it generally occurs in connection with a customer switching between providers (not necessarily willingly) –accounted for only 4% of the cases assessed over the year. This was in line with our expectations, given that a key feature of the MAC process, used for the majority of non-LLU broadband migrations, is the protection it offers against slamming.
- 4.15 DACS accounted for only 1% of cases assessed. Again, this was in line with our expectations, as we understood that BT’s policy is to remove DACS from a line when broadband is ordered.

Results: LLU

- 4.16 Within the LLU category, the biggest issue was slamming, with 42% cases over the period. In many of these cases, the product that had been slammed was not in fact broadband but voice – typically, the broadband service provider had signed up the customer for a broadband service and not informed the customer that what they were signing up for was actually a bundled broadband and telephony package, with the result that the customer’s telephone service was in effect slammed. The related mis-selling category accounted for a further 8% of cases, although the behaviour complained about in these cases was different – typically, customers felt they had purchased a broadband service on the basis of false or misleading information about service features (e.g. speed) and/or cost.
- 4.17 Tag on line proved to be an issue within the LLU category too, and was the second most significant issue complained about, accounting for 19% of cases over the period.
- 4.18 Other significant concerns included late provision of services and problems returning from LLU to PSTN (typically where a customer was attempting to order a PSTN line but was unable to do so because LLU existed, and the LLU account was not in the customer’s name), which both accounted for 10% of cases.
- 4.19 Problems with the MAC process accounted for a much lower proportion of cases than for Broadband (6%). However, this may reflect the fact that there have been few

customer-initiated migrations to/from LLU to date and that MACs have not to date been widely used for transfers involving connections based on LLU (see paragraph 3.32 above).

Results: MAC

- 4.20 Problems with the MAC process accounted for 19% of all cases (Broadband and LLU) analysed over the whole period, making MAC the biggest concern for consumers after tag on line and the largest category related purely to broadband migrations (because not all tag cases are associated with an attempted switch between broadband service providers). The majority of these cases came from the larger Broadband category (where MAC made up 21% of cases over the year) although as noted above MAC was also cited as a concern by LLU customers.
- 4.21 With the MAC category, there were two principal concerns, failure to issue a MAC and refusal to issue a MAC, accounting for around half of cases each. Around 50% of cases in the MAC category concerned a broadband service provider that had signed up to the voluntary code of practice ("CoP") at the time the case was logged. A further 14% of cases related to problems trying to obtain MACs from E7even (see paragraphs 4.47-4.62 below).
- 4.22 Evidence from individual cases suggested that some signatories are not fully complying with the voluntary code of. Even though the numbers of cases where there was sufficient information to make such a detailed classification were insufficient to draw conclusions about problems with MAC across the board, we think it is likely that these cases are representative of wider problems and are therefore including them for their qualitative value.
- 4.23 In 22 cases, signatories to the code refused to provide MACs for payment or contractual reasons. In eight of these cases, the LSP refused to provide a MAC because the customer owed it money – even though the practice of "debt blocking" is prohibited by the current voluntary code and signatories should not therefore be using this as a reason to refuse to issue MACs. In four cases, the customer was refused a MAC unless they paid the LSP a fee. In the remaining 10 cases in this group, the MAC was refused because the customer was still in contract. Ofcom agrees that broadband service provider should be able to expect to be able to recoup certain costs, and this may mean asking a customer to "buy out" the remainder of his contract if he wants to leave early. However, the MAC process should not be used as a means of enforcing contracts.
- 4.24 In eight cases in the sample, the broadband service provider had refused to provide a MAC because the service had been cancelled. The voluntary code states that service providers may refuse to issue a MAC when the service has already been terminated. However, it appeared that this provision is in some cases being exploited by broadband service providers where a customer says he wants to move, but is not aware of the MAC process. In such cases, customers ring up saying they want to cancel and move provider – not realising they need a MAC. When they are told this by their GSP and go back to the LSP for the MAC, they are refused it as the service has been cancelled. Ofcom considers that broadband service providers should be proactive in offering their customers advice about the MAC process, and should take account of a possible lack of awareness on the part of customers, e.g. by proactively offering them MACs even where a MAC is not requested by name.

- 4.25 In four cases, the customer could not get a MAC because their provider would only supply it by e-mail – even though the customer did not have access to e-mail at the time.

Evidence from OCC: conclusion

- 4.26 As a proportion of total broadband households, the number of households affected by problems with broadband migrations (or at least those who contact OCC to register their concerns) is very small.
- 4.27 However, broadband migrations issues have emerged as a significant issue for consumers contacting Ofcom, and it is significant that customers are calling OCC in such large numbers – significantly more than other telecoms issues, particularly for tag on line. OCC does not have the power to adjudicate in disputes between customers and service providers or to take action on behalf of individual customers, which suggests that customers are calling OCC had nowhere else to turn.
- 4.28 As noted at paragraph 4.6 above, not all consumers who experience difficulties with broadband migrations will call OCC. Some customers may eventually manage to resolve the problem themselves, or may settle for a lower level of service. Evidence from OCC will therefore significantly under-represent the extent of consumer harm associated with broadband migrations.
- 4.29 As broadband takeup continues to grow – and particularly as more consumers move onto LLU-based connections, serve out minimum contracts and want to switch – the absolute number of customers affected by migrations problems can only continue to rise. Tag on line provides an example of a problem that escalated rapidly, to the point where OCC was logging around 1,000 calls a week on tag on line alone by the beginning of this year.
- 4.30 Ofcom therefore considers that given the combination of the number of cases logged by OCC (albeit a relatively small number of broadband customers overall), likely under-reporting of problems, a likely increase in problems as volumes increase, the potential for new problems to emerge in future, and Ofcom's current lack of formal powers to address such problems, it is appropriate for Ofcom to act.

Question 1: do respondents agree that the evidence from cases logged by OCC suggests that there is a need for regulation?

- 4.31 The remainder of this section considers two key problems that consumers have experienced in relation to broadband migrations. The first of these is tag on line. The second is the fact that the only source of MACs is the customer's broadband service provider, which arose as a particular problem following the recent withdrawal of broadband service provider E7even from the consumer broadband market.

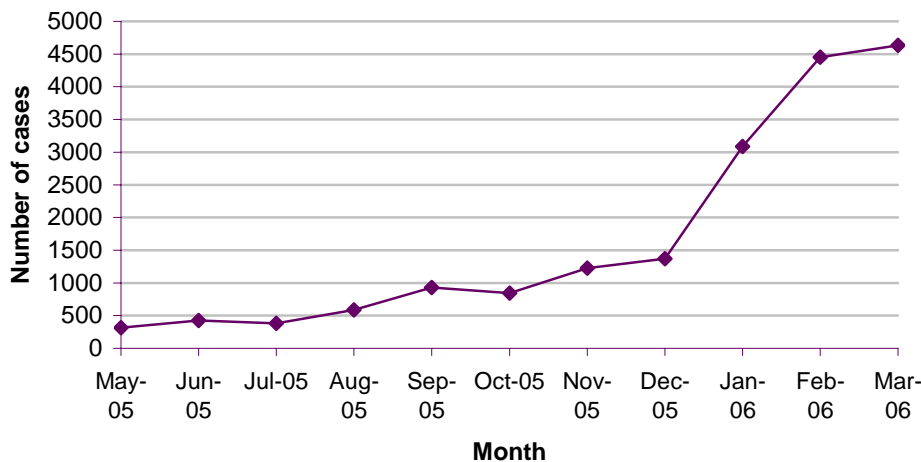
Key problem: tag on line

Introduction

- 4.32 "Tag on line" is a term used by Ofcom and the industry to describe the situation where a consumer cannot order broadband because there is (or appears to be) an incompatible product on the line, or another provider already providing broadband on his line.

- 4.33 Tag on line became a significant issue for OCC in early 2005. The number of consumers contacting OCC about tag on line rose steadily over the course of last year and, by November 2005, represented the most significant issue that OCC was dealing with by call volume. At the beginning of this year, OCC was logging around 1,000 tag on line cases per week.

Figure 1: tag on line cases reported to OCC and BT Wholesale



Source: OCC. Figure 1 shows total of tag on line cases logged by OCC up to 31 March 2006. BT Wholesale's dedicated tag on line helpdesk started logging significant numbers of calls in April 2006. However, data has not been included for this period because of the risk of double counting.

The problem

- 4.34 Consumers find out that there is a tag on the line when they attempt to order broadband. Their chosen broadband service provider will check the line²⁵, and will be informed that there is already broadband on the line, or that there is some unspecified incompatible product on the line, and will advise the customer of this.
- 4.35 In some cases, the customer may be able to identify what is wrong. The tag may be on the line because the customer is using a product which is incompatible with broadband, for example certain alarm systems. If he can deduce (possibly with some prompting from his chosen broadband service provider) what this product could be, he can take appropriate action, by cancelling the incompatible product.
- 4.36 However, the tag may be a result of action taken by someone other than that customer. The most common example of this is where a customer moves into a new home to find a tag on the line, because the outgoing occupant has forgotten to cancel his broadband contract (or the cancellation has not gone through by the time he moves), which will mean that BT's systems will identify the broadband service on that line as being provided by the outgoing occupant's service provider and will block any other broadband service provider from providing a service on that line.

²⁵ Using the "broadband checker", a tool provided by BT Wholesale to broadband SPs that enables them to check the status of the line. The same kind of functionality may also be included in the information to consumers available on broadband SPs' websites.

- 4.37 In such cases, the customer will have no idea what is behind the tag, as it is unrelated to anything that he has done in relation to that line.
- 4.38 This left most of those customers affected, or their chosen broadband service providers, unable to resolve the problem themselves. Their only option was therefore to contact OCC, which, initially, referred cases to BT Wholesale on a case-by-case basis. These consumers were making several calls: to their chosen service provider (possibly more than one broadband service provider, in the hope that one might be able to help where another could not), to OCC, and, once their case had been dealt with, to the chosen broadband service provider again.

Understanding the causes of tag

- 4.39 As broadband service providers were obtaining information about tags from BT Wholesale (it was BT Wholesale's systems that were telling them there was a tag on the line, either when they tried to place an order, or via the broadband checker), Ofcom thought it was possible that some problem with BT Wholesale's systems was behind the problems experienced by consumers.
- 4.40 BT Wholesale was the only party with access to the information that would enable Ofcom to diagnose the underlying causes of tag on line. However, this information was not being captured in a systematic way that would enable Ofcom to identify the cause(s) of tag on line and lead to the design of long-term solutions.
- 4.41 BT Wholesale therefore proposed a dedicated helpdesk with two functions:
- to help the caller resolve his particular problem; and
 - to collect robust information on the underlying causes of the problem to enable Ofcom and BT Wholesale to design appropriate solutions.
- 4.42 The helpdesk was launched in January 2006 and handles calls from all broadband customers – it does not differentiate between broadband and LLU connections, or, by extension, between BT Wholesale, Openreach and other wholesale broadband providers. At first, all callers were referred by OCC. In April, BT introduced changes to the process that enabled OCC to publish the number more widely (so that customers did not need to speak to an OCC advisor) and enabled broadband service providers to give the number to their customers. A more recent development has enabled broadband service providers who have obtained the necessary validation from their customers, and who have committed to using the information in an appropriate way, to contact the helpdesk on their customers' behalf.
- 4.43 Once the helpdesk systems were up and running, BT Wholesale was able to provide an analysis of root causes. BT's weekly root cause analysis groups cases into three broad categories: "end user or service provider error"²⁶, "BT error" and "other". Significant causes within those three broad categories are set out in the following table:

²⁶ It should be noted that this category does not in most cases reflect an error on the part of the end user calling in, or his chosen broadband SP – it is more likely to capture a failure on the part of the previous occupant or *his* broadband SP.

Table 2: Root cause analysis of tag on line

Category	Description	% of cases
End user or Service Provider error		
Already a connection	Broadband cannot be provided because there is already a live broadband service on the line (IPStream or DataStream based)	19%
Already a connection (LLU)	Broadband cannot be provided because there is already a live broadband service on the line (LLU based)	15%
Other	Includes no PSTN line, incompatible PSTN products (alarms, ISDN), social telephony	3%
BT error		
BB7 process	There has been a failure in the "BB7" process ²⁷ , e.g. been a delay processing the order to cancel an old connection.	17%
Incorrect records	A number of different categories that capture specific errors in BT's systems that can lead to a tag on the line.	6%
Other	Includes dejumping delays, incompatible line technology e.g. fibre ²⁸ .	9%
Other		
Open ADSL cease order	A service provider that used to provide service on the line (e.g. to a previous tenant) has submitted a cease order, but the five working days required for that order to mature have not elapsed.	21%
No tag on the line	There is no tag on the line – this may be because there was a tag on the line when the customer spoke to his service provider, but it has now cleared (as in the case of pending ceases)	5%
Other	Mainly inappropriate calls about issues outside the remit of the tag on line helpdesk.	6%

Source: BT Wholesale²⁹

- 4.44 Ofcom considers that the dedicated helpdesk has improved the experience of customers who find themselves affected by tag on line, as they can now get help to get tags removed. It should mean that in many cases the customer only has to make one call (either direct to the helpdesk, or to his chosen broadband service provider, which will then contact the helpdesk on his behalf). It also means that customers are given the clearest possible information about the cause of their individual problem and when it will be fixed (in some cases, for example where the problem is a result of incorrect records on BT Wholesale's system, helpdesk advisors will be able to make an immediate change that frees up the line).

²⁷ This is a process within BT Wholesale that tries to capture situations such as a change of PSTN provider, and in effect asks broadband SPs whether their service should be cancelled when a customer makes a change to the underlying PSTN service. Broadband SPs, if they disagree, can override the cease order that is automatically generated when there is a change to a PSTN service, leaving a tag on the line.

²⁸ But note not DACS.

²⁹ The information included in Table 2 is based averages taken from an analysis of 5% samples obtained on a weekly basis from the data gathered by BT Wholesale's dedicated tag on line helpdesk over the period 12 June 2006 to 17 July 2006. Figures are given to the nearest whole percentage point and therefore total to more than 100%.

- 4.45 In the longer term, however, Ofcom wants to address the root causes of tag on line so that consumers do not need to call the helpdesk in the first place. The information generated by the helpdesk is therefore important for enabling us to identify key causes of tag on line and to find solutions for some of those causes.
- 4.46 Nevertheless, it has become clear that there is no quick fix to the problem. While it is now easier for consumers to get help, the problem does not yet seem to be going away. While the helpdesk was originally envisaged as a short term solution, BT Wholesale now acknowledges that it is likely to retain a key role for the foreseeable future.

Question 2: do respondents agree that given the problems caused by tag on line there is a need for further regulation?

Key problem: only the customer's broadband service provider can issue a MAC

- 4.47 The current voluntary MAC code applies only to broadband service providers that supply end customers directly and does not set any expectations for what is required of wholesale broadband providers.
- 4.48 This means that the only place a customer can obtain a MAC is from his current broadband service provider. This can lead to difficulties where the customer's broadband service provider fails, or refuses, to issue MACs, as customers find themselves unable to move away without losing service, sometimes for several weeks.
- 4.49 While this is a generic problem, we have chosen to illustrate it using a particularly acute example, which is the E7even case discussed in the following paragraphs.
- 4.50 Until July 2006, E7even UK Ltd ("E7even") operated as a broadband service provider offering broadband services (sourced from wholesale broadband providers), to mainly residential consumers. E7even's services were priced well below the industry average retail cost, and required customers to commit to contracts for a minimum period of twelve months, with charges paid in advance.
- 4.51 In December 2005 E7even migrated its customers from wholesale services supplied by BT Wholesale to networks operated by three different companies: Easynet, NetServices and Generic Telecom (a wholesale customer of Tiscali).
- 4.52 At the beginning of 2006 significant numbers of E7even customers began to complain to Ofcom that they were not receiving a broadband service. These complaints predominantly fell into three overlapping categories. In the first quarter of 2006:
- 667 consumers complained that they were receiving no service from E7even, or that their connection was so slow as to be unusable;
 - 268 consumers complained that E7even was neither answering the phone nor replying to e-mails from its customers about service issues; and
 - 411 consumers complained that E7even had simply ignored e-mail and telephone requests for MACs which would enable them to leave E7even for a

different broadband service provider. In some cases, customers stated that requests were ignored for months.

- 4.53 E7even told that although they had promised to supply MACs within three working days (despite E7even not being a signatory to the voluntary code of practice), their hands had been tied by its wholesale broadband providers, which were not providing MACs at a sufficient rate to enable E7even to cope with the demand.
- 4.54 On 12 April 2006 Ofcom opened an investigation to examine E7even's dealings with consumers more closely. Ofcom's investigation, which is ongoing at the time of publication, was opened under General Condition 11.1, which prohibits Communications Providers from billing customers for services that have not been provided and General Condition 14.2, which requires Communications Providers to establish and maintain complaints-handling procedures that conform to a Code of Practice³⁰.
- 4.55 Complaints alleging that E7even was failing to supply MACs continued to be received by Ofcom throughout Q2 2006. E7even remained insistent that it was addressing customer service issues and issuing MACs where possible, while arguing that it was dependent on the goodwill of its wholesale broadband providers to provide it with MACs. Customers who were unhappy with their service from E7even continued to contact Ofcom to argue that they were unable to select a new broadband service provider, at least without experiencing some loss of service.
- 4.56 E7even is not a signatory to the Broadband Service Provider Migration Code of Practice. While both Tiscali and Easynet are, the code requires the LSP, in this case E7even, to provide MACs. The code does not identify any role for the wholesale broadband provider in the provision of MACs, even though in practice the wholesale broadband provider obtains the MAC from BT Wholesale and passes it down the reseller chain to its resellers.
- 4.57 On 1 July 2006, E7even customers on Tiscali's network were directed to the web page of a broadband reseller called EzeeDSL ("Ezee") (a brand of 186k Ltd, unconnected with E7Even). This was a "walled garden" site that informed customers E7even had terminated their contracts. Customers were told that if they wanted continuity of service, they could sign a 12-month contract with Ezee and would be reconnected within hours. However, customers who wished to choose a different broadband supplier were told they would be required to wait until 14 July before their service would be ceased by Tiscali.
- 4.58 In the meantime, former E7even customers – the vast majority of whom had paid for their E7even broadband in advance – were unable to access other internet sites or e-mail services. Ezee's web page stated that anyone seeking a MAC should contact E7even, yet E7even customer services were unobtainable, and E7even had told Ofcom that it had terminated its contractual arrangement with its former customers.
- 4.59 NetServices introduced its own walled garden site for former E7even customers a few days later, also referring them to Ezee's offer. Unlike Tiscali, however, NetServices did not specify a date on which the service of former E7even customers would be ceased in the event that they did not wish to take up Ezee's offer.
- 4.60 Although former E7even customers were no longer tied into a contract with E7even they could not change to a new provider (other than Ezee), because they could not

³⁰ See http://www.ofcom.org.uk/bulletins/comp_bull_index/comp_bull_ocases/open_all/cw_898/.

obtain a MAC that would have enabled them to switch (although many customers alleged they had made repeated efforts to obtain MACs from E7even over several months, without success). Those customers who required continuity of service had little choice but to sign a 12-month contract with Ezee at a monthly cost which in some cases was twice as expensive as their previous package with E7even. Their alternative was to wait for at least two weeks before cease orders would be placed by Tiscali and NetServices and then a further five working days before they would be able to place an order for a new service that could itself take ten days to become live, leaving them without broadband access for over a month.

- 4.61 Several hundred customers contacted OCC in the following days to complain about a situation that many described as “being held to ransom” by Tiscali, NetServices and Ezee.
- 4.62 Ofcom contacted Tiscali and NetServices to discuss this matter. Both companies argued that they did not have a relationship with the end user and were neither obliged to supply MAC codes to them, nor, as wholesalers, had the systems in place to handle thousands of customer requests for MACs or cessation of service. They argued that the Ezee package offered consumers the option of service continuity which in the event of a simple service termination they would not have received. In Ofcom’s view, under the current regulatory framework, the wholesale broadband providers could not be required to provide MACs to affected end users.

Question 3: do respondents agree that given the problems experienced by consumers where a broadband service provider fails or refuses to issue MACs, it is appropriate to introduce a process that enables customers to obtain MACs from another party? How do respondents see such a process working?

Broadband migrations and consumer harm: conclusion

- 4.63 This section presented three key pieces of evidence suggesting that current arrangements and the lack of formal obligations governing broadband migrations do cause consumer detriment, demonstrated by:
- trends in consumer concerns logged by OCC;
 - the tag on line problem; and
 - Ofcom’s experience in the E7even case, which showed that the voluntary nature of the MAC process can intensify problems with migrations, and highlighted the potential for problems caused by the fact that the only source of MACs is the customer’s broadband service provider.
- 4.64 In all cases, Ofcom was limited in the action it could take to address harm due to the lack of formal obligations on Communications Providers to ensure customers have a positive experience of broadband migrations, and a subsequent reluctance on the part of some Communications Providers to address these issues with sufficient urgency (or indeed to address them at all).
- 4.65 Ofcom concludes that on the basis of this evidence it is appropriate to propose changes to the current regulatory framework to protect consumers in future, which will further their interests and promote competition in broadband services.

Section 5

Proposals for further regulation

Is additional targeted regulation appropriate?

- 5.1 Ofcom concludes, on the basis of the evidence presented in Sections 3 and 4, that it is appropriate to propose additional targeted regulation aimed at addressing the following broadband migrations problems:
- **the MAC process:** problems arising from failure to sign up to and/or to comply with the current voluntary code of practice (see paragraphs 3.19-3.25);
 - **third party provision of MACs:** difficulties arising from the fact that the only source of MACs is currently the customer's broadband service provider (see paragraphs 4.47-4.62);
 - **tag on line** (see paragraphs 4.32-4.46);
 - **home movers:** problems, notably tag on line, that particularly affect customers moving home (see paragraphs 3.43-3.50);
 - **LLU migrations:** difficulties specific to migrations paths involving one or more connections based on LLU (see paragraphs 3.40-3.42); and
 - **potential problems emerging in the future** that cause anxiety or disruption to customer wishing to migrate broadband services.
- 5.2 Ofcom acknowledges that there are a number of ongoing developments that will help to address these problems, including:
- BT Wholesale's dedicated tag on line helpdesk (see above);
 - other ongoing work by BT Wholesale to address the problem;
 - BT Wholesale's industry forum on processes for home moves (see paragraph 3.47 above);
 - ongoing work by Openreach and the industry to develop automated processes for all broadband migrations paths and the shift onto EMP (see paragraph 3.42 above).
- 5.3 These developments are not expected to produce immediate improvements. For example, the industry forum on refining the process for home moves is only the start of work to introduce a new process that will help home movers. Work on some outstanding broadband migrations paths is scheduled to complete before the end of this year, but this work will continue into 2007 and beyond. The timetable for this ongoing work (both the industry's work on LLU broadband migrations paths and BT Wholesale's proposed solutions for tag on line) has been set by the industry and Ofcom would have no power to intervene in the event that timings were to slip or projects were dropped altogether.
- 5.4 The work already underway will not address all the problems Ofcom has identified. As discussed in Section 3, when things go wrong, Ofcom is currently limited in the

options it has for requiring broadband service providers to take action to prevent harm to consumers. Examples include the failure by broadband service providers to comply with the existing voluntary code of practice in relation to issuing MACs (including the E7even case) and the need to address tag on line.

- 5.5 Ofcom is therefore proposing additional regulation to address problems that will not be addressed by ongoing work.
- 5.6 Ofcom is proposing to adopt a new General Condition on Service Migrations, which will require broadband service providers and wholesale broadband providers to comply with a set of high-level principles governing all broadband migrations, and to follow the process currently set out in the Broadband Service Provider Migration Code of Practice.
- 5.7 As the market changes, we are likely to see further problems emerging in broadband migrations that we have not anticipated, or that do not currently present a significant problem. One example might be problems for customers who want to return to PSTN from LLU. Ofcom's proposals for formal regulation are therefore designed to be flexible enough to be able to address problems with broadband migrations that emerge in future.
- 5.8 The legal background and justifications for the additional regulation that Ofcom is proposing are discussed from paragraph 5.11 below.
- 5.9 In addition to the proposed regulation that we are consulting on, we considered the alternative option of doing nothing and leaving the broadband migrations code of practice process as a voluntary code, monitoring the progress of ongoing work and encouraging industry to work together to develop and refine migration processes for DSL services. This analysis is set out in Annex 5.
- 5.10 However, as set out above, ongoing work is not expected to produce immediate results and will not, in any case, address all of the problems that we have identified (and indeed potential problems that have yet to emerge). We therefore consider that formal regulation is needed.

Ofcom's proposals

- 5.11 Ofcom proposes two separate developments to the current regulatory framework:
- the immediate introduction of a new General Condition 22 on Service Migrations, taking effect two months after the publication of the final statement, that is in late 2006 or early 2007; and
 - in six months time, a further consultation on changes to the proposed General Condition 22 requiring Communications Providers to comply with processes for broadband migrations that have not been fully realised at this time, for example a mechanism for provision of MACs by someone other than the customer's broadband service provider.
- 5.12 The consultation period for these proposals is seven weeks as Ofcom's consultation guidelines³¹ permit a shorter consultation period than the usual 10 weeks on urgent issues such as this. Ofcom invites respondents' views on its proposals by 5 pm on 5

³¹ *How will Ofcom consult? A guide to our consultation process.*

October 2006. Details of how to respond to this consultation can be found in Annex 1.

General Condition on Migrations

- 5.13 Ofcom proposes to introduce a new General Condition 22 on Service Migrations (set out at Annex 7 below) which will initially consist of two elements specific to broadband migrations processes:
- a high-level obligation on all Communications Providers involved in broadband migrations to ensure that customers have a positive experience of broadband migrations by following the high-level principles set out at paragraph 5.14 below; and
 - a requirement on all Communications Providers involved in broadband migrations to comply with the MAC process set out at Annex 1 of the draft General Condition on Service Migrations.

High-level obligations

- 5.14 Ofcom's proposed General Condition on Service Migrations would require all Communications Providers involved in broadband migrations (both broadband service providers and wholesale broadband providers) to ensure that customers' requests to migrate service are managed in a way that minimises service disruption and does not impose onerous requirements on the customer by requiring Communications Providers to:
- facilitate consumer requests for broadband migrations in a manner that is fair and reasonable;
 - ensure that all broadband migrations are carried out within a reasonable period; and
 - ensure that all broadband migrations are carried out with minimal loss of service for the customer.
- 5.15 If Ofcom still considers, in light of responses to this consultation, that it is appropriate for it to introduce such an obligation, General Condition 22: Service Migrations will come into effect two months after Ofcom finalises its proposals.
- 5.16 As described in this consultation document, Ofcom has, in the past, found itself without specific powers to address consumer harm linked to (or exacerbated by) certain types of behaviour by broadband service providers and wholesale broadband providers.
- 5.17 Ofcom currently has no formal power to enforce compliance with the MAC code of practice or to take enforcement action to address consumer harm resulting from non-compliance. Ofcom was unable, for example, to open an investigation into E7even's failure to provide its customers with MACs, or to exert any formal pressure on E7even's wholesale suppliers to enable E7even's end customers to migrate away. Ofcom did not have grounds for a formal investigation into BT Wholesale's handling of the tag on line problem, and the progress that has been made is the result of voluntary action taken by BT Wholesale in response to informal pressure by Ofcom. Nor has Ofcom had the power to require broadband service providers to adopt

processes that have been designed for migrations involving LLU (see paragraph 3.32 above).

5.18 The proposed General Condition on Service Migrations is designed to capture, initially, the various types of consumer harm associated with broadband migrations described in this document (including the examples given in the previous paragraph). If the General Condition on Service Migrations comes into effect, we consider that the following types of behaviour would give Ofcom grounds for investigating a possible breach:

- consumers are required to make a disproportionate level of effort (e.g. repeated requests for MACs or calls to several different places) before they are able to switch;
- broadband service providers do not enable their consumers to switch away without loss of service, for example requiring customers to cease and reprovide even though processes that would ensure continuity of service are available;
- a broadband service provider is failing to provide its customers with the service that their contract entitles them to expect, but is not enabling them to exercise their right to switch to another provider (e.g. by providing MACs);
- a wholesale broadband provider is not doing what could reasonably be expected to support end users who want to migrate in the event that one of its downstream customers ceases to provide broadband service to its end users or is systematically failing to provide MACs;
- wholesale broadband providers (including BT Wholesale and Openreach) fail to do what could reasonably be expected of them to address problems with their underlying systems that are affecting broadband migrations, e.g. tag on line; and
- wholesale broadband providers (including BT Wholesale and Openreach) do not make reasonably available processes that allow MAC transfers.

5.19 The proposed General Condition will capture most of the problems listed in paragraph 2.26 above.

- **the MAC process:** the proposed General Condition will address current problems with the MAC process, as all broadband service providers will be required to comply with the existing MAC process, and this requirement will be enforceable by Ofcom.
- **tag on line:** the proposed General Condition will, to some extent, help to address tag on line, as the obligation to follow the MAC process where it is available will mean fewer migrations are managed using cease and reprovide.
- **home movers:** the proposed General Condition will, to some extent, help to address problems with home moves, as the high level obligation will require the industry to progress the development of a fit-for-purpose home movers process. In addition, as noted above, it will help to some extent to reduce the tag on line problem, which particularly affects home movers.
- **LLU migrations:** the proposed General Condition will address, to some extent, the problems currently associated with LLU migrations. The high level obligation will require the industry to progress the development of migrations processes for

LLU, and the requirement to follow the MAC process (for types of migrations to which it currently applies) will apply to all broadband service providers, including those providing connections based on LLU.

- **potential problems emerging in the future:** the high-level obligations set out in proposed General Condition will capture problems with broadband migrations processes that have yet to be designed and problems that have not yet emerged.

Question 4: do respondents agree that Ofcom's proposed high-level obligations would effectively address the problems described in this document?

- 5.20 The proposed General Condition will not introduce a mechanism for third party provision of MACs. While Ofcom considers such a development is necessary, we recognise that it represents a substantial change to current arrangements, and have therefore asked the industry to agree on a suitable mechanism and present its proposals to Ofcom in six months' time.
- 5.21 During this period, Ofcom will continue to gather evidence of consumer harm arising from shortcomings in migration processes and to consider the different options for developing existing broadband migrations processes. If the industry does not make sufficient progress over the next six months in addressing outstanding broadband migration issues, including third party provision of MACs, Ofcom will consult on what it considers to be the most appropriate process.

Annex 1 to the proposed General Condition: the MAC Broadband Migrations Process

- 5.22 While the MAC process has its disadvantages (see paragraphs 3.19-3.25 above) it is considered to be an example of self-regulation that has led to a good process, and the consensus among broadband service providers is that the process generally works as a smooth migration option, for example, in comparison with cease and re-provide.
- 5.23 Ofcom considers that the existing voluntary code already includes a number of provisions that should be carried forward in their current form or as slightly modified requirements:
- broadband service providers may to refuse to issue a MAC only in limited and specified circumstances. The current voluntary code, for example, cites four legitimate reasons for refusal to issue a MAC;
 - broadband service providers may not refuse to issue MACs because customers owe them money ("debt blocking"). Ofcom does not believe that it is appropriate for broadband service providers to use migrations processes as a tool for recovering upfront investment or as a means of minimising bad debt, since alternative provisions (e.g. the enforcement by broadband service providers of consumer contracts) already exist³². The obligation will be on broadband service providers to issue a MAC on request, in all circumstances other than those specified as exceptions, for all the migration paths to which the MAC process can

³² A comparable approach has been taken in the mobile industry. Mobile operators use a similar mechanism to MAC called PAC ("porting authority code") for mobile number portability, and industry agreed processes state that unpaid debt is not a valid reason for refusing to issue a PAC – although customers may be required to pay off the remaining term of a contract before a PAC is issued.

apply (which as noted above does not include migrations that are managed using the letter facilitation process described above);

- broadband service providers must not disconnect the broadband service when a customer requests a MAC. Broadband service providers must make an effort to understand what their customers are requesting – if they do not specify that they require a MAC, broadband service providers must ascertain whether they want to cease broadband completely, or transfer to another supplier;
- broadband service providers must give customers at least two different options for contacting them, e.g. by e-mail, telephone or in writing. To minimise the risk that a customer will write the MAC down incorrectly when given it over the phone, one form of contact with the customer must be in writing;
- broadband service providers must adhere to standard timescales for provision of MACs, and customers must be made aware of the standard validity period (30 calendar days) and be reminded of the MAC during that period on request;
- broadband service providers must make information available to their consumers about the MAC process and what they need to do to switch broadband service providers.

- 5.24 One of the main drawbacks of the current process is that Ofcom does not have the power to compel broadband service providers to follow it, or to investigate and take enforcement action in respect of consumer harm arising from a failure to comply with the voluntary code.
- 5.25 Customers currently experience harm as a result of failure by broadband service providers to comply with the voluntary code. While this was most acute in the E7even case, many customers are affected by continuing low-level failure to comply with the process, with 50% of the MAC cases we assessed relating to a broadband service provider that had signed up to the voluntary CoP at the time the case was logged (see paragraph 4.21 above).
- 5.26 Further, the voluntary nature of the current code can disadvantage and frustrate the efforts of the broadband service providers who have committed resources to implementing and following the code. For example, if a customer wishes to move away from a non-complying service provider that refuses to issue MACs, the GSP will be adversely impacted by the LSP's failure to comply with the MAC process. The customer's migration experience is unlikely to be positive – and this is likely to reflect badly on all broadband service providers involved, not only the LSP which has failed to comply.
- 5.27 Ofcom therefore proposes to make the existing MAC process, as set out in the voluntary code of practice, mandatory by incorporating it as Annex 1 of General Condition 22.
- 5.28 Not all elements of the voluntary code have been adopted in the proposed General Condition, as some are not necessary once compliance with the processes is obligatory. For example, the introductory sections about code signatories, application and enforcement, and changes to the code do not need to be incorporated in the proposed General Condition. Further, some of the provisions will depend on the individual terms and conditions in customer contracts and Ofcom does not therefore consider them suitable to include in the General Condition obligations.

- 5.29 Some minor enhancements and clarifications have been included in Annex 1 to the proposed General Condition. For example, the current voluntary code is silent on whether broadband service providers are permitted to charge for issuing MAC codes to their customers. Broadband service providers may, depending on their contract with the customer, be entitled to ask the customer to pay certain charges at the point of migration, for example where the customer is liable for charges for any term remaining. However, Ofcom does not consider that it is permissible for broadband service providers to impose a specific charge for issuing the MAC, which is part of a migration process and unrelated to the contractual obligations attaching to the broadband service. Other inclusions designed to address some of the problems highlighted in sections 4.20 -4.25 relate to communication, for example, ensuring that customers have more options to contact broadband service providers and requiring broadband service providers to follow up verbal communications with a form of written communication to minimise the possibility of transposition errors. This is reflected in Annex 1 to the proposed General Condition on Service Migrations.
- 5.30 The table at Annex 8 below explains which of the provisions of the voluntary code of practice Ofcom is proposing to carry over as obligation in Annex 1 to General Condition 22 (either as they are or in an amended form), which of those provisions it does not propose to make mandatory, and the reasons why.

Question 5: do respondents agree that a mandatory version of the MAC process is appropriate?

Further co-regulatory development

- 5.31 Ofcom acknowledges that its proposed regulation will not address all of the problems that have been identified with broadband migrations. There are complex issues and it will take time to agree and implement processes to cover the range of broadband migration scenarios for which no processes currently exist.
- 5.32 Ofcom expects the industry – broadband service providers (whether they are using services from BT Wholesale or Openreach), wholesale broadband providers, BT Wholesale and Openreach – to work together to develop processes and solutions for broadband migrations problems that will not be addressed by the proposed General Condition on Service Migrations.
- 5.33 Ofcom considers that the proposed General Condition on Service Migrations will eventually need to incorporate provisions to cover all broadband migration scenarios referred to in this document, including migrations involving connections based on LLU and home moves, and to ensure that customers are not obstructed in migrating services in instances where the Communications Provider is not contactable by customers or refuses to comply with migration obligations.
- 5.34 Ofcom expects the industry to formulate proposals for the key areas for further development set out in the following section within six months. Ofcom then intends to conduct a further consultation on the proposals put forward by industry, with the intention of incorporating them into the new General Condition on Migrations. Ofcom will provide appropriate support to ongoing work by the industry to develop such processes.
- 5.35 In the event that the industry fails to reach agreement within six months and/or to present a proposal which is acceptable to Ofcom, we will conduct a consultation based on Ofcom's own preferred solution for incorporating the additional elements

set out in the following section into the proposed General Condition on Service Migrations.

- 5.36 As discussed at paragraph 2.6 above the industry is currently discussing arrangements for future migrations in light of the proposals Ofcom made in the Migrations Consultation. A working group from industry is already progressing this work and this would be a suitable forum for discussion and development of the additional elements set out in the following section.

Question 6: do respondents agree that six months is an appropriate timescale for development of these further proposals? If not, what alternative period do respondents suggest, and why?

Key areas for further development

- 5.37 In order to ensure that the principles set out in the proposed General Condition on Migrations are fully implemented, Ofcom considers that the industry needs to develop existing processes and agree a number of new process elements. These are discussed in the following paragraphs.
- 5.38 Future processes must reflect developments in the market since the voluntary code was developed, notably the role of LLU. It must fully encompass the role of Openreach and other wholesale broadband providers as well as BT Wholesale (for example a Communications Provider selling LLU-based broadband on a wholesale basis to a broadband service provider). They must also encompass all the broadband migration scenarios described in this consultation, particularly home moves, which are not within the scope of the current voluntary code.
- 5.39 Future processes must include arrangements for provision of MACs by someone other than the customer's broadband service provider, in instances where the customer's service provider refuses, or fails, to provide one. Ofcom acknowledges that this represents a substantial change to the current MAC process, which assumes the customer interacts directly with the LSP. However, Ofcom considers it is an essential development for the reasons set out in the following paragraphs and discussed in Section 4 above.
- 5.40 Ofcom considers, in light of the withdrawal of E7even from the consumer broadband market and the resulting harm to consumers left stranded without a broadband service but unable to switch to another broadband service provider, that contingency arrangements for generating and issuing MACs are an essential requirement of future arrangements.
- 5.41 Harm to customers in the E7even case was particularly acute because the wholesale suppliers involved were under no obligation to issue MAC codes to the customers affected, and declined to do so on a voluntary basis.
- 5.42 There are a number of ways in which such a mechanism could be implemented:
- a "next provider in the chain" model, i.e. the wholesale broadband provider of the broadband service provider that has failed to provide its customers with MACs, is responsible for providing MACs;
 - BT Wholesale or Openreach is responsible for providing MACs to customers of any broadband service provider; or; or

- an independent third party is responsible for providing MACs.
- 5.43 In developing such a mechanism, Ofcom expects the industry to take into account the associated costs and appropriate cost recovery mechanism of the various different options. Broadband service providers and wholesale broadband providers may also need to review their contracts in order to reflect the change in regulation.

Question 7: do respondents agree that it is appropriate to make arrangements for provision of MACs by a third party mandatory?

Question 8: do respondents agree that it is appropriate to make arrangements for other migration processes, such as reverse migrations mandatory?

Review of proposed regulation

- 5.44 Ofcom considers that the proposed General Condition on Service Migrations would be reviewed at an appropriate point to see whether it still serves the needs of consumers and broadband service providers. The appropriate point is likely to be once Ofcom has reached a view on the outcome of the Migrations Consultation – although it may be earlier if it appears that the General Condition on Service Migrations is not fulfilling its intended purpose.

Legal background

- 5.45 In proposing a new general condition Ofcom is required to meet various tests set out in the Communications Act 2003 (“the Act”). These tests and Ofcom’s assessment of how these are met in connection with the General Condition on Service Migrations are set out below.

Section 3 – Ofcom’s general duties

- 5.46 Section 3(1) of the Act sets out the principal duty of Ofcom. Ofcom is required by this section to carry out its functions in line with this duty. That duty is:
- a) to further the interests of citizens in relation to communications matters; and
 - b) to further the interests of consumers in relevant markets, where appropriate by promoting competition.
- 5.47 Ofcom has also considered when carrying out its functions, amongst other things, the requirements in section 3 (2) of the Act to secure the availability throughout the UK of a wide range of electronic communications services, and section 3 (4) of the Act, namely that in performing its duties Ofcom must also have regard to such of the following as appears to be relevant in the circumstances, in particular:
- the desirability of promoting competition in relevant markets;
 - the desirability of encouraging investment and innovation in relevant markets;
 - the needs of persons with disabilities, of the elderly and of those on low incomes; and
 - the opinions of consumers in relevant markets and of members of the public generally.

- 5.48 Ofcom considers that the proposed General Condition on Service Migrations set out in this document is in line with its primary duties. In particular, making the existing MAC process mandatory for all broadband service providers will further the interests of broadband consumers and promote competition for consumer broadband services. It will continue to protect customers against the risks of slamming and mis-selling by ensuring that customers are involved in a decision to move their service to another provider.
- 5.49 A further consideration for Ofcom is the desirability of encouraging the availability and use of high-speed data transfer services throughout the United Kingdom.
- 5.50 In addition to the factors set out above, when performing its duties under the Act, Ofcom is required to have regard to the desirability of promoting and facilitating the development and use of effective forms of self-regulation. Ofcom considers that the progress achieved by industry in creating the MAC process may be undermined by the actions of those broadband service providers who do not comply with the code and, since it is voluntary, are not required to do so. Making compliance with the MAC process a general obligation will enable Ofcom to investigate allegations of non-compliance by broadband service providers and, where appropriate, to take enforcement action to ensure compliance.
- 5.51 An essential characteristic of a competitive broadband market is the ability of consumers to move between broadband service providers. Ofcom considers that mandating the current voluntary process, which has already been adopted by a large proportion of the industry, will facilitate a better migration experience for customers because all providers will be required to comply with the process.
- 5.52 Mandating the existing voluntary process will also benefit broadband service providers. A large proportion of the industry has invested time and resources to be in a position to comply with the MAC Code, and the entire industry suffers reputationally where some broadband service providers do not comply.

Section 4 – European Community requirements for regulation

- 5.53 Section 4 of the Act requires Ofcom to act in accordance with the six European Community requirements for regulation, including the requirement to promote the interests of all persons who are citizens of the European Union and to promote competition in relation to the provision of communications services.
- 5.54 Ofcom considers that the measures outlined above promote the interests of all persons who are citizens of the European Union by enabling consumers to benefit from easily from competition and greater choice. Improved and consistent migration processes enhance competition and promote consumer confidence in the underlying services.

Section 47 – Test for setting or modifying conditions

- 5.55 As set out under section 47(1) of the Act, in modifying a condition, Ofcom must be satisfied that the test set out under section 47(2) has been met. The test is that the modification of the condition is:
- a) objectively justifiable in relation to the networks, services, facilities, apparatus or directories to which it relates;

- b) not unduly discriminatory against particular persons or against a particular description of persons;
- c) proportionate to what it is intended to achieve; and
- d) transparent in relation to what it is intended to achieve.

Proposal 1: General Condition 22.2 3: high level obligations on Communications Providers in relation to broadband migrations

5.56 The first proposal that Ofcom intends to implement is the imposition of high-level obligations on all broadband service providers to ensure that customers have a positive experience of broadband migrations, even where the broadband service provider does not have specific obligations under the MAC process. This obligation is deliberately less specific than the other elements of the proposed obligation (Annex 1 – see below), which requires compliance with a detailed migrations process. Ofcom considers that the high-level obligations will provide guidance to broadband service providers about their obligations in relation to migrating broadband services, even where processes for particular migrations paths are still in the development phase. Ofcom considers it extremely important that industry work together to develop migration processes to ensure there can be smooth transitions between all types of broadband services, particularly those provided on the same underlying network.

5.57 The proposed obligation meets the tests set out in section 47(2) of the Act being:

- a) **objectively justifiable** because there is clear evidence that the experiences of some customers when dealing with Communications Providers offering broadband services have been far from satisfactory. In some instances it will not be apparent to a customer which broadband service provider is at fault in the migrations process. A high-level obligation applying to all broadband service providers will mean that they will have a requirement to act reasonably when dealing with customers where migration processes do not apply, or where the MAC process has broken down with respect to another broadband service provider.;
- b) **not unduly discriminatory against particular persons or against a particular description of persons** as all broadband service providers will be required to behave reasonably by taking actions to minimise service disruption and to facilitate requests by customers to migrate broadband services. Broadband service providers will be required to ensure as far as reasonably practicable that consumers will receive equivalent treatment whatever the wholesale basis of the broadband service they are migrating from so that LLU customers will be no worse off should they wish to move to or from a non-LLU service or to or from another LLU service;
- c) **proportionate** to what it is intended to achieve, which is an improved broadband migration experience for customers. The intention of imposing the proposed high level obligation is to acknowledge that broadband migration processes are still at an early stage. The high-level obligations are designed to operate as principles until such time that specific processes are developed for each of the migration options, while acknowledging the importance for providers to do all that is reasonable to facilitate migrations so that competition is promoted and the interests of consumers will be furthered. Broadband service providers and wholesale broadband providers are required to act in a way that is reasonable and therefore Ofcom does not intend to be overly prescriptive with respect to the

obligations. Ensuring that customers have minimal service disruption and that their requests to move to another provider are not unreasonably denied should be a fundamental element of customer service, whether the provider is on the gaining or losing end of the transaction; and

- d) **transparent** in relation to what it is intended to achieve insofar as the nature and obligations are clearly set out in this document for broadband service providers and wholesale broadband providers depending on their role in a given broadband migration scenario.

Proposal 2: General Condition 22, Annex 1: the MAC process

- 5.58 The second proposal involves taking the current voluntary Broadband Service Provider Migrations Code of Practice and making compliance with it compulsory by incorporating the elements of the MAC process as Annex 1 of the proposed General Condition 22 on Service Migrations. This will require all broadband service providers to follow the existing process and enable Ofcom to take action when broadband service providers are not acting in accordance with the Code.
- 5.59 As discussed in Section 4, the Code of Practice has been redrafted to make it suitable for incorporation as a General Condition. As a result some elements are no longer necessary and have been removed. A few minor additions to the provisions of the Code have been included in the proposed General Condition. Detail of these inclusions can be found at the end of the comparison table in Annex 8 below.
- 5.60 For the reasons discussed in this consultation, Ofcom considers that the proposal to mandate compliance with the MAC process meets the tests set out in section 47(2) of the Act being:
 - a) **objectively justifiable** because the evidence from customer complaints indicates that in a large proportion of cases, a failure by broadband service providers to comply with the MAC processes results in a poor customer experience and serves to undermine a migrations process that is regarded by industry as being a largely successful process. If Ofcom does not impose this obligation it risks undermining the work already undertaken by a significant proportion of the industry to develop the Code to where it is today;
 - b) **not unduly discriminatory against particular persons or against a particular description of persons**, although there will be a greater impact on broadband service providers who have not already signed up to the Code of Practice on a voluntary basis. Some broadband service providers have in fact undertaken the necessary developments to adopt the MAC process without actually being a signatory to the voluntary code. The application to all broadband service providers and wholesale broadband providers uniformly will mean that all broadband service providers stand to benefit from the acceptance and utilisation of a common process for broadband migrations;
 - c) **proportionate** to what it is intended to achieve, which is an improved experience for customers in the short term. For broadband service providers already complying with existing processes there will be little impact as they are already following the best practice on a voluntary basis. Ofcom believes that requiring all broadband service providers to comply with the MAC process is a proportionate response to counteract the problems that have arisen to date with migrations. There is evidence that some broadband service providers are not assisting in customer migrations by refusing to issue MACs, which impacts on individual

customers and discredits the industry and those broadband service providers who are actively participating in the MAC process. The minor enhancements to the Code of Practice are intended to address some of the shortcomings that have been identified with the current process, for example, trying to minimise transposition errors that may arise if the MAC is only communicated verbally; and

- d) **transparent** in relation to what it is intended to achieve insofar as the nature and obligations are clearly set out in this document.

Monitoring and enforcement

- 5.61 If Ofcom receives complaints about alleged non-compliance with General Condition 22 these will be handled in line with Ofcom's complaint handling guidelines³³.

³³ Ofcom's current complaint handling guidelines, *Guidelines for the handling of competition complaints, and complaints and disputes about breaches of conditions imposed under the EU Directives*, are published on its website at: http://www.ofcom.org.uk/bulletins/comp_bull_index/eu_directives/?a=87101. On 6 July 2006 Ofcom published a consultation document inviting respondents' views on draft guidelines intended to replace the existing guidelines. The consultation closes on 14 September 2006.

Annex 1

Responding to this consultation

How to respond

- A1.1 You are invited to submit written views and comments on the issues raised in this document **by 5pm on 5 October 2006**.
- A1.2 We prefer to receive responses using the online web form at <http://www.ofcom.org.uk/consult/condocs/migration/howtorespond/>, as this helps us to process the responses quickly and efficiently. We would also be grateful if you could assist us by completing a consultation response cover sheet (see Annex 3) to indicate whether any part of your response is confidential. The response cover sheet is incorporated in the online web form.
- A1.3 Please e-mail larger responses (particularly those that include charts, tables or other data) to louise.marriage@ofcom.org.uk, attaching your response as a Microsoft Word document, together with a consultation response cover sheet.
- A1.4 Alternatively, you may post your response to the address below, marked with the title of the consultation:
- Louise Marriage
4:79
Riverside House
2A Southwark Bridge Road
London
SE1 9HA
- A1.5 You do not need to supply us with a hard copy in addition to an electronic version.
- A1.6 Ofcom will acknowledge receipt of responses submitted using the online web form but not otherwise.

Further information

- A1.7 If you want to discuss the issues and questions raised in this consultation, or need advice on the appropriate form of response, please contact Louise Marriage on 020 7783 4333.

Confidentiality

- A1.8 We believe it is important for everyone interested in an issue to see the views expressed by consultation respondents. We will therefore usually publish all responses on our website, www.ofcom.org.uk as soon as possible after receipt (when respondents confirm on their response cover sheet that this is acceptable).
- A1.9 All comments will be treated as non-confidential unless respondents specify that part or all of the response is confidential and should not be disclosed. Please place any confidential parts of a response in a separate annex so that non-confidential parts may be published along with the respondent's identity.

- A1.10 Ofcom reserves its power to disclose any information it receives where this is required to facilitate the carrying out of its statutory functions.
- A1.11 Please also note that copyright and all other intellectual property in responses will be assumed to be licensed to Ofcom to use in order to meet its legal requirements. Ofcom's approach on intellectual property rights is explained further on its website at <http://www.ofcom.org.uk/about/account/disclaimer/>

Next steps

- A1.12 Following the end of the consultation period, Ofcom intends to publish a statement towards the end of the year.
- A1.13 You can register to receive free e-mail Updates alerting you to the publications of relevant Ofcom documents. For more details please see: http://www.ofcom.org.uk/static/subscribe/select_list.htm

Ofcom's consultation processes

- A1.14 Ofcom seeks to ensure that responding to a consultation is easy as possible. For more information please see our consultation principles in Annex 2.
- A1.15 If you have any comments or suggestions on how Ofcom conducts its consultations, please call our consultation helpdesk on 020 7981 3003 or e-mail us at consult@ofcom.org.uk. We would particularly welcome thoughts on how Ofcom could more effectively seek the views of those groups or individuals, such as small businesses or particular types of residential consumers, who are less likely to give their opinions through a formal consultation.
- A1.16 If you would like to discuss these issues or Ofcom's consultation processes more generally you can alternatively contact Vicki Nash, Director Scotland, who is Ofcom's consultation champion:

Vicki Nash
Ofcom
Sutherland House
149 St. Vincent Street
Glasgow G2 5NW

Tel: 0141 229 7401
Fax: 0141 229 7433

e-mail vicki.nash@ofcom.org.uk

Annex 2

Ofcom's consultation principles

A2.1 Ofcom has published the following seven principles that it will follow for each public written consultation:

Before the consultation

A2.2 Where possible, we will hold informal talks with people and organisations before announcing a big consultation to find out whether we are thinking in the right direction. If we do not have enough time to do this, we will hold an open meeting to explain our proposals shortly after announcing the consultation.

During the consultation

A2.3 We will be clear about who we are consulting, why, on what questions and for how long.

A2.4 We will make the consultation document as short and simple as possible with a summary of no more than two pages. We will try to make it as easy as possible to give us a written response. If the consultation is complicated, we may provide a shortened version for smaller organisations or individuals who would otherwise not be able to spare the time to share their views.

A2.5 We will normally allow ten weeks for responses to consultations on issues of general interest. The consultation period for these proposals is seven weeks as Ofcom's consultation guidelines³⁴ permit a shorter consultation period than the usual 10 weeks on urgent issues such as this.

A2.6 There will be a person within Ofcom who will be in charge of making sure we follow our own guidelines and reach out to the largest number of people and organizations interested in the outcome of our decisions. This individual (who we call the consultation champion) will also be the main person to contact with views on the way we run our consultations.

A2.7 If we are not able to follow one of these principles, we will explain why. This may be because a particular issue is urgent. If we need to reduce the amount of time we have set aside for a consultation, we will let those concerned know beforehand that this is a 'red flag consultation' which needs their urgent attention.

After the consultation

A2.8 We will look at each response carefully and with an open mind. We will give reasons for our decisions and will give an account of how the views of those concerned helped shape those decisions.

³⁴ *How will Ofcom consult? A guide to our consultation process.*

Annex 3

Consultation response cover sheet

- A3.1 In the interests of transparency, we will publish all consultation responses in full on our website, www.ofcom.org.uk, unless a respondent specifies that all or part of their response is confidential. We will also refer to the contents of a response when explaining our decision, without disclosing the specific information that you wish to remain confidential.
- A3.2 We have produced a coversheet for responses (see below) and would be very grateful if you could send one with your response (this is incorporated into the online web form if you respond in this way). This will speed up our processing of responses, and help to maintain confidentiality by allowing you to state very clearly what you don't want to be published. We will keep your completed coversheets confidential.
- A3.3 The quality of consultation can be enhanced by publishing responses before the consultation period closes. In particular, this can help those individuals and organisations with limited resources or familiarity with the issues to respond in a more informed way. Therefore Ofcom would encourage respondents to complete their coversheet in a way that allows Ofcom to publish their responses upon receipt, rather than waiting until the consultation period has ended.
- A3.4 We strongly prefer to receive responses via the online web form which incorporates the coversheet. If you are responding via e-mail, post or fax you can download an electronic copy of this coversheet as a Word or RTF file from the 'Consultations' section of our website at www.ofcom.org.uk/consult/.
- A3.5 Please put any confidential parts of your response in a separate annex to your response, so that they are clearly identified. This can include information such as your personal background and experience. If you want your name, address, other contact details, or job title to remain confidential, please provide them in your coversheet only so that we don't have to edit your response.

Cover sheet for response to an Ofcom consultation

BASIC DETAILS

Consultation title:

To (Ofcom contact):

Name of respondent:

Representing (self or organisation/s):

Address (if not received by e-mail):

CONFIDENTIALITY

What do you want Ofcom to keep confidential?

Nothing

☐

Name/contact details/job title

☐

Whole response

☐

Organisation

☐

Part of the response

☐

If there is no separate annex, which parts?

DECLARATION

I confirm that the correspondence supplied with this cover sheet is a formal consultation response. It can be published in full on Ofcom's website, unless otherwise specified on this cover sheet, and I authorise Ofcom to make use of the information in this response to meet its legal requirements. If I have sent my response by e-mail, Ofcom can disregard any standard e-mail text about not disclosing e-mail contents and attachments.

Ofcom seeks to publish responses on receipt. If your response is non-confidential (in whole or in part), and you would prefer us to publish your response only once the consultation has ended, please tick here.

☐

Name

Signed (if hard copy)

Annex 4

Consultation questions

Question 1 : do respondents agree that the evidence from cases logged by OCC suggests that there is a need for regulation?

Question 2: do respondents agree that given the problems caused by tag on line there is a need for further regulation?

Question 3: do respondents agree that given the problems experienced by consumers where a broadband service provider fails or refuses to issue MACs, it is appropriate to introduce a process that enables customers to obtain MACs from another party? How do respondents see such a process working?

Question 4: do respondents agree that Ofcom's proposed high-level obligations would effectively address the problems described in this document?

Question 5: do respondents agree that a mandatory version of the MAC process is appropriate?

Question 6: do respondents agree that six months is an appropriate timescale for development of these further proposals? If not, what alternative period do respondents suggest, and why?

Question 7: do respondents agree that it is appropriate to make arrangements for provision of MACs by a third party mandatory?

Question 8: do respondents agree that it is appropriate to make arrangements for other migration processes, such as reverse migrations mandatory?

Annex 5

Impact assessment

Introduction

- A5.1 The analysis presented in this annex, when read in conjunction with the rest of this consultation document, represents an impact assessment, as defined in section 7 of the Communications Act 2003 (the Act).
- A5.2 You should send any comments on this impact assessment to us by the closing date for this consultation. We will consider all comments before deciding whether to implement our proposals.
- A5.3 Impact assessments provide a valuable way of assessing different options for regulation and showing why the preferred option was chosen. They form part of best practice policy-making. This is reflected in section 7 of the Act, which means that generally we have to carry out impact assessments where our proposals would be likely to have a significant effect on businesses or the general public, or when there is a major change in Ofcom's activities. However, as a matter of policy Ofcom is committed to carrying out and publishing impact assessments in relation to the great majority of our policy decisions. For further information about our approach to impact assessments, see the guidelines, *Better policy-making: Ofcom's approach to impact assessment*, which are on our website:
http://www.ofcom.org.uk/consult/policy_making/guidelines.pdf

The citizen and/or consumer interest

- A5.4 As set out in paragraphs 2.16-2.17 above this project was prompted by a concern that consumers were not getting the best experience with broadband migrations.
- A5.5 On investigating this possibility further, Ofcom concluded that there was evidence (as set out in Section 4 above) – in the form of cases logged by OCC, and particular issues causing harm to consumers – that consumers were indeed suffering harm from broadband migrations processes.
- A5.6 The aim of the proposals set out in Section 5 above and examined in this impact assessment is therefore to minimise the potential for consumer harm around broadband migrations by ensuring that broadband service providers follow common processes, develop new processes that support consumer choice, and give Ofcom powers to enforce when it seems that they are not doing what they should be.

Ofcom's policy objective

- A5.7 The objectives of the proposals set out in Section 5 are:
- to improve consumer outcomes in broadband migrations by ensuring that broadband service providers comply with existing processes;
 - to improve underlying broadband migrations processes, so that consumer outcomes continue to improve; and
 - to give Ofcom specific powers to enforce non-compliance – as non-compliance will have a direct impact on consumers in terms of their ability to move easily.

A5.8 Two options are considered in this impact assessment:

- do nothing (no additional formal regulation); and
- a new General Condition on Service Migrations, to consist of a high-level obligations to ensure that customers have a positive experience of broadband migrations and a requirement to follow the MAC process (as discussed in Section 5)

Analysis of the different options

Do nothing (no additional formal regulation)

A5.9 Even in the absence of formal regulation, work to address consumer problems associated with broadband migrations is expected to continue – “no formal regulation” does not, therefore, mean no further action.

A5.10 BT Wholesale’s continued work on tag on line, and ongoing work by Openreach and the industry on migrations paths for LLU connections is proceeding according to a timetable established in accordance with the milestones set out in the BT Undertakings.

A5.11 In addition, the current voluntary code of practice will continue to apply to signatories which are responsible for a large majority (over 80%) of broadband migrations.

Benefit for consumers

A5.12 As set out in Section 4 above, the outlook for consumers affected by tag on line has already improved considerably as a result of the BT Wholesale tag on line helpdesk. BT Wholesale expects to continue to provide this service to consumers independently of any formal regulatory requirement, and it will not be impacted by any change to the regulatory framework.

A5.13 Other ongoing work which may benefit consumers, such as the development of processes for migrations paths involving LLU, are also independent of formal regulation, and are intended to represent an improvement on current arrangements that will ensure migrations happen smoothly and with minimal disruption to the consumer.

A5.14 However, Ofcom does not expect any of this work to lead to an immediate downturn in the number of consumers affected by broadband migrations problems. In fact, the number of consumers affected by problems with broadband migrations is likely to continue to grow in the short term in line with overall broadband volumes and increases in the number of customers using connections based on LLU rather than BT Wholesale products (in light of the specific potential for difficulties for those consumers migrating away from LLU).

A5.15 Nor will this work resolve the current problems with the MAC process – the largest cause of consumer harm after tag on line, as discussed in Sections 3 and 4 – as Ofcom would, again, be unable to intervene in the event that customers were adversely impacted by failure to comply with established processes.

Cost to stakeholders

A5.16 This option does not propose any additional action on the part of industry and will not represent any additional cost to that group of stakeholders.

Risks and possible unintended consequences

A5.17 The principal risk of this option is that work currently being undertaken voluntarily will stall and that Ofcom will have no formal power to intervene. This will lead to increasing consumer harm and negative perceptions of broadband.

A5.18 A further risk is that if Ofcom does not require compliance, the costs of compliance will be borne by broadband service providers who comply with the current voluntary code (and those broadband service providers and wholesale broadband providers who contribute to ongoing industry work) but not by those who do not comply. This may reduce incentives to sign up to and comply with the voluntary code of practice, further increasing the burden on those broadband service providers who remain compliant.

Impact on competition

A5.19 If consumer outcomes fail to improve, especially given the growing numbers of complaints, competition could be compromised as consumers will be less confident in switching to new broadband service providers. The outcome of this could potentially stifle growth and entry opportunities for broadband service providers, which may in turn have a negative impact on the prices and services offered to consumers.

A5.20 There is also the risk that LLU based broadband service providers will be particularly affected by negative perceptions of consumers who have had a bad experience with migrating from LLU-based broadband, leading to an impact on competition in the emerging LLU sector.

A5.21 Ofcom considers that, based on the evidence it has gathered so far, declining to introduce formal targeted regulation would not be fulfilling Ofcom's statutory duties to act in a way that further the interests of consumers and promotes competition.

Addressing the problem through ongoing work

A5.22 An alternative to the "do nothing" option described in the preceding paragraphs would have been for Ofcom to address the problems identified in this consultation document as part of its longer term ongoing work on migrations, as set out in the Migrations Consultation.

A5.23 The Migrations Consultation may lead to changes in migrations processes across all transferable voice and broadband changes in the medium term.

A5.24 In the short term, however, Ofcom considers that the impact of this option would have been identical to the "do nothing" option set out above.

A new General Condition on Service Migrations

A5.25 Ofcom's proposal is a new General Condition on Service Migrations consisting of two elements:

- a high-level obligation on all Communications Providers involved in broadband migrations to ensure that customers have a positive experience of broadband migrations;
- a requirement on all Communications Providers involved in broadband migrations to comply with the current MAC process.

A5.26 In addition, Ofcom expects all Communications Providers involved in broadband migrations to develop additional processes (e.g. a mechanism for the provision of MACs by someone other than the customer's broadband service provider) to be incorporated into General Condition 22 via a further consultation in six months' time.

Benefit for consumers

A5.27 In addition to the benefit that consumers will get from the voluntary action currently underway, consumers may, in some cases, see an immediate change as a result of Ofcom's preferred option. A requirement to comply with the current MAC process of practice will encourage compliance among all broadband service providers (and wholesale broadband providers), and should therefore lead to a reduction in types of behaviours prohibited by the current code (e.g. debt blocking, charging for MACs, refusal to supply MACs for reasons other than those specified in the current voluntary code). As any such behaviour would mean a service provider would be in breach of proposed General Condition 22, Ofcom would then be able to take action against it. In other words this action will help to solve the problems, highlighted in paragraph A5.15 above), which would not be resolved without the introduction of formal measures.

A5.28 While the voluntary code of practice already applies to broadband service providers providing services based on shared and full LLU, introducing a formal obligation will help to ensure that consumers on LLU-based broadband connections are no worse off in terms of their ability to switch.

A5.29 Ofcom expects the immediate impact of its preferred policy change on consumers to be limited. In fact, in the short term, numbers of consumers affected by the problems considered in this consultation are likely to continue to rise in line with overall broadband numbers.

A5.30 For example, if Ofcom has the power to investigate alleged non-compliance with a requirement to follow specified migrations processes, this will not enable Ofcom to progress investigations any faster to secure relief for those customers affected. In addition, the introduction of formal regulation will not impose tighter deadlines on ongoing work.

A5.31 Ofcom's intention, however, is that the high-level obligation on all Communications Providers involved in broadband migrations to ensure that customers have a positive experience (see Section 5) will ensure that ongoing work is carried out as quickly and as effectively as possible. Ofcom will have the power to intervene in the event that it considers broadband service providers are not doing what can reasonably be expected of them to improve the customer experience. In the long term that should, in conjunction with the voluntary action underway, eventually lead to a fall in the number of consumers affected.

Cost to stakeholders

- A5.32 All major broadband service providers and many smaller ones have already committed to following the voluntary code of practice. Those broadband service providers who have not signed up may face additional costs associated with compliance. For example, the voluntary code prohibits debt blocking, and some broadband service providers may not have signed up to the code precisely because they consider that this will expose them to additional cost. Across the industry, the cost of absorbing bad debt may increase. Broadband service providers who are not currently signatories to the voluntary code (or are signatories but are not fully complying) will no longer be able to block migration of customers who have not paid their bills. There is also a possibility that if customers know they can switch providers, even though they have not paid their bills, the number of customers who do not pay will increase. Ofcom welcomes quantitative evidence from respondents that would enable it to more accurately assess the likely impact of this particular provision on their businesses.
- A5.33 Additional compliance costs may be incurred by all broadband service providers, including current signatories to the voluntary code, for example in retraining front line staff to ensure that they are aware of the new requirement and briefed to offer MACs proactively to any customer that wishes to switch. Again, we would welcome quantitative evidence from respondents that would enable us to more accurately assess the likely impact of this particular provision on their businesses.
- A5.34 Most broadband service providers (even some who are not also signatories to the voluntary code), appear to be using the MAC process for migrations between IPStream and DataStream, and have undertaken the necessary development work to integrate their systems with those of BT Wholesale. Ofcom does not therefore anticipate that stakeholders will incur significant development costs as a result of the requirement to use the MAC process for IPStream and DataStream transfers.
- A5.35 Further development work for individual broadband service providers is likely to be necessary to ensure that migrations processes are fully extended to migrations involving LLU. However, Ofcom makes two observations about the associated cost. First, significant costs will be incurred by any service provider migrating some or all of its customer base to LLU, and additional costs imposed by an obligation to facilitate migrations are likely to be low as the impact on consumers will (or should) already have been factored into ongoing work. Second, there are also costs associated with the alternative. As discussed in Section 3, many broadband service providers are currently advising customers who want to switch to a connection based on LLU to terminate their old contract and start afresh, which incurs a real charge whereas broadband service providers do not incur a cost for obtaining a MAC (as distinct from the systems development work that broadband service providers need to undertake before they can issue and accept MACs).

Impact on competition

- A5.36 In terms of the impact on competition of this proposal as stated above many broadband service providers are already signed up to the voluntary code and so in terms of cost making the code mandatory will have little effect on them.
- A5.37 However, there may be smaller broadband service providers who are currently not signed up and for whom the cost of complying may be disproportionately high. The introduction of new formal regulatory measures may also have the effect of deterring smaller new entrants from entering in the future.

A5.38 However, by facilitating a positive process for consumers switching between broadband service providers, this effect may well result in increasing effective competition between broadband service providers, lowering prices and increasing quality of service.

Risks and possible unintended consequences

A5.39 A possible risk of Ofcom's proposed development is that it will detract resource from ongoing work by the industry associated with broadband migrations, for example BT Wholesale's proposed systems development and further work on migrations around LLU.

Conclusion

A5.40 Having considered the evidence set out in this impact assessment and in the body of this consultation document, Ofcom's preferred option is to introduce a new General Condition on Service Migrations. This option is set out in more detail in Section 5 and a notification of the proposed General Condition is set out at Annex 7.

Annex 6

Broadband Service Provider Migration Code of Practice

A6.1 This is the current voluntary *Broadband Service Provider Migration Code of Practice*, which is published on Ofcom's website at http://www.ofcom.org.uk/advice/codes/bbm_cop/ along with a list of current signatories.

Broadband Service Provider Migration Code of Practice

Introduction

Broadband service providers and BT have worked together to define an outline process and associated commercial principles for migrating customers between service providers. The process and principles are intended to maximise the convenience for consumers wishing to migrate, and to minimise the risk that the process will be abused, either by service providers or by consumers.

This Code of Practice is intended to embody the commercial principles that have been agreed. The guiding principle behind this Code of Practice is that all service providers involved in the provision of broadband services over BT copper loops will do so in a fair, reasonable and responsible manner and in the best interests of consumers.

Scope

Consumers have no reason to be aware what wholesale product underlies their retail service. The CoP is therefore intended to apply to migrations of all retail DSL services provided over BT copper loops, whether based on BT wholesale DSL services or those of a local loop unbundling operator (LLUO). This includes same product migrations (eg IPStream to IPStream or DataStream to DataStream) and different product migrations (eg IPStream to DataStream or IPStream to LLUO). Technical issues that may arise in the case of different product migrations are outside the scope of the commercial principles and of this CoP.

The SP to SP migration process to which this CoP refers will be incorporated into a new IPStream-only SP to SP migration process, to replace the existing one. It will also be incorporated into the IPStream to DataStream, DataStream to IPStream, DataStream to DataStream and IPStream/DataStream to LLUO migration processes in line with the timescales of the BT roadmap.

Signatories will be expected to comply with this CoP from the date at which the relevant processes and systems have been made available by BT Wholesale.

Application and enforcement

The CoP will operate as follows:

- SPs will sign up to the CoP on a voluntary basis, by letter to Ofcom.
- SPs may withdraw from the CoP at any time by giving notice in writing to Ofcom and to other signatories.

- SPs will publicise to consumers the existence of the Code.
- Ofcom will publicise to consumers the existence of the CoP and the list of SPs that have signed up to it.

If an SP who has signed up to the CoP fails to comply with the terms or service levels of the CoP, the SP's customers or other SPs may escalate complaints to Ofcom. Ofcom may consider any such complaints and take appropriate steps, where it is necessary to do so. BT Wholesale will not be expected to deal with complaints or take enforcement action for non-compliance.

The existence of this CoP will not remove the need for broadband service providers to abide by other relevant legislation, including the Competition Act 1998, the Communications Act 2003 and general consumer protection legislation.

Changes to the CoP

The CoP will be published on Ofcom's website. Any signatory or Ofcom may propose a change to the CoP. If none of the signatories objects to the change within 28 days, the change will be deemed to have been accepted. If any signatory objects, the change may be made only by the majority decision of a specially convened working group open to all existing signatories. BT Wholesale should also be consulted on any changes in case there are systems or contractual implications.

The Code of Practice

Broadband service providers agree, in addition to their general obligations as communications service providers, to act in accordance with the following Code of Practice when migrating customers to or from their service:

Definition of Terms

GSP	Gaining Service Provider*
LSP	Losing Service Provider*
BTW	BT Wholesale
MAC	Migration Authorisation Code
Customer	The user of the broadband connection
Account holder	The person or entity with contractual responsibility for the broadband service
Migration	Transfer of a broadband customer between SPs, where both SPs provide service over the same BT copper loop
Working day	0900 - 1700 hours, Monday . Friday (exc local Bank Holidays)

**Where there is a chain of resellers such that the SP contracting with BT for the wholesale service is different from the SP contracting with the customer for the retail service, the terms LSP and GSP refer to whichever party(s) in the chain is responsible or to the parties collectively as appropriate.*

Migration authorisation

1. The migration process cannot be initiated without prior authorisation by the losing service provider (LSP). Authorisation shall always be obtained by an account holder request to the LSP. The LSP is entitled to validate the status of the customer before authorising the migration of any broadband service.
2. The issuing of a Migration Authorisation Code (MAC) by the LSP is their agreement that the customer is entitled to request and have their broadband service(s) migrated to another SP. The MAC uniquely identifies to BTW the LSP and the broadband service that has been authorised for migrating.
3. The only reasons why a LSP may refuse to issue a MAC are that:
 - a) The customer has failed standard checks to validate that he is the account holder
 - b) The broadband service contract has been terminated
 - c) The LSP has already submitted a cease request to BTW for the broadband service
 - d) The account holder is deceased
4. For avoidance of doubt, the LSP may not refuse to issue a MAC if:
 - a) The account holder has not paid any charges due before the migration date (whether service charges, disconnection charges, charges for remaining minimum term contract period or any migration charge); such charges should be included in a final broadband service bill, which will be settled according to the terms of the contract.
 - b) The account holder is in bad debt but is still receiving the broadband service at the time the request is received.
 - c) The account holder is within a minimum term contract on the broadband service that is needed to recover a subsidy on the broadband service equipment or setup costs;
 - d) The broadband service that is to be migrated has already been suspended for reasons of bad debt at the time the request is received.
5. The LSP must specify how customers can contact it to request a MAC (to include phone, email and letter as a minimum). If the customer contacts the LSP in an approved way, the LSP must respond in writing (letter or email) with the MAC, or reason for its non-issue, within 5 working days of receipt of the customer's request. If a MAC is issued, its validity period will start on the date of despatch of the written migration authorisation. Except that, if the customer contacts the LSP by phone, the MAC may be issued immediately, in which case the validity period starts at the time it is issued, and the LSP is not obliged to provide additional written confirmation. The LSP must remind the customer of the MAC if requested by the customer.
6. The written response (email or letter) to the migration authorisation request must clearly indicate the MAC (or MACs), the MAC validity period, and the broadband service(s) to which the MAC applies. In the event that a MAC is refused for any broadband services, these must clearly be distinguished, together with the reason(s) for the refusal of each broadband service.

7. SPs must specify how customers can appeal against a decision not to issue a MAC. This could be through the SP's normal complaint handling process.

Migration process

8. A MAC is valid from the date that it is issued (either verbally or in writing, whichever is first) for a period of 30 calendar days, including bank holidays. The MAC validity period extends up to 17.00 on the 30th calendar day from issue.
9. When the customer applies to a GSP to migrate their broadband service(s) they must supply the GSP with a valid MAC for each broadband service to be migrated. The default migration date will be taken to be 5 working days after the submission of the migration request by the GSP. The customer may request an alternative migration date that is later than the default date.
10. If a GSP submits a migration request to the BTW system within the validity period, BT will process the request without any further authorisation from the LSP. If a GSP submits a migration request to the BTW system after the MAC has expired, BTW will reject the request.
11. The customer's request to the LSP for an authorisation to migrate does not in itself represent a request to terminate service with the LSP. The LSP should not, therefore, disconnect the broadband service upon request for (or issue of) a MAC.
12. During the MAC validity period, the LSP may continue to apply its normal processes (including suspending availability of the service) to manage bad debt prior to the broadband service being migrated.
13. The customer's request to the LSP for a MAC is taken to revoke any previous notice to terminate service (except where the LSP has already submitted a .cease. order to BTW, in which case the MAC request will be refused). On issuing a MAC, the LSP must confirm to the customer that any previous termination has been revoked, and shall ensure that any current or pending termination actions are cancelled.
14. At any time prior to the expiry of an existing MAC, the customer may request the LSP to remind him of the MAC and its expiry date. The customer cannot ask the LSP to cancel an existing MAC or to reissue a new MAC while an existing MAC is still valid.
15. The customer has the right to cancel or amend a migration request to the GSP at any time prior to the customer agreed date. However, only upward revisions of the migration date will be permitted.
16. When the LSP is notified that a migration has taken place, the customer's notice period (ie the date at which notice to discontinue service is taken for the purposes of calculating any outstanding subscription charges under the contract) will be taken to have commenced on the issue date of the MAC, or on the date of any prior notice to terminate, whichever is the earlier.
17. If the MAC validity period is passed without the LSP receiving notification of a migration request, the LSP must not terminate the current subscription, unless specifically requested to do so by the customer.

Marketing and external communications

18. SPs will publicise the provisions of this CoP to their customers, including publishing an agreed text on their website.
19. SPs will ensure that all communications with customers regarding difficulties that may arise from time to time in the porting process stress that all parties are working to resolve the difficulties. In particular, the LSP shall not state to customers that the delay is a good reason for maintaining the existing service and cancelling the migration.
20. SPs will not in the course of their marketing or sales activity encourage the customers of another SP to disregard the terms of their existing contract. For the avoidance of doubt, there is no positive obligation to remind customers of their obligations under their existing contract (though SPs may choose to do this); the prohibition is against gaining SPs explicitly encouraging end users not to respect their existing contract.

Other

21. SPs and BTW will establish a recovery process so that in the event of erroneous migrations, customers can be restored to their original SP with minimum disruption.

Annex 7

Notification

Notification of a proposed modification under section 48(2) of the Communications Act 2003

Proposal for insertion of a new General Condition 22 – Service Migrations to incorporate provisions about Broadband Migrations and the MAC Broadband Migrations Process, which is set out in the Schedule to the Notification under Section 48(1) of the Communications Act 2003 published by the Director General of Telecommunications on 22 July 2003.

1. OFCOM in accordance with section 48(2) hereby make the following proposals for insertion of a new General Condition 22 on Service Migrations to incorporate obligations about Broadband Migrations and the MAC Broadband Migrations Process;
2. The draft modification is set out in the Schedule to this Notification;
3. The effect of, and OFCOM's reasons for making, the proposals referred to in paragraph 1 above is set out in the accompanying explanatory statement;
4. OFCOM considers that the modification referred to in paragraph 1 above complies with the requirements of sections 45 to 50 of the Act, as appropriate and relevant to each of the proposed modifications;
5. In making the proposals set out in this Notification, OFCOM has considered and acted in accordance with their general duties in section 3 and of the Act and the six Community requirements in section 4 of the Act;
6. Representations may be made to OFCOM about the proposals set out in this Notification by **5pm on 5 October 2006**;
7. The modification shall enter into force on the date of publication of the final notification;
8. Copies of this Notification and the accompanying statement have been sent to the Secretary of State in accordance with section 50(1)(a) of the Act.
9. In this Notification:
 - a. "the Act" means the Communications Act 2003;
 - b. "OFCOM" means the Office of Communications; and
10. Except insofar as the context otherwise requires, words or expressions shall have the meaning assigned to them in this Notification and otherwise any word or expression shall have the same meaning as it has in the Act.
11. For the purpose of interpreting this Notification:

- a. headings and titles shall be disregarded; and
- b. the Interpretation Act 1978 shall apply as if this Act were an Act of Parliament.

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

Claudio Pollack

A person authorised by OFCOM under paragraph 18 of the Schedule to the Office of Communications Act 2002

17 August 2006

Schedule

Notification of a proposed modification under section 48(2) of the Communications Act 2003

Proposal for the insertion of a new General Condition 22 on Service Migrations

22 – SERVICE MIGRATIONS

Broadband Migrations

22.1 Within two months of this Condition entering into force, all Communications Providers pursuant to a request by an End-User or another Communications Provider to migrate a Broadband Service, shall:

- (a) comply with the provisions of the MAC Broadband Migrations Process set out at Annex 1 to this Condition; and
- (b) where the provisions of the MAC Broadband Migrations Process do not apply to the Communications Provider in relation to the Broadband Service, comply with the provisions referred to in Conditions 22.2.

22.2 The Communications Provider shall, pursuant to a request from an End-User and/or a Customer for a Broadband Migration:

- (a) facilitate the migration of the Broadband Service in a manner that is fair and reasonable;
- (b) ensure that the migration of the Broadband Service is carried out within a reasonable period;
- (c) ensure that the migration of the Broadband Service is carried out with minimal loss of the Broadband Service; and
- (d) assist with, and facilitate requests for, the migration of a Broadband Service not provided by another Communications Provider, in instances where the other Communications Provider has failed to, or refused to, comply with the MAC Broadband Migrations Process, in a manner that is fair and reasonable.

In this Condition:

- (a) “**Account holder**” means a person, other than a Communications Provider, who is party to a contract with the Communications Provider for the provision of Broadband Services.
- (b) “**Broadband Migration**” means one or more of the following processes by which:
 - (i) the Communications Provider transfers from using one Broadband Service to another Broadband Service;
 - (ii) an End-User or Customer transfers from using one Broadband Service to another Broadband Service;

- (iii) an End-User or Customer transfers from using a Broadband Service supplied by a Communications Provider to a Broadband Service supplied by another Communications Provider;
 - (iv) an End-User or Customer transfers from using a Broadband Service supplied by a Communications Provider at one location to a Broadband Service supplied by the same Communications Provider at a different location.
- (c) **“Broadband Services”** means all high speed DSL services that allow for the transfer of high volumes of data at high speeds.
- (d) **“Broadband Network Communications Provider”** means a Communications Provider that provides Broadband Network Services.
- (e) **“Broadband Network Services”** means services that:
 - (i) generate a MAC in relation to a Broadband Service provided by the Communications Provider to an End-User and/or to another Communications Provider;
 - (ii) effect a transfer of a Broadband Service from one Communications Provider to another Communications Provider using the MAC issued in relation to that Broadband Service; and
 - (iii) effect the cease of a Broadband Service from the Communications Provider at the request of the Communications Provider.
- (f) **“Cease Request”** means a direction given by a Communications Provider to a Broadband Network Communications Provider in relation to a Broadband Service, with the intention being to terminate provision of that Broadband Service.
- (g) **“Communications Provider”** means a person who provides Broadband Services
- (h) **“Customer”** means in relation to a Communications Provider a person who is an End-User of a Broadband Service provided by a different Communications Provider
- (i) **“Default Migration Date”** means five Working Days after the MAC is provided by a Communications Provider to a Broadband Network Communications Provider.
- (j) **“DSL (Digital Subscriber Line)”** means a family of technologies generically referred to as DSL, or xDSL, capable of transforming ordinary phone lines (also known as “twisted copper pairs”) into high speed digital lines
- (k) **“End-User”** means in relation to a Broadband Service:
 - (i) an Account holder; or
 - (ii) a person who may be authorised, by a person falling within paragraph (i) above, so as to make use of the Broadband Service;

- (l) **“Fixed-line Telephone Services”** means narrowband calls and lines services provided to an End-User or Customer that allow for the transfer of speech communications, and other forms of communications such as facsimile and data .
- (m) **“MAC”** means Migration Authorisation Code, which is a unique code used to identify a Broadband Service that is intended to be transferred from one Communications Provider to another Communications Provider.
- (n) **“MAC Broadband Migrations Process”** means the obligations and processes set out in Annex 1 to this Condition.
- (o) **“MAC validity period”** means a period extending up to 17.00 on the thirtieth calendar day from issue (either verbally or in writing, whichever is first) by the Communications Provider.
- (p) **“Migration Date”** means the date on which the transfer of the Broadband Service will be effected, at which point the End-User’s Broadband Service will commence being provided to the End-User by a different Communications Provider.
- (q) **“Working Day”** means the hours between 09.00 – 17.00 on Monday to Friday, with the exception of Bank Holidays.

Annex 1

Migrations Authorisation Code (MAC) Broadband Migrations Process

A1.1 The Communications Provider shall, at the request of:

- (a) an End-User of the Communications Provider; or
- (b) another Communications Provider who acquires a Broadband Service from the Communications Provider

issue a MAC for a Broadband Service where the Broadband Service is a service to which the MAC Broadband Migrations Process applies.

A1.2 The MAC Broadband Migrations Process applies to the supply by the Communications Provider of all DSL services, with the exception of those DSL services that are required to be migrated by means of a process that relates to the supply of a Fixed Line Telephone Service supplied in conjunction with the DSL service.

A1.3 The Communications Provider shall take reasonable steps to validate the identify of an End-User who has contacted the Communications Provider to request a MAC for a Broadband Service, before issuing a MAC to the End-User.

A1.4 The Communications Provider shall provide its End-Users with two or more of the following contact methods:

- (a) telephone numbers;
- (b) e-mail address; and
- (c) postal address,

for the purposes of an End-User contacting the Communications Provider to obtain a MAC.

Issuing MACs to End-Users

A1.5 The Communications Provider shall communicate the MAC to the End-User in writing by letter and/or by E-mail within five working days of receipt of the End-User's request.

A1.6 Where the Communications Provider has issued the MAC to the End-User over the telephone, the Communications Provider shall also communicate the MAC to the End-User in writing by letter and/or by e-mail within five working days of the telephone conversation.

A1.7 If the End-User requests one form of written contact over another, the Communications Provider shall use the form of written contact requested by the End-User.

A1.8 The written response (e-mail or letter) to the End-User containing the MAC shall clearly indicate:

- (a) the MAC (or MACs);

- (b) the MAC validity period and expiry date; and
 - (c) the Broadband Service(s) to which the MAC(s) applies.
- A1.9 At any time prior to the expiry of the MAC validity period, the Communications Provider shall remind the End-User of the MAC if requested by the End-User.
- A1.10 Where a MAC has already been requested and provided, the Communications Provider shall not impose any limits on the number of additional times an End-User may request the provision of a new MAC in relation to the Broadband Service, following the expiry of any other MACs.
- A1.11 The Communications Provider shall issue a MAC to the End-User free of charge

Refusal to issue a MAC

- A1.12 The Communications Provider shall only refuse to issue a MAC to their End-User if:
- (a) the Communications Provider has, by taking reasonable steps, been unable to validate the identity of the person requesting the MAC as the End-User;
 - (b) the Broadband Service contract has already been terminated;
 - (c) a MAC which is still within its MAC validity period has already been requested and issued by the Communications Provider in relation to the Broadband Service; and
 - (d) the Communications Provider has already submitted a Cease Request for the Broadband Service; and
 - (e) the Communications Provider is unable to obtain a MAC from a Broadband Network Communications Provider.
- A1.13 Where the Communications Provider is unable to, or refuses to, provide a MAC to the End-User, the Communications Provider shall provide the End-User with a clear explanation of why the MAC has not been provided.

Cease requests and notice to terminate a Broadband Service

- A1.14 The Communications Provider shall not issue a Cease Request for the Broadband Service unless the Communications Provider has established that the End-User does not wish to transfer the Broadband Service to another Communications Provider.
- A1.15 The Communications Provider shall, when issuing a MAC, confirm to the End-User that any previous termination by the End-User has been revoked, and shall ensure that any current or pending termination actions are cancelled.

MAC validity and migration dates

- A1.16 The Communications Provider shall not terminate the Broadband Service on account of the MAC validity period expiring unless the Communications Provider has received notification that the End-User's Broadband Service has been migrated to another Communications Provider.

- A1.17 Where a Customer provides a MAC within its validity period, together with a request to effect a transfer of the Broadband Service to the Communications Provider, the Communications Provider shall proceed with the migration and inform the Customer of the Default Migration Date.
- A1.18 The Communications Provider shall, at the request of a Customer up until one Working Day prior to the Default Migration Date:
- (a) accept a request to extend the Default Migration Date to a later Migration Date ("Requested Migration Date"), provided the MAC validity period has not expired within five days of the Requested Migration Date; or
 - (b) cancel the Default Migration Date or Requested Migration Date.

Erroneous MAC migrations

- A1.19 The Communications Provider shall provide a recovery process so that in the event of an erroneous migration effected by way of a MAC, the End-User's Broadband Service can be restored to the original Communications Provider with minimum disruption.

Information about the MAC Broadband Migrations Process

- A1.20 The Communications Provider shall publicise the availability of the MAC Broadband Migrations Process to End-Users, including providing the following information:
- (a) an explanation of how the MAC is used to facilitate the transfer of a Broadband Service to another Communications Provider;
 - (b) details of how an End-User may request a MAC from the Communications Provider, such as telephone, email and postal contact details;
 - (c) reasons why the Communications Provider may not be able to issue a MAC;
 - (d) details of the complaints handling process for complaints about a failure by the Communications Provider to issue a MAC;
 - (e) alternative migration options for an End-User if the Communications Provider cannot issue a MAC for the Broadband Service;
 - (f) the default Migration Date that applies when a MAC is provided to the Communications Provider by a Customer for the purposes of transferring the Broadband Service to the Communications Provider; and
 - (g) any options available to the End-User to request a Migration Date later than the Default Migration Date.
- A1.21 Publication of the information set out in A1.20 above shall be effected by publishing the information on the Communications Provider's website, and by sending a copy of the information if so requested by an End-User.

Complaints about the MAC Broadband Migrations Process

- A1.22 The Communications Provider shall handle complaints from End-Users in relation to a decision to refuse, or a failure by, the Communications Provider to issue a MAC, as part of its existing complaints handling processes.

Broadband Network Services

A1.23 Where the Communications Provider provides Broadband Network Services, the Communications Provider shall also ensure that it:

- (a) effects the transfer of a Broadband Service on the Default Migration Date, unless a later Migration Date has been requested by the Communications Provider for the transfer to be effected;
- (b) notifies the Communications Provider who formerly provided the Broadband Service of the date that the transfer has been effected to another Communications Provider; and
- (c) has a process that enables an erroneous service migration effected using a MAC to be reversed, so that the Broadband Service can be restored to the original Communications Provider who requested the MAC.

Annex 8

Comparison of voluntary Code of Practice requirements with proposed General Condition 22 obligations

Provisions of the voluntary code to be maintained in the proposed General Condition

Process issue	Reference in voluntary code Paragraph	Reference in General Condition 22, Annex 1	Application to proposed General Condition
How migration process is initiated – customer to Losing Service Provider (LSP) LSP validation of status of account holder before issuing MAC	1	A1.3	Obligation for broadband SPs to take reasonable steps to validate the identity of the person requesting the MAC, before issuing the MAC. An explanation of how the migration process is initiated is captured in A1.1 – A1.2
Issue of MAC represents acknowledgement and agreement by LSP that its customer may be migrated to another broadband SP Explains that MAC uniquely identifies to BT Wholesale the LSP and the broadband service on which migration is authorised to take place	2	A1.1 – A1.2	Explains the circumstances in which a MAC may be requested by a customer or other broadband SP. Not necessary to have a separate provision explaining the MAC identification process in the proposed General Condition.
Reasons why LSP may refuse to issue a MAC	3	A1.12	The proposed General Condition includes a general obligation on broadband SPs to issue MACs on request. Broadband SPs can only refuse to issue MACs if one of the exceptions set out in A1.13 applies.

Process issue	Reference in voluntary code Paragraph	Reference in General Condition 22, Annex 1	Application to proposed General Condition
Reasons why LSP may not refuse to issue a MAC	4	N/a	As per A1.12, the proposed General Condition includes a general obligation on broadband SPs to issue MACs on request, it is not necessary to set out specific instances where a MAC must be issued
How customers can contact LSP to request a MAC, process for issuing MAC. Requirement to remind customer of MAC if requested	5	A1.4, A1.5, A1.6, A1.9	<p>The Code of Practice includes a number of separate provisions, each of these are set out as individual obligations in the proposed General Condition.</p> <p>Ofcom acknowledges that a number of broadband SPs have processes for issuing MACs over the telephone, but this is not a requirement of the current code.</p> <p>Ofcom is however, mandating at least two forms of contact, one of which will be written. This is designed to minimise the instances of transposition errors, which can arise if the MAC is only provided to a customer during the course of a telephone conversation. See A1.4 and A1.6</p> <p>A1.5 and A1.6 – the five day requirement to communicate the MAC to customers has been retained.</p> <p>A1.9 – requirement for broadband SPs to remind customer of MAC if requested</p>

Process issue	Reference in voluntary code Paragraph	Reference in General Condition 22, Annex 1	Application to proposed General Condition
<p>What must be identified in the communication to the customer.</p> <p>Where MAC refused, set out the reasons why the MAC has been refused.</p>	6	<p>A1.8</p> <p>A1.12</p>	<p>The distinct provisions are separated into two requirements for clarity.</p> <p>A1.8 sets out the detail required when communicating the MAC to a customer and A1.12 sets out the specific exceptions to the general obligation to issue MACs</p>
Service Providers (SPs) must specify how customers can contact them to appeal against a decision not to issue a MAC, which can be part of the existing complaints handling process	7	A1.22	A1.22 makes it a requirement for broadband SPs to handle complaints by customers about a refusal to issue MACs as part of the broadband SPs existing complaints handling processes.
When MAC is valid	8	<p>Defined in 22.3 and used where appropriate within GC/Annex 1</p> <p>1.23</p>	<p>The MAC validity period is defined as a period extending up to 17.00 on the thirtieth day from issue whether verbally or in writing, whichever is the earlier.</p> <p>There is an obligation on the network provider to process the MAC request with five working days of receiving the request from the GSP.</p>
<p>Requirement for customer to provide Gaining Service Provider (GSP) with a valid MAC for each service to be migrated.</p> <p>The default migration date taken to be five working days after the submission of the request by the GSP.</p> <p>Option for customer to request an alternative migration date, later than the default date</p>	9	A1.17, A1.18	<p>These requirements have been separated into two obligations:</p> <p>1) Broadband SP to indicate the default migration date to the customer when given a MAC. (A1.17)</p> <p>2) Broadband SP to accept extensions to default migration date or cancellation of the migration request, provided the request from customer is received up to one working day before the default migration date. (A1.18)</p>

Process issue	Reference in voluntary code Paragraph	Reference in General Condition 22, Annex 1	Application to proposed General Condition
<p>If GSP submits a valid MAC, there is no requirement to obtain any further authorisation from the LSP before proceeding with the migration</p> <p>If GSP submits the MAC after its expiry the request will be rejected.</p>	10	N/a	<p>The obligation for a broadband SP to accept a valid MAC from a customer is captured in A1.17.</p> <p>There is no obligation on a broadband SP to accept a MAC from a customer after it has expired.</p>
The customer's request for a MAC does not represent a request to terminate the service. The LSP should not therefore disconnect the service upon request for, or issue, of a MAC	11	A1.14	<p>This provision from the code is expressed as an obligation on the broadband SP not to disconnect the service (i.e. issue a Cease Request), unless it has been established that the customer wants to cease supply, not migrate to another broadband SP, in all other instances a MAC will need to be issued.</p> <p>See also A1.16, which requires that the service is not to be disconnected unless there the broadband SP has been notified that a transfer has taken place to another broadband SP</p>
During the MAC validity period, the LSP may continue to apply normal processes including suspension of the service to manage bad debt prior to the service being migrated.	12	N/a	<p>The issue of a MAC and use of the MAC by the customer within its validity period is not intended to interfere with the contractual rights and obligations of the broadband SP.</p> <p>Once the service has been migrated using the MAC, the service is no longer controlled by the original broadband SP.</p>

Process issue	Reference in voluntary code Paragraph	Reference in General Condition 22, Annex 1	Application to proposed General Condition
The request by a customer for a MAC is taken to revoke previous notice given to the broadband SP. The broadband SP is required to confirm to the customer that any previous termination has been revoked and ensure that any current or pending termination actions are cancelled.	13	A1.15	<p>This obligation is intended to complement the one in A1.14, and requires the broadband SP to confirm to the customer that any previous actions are revoked and to ensure that pending or current termination actions are cancelled. One of the reasons why a MAC may be refused is if a Cease Request has already been issued by the broadband SP (A1.12(d)).</p> <p>A1.14 makes it clear that a MAC is the migration process to be used and that a Cease Request shall only be issued once the broadband SP has established that the customer is seeking to end the service, not migrate to another broadband SP.</p>
At any time prior to expiry of the MAC, the customer may request the LSP to remind him of the MAC and its expiry date. The customer cannot ask the broadband SP to cancel or re-issue a MAC that is still within its validity period.	14	A1.10	The obligation on the broadband SP is to remind the customer of the MAC and its expiry period if requested by the customer. There is no obligation on the broadband SP to cancel or issue a new MAC to a customer while one is still within its validity period.
The customer has the right to cancel or amend a migration request to the GSP at any time prior to the customer agreed date. However, only upward revisions of the migration date will be permitted,	15	A1.18	<p>The broadband SP is required to accept requests for upward revisions to the migration date or a cancellation request.</p> <p>Default migration date is a defined term in GC 22 and used in Annex 1.</p>

Process issue	Reference in voluntary code Paragraph	Reference in General Condition 22, Annex 1	Application to proposed General Condition
When the LSP is notified that a migration has taken place, the customer's notice period (ie the date at which notice to discontinue service is taken for the purposes of calculating any outstanding subscription charges under the contract) will be taken to have commenced on the issue date of the MAC, or on the date of any prior notice to terminate, whichever is the earlier.	16	N/a A1.23	This provision is not included in proposed GC/Annex 1 as an obligation. The notice period will depend on the terms of a customer's contract with the broadband SP as to when notice is taken to have been received and when subscription charges are no longer payable. It is assumed that customers would be required to pay subscription charges until the day the service is migrated to another broadband SP. There is a requirement on the network provider to notify the LSP that a migration has taken place using the MAC
If the MAC validity period is passed without the LSP receiving notification of a migration request, the LSP must not terminate the current subscription, unless specifically requested to do so by the customer.	17	A1.16	The broadband SP is required to keep the service going and is not to disconnect unless the broadband SP has been notified that a transfer has taken place to another broadband SP
Requirement to publicise the provisions of the code to customers and put text on the website	18	A1.20, A1.21	Rather than an agreed text, Ofcom has specified guidance about the type of information that broadband SPs will be required to provide on their website about broadband migrations.
Obligation on broadband SPs not to use difficulties or delays with the process as an opportunity to stay with the broadband SP	19	N/a	Not necessary to set out as an obligation, broadband SPs are required to comply with the issue of MACs and many of the difficulties arising from the process have arisen from non-compliance with some or all parts of the code.

Process issue	Reference in voluntary code Paragraph	Reference in General Condition 22, Annex 1	Application to proposed General Condition
Prohibition on encouraging customers of other broadband SPs to disregard the terms of their existing contract	20	N/a	As above.
Recovery process for erroneous migrations, restoring customers with minimal disruption	21	A1.19, A1.23	This obligation has been retained from the current code

Additional provisions, not currently included in the voluntary code but included in the proposed General Condition

Additional obligations not in the code of practice	Reference in voluntary code	Reference in General Condition 22, Annex 1	Application to proposed General Condition
Requirement for broadband SPs to offer at least two forms of contact methods	N/a	A1.4	Noted above, the obligation to offer customers at least two forms of contact methods is to give customers greater flexibility to contact broadband SPs to request MACs.
Requirement for broadband SPs to follow-up telephone conversation during which MAC is issued with written communication	N/a	A1.6	Noted above, the obligation to follow-up a telephone conversation in which the MAC is issued with a form of written contact containing the MAC is designed to minimise the instances of transposition errors associated with communicating MACs.
Request by customer to receive MAC by letter or e-mail format	N/a	A1.7	Where a customer specifically requests a form of written notice, for example, by post if e-mail is not possible, the broadband SP shall use the form of written contact requested by the customer. The intention is to avoid situations where broadband SPs issue MACs to customers at email addresses that do not work or cannot be accessed by the customer.
Specification that customers can continue to ask for MACs	N/a	A1.10	Although not set out in the code of practice as a specific provision, this is implicit in the code and has been included as an obligation on broadband SPs to issue new MACs to a customer on request, after the expiry of any earlier MACs.

Additional obligations not in the code of practice	Reference in voluntary code	Reference in General Condition 22, Annex 1	Application to proposed General Condition
No charge to be imposed for issue of a MAC	N/a	A1.11	In practice most broadband SPs have not imposed a separate charge to issue a MAC, although it is not set out as a specific provision in the code. Issuing MACs for no charge is in keeping with the spirit of the code. The object of the code is to provide a smooth migration path, and should not provide broadband SPs with an opportunity to impose additional charges for using the MAC process. The requirement to issue MACs free of charge is now a clear obligation in A1.12.

Annex 9

Glossary

Broadband Migrations Review (BMR): the Ofcom policy project to assess the effectiveness of industry-wide processes for customers signing up to, and switching between, broadband service providers. This policy review has led to the current consultation document.

Broadband: a service or connection which is capable of supporting ‘always-on’ services which provide the end-user with high data transfer speeds.

BT: British Telecommunications plc.

Communications Act (“the Act”): the Communications Act 2003.

Communications Provider: a person who provides an Electronic Communications Network or provides an Electronic Communications Service, as defined in the Act.

CoP: Code of Practice

DACS (Digital Access Carrier System): a piece of equipment used in BT’s network that enables two telephone services to be deployed over the same copper pair. DACs is incompatible with DSL broadband service.

DataStream: a wholesale interconnection product offered by BT Wholesale to Communications Providers allowing them to utilise more of their own networks and compete with BT Wholesale in the provision of intermediate services such as IPStream

Digital Subscriber Line (DSL): DSL is a family of technologies generically referred to as DSL, or xDSL, capable of transforming ordinary phone lines (also known as “twisted copper pairs”) into high speed digital lines.

EMP (Equivalence Management Platform): ordering system for service providers to purchase wholesale products from Openreach.

General Conditions of Entitlement: a set of regulations that apply to anyone who provides an electronic communication service or an electronic communications network.

GSP: Gaining Service Provider.

Integrated Services Digital Network (ISDN): a network evolved from the digital PSTN which provides digital exchange lines to customers and end to end digital connectivity between them.

IPStream: an intermediate broadband service sold by BT Wholesale to retail broadband service providers to sell on to consumers.

Local Loop Unbundling (LLU): a process by which a dominant provider’s local loops are physically disconnected from its network and connected to a competing provider’s networks. This enables Communications Providers other than the incumbent to use the local loop to provide services including broadband to end users.

Local loop: The access network connection between the customer's premises and the local serving exchange, usually comprised of two copper wires twisted together.

LSP: Losing Service Provider.

Metallic Path Facility (MPF): the provision of access to the copper wires from the customer premises to a BT exchange that allows a competing provider to provide the customer with both voice and data services over such copper wires.

Migration Authorisation Code (MAC): a unique code that a customer must give to a broadband service provider, that allows the service to be transferred from an existing service provider seamlessly and with little or no disruption of service.

Migrations Consultation: Ofcom's *Migrations, switching and mis-selling* consultation published on 16 February 2006. The Migrations Consultation reviewed current approaches to migrations, switching and mis-selling across transferable voice and broadband products.

Ofcom: Office of Communications. The regulator for communications industries, created by the Office of Communications Act 2002.

OCC (Ofcom Contact Centre): the team within Ofcom responsible for dealing with complaints and enquiries from members of the public

Openreach: a division of the BT Group responsible (among other things) for providing SMPF and MPF to broadband service providers.

PSTN: Public Switched Telephone Network.

Shared metallic path facility (SMPF): the provision of access to the copper wires from the customer's premises to a BT exchange that allows a competing provider to provide the customer with broadband services.

Slamming: where a customer is switched from one provider to another without the express knowledge and consent of that customer.

Tag on line: where a customer tries to order broadband, but is told by his chosen supplier that he cannot have service because there is a "tag" or "marker" on the line – which may mean that the system indicates that another supplier is already providing service on that line.

Wholesale Line Rental (WLR): A service offered by BT to other service providers allowing them to offer their own branded telephony service.