



BT's response to Ofcom's Consultation Document “Migrations, switching and mis-selling”

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BT would welcome any comments on the contents of this document which is also available electronically at <http://www.btplc.com/responses>

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Executive Summary

BT is pleased to contribute to Ofcom's consultation regarding migrations, switching and mis-selling. The issues raised correctly cover all parts of the value-chain from end-user consumer protection concerns to the need for robust underlying technical processes. This Group response therefore covers our views from all parts of BT and includes Openreach feasibility work and customer engagement.

A central and important theme of the migration debate is the need for consumers to benefit from processes that enable them to move easily and confidently between any number of Communications Providers (CPs). A vibrant market is one dependent upon robust customer-led processes that strike the right balance between consumer protection and ease of transfer, with customers able to make fully informed decisions based on understanding the impact of a migration on their existing services.

The rapid pace of change in the telecommunications sector, notably with the advent of new technologies, the move towards a converged world and service bundles becoming the norm suggests that maintaining the status quo of product specific migration processes is neither tenable nor desirable in future. The time is right for a review.

The rate of switching between products continues to rise – the volumes of Wholesale Line Rental transfers almost doubling over the last 12 months. The current letter facilitation process has proved inadequate in seeking to offer a robust migration process between services. The level of mis-selling remains unacceptably high - we should all learn from this experience and proactively consider the potential for moving to an alternative process. Basing this on some form of customer-initiated code process is a positive start worthwhile of further consideration.

A robust enforcement mechanism is crucial to any existing or new migration processes. The main issues of migration, switching and mis-selling centre on co-ordination between CPs and do not revolve around market power issues. Migrations processes should therefore be enshrined in new General Conditions. Ofcom could start by replacing the current sales and marketing guidelines which apply to a limited set of products with a single, mandatory code across all products.

In preparing for the consultation exercise, Openreach has consulted with CPs covering the spectrum of WLR sellers, Carrier Pre-Selection Operators (CPSOs), broadband service providers and Local Loop Unbundling Operators. Feasibility work has been undertaken on the potential for a new migration process based on a customer-initiated code process. We look forward to taking the debate further with industry, consumers and Ofcom and hope that others will be willing to participate actively in the debate. It is in all our interests to get this right to ensure that migrations processes are fit-for-purpose.

Introduction

Ofcom's consultation raises a number of important issues concerning the ways in which customers are able to move between telecoms and Internet providers and their products. As Ofcom recognises, balancing the need to facilitate ease of switching whilst ensuring adequate consumer protection is not straightforward. In particular, there are various trade-offs which arise in designing processes which enable ease of switching involving a variety of CPs of multi-product migrations. Based on our experience we believe there are some issues on which the industry should not compromise. These are explored further in this response to the specific questions raised by Ofcom.

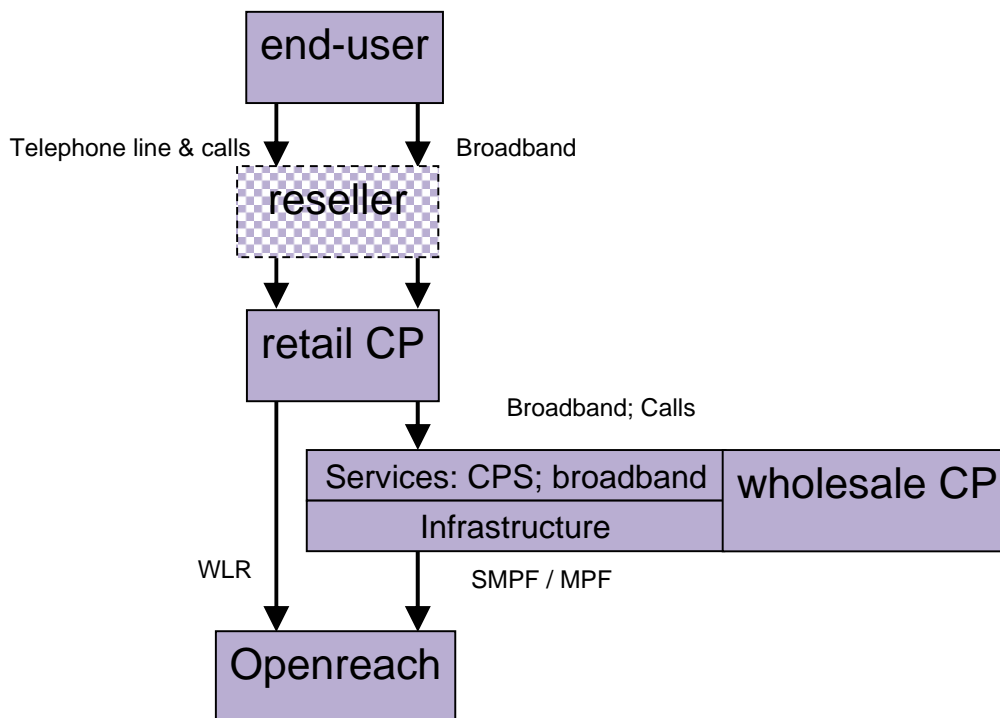
Changing landscape and the impact on consumer behaviour

Immense change has taken place in UK telecommunications over the last 25 years. Consumers and business users now have an extensive choice of telecommunications services and suppliers, from traditional infrastructure-based operators, through mobile operators and systemless service providers, and - more recently - resellers and ICT outsourcers. This gives rise to complex relationships including the possibility of several services being associated with a single line and several parties contracting for services on the same line.

For example *Mr A Person* could have his fixed exchange line provided by BT Retail with his telephony calls being offered by a Carrier Pre Selection Operator (CPSO), integrated messaging with his mobile phone service and a separate ISP providing a retail broadband service to another user of the line. *Mr A Person* then wants to transfer all his services seamlessly to a LLU operator and retain his current telephone number. There are multiple contracts involved in this scenario and in order to ensure a smooth migration, the process demands that only an authorised customer can make the changes to each service and that each party understands the impact of that decision and the part they must play in what must be a transparent process.

Any revised harmonised process should facilitate, where possible, reciprocal 'any-to-any' transfers, but must also recognise the natural hierarchy of services in the migrations process. In order to have a calls service, a telephony line is needed and therefore switching between line supplier means that the calls service may be affected. Likewise, a change in access supplier may affect broadband and telephony. Consequently, a good migrations process needs to ensure transparency such that all affected parties are fully informed and the transfer is feasible and wanted by the end-user. All parties involved in the delivery chain should understand at any point in time their role and responsibilities in the migrations process. An example of the diversity of parties and information flows in a telephony and broadband installation is shown below.

Current industry flows

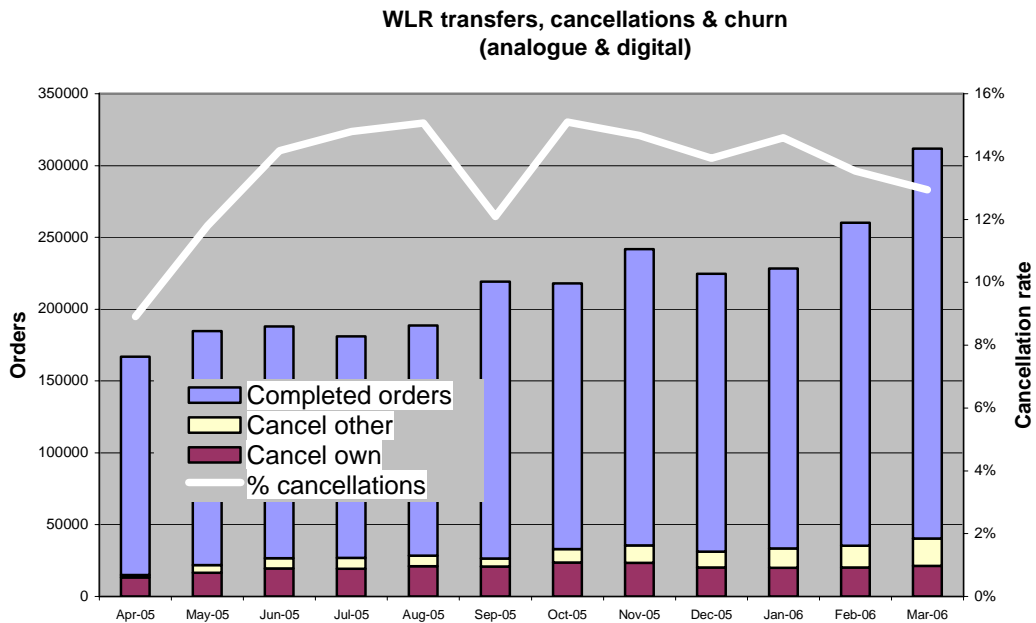


End-users increasingly substitute between fixed and mobile services and therefore we believe that the scope of this consultation should extend to migrations associated with mobile and VoIP when they are impacted by the transfer process. Service bundles combining, for example, fixed and mobile technology and the principle of 'technology neutrality' should also be added to the debate.

Current migration processes and Consumer Protection

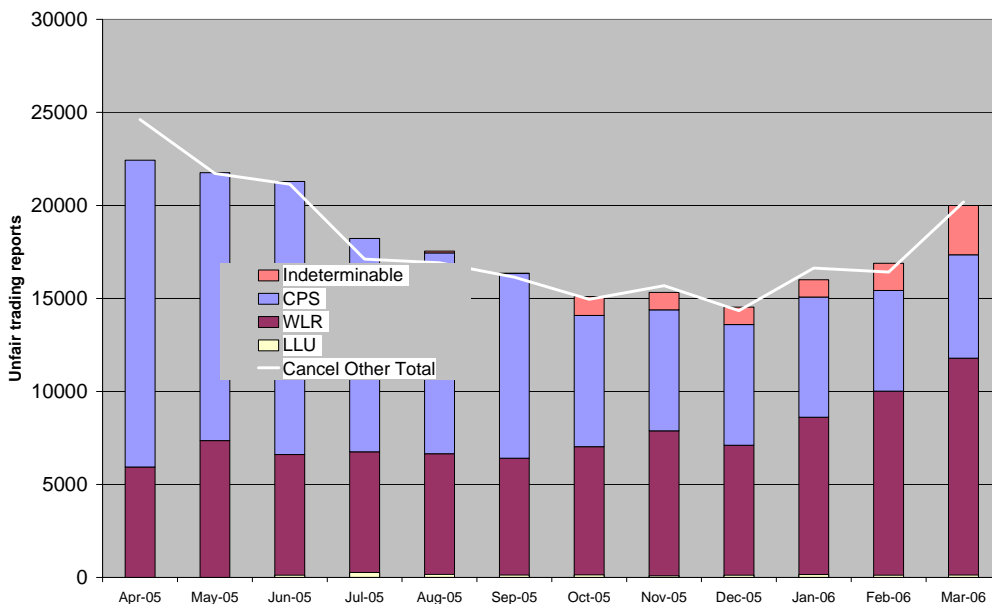
There is clear evidence that the letter facilitation process and associated consumer protection measures have proven to be inadequate in offering a robust migration process between services. Instead, we believe it provides a poor customer experience and does not protect consumers against the potential for mis-selling. As a result, the level of mis-selling remains unacceptably high, even after the introduction of the fixed narrowband mandatory guidelines.

As an example, the chart below shows that whilst the volume of WLR transfers has almost doubled over twelve months, the cancellation rate has remained within a range of 10-15%. Thus at least one transfer in ten results in a cancellation by either the losing or gaining party, imposing unnecessarily high costs on some industry players and a poor experience of the telecoms industry for end-users.



There is a clear correlation between the volume of WLR cancellations in the chart above and the Unfair Trading Reports (UFTs) below. As activity in the industry has switched from CPS transfers to WLR transfers, so the volume of CPS unfair trading reports has fallen, though the combined level of reports is little changed from the start to the end of the year.

Unfair trading reports and use of cancel-other



Consumer protection should encompass all end-users, including business customers. It should also be considered as operating in two parts, namely:

- verification that the order is authorised by the customer; and
- customers can be informed of the consequences by their (potentially multiple) supplier(s).

Even with a Migrations Authorisations Code (MAC) or single code, this two stage process would need to trigger a notification feed to affected providers to enable them to advise the customer of the impact (contract term, charges, loss of service etc). This could be backed up by sending letters to end-users.

We share Ofcom's view that customers should be fully informed when deciding whether or not to switch and this means that they should be entitled to know whether their existing provider is able to offer them something that would make them want to stay. BT therefore considers that Ofcom should reconsider its position on "save" activity. It is standard, legitimate commercial practice and totally legitimate throughout the service industry for customers to give prior notice of their intention to leave and for providers to seek to persuade customers to stay. This is competition in practice. Provided that CPs respect the wishes of customers who do not wish to be contacted in accordance with general legal requirements, we see absolutely no reason why the telecommunications industry should be treated any differently.

Application of Appropriate Regulation

The main issues of migration, switching and mis-selling centre on co-ordination between CPs and not on market power. Migrations processes should therefore be enshrined in new General Conditions, not SMP Conditions. Regulation in relation to transfer processes would then be applied consistently and equally to all parties involved. Neither is mis-selling an SMP issue and any action to address this problem should quite clearly address all operators equally, not just those with SMP.

BT suggests that current fixed narrowband mandatory guidelines should be replaced by single mandatory code of practice that applies in respect of all relevant migrations i.e. LLU, Number Portability, Broadband, and any other service (e.g. mobility and VoIP) brought within scope.

The Case for Harmonisation - Can one size fit all?

The case for harmonisation is well made. Certain services are readily migrated from one CP to another. For example, a simple transfer from one Internet Service Provider (ISP) to another using BT Wholesale IPstream can today take place without comprehensive or complicated network and contractual changes. However, other migrations involve more complicated information flows and interactions which demand a more extensive migration process.

We believe that in a converged world there will be an increase not only in switching volumes, but also in the complexity of switching scenarios. As such, we agree with Ofcom that the time is right to review the migration processes and seek out a harmonised solution as far as is possible. Whilst it is clear that no single solution will be perfect, a good single solution would be far preferable to today's multiple incompatible processes.

To inform this response to Ofcom's consultation, Openreach has undertaken a technical and operational feasibility study of single code processes. The study was based upon the objectives of:

- creating a single seamless end-to-end any-to-any migration process;
- led by end-users;
- neither favouring gaining nor losing providers;
- enabling free competition and ease of switching;
- taking into account multi-provider and multi-product transfers;
- minimising end-user inconvenience; and
- meeting BT's Undertakings commitments.

Key principles were as follows:

- a good transfer experience led by well-informed customers and based on their informed choices;
- protection against dishonest sales and marketing activity such as mis-selling and slamming through up-front end-user verification and authorisation to minimise processing costs in the event of order amendment or cancellation;
- supporting competition in retail and wholesale markets to the benefit of customers;
- monitoring and the provision of performance metrics; and
- minimising transfer costs for the industry and end-users.

Designing a process that accommodates all these goals involves trade-offs between them. For example, the strongest verification and authentication is provided by the party who has the most relevant information to hand, namely the losing provider, who could issue the end-user a unique identifier to initiate the transfer. However, if Ofcom is concerned about the losing provider's ability and incentives to inhibit this process, then verification could be undertaken by a neutral party – who will not necessarily have the same detailed information available to verify the customer. Alternatively, a robust regulatory framework or enforcement mechanism could provide a similar solution.

The introduction of any new migration process will create transition costs as we move from the current diverse environment to a harmonised one, together with ongoing operating costs. These costs will be incurred by CPs and by the operator of any central gateway. Clearly, costs must be minimised without

compromising the integrity of the process or undermining industry and end-user confidence. Furthermore we believe that costs should be recovered in line with

the principle of cost causality, and that all CPs should cover their own transition and operating costs. Our initial view is that any central gateway costs should be recovered through transaction charges rather than an industry levy which would be subject to complex negotiation and the challenge of collections.

Timing

As an outcome of Ofcom's Strategic Review of Telecommunications, Ofcom accepted BT's Undertakings which include reference to migration processes. BT has been proactively reviewing and enhancing such processes. For example, over the past 18 months much progress has been made to enhance Broadband migrations, culminating in the delivery of "Broadband Modify"; a system that enables any combination of IPStream to Datastream migrations, be they in a single or multiple transactions.

As the UK broadband market has evolved, more migration paths have emerged between Broadband and other products, such as LLU. Consequently, new migration paths are now in place and, looking ahead, we plan to enhance migration processes that bridge products such as Broadband, WLR, LLU, etc.

A key part of future migrations is the implementation of a single, harmonised process across all products. It would be beneficial for this to be taken into immediate consideration in the context of implementation of BT's Undertakings and industry Next Generation Networks.

Whilst some systems requirements may take time to implement, other dimensions, such as a move from SMP to General Conditions and a harmonised code, could be delivered much more quickly and have an immediate positive impact on the migrations process in the interim. Equally, consumer protection in relation to LLU could be provided by extending existing processes and regulatory requirements.

Liaison with Industry

In preparing for this consultation, Openreach has consulted a range of CPs with interests in WLR, CPS, broadband and LLU. The consolidated views of these communities and an Openreach proposal for addressing their needs and concerns were presented to Ofcom before the consultation started, and we are pleased to see aspects of this work reflected in the Consultation Document.

We believe that Ofcom has an important role in directing a migrations framework, and that this needs to be done in a continuing dialogue with the industry. To this effect, Openreach has already tested various proposals with industry groups, notably the Internet Service Providers' Association and the UK Competitive Telecommunications Association.

Openreach will continue to work with Communications Providers to build momentum for a harmonised end-user migrations process and the resultant back office processes. Openreach have proposed an outline process and timetable to industry to take forward a customer-initiated code process and develop the necessary systems, commercial, end-user and operational solutions. In recognition of the complex and politicised nature of this task, we would welcome Ofcom's involvement throughout, as observer and arbiter.

QUESTIONS

Q.1 Do you agree with the scope of the document? Are there any additional products and/or services, which you would like to see included in the Scope?

Ofcom has identified a number of key transferable products to which the approach to migrations is highly important. These form a helpful and informative basis on which to review and revise new harmonised processes going forward. We do consider that the concept of 'any-to-any' i.e. enabling any customer provided with a Communications Provider's (CP) service to use the same process to move to another CP's service is critical and will contribute to an overall positive customer satisfaction. In this context however we would consider that mobile and VoIP services, certainly in the case of number portability, should also be included in the scope of this consultation

Q.2 How might complex multi-site migrations, such as those involving VPN Services, be facilitated?

Ofcom identifies that migration processes may become particularly complex when they are required to cover multiple geographic sites in a co-ordinated manner – particularly in relation to migrations from Voice Virtual Private Networks (VPN) to IP VPNs. This has already been recognised in the case of migrations involving WLR, and Openreach presented its proposals for such migrations to the Process Forum on 7th March. We are currently developing and piloting the first of a series of optional complex provision service wrap products which will enable WLR CPs to purchase increasing levels of project management resource from Openreach dependant on the complexity of the required provision. The service wrap products will provide a seamless service, or entail minimum downtime for a CP's end-user during the transition from an existing service on a site to an alternative service based on the WLR product set.

Other services however are not so easily suited to a single harmonised process and arguably where this involves a large customer purchasing a complex managed VPN this is fundamentally unlike the individual customer that needs to be protected against 'slamming' and therefore the requirements are different.

Either way it is clear that any decision taken with regards to migration, if at all possible, would have to be wholly reciprocal between the various downstream suppliers. A non-reciprocal remedy imposed, or proposed, by Ofcom would distort competition between downstream suppliers in a competitive market where BT is merely one of a number of players.

Q.3 Does Ofcom's definition of a 'migration process' adequately capture the range of scenarios involved? If not, can you suggest a better definition?

BT broadly agrees with the proposed definition by Ofcom. We note that Ofcom has distinguished between singleton/bulk and simple/complex migrations but consider that the proposed definition does not address the complexity of the discussion in points 2.21 and 2.22 of the consultative document. The definition of a migration process should include the scenario where an end-user with products provided by multiple CPs may move to a single or multiple products provided by a single or multiple CPs and may move all their products at once or product by product. This scenario is catered for in BT's Undertakings.

Q.4 Ofcom has identified four policy objectives for migrations, switching and mis-selling, namely:

- ***a good customer experience;***
- ***adequate protection from irresponsible sales and marketing activity;***
- ***well informed customers; and***
- ***supporting competition in retail markets to the benefit of customers***

Do you agree that these are the right policy objectives? Are there further objectives that Ofcom should consider?

BT agrees with the policy objectives identified above by Ofcom, but would add a further two objectives.

First, monitoring migration activity is key to understanding whether or not the industry is functioning effectively. We would therefore add the following objective:

- **Monitoring and the provision of performance metrics.**

Second, as Ofcom notes in 3.3 (b) of the consultative document, the interests of consumers is to be furthered by promoting competition *where appropriate*. This caveat is clearly open to interpretation, and in this case BT believes that the reasonableness of the extra cost to industry of the modifications ought to be included as a policy objective. We therefore suggest a further objective which is that:

- **Minimising transfer costs for the industry and end-user.**

An unreasonable cost would, in our view, be incurred where the value of the marginal improvement for customers does not have a benefit commensurate to the marginal cost of the systems modifications for the industry. We appreciate that Ofcom will consult on cost recovery as part of a subsequent consultation.

Q.5 Do you agree that the interests of both customers and industry would be better served by moving to uniform processes for migrations, switching and mis-selling across transferable voice and broadband products?

In the long run the interests of both customers and industry would be better served by moving to uniform processes for migrations, switching and mis-selling. A uniform process would increase simplicity, information, and decrease barriers for consumers, whilst for industry it would simplify systems and, if efficient, should reduce costs. However, any process which is agreed, should take into account the implications for NGNs.

All system changes should be subject to reasonableness tests in terms of their cost implications for industry. In practice it is more likely that uniform processes would apply to the front-end authentication/validation processes than the back-end processes which will need to be adapted to the product being delivered. Although a simplified process is desirable it should be able to cater for migrations initiated via the CP or the end-user and provide adequate protection in both cases.

Q.6 What are your views on the Letter Facilitation process? What safeguards could be introduced to protect customers from the potential for irresponsible sales and marketing activity?

We do not consider that a process that relies entirely on "gaining" and "losing" letters for validation is fit-for-purpose. This is demonstrated in circumstances where migrations are conceptually straightforward (voice telephony), and would pose even greater problems where they are not (LLU). In any event the current levels of mis-selling are unacceptably high.

Following the introduction last year of Ofcom's Mandatory Sales & Marketing Guidelines, and legal actions taken by BT for intellectual property infringements, there was an initial reduction in the overall level of "UFTs"/cancel other from a peak of 21,000 a month to 16,000 a month in Nov/Dec 2005. Whilst this was clearly a positive development, even a figure of 16,000 is unacceptable.

In any event, however, the downward trend has not prevailed. We are now seeing very significant increases in the level of mis-selling. January 2006 saw an overall increase to 17,000 cases, and the figure for March was in excess of 22,000 cases. This creates inconvenience for end users and impacts on the reputation of the industry.

We believe that this provides clear evidence that the letter facilitation process and the mandatory guidelines together do not provide adequate customer protection. The fundamental problem with the process is that it does not require any indication that the customer consents to a transfer and the information required to trigger an order is all in the public domain.

Going forward, it is imperative for customer confidence and the reputation of the industry that this process is changed. It is inappropriate (as is currently the case) for a transfer to proceed unless a customer informs the appropriate CP that he did not consent to it. Rather, a transfer should only proceed where there is evidence that a customer has consented i.e. a customer-initiated process. Gaining and losing letters help ensure that a customer is fully informed about the consequences on other affected services. It is probable that these letters will have to be sent to customers for contractual purposes, particularly for more complex migrations, where there may well be several losing CPs.

Whilst the letter facilitation process remains the main consumer protection measure, there is a need for swifter and more effective regulatory intervention to combat mis-selling. In order for this to be effective and for all consumers and CPs who are adversely affected by the mis-selling of another CP regardless of their SMP status, to be treated equally, regulatory controls should be made universal through General Conditions and any Code of Practice requirements extended to include LLU. In addition, to meet Ofcom's policy objectives and to address mis-selling, uniform regulatory obligations through General Conditions and a single mandatory Code of Practice are also required. It is likely that in some cases these changes could be implemented more quickly and independently to any system changes

In addition, some flexibility is required in cases where customers with previous experience of slamming, or who simply wish to avoid it in future, instruct their current CP "not to switch them". A number of business customers have issued such instructions to BT Retail and made it clear that they would consider BT Retail to be in breach of contract should they refuse to act on them, and therefore liable for any losses suffered as a consequence of any subsequent slam. This is clear evidence of a very poor customer experience and it is unacceptable that a losing CP could find itself contractually exposed as a result of mis-selling by a gaining CP.

For consumer protection purposes, this issue clearly emphasises the need to move towards a process that requires customer consent and away from one that is almost entirely reliant on customers subsequently complaining that they did not consent. In the case of a relatively simple migration, reversing the process due to slamming, for example, can be inconvenient and gives rise to unnecessary costs. In the case of more complex migrations for example involving calls, lines and broadband moving to an unbundled local loop, unpicking the migration is even more complicated, costly and leads to increased customer confusion.

Q.7 What are your views on the MAC process? What safeguards could be introduced to ensure that providers support the switching process in a neutral and independent way?

The MAC process has both advantages and disadvantages. For example it offers robust protection for the consumer in terms of validating the customer and providing authority to proceed with the transfer. BT also agrees with Ofcom's

view that the MAC process reduces the opportunity for gaining providers to engage in irresponsible sales and marketing activity. Additionally the fact that the MAC process is operating on existing systems is another benefit. However it is reliant on losing providers making the codes available to initiate the transfer. It should be recognised however that blocking transfers is a growing problem already with LPs inappropriately using Cancel Other.

A simple way to remedy a situation whereby Losing Providers were not giving out the codes would be to mandate the activity through General Conditions and therefore Ofcom would be able to take rigorous enforcement action against any abusers. To this end Ofcom may be overstating the potential downside of a MAC process. A MAC is a type of single code and therefore the merits of the MAC should feature in any future potential scenarios of a new code-based migration process. The requirement for increased customer interaction could be seen as burdensome. However a variation of the MAC code could be considered whereby the LP after customer validation initiates the order. A confirmation letter could also form part of this process.

All of the potential concerns outlined seem to be based on specific assumptions regarding the design and governance of the MAC process. These concerns are easily satisfied. Concerns regarding the impact of CPs choosing not to use the MAC process are easily addressed by making the migration and MAC processes mandatory.

Ofcom raises the issue of tag-on-the-line. BT has analysed the root cause of a large sample of calls generated by tags. The analysis, as shared with Ofcom, clearly shows that less than 0.5% of these calls are caused by losing providers failing to fully support the switching process. More generally we are undertaking a rigorous analysis of the causes and potential remedies for avoidable tags.

Q.8 What are your views on the Single Code process?

Single code process feasibility study

Openreach has initiated a feasibility study of a single code process on a bill, together with an alternative process described in our response to Q.18. The key focus of this feasibility was to understand the following:

- Does the single on-bill code process satisfy Ofcom's objectives of:
 - A good customer experience;
 - Proper protection against dishonest sales and marketing activity such as mis-selling and slamming;
 - Well informed customers; and
 - Supporting competition in retail and wholesale markets to the benefit of customers.

- Whether a single on-bill code process is technically possible?

- What the impact on CPs would be if all were to adopt a single code on bill process?

Summary of results

Against each of the policy objectives above, the Openreach feasibility study has identified advantages and disadvantages, summarised here.

A good customer experience

Advantages: The customer experience could be perceived by the end-user to be very straightforward, provided that they have a bill or access to the internet and are migrating a single service. For simple scenarios the end-user need complete only one activity because the code is readily available.

Disadvantages: For less straightforward scenarios involving multiple products, there would be multiple codes on multiple bills and the customer experience would become very complex. Furthermore, not all services are supplied with regular bills, placing an onus on customers to find codes from their provider – website and call centre alternatives to on-bill codes would have to be made available. Additionally customers will not be able to initiate the transfer until they can produce the information on their bill, but see comments on consumer protection below.

Consumer protection

Advantages: Only the consumer has access to the code, conferring a degree of protection.

Disadvantages: The on-bill code has similar issues to those associated with an account code, in that for printed bills it could be obtained deviously, especially in door-to-door selling, thereby enabling slamming.

Well-informed customers

Advantages: As presented, the on-bill single code process offers no benefits in informing customers. As an enhancement, the code could be used by the gaining provider to interrogate a central database establish which services the customer will be moving from. However, confidentiality concerns and gaining providers' limited incentives to use such information constrains the benefits.

Disadvantages: Without the backup of additional LP and GP communications to the customer, the on-bill process offers customers no additional information about the consequences of their transfers.

Supporting competition

Advantages: If the LP were to be informed that the migration is taking place, the benefits of competition would accrue to end-users either through switching or staying in response to retention offers.

Disadvantages: None apparent.

Authority to migrate

Advantages: Authority to migrate is automatic with the single code on bill process, allowing the migration process to proceed quickly.

Disadvantages: Authority to migrate is not specific to a point in time or to the migration of a particular product combination, creating potential ambiguities about customers' migration intentions. The authority also allows customers to leave a CP even if they are within their minimum term or have debt outstanding, though this is a contractual matter between losing CPs and their customers.

Technical feasibility of single code process

Advantages: As the only customer contact is with the gaining provider, neither the central code database nor the losing provider have to implement additional interfaces to facilitate customer liaison.

Disadvantages: A central database of unguessable unique codes is required, which must be interrogated by every CP for every customer to obtain code for bills. If an expiry time is applied to codes then the database would have to be interrogated periodically for every service on every line, irrespective of whether any service is migrated in that period. If the database is to be pre-loaded with all customer technology permutations then even more regular updating of information by all CPs would be required, creating additional confidentiality concerns.

Impact on CPs

Advantages: The single code on-bill process enables quick migrations, particularly if the customer has the bill to hand, whether online, on the doorstep or when paying the bill at a bank or post office.

Disadvantages: Reduced levels of customer protection could lead to increased slamming, which disadvantages honest operators.

Conclusion

Whilst offering a number of advantages over other processes, the on-bill single code process suffers a number of weaknesses, to the extent that we believe it is not the best model for a harmonised migrations solution. In particular:

- It offers poor consumer protection and information;
- It is unsuitable for migrating multiple services;
- It relies on all CPs supplying codes on bills; and
- The process is not dynamic enough for a fast moving and diverse market.

An alternative approach towards a single code is outlined in our response to Q.18, which we believe addresses many of these weaknesses.

Q.9 How would you best manage transition costs in order to minimise disruption and any additional cost burden?

There are two challenges presented by the transition of moving to a harmonised migration process. One of these is the fair allocation of costs, whilst the other is the timing of the transition to minimise disruption and cost.

With regard to cost allocation, end-user-facing CPs (or the end-user-facing business units of integrated CPs) share the benefit of a harmonised process with their end-users, and therefore each EU-facing CP (or corresponding business units) should be responsible entirely for its own costs in this regard. Wholesale CPs, i.e. those selling to end-user facing CPs (or the corresponding business units in integrated CPs) however, do not necessarily gain a direct benefit from the introduction of a harmonised process and therefore should be able to recover their reasonable costs from their wholesale customers – see our response to Question 4.

Q.10 What are your views on identifying the characteristics of the current service?

Identification checks are useful to provide the customer and the GP with an understanding of what is provided on the line. However such identification checks need to be consistent with related legislation such as data protection.

Q.11 What are your views on how best to secure unique identification of lines?

At present, a WLR line and the SMPF service running over it is identified by a directory number. Whilst this is a starting point in identification, directory numbers and lines do not have a one-to-one relationship, in that a single number may be delivered over several lines, and indeed a line may have more than one number delivered to it. On the other hand, MPF lines are uniquely identified by a two letter regional code followed by a seven digit number.

Since a line is no longer necessarily associated with a unique telephone number, we believe that a mechanism is required by which CPs can uniquely identify any given line. This facility should also enable end-users to identify the owning CP for a line, to cover the situation where, for example, an end-user moves into

premises with active lines, for which there are one or more unknown CPs, leaving the end-user unable to initiate any change orders.

Due to its central role in the industry and its ownership and management of the copper access network, we propose that Openreach acts as a central repository of line identification. This would require every line to be assigned a unique and consistent identity that enables migration back and forth between WLR and LLU without a fundamental change of identity. With end-user permission, CPs would be able to interrogate Openreach systems to establish the owning CP for a line, as a precursor to end-user-initiated orders being placed on that line. This measure is necessary to prevent the possibility of CPs going on “fishing expeditions” for groups of lines at specific premises as part of marketing campaigns.

Q. 12 What are your views on protecting against ‘save’ activity?

We consider that Ofcom should reconsider its position on “save” activity. It is standard, legitimate commercial practice throughout the service industry for customers to have to give prior notice of their intention to “leave”- and for businesses to seek to persuade them to change their mind. Provided that CPs respect the wishes of those customers who do not wish to be contacted in accordance with general legal requirements, there is absolutely no reason why the telecommunications industry should be treated any differently. We share Ofcom’s view that customers should be fully informed when deciding whether or not to switch- and this means that they should be entitled to know whether their existing provider is able to offer them something that would make them stay.

There is no merit in a migrations process that prevents a customer from being offered something that would persuade them to stay with their existing CP. This suppresses competition in retail markets.

It is difficult to see why the losing CP alone should be prevented from pitching to a customer in the period before the customer’s contract with a new CP crystallizes. Additionally for many consumer transfers, the “cooling-off period” is not simply a creation of the migrations process, but a statutory obligation (as a consequence of either distance selling or doorstep selling). The underlying purpose of such a cooling-off period is to provide an opportunity for the customer to reconsider a decision in the light of all relevant information.

Moreover, as a matter of general and commercial law, “save” activity is not only permitted (subject in some contexts to appropriate marketing consents having been obtained) but also an everyday occurrence. Paragraph 4.33 of the

Consultation Document, which refers to the broadband process “inadvertently” providing an opportunity for save activity, shows a misunderstanding of this general position. General Condition 1.2 (or the EC provision it implements – Article 4(3) of the Access Directive) does not inherently prohibit save activity. It merely requires, in certain circumstances, that CPs only use confidential information they acquire from other CPs as part of the transfer process for the purposes that information was provided. This does not prevent Ofcom and/or industry from agreeing to a migration process where save activities is an appropriate use of the information.

We therefore consider that the issue of save activity should be re-assessed, whilst acknowledging that it might be appropriate to have some constraints to help ensure an orderly migrations process. For example guidelines on save activities such as no denigration. It follows that save activity should not be regarded as a cause for concern.

Q. 13 What are your views on the use of Cancel other and cancellation rights, more generally?

Cancellation rights

The customer's right to cancel should be retained. In a consumer context, there will in any event be a right under general law to cancel in respect of the vast majority of transfer orders, under either the distance selling or the doorstep selling regime. For distance sales, the standard cancellation period is 7 working days (but in practice it may be shorter or longer), and for doorstep sales, 7 calendar days. On this basis, as part of any consideration for a new migration process, leadtimes for cancellation rights should be considered.

We also consider that it would be prudent to retain a single process for both consumer and business customers, and that the retention of a cancellation right for business customers as well as consumers will reinforce public confidence in the transfer regime.

Cancel Other

Instances of slamming should diminish significantly if the right consumer protection measures are introduced to validate the customer. Consequently use of cancel other should reduce.

However, there are likely to be instances where the use of cancel other is still appropriate. A customer is entitled to approach its current CP (as principal) to indicate that he has changed his mind and no longer wishes to terminate service. In cases where the customer indicates that an order has not been placed legitimately (and that the GP had no authority as agent to terminate his existing contract), the LP will inevitably be in breach of contract if it does not accede to the customer's wishes.

Accordingly BT should clearly continue to be able to use Cancel Other. However, use of Cancel Other by BT and other CPs should be subject to the same rules. Therefore, if BT is to be limited in its use of Cancel Other, other CPs should be subject to the same limitations, via a General Condition. This is purely and simply a consumer protection/contractual issue, and there is no reason at all why there should be one regime for BT, and another for other CPs, especially as there is now evidence that some CPs are cancelling to block transfers and to enforce their own contracts.

Q.14 What are your views on Third Party Validation of Orders?

A process for migrations based on Third party Validation of Orders has been raised and briefly discussed between industry members on a number of occasions. In our view we are seeking to create new processes which are as streamlined as possible and removing unnecessary layers. Third Party Validation would increase the layers, and hence costs, of the process and therefore we consider that this should only be viewed as a realistic option if other, more streamlined processes are not successful.

Q.15 Do you agree that the principles set out in relation to singleton customer migrations should apply equally to bulk migrations?

In principle BT agrees that bulk migrations should be simple, efficient, high quality, and priced to reflect an efficient level of cost and supportive of customer choice whether they wish to remain with their current CP, move to another CP or return to BT. However, a bulk migration process should pay due regard to the services which an end-user has on their line to ensure that services are not unknowingly lost.

BT is of the view that whatever characteristics are agreed for singleton migrations they should equally apply to bulk migrations e.g. credit vetting, consumer protection etc.

Q.16 Do you agree with Ofcom's proposed framework for assessing whether there is market failure in respect of migrations, switching and mis-selling sufficient to warrant regulatory intervention?

BT does not agree with the proposed framework because (i) we do not think it reflects the role of the Undertakings in addressing the implications of "upstream" SMP and also (ii) because it excludes any mention of an important externality (i.e. market failure) which impedes the proper functioning of the telecommunications market.

Question 16 asks for views on Annex 4, which describes four main types of market failure. Ofcom then dismisses two of these and comes to the conclusion that intervention by Ofcom might be warranted to improve the operation of telecommunications markets, because:

- There might be market power at the upstream (para A4.18); and
- Incentives might exist to encourage operators with upstream market power to “produce” informational asymmetries to the disadvantage of other operators (para A4.19).

The approach of Annex 4 essentially only covers concerns which featured in the Strategic Review of Telecommunications, in response to which, BT committed to a large number of Undertakings. The analysis in Annex 4 therefore needs to address what market failures might exist (due to upstream market power) *after* the effect of the Undertakings has been taken on board.

There is no consideration in the proposed framework of mis-selling. This issue is of great importance because, if the market is to work well, consumers must have confidence in competition and the competitive process. Markets will not work well if suppliers are allowed to mislead customers – this is not economic theory but self-evident.

In BT's view the volume of cancelled orders, and specifically those for mis-selling reasons, is a much better consideration of market failure. The lack of adequate incentives on the gaining provider to validate customers and be fully accurate when describing its services are clearly identified in the summary section of the consultation as a source of market failure. In effect, potential gaining providers have an individual incentive to mis-sell even though this will damage all other gaining providers in the process. In the language of Annex 4, this is an externality and justifies intervention to correct for this market failure. Intervention may be a combination of sanctions against such practices or changes to processes to prevent them from occurring.

Q.17 Do you agree with the proposed way forward for developing the framework for determining whether Ofcom has a role to intervene in markets? Please provide an explanation for your answer

Ofcom suggests that it could look to develop a framework for regulatory intervention in three ways:

- • Option 1: consideration of migration issues on a case-by-case basis;
- • Option 2: setting minimum standards in some cases but on a case-by-case basis in others; or
- • Option 3: setting minimum standards in all cases.

We consider that there would be advantages to the development of minimum standards for migrations where possible, but we think a better word is *common* standards rather than minimum standards.

We believe that such standards should be reciprocal so that parties to an industry process would have both rights (to gain access) and responsibilities (to provide access). This way, suppliers committed to making migration and switching as trouble-free as possible would have incentives to make the shared

industry process work. In contrast, suppliers should not be allowed to free ride on changes which make it easier for customers to switch to them if they do not also participate in making it simpler for their customers to also switch to other suppliers.

We do not underestimate the challenge in identifying and promoting the common standards and this would clearly need to be the subject of industry discussions. In developing such common standards, it would be important not to settle on the lowest standard that any supplier could reasonably meet. At the same time, Ofcom needs to avoid setting standards that are prohibitively costly for participants to meet. Such issues can, however, only be explored by having discussions on the practicality of the processes envisaged.

We also agree with Ofcom that the trend towards the purchasing of bundles of services means that the telecommunications market would work better for end-users were switching and migrations also to take place for entire bundles. Again, the practical issues that follow need to be considered in more detail. Where BT does not supply all the elements of the bundle in question it cannot be assumed that BT can provide a common gateway.

As Ofcom notes at several points in the Consultation Document, intervention has a cost and the issue is whether this cost is likely to be more than offset by the benefits from a better-functioning market. Systems and processes which make markets more "frictionless" are to be encouraged *provided that* the costs are not excessive. Finding the right balance – where the marginal improvement for customers has a benefit equal to the marginal cost of the improvement to the industry – is the central challenge to which Ofcom's economic resources need to be focussed.

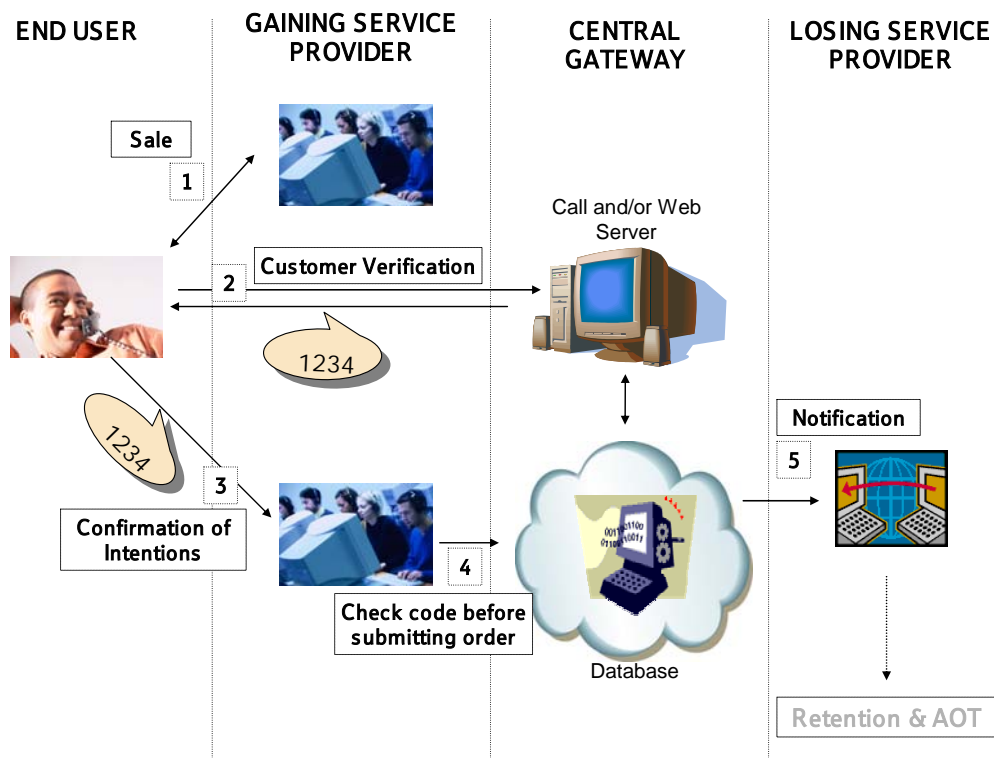
Q.18 How could the Single Code process work in practice?

Question 8 explored the feasibility of a single code on bill process. Whilst this could be an effective method for migrations it does have the following drawbacks:

- Poor consumer protection
- Not suitable for migrating multiple services
- Reliance on all CPs to supply code in advance of customer migrating
- Not dynamic enough for a fast moving and diverse market

In view of these drawbacks the feasibility explored other methods to operating a single code process other than via a bill.

The following diagram considers an Interactive Voice Response (IVR)/Web portal solution as one variant of a customer-initiated code solution:



This method involves an end-user obtaining a single code via an IVR or web portal rather than contacting the losing CP. It incorporates all of the benefits of the single code process as outlined in Question 8 whilst also overcoming the main drawbacks.

Consumer protection

The consumer is the only party who can initiate the process for obtaining the code. Therefore the code can not be fraudulently obtained in the same way as a bill and hence encounter the associated issues with mis-selling. The end-user could verify themselves through one of the following:

1. IVR from the actual line (e.g. CLI)
2. IVR from another line or IVR from the actual line but with unrecognised telephone number; maybe needed because the line being migrated doesn't have a voice service on it or it could be that the EU wants to make the call from a mobile/land line at the point of sale
3. Via the Web

Multiple migrations

The on-demand single code is independent of the LP and thus would be able to when there are multiple LPs. It is also specified by the customer based on their

definition of the services that they are expecting to be migrating. Thus one code could be defined as representing a migration of line rental, calls option, ADSL and mobile service to the new GP and the customer will have specified that this is the case rather than simply have gained a code from one of the losing providers.

The code also need only be short (e.g. 4 digits) and therefore negates the issues associated with lengthy codes such as the MAC and Combined Order Reference Codes (CORN).

CP responsibilities

It would be very difficult for us to implement a standardised process across industry which did not involve CPs needing to amend their systems. However the IVR/Web portal process would cause minimal disruption to CPs' internal processes and systems in comparison to the single code on bill process.

Dynamic communications industry

The communications industry is fast moving and highly competitive. As consumers become further well informed and offered a variety of different services at competitive rates, churn will increase and so will the frequency of switching. This process would better suit this type of market than the single code on bill.

To conclude the main benefit to this solution over the on bill code solution that is the end-user drives the migrations process and is not dependant on the losing CP issuing a code whilst keeping them well protected. We believe that the principle of the on-demand process could be extended to an enhanced MAC process in which customers obtain a multi-service code from a single LP. We would welcome the opportunity to discuss all variant with industry.

Q. 19 Do you agree with Ofcom's key principles for migrations, switching and mis-selling? Are there further principles which Ofcom should consider?

Ofcom has proposed 37 principles for migrations, switching and mis-selling in Annex 5 and BT does not wish to extend this extensive list unnecessarily. However, we do consider that Ofcom should also consider including the following:

- Industry processes should apply uniformly to 'any-to-any' transfers.
- In addition to binding Codes of Practice for sales and marketing activities, there should be financial sanctions against suppliers who knowingly conduct campaigns which misrepresent their services to customers. Not only does this undermine competition but it works against choice by well-

- informed customers. Consumers must have real protection from mis-selling.
- Costs incurred as a result of mis-selling should be recovered from the offending party.
 - Codes of Practice should apply to all transferable products and all CPs.
 - Express consent should be received prior to transfer so that wasteful and inefficient activity is not needlessly undertaken, also saving customers from the distress and annoyance which can follow from slamming. To help achieve these goals, we believe that verification of the customer's intentions should be provided at the outset not some time after the migration/switching procedure has been initiated.

Q.20 What are your views on whether these could be applied to guide current as well as new processes to be developed in the future?

BT considers that these principles need to be applied as far as possible to current processes and built into new procedures developed in the future. This would increase certainty and potentially lower costs of all future development as well as provide a seamless transition for all end-users and CPs.

Q.21 Which migration processes do you consider should be prioritised?

Q.22 What criteria should Ofcom use in deciding how best to prioritise migrations processes?

Questions 21 and 22 should be considered together. Ofcom identifies criteria that may be helpful in assessing priorities for migration processes. All the criteria have merit but minimising the risk of consumer harm should be the top priority. Deciding which products should be accommodated first should depend on a mix of systems requirements, costs, agreement to new processes by industry players and whether there is a need for a change in regulation. However LLU processes should be a priority due to the current process gaps and the scope for customer misunderstanding.

END