



# uSwitch response to Ofcom's Strategic Review of Digital Communications discussion document

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## 1 Executive summary

uSwitch is an online and telephone price comparison and switching service, helping consumers get a better deal on gas, electricity, home phone, broadband, digital television, mobile phones and personal finance products including mortgages, credit cards, current accounts and insurance. uSwitch is the largest broadband and mobile comparison service in the UK, by online traffic. In 2015 uSwitch is celebrating 15 years of saving customers money.

uSwitch is part of Zoopla Property Group plc, a digital media business that owns and operates some of the UK's most widely recognised and trusted online brands including Zoopla, PrimeLocation, SmartNewHomes and HomesOverseas.

Ofcom's strategic review could not be more timely. The digital communications market is going through a period of change. Rollout of 4G and superfast broadband services has led these to become mass market propositions. Proposed market consolidations are concentrating market shares. Access to the internet is firmly routed as an essential service, that is of increasing importance for accessing public services, and is substituting dedicated networks with OTT alternatives.

However, we cannot ignore that we still see some consumers who are suffering with poor broadband speeds, and who cannot get mobile coverage at home or at work.

We see a trend for inherently confusing bundled products including elements that do not respect the legal boundaries of Ofcom's regulatory instruments. We see a genuine chance that, absent of action, it will become more difficult for consumers to engage with the communications market.

Ofcom's review is seeking to tackle many of the structural questions that tends to divide the opinion of major industry players. We do not doubt these are important questions to consider as part of this review - but this should not be at the expense of how consumers will be best engaged, empowered and protected in the context of these market and technological developments.

As the market continues to develop and innovate, so too should Ofcom's approach to regulation. Ofcom has offered detailed regulation for specific services delivered over certain infrastructure, but that is no longer comprehensive enough to cover the services that consumers are actually buying, nor does it fully take into account how they are buying them. We think Ofcom's approach to consumer regulation should be more principles based, focusing prescription on key industry processes and core consumer rights. In return for a level of deregulation, Ofcom should work with the Government to ensure it has



the powers to apply its consumer regulation and industry processes across all relevant digital communications services. Ultimately we believe this would make things easier and simpler for customers to understand and engage with the market.

In the remainder of this document we have set out our views relating to the relevant questions in the DCR discussion document. We would welcome the opportunity to discuss some of these matters further with Ofcom in the course of its strategic review.

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## 3 Importance of competition and availability

### 3.1 Competition delivering the best consumer outcomes

Should competition policy remain at the core of good availability outcomes for most consumers, complemented by targeted intervention as required?

Q1: Do stakeholders agree that promoting effective and sustainable competition remains an appropriate strategy to deliver efficient investment and widespread availability of services for the majority of consumers, whilst noting the need for complementary public policy action for harder to reach areas across the UK?

Q2: Would alternative models deliver better outcomes for consumers in terms of investment, availability and price?

We are firmly of the view that effective competition is the best way to ensure that consumers are empowered and engaged, demanding better value for money from responsive markets.

Effective and sustainable competition has delivered transformational benefits to the communications market in the last decade. For example the BT Undertakings and the rise of local loop bundling has led to genuine competition in the retail broadband market, and ensuring spectrum for four national mobile operators has in part led to real attempts at product differentiation.

That said, some positive outcomes for consumers delivered through a certain degree of competition is not an excuse for resting on one's regulatory laurels. In securing a competitive market, the regulator should endeavor to remove any barriers to fair competition, ensuring those consumers who do not access the benefits of competition have the confidence and ability to engage with the market.

We see the big strategic question for this review is not *whether* effective and sustainable competition remains the right model for the market, but rather *how* we ensure competition continues to address the future challenges in the communications sector.

## 3.2 Service availability

What more can be done through public policy to deliver truly widespread availability?

Q3: We are interested in stakeholders' views on the likely future challenges for fixed and mobile service availability. Can a 'good' level of availability for particular services be defined? What options are there for policy makers to do more to extend availability to areas that may otherwise not be commercially viable or take longer to cover?

### 3.2.1 Fixed services

Whilst superfast broadband is now available to more than three quarters of the UK, broadband speeds remain a postcode lottery. A third (34%) of people, still live with sub 5Mbit/s speeds, while an unlucky 23% make do with speeds of less than 3Mbit/s.<sup>1</sup>

A House of Lords report earlier this year called for broadband to be defined as a public utility and voiced concerns about the delivery of superfast services.<sup>2</sup> Broadband is no longer a luxury. Terrible speeds can isolate people and take their toll on businesses, schools, even house prices, so it is essential that *all* consumers and businesses receive a fit for purpose broadband speed.

The proposed amendments to the USO goes some way towards guaranteeing this - a speed of at least 5Mbit/s. We believe that in meeting this, it is essential that the Government, Ofcom and BT explore options for delivery to those who live outside of the superfast rollout footprint. For example, satellite broadband may be a viable option for more remote premises that could allow those in these areas the minimum speeds required to conduct basic broadband tasks. It's essential that isolated and rural communities are not left behind in the race for a digital Britain.

Superfast broadband is essential for the future and is now an option for 83% of the population - but many of those who are lucky enough to have access to superfast speeds are choosing not to take it. Despite the aggressive rollout of fibre services in the UK over recent years, only 30% of people are taking fibre services. 31% say they are unaware that superfast services are offered by

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<sup>1</sup>

<http://www.uswitch.com/media-centre/2015/03/uks-worst-street-for-broadband-revealed-and-its-135-times-slower-than-the-fastest-street/>

<sup>2</sup> <http://www.publications.parliament.uk/pa/ld201415/ldselect/lddigital/111/111.pdf>

providers other than BT or Virgin Media, and 15% have no idea which providers offer a superfast service full stop.<sup>3</sup>

Nearly three quarters (72%) are willing to spend extra for superfast broadband, on top of their current packages. But our research reveals that standard broadband users are only willing to pay £5 extra a month for superfast speeds, whereas fibre is currently £9 more expensive than standard packages.<sup>4</sup>

The government's recent superfast advertising campaign may have helped to stimulate demand, but more needs to be done to make the availability and benefits of fibre clear, making sure consumers are notified by broadband providers when it's live in their area and that homes are clear on the benefits superfast speeds can offer.

We believe more should be done to convey the benefits of access to next generation networks to those who could benefit the most. For many, fibre broadband infrastructure could be the answer to poor standard ADSL broadband speeds - but some consumers may not wish to pay for superfast speeds that are not necessary for their usage.

To that end we would like to see more wholesale fibre services that allow delivery of functional broadband, to help the consumers who do not need superfast speeds of 30Mbit/s or higher. We would like to see providers begin to backhaul existing standard broadband packages over fibre network infrastructure that is fit for purpose. This should be especially relevant when Ofcom considers how to deliver the proposed new USO requirements and the principle of universal pricing. We do not believe it will be sufficient to say universal provision of 5Mbit/s broadband has been achieved if it is only available to some consumers via retail products that come with a 'superfast' premium.

We understand that rollout costs tend to exponentially increase in the final few percentage points of coverage. However, we expect that new or alternative technologies should be deployed to ensure widespread availability of essential services such as broadband. Satellite broadband services for example are a simple solution to deliver functional broadband speeds to more remote areas. We would like to see a way of using this technology that is also consistent with the universal pricing principle of the USO. We would like to see a timetable for delivering the proposed USO changes in place as soon as possible - technologies that could help plug the gap are available today, so we see no reason for a particularly long lead time.

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<sup>3</sup>

<http://www.uswitch.com/media-centre/2015/02/confusion-over-fibre-broadband-hampering-take-up/>

<sup>4</sup> Ibid

### **3.2.2 Mobile services**

We are in no doubt that the demand for mobile data access, and by extension UHF spectrum capacity, will continue to increase. We would expect Ofcom to consider if services currently using dedicated spectrum could be delivered over the internet, so that additional capacity could be made available for future generations of mobile services. We consider this will secure maximise value for the public spectrum resource, as well as helping to develop consumer services.

uSwitch was pleased when Ofcom introduced the 98% indoor coverage obligation for one of the 800 MHz (4G) auction lots. Availability of services across the UK in all population areas where it is realistic to provide should continue to be a key objective, as and when Ofcom makes more spectrum available for mass market services.

We believe likely mobile operator consolidation raises important mobile coverage issues. We would suggest Ofcom, working with the Government and other relevant competition authorities, should ensure that coverage levels after any consolidation do not drop in any areas currently covered, with a particular focus premises and geographic coverage in rural areas. Beyond that, we would expect that any efficiencies consolidated MNOs achieve, should be considered in any cost benefit analysis for future coverage obligations.

## 4 Upstream competition and structural remedies

uSwitch does not wish to comment specifically on questions 4-16 in Ofcom's discussion document beyond offering some high-level observations. We do not wish to undermine the importance of structural issues with the fixed telecoms incumbent but we caution against these questions becoming too much of a distraction to the wider aims of this review.

uSwitch is not best placed to comment on the relative benefits of any particular form of access or structural regulation. We simply suggest that Ofcom should continue to seek any ex ante competition remedies where it is appropriate and likely to deliver a greater level of competition and investment in the market.

From our perspective as an intermediary in the retail consumer broadband market, we have not recently observed any particular forms of discrimination by Openreach in favour of BT's retail business to the extent that it has a significant impact on the competitive dynamics of the retail market.

We suggest the primary considerations for Ofcom when looking at the appropriate structure of BT is whether any structural change for the incumbent would likely achieve the following;

- Materially more efficient network investment aggregated across all players in the market
- Materially better quality of service for end-users
- Materially lower prices for consumers.

uSwitch is not best placed to offer an assessment on whether structural separation would achieve these outcomes.

## 5 Consumer engagement

### 5.1 Risks to consumer engagement

Should Ofcom do more to further support empowerment at each stage of the consumer's decision making process?

Q17: What do stakeholders think are the greatest risks to continuing effective consumer engagement and empowerment?

Q18: What indicators should Ofcom monitor in order to get an early warning of demand-side issues?

Consumer engagement and empowerment is fundamental to ensuring markets function competitively. In our view Ofcom should leave no stone unturned in its ambition to seek improvements in this area.

uSwitch expects some major developments in the retail market in the coming years that could detract from the positive measures currently in place to support consumer engagement. As a result we see a key challenge for Ofcom's consumer policy programme is ensuring we do not move backwards in terms of consumer engagement.

#### 5.1.1 Increase in bundling of retail services

We have not yet seen any evidence for especially strong consumer demand for triple and quad play services. In fact we have seen research suggesting the vast majority of consumers are not currently interested in consolidating all of the communications services with one provider.

We have seen the percentage of people buying effectively bundled landline and broadband has continued to grow. However this will be at least in part due to the fact that it is increasingly difficult to find providers that do not require you to take line rental with their broadband service. In situations where one can buy line rental and broadband separately, the cost can often be prohibitively high.

The percentage of consumers also adding TV to their package has increased slightly but is still relatively low. Quad play bundling has been much heralded by the industry but consumers are yet to engage with this as a product. We believe the proliferation of bundle deals has meant that it is now more difficult to compare some deals. While it is fairly straightforward to compare broadband and landline deals, once you add in TV it becomes much more difficult due to the different content available on each platform.

Adding to the complication and confusion with bundles is the differing terms and conditions that apply to each of the components. Not only may there be differing contract lengths but the terms under which early termination may be enacted for free vary greatly and these can be very hard to find. This has the consequence of causing confusion for the consumer, meaning they are less likely to switch to a more competitive deal as they are unable to understand their current contractual situation.

Providers are incentivised to increase the revenue they gain per customer and to reduce the likelihood of churn - and in a competitive market it is perfectly reasonable for them to seek to do so. However, for a market to be truly competitive, consumers need to be able to easily get the information they need to make an informed decision and critically, they need to be able to act on it if they wish to.

We are concerned that demand for bundled services may be somewhat artificially created going forward. We see no real evidence for consumer demand, yet we know if the retail products are constructed in such a way that a triple or quad play bundle is the one way to initially gain good value, consumers would have no option but to take the services. We do not believe that is necessarily an optimum consumer outcome and it certainly raises some challenging regulatory issues.

The comparison and switching barriers are significantly higher with bundled services - it can be difficult to unpick the various contractual terms and interdependent pricing. Once in a bundle, unnecessary hassle barriers are raised for consumers which has the potential to significantly constrain competition in the retail market in future. We believe this could be heightened by current market consolidation activity that increases the incentives of providers to take advantage of and exacerbate these artificial hassle barriers.

We would broadly characterise bundles as one of the two potential categories from a policy point of view. For simplicity - 'good bundles' and 'bad bundles':

### Characteristics of good bundles

- ✓ Contract end dates and termination clauses align
- ✓ Consumers organically demand the bundle structure. Clear pricing of each of the separate bundled elements.
- ✓ Switching processes are consistent, aligned and gaining provider led
- ✓ Consumers get better prices than standalone. Consumer protection provisions are consistent and fair.

### Characteristics of bad bundles

- ✗ No clear contractual end date for all elements
- ✗ Consumers only take the product as it is the realistic option and they cannot easily unpick different bundled elements' price
- ✗ Cannot switch the entire bundle or any one element without triggering prohibitive pricing penalties or excessive hassle
- ✗ Ability to vary core terms including pricing varies between bundle elements

We suggest Ofcom remains mindful of the average costs paid for services and the level of switching for each digital communication service, as well as proactively monitoring the market for any services that could be considered a 'bad bundle', displaying some of the above characteristics.

uSwitch believes that Ofcom's objective should be to create a consumer regulatory environment where 'bad bundles' are not possible for providers to create. We consider this a key policy response to current and potential future market consolidation and increase in the incentives to bundle, to ensure the benefits of competition continue to flow through to consumers.

## 5.2 Policy options to improve consumer engagement

Q19: What options might be considered to address concerns about consumer empowerment at each stage of the decision-making process (access, assess, act)? What more might be required in terms of information provision, switching and measures to help consumers assess the information available to them? What role may Ofcom have to play compared to other stakeholders (including industry)?

We are pleased that Ofcom is taking a more holistic approach to consumer empowerment. We have often advocated that consumers must be empowered

and engaged at every stage of decision-making for the benefits of competition to be genuinely available for the majority of consumers.

Ofcom has a role at each of these stages both in ensuring the right regulatory framework is in place, but also facilitating innovate tools for consumers to use.

## **5.2.1 Access**

### **5.2.1.1 Consistent regulatory approach**

Perception of (and actual) hassle involved in switching is in our view the biggest single barrier for consumers accessing an assessment of the market and acting on it. As discussed in sections 5.1 and 7, we believe that in response to an increase in bundling of services with different contracts, underlying regulatory differences will potentially increase confusion and by extension the perception of hassle. Without Ofcom achieving consistency in approach of consumer rights, switching processes and information, consumers' perception of hassle will undoubtedly increase and the consumer empowerment will be foreclosed regardless of any piecemeal measures taken.

### **5.2.1.2 Prompts**

We have previously argued that end of contract notifications could have a real benefit for improving understanding of out of contract pricing and the ability to switch.

We have seen an increasing tendency in the broadband market for acquisition pricing that runs for the duration of the initial contract period. These deals are often very competitive but do run on to providers' standard pricing once the deal comes to an end. This is a price change but one where the provisions of General Condition 9.6 does not apply. We also see that mobile contracts where the handset cost is built into the initial contract period, do not tend to roll onto cheaper plans when the handset cost has been recovered at the end of the initial period.

Our view is consumers coming to end of their initial contract period should not be expected to remember the exact month their deal comes to an end or check the first bill or bank statement after the change to see how much they are now paying. As we have previously argued, we believe an end of contract notification requirement would have the impact of raising awareness of the contract end date and to begin to break down some of the misconceptions that exist around switching processes.

We expect these sort of prompts will address the potential for consumers overpaying for their services, as it will prompt consumers to assess the options available to them on the market. In energy for example, consumers on a fixed-term tariff are sent a letter notifying them of the end of their contract. Forty-three percent of consumers who read this letter at least checked the

features of the tariff they were on; 34% looked into switching tariffs with their current supplier and 23% looked into switching to a different supplier.<sup>5</sup> We have seen this drive a significant amount of energy comparison activity.

## 5.2.2 Assess

We note that particularly in the digital communications market comparisons are less driven by price than in some other comparable utilities sectors. As a result, an ability to compare the speeds one is likely to receive, download limits, or the content included in any TV package are often equal in consideration to price. As a result Ofcom should think more broadly about how to ensure the relevant information makes it to consumers to enable informed decision making.

To assess the market, consumers need to be able to compare different options side-by-side, with all the relevant factors considered. The quicker and easier this assessment progress is, the more likely consumers will be to undertake it.

### 5.2.2.1 Use of data

Data can be an incredibly powerful tool for consumer decision making but only if properly harnessed. Price comparison websites (PCWs) are ideally placed to develop tools using such data. When considering what data to open up for use in this way, we believe there are a number of key objectives;

- Offering side-by-side relevant and comparable information by provider
- Offered at the point the consumer is actually making the decision
- Tailored to the consumer's individual circumstances
- Based on data that is accurate and recent - and that the consumer could actually use to hold their provider to account.

We believe this is best delivered as part of the comparison website journey, where the intermediary is best placed to aggregate all of the relevant information, and deliver it at the point of comparison.

Independent, third party solutions for the data have been considered to help offer this, but we note shortcomings in perceived robustness (and the inability for consumers to hold providers to independent, unverified data). In general we would favour access to data sourced by the providers directly, so consumers can actually hold their provider to information displayed to them during the comparison process.

uSwitch currently aggregates product information allowing consumers to compare product features such as monthly allowances, key features and pricing and we try to overlay any availability information available to us. We would like to have access to data that would allow us to offer a richer comparison experience,

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<sup>5</sup> 4.32:

<http://www.ukrn.org.uk/wp-content/uploads/2014/12/Statement-Consumer-engagement-and-switching.pdf>

that tailors any results to consumers specific circumstances and makes clear how providers vary. We see in other product comparison services the ability to do this to varying degrees. The communications comparison space is significantly further beyond other industries in this regard.

We have summarised in the table below a matrix of the sort of information we would ideally like to present to consumers in the communication market. We have offered our assessment on where some of the gaps currently are.

<b>Levels of relevant data</b>	<b>High level</b> - helping the consumer to select the type of service	<b>Provider specific</b> - helping the consumer select a provider for the service	<b>Personal usage</b> - helping the consumer select the product for their usage
<b>Product</b> (including pricing, key features and limits)	PCWs provide this information at point of comparison		Done manually by the consumer - no Midata programme currently in place in the communications market
<b>Availability</b> (standard vs fibre broadband or generation of mobile service)	PCWs can display some basic availability tools with broadband products but generally not address-specific		
<b>Quality</b> (e.g. speeds or coverage)	Ofcom Infrastructure Report data is in the public domain but is perpetually out of date following publication	Generally only available through providers directly - not easily comparable	

Theoretically, if intermediaries could automatically access consumption data for an individual user and had access to the address and provider specific data, we could offer;

- A mobile comparison based on a consumer's best mobile coverage and data speeds available at their home and work address
- A mobile comparison based on a consumer's actual minutes, text and data usage
- A broadband comparison based on the line speed estimate actually committed to by each specific broadband provider

- A TV platform comparison based on the TV channels a consumer actually watches.

We recognise there are a host of legal and logistical issues around achieving comparison of this complexity - but intermediaries are well placed and incentivised to build these sort of solutions that could make an otherwise very complex comparison process very simple and engaging for the consumer. Ease of comparison based on rich data could provide a major, positive impact for consumer engagement and wider market competition. However, access to the relevant underlying data is the fundamental barrier to significant, and potentially transformational, developments in this area.

In terms of specific data not currently available, we believe there are a few 'quick-wins' that could have a major impact for consumers. We believe Ofcom has a role encouraging industry under the Broadband Speeds Code to allow API access to line-specific broadband speed estimates, by provider, as already provided in the sales journey. An ability to compare all speeds that different providers will guarantee would help consumers to make a much more objective comparison and enable them to understand who they are likely to receive the best service from. This would allow PCWs to offer tailored speeds comparison that consumers could actually hold their provider to. Bringing this to the fore during the comparison will make the comparison simple and help to drive a more competitive market.

We also believe API access to the underlying data in Ofcom's recent mobile coverage maps data would offer ways to get this information to more consumers. Access to this information will enable multiple PCWs to develop novel and innovative ways of displaying or overlaying this data to aid consumers, so rather than a single point of comparison, a more accurate picture of the entire service available can be created.

More broadly, we would like to see if Ofcom would work with the Government to restart the Midata programme in the communications sector.

### **5.2.3 Act**

Our view is consumers should not be put off from switching just by virtue of hassle, or indeed, the perception of potential hassle. We see this as putting up an unnecessary barrier which ultimately holds back competition. We would never argue that consumers should switch for the sake of it, but we believe there would be genuine improvements in competition in the retail market if the only reason consumers stay with their current provider was because, based on an informed decision, they genuinely believe it continues to be the best option for them.

### **5.2.3.1 Switching processes**

According to uSwitch research (September 2014), over two million frustrated broadband users tried and failed to switch to new providers in the past year. Our research suggests people in the UK actually switch mortgages more frequently than they move broadband supplier with 25% who've never moved saying it's not worth the hassle or is too complicated. Almost a third (30%) of broadband users have never even bothered to change provider, and only 16% have switched in the past 12 months.<sup>6</sup>

Even more loyal to their providers are pay TV customers with 43% having never left their current provider – 13% of them blame being tied into bundles.<sup>7</sup>

Ofcom's recent changes to the Openreach switching process was a welcome step, but over four million broadband users didn't benefit and still face a frustrating losing provider lead switching process. The change did not take into account the millions of mobile and pay TV customers who still face losing provider led or cease and reprovide processes.

Our research shows more than half (51%) of bill payers would be more inclined to switch their mobile, pay TV and broadband if they did not have to contact their current provider and the network they were moving to handled and guided them through the process. More than four in 10 (41%) bill payers would be more likely to switch if their provider could guarantee they would not be left without service, while more than a quarter (26%) would be more tempted to move if the process happened within a specified time frame.<sup>8</sup>

We have responded to Ofcom on various switching consultations in the past and continue to engage with Ofcom on these issues. From a strategic point of view, the high-level objective must be to have gaining provider led processes in place across the board. To truly address the perceptions of hassle, Ofcom must try to ensure that switching processes appear consistent to the consumer, regardless of the underlying networks or processes.

We do not accept that this is too difficult to achieve. Ofcom and industry should take more innovative approaches to achieving this, piggybacking on existing processes to close the remain gaps in switching processes where possible.

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<sup>6</sup>

<http://www.uswitch.com/media-centre/2015/06/breaking-up-is-hard-to-do-why-brits-who-dont-bin-their-broadband-providers-are-losing-83-million-each-year/>

<sup>7</sup> Ibid

<sup>8</sup> Ibid

## 6 Quality of service

What more should Ofcom do to support better quality of service for consumers, in either competitive or less competitive markets?

Q20: Are there examples in competitive or uncompetitive sections of the market where providers are not currently delivering adequate quality of services to consumers? What might be causing such outcomes?

Q21: What further options, if any, should Ofcom consider to secure better quality of service in the digital communications sectors?

Providers often have to balance the level of quality with the level of cost to deliver it. A competitive market, when working properly, should naturally deliver the right equilibrium of quality and retail price as demanded by consumers. We are aware of concerns around quality of service in particular on some Openreach-delivered consumer products. We note recent Openreach commitments to improve quality of service on issues including provision and fault repair following quality of service remedies being imposed as part of the most recent Fixed Access Market Reviews.

In general, where Ofcom seeks to impose ex ante economic regulation, we believe it must have regard to quality of service. If Ofcom imposes a charge control, as it has in the past, on a wholesale SMP product which by definition is not offered in a competitive market, it stands to reason that quality of service could be sacrificed to meet with the terms of the charge control without the threat of losing any market share. For ex ante regulation to better mimic the outcomes of a competitive market, it should both constrain pricing and mandate the level of quality a competitive market would otherwise deliver.

We believe to mitigate the potential impact on quality of service to meet an ex ante charge control, Ofcom should have a policy that ex ante quality of service standards go hand in hand with any ex ante price regulation. We believe the benefit of this would flow through to consumers assuming the relevant downstream market is competitive.

## 7 Innovative and simplified regulation

### 7.1 Opportunities for deregulation

Are there opportunities for deregulation or simplification that will bring broader benefits whilst avoiding new risks to consumer harm?

Q22: Might there be future opportunities to narrow the focus of ex ante economic regulation whilst still protecting consumers against poorer outcomes?

Q23: Where might future network evolutions, including network retirement, offer opportunities for deregulation whilst still supporting good consumer outcomes?

uSwitch expects that the need for ex ante economic regulation for certain wholesale products will no longer be necessary as the level of truly substitutable services not requiring the relevant wholesale input becomes material. There are some clear potential examples of this, for example traditional call origination and even potentially call termination against VoIP delivered services. However, we must recognise that it tends to be the more potentially vulnerable consumers that are more likely to stay on legacy services.

Ofcom should be mindful of the potential impact on the pricing of legacy services before it removes the relevant upstream controls. In these circumstances Ofcom should be confident that the substitutable products provides a genuine constraint to the pricing of the legacy service.

### 7.2 Consistency and simplification of regulation across products

Q24: What are the potential competition and consumer protection implications of the rise of OTT services? Might the adoption of such services enable future deregulation without raising the risk of consumer harm?

Q25: Are there any areas where you think that regulation could be better targeted or removed in future? What would be the benefit of deregulation as well as the main risks to consumers and how these could be mitigated? Please provide evidence to support your proposals.

We note that over the top (OTT) internet delivered services are likely to have a major impact on the market in the coming years. This will offer greater

competition, especially on services that have previously relied on infrastructure provided by SMP operators. We expect that the rise in the use of OTT means that issues around the availability and access of internet services will be increasingly important.

More broadly, greater use of OTT services coupled with the potential for increased use of bundling in the retail market, opens up really significant questions for consumer empowerment and protection remedies in future. We believe consistency of regulatory approach should be key objective of Ofcom moving forward. We have seen moves to harmonise regulatory devices in financial services, for example in the transferring of consumer credit regulation from the OFT to the FCA. We see no reason why Ofcom cannot also take this approach with telecoms, pay TV platform and some OTT services.

Ofcom's General and SMP Conditions cover the major telecoms services. Although TV platform and content services have a fragmented regulatory approach using a blend of licensing, competition law enforcement and use of the Unfair Terms in the Consumer Contracts Regulations (UTCCRs). As we see an increase of consumer service bundling and TV or TV-like content become key differentiators, consumers need to have an appropriate understanding of their rights and options. In terms of consumer protection, we are not convinced that the UTCCRs (going forward Consumer Rights Act) offers sufficient powers for Ofcom to proactively intervene beyond issuing guidance.

We believe that Ofcom should have the powers to impose General Conditions on providers of TV platforms and OTT services in the UK. We believe Ofcom should then use such powers to achieve consistency in consumer protection and consumer empowerment regulations in the communications sector.

At present, telecoms services have a fairly prescriptive set of regulatory requirements, which in some circumstances could create a distortion in the market when compared to OTT services. We believe that a consistent approach, expanding the General Conditions to cover other communications services, would create an opportunity to remove some regulation in the existing conditions. This would be a level regulatory playing field where Ofcom would rely on prescriptive measures only where necessary for protection or process reasons, relying on regulatory principles more broadly across all digital communications services.

uSwitch believes that Ofcom should adopt a principles-led approach to consumer regulation, and on this basis should conduct a wholesale review of the General Conditions. Expanding to cover all relevant digital communications services - but in return pitching them at a higher level with less prescription. We believe this approach could reduce some regulation burden on stakeholders while achieving better outcomes for consumers - really targeting the rules to

important consumer rights, such as mid contract price protection, and vital industry processes, such as a consistent to the consumer switching process.

### **7.3 Innovative tools to deliver consumer outcomes**

We discuss in section 5 of this document some of our views on how to increase the levels of consumer engagement in the retail communication market.

Information remedies are often turned as the primary means of increasing consumer engagement and even as policy responses to consumer protection issues. Ofcom has in the last decade tried to use itself to deliver information directly to consumers, with varying degrees of success. Presumably one of the reasons Ofcom has sought this approach is it avoids having to impose information requirements directly on providers, with all the proportionality tests that go with that.

uSwitch agrees that the right information for consumers is fundamental in promoting informed decisions. Our experience tells us that finding that right level of information and the most appropriate way of displaying is not an exact science and it can take a lot of effort, testing and perfecting to get right. One thing we do know, is most consumers do not think of Ofcom as the place to go for this information.

Ofcom should consider the intermediary part of the value chain when considering any consumer information remedies. Intermediaries, especially PCWs, have incentives that are aligned to helping consumers navigate the market. Intermediaries have teams of experts in finding new and innovate ways of displaying information. They operate in a competitive market of intermediaries where all players are trying to find the best ways of supplying the information consumers demand.

Ofcom, when it thinks about turning to information remedies, should not be thinking of penning its own guide or map for its own website. It should look to exploit the ready-made front-line of consumer engagement. If it works to ensure the right legal processes are in place to unlock access to data and information that consumers actually demand, the competitive intermediary market will work to find the best ways to display it because that's what it is incentivised to do. Ofcom would not need to define exactly though the information should look or be presented - but open up the possibility and let the competition intermediary space push the best of doing it to the top.