Which?

Consultation response

Strategic Review of Digital Communications

Strategic Review of Digital Communications, Discussion document – Which? consultation response.

Which? is the largest consumer organisation in the UK with more than 1.2 million members and supporters. We operate as an independent, a-political, social enterprise working for all consumers and funded solely by our commercial ventures. We receive no government money, public donations, or other fundraising income. Which?'s mission is to make individuals as powerful as the organisations they have to deal with in their daily lives, by empowering them to make informed decisions and by campaigning to make people's lives fairer, simpler and safer.

Introduction

Which? welcomes this opportunity to respond to Ofcom's discussion paper on its Strategic Review of Digital Communications. It is the first review of the communications sector in 10 years, and during that time the way in which consumers use communications services, as well as the technology itself, has changed dramatically.

We are also pleased to see that throughout the document there is a clear focus on ensuring markets work for consumers. We understand that Ofcom's view is that the best mechanism for delivering choice, quality and affordable prices is a healthy competitive market and that it wants to drive sustainable competition. However, Ofcom also notes that '*competition is only effective when consumers are equipped to make an informed decision and can easily act on that information to make a switch if they want to*'.

The review comes at a time when there are already low levels of trust and consumer satisfaction in the telecoms sector. Which? consumer insight data showed that, in September 2015, 35% of people trusted mobile phone services, fewer than the proportion of people who trust banks. Fewer than half of people (44%) said they trust providers of broadband and home phone services.

In addition, customer satisfaction levels for the main telecoms providers remain consistently low and are similar to those of the big six energy firms. In Which?'s most recent annual customer satisfaction survey of 100 major brands, BT was rated ninety-eighth, with TalkTalk ninety-seventh, Vodafone ninety-fifth and EE ninety-fourth.

This response sets out Which?'s position on a number of the issues raised by Ofcom in the discussion paper, as well as recommendations as to how we believe the regulator can have the greatest positive impact for consumers.

In summary, we believe Ofcom should:

- Give more consideration to capturing a broader range of consumer feedback on providers and service quality, and investigating and testing what type of information might engage consumers, at the right point in their decision making, to switch or to purchase.

- Consider introducing arrangements that ensure appropriate levels of automatic compensation for service failures, based on clear principles and research into consumers' expectations. This would ensure consumers are properly compensated when providers do not deliver what consumers paid for – and would contribute towards incentivising higher levels of service quality.

- Ensure that there is transparency around the compensation levels available, including awards made by the telecoms ADR schemes for service failures.

- Consider the benefits of a simple and straightforward obligation on providers to provide clear pricing and fair information about their services. In this instance Ofcom could add most value, not by setting out the form that the information must take, but instead, obliging providers to demonstrate that consumers find their information clear and fair.

- Ensure that providers deliver on the products that they have sold to consumers, for example advertised broadband speeds, and provide appropriate levels of compensation if the service does not meet this standard. By this we mean the headline claim, rather than what is mentioned in the small print of contracts, and this should apply in all areas, including for people living in rural areas.

- Look at how better information in telecoms could usefully include information based on consumer experiences of providers, and service quality, and how the telecoms ADR schemes could add real data into this overall picture.

- Press ahead with its work to simplify and harmonise switching across the communications sector. It is a year since the previous call for inputs and while responses are being considered, Ofcom is yet to progress its work on triple play switching. As the case for moving to Gaining Provider Led (GPL) switching in mobile is strong, Ofcom should quickly move to a firm position and implementation. The regulator then needs to put itself on the front foot in terms of triple-play switching, before contract terms and practices become entrenched and more difficult to change.

- Prioritise the benefits of better communication around end of mobile contract notification. Many mobile contracts use Early Termination Charges (ETCs) to ensure 'payment completion' on the handset, but then do not treat that as the end of the payment period for the handset.

- Take the necessary steps to drive improved Openreach performance, whether structurally separated or not. It is important that Openreach has adequate incentives to continually improve its performance and not simply meet minimum standards.

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- Explore how it can better make Openreach more responsive to the users and consumers of its services, both end consumers and the communications service providers that use Openreach services, and create incentives on Openreach by feeding through the cost of appropriate levels of end user compensation.

- Fully consider the impact on consumers of the potential mergers: Ofcom is right to be doubtful that consolidation, rather than competition, between mobile networks will drive investment in the future. Given the apparent price increases following the Hutchinson/Orange merger in Austria, as well as the concerns of the telecoms regulators in Germany and Ireland, there must be a significant risk that any mergers between the four UK network operators would result in poor outcomes for UK consumers.

1. Choosing a provider when consumers cannot assess quality

Ofcom has identified a useful set of issues to examine in terms of quality of service, and sets out a helpful framework for understanding the meaning of quality, which is a useful starting point for the review.

Ofcom is right to state that some of the interventionist options around setting quality standards for regulatory action are unattractive. There is a need for more targeted and effective interventions.

In terms of the options set out, it is vital to ensure that there is good information available to consumers. This is particularly the case given that the industry has tended to focus on the promotion of headline prices and speeds, and competition has not focussed on quality of the service or providing information to consumers about that aspect.[1]

In its analysis Ofcom has identified a key point, that there is always likely to be a co-ordination failure in generating comparable information. This is because providers do not know the outcome for their own services, and even if they did, not all would have the incentive to co-operate. This means that there is little pressure on them to provide information in a consistent format, and therefore, there are challenges for a regulator, or third party, collecting this information so it can be published in a comparable format.

Ofcom lists a great deal of information that has been produced, and asks what more information could be made available.[2] Simply generating more information is unlikely to help. If information provision is to be mandated, or provided by Ofcom (or a third party), then Ofcom first needs to assess what would be effective in engaging consumers and whether it could be delivered at the right point in time, in a practical and cost effective way. Intentions to carry out work along these lines do not seem to feature in Ofcom's current plans.

Collecting and providing information is costly, and too much or the wrong information may at best be discarded by consumers, and at worst make their decision making even harder. In terms of the options that Ofcom sets out for more information, or various forms of information, the key that will assist Ofcom in making a decision is to test with consumers what would make an impact.

[1] Ofcom's strategic review discussion document, page 152
[2] Ofcom's strategic review discussion document, 12.15 to 12.16

In the list of examples that Ofcom has identified as areas where it has observed failings in information it mentions low awareness of redress and compensation.[3] This area of complaint handling, redress and compensation, should have a more prominent place in Ofcom's plans for the strategic review. It could also play a useful role in helping to solve the challenges around the provision of impactful information on service quality.

While Ofcom does publish some complaint data, which highlights poor performance, the information is somewhat limited and does not include detailed analysis about what the complaints were about, or what the outcome of the complaint for the customer was. For example, we are unable to identify how successful providers have been at resolving complaints. There is also currently no or very little information available from the telecoms ADR schemes. This is in contrast to the high quality information available in financial services, and even the emerging picture of better information from the energy redress scheme.[4] [5]

In other areas of daily life, consumers have become increasingly familiar with platforms that feature consumer feedback on products or services. These systems enable them to make decisions having first taken into account the experiences of other consumers. Most major online marketplaces and sales channels now feature customer reviews and feedback rankings highly to inform purchasing decisions. Better information in telecoms might usefully include information based on consumer experiences of providers, and service quality, and the telecoms ADR schemes could add real data into this overall picture.

2. Choosing a provider when choices become more complex

Ofcom has put forward a number of suggestions that could make it easier for consumers to compare prices, as well as other features of services.[6] However, there also needs to be an assessment of how difficult consumers find price comparisons, and the reasons behind these difficulties. This includes not just the price itself, but whether consumers consider the services on offer as being value for money. This is likely to inform the future direction of any possible remedies. Ofcom notes that in future, the complexity facing the consumer is likely to increase, which could result in serious risks if it further slows the rate of consumer switching. However, consumers are already struggling to compare the prices of telecommunications services, as our mobile switching research demonstrates (see Annex 1).

Ofcom puts forward some options to explore:

- User-generated recommendations
- Devising a set of common comparators across services
- Simplify or standardise the information available
- Require communications providers to provide information in a standard format to facilitate like-for-like comparisons

[3] In mobile, information on network performance, including dropped calls, mobile speeds and frequency of network outages. In fixed, transparent and comparable information on broadband speeds across the day, fault rates, traffic management policies or other quality measures beyond speed (such as latency or jitter) for users who value these specific characteristics.
[4] See the Financial Ombudsman Service's website for examples of the extensive information available – including all actual decisions made
[5] http://www.ombudsman-services.org/key-figures-about-ombudsman-services-.html
[6] Ofcom's strategic review discussion document, Section 12.

- Mandating simpler and more comparable retail propositions
- Independent Advisory Body

The role of user generated information would seem to be a useful area for the strategic review to explore in depth. There are some studies that indicate consumers are more likely to trust, and act on, positive and negative consumer reviews than other forms of information, and the use of consumer reviews can also have a powerful reputational incentive for firms.[7]

Some of the other options put forward, such as reducing the number of retail offerings available, would represent a heavy-handed intervention, and may carry significant risks of reducing the ability of providers to offer new and innovative tariffs and options.

Similar risks also exist, to a lesser extent, in common comparators and standardised information and so these options come with some costs. It is possible that these may be the best option and lead to better outcomes for consumers. However, before introducing such initiatives in telecoms, Ofcom would need to both assess the level of current and likely future problems. Critically, it should thoroughly test with consumers and gather evidence on what kind of intervention is likely to lead to the best outcome in terms of effectiveness.

Which? recommends that Ofcom considers an obligation on providers to simply provide clear pricing and fair information. It is not necessarily the case that the regulator needs to set out the form that the information must take, and indeed a regulator is often not best placed to determine this.

Since the best people to decide what consumers find clear, are consumers, then providers could be obliged to demonstrate that consumers find their pricing, and details of their service offerings including quality, clear and fair. The best people to understand their customers are providers, not the regulator. Providers can utilise their relationship with customers to understand and test what clear information would look like in practice, both for pricing and details of their service offerings, including quality. It seems that, where normal competitive pressures fail to deliver clarity over choices, perhaps because the first provider to do so may not necessary gain a competitive advantage, the regulator's first intervention could usefully be in the form of a 'kick-start' towards a culture of clarity on price and service offerings.

This would involve Ofcom being open to shifting the judgment about what is good, clear, and fair information away from the regulator to consumers. This has been done in other sectors in different forms and with a different context, and we suggest that Ofcom could look at examples where providers have been challenged to demonstrate that they have responded to consumers. Examples include Ofwat's Consumer Challenge Groups and the WICS Consumer Forum. These models cannot be directly transferred to telecoms, but the underlying idea, that providers are challenged to demonstrate they are meeting consumers' needs, may be applicable.

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[7] See, for example: Luca. M. (2011). Reviews, Reputation, and Revenue: The Case of Yelp.com. *Harvard Business School Working Paper* 12-016; and Sonja Utz, Peter Kerkhof, Joost van den Bos (2012). Consumers rule: How consumer reviews influence perceived trustworthiness of online stores. Electronic Commerce Research and Applications Journal.

One particular area where this approach may be useful is the way providers communicate to consumers about headline characteristics, including broadband speeds and mobile coverage. Which? has long campaigned for providers to back up claims such as 'superfast' with speeds that the consumer actually experiences. Consumers expect providers to deliver the service they were advertised and to get appropriate levels of compensation if they do not: providers should be held to account for delivering this. By this we mean what consumers really believed they were buying rather than what is mentioned in the small print of contracts. Obliging providers to carefully consider, and test, what the average consumer would consider fair in terms of what providers say about the services they will deliver, compared to what the consumer experiences, has the potential to not only bring more clarity to consumers in the choices they make but may spur providers to improve performance.

3. Price comparison websites

The availability of price comparison sites alone is not necessarily an effective remedy to the difficulties facing consumers making complex choices, however they do have a role to play.

Given the general complexity of telecoms pricing and the need to improve service quality information, Ofcom should look at the telecoms PCW market to determine whether there are steps that could be taken that would improve consumer outcomes. PCWs in telecoms are used less often, and have potentially poor displays of information, compared to other sectors.

The majority, but not all, telecoms PCWs do not display prices in the most fully comparable way[8]. Of the sites Which? reviewed, 80% of mobile phone PCWs, and 70% of broadband PCWs, did not show an APR-style 'effective monthly cost' figure that took into account all the different fixed and variable costs across the length of the contract, for example, standing charge, handset, connection fee, initial discount. Price comparisons were instead more complex, and services ranked on one aspect of the price, and consumers were left to manually compare the other aspects.

This research also found that of all the PCW sectors examined, a higher proportion, though still a minority, of telecoms PCWs did not automatically rank providers by price. The only two PCWs that highlighted providers and 'jumped' them to the top of the rankings out of price order were telecoms PCWs.

One thing that may be holding back penetration of PCWs into the telecoms market is that active switchers know many of the best telecoms deals are only available offline. Telecoms PCWs account for a smaller proportion of purchases than in other sectors. We found only 33% of telecoms PCWs contained the best available deals for the usage profile or location we inputted, significantly lower than credit card or energy PCWs.

Alternatively, fewer consumers may be 'multi-homing' on telecoms PCWs, so reducing the competitive pressure between PCWs to deliver 'best practice' price displays; or it may be that consumers do not place a high value on the display of 'effective monthly costs',

[8] We conducted sample searches on 21 mobile phone and 21 broadband PCWs in August 2015 and coded for various aspects of their operation. This included whether the full price including all relevant costs was displayed to consumers up front. We identified PCWs through an internet search for '[PRODUCT] price comparison', taking results from the first five pages.

instead choosing via selection of a preferred handset, network or if using triple play content provider.

4. Switching, and switching and bundling

Ofcom sets out the problems consumers face when switching mobile provider, as well as the potential problems that may arise in switching triple-play provider. The results from Which?'s research, which followed consumers attempting to switch mobile provider and highlighted many of the difficulties consumers face support this and are consistent with Ofcom's own research.[9] (Please see Annex 1 for details.)

Ofcom says that it currently intends to:

- publish a consultation on improving switching processes for mobile services;
- consider options to extend its work on the switching of bundles to include the switching of triple play bundles;
- provide further information on provider-specific mobile coverage;
- assess the cancellation policies and the practices providers employ and whether this harms consumers' ability to switch; and
- research whether requiring consumers to be notified or 'prompted' at the end of their minimum contract period would improve consumer engagement.

A year on from Ofcom's initial call for inputs on the issue, the regulator has now published its consultation on mobile switching. However, there is still work needed to ensure the harmonisation of the switching process across the whole sector. The current system, particularly between mobile phone providers, impairs consumers switching experience and results in increased detriment to them. Ofcom should swiftly move forward to remove the barriers to switching, which is a fundamental requirement needed for a market to deliver good outcomes for consumers.

In addition, against the background set out in the review of convergence of services, and the potential negative impact bundling may have on switching levels, Which? urges Ofcom to put itself on the front foot in terms of triple-play switching, before contract terms and practices become entrenched and more difficult to change. Whilst Ofcom has called for further inputs specifically on triple-play switching no further update is due until 2016.

Ofcom should look at all of the potential issues that it lists as relevant to easing switching of bundled services, and in particular:

- aligning the contract end-dates for services within a bundle to make sure that multiple services can be switched more easily;
- moving to harmonised switching processes over time, regardless of the network over which a service or bundle of services is delivered;
- assessing the consumer benefits and costs of minimum contract periods where they are applied to contract renewals or upgrades where there are limited upfront costs to the communications provider;
- assessing the ability to port personal data and other content or services when switching service provider.

[9] Described in Ofcom's current mobile switching consultation (2015).

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Ofcom mentions the possibility of ‘investigating incidents in which CPs appear to be adopting more aggressive retention techniques which make it difficult for consumers to cancel their existing subscriptions’. A more proactive approach would seem to be warranted, given the history of such problems in the telecoms sector. Ofcom currently has an own initiative investigation open into problems that consumers may have when they try to exit their communications service contract, and we look forward to seeing good transparency and regular updates from that programme soon.

Significant switching costs give the provider a degree of power over customers once they have signed up to a contract. This is particularly acute in mobile where the switching arrangements operate on a losing party leads basis. This means a consumer that wishes to switch has first to declare themselves to their current provider, who then has the opportunity to make a counter offer in hope of keeping them.

Ofcom has made much of the negative impact that this process can have on competition in the past, as it significantly raises competitor acquisition costs because many otherwise likely acquisitions can end up being unsuccessful. Ofcom’s general position since 2010 has been strongly in favour of moving to Gaining Party Lead switching processes. While this is raised as a potential option in Ofcom’s current consultation on mobile switching processes, the tone of the document seems much more incremental than has been the case in earlier Ofcom consultations on this topic for example, in its 2012 consultation on switching processes associated with services using Openreach.

Given the arguments and evidence set out in Ofcom’s mobile switching consultation on the advantages of GPL, the examples from elsewhere in Europe and the more positive experiences of consumers using GPL processes for landline and broadband services, there is a strong case that Ofcom should move to implement GPL processes in mobile; Which? urges the regulator to implement the measure swiftly to bring it in line with other areas of the communications sector.

Ofcom has noted in its mobile switching consultation that it is in the process of undertaking consumer research to better understand consumer awareness of the end date of contracts, as well as the implications this has to inform any regulatory action that may be appropriate around end of contract notification.

As currently structured, many handset contracts look to provide a one-way bet in terms of repayment. That is, they use Early Termination Charges (ETCs) to ensure ‘payment completion’ on the handset, but then do not treat that as the end of the payment period for the handset: the same monthly charge is levied unless the consumer explicitly chooses to switch contact or provider.

Which? research shows (see Annex 2) that a fifth (22%) of people who had come to the end of a contract were not sure if it was possible to get a pay monthly plan changed to SIM only at the end of the fixed term. Of those who signed up to a monthly phone plan (with new phone), and had phoned their provider to ask about available deals, only 1 in 10 (9%) reported that their provider told them they could keep the phone and get a SIM only contract. Ofcom’s research shows that a sizeable minority of mobile subscribers (1 in 10) do not know when their contract is up for renewal.

Given the above, and the declining switching levels in mobile, investigating the possible benefits of better communications around end of mobile contract notification for mobile services should be a priority for Ofcom.

5. Compensation when things go wrong

Telecommunications are important services for consumers and are increasingly considered essential. Consumers have rapidly increased their usage of communications services over the last decade and mobile phone use is now ubiquitous with 92% of adults using mobile phones whilst 78% of households have broadband.[10] [11] This has led to these services increasingly being seen as a utility, rather than a luxury.

In the supply and distribution of other utilities, such as gas, electricity and water to households, there are statutory schemes that provide for guaranteed service standards (GSSs) and specified, fixed levels of compensation to consumers if those service standards are not met. There are no such compensation arrangements for the supply of fixed or mobile telecoms services.

As a result:

- energy and water consumers generally receive *automatic* compensation when GSSs are not met while telecoms customers typically need to ask for compensation;
- energy and water customers generally receive *much* higher levels of compensation, for loss of service or missed appointments, than telecoms customers.

Consumers expect uninterrupted access to these services, and plan their lives on this basis, so service failures can cause significant loss and inconvenience. Which? is conducting research on consumers' experiences of and expectations for compensation for service failures across sectors, and will share our detailed findings with Ofcom as soon as these are available. Our initial results indicate that:

- consumers are more exercised about service failings in telecoms than in other sectors;
- broadband is seen by consumers as an essential service;
- compensation levels in telecoms are simply out of line with consumers' expectations – they are far too low.

In the absence of any details of compensation awarded by the telecoms ADR schemes, or a formal scheme that sets compensation levels, it is difficult for us or telecoms customers to know what consumers of telecoms may receive in the form of compensation for service failings.

Fixed line providers' level of compensation to consumers appears typically to be based on refunding only the charges for the period of lack of service (over and above the service standard for repair) i.e. typically £1 or less per day. A telecoms customer may receive £10 for a missed appointment. Ofcom has announced that it has strengthened its Code of Practice, meaning that from October consumers can exit their contract penalty free in certain circumstances, if speeds dip below the minimum guaranteed level and the problem

[10] P4 of cost and value of communications services in the UK, Jan 2014
[11] Ofcom's 'The Consumer Experience of 2014 – Research Report', Figure 31 p51

cannot be resolved; this does not help consumers who receive slow broadband speeds as there is still no compensation available for this.

Compensation received by the service providers from Openreach is much more generous. For example, Openreach pays the retailer around £1.10 per hour of service loss over and above service standard. Openreach also compensates providers around £45 for a missed appointment.

Mobile providers' criteria for agreeing to compensation vary, as do levels of compensation. The onus appears to be very much on customers to 'prove' lack of service. A recent report[12] found:

- EE/T-Mobile customers who wanted to claim reimbursements had to log at least seven instances of signal failure, dropped calls or internet connection loss over the course of one day;
- Vodafone customers appeared to need to show no signal at all for three or more days to secure agreement to compensation for these 'missing' days;
- O2 said it would reimburse the price of a month's contract for someone who could prove they had suffered intermittent signal and internet for three months, if they could prove they had lost signal or internet connection seven times in a given day.

In establishing appropriate levels of automatic compensation in energy, Ofgem used clear principles, including:

- customer impact;
- proportionality;
- incentives;
- ease of operation (in particular, payments to customers should be automatic as a default rather than the customer having to make a claim).

It appears that telecoms providers are simply not meeting customers' expectations in terms of financial compensation when things go wrong. It is unlikely that this is an aspect of service that will ever be spurred by competition alone, or at least there are no signs of any such developments.

Ofcom should consider how to put in place arrangements that ensure appropriate levels of, where possible, automatic compensation to consumers for telecoms service failures, based on clear principles and research to understand consumers' expectations. This would ensure consumers are properly compensated when they fail to receive the service they expected and paid for – and would contribute towards incentivising higher levels of service quality.

Ofcom should also ensure that there is transparency, including in awards made by the telecoms ADR schemes for service failures, of the compensation levels available in telecoms.

[12] *The Daily Telegraph*, 6 December 2014

6. Improving Openreach's performance – whether separated or not

Whether structurally separated or not, steps will need to be taken to drive improved Openreach performance, and it is important that Openreach has adequate incentives continually to improve its performance, not simply meet minimum standards.

There are risks, in some of the options touched on in the strategic review, of Ofcom getting into detailed regulation of outputs. Specifying and updating output standards may take a regulator into increasingly detailed decisions about the right outputs, service levels, and costs to be allowed in relation to those levels and associated incentives that should be set. It is very hard for a regulator to do this well, given the information it has available and it may lead to an increasing focus on what the regulator wants rather than what customers want.

Ofcom should explore how it can better make Openreach more responsive to the users and consumers of its services – both end consumers and the communications service providers that use Openreach services. This should be done whether or not Openreach is separated from BT. Some of the options for doing this may not easily fit within the current structures, or even Ofcom's framework of powers for regulation. However, it is appropriate for the strategic review to consider far reaching changes now, even if some may be for the longer term.

Enabling end consumers of Openreach to drive performance

A key approach to incentivising Openreach's performance may be to ensure that consumers receive appropriate levels of compensation when service levels fall below an acceptable level, and that the cost of this is fully passed through to Openreach in a form that incentivises performance.

As stated earlier, there seems to be a mismatch between compensation paid to end users, and the value that users place on service failures. This is an area Ofcom should examine.

Openreach already pays retailers compensation at levels considerably higher than retailers pass on to consumers. It is not clear that these levels have been set at levels that reasonably compensate the combined losses of the consumer and the retailer from service failure or that the existing compensation is distributed correctly between end consumer and retailers.

Enabling customers (communications service providers) to drive performance

Openreach's direct customers are themselves large businesses such as TalkTalk, Sky and Vodafone, with clear incentives to secure good services to serve their customers.

It may be possible to better exploit the capacity of these customers to drive the performance of Openreach, since these businesses, much more than the regulator, have ability and incentives to know the service standards that customer's value and are willing to pay for.

There are options for how this might be achieved, and it would be useful for the strategic review to consider these, even if they require longer term changes to regulatory frameworks. In any event, the separation of Openreach from BT would itself be a long and time consuming process, so considering other long term changes alongside this option seems reasonable.

The regulation of airports illustrates one such example in the constructive engagement approach adopted by the CAA. Airports, like Openreach, have a limited number of large competing customers and some use has been made of regulatory processes for encouraging collective negotiation and agreement between the airport and airlines on the regulated service, price and incentives package. This works where incentives are such that there is expected benefit to all parties from reaching an agreement on the dimensions of a package rather than risking what the regulator may impose.

Other examples that might inform Ofcom's work include the Public Contest Method used in Argentina where electricity transmission users propose and vote on possible transmission expansions, with construction, operation and maintenance of approved expansions being put out to competitive tender, and Negotiated Settlements used in parts of the US and Canada where utilities and network users and customer representatives negotiate and seek to agree on the whole or part of a forthcoming price control or other issue.

7. End to end competition, and mobile mergers

Ofcom defines 'full' end-to-end competition to include providers who use a combination of own network and third party wholesale services from other providers on a commercial basis.[13] Therefore the scope covers circumstances where own provision is far from 'full' end-to-end. If this were not the case, none of the mobile operators could currently be said to be full end-to-end competitors, in the sense that they all make significant use of fixed line backhaul services from BT.

It is not clear what weight Ofcom gives to 'on a commercial basis' here. MNOs purchase a significant volume of leased line services from BT that are subject to price controls for use as part of their own networks. This means that the development of 'full' end-to-end mobile competition involves the purchase of regulated fixed line inputs. The key concerns are likely to be quite a bit narrower than the 'full' label suggests and Ofcom's current regulatory approach reflects this. The relevant question may not be whether 'full' end to end competition is sustainable, but whether there may be some parts of network provision, over and above those currently subject to access regulation, where competition may not be sustainable.

Ofcom describes this in terms of bottlenecks, and notes the continued existence of such bottlenecks in a leased line context has been found to vary by location.[14] There are a range of examples in mobile where targeted responses have been found to address such bottlenecks, such as the Mobile Broadband Network Ltd and the network sharing joint venture between EE and H3G.

Instead of characterising a position of 'full' network competition and raising a question of its sustainability, Ofcom could question the likely sustainable scope of competition in different aspects of network provision in different locations. This seems particularly important in an environment where mobile mergers have been cleared in Austria, Germany and Ireland, all using MVNO access obligations as a remedy to attempt to compensate for the reduction in network competition. Informing possible counterfactuals

[13] Ofcom's strategic review discussion document, figure 24 on p84
[14] Ofcom's strategic review discussion document, 9.9

with options that fall short of 'full' merger, and to question why less restrictive competition options are not explored, would seem to be in line with Ofcom's intention to adopt a 'cautious and pro-competitive' position.

In line with Ofcom's own view, the regulator should be cautious of an extension of reliance on regulated access approaches to protect customers and the lessons of service quality issues highlighted in relation to the fixed line model of retailers and Openreach are very relevant. Where Ofcom identifies material concerns over the sustainability of competitive provision in mobile networks, a cautious and pro-competitive approach should involve seeking to identify the geographic and product markets as narrowly as possible. In doing so it is possible that it may demonstrate that MNO mergers may be an extreme way of addressing concerns over the sustainability of competing offerings in parts of network provision, in some geographic areas.

Ofcom is right to be doubtful that consolidation, rather than competition between networks, will drive investment in the future, and we note the support for this position in the recent report on the drivers of investment which concludes:

- *On the basis of our analysis including econometric assessments, we have found no linkage between consolidation or higher concentration in mobile markets and an increase in investment.*

And

- *The evidence also does not confirm that consolidation and higher concentration in mobile markets is linked to an improvement in consumer outcomes.* [15]

Given the apparent price increases following the Hutchinson/Orange merger in Austria, and the concerns of the telecoms regulators in Germany and Ireland, there must be a significant risk that any mergers between the four UK network operators would result in poor outcomes for UK consumers.

8. Availability of services

We agree with Ofcom's analysis of the extent to which competition can be relied upon to provide incentives to invest, and the need for some public policy interventions to provide universal availability of all communications services. Public policy interventions, including their cost, is primarily a matter for Government, and Ofcom of course has a supporting role in providing analysis of the costs and benefits. This should include transparency of costs when Ofcom requires services to be extended beyond the point that commercial viability alone would do so, clearly setting out how such obligations are funded and any bill impacts this may have on different groups of consumers.

This seems particularly relevant to a review of the universal service obligation on broadband. It is appropriate and timely to review the universal service obligation on broadband but Ofcom does not touch on the costs of this, or the distribution of cost and benefits. This is a gap that could be usefully filled by Ofcom in the next stage of its review.

[15] WIK-Consult report for Ofcom - Competition & investment: An analysis of the drivers of investment and consumer welfare in mobile telecommunications.

The recommendation for Ofcom to ensure that providers are delivering what consumers believe they are being sold is also applicable in geographic areas that experience poorer services than others. Providers should ensure that advertising and information fairly reflects the services they sell. This includes the descriptions of network performance in a way that differences in performance between areas are transparent, and consumers should know the network performance they can be expected to be provided with wherever they are. They should also be adequately compensated when standards fall below what the provider sold them.

Which?
8 October 2015

Annex 1: Mobile Switching: Summary Research Findings

Methodology

Which? conducted an ethnographic study of mobile phone switching to understand the consumer experience of switching in the market. Twelve members of the general public kept a diary of their experience of researching a new mobile deal and entering a new contract (if this occurred) between October and December 2014.

Findings

- Participants were generally savvy, doing extensive research, aware of employee deals e.g. NHS, and often negotiating with providers and switching away if they could get a better deal elsewhere. However, this process was not an enjoyable task and often lengthy and frustrating.

- Of the 12 people, 6 took out a new contract with their provider, 5 switched and 1 gave up on the process (saying they would return to researching at a later stage).

- Of the 6 who stayed, 4 negotiated with their provider using research on what other providers were willing to give them (and were successful), 1 negotiated on the handset he wanted.

- The main reasons for sticking with a provider were that they would offer a competitive deal and that through sticking people wouldn't have to go through the "hassle" of switching.

"…relieved to stay with my current provider so avoiding the usual hassle of switching numbers and networks."

"It meant that I didn't have to give 30 days notice to go to another provider"

- One person stuck with her provider as she didn't realise that she could take her number with her, although she also did say she got a "good deal".

"I didn't switch mainly because I wanted to keep my old telephone number. Vodafone have always given me good service. I got a good deal from them too."

<u>Key Themes</u>

1. **Researching is not an enjoyable task: it's frustrating & time-consuming**

"I am apprehensive about starting from scratch again as it were."

"When I started the process of researching I was excited and looking forward to it, but not whilst in the process I am very frustrated…"

"This is something I have little time for, and I feel the information is hard to find"

"I have become extremely frustrated by the whole process of switching phones"

2. **It is not prioritised in day-to-day life**

23rd October: "I am now committed to making the decision next week-deadline being next Friday."

30th October-"I do not know why I am procrastinating- no that's not it- just extremely busy at work and get so tired at the end of the day…I have made the decision but have to physically walk into the store and do it!!"
1st December: "I finally switched!"

"I got a bit side-tracked in the last two weeks, took on too much work... so haven't given the phone switching my full attention for a while. At the minute I am thinking I will switch if I could just get round to doing it."

3. **Descriptions of coming to a decision include it being a "relief"& "taking the plunge".**

"Pleased and relieved that…finally got the deal I wanted"

"Pure relief"

4. **However, for some, there was hesitancy about committing to a deal**

"A voice in my head says I should also visit EE, everyone seems to be talking about them"

"It was a deal I was happy with…I got everything that I wanted…Although I didn't really need to go and think about it anymore, as I had deliberated over it for a quite a while, I was still a bit uncertain."

"I felt as though I was offered a really competitive deal…although I always feel when speaking to a salesperson that there might be something else or something better that they aren't offering you immediately!"

Only one individual made a snap decision:

"I was in 2 minds whether to think about this and come back, or simply go ahead with signing the contract…I simply decided to go ahead. I am not thinking too much about it. I am happy it is done…"

More commonly, people do research; try out phones in some way (either in store, through friends or both); and then phone their provider to switch. There was one instance of using the online chat/ "instant messenger" to do the negotiation and switch. In both the in-store and online switch there was some pressure to take the deal. For example, in-store one participant said *"the salesman was already on the phone (on hold) to [the] old provider to obtain the PAC code"* and online *"…the customer advisor [was] definitely saying 'are you going to take this deal today'. And although I didn't really need to go away …I was still a bit uncertain"*. Both these participants did however say the deal they received was good and appeared to show no regrets.

<u>The research process</u>

1. **Consumers use a variety of sources**

Most people used a variety of sources, although weighted differently. Some focus on online research and only going into stores to try the phones out; whereas others mainly went in-store and called their provider.

- Friends/ family were used by all (inc facebook post), in one or more of the following capacities: to recommend providers, check signal coverage in the local area and ask about/ try out handsets.

- Comparison sites were used by some to narrow down/ give their search direction. However it was still noted that the sheer volume of information meant that it was *"confusing to absorb and process all the information at once"(Sarah).*

- Cashback sites (2 people): no –one ended up going through a cashback site. Although one person did sell her phone.

2. Many consumers report poor in-store experience

Generally, consumers reporting that the in-store experience was not a positive one, although there were exceptions.

- Simply poor customer service:
    - *"Despite being the only person in the shop I was ignored while the staff leant against the displays having a private conversation...I left the shop"*
    - *"Their sales techniques (or lack of) leave much to be desired. A lot of advertising and hoohaah, however they do not know the meaning of customer service."*
- Not listening to what the customer wanted, instead trying to push a certain product:
    - *"It is rare to find any sales person who is willing to listen, really listen, to my requirements, instead of pushing down one of the products they want to sell"*
    - *"Apart from…where I sealed the deal…My experience has been that they [sales people] were not helpful and tried to sell me the most expensive handset going!"*
    - *"I told them why I was considering switching. They did not seem bothered and were more interested telling me that they were building a 4G network…they do not listen."*
- Mis-information:
    - One participant was told that new phones couldn't be unlocked before a year, only for her to find out that this wasn't the case when she phoned the provider. *"The sales assistant informed me you needed to have the new phone one year before you could unlock it…[when phoned] shocked to hear that their phones can be unlocked before a year"*
    - Another participant said he was offered a discount by an in-store sales person for having two contracts, but was told he would get a better deal online. However, when spoke to them online they *"denied that the shop would give me a discount for having two phones."*

3. **And similar experiences with providers' call centres**

- Some experienced long waiting times:

    - *"Got into a queue and waited for 15 min. Still no answers when I switched off. Felt like a valued customer. Not. Did not even manage to speak to someone. I am away most of the week and cannot call other than weekends. You would think as they are that busy they would put extra staff on at weekends"*

    - *"After about thirty attempts over two days to get past a recorded message which kept telling me how busy they were I decided to send an email to their online complaints address berating them for lack of customer service. I did not get a response to this. Tried phoning again over a week later still couldn't get through…"*

4. **Consumers sometimes experience cognitive overload:**

- The amount of information/ choice, regarding both handsets and tariffs.

"I felt overwhelmed by the various handsets on display [in-store] and unsure about which I'd prefer"

"There are so many different companies and options"

"Apprehensive about starting from scratch again…and comparing the different tariffs on offer from multiple providers"

- That offers could be found in various places, e.g. through an intermediary like carphone warehouse, or through the a provider; online or offline

"It was still necessary to keep track offline of the offers available in different places in order to compare them effectively".

Sometimes participants were told to phone the provider in order to get a better deal, from an in-store sales person.

It was a relief for some when there weren't good deals available as it wasn't extra information they had to consider:

"Strangely I found it useful that there were no comparative tariffs available direct through EE! This has helped clarify my decision."

Similarly when additional, unexpected, information was put into the decision making process it wasn't necessarily positive. For example one participant thought she knew what phone she wanted however after trying out her colleagues found she wasn't so sure: *"Throwing another option into the mix to make the decision even harder!"*

- The complexity of information

Participants found that the information wasn't particularly easy to compare:

"Collecting information was not easy…the information needed to compare contracts is not readily available. Websites are built in such a way that the information cannot be compared".

"It's nearly impossible to find the true cost of any deal from one company compared to another…"

"There is a lot out there and some deals are confusing"

Sometimes information wanted was missing online:

"I feel the information I need is hard to find."

"I am finding it difficult to get answers for specific questions, e.g. does the phone come unlocked? What is the signal like in the area I live? I found it got me nowhere except for the price of the monthly bill. I ended up having to visit different stores to research everything."

And the technical language/ factors could be confusing and require more research:

"I do not claim to understand all the technical bits which the phone companies use to promote their phones…"

"I don't really know what 4G is or why I should be interested in getting it".

<u>The structure of the contract</u>

Various comments around this theme:

- 24 month contracts:
    - *"The one thing that frustrates me the most is that each and every provider offers a 24 month contract- why can it not be shorter…"*
    - *"Two years is a big commitment, need to make sure the decision is right."*
- Structure of cost:
    - *"O2 have started adding handset charges to the per month bill which I don't like. It does not give people an option to buy the handset only which I think is wrong."*
    - *"The deals were inflexible, you have to pay what they decide rather than choose how much you want to pay upfront and per month"*
- What tariffs include as standard:
    - "I do not necessarily want to download music, access the internet etc but since it is included in the price, I have to opt for it - am just told that I need not activate the internet access, but the point is I am paying for it anyway!!"

Annex 3: Compensation payments in other sectors

Electricity

If an electricity supplier (distributor) fails to keep or offer a timely appointment, the customer is entitled to £22 (£30). If the customer suspects his voltage is outside permitted limits and the distributor fails to offer a necessary visit to the premises to investigate during a specified time, the customer is entitled to £30.

Compensation for power outages depends on a number of factors including for example the duration of the outage, the number of supply interruptions, the number of customers affected, whether the outage is caused by severe weather and whether there are factors outside the distributor's control in restoring power. For example if a fault to the distribution system occurs, the distributor must pay the customer £75 if supply is not restored within 12 hours and £35 for each successive 12 hour period that supply is not restored.

Gas

If the customer suspects his meter is faulty and the supplier fails to offer a necessary visit to the premises to investigate during seven working days, the customer is entitled to £20. If a supplier fails to keep or offer a timely appointment, the customer is also entitled to £20.

Compensation for supply interruptions depends on a number of factors including for example the duration of the interruption, the cause of the interruption, the number of customers affected and whether customers have alternative sources of heating and cooking facilities during the interruption. For example if a fault to the pipe-line system occurs, the supplier must pay the customer £30 if supply is not restored within 24 hours and £30 for each successive 24 hour period that supply is not restored, up to a maximum of £1000.

Water

Customers receive a minimum payment of £20 for appointments not made properly or kept and for written queries, requests and complaints not actioned on time. For low water pressure, customers receive £25 (with no late payment penalty). Customers receive a minimum payment of £20 when planned supply interruptions overrun, with an additional £10 for each additional 24 hours of interruption. The same compensation levels apply to unplanned interruptions. For incorrect notice of planned interruptions, consumers receive £20.