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Quick, easy and reliable switching

Response to Ofcom's consultation on 'Proposals for a new landline and broadband switching process and to improve information for mobile switching'

April 2021

Executive summary

- **Ofcom should revisit its assessment and provisional conclusion.**
- **Code to Switch (as updated) is the best solution for consumers.**
- **The IVR option gives all customers control over contact with their losing provider and removes perceived 'difficulties and deterrents'.**
- **One Touch Switch will cost more to build and run, has significant inherent customer experience risks, will result in poor decisions and risks data breaches.**
- **Ofcom's engagement with industry has been inconsistent and unfair.**
- **Implementation of either solution by December 2022 is unachievable.**

Sky is a strong supporter of informed decision making by customers and easy switching, so that customers get the right service, at the right price for them, from the provider they prefer – recognising firms' legitimate right to compete strongly to attract and retain customers in a highly competitive consumer marketplace.

Sky has a strong track record in delivering first class service to consumers, and we put our customers at the heart of everything we do. Our commitment to first class service is reflected in outcomes such as the high 'net promoter scores' given to Sky by our customers, and the fact Sky consistently generates significantly fewer complaints to Ofcom than its rivals across broadband, telephony and pay TV services.

Having reviewed Ofcom's analysis in its February 2021 consultation on 'Proposals for a new landline and broadband switching process and to improve information for mobile switching' (the 'Consultation'), and in light of the addition of the mandated IVR option in Code to Switch+, Sky remains firmly of the view Code to Switch (as revised[1]) is the best option for consumers and industry.

The primary reasons why Ofcom has rejected the Code to Switch proposal, as previously designed, were because Ofcom considered that would not offer all customers sufficient control over the method and extent of contact they have with their losing provider and would give rise to perceived 'difficulties or deterrents' in having to contact two providers. The addition of the IVR option in Code to Switch+ mitigates both these concerns. In light of this update, we consider that Ofcom must reassess the merits of the two options against the criteria it set out in the Consultation. When it does so, it will become apparent that Ofcom should revisit its provisional conclusion and adopt Code to Switch+ as its preferred solution for all landline and broadband switches.

Code to Switch+ will support well informed decision making and enable quick, easy and reliable switching journeys for all the c.2.4m switching customers per year[2], with a guarantee of always switching the correct customer's service. It also means that a simple, well understood, switching message can be used across all telecommunications services in the UK: *"Whatever you want to switch, get your code first."*

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[1] 'Option X, Broadband and voice switching proposal, response to Ofcom (March 2021)'.
[2] Based on the OTA's estimate of c.200,000 monthly switches.

Conversely, mandating One Touch Switch has significant inherent limitations, will frequently result in slow and disjointed switching experiences and, ultimately, lead to poor choices and poor outcomes for many consumers.

Forecast customer / service identification & authentication errors

- **One Touch Switch:**
  - 8,000 per month
  - 100,00 per annum
- **Code to Switch+:**
  - 0

The proponents of One Touch Switch accept that, even based on their own (wildly optimistic and unfounded) assumptions, their solution will result in almost 100,000 very poor customer switching experiences every year, causing significant disruption and detriment, compared with none for Code to Switch+.[3]

Ofcom's own analysis has shown One Touch Switch will be much more expensive to build and run - costs which will have to be passed on to consumers. Furthermore, there are sound reasons to believe that Ofcom's estimates of those costs are significantly underestimated, as they rely on a small number of highly suspect assumptions and omit key components of the final process.

Ofcom's engagement with industry on this topic, and process to date, has been flawed as Ofcom has not treated the industry groups equally. In the pre-Consultation phase Ofcom gave specific feedback to one working group (Option Y) on a critical flaw that allowed them the opportunity to resolve this in a redesigned One Touch Switch proposal. However, no equivalent feedback or opportunity to address Ofcom's concerns was given to the Option X working group prior to Ofcom's analysis and it reaching its provisional decision set out in the Consultation.

Sky is also concerned that 'requirements' that were considered 'key' to any solution design at the outset, and are an inherent weakness of the One Touch Switch solution, have been deprioritised by Ofcom in its assessment, whilst requirements that were not included in the base capabilities, and have been identified by Ofcom as a weakness of Code to Switch, have been given elevated importance. This moving of the goal posts suggests the provisional conclusion has been artificially engineered.

Ofcom should therefore reconsider its proposals in light of the updated Code to Switch+ solution and reconsult on its preferred option in order to give all stakeholders an opportunity to consider any additional concerns that are raised by that new analysis. The choice Ofcom makes now will be with the industry and UK consumers for decades to come. It is therefore imperative this decision is based upon robust and realistic analysis and the right solution is chosen.

Irrespective of which solution is chosen, a minimum of 18 months from Ofcom's final decision will be required to fully scope, design and implement it. This is consistent with other similar process changes that have been implemented recently, such as the auto-compensation scheme and end of contract notifications. Based on Ofcom's anticipated timeline for the final rules to be confirmed and published in Q3 2021, implementation should be set no earlier than 01 August 2023.

[3] Based on the Option Y working group's estimated successful customer identification and verification rate of 96% (Page 1, 'Option Y, Responses to Ofcom's questions'. June 2020) and the OTA's estimate of c.200,000 monthly switches.

Code to Switch+ is the best solution for consumers

Ofcom sets out the objectives for this intervention in the very title of its consultation: quick, easy and reliable switching.

When objectively compared against these goals, and the tests Ofcom sets out in the Consultation (namely a process which is (a) easiest to use; (b) quickest; (c) most reliable; and (b) based on informed consent[4]), it is clear Code to Switch+ provides a better overall experience for switching customers.

Code to Switch+ is easy to use

a. It is simple to understand and follow:
    i. it offers all customers easy and familiar routes to get their code (and switching information) with which millions of customers will already be familiar due to a successful mobile switch or request for a switching code;[5] and
    ii. it offers a unique opportunity to use the same process for all telecommunications services which will reduce customer confusion; and
b. It gives all customers complete control over the extent and type of contact they have with the losing provider, effectively eliminating any difficulties and deterrents relating to the perceived 'hassle' or 'unwanted save' activity.

Code to Switch+ is quick

a. It allows customers to obtain their code and switching information very quickly (within 60 seconds, the same as the mobile auto-switch solution, with a design target of 10 seconds) and then place a switching order they *know* will complete; and
b. It supports switching in the shortest possible time and on the date agreed by the customer. There is no need to add in extra time as a "safety net" in order for potential errors with the switching order to be identified by the customer and corrected.

Code to Switch+ is reliable

a. By definition, customer and service identification and validation are successful 100% of the time when a switch order is placed as these are conducted by the losing provider when generating the code and switching information, which would follow its BAU identification and verification processes;
b. It robustly protects customer data from unauthorised disclosure or use in accordance with the General Data Protection Regulation[6]; and
c. It has built-in protections against slamming, both malicious and erroneous line transfers, that negate the need for a service restoration process.

Code to Switch+ is based on informed consent

a. The customer receives information on the implications of switching in a timely manner that facilitates their effective engagement in the market and making a well-informed, well researched, switching decision.

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[4] Sections 4 and 5 of the Consultation.
[5] Based on data provided to Sky by Syniverse showing approximately 12m switching codes requested by UK consumers between July 2019 – 31 March 2021.
[6] General Data Protection Regulation 2016/678 ('GDPR').

Conversely, One Touch Switch has a number of clear points of failure where customers will experience disruption and hassle during the switching process, potentially resulting in significant drop-out, or delayed or unsuccessful switches. Even where successfully completed, One Touch Switch will result in poor outcomes, and even consumer harm, for some as a result of hastily made decisions due to only receiving the implications of switching when already engaged in a sales process with the alternative provider. Furthermore, the 'protections' in One Touch Switch are weak as they rely entirely on customer awareness and action, and will lead to delays as they necessitate a 'safety net' and service restoration process.

Code to Switch+ is more reliable

When Ofcom and the OTA first briefed industry, following adoption of the European Electronic Communications Code ('EECC'), on the base requirements to be satisfied by any switching solution developed by an industry working group, five *"base capabilities"* or *"boxes to tick"* were identified[7]:

European Electronic Communications Code (EECC) – Switching and Porting Requirements

Credible Switching Process – Base capabilities needed

Base Capabilities Needed (i.e. boxes to tick)				
Consumer Authentication	Consumer Intent	Customer awareness of implications of switching	Service/Asset validation	Reliable process
The process correctly identifies the customer and their authority to switch the service.	The process positively confirms the customer's 'consent' to switch	The process ensures that the consumer is well informed of the implications of changing CP	The process identifies the correct services and associated assets to be switched.	The process is smooth and reliable. -Minimal loss of service 'on the due date' - speedy restoration when things go wrong.

These are clearly critical baseline capabilities of any solution, four of which relate to the reliability of the process and protections against slamming: 'customer authentication', 'customer intent', 'service/asset validation', and 'reliable process'. We address these first and the remaining base capability ('customer awareness of implications of switching') later.

Strong customer and service identification, authentication and validation

Ofcom has grossly over-estimated the reliability and 'ease of use' of One Touch Switch and under-appreciated that of Code to Switch+.

In its assessment of One Touch Switch and Code to Switch+, Ofcom recognises each solution uses a different approach to identifying and authenticating the customer and services to be switched. Ofcom correctly observes that Code to Switch+ is *"highly likely to be accurate"* as the customer identification and authentication and service identification is completed entirely with the losing provider – using their BAU identification and verification processes - at the point of obtaining a code.[8]

In fact, rather than being "*highly likely to be accurate*", at the point of placing their switch order with the gaining provider using the code, the customer and services to be switched will *always* be correctly identified and authenticated as a result of

[7] Page 13, Ofcom and OTA joint presentation to industry, *'European Electronic Communications Code (EECC) – Switching and Porting Requirements'*, 2 September 2019.
[8] Paragraph 5.86 of the Consultation.

possession and use of a valid code (a 100% accuracy rate). This is why Code to Switch+ does not require a service restoration process for switching scenarios.

However, the same cannot be said of One Touch Switch.

Switching customer / service match success rate

- **One Touch Switch:** 96%
- **Code to Switch**+: 100%

The proponents of One Touch Switch told Ofcom they expect the matching process to have a very high degree of success (around 96%), based on basic information provided.[9] However, Ofcom's independent technical advice makes clear it has not subjected this assertion to robust scrutiny or undertaken its own independent analysis. It has simply taken these statements at face value. It states only: *"The estimate seems reasonable based on Cartesian's previous experience in working with large UK CPs; however, we have not sought to validate this with CPs within the scope of this project."*[10] The nature of this 'previous experience' or its relevance to this particular project is not stated and therefore cannot be assessed as relevant to this context.[11]

There is no basis for assuming matching customers and services based on basic information only, such as name, address and current provider, will achieve an error rate of 1 in 25.[12] The matching rate cannot be known since these pieces of data are not currently used in any fixed line switching process in the UK. It seems highly likely there will be far more frequent errors in matching these details than this (for example, due to spelling mistakes, address confusion, accounts held in different names etc.).

A successful switching experience requires a match on both elements – customer and service/asset. Just because a provider has validated the customer correctly, there is no guarantee their switching order will then be successfully placed against the correct service if one is being transferred (on an intra-network basis). Historically, the way a gaining provider has identified the correct asset to place their switching order against is via the telephone number associated with the WLR line. However, with WLR shortly being withdrawn by Openreach, assets will no longer be able to be identified in this way - further increasing the risk of such erroneous transfers in the future. Like customer identification and authentication, this issue simply doesn't exist on Code to Switch+ where the switch order can *only* be placed against the correct service.

One Touch Switch might seek to address these concerns by asking for more and more granular information from the customer. However, as well as adding complexity to the sales process, requesting more information will further delay the process and increase the likelihood of the customer not knowing, or having access to, the information, making errors or having to leave and rejoin the process (having to call back etc.).[13]

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[9] Pages 1-2, 'Responses to Ofcom's questions'. Option Y, June 2020. The Option Y working group estimate a better than 99% matching rate to resolve the correct UPRN from a given address and postcode.
[10] Page 5, 'Fixed telecoms switching: technical study'. Cartesian, January 2021.
[11] Sky notes this experience relates to work with *"large UK CPs"* only, whereas any new switching solution will apply to all providers. It is not clear the extent to which the assumptions will remain true across the large number of smaller providers who will also need to implement the new switching process.
[12] The Option Y working group have estimated a success rate of 96%, with this increasing to 99% where UPRN is also used. Page 1, 'Responses to Ofcom's questions'. Option Y, June 2020.
[13] The One Touch Switch proposals state: *"A GP must have a dialogue with the customer* ***to obtain key information about their existing service****, in order to obtain a match with the LP and place a switch order with criteria which the LP can identify."* (emphasis added). Page 8, 'Option Y, Gaining Provider Led Switching – the Option Y proposal'. With 'optional details' that may be requested including *"Indentifiers e.g. FTTP ONT serial no."* (Page 1, 'YHub switching process description').

Where matching errors occur which cannot be immediately resolved by the customer (which, in itself adds disruption and delay), there is no clear or simple solution. Either the customer will need to drop out of the sales journey whilst they obtain or correct the information (potentially contacting the losing provider to do so)[14] and then re-engage with the gaining provider, or the gaining provider could presumably place a new order rather than switch, which forces the customer down the 'cease and reprovide' route. Where customers drop out of a sales journey, this will result in significant disruption and delay and some will not return representing 'lost' switches. Whereas, if the gaining provider simply relies on a 'cease and reprovide' it drives usage of the very process Ofcom is seeking to move away from with this regulatory intervention and is clearly not complaint with the EECC requirement the switching process must be led by the receiving (gaining) provider.[15]

Even if the assumed 96% matching success rate on One Touch Switch were to prove correct, this would mean approximately 100,000 customers per year (over 8,000 per month) have a poor switching experience.[16] This compares with none on Code to Switch+.

Furthermore, neither Ofcom nor the One Touch Switch working group have considered whether all providers would be able to support real-time automated customer / service identification and authentication 24/7 365 days a year. The new process will have to work for all providers – from the small number of large providers to the very large number of small retailers. For example, Sky understands some smaller retailers employ manual activities to support their sales / cease processes. In the absence of an integrated automated solution that interfaces with *every* retailer and operator, and their respective customer databases, it is not clear from the One Touch Switch proposals how this could be done in real-time outside working hours (say, where a switch request is placed late at night).

Given these obvious flaws with the One Touch Switch proposal, it is not clear how Ofcom has concluded that "*(a) both options should be able to achieve a high degree of accuracy in identifying the customer and services to switch and (b) there is no substantial difference in the risk of errors arising from incorrectly identifying the customer and their services*".[17] One Touch Switch has a significant risk of inaccurate customer identification as compared to Code to Switch+.

Consumer consent and protection against slamming

As well as supporting a reliable process, 'Customer authentication', 'service/asset validation' and, in particular, 'customer intent' ("*the process positively confirms the customer's 'consent' to switch*") also seek to protect customers against slamming – both malicious and erroneous transfers.[18] The importance of this issue was reinforced by Ofcom in its July 2020 letter to industry.[19]

Ofcom, rightly, recognises Code to Switch+ has stronger protections against slamming at paragraph 5.92 of the Consultation. However, this understates the position, which is far more stark than Ofcom acknowledges.

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[14] As Cartesian states at p. 11: "*There is a risk that the information provided by the customer fails to match the records held by the LCP. Should this occur, the customer would be unable to proceed with a switch until a positive match is obtained. Instances where addresses fail to match will only impact a single switch attempt.*" *Op. cit.* footnote 10.
[15] See Article 106(6) of the EECC.
[16] Based on the OTA's estimate of 200,000 switches per month. Paragraph A7.9 of Annex 7 to the Consultation.
[17] Paragraph 5.88 of the Consultation.
[18] New General Condition C7.9 imposes an obligation on the gaining provider to take all reasonable steps to ensure it does not engage in slamming.
[19] 'Letter to fixed switching and porting working group: consent and the new fixed switching process for residential customers', Ofcom, July 2020.

For the reasons Ofcom has identified in paragraph 5.93, Code to Switch+ has very strong protections against all forms of slamming. So much so, it should rarely, if ever, occur. This would be a marked improvement on the current position under the Notification of Transfer process.

One Touch Switch, however, offers weak protection against malicious slamming that is only marginally better than what we have today. The only difference is that the switching customer has to give their gaining provider details of their losing provider (company/brand name), which only protects against 'no contact' slams and could easily be obtained, or guessed, by an unscrupulous actor.[20]

In addition, the One Touch Switch proposal provides no protection against 'erroneous transfers'. This arises where a provider has unintentionally placed their switching order against the wrong customer's service – causing a disruption to the service incorrectly 'targeted' and delay in provision to the switching customer. The root cause for these issues is a lack of validation as to the correct service to switch (for intra-network switching). This risk remains unchecked and unresolved in the One Touch Switch proposal (which, as noted above, provides no surety that the switching order is placed against the correct service) but is fully resolved under the Code to Switch+ process because the switching order can *only* be placed against the correct service.

Slamming, in all its forms, will be virtually eradicated under Code to Switch+. Whereas, it would continue under One Touch Switch. Despite its supposed importance to Ofcom – and to consumers - it appears this distinction has, inappropriately, been given very little weight in Ofcom's assessment.

One Touch Switch relies too heavily on reactive customer action

In assessing the reliability of the respective solutions, in terms of minimising errors or loss of service and providing protection against slamming, Ofcom relies on the 'backstop' of the losing provider having to send the switching information to the customer, which would act as a prompt to take action where something has gone wrong.[21]

This is clearly a weak form of protection and reduces the ease of use (adds hassle) as it requires the customer to (a) identify any errors and (b) take the necessary action. This may be effective for some customers who receive the information in real-time. But vulnerable customers and those without access to internet services will be disproportionately impacted as they are more likely to receive their switching information via a non-real time method (e.g. because the only contact details held by losing provider would be their postal address) and so will need to wait to receive it, by which time the unauthorised transfer order will have already been placed and likely be 'in flight'.

Relying on these backstops also undermines the EECC's and Ofcom's overriding objective that the switching and porting process must be *"carried out in the shortest possible time"* or *"as soon as possible"*[22], especially where the customer requests the implications of switching information by post. By definition, the One Touch Switch process must allow time for this to be received before the order can proceed.

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[20] Relying on the implications of switching information being sent to the customer offers no additional protection compared to the current Notification of Transfer position. The information is just sent at a different time (real-time vs after the order is placed).
[21] Paragraphs 5.87 and 5.94 of the Consultation.
[22] EECC Article 106 (1), 106(5) and new GC C7.3(b) (effective 19 December 2022).

The same concerns do not arise with Code to Switch+ which can support switching in the 'shortest possible time' without the need for such a reactive backstop as the process has inherent mechanisms to protect customers against these harms.

One Touch Switch is exposed to significant data protection risks

As far as Sky can tell, no data protection impact assessment has been carried out in respect of One Touch Switch.[23] Had this been done, Sky considers the solution would have been designed to include more robust checks on who is requesting the switch. However, requesting and checking more information would increase the likelihood of the customer / service identification and authentication issues we have already identified (such as more errors and missing information).

Switching information will, almost certainly, contain personal data. For example, it will likely contain the name and address of the customer (who and where the services in question are being supplied to). It may also contain the account number for the existing services.

Sending this information to someone who has requested a switch, via the 'hub', is clearly 'processing' and 'disclosure' for the purposes of the GDPR. It is therefore vital that robust protections are in place to ensure only the switching customer receives this (both as a matter of best practice and to comply with data protection law).

Ordinarily, providers would not disclose such information to an individual until they have verified the requester is authorised to receive it. This normally requires a number of pieces of information to be provided, such as name, address, date of birth and some sort of secure unique identifier such as a password or PIN.

However, the One Touch Switch process design provides that customer matching – which, if successful, automatically triggers the switching information – will be completed using *only* 'basic details' in the first instance (name, address and losing provider name). Only if matching fails will *"additional identifying details"* be required. And, even then, this will only be the losing provider account number, phone number or other "*identifiers e.g. FTTP ONT serial number"*. At no point are secure unique identifiers requested.[24]

This might not be so significant if the implications of switching information is sent only to the contact details held by the losing provider, as an unscrupulous actor presumably would not have access to the email account or mobile phone etc. But the proposed process also envisages it being sent to contact details given to the gaining provider (if different).[25] There can be absolutely no certainty these latter details belong to, or can be accessed by, the relevant customer.

If implemented as proposed, One Touch Switch therefore poses a clear and significant risk of the unauthorised disclosure of personal data in breach of the

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[23] Pursuant to Article 35 of the GDPR a data protection impact assessment ('DIPA') *must* be undertaken where a type of processing is likely to result in a high risk to the rights and freedoms of individuals, in particular where there is processing using new technologies (such as a central switching 'hub'). Even if a DIPA is not mandated by the GDPR, the Information Commissioner's Office recommends carrying one out *"in any major project involving the use of personal data"* (Data protection impact assessments | ICO, viewed 31 March 2021).

[24] Page 5, step 5 'Option Y, Gaining Provider Led Switching – the Option Y proposal'. Option Y group, 31 July 2020: *"LP Provides Switch Info. If the LP can match the customer name and services at the target address, it* ***automatically and immediately generates Switch Info****, and its own contact details for the customer (if these are different),* ***and sends them*** *to the Hub".* (emphasis added)

[25] Footnote 71 of the Consultation and page 2, 'YHub switching process description'. Option Y group, August 2020, step 6.

GDPR. But, if refined to increase the robustness of the checks undertaken before such personal data is disclosed, this risks further complicating the customer / service matching stage which exacerbates the risk of confusion, delays, drop-out and forced contact with the losing provider noted above.

The same concerns do not arise in respect of Code to Switch+ as the implications of switching information is given directly to the customer by the losing provider only after that provider has followed its BAU customer identification and verification processes (which will already need to comply with GDPR). For the same reasons, a new data protection impact assessment is not required as there is no new processing of personal data.

Only Code to Switch+ facilitates proper market engagement and well informed decision making

Well informed decisions require the relevant information in advance

The final key objective identified by the OTA and Ofcom when briefing industry was *"Customer awareness of implications of switching' ("the process ensures that the consumer is well informed of the implications of changing CP)"*.[26] Yet again, this objective is far better supported by Code to Switch+ than One Touch Switch.

This objective aligns with the EECC's requirements that *"In order to take full advantage of the competitive environment, consumers should be able to make informed choices..."* and that customers are *"adequately informed...throughout the switching and porting process"*.[27]

These requirements state that the customer must be "*well*" or "*adequately*" informed, not just informed. Something more is therefore needed than just supplying the required information. It must be given in a manner and at a time that facilitates a decision being made in light of that information.

Under Code to Switch+ the customer obtains their code and implications of switching information separately from any conversation with a gaining provider and, possibly, before even engaging in the market and selecting a new provider.

This allows the customer to consider this information in a timeframe that suits their personal needs and circumstances, seeking clarification or more information where needed (independently or from the losing provider) and using it as the basis for comparisons with different offers available in the market. The outcome of this is a well / adequately informed decision, as required by the EECC.

Conversely, under One Touch Switch the implications of switching will be provided in real-time whilst the customer is engaged with the gaining provider's sales process (either on the phone, online or in a store). This is far too late to facilitate proper consideration, engagement in the market or a well/adequately informed switching decision - either customers will not read it, or even if they do, will not have time to fully consider it.

The implications of switching could be unexpected and have quite significant consequences (financially or in terms of any impact on other services). It is therefore important that customers are allowed the time to consider the information properly

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[26] *Op. cit.* footnote 7.
[27] Recital 273 and Article 106(6) of the EECC.

and what it means for them. For example, early termination charges may represent a significant liability that would have to be weighed, in real time, against any saving the customer may be making with the gaining provider. Similarly, where other services are dependent on the losing providers' landline or broadband service, such as some pay TV services, these will be automatically cancelled by switching. Some customers may not be aware of this and would have to assess, real time, whether they are willing to lose, or also switch, their pay TV services.

Ofcom itself has previously recognised the importance of presenting relevant information in a clear and timely manner to ensure appropriate decisions are made:

> *"'[I]nformation overload' can drive consumers to make **hasty decisions** or to postpone their decision."*[28] (emphasis added)

However, in its assessment of the two options, at paragraphs 5.96 – 5.103 of the Consultation, Ofcom has incorrectly focussed on the mere administrative process of *providing* the information before the order is placed. If it has been received, Ofcom's view is that the customer can, by definition, be said to have made an 'informed choice' and therefore given their "express consent".[29] This is far too simplistic.

Code to Switch+ inherently supports *"well"* and *"adequately"* informed switching decisions. One Touch Switch does not.

Code to Switch+ eliminates the risk of pressure sales, whereas One Touch Switch increases it

Ofcom acknowledges the risk that, where customers switch by phone under One Touch Switch, *"there is potential that some would feel pressured (either real or perceived) into considering the information quickly and making a decision"*.[30] Ofcom overlooks that this risk would also arise where customers are switching in a retail store in the presence of a sales agent or online with support of a webchat agent.

But this risk doesn't arise, at all, in the Code to Switch+ process.

Ofcom assumes all customers will take the time to consider the losing provider switching information given to them in real time (even if they are on the phone with a sales agent at the time)[31] but has not explained the basis for this assumption. Ofcom says it *"would expect providers to ensure customers have adequate time to consider [the] information"* but neither Ofcom nor the proponents of One Touch Switch have put forward any proposals as to how that might be achieved or enforced.[32]

There is a clear incentive for some sales agents (on the phone, online or in a store) to pressure the customer into making a decision without fully reading or considering the implications of the information they have received, or to ask customers to share information with them so they can overcome any objections (for example, details of early termination charges that they might then seek to compensate the customer

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[28] Paragraph 5.51, *A Review of Consumer Information Remedies*. Ofcom, 12 March 2013.
[29] New GC C7.9 requires providers take all reasonable steps to ensure they don't transfer customers without their "express consent". "Express consent" is defined as: *"the express agreement of a Customer to contract with a Communications Provider, or to transfer their Public Electronic Communications Service(s) or port their Telephone Number(s), where the Communications Provider has obtained such consent in a manner which has enabled the Customer to make an **informed choice**"* (emphasis added)
[30] Paragraph 5.101 of the Consultation.
[31] At paragraphs 5.101 and 5.102 of the Consultation.
[32] Paragraph 5.102 of the Consultation.

for). Ofcom does not appear to have given these issues, or the risk they could result in poor decisions by consumers, sufficient consideration in its assessment.

Furthermore, Sky acknowledges it will be theoretically possible for customers to drop out of the One Touch Switch sales journey when they receive the implications of switching in order to consider this further, and some consumers will do this. But some of those who would be better off taking this step are less likely to do so under One Touch Switch as they will have already invested significant time and effort in the process by the time they reach this point.

Code to Switch+ is easy to use and supports quick switching

In light of Ofcom's concerns regarding Code to Switch, set out in Section 5 of the Consultation, the Option X group submitted an updated proposed solution on 12 March 2021 which included a requirement as part of the 'contact centre' route that providers *must* offer an automated IVR (interactive voice response) option for obtaining the switching code and information on implications of switching (in addition to the option of speaking to a call centre agent).[33]

When confirming receipt of this updated submission and outlining next steps, Ofcom asked the Option X working group to *"set out any evidence you have on the use of IVR systems at present, what they are used for and any performance measures you have, as well as how such a system would work in the context of the Code to Switch proposal."*[34] We have included information in relation to each of these points in Annex 1 of this response.

An IVR solution addresses Ofcom's concerns

Many of Ofcom's concerns relating to Code to Switch, as set out in Section 5 of the Consultation, are resolved by the mandated IVR option introduced in Code to Switch+. When this automated option is combined with the other benefits of Code to Switch+, it is clearly the best overall solution for consumers.

The addition of the IVR feature means Code to Switch+:

a. Gives *all customers* complete control over the extent and type of contact they have with the losing provider, including an effective mechanism to avoid speaking to them in person if they don't want to.

   Customers can request a code, and their implications of switching information, via a range of channels (phone, online, app and IVR). Under Code to Switch there were already options that allowed the vast majority of customers to get this information without having to speak to their losing provider in person (online and app). But the addition of an IVR route means *all customers* – including those with a voice-only service or who have difficulties using online services – can do so.

b. Allows customers to avoid perceived 'difficulties and deterrents' relating to contact with the losing provider. Customers using the IVR option:
   i. will not have to wait in call queues or make multiple attempts to get through;
   ii. are not subject to the constraints of call centre opening times; and

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[33] 'Option X, Broadband and voice switching proposal'. Option X group, March 2021.
[34] Email from Christina Luna-Esteban to Option X working group, 23 March 2021.

iii. would not be *forced* into having a conversation that might result in 'unwanted save' activity.[35]

As Ofcom acknowledges at paragraph 5.36 of the Consultation, the SMS option in the mobile auto-switch process remedies all of these concerns in the mobile sector and the same logic must, therefore, apply to the IVR solution in Code to Switch+.[36]

c. Reduces any perceived 'hassle' of having to contact two providers and reduces the time/effort involved doing so. In addition to online or via an app, the code and switching information can be obtained quickly and easily by calling the provider and following the IVR instructions, possibly even whilst the customer is already engaged with a gaining providers' sales process (e.g. online). Under One Touch Switch, a fixed-line voice-only customer would have to wait for a hard-copy letter to arrive before they are able to switch – this extended timescale is avoided by the facility to get the Code via an IVR within a short timescale.

This therefore reduces the risk of customers not engaging in switching the first place due to perceived 'hassle' or abandoning a switch.

At paragraphs 5.30 and 5.31 Ofcom identifies *"the hassle of having to contact more than one provider"* as potentially off-putting to customers in itself. However, this concern was not material, or decisive, in Ofcom's decision to implement the mobile auto-switch process in July 2019 and it is not borne out in volumes of customers switching their mobile services.

Furthermore, Ofcom's consumer research is not a reliable basis for this assertion as respondents are unlikely to have considered an IVR option when answering the question given an equivalent automated option does not exist under current switching processes – 'contact' will have been interpreted as 'speaking to', which is exactly what the IVR is designed to avoid.

Likewise, comparisons with the old Migration Authorisation Code (MAC) process are not relevant as the MAC process did not contain non-real time communication options such as online, app or IVR.

One Touch Switch risks confusion and disruption when sharing the switching information resulting in interruptions and significant delays to the process

In addition to the potential customer and service matching errors and data protection risks already identified, One Touch Switch is exposed to confusion, errors and delays due to the way the implications of switching information is shared with the customer.

Under the One Touch Switch proposal information on the implications of switching is sent directly to the customer by the 'hub' using the contact details provided by the losing provider (based on the customer's chosen method).[37] This is an obvious

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[35] Ofcom is wrong to assume all customers calling and speaking to their losing provider do not wish to do so (see paragraph 5.24 of the Consultation). Those who prefer to engage with providers by phone, and some voice only customers and those with difficulties using online services, may very well be happy to speak with their losing provider

[36] Ofcom says, at paragraph 5.36 of the Consultation, *"To remedy [these concerns], Auto-Switch allows customers to control the contact they have with the losing provider when they are considering switching their service, including avoiding a phone conversation if they do not want one."*

[37] At Figure 3.3 of the Consultation, step 2, Ofcom states: *"The information is provided by the method the customer chooses e.g. as part of the gaining provider's online order process (downloadable afterwards), email, text or letter."*

point of failure and cause of potential confusion and 'hassle' for customers that has not been considered in the One Touch Switch proposals or Ofcom's analysis:

a. If the information is sent 'from' anyone other than the losing provider (e.g. using the hub's email address rather than the losing provider's) some customers will treat it with suspicion, might ignore it or it might be automatically blocked or routed to 'junk' folders. Even though the customer has requested the information, they might reasonably expect it to come from their existing provider (in Sky's case, from an email address such as xyz@sky.com) rather than some generic unknown email address;
b. It is unclear what would happen if the contact method chosen by the customer is not supported by the details held by the losing provider - for example, the customer chooses to receive the information via SMS but the losing provider does not have a mobile number on file;
c. It is unclear what would happen if the information does not arrive via the chosen route. This could arise, for example, because the contact details held by the losing provider are out of date (old email address, typos etc) or the email inbox is full.

Furthermore, the switching information is sent to the customer by the 'hub' without the gaining provider having access to it.[38] If the customer has questions about the information and the implications for them, they cannot raise this with the gaining provider. Even if they did, it is unlikely the gaining provider will be able to offer any meaningful support.

Where the information cannot be sent or the customer has questions, they would be forced to drop out of the process and contact the losing provider to complete/correct the details or discuss the information before re-engaging with the switch.[39]

Whilst the One Touch Switch working group note this very fleetingly in their proposal[40], Ofcom has not recognised or considered any of these potential causes of 'hassle' or disruption in its assessment of One Touch Switch in Section 5.

Code to Switch+ is no harder to understand and follow for customers with mobile bundles than One Touch Switch

Other than the need for customers with 'bundles' of landline, broadband and mobile services to obtain two separate codes, potentially via different routes, Ofcom has not raised any concerns with Code to Switch at paragraphs 5.12 – 5.19 that are either not overcome by the IVR solution in Code to Switch+ or apply equally to both Code to Switch+ and One Touch Switch.

Whichever process Ofcom adopts, these customers will need to undertake two separate actions and follow different processes – obtain a switching code for their mobile service and either obtain a code for their landline and broadband services or place an order directly with the gaining provider. There is the potential for confusion in either of these.

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[38] Paragraph 3.39 of the Consultation.
[39] One Touch Switch does not envisage a customer obtaining this information directly from the losing provider outside a switching journey.
[40] Page 5, point 6 'Option Y, Gaining Provider Led Switching – the Option Y proposal'. Option Y group, 31 July 2020.

However, the majority of switching mobile customers (at least 58%) already request their code via a method that would also be supported by Code to Switch+.[41] And Ofcom acknowledges *"many customers already have knowledge and experience of using [Auto-Switch] switching processes for their communications services"*.[42] In fact, Sky's own analysis shows approximately 12 million switching codes have been requested under the mobile auto-switch process since it launched in July 2019.[43] None of these customers are likely to be confused by the need to obtain a code to switch their landline or broadband services.

Other than the potential 'confusion', Ofcom's only other concerns with customers having to obtain a separate switching code under Code to Switch are the additional difficulties they might incur and deterrents they might be exposed to as a result of not being able to avoid contact with a losing provider sales agent.[44] These are addressed by the IVR option added in Code to Switch, as well as the online and app routes for customers who have access to the internet.

In fact, Code to Switch+ presents Ofcom with a unique opportunity to align switching processes across all telecoms products with a need to obtain a code first. This facilitates and clear and simple consumer awareness campaign ("whatever telecoms service you want to switch, get your switching code first and give it to your new provider").

[41] Switching Experience Tracker. Ofcom 2020. Q4A, table 29. Multi-code question so adds to >100 (51% text, 32% phone, online account 26%, in store 7%, other 1%, don't know 3%).
[42] Paragraph 4.10(d) of the Consultation.
[43] Based on data provided by Syniverse to Sky for the period July 2019 – 31 March 2021.
[44] Paragraphs 5.16 ad 5.17 of the Consultation.

The process followed by Ofcom has been flawed

In this section we identify the shortcomings in Ofcom's engagement with industry pre-Consultation, which has led to an initial preference which must be revisited, as well as the inadequate cost-benefit analysis Ofcom has relied upon in reaching that conclusion.

Ofcom's pre-Consultation phase was inconsistent as it changed the criteria against which it has assessed each option and unfair as it did not treat the industry groups equally. In response to the proposed solutions submitted in December 2019 Ofcom provided the Option Y working group (One Touch Switch) with feedback on specific concerns it had regarding their solutions' ability to comply with the EECC. This resulted in a redesigned proposal in the form of what is now One Touch Switch, which Ofcom has provisionally concluded best meets its policy objectives and is its preferred option.

No equivalent feedback was provided to the Option X working group (Code to Switch) pre-Consultation. Whilst Ofcom has accepted the Code to Switch+ update and published this for consultees to consider, the two week extension to the Consultation deadline is inadequate for the implications of this to be given proper consideration.

As Ofcom reached its provisional decision based on a now out of date proposal and, as outlined in this response, the update to that proposal addresses the vast majority of the concerns Ofcom has identified, it is imperative that Ofcom fully reassesses the respective merits of each option and, if needs be, publishes and consults on its revised assessment.

Furthermore, the cost-benefit analysis Ofcom has relied on in reaching its provisional decision is weak to say the least:

a. Ofcom has under-estimated how many customers will contact their losing provider under One Touch Switch, which adversely impacts the assumed reduction in incremental cost of this solution;
b. Even based on Ofcom's revised assumptions and costs, Code to Switch+ is still cheaper for industry to implement unless a very specific approach to analysing the cost data is taken;
c. The cost estimates are not based on like-for-like solutions. The One Touch Switch proposals leave material parts of the process to be defined in the detailed design and implementation phase. These will inevitably increase the costs of implementation;
d. Ofcom has not subjected its independent research into implementation costs to robust scrutiny;
e. Ofcom has not considered costs or benefits outside the direct costs incurred in designing, implementing and operating the solutions (for example, the cost to consumers of a reduction in improved offers from their existing provider arising out of a reactive save conversation which will no longer take place under One Touch Switch); and
f. Ofcom has not been transparent about the cost estimates it has received from providers of 'Hub services' and system integrators.

Ofcom's pre-consultation phase was unfair and has led to a premature provisional decision

Following adoption of the EECC, Ofcom asked the OTA for support in convening and managing an industry working group to develop proposals for the new switching and porting process.[45] To help get this working group process underway, Ofcom and the OTA held a joint meeting with industry to outline the high-level requirements of the EECC, specifically in respect of switching and porting, Ofcom/the OTA identified five 'base capabilities' or *"boxes to tick"* (in any proposed solution): 'customer authentication', 'customer intent', 'customer awareness of implications of switching', 'service/asset validation', and 'reliable process'.[46]

In light of this, it would not be unreasonable for industry to take these as the most important, *minimum*, capabilities that need to be satisfied in any solution and this is the basis on which the Sky engaged in the process when developing Option X.

Ofcom has changed the assessment criteria and not treated the industry groups equally

Instead, Ofcom has assessed the proposed solutions against different criteria[47] and treated the Code to Switch+ working group differently from the One Touch Switch group in the pre-consultation phase. The One Touch Switch group were informed of Ofcom's view of their proposal's failings and encouraged to resubmit a redesigned solution addressing those issues prior to Ofcom's assessment and provisional decision. No such process was followed in relation to the Option X draft solution.

Following submission of their respective proposals,[48] Ofcom conducted an initial assessment of each solution during early 2020. Ofcom wrote to industry expressing concerns about the Option Y proposals and their ability to meet the 'express consent' requirement of the EECC. In short, Ofcom considered the Option Y solutions fell down on the 'Customer awareness of implications of switching' base capability originally identified by the OTA and Ofcom. Ofcom said *"…by setting this out now industry has an opportunity to suggest any amendments to the proposals prior to our planned consultation."* and invited further submissions by 24 July 2020.[49]

The Option Y group took up this offer and redesigned their proposals, to address the specific concerns identified by Ofcom, resulting in what is now One Touch Switch (as well as an alternative option called 'YPG').

At no point during its engagement with industry did Ofcom raise any concerns regarding the Code to Switch proposal, whether relating to express consent or otherwise. Sky is therefore surprised that Ofcom's assessment in the Consultation concludes Code to Switch, as constructed at that time, does not meet Ofcom's policy objectives due to a perceived lack of control over the extent to which the customer has to engage with the losing provider and the risk it may introduce 'difficulties and deterrents' to the switching process.

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[45] 'Letter to the OTA: switching and porting'. Ofcom, July 2019.
[46] *Op. cit.* footnote 7.
[47] As set out in Section 4 of the Consultation, Ofcom has assessed each option against the following requirements:
a. Easy to use (simple to understand and follow; led by the gaining provider and enhance customers' control; minimise the effort needed to complete the process)
b. Quick
c. Reliable (the switch happens when the gaining provider says it will; minimise any loss of service; minimise the chance of errors and enable a customer's services to be restored quickly where an error does occur)
d. Based on informed consent (the customer has expressly agreed to the switch; information is provided enabling customers to make an informed choice).

[48] Initial proposed solutions were submitted to Ofcom, via the OTA, on 18 December 2019. Ofcom subsequently wrote to both groups on 20 January 2020 requesting further work be undertaken to provide more detail regarding costs and timescales for each solution. This was submitted to Ofcom by 28 February 2020.
[49] Ofcom 'Letter to fixed switching and porting working group', June 2020. Ofcom originally asked for updated submissions to be received by 17 July 2020 but this was revised to 24 July 2020 in Ofcom's 'Letter to fixed switching and porting working group: consent and the new fixed switching process for residential customers', July 2020.

Ofcom's approach is unfair. Each working group has a legitimate expectation that it will be dealt with equitably and on a non-discriminatory basis. It was reasonable for the Code to Switch+ working group to assume that Ofcom had no issues with its proposal since no concerns were raised during the pre-consultation phase in the way that they were with the One Touch Switch proposal.

Whilst Sky recognises Ofcom has now accepted and published an updated proposal from the Option X working group, to reflect the incorporation of a mandated IVR option in the Code to Switch+ solution, and extended the deadline for responses to the Consultation by two weeks, this only goes part way to correcting the manifest flaws of its prior process. Ofcom has still not provided sufficient time for the updated Option X proposal to be taken into account. Consultees cannot validly judge between the two proposals and cannot therefore give *"intelligent consideration and an intelligent response"*.[50]

Ofcom's procedural failure is compounded by the fact it relied on the flaws identified in the Consultation, but never put to the Option X working group, in selecting the Option Y working groups' proposal as its preferred option. Ofcom has given One Touch Switch an unfair advantage which has fundamentally impacted the outcome of Ofcom's initial assessment to the detriment of the Code to Switch+ proposals.

Sky believes that to correct its flawed process, Ofcom must properly reconsider its assessment of the two options. It would expect Ofcom to publish a new consultation on the outcome of that revised assessment.

Ofcom's cost-benefit analysis is flawed and cannot be relied upon

As the One Touch Switch process will impose significant costs on industry costs (up to £62 million over a 10 year period by Ofcom's own reckoning[51]), section 7 of the Communications Act 2003 requires that an impact assessment must be undertaken and published. Best regulatory practice dictates that this includes a robust cost-benefit analysis that is capable of withstanding profound and rigorous scrutiny. However, in its analysis set out at Annex 7 to the Consultation, Ofcom has fallen well short in this regard.

a. Ofcom significantly under-estimates the extent to which customers using the One Touch Switch process will still need or choose to contact their losing provider. A higher contact rate not only increases the opex cost to industry but undermines a number of the perceived benefits of One Touch Switch Ofcom has identified;
b. Notwithstanding the updated costs estimates Ofcom has used in Annex 7 in light of an error by one provider, Code to Switch+ is still expected to be significantly cheaper to implement and operate;
c. The two proposed processes have been developed to different degrees of detail, with significant gaps in the One Touch Switch process that have been left for the detailed solution design phase. It is inaccurate to compare a more complete solution with an incomplete one, and inevitable that where significant elements of any new solution are excluded from the design the estimated costs will be lower;
d. Furthermore, Ofcom and the OTA have undertaken their own research into the likely costs of either solution. However, they have either approached parties with a vested interest in such estimates being as low as possible or have failed

[50] *R v N E Devon HA ex p Coughlan [2001] QB 213. At [108], Lord Woolf MR.*
[51] Table A7.6. Annex 7 of the Consultation.

to publish the feedback they received with a sufficient degree of detail to allow them to be exposed to robust scrutiny as part of the consultation process.

Ofcom under-estimates how many customers will contact their losing provider under One Touch Switch

Ofcom's assessment of the net present costs ("NPC"), equivalent annual costs ("EAC") and costs per switch and per connection for each solution in Annex 7 of the consultation, based on the inputs provided by industry, shows Code to Switch+ will be significantly cheaper to implement than One Touch Switch across all these measures.[52] However, at paragraphs A7.34 – A7.39 Ofcom uses an incorrect assumption to replace a critical cost input on the One Touch Switch side that subsequently distorts the outcome.

Ofcom's rationale for replacing the relevant cost estimate is that the provider in question has relied on the incorrect percentage of customers switching within the current Openreach network having contact with their losing provider (62% vs 49%). For the purposes of its revised calculations of the EAC and costs per switch and per connection, Ofcom assumes this lower contact rate will remain constant, or at least represents the 'worst case scenario', under One Touch Switch.

However, that assumption is almost certainly incorrect. Sky expects the percentage of customers contacting their existing provider under One Touch Switch is likely to be somewhere between the original (62%) and revised (49%) figures, with a high degree of confidence it will be towards the upper end of this range.

Sky has formed this view on the following basis:

a. the data Ofcom has used is based on Ofcom's 2020 'Switching Experience Tracker', which relates to consumer experiences under a fundamentally different switching process - notably, one where the implications of switching (early termination charges, impact on other products etc) are sent directly to the customer by the losing provider separately and after the switch order has been placed; and
b. the call back rate to the losing provider is likely to be much higher than 49% for the following reasons:
    i. *more information* regarding the implications of switching is provided during the One Touch Switch process than the current Notification of Transfer process;[53]
    ii. information is delivered in *real-time* during a gaining provider sales journey (including a sales call); and
    iii. information is delivered to the customer directly via a hub, without the customer having the opportunity to ask questions or discuss it with the gaining provider sales agent who is on the phone/online signing them up.

Ofcom has not shared the full details of the revised cost estimates for each solution based on the updated assumptions. It is therefore impossible for Sky, or any other respondent to the consultation, to see the point at which this 'tips the balance' in favour of One Touch Switch. However, to the extent this rate is higher than 49%, it will bring the estimated costs back closer to their original position where Code to Switch+ is expected to be significantly cheaper to implement and operate.

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[52] The Option X working group do not consider the addition of a mandated IVR option for customers in Code to Switch+ materially impacts the cost estimates previously submitted to Ofcom under Code to Switch as these already take account of the requirement to calculate the implications of switching information and this simply relates to the means by which that information is conveyed..

[53] The new switching information rules will be set out in GC C7.10-13, effective from 19 December 2022.

Even based on the updated costs, Code to Switch+ is significantly cheaper

Even if Ofcom's assumptions are correct, the revised incremental costs of One Touch Switch are still significantly higher, on all metrics, than Code to Switch+. For example, in opex scenario 2 for One Touch Switch:

a. the NPC is £47 - £58m (vs £6m - £19m for Code to Switch+);
b. the EAC is £7m (vs £1.7m for Code to Switch+); and
c. the cost per switch is £2.90 (vs £0.7 for Code to Switch+).[54]

Ofcom has failed to give this fact due consideration in its analysis in Section 5 of the Consultation and, specifically, when considering the proportionality of the respective options. Instead, Ofcom incorrectly focusses its proportionality assessment just on the One Touch Switch proposal as that is its provisionally preferred option.

As Ofcom will be aware, the Competition Appeal Tribunal has indicated that, when fulfilling its regulatory obligations under s.3(3) of the Communications Act 2003, the concept of 'proportionality' should be interpreted by Ofcom as meaning that proposed new regulation:

a. must be effective in achieving the legitimate aim in question;
b. must be no more onerous than required to achieve the aim;
c. must be the least onerous, if there is a choice of equally effective measures; and
d. must not produce adverse effects which are disproportionate to the aim pursued.[55]

In light of the fact Code to Switch+ now better meets Ofcom's policy objectives, Ofcom must revisit its proportionality assessment as it has two proposals which are (at a minimum) equally effective at achieving the stated aim, and a clear solution that is, by some way, the least onerous to implement and run (Code to Switch+).

Not comparing like-with-like

Whilst accepting both solutions are described at a high level, and detailed design work is required during the implementation phase, the Code to Switch+ process nonetheless caters for all key components in the switching process, whereas One Touch Switch does not.

Code to Switch+ includes an inherent mechanism for number porting – a critical component of any robust landline switching process - as the code generated will indicate to the gaining provider whether or not the customer wishes to port their

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[54] Sky notes that at paragraph A7.36 and Table A7.6 Ofcom purports to show One Touch Switch is cheaper to implement and run than Code to Switch+ based on revised calculations replacing outlier cost data. However, Ofcom's explanation of how it has undertaken these revised calculations is opaque, and therefore it is not possible to comment on it meaningfully. For example, Ofcom states the EACs included in Table A7.6 *"are based on the mid-point of the NPC values in Table A7.3"*. However, Table A7.3 shows the estimated net present costs of implementing the respective solutions, not the EACs (which are illustrated in Table A7.4). Even accepting that this is simply a cross-referencing error, paragraph A7.36 and the title of Table A7.6 state that it shows the impact of replacing a potential outlier. It is therefore unclear why Ofcom has included cost data in Table A7.6 based on a mid-point of a previous table (Table A7.3 [A7.4]) that reflected the very outlier costs Ofcom is seeking to remove. Further still, the mid-point of the EACs for One Touch Switch reported in Table A7.4 is £8.2m (the EACs for One Touch Switch are £7.6m in opex scenario 1 and £8.8m in opex scenario 2), not the £7.5m Ofcom quotes in Table A7.6. Likewise, the mid-point of the EACs for Code to Switch+ reported in Table A7.4 is £0.7m (-£0.3m opex scenario 1 and £1.7m opex scenario 2), not £9.6m. Therefore, as this table is unintelligible and not capable of robust scrutiny, Sky has placed no weight on it or its purported conclusions. Ofcom should do the same.

[55] Paragraph 137, *Tesco plc v Competition Commission* [2009] CAT 6.

number.[56] Conversely, the One Touch Switch proposals say nothing about how number porting would work and just leaves this to be confirmed in the design phase.

Ofcom entirely overlooks this difference in the consultation. Ofcom's comparisons of the respective merits of each solution, costs and timescales to implement are therefore not accurate or reliable. They do not compare like-with-like.

Scoping, defining and agreeing a porting process for One Touch Switch will add significant additional effort, and therefore time, to the already tightly constrained implementation phase.[57] Likewise, adding a porting process to the proposals will add significant costs to the estimates provided.

Ofcom is comparing a complete solution with an incomplete one, yet still provisionally prefers the incomplete one. It is unclear to Sky how Ofcom can reach this conclusion. Ofcom cannot form a robust view on the proposals, including conducting a proper cost-benefit analysis of each, until it has more information about how number porting will work on One Touch Switch and updated costs and timescale estimates have been provided.[58]

Ofcom's independent research into costs is not complete or robust

The OTA, on behalf Ofcom, undertook its own research to obtain indicative costs from providers of 'Hub services' and system integrators which Ofcom has factored into its cost analysis.[59] There is a significant risk that such parties will have underestimated, possibly quite significantly, the likely complexity, and therefore costs, of implementing and operating the hub platform given their vested interest in securing this work.

Ofcom has also failed to consider any costs that go beyond the pure direct, functional, costs provided by industry for setting up and running each switching process. For example, Ofcom has not considered the potential wider costs or benefits, such as the costs (or disbenefits) to consumers and industry of One Touch Switch resulting in fewer reactive save conversations (compared with either the current position or Code to Switch+).

Ofcom takes a very simple view of save activity in the consultation, either it is 'wanted' or 'unwanted', and assumes that where it is 'wanted' all consumers will actively seek it out before engaging with a gaining provider. But the reality is more nuanced - some customers may start the process thinking they want to leave their current service but following a conversation with their current provider obtain a better deal that they are very happy with.

Ofcom has previously recognised the benefits to consumers of retention offers. In its 2016 consultation on triple-play switching (the "2016 Switching Consultation") Ofcom stated: "*We note that… some consumers appear to welcome, and may benefit from, the possibility of obtaining a better deal from their old provider*".[60] These benefits

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[56] The customer will be validated by providing the code to the gaining provider and the number / network information is imprinted on the code (both these things are needed through the number port ordering process).
[57] The One Touch Switch working group has already said it will take a minimum of 18 months to implement their solution and so Ofcom's implementation timescales are already unrealistic. Page 9, paragraph 3A, 'Option Y, Gaining Provider Led Switching – the Option Y proposal'. 31 July 2020.
[58] Sky notes Code to Switch+ also includes a proposal for the 999 database to be automatically updated following a switch and number port. An equivalent proposal is also missing from One Touch Switch.
[59] Para's A7.13 – 7.15 of Annex 7 of the Consultation.
[60] Paragraph 4.39, Consultation: 'Making switching easier and more reliable for consumers – proposals to reform landline, broadband and pay TV switching between different platforms', Ofcom. 29 July 2016.

could include reduced prices, 'right-sizing' of their package and avoiding the need to incur the costs of switching.

Likewise, there are corresponding benefits to firms. These can be considerable, including the saved time and costs of completing the switching process, engineer site visits and new equipment installation. Unnecessary costs that are avoided are a direct benefit of save activity.

The implementation of One Touch Switch would significantly reduce the number of consumers who benefit from retention offers each year, both compared to current levels and compared to those customers that might contact their losing provider for a switching code but simultaneously ask for, or be offered, a 'save' conversation.

Ofcom's impact assessment does not have regard to whether these disbenefits to consumers and firms arise from its proposals and, if so, their extent. Nor has Ofcom considered whether there are any other indirect, non-functional, costs or benefits.

Lack of transparency over third party inputs

Ofcom has not shared the feedback or cost estimates put forward by the providers of 'Hub services' and system integrators. It is therefore not possible for respondents to the consultation to assess or comment on these in any detail.

However, with regards to the central 'hub' proposed in both One Touch Switch and Code to Switch+ processes, Ofcom observes: "*Hub costs have only a marginal impact on aggregate costs of either option, i.e. about 1% of capex for Code to Switch, and about 3% of capex for One Touch Switch.*"[61]

Even without being able to assess the underlying details, this comes as somewhat of a surprise to Sky given the 2016 Switching Consultation concluded the total cost to industry to set up and maintain a cross-platform gaining provider-led switching solution was approximately £110m over a ten year period, with the acknowledged possibility of this being even higher.[62] Even with the introduction of an independent third party hub – similar to that being suggested in the One Touch Switch proposal – Ofcom concluded the costs to industry would be broadly the same.[63]

To put this into perspective, this figure is £91m higher than the opex scenario 2 for Code to Switch, £39m higher than the One Touch Switch costs provided by industry and £48m higher than the high-end One Touch Switch NPC estimated by Ofcom.[64]

Given Ofcom's lack of transparency about the cost estimates provided by third parties, Sky is unable to assess which factors have resulted in such a different outcome and whether or not Ofcom's assumptions regarding the 'hub', which is similar to one of the options considered in the 2016 Switching Consultation, are accurate.

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[61] Paragraph A7.20 of Annex 7 of the Consultation.
[62] Paragraph's 3.30 - 34, Statement: 'Ofcom's decision on switching landline, broadband and/or pay TV between different platforms'. Ofcom, July 2017. Set-up costs were estimated by Ofcom to be approximately £40m (within a range of £34m - £50m) and ongoing maintenance costs approximately £8m a year.
[63] *Ibid.* at paragraphs 3.36 – 3.38.
[64] See Tables A7.3 and A7.6 in Annex 7 of the Consultation.

One Touch Switch must be improved if it is chosen

Notwithstanding the concerns outlined in this response (some of which are inherent to the design of the process and cannot easily be resolved, such as the data protection concerns with sending the implications of switching information to contact details provided to the gaining provider or the risk of delays and errors in identifying and authenticating the customer and services to be switched), if Ofcom were to proceed with One Touch Switch, Sky considers the following steps must, at a minimum, be taken to improve it for the benefit of consumers:

a. the customer identification and authentication and service identification process must have greater built-in intelligence; and

b. the implications of switching information should be shared (with the customer's consent) with the gaining provider.

Customer and service identification must be more nuanced

Under the One Touch Switch proposals, the relevant customer and service identification and authentication appears to be undertaken on a 'one shot' basis. In other words, *all* of the required information is obtained from the customer and sent by the gaining provider to the losing provider, via the hub. This will return a 'yes'/'no' response (successful/unsuccessful match).

In order to avoid a protracted process whereby neither the gaining provider or customer can easily identify the cause of a 'no'/'unsuccessful' response (which specific piece of information has caused the identification failure) and having to resubmit multiple variations, Sky suggests the process should either be sequential and/or responses more nuanced.

a. Under a sequential process, the relevant information would be submitted one step at a time. For example:
    i. Step 1: Do you supply services to X address?
    ii. Step 3: Do you supply A/B/C service(s) at X address?
    iii. Step 2: Do you supply Y customer A/B/C service(s) at X address?

b. More nuanced responses (rather than 'Yes'/'No') would be along the lines of:
    i. 'Address not recognised' / 'No services supplied to X address'
    ii. 'Address recognised but service is not'
    iii. 'Address recognised, services recognised but customer is not'
    iv. 'Customer recognised but address is not'

With appropriate technical integration, Sky anticipates this process could be completed relatively quickly with minimal incremental delay (although any such delay is likely to still be less than the impact of having to resubmit all data multiple times or the 'hassle' caused by the customer dropping out of the journey).

However, if Ofcom is concerned about any additional time a sequential process would incur, more nuanced responses alone would resolve most of the delay/hassle risks with the 'one shot' approach. For example, the gaining provider could ask "Do you supply [CUSTOMER], [SERVICE(S)] at [ADDRESS]?" and where there is a failure in any one element of this data the response back from the 'hub' would identify which elements are matched and which are not (see examples above). This would allow the customer or gaining provider to resolve the specific erroneous item and resubmit just that item.

Implications of switching information should be shared with the gaining provider

Sky does not share the concerns raised by Ofcom at paragraph 3.40 regarding the gaining provider having access to the losing provider switching information.[65] Therefore, subject to the customer agreeing, Sky suggests the One Touch Switch process allows this to be shared with the gaining provider at the same time it is sent to the customer (by the losing provider, via the 'hub').

Most, if not all, of this information will already be publicly available on the losing provider's website, either specifically (e.g. technical dependencies between products) or more generally but in a manner that can be broadly worked out (e.g. all providers are required to publish their standard early termination charges).

Sky does not envisage any harms or risks arising from this information being shared with the gaining provider on a customer-specific basis, whether under competition law, for commercial sensitivity reasons or otherwise.

Sharing this information will have a number of benefits for both consumers and industry:

a. Gaining providers will be able to offer at least some support, or reassurance, to customers, or direct them to the relevant place to get more information or resolve any queries themselves. For example:
    i. if the customer is concerned about losing a particular service or feature that is also available from the gaining provider or where an equivalent is available independently the provider can point this out;
    ii. many providers will know roughly where to find competitors published early termination charges information so can direct customers to this if needed;
b. Greater transparency over the switching impacts on customers will result in increased competition which may result in reduced prices for customers, increased innovation or other incentives being offered. For example:
    i. The gaining provider could take the information into account in the commercial terms they offer. A provider might offer to increase a discount in light of the early termination charges the customer must pay or to credit the customer an equivalent amount;
    ii. If a provider identifies a specific reason driving a high number of customers to change their mind about switching to them it might prompt them to innovate their own products and services in order to mitigate this impact.

Whilst sharing this information with the gaining provider would not mitigate all of the concerns Sky has previously identified in this response, it would go some way to resolving some of the 'friction' or 'hassle' caused by the customer receiving the information but being completely unable to discuss it with the gaining provider with whom they are engaged in an active dialogue.

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[65] These concerns were raised in relation to an alternative proposal submitted by the Option Y working group – 'YPG' – whereby the implications of switching were sent by the losing provider to the 'hub' which then forwards it on, unedited, to the gaining provider for them to send to the customer. However, the underlying concern regarding commercial sensitivities can be applied across.

Implementation concerns

Neither solution can be implemented by December 2022

Both solutions would require a minimum of 18 months to implement

Ofcom has said that it intends to publish its decision on the preferred switching process in Q2 2021, with the final changes to the General Conditions of Entitlement not being confirmed until Q3 2021.[66]

As the deadline for responses to the Consultation is 14 April 2021, the earliest Ofcom is likely to publish its decision is mid-to-late May 2021, although this seems highly unlikely given the need to give due consideration to the responses received and to undertake any further analysis and assessment (including the possible need to reconsult). It therefore seems likely a decision will be made towards the end of Q2 2021 at the very earliest.

Both industry working groups have made clear to Ofcom throughout their engagement, both with the OTA and directly with Ofcom, that establishing a new cross-platform switching process is a significant task. In their formal proposals, both have estimated a minimum of 18 months to fully design and implement their respective solutions.[67]

By way of comparison, Sky notes it took industry 18 months to implement the voluntary auto-compensation regime. This was despite the fact only a relatively small number of large providers had signed up to the scheme and, by the time Ofcom confirmed its decision to approve the industry-proposed scheme, those providers were aligned on the process and had already agreed all of the key components.

There is considerably more work to do, by more providers, to implement either One Touch Switch or Code to Switch+, not least because both proposals remain relatively high-level and there is still a significant amount of scoping and design work to be completed. By way of example, One Touch Switch will require all UK retailers of landline and broadband services, from the very largest to the smallest, to interface with the central 'hub'. Ofcom should not under-estimate how long the design and implementation work will take. When discussing both options with Sky's operational teams, they colloquially summarised the effort required to implement either as the equivalent to 'auto-compensation on steroids'.

Ofcom must also recognise that industry will be unable to confirm the process designs and begin the implementation work in earnest until the final rules are confirmed in Q3 2021. This might not be until September 2021.

Furthermore, as Ofcom will be aware, new switching and porting rules are not the only change being implemented under the EECC. A number of these other regulatory developments will require significant technical resource to deliver and it will be the same delivery teams that will be required to undertake this activity as well as implement a new switching process. Sky notes Ofcom has sought to spread the impact of the EECC changes across three implementation dates.[68] However, it is

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[66] Paragraph 1.22 of the Consultation.
[67] *Op. cit.* footnote 57 and Page 2, 'Option X, Broadband and voice switching proposal, response to Ofcom'. However, these estimates were given prior to Ofcom publishing its final rules implementing the EECC, which will constrain development resource as the implementation timescales overlap, and do not factor in implementing other regulatory interventions that may arise.
[68] 17 December 2021, 17 June 2021 and 19 December 2022.

naive to think such development work is carried out sequentially and there will not be significant overlap and 'bottlenecks'.

Therefore, with a new process confirmed in the middle of Q2 2021 and final rules not confirmed until Q3 2021, it will be impossible for industry to complete the necessary work to implement the chosen solution by 19 December 2022.

Limited work can be done in advance of Ofcom's decision

In recognition of the exceptionally short timescales it is proposing to deliver this change, Ofcom has suggested industry undertake preparatory work ahead of Ofcom's decision, in particular with a view to establishing the governance framework through which providers will work together to engage and establish a central 'hub'.[69]

Whilst Sky is happy to support such discussions, Ofcom must be realistic about what might be achievable.

The parties interested in such discussions, and the nature of any governance arrangements, will depend on which entities will be engaging directly with the 'hub'. This will differ according to whether One Touch Switch is preferred or Code to Switch+. For example, under Code to Switch+ only access providers and wholesalers would be required to connect to the hub, whereas under One Touch Switch *all* retailers will need to be connected.[70] This would make the governance arrangements significantly different depending on which switching process is taken forward.

Whilst it is clear some communications providers will play an active role in whatever solution is preferred – notably, Sky, BT, Virgin Media and TalkTalk - it seems the furthest they could go is developing a series of 'options' that could be put to the relevant interested parties once Ofcom's decision is known. Ofcom will, understandably, be keen to ensure all relevant voices are heard and there can be no suggestion of governance arrangements impacting multiple stakeholders being decided by a handful of operators 'behind closed doors'.

Furthermore, even if it were possible for industry to agree a framework for 'hub' governance ahead of any decision by Ofcom, it would be impossible to implement such arrangements or to begin the process of selecting a 'hub supplier' or procuring the necessary systems without knowing what 'solution' this was being undertaken for.

Sky therefore considers there are significant limitations to the extent to which governance arrangements for a 'hub' can be agreed in advance of Ofcom's policy decision. And the need to finalise and implement these arrangements after that decision will, unfortunately, add further pressure to operators' ability to implement the chosen solution by 19 December 2022.

[69] Paragraphs 7.6 – 7.8 of the Consultation.
[70] The new switching process will need to be supported by all providers. By way of example, in January 2021 ISP Review is tracking at least 80 FTTP builders, all of whom would have to interface with the 'hub' on One Touch Switch. A3.15, 'Promoting investment and competition in fibre networks: Wholesale Fixed Telecoms Market Review 2021-26', Annexes 1 - 26. Ofcom, 18 March 2021.

Annexes

Annex 1

What does Sky already use IVRs for?

Sky currently has a 'natural language' IVR deployed where the customer is asked what they are calling about and the call is routed to self-serve flows or the relevant call centre team based on their response (verbal or response to key pad prompts). For example, a customer may say they:

a. want to "make a payment" and they will be routed to the automated payment process;
b. have a "question about my bill" and they are routed to the team who can provide information on our charges;
c. want to "reset my Sky TV PIN" and they will be routed to the self-serve function that supports this; or
d. want "an itemised bill" and they will be routed to the appropriate self-serve interface where the itemised bill information is delivered over the phone.

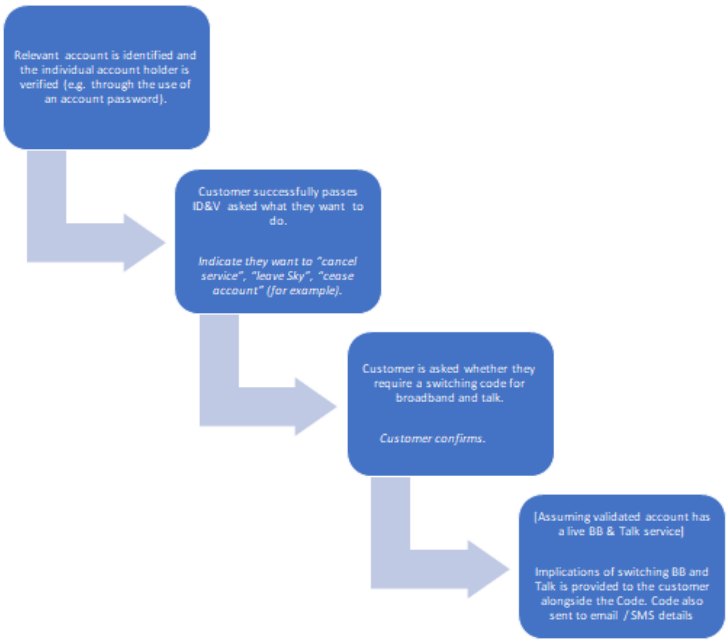
Evidence on use and performance

[CONFIDENTIAL REDACTED]. Sky's IVR performance figures as at April 2021 show:

a. 86% of customers are identified to the right account through the automated process (the rest are routed to a call centre agent to complete identification);
b. Over 90% of customers are routed to the appropriate function (self-serve or agent support) after stating what they wanted to do; and
c. Average time spent in Sky's IVR system is approximately 90 seconds.

How could an IVR solution work in the context of the Code to Switch proposal?

An example of the high-level call flow for customers wishing to switch their Sky broadband and talk services under Code to Switch+ is as follows:



This process could be simplified further if the customer indicates a clear intention to switch their landline and/or broadband services or get a code. For example, if they say "get a switching code" step 3 above could be bypassed.

What impact would introducing an IVR option have on the implementation time and cost estimates Sky previously provided for Code to Switch?

Sky does not expect modification of our existing IVR solution to provide a self-serve code generation function and information on the implications of switching to be a material development. We would not expect it to incur significant costs (<£50k as an estimate) nor add to the overall timescales required to the deliver changes to the switching process required for Code to Switch.