



Response by SSE to BEREC consultation on Best practices to facilitate switching

Background to SSE

SSE is a major energy company in the UK with subsidiary companies involved in electricity generation, gas storage, infrastructure operation of electricity networks and gas pipelines plus retail energy service provision to millions of customers. It has also entered the retail communications market in the UK, using available wholesale products to enable it to provide retail telephony and internet access (“broadband”) services to its customer base.

SSE views on issues related to switching processes

SSE believes that consumer switching processes are of fundamental importance for the health and development of competitive retail markets. For services that are essential to modern life – such as electronic communications and utility services – this is even more important as consumers do not really have the choice not to consume the products and they require the service concerned not to be disrupted while the “switch” is happening.

We therefore welcome the consultation by BEREC on proposed best practice guidelines for Member States to facilitate switching. Our responses to the specific consultation questions are set out in the section below and we would like to make 2 main points initially.

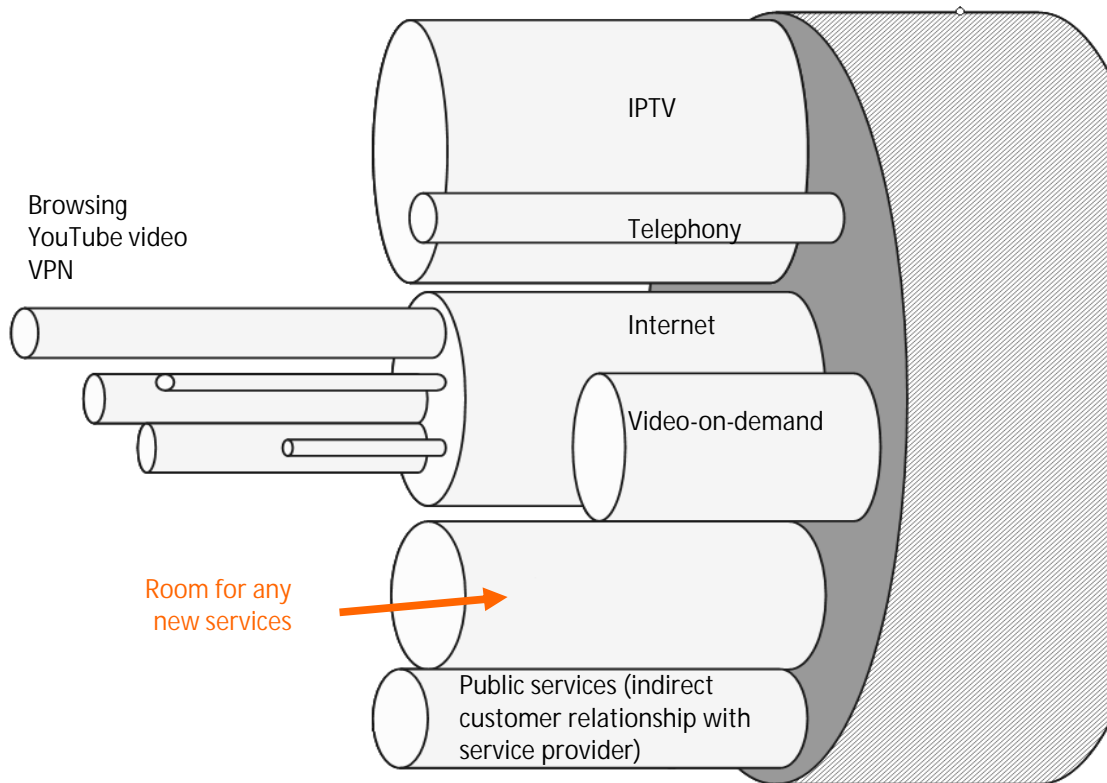
1. In our view, and based on our experience in energy retail markets, it is very important for there to be change control and governance for the basic documentation of how switching processes work. This provides clarity for all parties on how switching works - it may vary across different products but there has to be a “single source of truth” for all companies in the market on this point. Similarly, it is important that there is a controlled change process around that documentation. This allows the switching process to develop as the market evolves with new products and/or variations to old products. It should also allow new entrants and smaller players to be able to propose changes or point out issues with proposals from other market players in order to support the competitive forces and innovation that comes from these sources.

In order to support the governance and encourage the industry cooperation that is entailed in agreeing changes and developments to industry processes, we believe it is necessary for there to be a back-stop regulatory requirement on all relevant parties to abide by the switching process, as documented, and to any industry agreed developments to this. If this does not exist, then it is extremely unlikely that the commercial interests of all parties will align sufficiently to allow developments that support competition.

We expand on these points in our response to question 7 of the consultation.

2. Across the EU, the impact of next generation access (NGA) in communications services is beginning to be felt. Given the far greater information carrying capacity of the fibre-based NGA networks, we believe that switching processes appropriate for this new technology should be developed well in advance of mass roll-out for consumers. There are two main reasons for this: firstly, so that reverse switching paths have been put in place for any particular migration of a consumer's products from copper to fibre technology – needed for change of mind and also in the case of house moves. The second reason is that we believe the greatly enhanced capacity of a fibre link should be managed to allow the greatest use of its potential to provide a range of different services.

This is being discussed in the UK as a “multi-channel model” and the use of the capacity link to a consumer's premises in this model is illustrated diagrammatically below. The important point is that the separate “sub-channels” each represent a potentially different contractual relationship between the customer (or a body acting on his behalf in the case of indirect relationships) and a communications provider. Each service should be unaffected by other services provided on or removed from the link.





Managing customer switching on this model will be more complex than for copper-based migrations using current technology but we believe it will allow for more innovation and for potentially many more services eventually being able to use the capacity of the link than might be foreseeable at the present time. However, given the likely step-change in complexity, we believe it is even more important that the governance arrangements we have outlined in our first point are put in place to manage customer switching against the background of these technological developments in the industry.

Responses to specific consultation questions

Question 1 (section 3): Are you satisfied with the typical switching time between service providers in the following services:

- a) Fixed telephony;
- b) Mobile telephony;
- c) Internet access;
- d) Bundles.

If not, please offer suggestions on how to speed up the switching time between service providers, whilst ensuring an adequate level of consumer safeguards.

We can only speak for the switching process lengths in the UK. Here, mobile telephony can switch relatively quickly but fixed telephony can take a few weeks with internet access and bundles taking greater lengths of time. We believe it should be possible to speed up switching times for the slowest types of switch if there was more coordination between the relevant companies to provide uniform, centralised switching processes, backed by regulatory requirements to achieve and maintain these.

In addition, where customer switching is covered by statutory consumer protection to allow “cooling off” – for example after an uninvited sales contact – these time periods should be managed by gaining providers rather than being embodied in industry processes. This would make the prospect of speedy restoration of customers (where cooling off is not required) to their previous supplier easier to achieve via the standard industry processes.

Question 2 (section 4): Do you agree that the obstacles to switching identified in the draft report are the most relevant to consumers? If not, please explain why.

This is the list of obstacles identified in the report

- **Contractual obstacles which have the effect of discouraging switching, or which create disputes between the consumer and Losing Provider due to the consumer’s intention to switch**
- **Lack of consumer information**
- **Irresponsible or dishonest sales and marketing activity by the Gaining Provider**
- **Technical issues which may impact switching**
- **Actions by the Losing Provider to burden the switching decision by the consumer**
- **Save and retention activity by the Losing Provider**

- Difficulties arising from the number porting process which impact on the switching process
- Pricing strategies of operators in the retail market (e.g. differences between on-net and off-net tariffs)
- Deficiencies in the switching process
- The length of the overall switching process
- Difficulties for the NRA in enforcing operators' compliance with switching requirements
- Another obstacle raised by NRAs was in relation to unlocking SIM cards.

All the obstacles mentioned seem relevant to consumers.

Question 3 (section 4): Do you have experience and evidence of any other major obstacles faced by consumers in switching between service providers?
The list above covers most of the major obstacles of which we are aware.

Question 4 (section 4): Among the identified obstacles, which would you rate as the most significant in terms of their adverse impact on switching service providers and why?

In our experience, the losing provider led process in the UK for broadband switching is definitely hampered by the opportunity for both “save and retention” activity by the losing provider and the greater opportunity for the losing provider to “burden the switching decision” or act in other ways to frustrate the switching process.

The second general area that has a material adverse impact on switching is the greater tendency for there to be contractual obstacles such as tied in fixed term or rolling contracts with significant termination charges. This is much more prevalent in the retail communications market than in other utility services in the UK.

A further area that has some effect, in our view, is the length of switching process for some combinations of services e.g. fixed telephony plus broadband in some scenarios.

Question 5 (section 4): What are your views as to whether particular obstacles to switching are more relevant in a specific electronic communications services (e.g. fixed telephony, mobile telephony, Internet access or bundles)?

As discussed above, while contractual issues affect all markets as far as we are aware, the difficulties with action by losing providers only affects those markets where there is a losing provider led process – internet access and mobile telephony in the UK.

Question 6 (section 5): Do you agree with the best practice principles identified in the report? If not, please explain why.

We agree with the two broad categories of best practice that the report uses: those to support a positive consumer experience and those to support a competitive framework. We also recognise the trade-offs mentioned by the report and therefore the need for National Regulatory



Authorities (NRAs) to consider how best to apply the recommendations in their own areas.

In the two lists, we generally agree with all the bullet points in relation to support for the competitive framework whereas, for the consumer experience list, we agree with many but have reservations about one or two of these. Our comments are set out below against each proposed best practice guideline.

Consumer Experience Guidelines

Best Practice 1: *Minimisation of unnecessary switching costs/barriers, both for individual services and for bundles, so that there should be minimal effort on the part of the consumer in order to switch, respecting inter alia the following principles:*

We agree with all of the bullet points under this heading.

Best Practice 2: *Minimisation of instances of mis-selling/slamming and other unfair practices, including respect of the following principles:*

We have 2 comments under this heading.

Firstly, 2 of the 6 bullets under this heading refer to the length of the switching process. The second suggests that the “overall length of the switching process” should take into account consumer protection considerations such as the ability of the customer to change their mind. The fourth suggests that there should be a “quick and reliable restoration process” for consumers switched in error. In our view, the customer switching process, in system terms, should be as quick as possible so that the fourth bullet can happen easily i.e. a restoration of the customer using the underlying systems to his previous supplier where this is necessary. However, this objective could be at odds with the second bullet if consumer protection periods are built into the switching systems. To some extent, this is the case in the UK’s fixed line telephony switching systems where a “10 day transfer period” is built into the switching systems such that they cannot readily be used for rapid restoration.

In our view, consumer protection measures should be dealt with outside the switching systems such that, according to each Member State’s legal requirements, consumer protection periods are managed by the providers initiating the switch, as appropriate to the circumstances. In the event of a restoration or other analogous circumstance, the switching process would be used without delay while in the event of a distance sale in the UK for example, statutory “cooling off” periods would be observed before the actual switching process was activated.

We therefore suggest that the second bullet is amended as follows in order to avoid a tendency to build in consumer protection periods when they will not always be necessary:



- ~~The overall length~~ **Normal use** of the switching process should take into account, where appropriate, consumer protection considerations, including an opportunity for consumers to stop the switch happening where they have not given consent to the switch or where they simply wish to change their mind.

Secondly, we have reservations about the intent of the first bullet, which states that “registered evidence” of a customer’s authorisation to switch service provider needs to be kept by the service provider for a reasonable period of time. It is easy to see how direct evidence could be readily kept for face-to-face and for web-based sales. The more contentious area for industry is evidence of agreement to a sale during a telephone discussion – this could lead to significant implementation costs, if call recording were to be required to provide sufficient evidence in these cases.

We are strongly of the view that there should be flexibility in this area, so that the standard of evidence required takes account of the processes surrounding the sale. In an environment where sales confirmation material is rapidly provided to a customer, where processing is delayed to allow for “cooling off” and where a customer can be rapidly restored to a previous provider when necessary would not, in our view, need the same standard of evidence with respect to a sale as one where none of these factors were in place.

In order to allow this flexibility, we would suggest rewording the first bullet as follows:

- ~~Registered evidence~~ **Reasonable records** of the consumer’s authorisation to switch service provider **should be kept, for a reasonable period, in the light of national legislation and industry processes, by the service providers.**

Best Practice 3: Accurate information on switching to be given to consumers, before and during the switching process, and also immediately after it is concluded, with information being presented clearly and in an easily accessible format, including:

We agree with the main sentiment of this heading but do not agree that all the detailed provisions would necessarily be helpful.

For example,

- **second bullet, we do not think that, especially for gaining provider led processes as advocated in best practice 1, customers will generally be interested in the roles and responsibilities of all parties involved in the switching process; and**
- **final bullet, we believe it may not be practicable for a gaining service provider to know of all the potential affects on existing service(s) that would result from a customer moving to his own service.**

Given these examples, we believe it would be appropriate for the wording of the guideline to provide more flexibility, depending on circumstances, as follows:



Best Practice 3: Accurate information ~~on switching~~ to be given to consumers, before and during the switching process, and also immediately after it is concluded, as appropriate to the process used, with information being presented clearly and in an easily accessible format, including:

Best Practice 4: Publication of guidance by NRAs that aims to make sure that service providers are aware of, understand, and comply with all obligations relating to national legislation and best practice principles that apply to them, including:

We agree with this guideline – guidance by NRAs is usually helpful to the market.

Competition Framework Guidelines

Best Practice 5: Support competition in retail markets, including:

We fully support the intention and detail in this guideline and believe it could go further as discussed in response to question 7.

One detailed point is that, in footnote²⁵, the final line of this would be clearer if it was amended to read “... the switching costs for switching one services should not be significantly higher than another for no justifiable reason” by analogy with the content of footnote 24.

Best Practice 6: Cost efficiency of the switching process, including:

We fully support the intention and detail in this guideline and believe it could go further as discussed in response to question 7.

Question 7 (section 5): Are there any other best practice principles you would like to be identified in this report?

The main additional area that we would like to see covered in the guidelines is a development of the idea, expressed already in one of the bullets under the best practice 6 guideline, of “a level of co-operation between all service providers involved in the switching process”.

SSE operates in the regulated retail markets for energy in the UK and is developing its interests in the water market as this opens to competition in the UK. In these markets, there is a regulatory emphasis on customer switching processes, characterised by:

- **regulatory oversight of the switching process and documentation;**
- **transparent change control for the relevant documentation of process;**
- and
- **a requirement for relevant service providers to implement processes and systems to allow switching to happen in accordance with the agreed documentation.**

In particular, we believe the energy market successfully allows the switching processes to evolve by allowing industry to develop them, as the market evolves, under a system of transparent and inclusive governance arrangements. These arrangements are ultimately overseen by the regulator but allow a significant degree of “day-to-day” control of



systems and governance to be undertaken by industry participants, through use of market bodies, paid for by and answerable to the market as a whole. We advocate a similar approach for electronic communications retail markets involving consumers.

We therefore suggest that the fifth bullet point in best practice guideline 6 is amplified and added at the start of the bullet points under best practice guideline 5, which provides the general support for competition in retail markets (whereas guideline 6 deals more specifically with cost efficiency). In our view, cooperation of this sort is a necessary condition for the other bullet points of guideline 5 (as well as the cost principles in guideline 6) to be achieved.

- ***Establish an industry framework for cooperation between all relevant service providers in order to facilitate the transparent and inclusive governance of consumer switching arrangements so that these can be developed by industry, as markets evolve, under appropriate regulatory direction.***

Ends