

**TRANSPARENCY AND INFORMATION:  
MORE POWER TO END-USERS OF ELECTRONIC COMMUNICATIONS  
SERVICES**

by

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\* This background paper was prepared for presentation at the ANC international conference on “*Regulating Electronic Communications – Putting the End-User First*” held in Bucharest, Romania, on 21 October 2008.

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## **TRANSPARENCY AND INFORMATION – MORE POWER TO END-USERS OF ELECTRONIC COMMUNICATIONS**

### **1. INTRODUCTION**

Consumer protection and empowerment is important not only to consumers but because empowered consumers are crucial to sustainable effective competition<sup>1</sup>. If consumers are ill-informed and passive, firms will not be under pressure to deliver the promised benefits of competition e.g., lower prices, increased choice and improved quality of service. So the consumer interest must stay at the foundation of any regulatory paradigm and has to be recognised as a fundamental driving force for the development of the sector.

Major consumer issues in the electronic communications area include: (i) consumers' right to information; (ii) consumers' right to choose; (iii) consumers' right to protection; and (iv) consumers' right to redress. This paper focuses primarily on the first of these – that is, on consumer information requirements to help empower consumers.

The paper is organised in the following way. The introductory section explains the crucial importance of consumer empowerment through more transparent information and other means. The insights of so-called “behavioural economics” that warns that better information alone may not be enough are discussed. Section 2 then examines the difficulty consumers have in comparing tariff offers from fixed line, mobile and internet service providers. Section 3 examines consumer difficulty in comparing quality of service since this is closely related to price. Clearly, if quality deteriorates but price remains the same, in effect the price has fallen. Section 4 discusses the extent of switching as an indicator of consumer ability to compare offers. It examines what evidence there is about actual consumer switching behaviour. Section 5 considers the implications for policy and regulation. Finally, section 6 concludes the paper.

#### ***1.1 Consumer empowerment and information***

Consumer information plays a critical role in competitive markets. Increased competition and innovation in the telecommunications sector is delivering considerable benefits to consumers but is also increasing complexity. Markets work best when consumers are fully informed about what they are buying. Without this, consumers may make incorrect decisions and be reluctant to switch. Lack of transparency will mean that consumers do not find it easy to make informed decisions and compare services. This may be because appropriate information does not exist. It might also be because the information they are presented with is complex, not easy to interpret and in a number of different places.

Consumers can be disadvantaged and suffer detriment when information is withheld, where there is deception in the information provided, or when information lacks transparency and is too difficult for consumers to obtain or evaluate. Increasing importance is being attached to the

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<sup>1</sup> A detailed discussion of this issue is available in OECD (2008), “Enhancing Competition in Telecommunications: Protecting and Empowering Consumers”. DSTI-CP(2007)6-ENG-FINAL. Paris February 2008. Available at [http://www.oilis.oecd.org/oilis/2007doc.nsf/FREDATCORPLOOK/NT00005C82/\\$FILE/JT03241292.PDF](http://www.oilis.oecd.org/oilis/2007doc.nsf/FREDATCORPLOOK/NT00005C82/$FILE/JT03241292.PDF)

transparency issues that end-users of telecommunications are confronted with, in particular the difficulty of accessing tariff information and comparing offers and post-contract tariff changes. To benefit from competition, consumers need to be well informed, not just about price but also about quality of service. Indeed, the two are related since a fall in the quality of service, with the price remaining the same, is, in effect, an increase in price.

Constraints on the ability of consumers to process information can lead to welfare-reducing decisions even when the information available is non-deceptive. Where consumers have too little information, or too much information of unreliable, inconsistent quality, various types of detriment can arise, including:

- consumers failing to participate in the market at all, because they have limited awareness of the products and services on offer, or conversely because they are confused by an excess of available information (sometimes referred to as ‘information overload’)
- consumers paying too much
- consumers buying the wrong product or service
- consumer disappointment and frustration with the product or service, because it turns out to lack the expected level of quality (Ofcom 2006a).

A substantial amount of regulation has been directed at these problems, including misleading conduct laws (e.g. prohibition on fine print disclaimers, requirement for plain language contracts); disclosure requirements, product regulation; and regulation aimed at allowing consumers to conveniently switch between suppliers – such as the development of interoperability standards and number portability in the telecommunications industry.

Government policy and regulation has traditionally been concerned with minimising detriment to the consumer interest resulting from a lack of consumer information, or misleading information, or mis-selling, or the “bounded rationality” of consumer decision-making. Other tools include: provision of price and quality comparison data for consumers and the use of calculators (usually on websites) allowing consumers to enter data to enable them to make price comparisons.

### *Better not necessarily more information*

While information is often favoured as a policy/regulatory tool to address ‘market failure’, it can have its own failings and drawbacks. For instance, presenting a large volume of information can reduce its effectiveness. Consumer attention is limited and additional information may diminish the attention consumers pay to the information received. For instance, research conducted by the UK Better Regulation Executive (2007a) found that many pieces of information were simply not having the impact on consumer behaviour they set out to achieve. Consumers rejected much of the information because it was not helpful or was presented in a complex or unappealing format.

As with other regulatory tools, information has its costs as well as benefits. Information requirements are often an irritant for business. Even potentially small information requirements can have a cost to business since firms may have to install costly legal and monitoring systems to ensure compliance with the law.

## **1.2 Behavioural economics and consumer information**

Conventional economic analysis recognises that information asymmetry and information failure may lead to sub-optimal consumer outcomes. Conventional economics recognises that consumers face a “bounded rationality” (e.g. in processing information) and, as a result, rely on ‘heuristics’

(such as reliance on a firm's reputation and other price and quality signals) in decision-making. But such demand-side analysis is indicating improved insights into actual consumer behaviour that may exhibit systematic departures from the "rational" behaviour assumed by conventional (neoclassical) economics. That is, even when presented with full information, consumers may not always be in a position to understand and/or use that information to their advantage. This raises questions about whether, and if so, what different policy or regulatory intervention may be necessary to help consumers adopt decisions in their best interests.

Behavioural economics challenges some of the presumptions of conventional economics that consumers make their choices coherently and rationally given their preferences and the constraints upon them. Behavioural economics involves the study of *actual* consumer behaviour (by contrast with how consumers *should* behave). It argues that consumers can fail to act in their own best interests due to behavioural traits such as failure to process information objectively or mis-evaluations about the costs and benefits of prospective decisions. For example, research conducted on switching activity by low-income households in UK electricity markets found that on the whole these consumers did not switch provider in a way that could be explained by any rational set of criteria. Only 7% of consumers chose the cheapest option and, indeed, 32% changed to a supplier that was more expensive (Wilson and Waddams 2005).

Among the biases identified by behavioural economics, the following may be particularly relevant to the telecommunications market and may help to explain how, even where there is adequate information, consumers may be making seemingly irrational decisions in choosing an operator or service package (OECD 2008):

- **Choice overload** - consumers having too many products or features to compare and may experience increased anxiety about the possibility of making a bad choice. This can lead to random choice, or failure to make any choice, resulting in missed opportunities for buyers and sellers. A type of "analysis paralysis" can take hold when information and choice becomes very complex.
- **Endowment** – consumers may be reluctant to give up what they have, even though they would not buy such goods or services if they did not already have them (e.g., consumers may stay with the incumbent fixed line provider because of misplaced loyalty, a failure to acknowledge poor choices in the past, or an irrational consideration of sunk costs).
- **Defaults** – the ordering of options, particularly in markets where a choice must be made, influences choice. *Default bias*: the decision to opt-in or opt-out e.g., when extending a mobile phone contract, is not the same decision for people. Also, consumers may tend to take the path of least resistance, particularly if they feel that there is a 'normal' option (e.g., people may buy 'standard' bundles offered by telecommunications suppliers, even if they do not want the whole telecommunications bundle).
- **Hyperbolic discounting** – consumers tend to be short-sighted when making decisions with immediate costs or benefits to be weighed against future costs or benefits (e.g., consumers may enter long-term telecommunications contracts because they place more value on the immediate benefits of the offer, such as a free or heavily subsidised handset or a reduced first month rate, or free local calls, rather than on the long term costs of a contract such as high price for calls exceeding a usage 'bucket', the inability to switch to lower priced alternatives, and the inability to take advantage of latest technology).

*Time variant preferences:* usually manifests as ‘hyperbolic discounting’. Generally our discount rate increases the shorter the time period outstanding. This can lead us to discount costs that impact in the longer term in favour of benefits that impact in the short term. Accordingly we may sign long-term contracts with mobile phone companies to obtain a ‘free’ handset, even though this may be more expensive in the long term than buying a handset without being locked-in to a long-term contract.

- **Framing biases** – consumer choice is influenced by the ‘frame’ in which information is presented. Presentation of the same information in a different ‘frame’, can lead to a different decision. For instance, cash back offers can be much more attractive to customers than a similar or even greater discount. For most consumers, ‘only 3% fat’ is likely to be less appealing than ‘97% fat free’.
- **Loss aversion** – the preference for avoiding loss is widely considered to be greater than the preference for gain.
- **Heuristics** – consumers often take short cuts (*e.g.* by following rules of thumb) when the decision environment is too complex relative to their mental and computational capabilities. These rules of thumb are called “heuristics” and are often accurate enough to be useful, but may sometimes lead to sub-optimal decisions.

### ***1.3 European Commission proposals concerning information transparency***

The European Commission’s Framework Review has proposed strengthened transparency and information provisions. The proposals recognise the need to consider the impact of the asymmetry of information between providers and end-users on consumer welfare and emphasize the steps that can be taken by various regulatory agencies to improve end-user transparency and awareness, in particular by mandating transparency rules on providers and by introducing interactive price guides.

The European Commission (EC) proposed changes<sup>2</sup> to the EC’s Universal Service Directive<sup>3</sup> had a number of aims (EC 2006), including:

- improving the transparency and publication of information for end-users;
- facilitating use of and access to e-communications for disabled users;
- facilitating the switching of suppliers by consumers through, among other things, strengthened provisions on number portability;
- improving obligations related to emergency services; and
- ensuring basic connectivity and quality of service.

#### *Improving the transparency and publication of tariff information for users*

The aim in regard to this aspect of the EC’s proposed changes is to increase price transparency by obliging operators to publish comparable, adequate and to up-date information in an easily

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<sup>2</sup> EC (European Commission) (2006), Proposal for a Directive of the European Parliament and of the Council amending Directive 2002/22/EC on universal service and users’ rights relating to electronic communications networks, Directive 2002/58/EC concerning the processing of personal data and the protection of privacy in the electronic communications sector and Regulation (EC) No 2006/2004 on consumer protection cooperation.

<sup>3</sup> Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users’ rights relating to electronic communications networks and services (OJ L 108, 24.4.2002).

accessible form and allowing third parties to use publicly available tariffs (e.g., for the purpose of selling or making available interactive guides) and national regulatory authorities ((NRAs) to make such guides available when these are not available on the market. NRAs are to be given powers to require from operators better tariff transparency as well as clear information on possible restrictions on access to all types of content and applications. The possibility for the EC to take implementing measures is intended to ensure, where appropriate, a minimum level of harmonisation in this area.

The EC made a number of specific proposals in regard to end-user tariffs:

1. Member States shall ensure that transparent, comparable, adequate and up-to-date information on applicable prices and tariffs, and on standard terms and conditions, in respect of access to and use of specified services.
2. Member States shall ensure that undertakings providing public electronic communications networks and/or services publish comparable, adequate and up-to-date information on applicable prices and tariffs in respect of access and use of their services provided to consumers. Such information shall be published in an easily accessible form.
3. NRAs shall encourage the provision of information to enable end-users and consumers to make an independent evaluation of the cost of alternative usage patterns, by means of interactive guides or similar techniques. Member States shall ensure that NRAs make such guides or techniques available, when these are not available on the market. Third parties shall have a right to use without charge the tariffs published by undertakings providing electronic communications networks and/or services, for the purposes of selling or making available such interactive guides or similar techniques.
4. Member States shall ensure that NRAs are able to oblige undertakings providing electronic communications services to provide applicable tariff information to customers at the time and point of purchase to ensure that customers are fully informed of pricing conditions.
5. Member States shall ensure that NRAs are able to oblige undertakings providing electronic communications services and/or networks to provide information to customers in a clear, comprehensive and easily accessible form.
6. In order to ensure that end-users can benefit from a consistent approach to tariff transparency, the Commission may take the appropriate technical implementing measures in this area, such as specify the methodology or procedures.

#### *Quality of service*

The current EC's Universal Services Directive<sup>4</sup> also requires European Union Member States to ensure that NRAs are able to require communications providers to publish comparable, adequate and up-to-date information for customers on the quality of their services. The EC's Universal Service Directive states that: "End-users should have access to publicly available information on communications services. Member States should be able to monitor the quality of services which are offered in their territories. National regulatory authorities should be able systematically to

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<sup>4</sup> Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (OJ L 108, 24.4.2002), Article 22.

collect information on the quality of services offered in their territories on the basis of criteria which allow comparability between service providers and between Member States.” Also, “NRAs may specify the quality of service parameters to be measured and the content, form and manner of information to be published so that customers have access to comprehensive, comparable and customer friendly information.”

EC’s proposed changes to the Universal Service Directive aim at empowering NRAs to prevent degradation of quality of service by setting minimum quality levels for network transmission services for end-users. The possibility for the EC to take implementing measures is intended to ensure, where appropriate, a minimum level of harmonisation in this area.

## **2. ACCESS TO INFORMATION ON PRICES**

As noted earlier, constraints on the ability of consumers to process information can lead to non-optimal, welfare-reducing decisions, even when the information available to them is non-deceptive. For example, comparison of prices for telecommunications services offered by different suppliers is complicated by the wide range of possible consumer usage patterns, detailed variations in price levels and price structures and the large number of possible discount and bundled schemes available. Tariff plans commonly employ an increasing variety of structures and discount schemes<sup>5</sup>. Moreover, operators and service providers regularly adjust their pricing strategies either through changes in components of their tariff structure, or the introduction/withdrawal of various discount schemes and service packages. In short, the wide range of tariffs and discount schemes make it difficult for consumers to calculate which tariff, from which supplier, offers the best deal or an improvement on their existing service. To make a fully informed decision, consumers would need to study a detailed breakdown of their call profile (the number, type, duration and timing of calls made). A survey in the UK, for example, indicated that over one third of consumers found it difficult to compare prices in the fixed, mobile and Internet market segments (Ofcom 2006b). This finding is consistent with the findings of surveys conducted in other EU Member States that will be examined below.

### ***2.1 Fixed line price comparisons***

In the fixed line market, consumer confusion can arise in the purchase of both local and long distance services. Many operators have begun bundling local and long distance calls with line rental access and have introduced various pricing scheme combinations that allow consumers to choose between higher line rental and associated lower local and long distance call prices or lower access and higher call charges. In many cases the bundled offers come with a certain number of local or long distance calls being provided without additional charge as part of the package.

In Ireland, for example, eircom’s tariff plans bundle line rental (either PSTN or ISDN) with calls. Eircom *Talktime* has four levels and is aimed at residential consumers and consists of a core package which bundles rental with local and national off-peak calls as well as up to two value-added phone services such as mailbox or call forwarding. The plans also offer additional minutes for calls to a nominated local or national number (“Call a friend for free minutes”). Mobile and international “add-ons” are also available for an additional fee. Carryover of minutes is allowed into the next billing period, but not thereafter.

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<sup>5</sup> For an assessment of the complications in comparing pricing offers resulting from the widening use of price discount schemes, see Xavier, P (1998), “Price discount schemes for telecommunications and international price comparisons”, *Telecommunications Policy* (May).



Similarly, in August 2005, France Telecom launched “*Atout Téléphone*” (telephone advantage), a new range including four unlimited packages, two of them including a package of call minutes to fixed lines, mobiles, Europe and North America, and a package offering a price/minute reduction, for a monthly subscription. (The unlimited calls to mobiles scheme was subsequently withdrawn by the operator and a limited number of hours of mobile calls introduced.)

A variety of other fixed-line residential pricing packages are available in other telecommunications markets where competition prevails. Although such pricing plans offer benefits to consumers and can provide the convenience of “one bill”, they also increase the complexity of choice faced by consumers especially when competitors respond with their own bundled offerings that provide alternative pricing and usage combinations. Consumers have to consider a wide range of variables in regard to dozens of fixed-line pricing packages offered by several providers. This wide choice can create information overload and confusion and can prevent consumers from making optimal choices concerning the most appropriate fixed-line option consistent with their usage patterns and budget constraints (NCC, 2005).

Table 1 shows the results of a survey on ease of comparing offers from fixed line telecommunications providers in EU25 countries.

About 35% of EU25 consumers surveyed found it difficult to compare offers from fixed line telephone providers. The level of “don’t know” responses increases this proportion of those finding it difficult to compare fixed line offers. For some countries, there were very high ‘don’t know’ figures involving around a third of those polled e.g., 40% in Hungary, 37% in Latvia, 35% in Cyprus, 34% in Finland, and 34% in Lithuania.

However, the figures vary widely from country to country. The extent of the prevalence of strong competition (giving rise to a wide choice of pricing packages) in various countries probably accounts for some of the differences. This may explain why, for instance, 53% of respondents in Sweden and 47% in Belgium said that comparing offers was difficult.

**Table 1. Results of Survey on Ease of Comparing Offers from Fixed Line Providers**

<b>In general, how easy do you find it to compare offers from different fixed line providers?</b>			
	<b>Very difficult</b>	<b>Fairly difficult</b>	<b>Don't know</b>
EU25	11%	24%	13%
NMS	8%	19%	18%
EU15	11%	25%	12%
IT	17%	25%	9%
SE	16%	37%	11%
DK	16%	27%	21%
FR	14%	31%	10%
NL	14%	27%	17%
BE	13%	34%	7%
DE	13%	31%	5%
SI	12%	21%	14%
LT	12%	15%	34%
FI	10%	23%	34%
HU	10%	19%	21%
CZ	11%	19%	18%
AT	9%	20%	13%

HU	9%	17%	40%
SK	9%	20%	11%
EL	8%	17%	2%
PL	7%	18%	16%
LU	7%	16%	17%
ES	6%	21%	18%
LV	6%	14%	37%
CY	6%	7%	35%
PT	5%	14%	19%
IE	5%	13%	22%
UK	4%	13%	20%
EE	3%	11%	32%
MT	3%	9%	26%

Source: EC (2007), "Special Eurobarometer 260 -- Services of General Interest", July.

Available at [http://ec.europa.eu/consumers/cons\\_int/serv\\_gen/cons\\_satisf/eb260\\_report\\_en.pdf](http://ec.europa.eu/consumers/cons_int/serv_gen/cons_satisf/eb260_report_en.pdf)

## 2.2 Price comparison in the mobile market

Strong competition in the mobile market offers potentially significant benefits to consumers who have a wide range of different plans from which to choose. For instance, Table 2 indicates a variety of mid-range plans for mobile telecommunications consumers in Australia. By paying a flat monthly fee of AUS\$49 (about USD 40) a consumer can obtain between AUS\$200 (USD 160) and AUS\$300 (USD 240) worth of calls (depending on which operator is chosen) as long as she stays below the allocated limit of call charges.

**Table 2. Mid-range Mobile Telecommunications Plans in Australia**

Carrier	Credit	Cost
Gotalk	\$200	\$45
Telstra	\$200	\$49
Austar	\$230	\$49
Virgin	\$230	\$45
Primus	\$230	\$49
AAPT	\$240	\$49
Simpliciti	\$240	\$47
Dodo	\$250	\$49.90
Slimtel	\$250	\$49
Vodafone	\$280	\$49
3 mobile	\$300	\$49
Optus	\$300	\$49

Source: PhoneChoice quoted in the Age, 7 March 2007.

Consumer surveys across a number of countries have revealed that consumers find it difficult to compare mobile pricing plans offered by different operators because of the wide variety of plans with complex rate structures that impose different restrictions on use. In many countries consumers pay different amounts for calls depending on whether the called party is on the same network as the caller or not. In addition, call prices may depend on the time the call is made and how many calls the calling party has already made in the relevant billing period. In many cases consumers have even expressed difficulty in choosing between mobile pricing plans offered by the same operator (ACMA, 2006).

Comparison of retail prices of mobile plans can be difficult also because of the bundling of calling and access charges. For example, plans with higher monthly access charges usually come with a larger number of unmetered call minutes. Also adding to the complexity is the range of mobile packages offering different combinations of monthly charges, free calling minutes, and peak and off-peak calling rates.

In the US, consumer advocates have complained that operators make it extremely difficult to determine the final price of a mobile service by incorporating a range of surcharges in call prices that are not immediately apparent in the prices publicised in consumer advertising and promotional literature (Illinois PIRG, 2005).

There have also been complaints from consumers that services included and excluded in a capped plan were not clearly explained to them (ACMA, 2006). For instance, services such as text or picture messaging and data such as Internet content might fall outside a capped plan, being billed on top of the flat monthly fee. Consumers have also complained that they have been unaware that they have breached a cap since there were no tools enabling them to monitor their usage, hence it is all too easy to exceed the limit and be subjected to high excess charges.

These complaints seem to be supported by the apparent inability of many consumers to effectively utilise the inclusive (or 'capped') minutes available in many mobile packages. A UK survey (NCC, 2006) disclosed that one-third of consumers do not use all the inclusive minutes available to them. Notably, almost 20% of those on monthly contracts claimed that they usually use less than half of their inclusive minutes. By contrast, 40% of consumers usually consume more than the inclusive minutes allocated to them as part of their package. This suggests that many consumers may either: systematically overestimate usage levels and choose plans with higher rental charges and more available minutes than they actually require, or underestimate usage and end up paying significantly higher prices for additional minutes above those provided as part of their pricing plan.

A study conducted in the US has suggested that some mobile operators take advantage of consumer misperception in underestimating usage requirements (Bar-Gill, 2006). The study found that there is a steep jump in per-minute charges when consumers exceed a plan's usage limit. Many contracts specify an increase of more than 100% in the per-minute price, with some contracts specifying increases of 200% and above. The study observes that such significant increases do not reflect a corresponding change in the provider's per-minute cost.

Table 3 shows the results of a survey on difficulty of comparing offers from mobile telecommunications providers in EU25 countries. 38% of EU mobile phone consumers surveyed said that it was difficult to compare offers from different mobile phone operators. This includes figures of 58% for Denmark and 63% for Sweden. It is interesting that price comparisons seem more difficult in these well-developed and competitive markets. This is probably because as competition intensifies and providers and tariff offers increase, it can become more difficult to compare offers.

This interpretation is supported by the fact that the highest proportion of those surveyed saying that comparison of offers was 'very difficult' were again in Denmark (30%) and Sweden (27%) compared with an EU25 average of 14%. And also that the three countries with the lowest percentages of survey respondents saying that price comparison were "very difficult" were in Cyprus (1%) and Malta (2%) where the level of competition is low.

The percentage of respondents indicating that comparing offers is difficult increases significantly if those replying “don’t know” are included. There were 13% of all those surveyed in this category, including 25% in Cyprus and 24% in the UK.

**Table 3. Results of Survey on Difficulty of Comparing Offers from Mobile Providers**

<b>In general, how easy do you find it to compare offers from different mobile providers?</b>			
	<b>Very difficult</b>	<b>Fairly difficult</b>	<b>Don't know</b>
EU25	14%	24%	13%
NMS	8%	17%	12%
EU15	15%	25%	13%
DK	30%	28%	11%
SE	27%	36%	11%
DE	21%	32%	8%
NL	21%	26%	14%
FR	20%	34%	12%
BE	18%	36%	6%
IT	17%	24%	7%
FI	16%	29%	8%
AT	10%	24%	11%
LT	10%	18%	12%
LU	9%	22%	16%
HU	9%	21%	14%
EL	9%	14%	3%
PL	8%	17%	13%
ES	7%	19%	18%
CZ	7%	18%	6%
SK	7%	17%	4%
UK	7%	14%	24%
LV	5%	18%	18%
IE	4%	10%	17%
SI	8%	16%	11%
EE	2%	13%	18%
PT	2%	12%	15%
CY	2%	7%	25%
MT	1%	5%	21%

Source: EC (2007), “Special Eurobarometer 260 -- Services of General Interest”, July.

Available at [http://ec.europa.eu/consumers/cons\\_int/serv\\_gen/cons\\_satisf/eb260\\_report\\_en.pdf](http://ec.europa.eu/consumers/cons_int/serv_gen/cons_satisf/eb260_report_en.pdf)

The EC has identified a number of problems in relation to the transparency and publication of consumer information (EC, 2006). Callers are often unable to find out, or are not aware of, which tariff applies to their services. For example, when calling a premium rate number, consumers are not always adequately informed on the price involved or even on the type of service behind the number. Another example is that a mobile call to a number advertised as “free-phone” may be not free. The EC also recognised that making price comparisons can be difficult for consumers, particularly in cases of service bundling.

A further problem in the mobile market relates to the lack of transparency of charges for international roaming. Roaming charges are complex and not well understood by consumers.

Indeed, some consumers may not even be aware that these charges exist. Even though all operators charge mobile subscribers for receiving incoming calls while roaming overseas, UK research suggests that many small to medium enterprises may not know whether they are charged for receiving incoming calls when roaming, or believe that they are not charged (Oftel 2001).

### *Hyperbolic discounting in mobile telephony*

The apparent acceptance of the high prices set for call minutes beyond the plan limit may be one illustration of “hyperbolic discounting” by consumers who heavily discount the prospect of such costs in the future (OECD 2008). Providers can exploit consumers’ underestimation of their future telecommunications usage by bundling airtime, handsets, and other services such as voice mail. The high long-term prices consumers end up paying subsidise the free or heavily subsidised handsets, free calls and voicemail, etc.

### **2.3 Difficulties in comparing broadband prices**

Price complexity is also a key characteristic of broadband service packages. As an example of the complexity involved, a consumer in Australia seeking a broadband plan could be confronted by more than 2000 plans from more than 500 ISPs. These plans differ in regard to the monthly price charged, the upload and download speeds offered and the degree to which the speeds are “shaped” above a certain level, the amount of prepaid data provided as part of the plan, the price charged for excess data above the maximum allowance and the set-up fee involved. Moreover, there continue to be sharp changes in Internet prices that also add to the difficulty in making price comparisons. Indeed, in the UK, the prices of broadband Internet access has dropped so much that they have become cheaper than dial-up service. According to SimplySwitch.com (a price comparison service), consumers with a dial-up connection are now able to make significant savings by switching to broadband, irrespective of whether they pay per minute or a monthly fee for unlimited access (SimplySwitch.com).

SimplySwitch estimates that pay-per-minute dial-up consumers who use the Internet for just two hours per week could save money by switching to broadband. SimplySwitch estimates that nearly all Internet service providers offer unlimited broadband packages that are significantly cheaper than equivalent dial-up deals. Telewest and NTL customers could save about £60 per year by switching to broadband while those with Tiscali and AOL could save £33 and £12 respectively per year. This development provides an interesting situation that allows assertions about consumer behaviour to be tested. If Internet consumers are indeed aware, rational and ‘empowered’, a significant switch from dial-up to broadband might be expected to occur.

Table 4 shows the results of a survey of EU25 consumers on ease of comparing offers from Internet service providers. About 30% of consumers found it difficult to compare offers from different internet service providers whether dial-up or broadband. There were also a high proportion of “don’t knows” (27%) from EU25 respondents. If these are added, the proportion of those experiencing difficulty increases sharply to 57%.

The number of respondents who found the process difficult were usually relatively high in the developed economies where competition was relatively strong e.g., Sweden, Denmark, Netherlands, France etc., compared with countries such as Greece and Latvia. This might be explained in part by the presence/degree and complexity of competition prevailing in the markets of countries with relatively more competition and pricing packages available to complicate/confuse choice.

**Table 4. Results of Survey on Difficulty of Comparing Offers from Internet Service Providers**

<b>In general, how easy do you find it to compare offers from different internet service providers?</b>			
	<b>Very difficult</b>	<b>Fairly difficult</b>	<b>Don't know</b>
EU25	11%	19%	27%
NMS	11%	15%	31%
EU15	11%	20%	26%
SK	19%	25%	19%
DE	16%	28%	18%
DK	16%	27%	24%
EL	15%	21%	15%
NL	14%	24%	19%
IT	14%	19%	25%
LT	14%	14%	30%
FR	13%	23%	29%
BE	12%	26%	21%
PL	12%	12%	33%
SE	11%	28%	27%
CZ	11%	19%	18%
AT	9%	21%	28%
HU	9%	17%	40%
FI	7%	21%	25%
ES	7%	15%	30%
SI	6%	17%	21%
LU	5%	17%	31%
LV	5%	13%	42%
PT	5%	11%	41%
UK	4%	8%	33%
CY	4%	5%	53%
IE	3%	10%	42%
EE	3%	9%	36%
MT	2%	6%	46%

Source: EC (2007), "Special Eurobarometer 260 -- Services of General Interest", July.

Available at [http://ec.europa.eu/consumers/cons\\_int/serv\\_gen/cons\\_satisf/eb260\\_report\\_en.pdf](http://ec.europa.eu/consumers/cons_int/serv_gen/cons_satisf/eb260_report_en.pdf)

## **2.4 Pricing of bundled services**

The provision of bundled services offering fixed services together with a combination of mobile/broadband/digital TV offer lower prices, a single bill and new innovative services is giving consumers the opportunity to purchase services that are more tailor-made. But it also means that consumers face an increase in complexity – not just in the number of communications services they buy but also in the complexity of each individual service. And, because each bundle available has a different set of characteristics, this may also lead to difficulties in comparing offerings. Services that facilitate the comparison of the prices of service bundles may help address this problem and should be encouraged.

Market solutions can emerge to address information asymmetries. For example, there are Internet-based companies that provide price comparison information to assist consumers to make informed decisions, including whether to enter into a contract with a supplier. These services may also provide information on how to switch supplier once a contract has been entered into.

## ***2.5 Improving price comparison information***

Regulators, too, may have a role to play in enabling consumers to make effective choices, particularly as the ability to compare and switch offerings becomes more complex as a result of service bundling, convergence and next generation networks (NGN). This could be achieved by encouraging suppliers to change the way they present information to their consumers. The presentation of prices in a standardised more quickly comprehensible manner/form can assist in this regard. Or it could mean a regulator promoting intermediaries that provide price comparison information. In some cases – perhaps where more generic information about communications markets as a whole and opportunities for switching is required – a regulator may sometimes be best placed to provide information itself.

As noted earlier the EC has proposed changes that would:

- give NRAs powers to require from operators better tariff transparency (with the possibility to agree technical implementing measures at EU level) to ensure that consumers are fully informed of the price before they purchase the service.
- ensure that third parties have the right to use without charge or hindrance publicly available tariffs published by undertakings providing e-communication services, for the purpose of selling or making available comparative price guides.
- empower NRAs to make price guides available where the market has not provided them.

A number of national regulators have been encouraging the provision of devices such as price comparison calculators. For example, in 2002, Ofcom introduced the ‘PASS’ scheme enabling it to accredit websites that compare the prices and services of different suppliers impartially and accurately (according to standards specified by Ofcom). Ofcom has also proposed a new improved scheme aimed at addressing the increased complexity resulting from convergence and service bundling by extending accreditation to services that enable consumers to compare service bundles. Ofcom believes that this new improved scheme, offering consumers quality-assured price comparison services for both single and bundled communications services would be the most effective means of ensuring wide availability of effective price comparison information (Ofcom 2006a).

In Ireland, the regulator Comreg supports itself an interactive website ([www.callcosts.ie](http://www.callcosts.ie)) to help consumers in comparing the cost of personal/non-business mobile, home phone and broadband pricing plans. Similar initiatives were launched by regulators in Sweden, Denmark or Norway.

## **3. ACCESS TO INFORMATION ON QUALITY OF SERVICE**

As noted earlier, to benefit from competition, consumers need to be well informed, not just about price but also on the qualitative aspects of the service. Indeed, the two are related since a fall in the quality of service, with the price remaining the same, is, in effect, an increase in price.

Consumer research indicates that quality of service is the second most important driver of switching after price (Ofcom, 2006a). Business as well as residential consumers are interested in quality of service comparisons. For instance, in the UK, the majority of small and medium sized

enterprises (SMEs) indicated a keen interest in comparing quality of service for fixed line (74%), mobile (82%) and Internet (87%) (Ofcom, 2006a).

In a competitive market there are clear incentives for providers with a high quality of service to let consumers know about it. But there is little commercial incentive for those providers offering a low quality of service to produce timely and accessible comparable quality of service information.

Even though there is considerable information available on quality of service, it does not seem to be providing consumers with the information they want. Australian research, for example, has found that 65% of residential consumers and 74% of businesses believe that it is difficult to compare the service features of different telecommunications companies (ACMA, 2006).

In the UK, as Table 5 indicates, over 30% of those surveyed considered that it was difficult to make quality of service comparisons. Indeed, Ofcom's research (Ofcom 2007) suggests that consumers find it more difficult to compare quality of service than the price of service. In 2007 around 39% of fixed line consumers, 33% of mobile consumers and 37% of Internet consumers found it difficult to compare quality of service information compared to 30% of fixed line consumers, 25% of mobile consumers and 18% of Internet consumers who found it difficult to make cost comparisons.

**Table 5. Consumer opinion in UK on ease of making quality of service comparisons (2006 and 2007)**

		<b>Very Easy</b>	<b>Fairly easy</b>	<b>Fairly difficult</b>	<b>Very difficult</b>	<b>Don't know</b>
<b>Fixed Line</b>	Q2 2006	13%	28%	21%	13%	25%
	Q2 2007	8%	30%	24%	15%	23%
<b>Mobile</b>	Q2 2006	17%	34%	21%	11%	17%
	Q2 2007	11%	34%	21%	12%	22%
<b>Internet</b>	Q2 2006	15%	33%	24%	10%	18%
	Q2 2007	16%	41%	24%	13%	6%

*Note:* Base is all adults with fixed line, mobile, internet.

*Source:* Ofcom, Communications Tracking Survey, 2007

Usage of the QoS information currently published has evidently been very low (Ofcom 2007). However, it is not clear what this suggests. For instance, whether it suggests that there is no need for the publication of quality of service information? Or whether the wrong information is being published or because it is being published in the wrong way? Or because consumers do not know about it?

There is need for further research to find out whether customers take quality of customer service into account when choosing or changing suppliers and if they do, what they are interested in and how they might best be presented with such information. This will help materialize the significant potential for consumers to gain from the (benchmark) competition between providers that publication of pertinent QoS information could bring.



### ***3.1 Fixed line quality of service***

In the fixed telephony market, a number of countries require operators to report quality of service indicators regularly both to the regulatory authority and to consumers. Various countries also have standards that must be met in respect to established indicators. Canada, for example, sets targets for quality of service and imposes financial penalties on operators that do not achieve the targets (CRTC, 2006). In the UK, Ofcom published a Quality of Service Direction in January 2005 requiring certain fixed voice service providers to publish comparable, adequate and up to date information for end users on quality of service.

The types of quality of service information that are currently required by the QoS Direction are focused on customer service rather than network parameters and fall into five categories:

- Supply time for initial connection;
- Fault rate per access line;
- Fault repair time;
- The time taken to resolve end-user complaints received by the communications provider; and
- Bill correctness complaints.

Despite the existence of various types of information on fixed line quality of service, many consumers indicate that they would prefer greater levels of quality of service information to be made available. A UK survey, for example, found that 31% of fixed line consumers would prefer more readily comparable quality of service information to be made available (Ofcom, 2006b).

What sort of information should be made available? Ofcom's consultation (Ofcom 2007) poses a number of questions that could generate answers to this question.

- How could the information be made available?
- What services could be covered by the requirements?
- What size of provider could be required to publish information?
- What information could be published?
- Who could the information be published for?
- How could the information be verified?
- In what manner could the information be published?
- How could the information be promoted to consumers?

### ***3.2 Mobile telecommunications quality of service information issues***

A large number of mobile telecommunications consumers consider that it is difficult to compare the quality of service levels being offered by different operators. A Canadian survey, for example, found that only 44% of mobile telephony consumers believed that it was easy to compare the service levels offered by mobile operators. Notably, Table 6 indicates that this percentage has been falling steadily since 2003 with 55% in 2003, 47% in 2004 and 44% in 2005, suggesting that

more and more Canadian mobile telecommunications consumers are finding it less easy to compare quality of service levels.

**Table 6. Canadian consumers' ability to compare mobile quality of service. 2003-2005**

	2003	2004	2005
Easy to compare	55%	47%	44%
Not easy to compare	33%	36%	36%
Don't know/ did not answer or service does not apply	12%	16%	20%

Source: CRTC, "Status of Competition in Canadian Telecommunications Markets", October 2005.

Similar results have been reported across a number of other countries (Milne, 2006). In Australia, consumers have expressed high levels of dissatisfaction with the difficulty in accessing comparable performance information for mobile services and with the information produced by carriers that makes it difficult to compare products within and between service providers (ACA, 2001).

Competing mobile telecommunications standards in various countries have also contributed to technological complexity and consumer confusion. Currently mobile technologies are classified as second generation (2G), transitional (2.5G) and third generation (3G) with different features, data speeds, handsets and compatibility requirements for each technology. With a large array of technologies, standards and competing specifications and features there is a high level of confusion among consumers e.g., in respect to 2.5G and 3G service offerings. Several studies on behalf of Ofcom (Ofcom, 2006e) have revealed a low level of awareness and understanding about 3G technology and 3G services. However, despite consumers indicating that they find it difficult to compare quality of service differences among operators, interestingly a UK survey found that a majority of consumers indicated that they are unlikely to use such information even if it were easily available to them (Ofcom, 2006b). This may indicate that price is a more important criterion to consumers than difficult-to-understand quality comparisons. It may also indicate dissatisfaction with the indicators currently used.

The difficulties faced by consumers in using quality of service information (Barrow, 2007) have led many regulators around the world to attempt to improve the breadth and depth of quality of service information made available in the market (Milne, 2006). However, such attempts to develop consistent, comparable indicators have had only limited success (Sutherland, 2006). Issues that have proven controversial and difficult to resolve include consistency of sampling, sampling handling, measurement methods and data qualifiers and the development of consistent conditions under which measurements are carried out (Milne, 2006). For example, until 2002 the Australian Communications Authority (ACA) required that carriers report regularly on a defined set of key performance indicators. In its 2001-2002 Telecommunications Performance Report, however, the ACA indicated that it would cease publishing the data because, while all of the carriers were complying with the requirements, they were not reporting the data in a consistent, comparable manner (ACA, 2002).

In the US, operators have responded to requests that they develop a quality of service reporting framework by arguing that:

- The information is business sensitive and proprietary and that revealing it could damage a carrier's competitiveness by alerting its competitors to the strengths and weaknesses of its network.
- The information would not be useful to consumers trying to compare one carrier's performance with that of another carrier. Data would not be suitable for comparisons because carriers do not measure performance using a single set of standards. Also, systems using different transmission technologies respond differently to overcrowding on the network.
- The information might not be completely accurate. For example, if callers turn off the power on their phones to end a call instead of pressing the "end" button, the network might record that as a dropped call.
- Because their networks are changing rapidly, network performance data would be out-of-date before it could be used.
- Performance is affected by various transient factors, such as time of year, weather, and unusual periods of demand that tax network capacity. (GAO, 2003)

In the UK, the Direction on quality of service was applied only to fixed providers as mobile operators had put in place a process to self provide the information. For instance, mobile operators have developed a website ([www.topnetUK.org](http://www.topnetUK.org)) that allows consumers to compare the geographic network performance and voice call quality of each of the GSM mobile network operators (O2, Orange, Vodafone and T-Mobile). The participating mobile operators have commissioned an independent test company to regularly drive around the UK making in-car test calls on all four networks on selected roads, motorways and in selected towns and cities. Surveys are ongoing and updates are scheduled weekly.

### **3.3 Broadband quality of service**

Because of the nature of the Internet, Internet Service Providers (ISPs) can only provide a "best effort" service, with a target data rate, but no guarantee that this will always be achieved. A number of factors can affect the consumer's experience of an Internet connection that do not relate to the ISP, including:

- the consumer's PC, modem, and software.
- the application or content used by the consumer, *e.g.*, e-mail, music or video.
- the protocols used by Internet applications.
- capacity on shared domestic and international Internet resources.
- the popularity and capacity of content providers' Web resources.
- packetisation of information, which means that there are no dedicated data circuits and therefore variable rates at which data is transferred.

In many cases, therefore, data rates actually achieved can be significantly below those advertised. Many consumers of broadband Internet services do not understand the service characteristics and limitations of the service. In the context of such limited consumer knowledge, there is a tendency to market broadband on the basis of simple promises such as broadband being very fast or 'always

on' and this can lead to disillusionment when such promises are not met. A number of areas of concern have been identified.

- In relation to speed, consumers are not made clearly aware that there may be limitations on availability of the speeds promised, or that the advertised speeds are usually maximums or based on 'best endeavour' rather than guarantees.
- The widespread imposition of download limits or caps expressed in Megabytes or Gigabytes that do not give consumers a clear understanding of how much content they can actually download.
- The lack of information about technology compatibility issues. This includes the need for hardware or software upgrades to deal with broadband services.

Research in the UK indicates that the majority of consumers are unaware of two key issues that might affect the quality of service of their broadband connection (Ofcom, 2006b). These are the "contention ratio" which is a measure of the number of users simultaneously sharing bandwidth, and the imposition of usage caps. Both contention ratios and usage caps are almost ubiquitous in broadband service agreements. Most users are either unaware of what the terms mean and/or have an incorrect understanding of how these terms apply to them. For example, according to one study, 90% of all consumers with broadband connections had never heard of the term "contention ratio". Similarly, over 70% believed wrongly that there was no usage cap on their broadband connection (Ofcom, 2006d).

In the UK, a new Code of Practice to ensure that internet service providers (ISPs) offer greater clarity over customers' broadband line speeds has been published by Ofcom (Ofcom 2008). Some 37 ISPs, covering over 90 per cent of broadband customers, have agreed to honour both the letter and the spirit of the Code to give consumers a clearer understanding of the speeds they can get and to ensure that they are on an appropriate broadband package. Ofcom is concerned that consumers could be misled or misinformed when choosing their broadband services by ISPs advertising headline speeds that are higher than users can receive in practice. Ofcom's own research has shown that consumer satisfaction of ISPs has fallen over the last year. To gain a clearer picture of the issue, Ofcom is also undertaking a comprehensive broadband speed survey to identify actual broadband performance across the country and its relationship to advertised headline speeds.

In Australia, the Telecommunications Industry Ombudsman (TIO), established to handle consumer complaints, has declared:

In the TIO's experience, consumers are often easily confused about broadband, and require detailed explanation by [Internet service providers] about the process and what their expectations should be of the product they are purchasing. While there are tools available to assist consumers in their broadband purchasing decisions ... consumers are not widely aware of the availability of such publications ... (Rural and Regional Services and Development Committee (of the Australian Parliament) (2006).

In the US, for example, there are six different technologies being used to provide broadband services, each with its own strengths and weaknesses which consumers would need to become aware of in order to exercise informed choice.

Similarly, in regard to mobile broadband technologies, there is a confusingly large array of standards surrounding WiFi and WiMAX, which makes it very difficult for consumers to

understand the characteristics of each technology, make comparisons between them and assess the pros and cons of competing devices which make use of the various standards. All WiFi technologies are designated '802.11x', where the 'x' is a letter varying according to the exact 'flavour' (e.g. 802.11a, 802.11b, 802.11g, 802.11n). However, some of these differing standards are not compatible with each other, leading to further confusion.

Consumers with bundling arrangements found comparing services from different bundled service providers more difficult than comparing services from different fixed line or mobile service providers. For instance, only six percent of small business respondents considered it easy to compare bundled packages between different service providers (ACA, 2004a).

### ***3.4 Enhancing access to comparable information on quality of service***

Regulators can encourage the market to provide information on quality of service indicators for fixed voice and mobile voice through an industry-led approach in which network operators and service providers define and manage the scheme and collectively publish indicators for use by consumers. The aim should be to ensure that information provided for consumers is easily comprehensible, objective, reliable, timely and up-to-date.

Regulation should be alert to the risk, however, that imposing the same targets for all operators may limit choices of quality and price. One commentator suggests that the following overall guidelines be considered:

- Consultation should be widespread and taken into account fully before regulations are introduced.
- The measurements made should be important to consumers, practical for operators and comparable between operators. They should concentrate on a few aspects of services.
- The measurements published should be helpful to consumers and fair to operators. They should be publicised in ways appropriate to the culture of the intended users.
- Any targets adopted should be useful and realistic.
- Monitoring should entail regularly examining, and understanding the basis for, the measurements. (Milne, 2006)

In the UK, Ofcom has required all fixed line providers with at least £4 million net revenue and 100 million minutes of voice calls handled to end users per quarter to publish objective and comparable quality of service indicators. Fixed-line providers launched their website [www.topcomm.org.uk](http://www.topcomm.org.uk) in July 2006. The site provides comparable information on service provision, fault incidence and fault repair, complaints processing and upheld billing complaints. The data must be approved by Topcomm's independent auditor before it is published. This auditor ensures that all participants are interpreting the scheme's requirements and measurement definitions in a standard and comparable way. There is also a privately operated website providing an advisory service (<http://www.simplyswitch.com>)

Very few countries regulate or report on broadband quality of service. Regulators in countries that do so (such as the InfoCom Development Authority in Singapore, the Malaysian Communications and Multimedia Commission and the Telecommunications Regulatory Authority of India) measure various technical indicators such as:

- Network latency
- Packet loss
- Bandwidth utilization/throughput
- Service provision/activation time
- Upload time to the service providers FTP site
- Download time from local and overseas websites
- Service availability/uptime
- Fault repair/ restoration time
- Static IP address allocation.

Although such indicators might provide useful information to industry participants for benchmarking and network management purposes, there are concerns that some of them have the potential to further confuse consumers and lead to consumer disengagement. For example, research undertaken in Australia (ACA, 2004b) identified the inability to compare one service offering with another, the difficulty with technical jargon and the lack of information about limitations on services (and what those limitations mean) as key consumer concerns associated with broadband.

In Hong Kong, in April 2008, five major broadband ISPs moved to enhance the transparency of their service performance by publishing performance statistics against their services pledges.<sup>6</sup> This was a joint initiative of the industry and the regulator, the Office of the Telecommunications Authority (OFTA), to further enhance the quality of customer service of the Internet service industry. The published information covers network reliability, service restoration time, technical performance, customer hotline performance and customer complaint handling. With the availability of the information, the aim is that consumers will be better able to make informed purchasing choices based on their own needs. Furthermore, the initiative is designed to encourage the ISPs to further boost their service quality, help enhance the level of customer satisfaction, and enable consumers to monitor the service performance of the ISPs on a continuing basis. The performance statistics are made available at the websites of the five broadband ISPs<sup>7</sup> and are to be updated quarterly.

#### 4. INFORMATION IMPERFECTIONS AND SWITCHING

##### *4.1 Switching and information transparency*

The ability and willingness of consumers to switch is critically important since this enables consumers to access the benefits introduced by new entrants. And the ability to switch will also

<sup>6</sup> Press release of the Office of the Hong Kong Telecommunications Authority, 27 April 2008.

<sup>7</sup> The ISP web sites are as follows:

- HKBN: [www.hkbn.net/bb1000/cc\\_pledge.htm](http://www.hkbn.net/bb1000/cc_pledge.htm)
- HGC: [www.hgcbroadband.com/per\\_pledge\\_eng.html](http://www.hgcbroadband.com/per_pledge_eng.html)
- NWT: [www.newworldtel.com](http://www.newworldtel.com)
- PCCW-IMS: [www.netvigator.com](http://www.netvigator.com)
- HKCTV: [www.i-cable.com/cs/announcement/e-content-service-pledge.html](http://www.i-cable.com/cs/announcement/e-content-service-pledge.html)

Hyperlinks to the above web sites are also provided in OFTA's (the regulator) website for easy access: [www.ofta.gov.hk/en/consumer\\_interest/pp-broadband.html](http://www.ofta.gov.hk/en/consumer_interest/pp-broadband.html)

exert pressure on the incumbent operator to deliver benefits to its customers. If switching is discouraged or impeded this could impact not only on the demand side but also potentially raise supply-side barriers (Barrow 2007). This is because new entrants could be deterred from entering the market in the belief that it will be difficult to persuade consumers to switch from their existing provider. This could diminish ‘contestability’ and the effectiveness of competition and limit the benefits that consumers would otherwise derive from it.

Where consumers have too little information, information that lacks transparency, or too much information of inconsistent quality, this may be a cause of consumer reluctance to switch because they are unsure about the benefits of switching.

Consumers will not switch to a competing supplier unless the price difference clearly exceeds the switching costs. This suggests that when price differences are not clear (or where switching costs are high), consumers will be less likely to switch. Thus indications of consumer reluctance to switch may be indicative of the difficulty in making price comparisons and/or in switching although there are several other factors that could be affecting consumer switching behaviour<sup>8</sup>.

While prices and affordability dominate the reasons given for switching, quality of service also features as a reason for a significant minority of those who have considered switching.

#### **4.2 Evidence of actual consumer behaviour in telecommunications markets**

As noted earlier, behavioural economics argues that the study of *actual* consumer behaviour as distinct from how consumers should behave generates valuable insights into the sort of information that consumers would find valuable in making decisions. Accordingly, this section examines the available evidence of actual consumer behaviour in the telecommunications services sector and influences on such behaviour.

Table 7 shows the results of a survey on switching by telecommunications consumers in EU25 countries. The majority (about 70%) had not switched or thought of switching during 2005-2006.

**Table 7. Consumer switching between fixed line, mobile and internet service providers**

<b>Have you tried or thought about switching telephone providers during the past two years?</b>			
	Yes (%)	No (%)	Don't know (%)
Mobile	29	69	2
Fixed line	25	71	4
Internet service providers	25	71	4

Source: EC (2007), “Special Eurobarometer 260 -- Services of General Interest”, July.

Available at [http://ec.europa.eu/consumers/cons\\_int/serv\\_gen/cons\\_satisf/eb260\\_report\\_en.pdf](http://ec.europa.eu/consumers/cons_int/serv_gen/cons_satisf/eb260_report_en.pdf)

<sup>8</sup> The research (see Xavier and Ypsilanti, 2008) suggests other important deterrents to switching, include:

- lengthy and cumbersome switching procedures that make it inconvenient for consumers to switch and can outweigh any potential benefits;
- early exit charges, imposed by an existing provider, that reduce the benefits of switching.
- technical incompatibility of equipment that can make it uneconomical for consumers to switch (for example, if they cannot use a blocked mobile phone with their new provider);
- long-term deals that lock consumers into lengthy relationships with their providers (as may occur with mobile telephony and Internet contracts) and increase the risk of them being overcharged.

Further details about survey results concerning switching behaviour are examined below.

#### ***4.2.1 Consumer behaviour in the fixed line market***

##### *EC fixed line switching*

Table 8 shows the results of a survey on switching between fixed line telecommunications providers in EU25 countries. The majority (65%) had not tried to switch. However, about 16% of consumers in EU25 countries did switch and found that it was easy. It is not clear what can be concluded from these figures. One possible interpretation is that for those determined/skilled enough to obtain the information to switch, switching was not all that difficult. But for the majority, the information was not readily available. Or the explanation could be one that supports the (endowment factor) contention of behavioural economists that we tend to stay with our present provider unless something major happens to upset us. Or of course, it could simply be that the majority are satisfied customers with no incentive to switch.

##### *United Kingdom*

Ofcom's research found that in the United Kingdom, one in three (34%) of the fixed line consumers surveyed had changed the supplier providing their home fixed-line service in the last four years (2003-2006). However, two-thirds (66%) had not switched in this time period and the majority (52%) had not even considered doing so. Regardless of whether or not they had switched supplier in the last four years, 34% had made some change to their existing service with their current supplier in this time period. A similar proportion claimed to keep an eye on the market: around a third (36%) agreed that they were always seeking a better deal and a similar proportion (31%) agreed that they made a conscious effort to keep up-to-date with what other providers were offering. In this context, it is notable that according to Ofcom's research, 86% of fixed line consumers in the UK were satisfied with their overall experience with their current supplier: almost half (46%) were very satisfied and a similar proportion (40%) were fairly satisfied. Clearly, if consumers are satisfied, there may be no/less reason for them to switch.

Consumer responses to Ofcom's questionnaire surveys indicated that the greatest deterrent to shopping for an alternative fixed line supplier is the possibility of getting locked into a contract with a new supplier: two-thirds of consumers (67%) agreed that they would be put off by this. The second greatest barrier to switching was reluctance to leave a known and trusted supplier for one that is unfamiliar – stated by 65% of consumers. In the fixed line market, many consumers have been with their supplier for many years. For some consumers, their relationship with their fixed line supplier was perceived as being more important than whether they could get a better deal elsewhere. Because of the “endowment factor” -- a factor influencing consumer behaviour underlined by behavioural economics -- these consumers would only switch if they had experienced a serious betrayal of trust that incites a ‘revenge value’ to switching. As many as one in two (53%) fixed line consumers agreed that they had a strong sense of loyalty to their existing supplier (Ofcom 2006b). No significant differences were detected between demographic groups. In other words, differences are due to attitudes and behaviour rather than by differences in demographics.

In summary, Ofcom concluded that in the fixed line market, in the face of an undifferentiated market (perceived or actual), some consumers are adopting fallback, risk-averse strategies and will stay with what they know and trust, even though it might not be the best rational option. This appears to support the arguments of behavioural economics. Ofcom's findings suggest that the greatest chance of furthering participation in the fixed line market are efforts to help consumers to



overcome their inertia, by allaying fears regarding the potential risks associated with switching services, or by educating them regarding the tangible benefits of any new service over and above their existing arrangement (Ofcom 2006b).

**Table 8. Switching between fixed line telecommunications providers in EU25 countries**

<b>Have you tried/thought about switching your fixed line telecommunications provider in the last two years?</b>						
	No, you did not try because you are not interested in switching	No, you did not try because you thought it might be too difficult	Yes, you tried to switch but you gave up due to the obstacles you faced	Yes, you switched but it was difficult	Yes, you switched and it was easy	Don't know
CY	91	4	3	1	1	2
SI	89	6	3	1	1	2
MT	85	7	1	1	4	3
LT	84	9	2	1	1	3
FI	82	9	1	3	1	4
SK	82	10	2	1	4	2
EL	81	5	2	1	10	4
EE	81	5	2	1	8	4
LV	80	10	1	1	3	6
ES	80	5	2	3	5	2
LU	79	11	8	1	1	2
AT	77	7	1	2	7	5
HU	76	7	2	2	9	1
PT	71	14	3	6	9	1
PL	70	6	8	2	11	3
UK	67	5	1	1	21	3
CZ	67	14	6	2	10	2
DK	65	11	3	4	15	2
BE	63	9	2	2	21	2
IE	62	13	1	3	13	7
IT	60	7	6	8	14	5
DE	59	14	4	3	18	4
FR	54	10	5	6	22	2
NL	53	6	9	5	24	3
SE	50	6	9	5	24	2
EU25	65	9	3	3	16	2
EU15	65	9	3	4	17	2
NMS	73	8	6	2	9	2

Source: EC (2007), "Special Eurobarometer 260 -- Services of General Interest", July.

Available at [http://ec.europa.eu/consumers/cons\\_int/serv\\_gen/cons\\_satisf/eb260\\_report\\_en.pdf](http://ec.europa.eu/consumers/cons_int/serv_gen/cons_satisf/eb260_report_en.pdf)

#### **4.2.2 Consumer behaviour in mobile telecommunications markets**

##### *European Union*

Table 9 shows the results of a survey on switching between mobile telecommunications providers in EU25 countries. While there were wide variations on a country by country basis, the majority of consumers surveyed (62%) responded that they were not interested in switching. Only 7% said

they did not try because they thought it was too difficult. In fact, 20% of consumers had actually switched mobile provider over the past two years and said that the switching process was easy. Again, from the information generated by the survey it is not clear how these figures might be interpreted and to what extent lack of information was responsible for reluctance to switch.

**Table 9. Switching between mobile phone providers in EU25 countries**

<b>Have you tried/thought about switching your mobile phone provider in the last two years?</b>						
	No, you did not try because you are not interested in switching	No, you did not try because you thought it might be too difficult	Yes, you tried to switch but you gave up due to the obstacles you faced	Yes, you switched but it was difficult	Yes, you switched and it was easy	Don't know
MT	83	7	1	1	9	1
CY	83	3	3	1	10	1
PT	82	10	3	1	8	1
SI	80	3	5	2	14	1
HU	77	6	1	3	14	1
SK	76	8	3	1	11	1
LV	73	7	3	1	13	2
ES	72	4	3	6	14	1
EL	70	5	1	3	23	1
CZ	68	10	1	3	17	1
PL	68	5	5	1	20	2
EE	67	4	2	3	21	4
LU	65	8	2	3	22	1
UK	64	5	4	2	22	1
LT	64	4	4	3	24	1
BE	62	9	4	4	20	1
SE	60	7	2	5	26	1
IT	60	7	5	8	18	2
IE	59	12	2	2	22	1
FR	58	10	7	6	16	2
AT	57	5	2	4	29	3
NL	57	5	5	8	25	1
DE	53	11	5	5	24	3
DK	49	9	3	8	29	4
FI	45	3	2	3	47	1
EU25	62	7	6	5	20	2
EU15	61	8	5	5	21	2
NMS	70	6	3	3	17	1

Source: EC (2007), "Special Eurobarometer 260 -- Services of General Interest", July.

Available at [http://ec.europa.eu/consumers/cons\\_int/serv\\_gen/cons\\_satisf/eb260\\_report\\_en.pdf](http://ec.europa.eu/consumers/cons_int/serv_gen/cons_satisf/eb260_report_en.pdf)

### *United Kingdom*

Ofcom found that more than a third (36%) of mobile telecommunications consumers in the UK had changed their mobile phone network supplier in the last four years. The figure rises to 52% for those who are on an annual contract and falls to 29% for those who are on pre-pay packages. However, two-thirds (66%) had not switched during this time period and the majority (53%) had

not even considered doing so. Even among the 7% who had considered switching, not all had actively started looking for an alternative.

Ofcom pointed out that although the majority of consumers in the mobile phone market have not considered changing their supplier, they are nevertheless ‘participating’ in other ways. 32% had made some change to their existing service with their current supplier during this time period. While consumers were far more likely to change the tariff or package they were on (31%) than ask their supplier to match a better deal they had seen elsewhere (8%), mobile phone users seemed aware of their potential to negotiate. 62% of those on contracts had changed their existing tariff/package and 16% had attempted to renegotiate their package/deal. Around a third of all consumers claimed to keep an eye on the mobile phone market. 32% agreed that they were always searching for a better deal and 28% agreed that they made a conscious effort to keep up-to-date with what other providers were offering. In terms of reasons given for not switching, more than half the telecommunications consumers surveyed (54%) said that they were very satisfied with their overall experience with their current supplier and another third (36%) said that they were fairly satisfied. Post-pay and pre-pay consumers were equally satisfied with their current network supplier.

The research also identified a range of procedural and psychological barriers perceived by mobile telecommunications consumers as Table 10 indicates. The greatest deterrent to shopping for an alternative mobile phone network supplier was the possibility of getting locked into a contract with a new company. Around two-thirds of consumers (68%) agreed that they would be put off by this.

Reflecting a similar sentiment, the second greatest barrier to shopping was reluctance to leave a known and trusted supplier for one that was unfamiliar, an issue for 64% of consumers. This refers to the extent to which consumers value their relationships with their mobile phone network supplier. More than one in two (55%) agreed that they had a strong sense of loyalty to their existing network supplier. This was particularly the case for inactive consumers of whom 39% were likely to be ‘relational’ people (with a preference for using trusted brands known or recommended to them) and only 14% were likely to be ‘transactional’ people (willing to consider unfamiliar brands if they offer a good deal). This manifestation of the ‘endowment factor’ and/or ‘irrational’ fear or ‘risk averseness’ relating to a change to a new provider are consistent with the arguments of behavioural economics.

More regulatory attention might be directed to this ‘barrier to switching’. For instance, the cost of breaking a contract might be lowered where a consumer can demonstrate that conditions of the contract were not being delivered by the supplier.

The consumer traits of lack of confidence, heuristics, and susceptibility to information overload emphasised by behavioural economics also appeared to play a role in decision-making. Among so-called “inactive” consumers, 48% did not feel they knew enough to make the right choice and 42% expressed concern about “appearing stupid in front of sales staff”. 44% were willing to accept a solution that they felt was ‘good enough’ rather than investigate all options to find the ‘best’ one.

**Table 10. Perceived barriers to shopping and/or switching mobile phone suppliers in the UK**

<b>Response to Question (with prompted reasons): “I did not switch my mobile phone supplier because..”</b>					
<b>Reason</b>	<b>Agree %</b>	<b>Strongly agree %</b>	<b>Total agree %</b>	<b>Post-pay %</b>	<b>Pre-pay %</b>
Don't want to get locked into contract with new provider	47	21	68	47	52
Reluctant to leave provider I trust for one I don't know	47	17	64	52	59
Strong sense of loyalty towards current provider	36	19	55	<b>No difference</b>	
Shopping for new provider too much of a hassle/chore	41	12	53	41	49
Only short term gain as providers follow each other	43	9	52	<b>No difference</b>	
Difficult to make comparisons b/w providers	38	9	47	35	53
Don't have time to research options	38	9	47	34	54
Don't want to lose current deal/package	32	14	42	<b>No difference</b>	
Big risk that something will go wrong in transition	30	7	37	<b>No difference</b>	
Don't know enough to make right choice	28	9	37	27	42
Bound to feel stupid/out-of-date when I talk to sales staff	21	12	33	24	37
No difference in cost of supplier	28	4	32	27	33
No difference in quality of supplier	26	3	29	23	32
Don't know where to find trusted info about options	21	5	26	<b>No difference</b>	

*Note: Base: All mobile (500). Percentages represent share of total sample.*

*Source: Ofcom, 2006b*

In this market, consumers on contracts also appear to be bound to their suppliers as a result of having negotiated or been given special deals: two fifths (42%) of consumers expressed concern about losing the package or deal they were on. Early exit penalties could also apply here.

The process of shopping was itself likely to discourage around half of the consumers surveyed: 53% agreed that shopping for a new supplier was too much of a hassle; 47% agreed that it was difficult to make comparisons between suppliers; and 47% agreed that they did not have enough time to research the options. Moreover, many (52%) perceived that the gain would be short term because all the suppliers follow each other. As Table 10 indicates, this is particularly the case among pre-pay consumers, who perceived higher barriers to switching than those on contracts: 82% of pre-pay users agreed they did not want to be locked into contracts with a new provider. They were also significantly more likely to regard shopping for a new network supplier as an onerous process, approaching it with lower levels of interest and confidence than contract users.

In summary, Ofcom concluded that the evidence suggests that in the UK mobile telecommunications market, in the face of complexity and lack of market differentiation (perceived or actual), some consumers will stay with what they know, even though it might not be the 'best' option. Ofcom concluded that the greatest chance of furthering consumer participation in the mobile phone market is through efforts made to influence these key drivers, for example by

educating them in regard to the tangible benefits of any new service over and above their existing set-up, by making the switching process easier or by helping consumers to overcome inertia.

### *Portugal*

In Portugal, Table 11 indicates that of those mobile telecommunications consumers responding to a survey conducted for Anacom about 19% have switched. Of these, about one-third switched because “most of my contacts are clients of the new operator”. Presumably there was some advantage with being on the same network such as network coverage and/or discounted or free calls to consumers on the same network. Another one-third of those who switched did so because they were “unhappy with prices” of their old operator. 13.7% of those who switched did so because they were unhappy with the quality of service provided by their old operator and 8.6% because of an offer from the new operator.

Of the 80.7% who had never changed operator, 66% were satisfied with their current operator and 31.2% because “most of my contacts are clients of current operator”. Only about 10% of consumers seemed focused on price as a driver of switching and even less (about 4%) on quality of service.

**Table 11. Switching mobile telecommunications operator in Portugal**

<b>Have already changed operator</b>	<b>19.3%</b>
Most of my contacts are clients of new operator	34.6%
Unhappy with prices	33.3%
Unhappy with quality of service	13.7%
Offer from new operator	8.6%
Other	20.6%
<b>Never changed operator</b>	<b>80.7%</b>
Satisfied with current operator	66.2%
Most of my contacts are clients of current operator	31.2%
Offers the best prices	6.6%
Switching is too complicated / inertia	3.2%
Decision of another person	2.8%
More / better network coverage	0.8%
Keep the same number	0.4%
Other	4.0%
Do not know / Did not respond	2.3%

Source: Anacom 2006.

### *Australia*

An Australian survey, summarised in Table 12, found that the likelihood of consumers switching service provider ranged from: about 13.5% for fixed line providers, 14% for mobile telecommunications providers and 16.5% for Internet service providers during July 2005 to June 2006. The remaining consumers said they were either ‘unlikely’ or ‘neither likely nor unlikely’ to switch providers.

**Table 12. Consumer likelihood to switch providers in Australia, 2004-2006**

Respondents were asked 'How likely would you be to switch companies, if you were able to buy that service from another company?' (Excludes 'no answer' and 'doesn't apply')						
	Very or fairly likely to switch		Neither likely nor unlikely to switch		Very or fairly unlikely to switch	
	July 2004- June 2005	July 2005- June 2006	July 2004- June 2005	July 2005- June 2006	July 2004- June 2005	July 2005- June 2006
Local telephone company	13.5%	13.2%	29.2%	27.9%	57.3%	58.8%
STD telephone company	13.0%	12.8%	29.8%	28.3%	57.2%	58.9%
International telephone company	11.8%	11.5%	30.7%	29.1%	57.5%	59.5%
Mobile phone service provider	14.5%	13.9%	29.2%	28.2%	56.4%	57.9%
Internet service provider	16.8%	16.5%	30.6%	28.3%	52.5%	55.2%

Source: Roy Morgan Research, questionnaire survey sample of approximately 23,000 people aged 14+ years. Cited in ACMA (Australian Communications and Media Authority), 2006.

#### **4.2.3 Consumer behaviour in Internet Markets**

##### *Switching ISPs in the European Union25*

Table 13 shows the results of a survey on switching between internet service providers in EU25 countries. Users of the internet in this survey were asked whether they had tried or thought about switching their dial-up or broadband provider during the past two years. The largest proportion (64%) of internet users said that they were not interested in switching. 7% of users were put off trying to switch providers because they thought the process would be too difficult.

The proportion of respondents who said they were not interested in switching varies substantially across the EU with the highest percentages in countries such as Slovenia (82%) and Cyprus (86%) where competition is relatively low. However, the proportion of those surveyed who had not considered switching is high even in countries where competition among ISPs is relatively strong.

Whether respondents were not interested in switching because of the lack of information transparency or competition or whether they were prepared to stay with their existing provider because they were satisfied with it is unclear from the survey results.

**Table 13. Results of Survey on Switching Internet Service Providers**

<b>Have you tried/thought about switching your internet service provider in last two years? (Negative responses)</b>			
	<b>No, you did not try because you are not interested in switching</b>	<b>No, you did not try because you thought it might be too difficult</b>	<b>Don't know</b>
CY	86%	4%	4%
SI	82%	4%	3
LV	78%	6%	5%
HU	76%	4%	4%
EE	75%	2%	5%
LT	75%	4%	8%
PL	75%	4%	8%
ES	73%	5%	5%
SK	73%	7%	10%
LU	72%	8%	2%
FI	72%	4%	6%
EL	70%	7%	2%
AT	69%	6%	10%
PT	68%	12%	12%
BE	67%	8%	2%
CZ	66%	8%	2%
MT	66%	6%	2%
IE	65%	13%	13%
UK	65%	5%	5%
DK	62%	9%	2%
IT	62%	7%	10%
SE	62%	8%	3%
FR	60%	6%	6%
NL	59%	5%	4%
DE	57%	12%	4%
EU15	63%	7%	5%
NMS10	74%	5%	7%
EU25	64%	7%	5%

Source: EC (2007), "Special Eurobarometer 260 -- Services of General Interest", July. Available at [http://ec.europa.eu/consumers/cons\\_int/serv\\_gen/cons\\_satisf/eb260\\_report\\_en.pdf](http://ec.europa.eu/consumers/cons_int/serv_gen/cons_satisf/eb260_report_en.pdf)

### *United Kingdom*

According to Ofcom's research, awareness of alternative suppliers is lowest in the Internet market with around 20% of Internet consumers in the UK unable to spontaneously name any narrowband or broadband Internet service providers (ISPs) in their area. However, half of Internet subscribers were spontaneously aware of two or more narrowband suppliers, and this rises to 74% when prompted (Ofcom 2006b).

Just over one quarter (28%) of UK consumers have switched their ISP supplier – 18% having changed supplier more than 12 months ago, and 9% more recently. These are lower levels than for fixed or mobile services, perhaps reflecting the earlier stage of development for Internet/broadband services. Just over a quarter (28%) of the Internet consumers surveyed had

changed the supplier during the last four years. However, about three-quarters (72%) had not switched during this time period and the majority (46%) had not even considered doing so. Even among the 13% who had considered switching, not all had actively started looking for an alternative.

Ofcom found that regardless of whether or not they had switched ISP in the last four years, almost three-quarters (72%) had made some change to their existing service with their current ISP in this time period. This was mainly the result of consumers switching connection type (62% had done this) and/or switching tariff, including upgrades to connection speed (53% had done this). A few (10%) had re-negotiated their deal (*i.e.*, asked their current ISP to match a better deal they had seen elsewhere). Thus, even though the research shows that many consumers in the Internet market have not considered changing their Internet service provider (ISP), competition had allowed them to ‘participate’ in other ways.

Compared with broadband users, narrowband users were significantly less likely to have made any changes to their existing package: 24% had changed connection type and 25% had changed their tariff or package.

According to Ofcom’s research, the greatest deterrents to active participation in the Internet market include the possibility of getting locked into a contract with a new supplier (68% of consumers); reluctance to leave a known and trusted ISP for one that was unfamiliar (63% of consumers); and perceived effort of shopping around, including difficulty in making comparisons between ISPs (44%) and not enough time to research all the options (40%). The main drivers of participation include interest in technology and desire for low cost and/or willingness to consider unfamiliar brands if offered a good deal. There were few demographic differences, suggesting participation is influenced by attitudes and behavioural factors rather than by differences in demographics.

This information suggests that in the face of complexity (perceived or actual), inactive consumers are adopting fallback, risk-averse strategies and will stay with what they know, even though it might not be the ‘best’ option. The information is consistent with the argument of behavioural economics that an “endowment factor” serves to influence decisions in favour of the present provider.

## **5. IMPLICATIONS FOR TELECOMMUNICATIONS REGULATION**

### ***5.1 Policy and regulation to address consumer detriment resulting from imperfect information***

#### *Increase awareness of alternative suppliers*

The majority of consumers seem aware of alternative providers of communications services. In those areas where knowledge and understanding is lower, growing competition is expected to lead naturally to an increased awareness of alternative providers. Nevertheless, where the market is not doing so or is unlikely to do so, there is a clear role for regulators to assist consumer participation by raising awareness of the availability and tangible benefits of different services. Consideration may need to be given to how these kinds of educational campaigns could be tailored, in both their message and distribution channel (e.g. a leaflet, consumer hotline or web based programmes) to different groups of consumers to provide them with practical guidance to quickly identify the most suitable/cheapest telecommunications plan.



A good reputation is a prized asset for a business. Regulators should explore ways of unlocking the power of reputation to change a supplier's behaviour in a way that benefits consumers but that is also fair to business (NCC, 2005a).

Steps could be taken to make comparisons across providers easier, thereby reducing search costs of consumers and facilitating the switching process. For example, regulators could work with fixed line and mobile network operators to develop and publicise a set of comparable indicators relating to quality of service. Monitoring the quality of service of mobile telecommunications providers and making this information available could also help consumers compare signal strength, dropped call counts and dead zones across providers. Furthermore, regulators could encourage third parties, including consumer organisations, to provide price/service-comparison facilities through radio, consumer hotlines, websites, etc.

### ***5.2 Regulation of information disclosure***

More information is usually seen to be desirable. But, as a remedy for market failure, information disclosure may have its limits. A demand-side "behavioural" perspective warns that if consumers have limited cognitive abilities, either generally or in a particular situation, then adding more information may result in information overload and hence in worse decision making. Excessive disclosure can confuse consumers (as evidenced in the case of mobile phone and Internet tariffs options) and can also discourage firms from providing useful information through their advertising. In these cases, the need is not for *more* but for better (perhaps less) information in a structured easily comprehensible format (Gans 2005). There is need for rigorous analysis of the cost and benefits associated with alternative remedies before any government action is justified. Where feasible, such analysis should be empirically based.

Typically, a mandated disclosure is intended to improve the information received by the less-informed buyers to a greater extent than by those more sophisticated consumers who may already possess and be able to process the requisite information. But the reverse can also be the case where it is the more sophisticated (and more cognitively capable) consumers who can make more use of the information contained in a mandated disclosure. For example, mandating information on broadband download speeds and caps can be of far more use to those consumers who have at least a basic knowledge of technical features of broadband capacity (e.g. bits per second).

Differences in the incidence of benefits from a mandated disclosure mean that any costs could tend to be differentially imposed as well. Some consumers may be provided with information they cannot use, some may be provided with information they do not need, and some others will be overloaded with information, but all will have to pay for the compliance and related costs (OECD, 2006).

This cautionary note aside, there are many situations where an information disclosure remedy is necessary and appropriate. Even in competitive markets, suppliers may possess market power if consumers are not well informed about products, supply conditions and/or alternatives and feel unable/unwilling to switch between these alternatives. Providing consumers with more and better information, for example, through mandatory disclosure or through third party certification may facilitate more active participation in the market and wiser decision-making.

Three policy options concerning information disclosure were analysed by the EC:

*Option 1:* Encourage more industry self-regulation;

*Option 2:* Update and strengthen the current provisions; and

*Option 3:* No change to the regulatory framework.

The EC considered against Option 1 considering that at the present time it would not be feasible to expect that voluntary self-regulation would result in a significant improvement in consumer protection and user rights.

The EC considered that Option 2 is the most appropriate, while not ruling out the possibility of self-regulatory developments within the legal framework that Option 2 would create where these would effectively achieve the results sought. Option 2 takes into account technological advances and market developments and ensures that consumer issues would be guaranteed by law and not simply enshrined in industry agreements.

In the UK, in all three telecommunications markets (fixed line, mobile and Internet), a factor that respondents to questionnaire surveys indicated was important in influencing them to consider switching was the availability of information to calculate the cheapest supplier based on their usage profile (Ofcom, 2006b). Information disclosure can take many forms. In the UK, websites of the fixed line suppliers were the highest claimed source of information (42%), followed by recommendations from friends / family and brochures/ promotional literature both of which were used by around a third of all switchers (Ofcom, 2006b). Of all the information sources consulted, word-of-mouth recommendations were regarded as being the most trusted source (28%), and also the easiest to understand (22%). The supplier websites were regarded as the most informative sources (with 24% of switchers agreeing that this was the case).

To remedy information deficiencies, regulator should consider whether to furnish the missing information itself, to encourage the industry to provide the necessary information or, if necessary, oblige the industry to disclose it. Because of information asymmetry, the regulator will need to seek the co-operation of the regulated sector and to some extent should also depend on self-regulation and co-regulation.

“Consumers can aid benefits to achieving regulatory outcomes if they are given the right tools. Empowering them to reward good practice is more sustainable than enforcers hunting down the rogues. Regulators should see consumers not just as prime beneficiaries of regulation but as co-producers of it. Active consumers can do far more than governments and regulatory institutions can to regulate markets. Their sensitivity to price and quality promotes efficiency and improvement, regulating firms by spurring them on...At present, however, consumers can only have their decisions on limited information, mainly confined to price. By providing consumers with independent information about quality indicators – such as compliance rates or upheld complaints – our regulatory institutions can help to square the virtuous circle and promote consumer power.” (UK Better Regulation Executive 2007a)

### ***5.3 Addressing behavioural bias***

Just as informational problems may be multi-faceted, so, too, may problems that result from *behavioural biases*. It is important for policy and regulation to recognise these biases and develop a fuller understanding of the needs and motivations underlying consumer behaviour in telecommunications markets.

Not all behavioural biases lead to consumer detriment. For the most part they do not lead consumers to depart significantly from optimal decisions. Public policy should be concerned only with those biases that lead to significant detriment. When markets fail because of such costly biases, remedies should be shaped accordingly. For example, a situation of choice or information overload could be aggravated by a requirement for more information disclosure. Rather, the

appropriate intervention may involve re-framing the information that is available to consumers in a way that makes choice easier.

The policy implications of demand-side analysis in some respects are more challenging than those derived from the more traditional approach to consumer protection and empowerment. For instance, behavioural economics predicts that for various reasons some consumers (or consumers in some circumstances) may act in ways that are inconsistent with their “ex ante” preferences. Consumers may use information in ways not predicted by neoclassical theory or they may, for various reasons, not use available information. Thus, while in some cases providing more information or providing information in a different form may remove or reduce the risk to consumers, this will not always be the case. If it is to be effective, an effort to inform consumers must appreciate how people actually think. The behavioural response to identical pieces of information will depend on how they are presented and framed.

Thus, in circumstances where the conduct of suppliers alters the preference set of consumers, and hence their choices, resulting in an inferior outcome for those consumers, the solution may lie in regulatory intervention that aims to “steer people’s choices in welfare-promoting directions without eliminating freedom of choice” (OECD 2006).

1. *Resetting defaults.* Options can be presented in ways that lead the consumer to gravitate towards certain choices that are in their interests. For example, to overcome the biases of hyperbolic discounting and of default inertia, renewal of a telecommunications contract can be presented with ‘opting out’ as a default. Policy-makers and regulators could consider the use of “light” interventions such as a mandatory ‘opt in’ default provision (rather than an “opt out” default) as part of arrangements for extending a telecommunications contract.
2. *Reframing.* Suppliers can be required to present information in a variety of frames, or in specific frames that may guide sound consumer choice. The policy solution under a demand-side “behavioural approach” is that rather than requiring that the consumer read ever more complex contracts, the government can mandate standard form clauses or even standard form contracts. This recognises that consumers probably will not read the contract in detail. But care should be exercised so that in removing ambiguity, the behavioural solution also tries not to limit consumer choice since this can make consumers worse off if parties are now constrained to government-devised contracts that are inflexible and cannot be altered to fit their personal circumstances.
3. *General de-biasing.* Although biases are generally deeply ingrained, there is a role for consumer education, making consumers aware of their biases, and helping them to develop mechanisms to overcome those biases that go against their self-interest. For instance, to counter “hyperbolic discounting”, consumers might be counselled to consider carefully whether a flat rate contract or a “free” mobile phone handset with a two-year contract really does suit their usage level and pattern. Cooling-off periods can be used to allow consumers to re-frame their choices and to give them an opportunity for rational re-consideration to overcome the influence of impulsive choice, such as those resulting from “hyperbolic discounting”.
4. *Recognising risk averseness in the switching process.* In addition to making more information available, raising awareness, and addressing some of the behavioural biases that may prevent consumers from actively participating in the market and making decisions to switch where not satisfied, there are some specific measures that can be taken by regulators to

reduce practical impediments to consumers switching from one supplier to another. For example, regulators could ensure that the shortest possible time is taken to complete number portability for consumers switching fixed line and mobile telecommunications providers. Regulators could require that all Internet service providers ensure a simple, costless (or at least cheap) and quick transfer of consumers who choose to switch provider. Regulators could examine the need to limit the “lock in” period for mobile phone handsets in order to facilitate switching. Where applicable, the fee for unlocking the handset should be related to the cost involved.

In November 2007, the report of a review on ways of improving the provision of information to consumers conducted by the Better Regulation Executive and the UK National Consumer Council was published (UK Better Regulation Executive 2007a). The report recommended that government (departments and regulators) apply five tests in policy design, when considering the use of regulated information requirements:

1. Have you defined the behavioural outcomes that you wish to achieve? (What do you want to achieve?)
2. Will information provide a sufficient incentive for consumers to change their behaviour? (Is the information likely to be of value to consumers?)
3. To what extent does the information fit with the wider system and simplify choices for consumers? (Will the information help consumers make choices?)
4. Is the information aligned with business incentives, where this is possible? (Will businesses support or oppose what you are trying to achieve?)
5. Have you considered the fit with existing information requirements? (What information is already there?)

The UK government accepted the recommendation regarding the use of these tests announcing that they would be referenced in the Impact Assessment toolkit as good practice and included in appropriate training and reference materials in the UK (UK Better Regulation Executive 2007b).

The UK government also accepted the report’s additional recommendations that it:

- pilot the use of outcome-based approaches to information requirements, enforced on the basis of consumer understanding of messages rather than provision of information.
- commission research to develop concrete proposals of how information requirements might be presented over the Internet.
- work in partnership with consumer groups to develop a scheme to incentivise policy-makers and business to provide innovative approaches to communicating with consumers.
- test all significant future regulated information provision requirements in a semi-final format with consumers before implementation.
- review all significant information requirements after an appropriate period (e.g., 2-3 years) with a presumption that a requirement be redesigned or removed unless it can be shown to be effective in improving outcomes.

### *Contracts and advertising materials*

Particular attention is needed to ensure accurate disclosures in the pre-contractual phases and to the clarity of contract terms themselves. Regulators could require all mobile telecommunications operators to use contracts and marketing materials that clearly spell out the terms of the contract in an easy-to-read, standardised format. The disclosures could include:

1. Rate information, including monthly base charge, per-minute charges for minutes not included in the plan, the method for calculating minutes charged, late payment penalties, and other usage fees.
2. Plan details, including a breakdown of weekend/daytime, nights/weekend, long-distance, roaming, incoming calls, and directory assistance.
3. Termination and start-up fees, as well as the termination dates for the trial plan and contract.
4. Taxes and surcharges.

### *Billing*

Telecommunications billing issues are a frequent source of consumer confusion and disempowerment. A number of countries have taken steps to address this issue and establish rules for service providers regarding the provision of billing information. For example, in 1999, the Federal Communications Commission (FCC) released the *Truth-in-Billing Order* to address growing concerns relating to billing and an increase in the number of entities willing to take advantage of consumer confusion in this area. The truth in billing principles that have been established apply to all carriers, including wireless carriers and generally require: 1) that consumer telephone bills be clearly organised, clearly identify the service provider, and highlight any new providers; 2) that bills contain full and non-misleading descriptions of charges that appear therein; and 3) that bills contain clear and conspicuous disclosure of any information the consumer may need to make inquiries about, or contest charges on the bill.

Where not already in place, these kinds of “truth in billing” measures should be encouraged by regulators. With respect to mobile telecommunications bills, roaming charges which are complex and not well understood by consumers should be clearly itemised on the bill identifying the date and location of the call.

### *Codes of practice*

Industry codes of practice and other self-regulatory measures can, and have, been put in place to address many of the issues addressed above. When effectively enforced these kinds of measures can be very valuable to improve consumer confidence in the market and arguably are preferable to regulatory intervention.

### **5.4 Vulnerable consumers**

The way vulnerable and disabled consumers are disadvantaged in terms of their ability to participate in the market warrant special attention. Research conducted in the UK (Ofcom 2006b) found that such vulnerable and ‘uninvolved’ consumers may share a range of common characteristics that could justify targeted action:

- They tend to be older – people in the age group 65 years and older make up a large share of this group.
- They tend to be on lower incomes.
- They are less likely to have Internet access at home – in the age group of 65+ only 27% have home Internet access.
- They tend to have a lower than average understanding of new technology terms, a lower than average awareness of alternative suppliers and are often lacking in the knowledge of their rights.

For instance, Ofcom's research (Ofcom 2006b) indicates that while those without Internet access – frequently older and low income consumers – are less likely to look for information at all, providing price information solely via websites could risk excluding relatively large and vulnerable groups of consumers. There is need for further research to assess:

- Consumers' use of information sources and how consumers use these when making choices.
- Consumer opinion on current information obtained through *e.g.* supplier websites, Internet generally, specialist publications.
- The importance of savings in switching supplier, what trade-offs are made when considering whether to switch, and the key drivers in consumer decisions to search or switch.
- The extent to which misperception, low awareness of achievable savings or ease of the switching process impacts on consumer switching decisions.

There is particular need to assess the needs and motivations of consumers -- especially uninvolved and vulnerable consumers -- in more detail to ascertain what (if anything) would encourage more participation in telecommunications markets. This would assist consideration of whether and if so what regulatory intervention is warranted.

All consumers want simply understood information. If business and policy-makers design the regulated information with vulnerable consumers in mind, then all consumers are likely to benefit.

## **6. CONCLUSION**

Communicating by electronic means has become a central feature in many developed as well as developing countries and this will become even more so as next generation communication infrastructures and services are put in place. Technological advances and market pressures have made telecommunications and ICT products and systems increasingly complex and feature rich. But this has also increased the complexity faced by consumers in determining appropriate products that satisfy their needs and in evaluating alternative product offerings by competing providers.

This background paper points to a number of conclusions and proposals.

- To help reduce consumer detriment due to information deficiency, consumers require:
  - awareness of alternative suppliers and services
  - access to comparative information on the features, prices and quality of the available services
  - enhanced ability to switch provider at an acceptable cost, including the cost of access to information and on the processes involved in switching.
- Service providers in the telecommunications sector should be strongly encouraged through self-regulation to provide adequate information to consumers to exercise effective choices and assert their rights.
- Regulators should consider requiring that all major operators provide adequate, comparable, appropriate and accurate information to consumers through different channels (*e.g.* through leaflet, radio, consumer hotline and web based programmes) to enable consumers, especially vulnerable consumers, to quickly identify the most suitable and best value telecommunications plan.
- Government/regulators could collaborate with service providers to explore ways of aligning business incentives with information provision.
- Policy makers and regulators should develop a better and fuller understanding of the needs and motivations underlying consumer behaviour in telecommunications markets, especially those of vulnerable consumers (such as the elderly, minors, disabled, those on low incomes, and the unemployed).
- Regulators could use more effective means of targeting information to vulnerable groups to provide them with practical guidance about how they can get the best deal.
- Where not already in place, regulators should require “truth-in-billing”, and restrict harmful business conduct and practices (*e.g.* by prohibiting mis-selling, misleading advertising).

There is need to recognise that striking a balance between protecting consumer interests and establishing investment-friendly regulation is of paramount importance for facilitating the deployment of new communication services. In this context, the use of industry self-regulation, including industry codes of practice, is to be encouraged as a sensible approach. But vigorous regulatory intervention may be needed if this proves necessary.

#### *Consumers’ right to information*

Consumers of electronic communication services have the right to be provided with clear, accurate and sufficient information about the terms, conditions and costs associated with a transaction to enable them to make an informed decision about whether to sign a contract.

Provision of good (not necessarily *more*) information to consumers should be given attention in view of the complexity of electronic communications, the plethora of new services and the increasing purchase of bundled services through long term contracts (typically 2 years).

Consumer education programmes can be used to help develop discriminating consumers capable of making informed choice of goods and services, conscious of their behavioural biases, their rights and relevant consumer protection measures. In developing such educational programmes, special attention should be given to the needs of disadvantaged and vulnerable consumers.

### *Price/quality of service comparison*

Regulators could work with fixed line, mobile network operators and ISPs to develop and publicize a set of comparable indicators relating to price and quality of service. Regulators could encourage independent third parties and consumer organisations to provide easily comprehensible price/service-comparison information through consumer hotlines, websites, leaflet, radio, etc., to enable consumers, especially vulnerable consumers, to quickly identify the most suitable/best value-for-money telecommunication plan(s). The price/service comparison websites are effective information tools and deserve more research to better understand how well they are working, who is benefiting from them (and who isn't) and how to improve them. Ofcom's efforts in this area have been commendable and could contain guidance for use elsewhere. Where the market (through industry-led or third-party-led initiatives) fails to provide adequate price/service comparison instruments, the regulator could intervene to fill this gap e.g. by making available a comparison website of its own.

### *Harmonisation*

For the EU, the question of minimum harmonisation (appropriate in the context of the EC's principles of proportionality and subsidiarity) arises. There is a need to increase coherence of information methods/tools used across the EU, by means of, for instance, spreading best practice. Harmonisation might also be pursued through codes of practice or the issuance of a set of guidelines. The development of a Charter of Consumer Rights might also be considered. To illustrate the nature and content of such a charter, a preliminary draft is included in this paper as **Attachment1**.



# ATTACHMENT 1

## TOWARDS A CHARTER ON THE RIGHTS OF END-USERS OF ELECTRONIC COMMUNICATIONS SERVICES

### 1. Introduction

Market competition alone may be insufficient to provide adequate protection for consumers and hence a range of supplementary measures has been used, including: laws on advertisements; competition law; contract law; health and safety legislation; and data protection laws. Such measures recognise that consumers often face imbalances in economic terms, information and educational levels, bargaining power, etc. There has also been increased recognition that informed and empowered consumers can, through demand side choices, stimulate firms to innovate, improve quality and compete in terms of price. By making well-informed choices between suppliers, consumers not only benefit from competition, but they initiate and sustain it.

Communicating by electronic means has become a central feature in many countries and this will become even more so as next generation communication infrastructures and services are put into place. There has been increasing recognition of the need for a review of consumer policy relating to electronic communication services.

One element in such a review is the need for a Charter on Consumer Rights. A Charter on Consumer Rights in an Electronic Communications environment could be valuable in:

- encouraging the development of market conditions that provide consumers with improved quality and greater choice at lower prices
- enhancing consumer information, awareness of new services and suppliers, protection and empowerment, including educating consumers about alternative suppliers and the benefits of newly available services
- improving the transparency and fairness of contractual agreements
- making the switching process easier, cheaper and faster
- facilitating and accelerating settlement of consumer complaints.

Such a Charter should recognise that striking a balance between protecting consumer interests and establishing investment-friendly regulation is of paramount importance for facilitating the deployment of new communication services. In this context, the use of industry self-regulation, including industry codes of practice, is encouraged as a sensible approach towards implementing the Charter. But the Charter should recognise that vigorous regulatory intervention be applied if this proves necessary.

The Charter should be aimed at addressing major consumer issues in the electronic communications area by underpinning the main consumer rights, including: (i) consumers' right to information; (ii) consumers' right to choose; (iii) consumers' right to protection; and (iv) consumers' right to redress.

## 2. Consumers' right to information

Consumers of electronic communication services have the right to be provided with clear, accurate and sufficient information about the terms, conditions and costs associated with a transaction to enable them to make an informed decision about whether to sign a contract.

Provision of good (not necessarily *more*) information to consumers requires particular attention in view of the complexity of electronic communications, the plethora of new services and the increasing purchase of bundled services through long term contracts (typically 2 years).

Consumer education programmes can be used to help develop discriminating consumers capable of making informed choice of goods and services, conscious of their behavioural biases, their rights and relevant consumer protection measures. In developing such educational programmes, special attention should be given to the needs of disadvantaged and vulnerable consumers.

Because consumers tend to heavily discount future costs and are more focused on the immediate near-term benefits, regulators could restrict the practice of fee payments for equipment e.g., for a handset or a modem, when the consumer terminates subscribership (rather than at commencement).

Cooling-off periods could be used to give consumers an opportunity for rational re-consideration to overcome the influence of impulsive choice.

### *Quality of service*

Quality of service experienced by consumers can vary significantly. For instance, voice calls may fail due to lengthy queuing delays during periods of congestion. So too can services delivered via VoIP technology (that are reliant, in general, on the provision of services that are not always controlled by the VoIP provider). Moreover, there is concern that some operators may degrade the quality of some services offered to consumers (e.g., "free" broadband) to unacceptably low levels.

Regulators can mandate that all operators conform to a set of minimum quality of service standards. An alternative approach is not to impose uniform minimum quality of service standards but to allow ready comparison of service quality from different providers.

### *Price/service-comparison*

Regulators could work with the fixed line, mobile network operators and Internet Service Providers (ISPs) to develop and publicize a set of comparable indicators relating to price and quality of service.

Regulators could encourage independent third parties and consumer organisations to provide easily comprehensible price/service-comparison information through consumer hotlines, websites, leaflet, radio, etc., to enable consumers, especially vulnerable consumers, to quickly identify the most suitable/best value-for-money communication plan(s).

The price/service comparison websites are effective information tools. Where the market (through industry-led or third-party-led initiatives) fails to provide adequate price/service comparison instruments, the regulator could intervene to fill this gap e.g. by making available a comparison website of its own.

### *Emergency services*

Consumers are entitled to be made aware of the potential for emergency services access to fail and of the circumstances under which failure could occur.

Regulators should require that all fixed location and portable communication devices offer access to emergency calls.

### **3. Consumers' right to choose**

If consumers are able to switch easily, operators would be less inclined to charge excessively high prices or supply poor quality of service.

Regulators could require that all fixed, mobile and Internet service providers ensure that the migration process from one service provider to another is fast, cheap, predictable and reliable and that consumers are able to switch with minimum difficulty and delay.

### *Number portability*

Number portability plays an important role in the promotion of competition by removing the cost and inconvenience of having to change telephone numbers when switching providers.

Regulators should ensure that the shortest possible time is taken to complete number portability for consumers switching from one communication provider to another.

### *Interoperability*

An absence of interoperability such that consumers need to buy new equipment to utilise another provider's service would inhibit the switching process. Regulators could consider ways to increase interoperability. For instance, regulators could examine the need to limit the "lock in" period for mobile phone handsets in order to facilitate switching. (Where applicable, the fee for unlocking the handset should be related to the cost involved.) However, care should be exercised that regulatory measures applied do not stifle business innovation, which may include differentiated equipment and applications.

### *Bundling*

Bundling can be beneficial to consumers and, indeed, an increasing number of consumers are subscribing to bundled service plans. But bundling can also be unfairly restrictive if the consumer's wish to change service provider for one service (e.g., voice or internet) is constricted because it would necessitate changing the provider for all services.

The shift towards bundling means that if a consumer cannot pay a bill, she could risk disconnection from all these bundled services, including mobile, internet, landline, and pay TV.

Regulators should ensure that access to a single service always be available.

#### **4. Consumers' right to protection**

Consumers of electronic communication services have the right to be provided with transparent and effective consumer protection that is not less than the level of protection afforded in other forms of consumption.

##### *Mis-selling*

Consumers of communication services should be protected from mis-selling, including misleading advertising, pressurising, cold-calling, small print conditions/exemptions, etc. In regard to communication services, examples of such mis-selling include:

- the provision of false and/or misleading information (e.g., about potential savings);
- applying unacceptable pressure to change providers;
- 'slamming', where consumers are switched from one company to another without their knowledge and consent; and
- "cramming", where consumers are subjected to unauthorized or deceptive charges.

Businesses should take special care in advertising or marketing to vulnerable consumers such as children, the elderly, the seriously ill, and others who may not have the capacity to fully understand the information presented.

Governments should strengthen measures relating to the control of restrictive and other abusive business practices, including those that deliberately mislead or confuse consumers.

##### *Contracts*

Consumers have a right to a contract that is fair and transparent. Where contract conditions require a minimum contract duration, the expiry date should be clearly specified. Consumers are entitled to adequate notice of any intention to modify contractual conditions and about their right of withdrawal in such cases.

Regulators could require that all mobile telecommunications contracts be no longer than one year, with an option to renew the contract. In addition, suppliers should not be permitted to extend a consumer's contract without written permission.

Regulators could consider requiring a mandatory 'opt in' default provision (rather than an 'opt out' default) as part of arrangements for extending a contract.

Early termination penalties/fees inhibit switching and constrict consumer choice. Regulators should consider requiring communications operators to eliminate the use of such penalties.

Regulators could require all fixed line and mobile operators and Internet Service Providers (ISPs) to provide a risk-free trial period during which they can cancel any new service contract without penalty. This would give consumers time and opportunity to ascertain whether the communications service works as promised. For instance, consumers could be given 30 days to cancel after receiving the first bill so that they can verify promises regarding cost and quality of service.

### *Truth in billing*

Despite technological advances, inaccurate billing continues to be a major cause of consumer complaint. In general: i) consumer bills should be clearly organized, clearly identify the service provider, and highlight any new provider; ii) bills should contain full and non-misleading description of charges; iii) bills should contain clear disclosure of information consumers may need to make inquiries, or contest charges; and iv) roaming calls should be itemised on the bill within 60 days of the call, identifying the date and location of the call.

Regulators should continue to encourage the use of self-regulation and industry codes of practice concerning billing, but monitor the need for truth-in billing regulation that could be applied to all communication service suppliers.

## **5. Consumers' right to redress**

Consumers are entitled to appropriate forms of redress. For serious disputes, consumers can seek redress through the legal system. However, many consumers are reluctant to go to court either because of the time and expense involved and/or because they find the judicial process intimidating.

Governments should ensure that consumers have access to fair, timely and inexpensive means of redress, including less formal alternative dispute resolution mechanisms.

### *Dispute resolution*

Governments could establish an independent dispute resolution body.

Governments could also foster voluntary consumer representation agencies.

The role of regulators in dispute settlement should be made clear. Such a consumer function within the regulator needs to be well publicised, properly resourced and headed up by a senior management figure.

### *Industry ombudsman*

Governments could establish a consumer protection agency, such as an ombudsman office, tasked with protecting the interests of consumers in the new complex communications environment. Consumer complaints received, analyzed and reported/publicised by an industry ombudsman can provide useful information for policy and regulatory improvement.

## **6. Conclusion**

A Charter on the rights of consumers of electronic communications services can help underpin consumer rights. This Attachment has raised some issues that may contribute towards the development of such a Charter of Consumer Rights.

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