

BEREC report on best practices to facilitate consumer switching

October 2010

Table of Contents		Page
	Executive Summary	3
1	Introduction	8
2	Review of economic literature on switching	16
3	Mechanisms used by NRAs to facilitate switching and protect consumers	25
4	Obstacles to switching	42
5	Recommended best practices to facilitate switching	67
6	Proposals for future work	75
	Glossary of terms	77
	References	80

Executive Summary

Effective competition in the communication markets benefits consumers in terms of increased choice, lower prices, appropriate quality and innovation. Thus, although the emergence of competitive offers is a key element for consumer welfare, for competition to be able to fully deliver effective outcomes for consumers, two other important elements are necessary:

- a. Consumers need to be empowered with the information, skills and confidence necessary to engage effectively with the competitive process. This requires that consumers are aware of the choices available to them, of the features, capabilities, prices, advantages and disadvantages of new services and technologies (so that they are able to properly assess the potential benefits) and also of the existence and ways of using some functionalities (e.g. number portability) that strengthen their ability to switch.
- b. Where consumers have found a good deal, they need to be able to switch between electronic communications service providers ('service providers') without undue effort, disruption and anxiety. Where this is not the case, consumers who switch may suffer harm. Further, it may result in a lack of consumer confidence in switching processes and, as a consequence, result in consumers choosing not to switch. This could dampen the competitive process and consumers may not receive the benefits from competition they should be able to expect.

The first issue mentioned above (consumer information), including transparency and methods of information, was a topic on which the European Regulators Group ('ERG') has published a report, *ERG (2009) Report on Transparency of Tariff Information*. It is also a topic which has been considered in other previous reports (e.g. *ERG (2005) Report on Transparency of retail prices (with implementation of Number Portability)*).

The objectives of this current report are, in light of the latest legislative developments at the European Union ('EU') level, to:

- a. analyse national conditions and practices in respect of dealing with obstacles to switching between service providers, including, *inter alia*, the length of contract terms, the conditions for termination of contracts and the ease of porting (including the speed of the porting process);

- b. learn from each other's best practices, in the above mentioned areas, and pinpoint what are the most effective approaches to removing obstacles to switching.

The report uses a variety of different sources in taking forward its analysis, including a questionnaire addressed to National Regulatory Authorities ('NRAs'), identification of relevant case studies and various related academic works, studies, reports and surveys. The report also takes account of comments received in response to the 4-week stakeholder consultation on a draft version of this report, held in June 2010.

In particular, in devising the questionnaire, the Body of European Regulators for Electronic Communications ('BEREC') has sought to pool the knowledge and experiences of NRAs across Europe in order to progress our thinking in relation to the identification of best practices to facilitate switching. It is important to note, however, that in reflecting the positions/perceptions expressed by NRAs in their answers to the questionnaire, the report is not intended to make an assessment of the different approaches to consumer switching adopted by NRAs. The different approaches to consumer switching adopted by NRAs can only be properly considered in relation to the national market characteristics.

The questionnaire received a very positive response from NRAs, with 28 countries¹ responding, including 24 EU Member States. In reviewing the responses to the questionnaire, it is evident there are a variety of different approaches which have been adopted by NRAs to facilitate consumer switching across the relevant communications sectors considered within this report² (fixed telephony, mobile telephony, internet/Broadband ('internet/BB') and bundled services³). These include:

- a. **The vast majority of countries follow (for all, or at least part, of their switching processes) a Gaining Provider-led ('GPL') process for switching fixed and mobile**

¹ The following 28 countries responded to the questionnaire:

24 EU countries - Austria, Belgium, Bulgaria, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Lithuania, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and the United Kingdom

4 other countries – Iceland, Norway, Switzerland and Turkey

² It should be noted that several NRAs only provided information relating to those switching processes where there are rules applied such as, where number portability exists, for example. This was particularly the case in relation to fixed and mobile telephony services. For this reason, the results presented may not always fully reflect all aspects of switching in particular countries – but rather only those switching processes which have rules applied.

³ When a firm sells two or more services together as one combined offering on a single bill at a fixed price, which is often discounted.

telephony (24 countries for each) where consumers are able to switch by simply contacting their new service provider(s).

- b. **Formal switching processes for internet/BB and bundles are not universally established**, with 10 countries not having put in place a switching process for internet/BB services and 21 countries not having put in place a switching process for switching bundled services. Of the 19 countries which do have a formal switching process for internet/BB, 14 follow a GPL process. Of those seven countries which do have a formal process for switching bundles, all followed a GPL process.
- c. **There are a variety of different approaches to customer validation**, ranging from ex ante requirements (including Third Party Validation ('TPV') measures, code-based processes, requirements on service providers to obtain legal authority from the consumer) to ex-post requirements (including requirements to retain evidence and compensation payments).
- d. **The current times taken to switch are not generally viewed by those NRAs who responded as a major obstacle to the switching process relative to other aspects**. The majority of countries do not specify overall maximum switching periods, counted from the date on which the order is placed by the subscriber. Of those that do specify switching lengths, timescales varied considerably. The shortest maximum period for switching was 24 hours (switching mobile services in Ireland). However, most of the countries followed longer periods for switching, typically between three and seven days or longer.
- e. **Most countries do not have specified rules, processes or legal requirements for ensuring that consumers are informed of the switch throughout the switching process⁴**. Of those which do, again, different approaches have been adopted, including telephone calls, SMS or letters. The GP is typically the party with responsibility for informing the consumer, but in some cases, requirements are placed on both the GP and LP.

In light of responses to the switching questionnaire, NRAs mentioned a wide range of obstacles which affected switching. The areas of concern which were most frequently identified by NRAs as being "*the main obstacles to switching*" were as follows:

⁴ Several NRAs provided information in relation only to their "regulated" switching processes (e.g. number portability, call pre-selection, switching processes for LLU, etc.)

- a. **Contractual issues** were the biggest single obstacle to switching, being the top concern across fixed telephony, mobile telephony, internet/BB and bundled services. Concerns were predominantly to do with restrictive terms and conditions e.g. Early Termination Charges ('ETCs').
- b. **Lack of consumer information** was also highlighted as a major obstacle to switching. The most common concerns related to unclear perception of pricing structures and a lack of information to consumers regarding the implications of switching.
- c. **Irresponsible selling** also rated highly as an obstacle to switching (particularly for fixed telephony and mobile telephony services). This was typically in the form of mis-selling or slamming activity⁵.
- d. **Technical issues** were also highlighted as an obstacle to switching (particularly for internet/BB and bundles). Concerns related predominantly to process deficiencies in the switching process impacting on the switching experience.
- e. Other obstacles raised as key concerns include **LPs burdening the switching process, save and retention activity by the LP, concerns related to number portability and the pricing strategies of operators in the retail markets** (this last obstacle was indicated as particularly relevant in the context of mobile services).

In light of analysis of the questionnaire responses, along with other considerations, BEREK recommends the following best practices to facilitate switching, which relate to supporting a positive consumer experience (best practices 1 to 4) and to encouraging a positive impact on competition and welfare (best practices 5 and 6):

- **Best Practice 1:** Minimisation of unnecessary switching costs/barriers, both for individual services and for bundles, so that there should be minimal effort on the part of the consumer in order to switch, including a specified maximum time for the switch.
- **Best Practice 2:** Minimisation of instances of mis-selling/slamming and other unfair practices.

⁵ Where consumers are switched between service providers without their knowledge or consent.

- **Best Practice 3:** Accurate information on switching to be given to consumers, before and during the switching process, and also immediately after it is concluded, with information being presented clearly and in an easily accessible format.
- **Best Practice 4:** Publication of guidance by NRAs that aims to ensure that service providers are aware of, understand, and comply with all obligations relating to national legislation and best practice principles that apply to them.
- **Best Practice 5:** Support competition in retail markets.
- **Best Practice 6:** Cost efficiency of the switching process.

The report also contains 10 case studies from nine countries, which display a variety of valuable experiences in identifying best practices to facilitate switching.

1. Introduction

The level of consumer switching between service providers is a key indicator of consumer welfare and a significant factor influencing the overall development of competition in retail markets: namely energy, retail banking, insurance, financial services and electronic communications.

In respect of the electronic communications sector, in particular, there is a growing European context to this issue as demonstrated through the introduction of new rules aiming to facilitate switching. These were included in the revised Directives for electronic communications (e.g. establishment of maximum porting times).

It is for these reasons that BEREC has decided to undertake a project to identify best practices to facilitate switching.

Why is switching important in competitive markets?

The ability and willingness of consumers to switch between service providers is critically important in many sectors of the economy. Effective competition delivers increased choice, lower prices to consumers, appropriate quality and innovation. According to the results of a Eurobarometer survey carried out in 2008 *“about consumers’ views on switching service providers”*, the majority of consumers who switched benefitted financially from doing so. This was the case, on average, for 72% of consumers in the fixed telephony market and 66% of consumers in the mobile telephony and internet/BB sectors.

In order to benefit from competition, however, consumers must have confidence to exercise choice and derive benefit from doing so. Where this is not the case, consumers who switch may suffer harm. Further, it may result in a lack of consumer confidence in switching processes which results in consumers choosing not to switch. This could dampen the competitive process and consumers may not receive the benefits from competition they should be able to expect.

This report is primarily focused on the first issue mentioned above (consumers’ ability to switch), looking at the national practices used to facilitate switching in the context of existing processes.

The European Commission ('EC') said in its 2009 European Consumer Scoreboard:

“The ability to switch providers is one of the essential features of the market economy that allows consumers to constantly search for the best deal. This ability affects the offers proposed by providers, because they need to cater ever more closely for the needs of customers or risk losing them to the competition. Switching has this impact only if its costs are sufficiently low compared to the price of the service involved.

Consumers can only select the most competitive offer in the market if their switching ability is not hindered by search costs, delays, taxes and other factors that make up the switching costs. If these are significant, especially in relation to the price of the service, some consumers will be deterred from switching their service provider”.

The second element mentioned above (the willingness of consumers to switch) was touched upon in the ERG's report on consumer information, including transparency and methods of information, *ERG (2009) Report on Transparency of Tariff Information*.

In addition, the results of the Eurobarometer survey looking at the 27 EU Member States are relevant in this regard. The survey revealed that the majority of consumers surveyed had not switched services in the previous two years because they did not want to. The main reason for not switching was that consumers perceived that their *“current provider offers the best value for money”*. A minority of the respondents (5% for fixed and mobile telephony and 4% for internet/BB subscribers) said they didn't switch because: *“it is difficult to find out which provider is the cheapest”*. Consumers also perceived that *“the cost and effort required in switching is too large”*.

European context

The November 2007 publication of the EC-proposed Electronic Communications Framework Review package created the context for a wider European debate. This revealed concerns among policy makers and regulators in relation to key factors that influence the ability of consumers to switch service providers, such as the ability of consumers to withdraw from their contracts and the ease of the switching process, particularly with regard to the ease of porting numbers.

The Framework Review package was adopted in November 2009 and specifically discussed switching in Recital 47 of the Citizens' Rights Directive (2009/136/EC), which stated the following:

"In order to take full advantage of the competitive environment, consumers should be able to make informed choices and to change providers when it is in their interests. It is essential to ensure that they can do so without being hindered by legal, technical or practical obstacles, including contractual conditions, procedures, charges and so on. This does not preclude the imposition of reasonable minimum contractual periods in consumer contracts.

Number portability is a key facilitator of consumer choice and effective competition in competitive markets for electronic communications and should be implemented with the minimum delay, so that the number is functionally activated within one working day and the user does not experience a loss of service lasting longer than one working day. Competent national authorities may prescribe the global process of the porting of numbers, taking into account national provisions on contracts and technological developments.

Experience in certain Member States has shown that there is a risk of consumers being switched to another provider without having given their consent. While that is a matter that should primarily be addressed by law enforcement authorities, Member States should be able to impose such minimum proportionate measures regarding the switching process, including appropriate sanctions, as are necessary to minimise such risks, and to ensure that consumers are protected throughout the switching process without making the process less attractive for them".

Article 30(4) of the Citizens' Rights Directive introduced a new requirement that consumers, "having concluded an agreement" shall have the number activated within one working day. NRAs can define the overall porting process, taking into account national provisions on contracts, technological developments and the need to maintain continuity of service provision. The article applies to both mobile and fixed telephony (but not to mobile-to-fixed portability or internet/BB). It also introduces a competence on Member States to impose sanctions on service providers, including a provision to compensate subscribers in case of delay in porting or abuse of porting by them or on their behalf.

Recital 41 of the Universal Service Directive says that the impact of number portability is considerably strengthened when there is transparent tariff information and states that NRAs “*should, where feasible, facilitate appropriate tariff transparency as part of the implementation of number portability*”.

Member States have until 25 May 2011 to transpose the revised Framework into national law and this report is therefore timed to inform the deliberations of Member States as they consider how to implement the revised Framework. Where NRAs have a role to play, such as on the porting provisions mentioned above, BEREC’s members are keen to ensure that implementation of the Framework is completed in a timely manner ahead of the 25 May 2011 deadline.

Furthermore, the EC publishes an annual Consumer Markets Scoreboard to monitor the performance of key markets from a consumer perspective, and identify which parts are not functioning well for consumers. Switching is one of the five indicators that the Scoreboard measures, along with complaints, prices, satisfaction and safety.

The second Scoreboard was published in January 2009 and included data from a Eurobarometer survey of 27,000 consumers from across the EU on their views of switching service providers. This survey provided a pan-European picture of the consumer experience of switching, enabling comparison between four different sectors of the economy - electronic communications services, retail banking, insurance and energy. Within these four sectors were 11 specific service areas, including fixed telephony, mobile telephony and internet/BB.

As already mentioned, the survey revealed that, in all sectors, most consumers surveyed had not switched services in the previous two years because they did not want to, with the main reason being that the “*current provider offers the best value for money*”. Of the four sectors surveyed, the highest levels of switching were found in the electronic communications sector, with Internet/BB subscribers (22%), mobile telephony customers (19%) and fixed telephony customers (18%) behind only car insurance (25%) in the list of 11 services areas.

However, the results varied between different countries, with the range between the countries with highest and lowest levels demonstrating a great deal of variance: for Internet/BB services, the highest churn rates were registered in Greece (36%), and the lowest in Poland and Slovakia (both 9%); for mobile telephony services, Germany had the highest level of switchers (26%) with the lowest in Hungary (7%); and for fixed telephony, the

most switching was reported in Greece (26%) while in Finland, Bulgaria and Latvia fewer than 1% of respondents reported trying to switch in the previous two years.

Perceived difficulties were not so important when it came to switching service providers, although switching was considered more difficult than in the other sectors. Most consumers interested in switching were able to do so without problems, although a substantial minority anticipated or experienced difficulties - 38% in the electronic communications sector, compared to 43% in banking, 51% in energy and 25% in insurance.

Consumers were asked what tools they thought would be most helpful to them when considering switching service providers. The introduction of standardised comparable offers from service providers, the availability of helpful information (namely a website with comparable information) and a costless switching process were the key elements that consumers said they would find most useful in respect of fixed telephony, mobile telephony and internet/BB. Rapid transition periods and shorter minimum contract periods were seen as less important.

In addition, there are various studies and surveys relating to switching costs which have been published by NRAs, national competition authorities, academics and other entities, which study this issue at national level. Some of these are mentioned in the literature review.

Review of economic literature on switching

It is also relevant to consider switching within a wider economic framework as this provides a much broader context to our analysis, including a better understanding of how consumers and firms behave in the marketplace and the impact that different switching processes and features have on competition and consumer welfare.

We have identified two key aspects of switching processes that are important in order to gain a better understanding of how they impact on consumer switching:

- a. the level of switching costs that switching processes generate; and

- b. the extent to which switching processes allow for segmentation of consumers and subsequent price discrimination (the ability to charge different consumers different prices)⁶.

It is important to consider switching costs and the extent to which they may act as a barrier to consumer switching. Switching costs in this context include those costs incurred by consumers as part of the switching process. These may be informational, contractual or process costs.

However, it is important to make a distinction between those costs which may arise from legitimate commercial customer retention strategies and those that may arise due to market failure. In particular, where switching is costless, then this may itself give rise to sub-optimal outcomes and lead to inefficient switching levels. An example of this is where service providers may have incurred upfront costs through supporting switching (e.g. where the customer acquisition costs may include the provision of equipment). Where there are costs attached to switching, it is legitimate for service providers to recover those costs e.g. through the imposition of reasonable minimum contractual periods ('MCPs') in consumer contracts.

Accordingly, in identifying relevant switching costs, it is necessary to focus on the areas of real concern in order to understand which ones impact negatively on the consumer experience and result in direct harm. In relation to the consumer experience of switching, this may involve hassle, lack of clarity of the switching process, loss of service, attempts to switch being frustrated by the illegitimate actions of suppliers or consumers being switched without their consent or knowledge.

Switching costs can also give rise to indirect harm, such as where this impacts negatively on competition through reduced propensity for consumers to switch. A recent UK-wide study by Ofcom into the cost of mis-selling and slamming activity in the fixed telephony sector estimated that the financial loss resulting from such activity was in the region of £10-37 million per annum (for mis-selling) and £0-2 million per annum (for slamming)⁷.

Accordingly, we include a review of economic literature on switching in section 2 of this report. Without prejudice to the detailed results presented in that section, it is worth mentioning that:

⁶ Save activity enables providers to price discriminate by helping to distinguish between consumers looking to switch and those not looking to switch).

⁷ About €11.5–42.5 million p.a. for mis-selling and €0 – 2.3 million p.a. for slamming at April 2010 exchange rates.

- a. The academic literature is not entirely conclusive on whether switching costs increase or lower firm profits or consumer welfare. This ambiguity is because, contrary to common perception, higher switching costs can lead to more intense competition for new consumers as firms anticipate that they will be able to extract these consumers' surplus once they are signed and 'locked-in' because of the switching costs. This means that the expected future profits from signing a consumer may be passed on to the consumer in order to attract her/him in the first place⁸.
- b. In this context, the Losing Provider-led ('LPL') process (even without save activity) may be viewed as a process with higher switching costs than GPL processes (e.g. due to multiple touch points, possibility of delay or refusal to provide codes on account of misaligned incentives). Save activity has the potential to make this worse.
- c. There appears to be little economic literature focused on the competitive effects of suppliers making a new offer, through save activity, to consumers looking to switch. This is a form of price discrimination between these consumers and other consumers not looking to switch. We know from the literature on price discrimination that, unlike in the monopoly case, price discrimination between competing firms can lead to all prices falling or rising (with respect to the unique price that would prevail under uniform pricing) and thus consumer welfare could increase or decrease.
- d. It is not clear however, whether price discrimination enabled by save activity is similar or different from the other 'classical' types of price discrimination that yield benefits to consumers in competitive environments. For example, save activity does not allow firms to segment consumers in a market, but only to segment a firm's own consumer base. It is, therefore, not a 'spontaneous' type of price discrimination, but is triggered by a consumer's desire to switch.
- e. However, in relation to customer segmentation, price discrimination is less feasible under a GPL process as there is no requirement explicitly built into the switching process for the consumer to contact the LP in order to switch.

⁸ However, the UK Office of Fair Trading (2003) noted a number of conditions that could prevent ex-post profits being passed through to consumers, and Farrell & Klemperer (2006) note that, "on balance switching costs seem more likely to increase prices". In addition, Farrell and Klemperer have suggested that switching costs can segment an otherwise undifferentiated market as firms focus on their established customers, letting oligopolists extract positive profits.

Methodology of report

As discussed above, the debate around the revised Framework, and a new focus provided by the Consumer Markets Scoreboard, have helped create a debate at the European level about the issues related to switching.

In order to contribute to this debate on switching, BEREC has decided to draw on the experiences of its members to identify and understand national conditions and practices in order to assess the different approaches that NRAs have adopted in relation to consumer switching. As part of this review, we have also assessed the extent to which different switching practices perform against defined obstacles. The questionnaire was sub-divided to understand whether/how switching processes and obstacles differed across electronic communications services (fixed telephony, mobile telephony, internet/BB and bundles).

To gather detailed information from NRAs about their experiences and practices dealing with switching, BEREC circulated a questionnaire to all members, receiving responses in November and December 2009. The questionnaire received a very positive response from NRAs, with 28 countries responding, including 24 EU Member States.

As a way of defining the scope of our survey, this questionnaire focused on *consumers*, as defined by the EU Framework Directive⁹ - individual people using communications services for non-business purposes. Nevertheless, we do recognise that the issues raised may be similar for small and micro-businesses.

⁹ Article 2 (i) consumer.means any natural person who uses or requests a publicly available electronic communications service for purposes which are outside his or her trade, business or profession, EU Electronic Communications Framework Directive.

2. Review of economic literature on switching

This section aims to review the relevant economic literature on switching in order to assess what we can learn from the theory on switching. This provides a better understanding of how consumers and firms behave in the marketplace and the impact that different switching processes and features have on competition and consumer welfare.

From a conceptual viewpoint, it may be helpful to consider switching along the lines of Klemperer (1995), which views switching as the result of a consumer's trade-off between the desire to buy a new item and the need to recover an investment in a previous item. Whilst multiple taxonomies may be considered in the framework of switching costs, Klemperer's classification of switching costs shows a high operative value.

According to Klemperer (1995), switching costs may be classified as: physical investment (in equipment or the establishment of a relationship, for instance); informational investment (finding out about all the characteristics of a product and how to use it); artificially created investment (when the price of the first unit of a given product is high and the price of the subsequent units is cheap); and psychological investment (associated with loyalty to a certain brand).

It is also worthwhile considering the work developed by Padilla (1995), which studied, within a finite time horizon, the impact of switching costs when there are only two service providers in a market for consumers to choose from. This model shows that high switching costs reduce the incentives to deviations relative to a collusion agreement (since those costs limit the consumer reaction to price cuts). However, high switching costs would also reduce the ability of the other firm to retaliate by cutting prices. Therefore, it is not intuitive to understand *a priori* the effect of these costs over the sustainability of collusive agreements. In general, the results from this study suggest that high switching costs are prejudicial to competition.

To (1996) studied switching in a model with an infinite time horizon and concluded that high switching costs can be exploited by firms by charging high prices to their client base. However, the model also shows that, at a second stage, these high prices will tend to decrease the market share of those companies since new consumers entering the market will be attracted to other firms. Therefore, depending on whether there are new consumers entering the market and on whether there is price discrimination between old and new

customers, there may still be downward pressure on prices to decrease again, in order to increase the client base.

Chen (1997) studied switching in a context where companies in a mature market are able to price discriminate between current and potential clients (e.g. offering discounts to new clients to induce them to switch), based upon a model of two- period duopolistic competition. According to Chen's conclusions, in practice, price discrimination results in lower equal price levels, even when market shares are different.

Other interesting conclusions by Chen (1997) point out that in a mature market:

- a. higher switching costs tend to lead to more price discrimination;
- b. greater competition occurs when there is price discrimination than when there is no price discrimination.

Other implications of switching costs that are less studied have to do with their effect on macro-economic variables. Beggs and Klemperer (1990) show that switching costs may help to explain counter cyclical evolutions of prices and less prompt feedback to variations of the exchange rate. These potential effects, however, seem of little importance in the framework of the present analysis.

Shy (2002) saw that, in practice, it is virtually impossible to measure switching costs directly (with the exception of methods based on customer surveys, such as those performed by Lorincz and Nagy (2007)).

To overcome that difficulty, Shy (2002) created a "*quick and easy*" methodology to estimate switching costs based on observed variables, such as prices and market shares of the companies. He concluded that companies performing in each sector of activity are best placed to observe and evaluate the switching costs incurred by consumers and, therefore, maximize their prices subject to a restriction according to which no other company would profit from lower prices in order to "*subsidize*" its customers to switch.

Shy (2002) applied his model to mobile telephony in Israel and to banking services in Finland, but it seems applicable to any other area of activity. One of the interesting conclusions of Shy's model is that the increase of switching costs causes a positive price

variation. A further conclusion is that even if switching costs were zero, only half of the consumers would switch service providers.

Shy also considered whether service provider switching costs should be analysed “*instantaneously*” or over a certain period; he preferred the first approach (concomitantly with the assumption that switching is not an “*ongoing*” activity).

Looking at the empirical studies, it is possible to admit – especially in cases where it is cheaper to make calls to people on the same network – that, when a customer’s most frequent contacts (e.g. family and friends) are clients of the same service provider, this may constitute an obstacle to the switching of a given individual, considering the accrued costs arising from the concomitant increase of off-net calls volume. This is despite the fact that certain operators already offer identical prices for on-net and off-net calls, which may, in certain cases, be higher than the lower priced on-net calls made available by each service provider.

In this context, it is interesting to look at the study developed by Corrocher and Zirulia (2009), based on a survey of 139 Italian students, which considered two objectives in the framework of mobile telephony:

- a. to identify to what extent an individual values his contacts when selecting a service provider (‘local network effects’);
- b. to identify the characteristics of those that ascribe more value to the network their contacts are on when choosing a service provider.

The model (factor analysis followed by cluster analysis) uses several “*dummy*” variables to take into account whether it is really the student who pay the bills (and not, for instance, the parents) and if their service provider has tariff plans with discounts when contacting selected people (e.g. family and friends).

The results of this study suggest that the customers that confer more importance to their contact network are more intensive users and have a better knowledge of the available offers, when compared with other users. This type of user has lower costs than one could initially expect, given his usage pattern. According to the authors, this shows that, even after implementation of number porting, the switching costs are not fully eliminated, considering the importance attributed to the contact network.

Maicas et al (2009) attempted to analyse switching costs at the level of the individual user in order to find the impact of number porting on those costs. This analysis was carried out in the Spanish mobile telephony market during the period between January 2001 and December 2004 using a sample of 287 subscribers who switched service providers during this period, of which 79 required number portability.

The results highlighted that the customers who keep their number when switching service providers have lower switching costs than the other customers. This would suggest that portability seems to benefit mostly those that use it and not overall clients.

Other interesting results presented by Maicas et al are the following:

- a. the longer the relationship between the customers and the service provider, and the higher the volume of contracted services, the higher the possibility that such customers keep their number when switching service provider;
- b. elderly clients have a lower probability of keeping the number while switching service provider;
- c. the probability of a customer porting their number does not seem to be statistically related to the service provider that the customer is originating from.

Also of relevance, Grzybowksi (2008) studied the switching costs in mobile telephony in the UK (between 1999 and 2001), with the application of Logit models to panel data, making use of 2,600 observations per year.

According to the conclusions of the research, switching costs vary significantly between service providers – customers of Orange had the highest switching costs, whilst the customers of Vodafone had the lowest.

Still according to the author, it is the switching costs as well as the persistent consumer tastes that influence the choice of a given service provider. The probability of switching appears to depend especially on the age (as in the study of Maicas et al, the older the individual, the lower the switching probability), and on the ways people spend their leisure time (book readers and people who occupy themselves in domestic activities would have a higher probability of switching).

Grzybowski and Pereira (2007) considered switching costs in the mobile telephony market in Portugal, with resource to multinomial and mixed logit models supported by making use of a consumer research company data based on monthly billing for 800 residential consumers on the Portuguese mainland, between April 2003 and March 2004.

Switching costs were found to be very high. Nevertheless, these economists sustain that the main influence on switching behaviour for these particular consumers were their brand preferences and the network which their contacts tended to use. Even if the switching costs were zero, the market shares of the service providers would suffer little alterations in relative terms. This was due to lasting preferences of the consumers for certain brands and to the existence of network effects mediated by the price.

Swann and Birke (2006) tried to explain (based upon Ofcom's market data and surveys on usage patterns) to what extent the individual choices of mobile telephony customers in the UK depend on the network used by other household members.

Interestingly, they concluded that part of the difference between the percentage of on-net traffic and the percentage of off-net traffic is not explained solely by the difference on retail prices. It could also be accounted for by the service provider switching costs (e.g. portability), lack of information or consumer inertia.

The findings suggest that the network used by other household members is much more important for an individual's choice than the total number of subscribers to each of the mobile networks. Hence, the existence of 9.2 million "*anonymous*" users would have the same impact as only one family member belonging to the same network. However, this does not say anything about the overall household choice of network, which may tend towards the larger network.

Srinuan and Bohlin (2009) studied the impact of the introduction of mobile number portability at the end of 2001 in Sweden, based upon an indirect method (the "*Shy Model*"). Of particular interest, during the period for which the analysis was carried out, less than half of the consumers that switched service provider requested number portability.

The authors concluded that the switching costs for consumers when switching from the historic operator (Telia) to Tele2 and to Telenor had fallen by more than 50% over an eight-year period. Moreover, these reductions may have been even higher, were it not for Telia

offering subsidised handsets (presumably associated with loyalty or loyalty conditions) and introducing tariff plans that raised the on-net/off-net price differential.

Lee et al (2006) focused on switching mobile service provider costs in South Korea (after the introduction of number portability in 2004) based on a conjoint analysis model, supported in using survey results from 500 residents of Seoul.

These economists concluded that the switching costs would have fallen after the implementation of number portability, but are still high, due to the persistent reputation for quality of service associated with the historic operator.

Among the potential measures that Lee et al (2006) identified as suitable to reduce switching costs, one can underline the following:

- a. regular publication, by an independent body, of the price and quality of service indicators for the service providers;
- b. implementation of a swift process for switching service providers, via the internet;
- c. creation of a common billing system for all service providers;
- d. transference, between service providers, of points associated with loyalty programmes.

Lyons (2006) researched the impact of mobile number portability on prices and “*churn*”, based on an OLS model, fed by using a database of quarterly data from 1999 to 2004 encompassing 38 countries (including almost all OECD countries, with the remaining being developing countries). The author’s conclusions suggest that, in countries that introduce mobile number porting with regulations mandating that the process be completed in five days or less, prices tend to fall (on average 6.6% in the short run and 12% in the long run) and churn tends to increase (circa 13.6% in the short run and 34.7% in the long run).

Grzybowski (2005) analysed the impact of mobile number portability on prices in the EU15 countries from 1998 to 2002 and tested the impact of regulation (e.g. mobile number portability and regulations concerning MVNOs) and non-regulatory factors (e.g. income per capita in purchasing power parities, total population, etc).

To evaluate mobile telephony prices, Grzybowski (2005) used exogenous variables of regulatory nature (such as the existence or not of number portability, of mobile telephony resellers and of full fixed telephony liberalisation) and variables that are determinant of the marginal cost (such as the hourly wage rate, the interest rate of 10-year treasury bonds or the cost of electricity).

The findings of the study suggest that number portability leads to a reduction in prices, since competition tends to be more intense and prices lower in countries where mobile number portability has been introduced.

Knittel (1997) studied switching costs in the market for long-distance calls in the USA in the period between 1984 and 1993. This economist concluded that the switching costs could be seen as a source of market power for the three main service providers and had a significant influence on their margins. On the other hand, the reduction of the prices charged by the service providers when the client switched service provider and the increase of advertising (allowing better price comparisons) should diminish considerably the switching costs.

Viard (2006) studied the impact of number portability, after its introduction in 1993, for 800 numbers (so-called "*green numbers*", which are free to the caller) on the price of those numbers in the USA, using data from a four year period (three years before and one year after the introduction of number portability). The findings were in line with those of the studies already mentioned regarding the impact of mobile number portability on price; the price that an average client paid for these numbers fell by 14%.

Kraft and Salies (2006) analysed the costs of switching internet service providers in France, in 2005, using to the "*Shy model*". The results of the study suggest that the switching costs of the two main providers (FT and Free) were substantially higher than those of the remaining seven providers. To this effect, the results highlighted the advantage of FT being the historic provider and the fact that Free's Wi-Fi technology had some learning costs associated with it. These results also showed FT's probability of winning back some "*lost*" clients to the new entrants could be considered relatively high.

Lorincz and Nagy (2007) studied switching costs in mobile telephony, fixed telephony and internet access in Hungary, employing an online questionnaire in 2007 with (with the declared preferences method) conducted by a market research company in September 2007, that encompassed a sample of 2,500 individuals.

The survey included a set of questions about the process of searching for information and comparing on the offers available from different suppliers, the costs of cancelling previous contracts, the set-up of the new contract, the learning process for the new service, the set up of the new service, the risk or uncertainty associated to switching, the consumer satisfaction and the loyalty conditions consumers encountered.

According to the conclusions of the survey, switching between mobile telephony service providers is considered relatively easier and entails lower costs than switching fixed-line telephony and internet service providers.

Contrary to what would be expected, individuals older than thirty seemed to deal better with switching service providers. The greatest influence on the difficulty of switching appeared to be the costs of cancelling previous contracts, whilst other factors could be considered negligible (e.g. search costs and learning costs) or of small importance (e.g. comparison costs and costs with the set-up of new contracts). In any case, the existence of loyalty conditions also caused higher switching costs.

ARCEP published a study on mobile telephony switching costs in June 2009 which studied this issue at a national level. Of particular relevance, on the question "*what is the main reason why you did not switch operators during the past 12 months?*", switching costs were not considered the main reason in terms of switching levels, with only 4% of respondents mentioning hassle. The main reasons identified for not switching were that consumers had not considered the opportunity of switching (35%) and that the current mobile offer was the best adapted to their consumption profile (31%).

It is also important to note that, while number portability has several related benefits for consumers, it is not costless, albeit these costs may be exceeded by the benefits. Among the relevant costs, Buheler et al (2006) highlight the direct costs associated with porting each individual number, the incremental costs of call conveyance, or the costs related to a lack of tariff transparency (since, in the absence of a warning, callers may not be aware that they are calling a ported number, which is particularly relevant when there is a price difference between intra-network and inter-network calls).

Buheler and Haucap (2004) suggested also that the lack of tariff transparency would incentivise the mobile telephony service providers to increase the termination prices if it was possible for them to do so, exploiting the lack of knowledge a caller might have regarding the network of the number they dial.

3. Mechanisms used by NRAs to facilitate switching and protect consumers

This section aims to provide a high level summary, and analysis, of the different approaches and mechanisms used by NRAs to facilitate switching and protect consumers in light of responses received to the BEREC questionnaire sent in December 2009^{10 11}.

Specifically, the questionnaire requested information in respect of fixed telephony, mobile telephony, internet/BB and bundles on the following:

a. Processes

- 1) Who does the consumer need to contact in order to switch?
- 2) What is the customer validation process?
- 3) What is the length of the overall switching process?
- 4) How are consumers informed that the switch is going ahead?

b. Enforcement

What are the rules and requirements on service providers concerned with...

- i) stopping GPs engaging in irresponsible sales and marketing activity?
- ii) the LP's attempts to frustrate the switching process?
- iii) contractual obstacles?
- iv) adherence to switching process requirements, such as porting requirements?
- v) cooling-off periods?

c. Harmonised switching processes

- 1) Does harmonisation of switching processes currently exist?
- 2) Is a lack of harmonised switching processes a concern in your country?

¹⁰ Due to certain NRAs responding differently for where porting or other specific switching processes exists, the figures in the tables will not always add up to 28.

¹¹ Several NRAs did not provide information on all the switching processes in their countries but only on their "regulated" switching processes (e.g. number portability, call pre-selection, LLU, etc). For this reason, the results presented may not always fully reflect all aspects of switching in particular countries – but rather only those switching processes which have rules applied.

Furthermore, in answering the questions on bundles, several NRAs identified the individual processes involved in switching to and from bundles, whereas other NRAs followed the approach of indicating the rules/processes in place for switching the bundle offer as whole.

3) What are the obstacles to establishing a single switching process?

The responses are described in more detail below. An explanation of the terms used is provided in the Glossary at the back of this report.

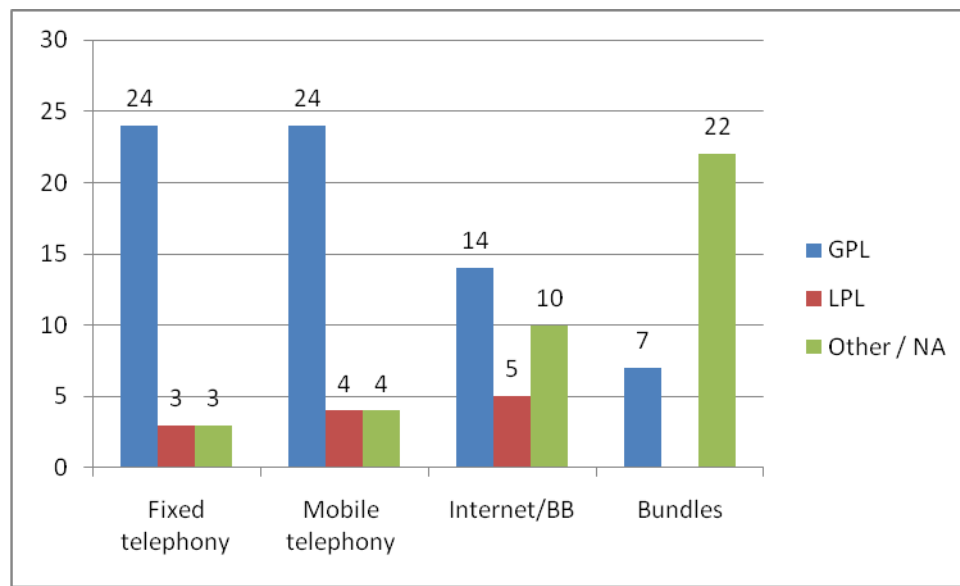
Approaches to switching across different services:

(a) Processes

1) *Who does the consumer need to contact in order to switch?*

The vast majority of countries follow (for all, or at least part, of their switching processes) a GPL process for switching fixed and mobile telephony (24 countries for each) where consumers are able to switch by simply contacting their new service provider(s). This is shown in Figure 1 below.

Figure 1: Who does the consumer need to contact in order to switch



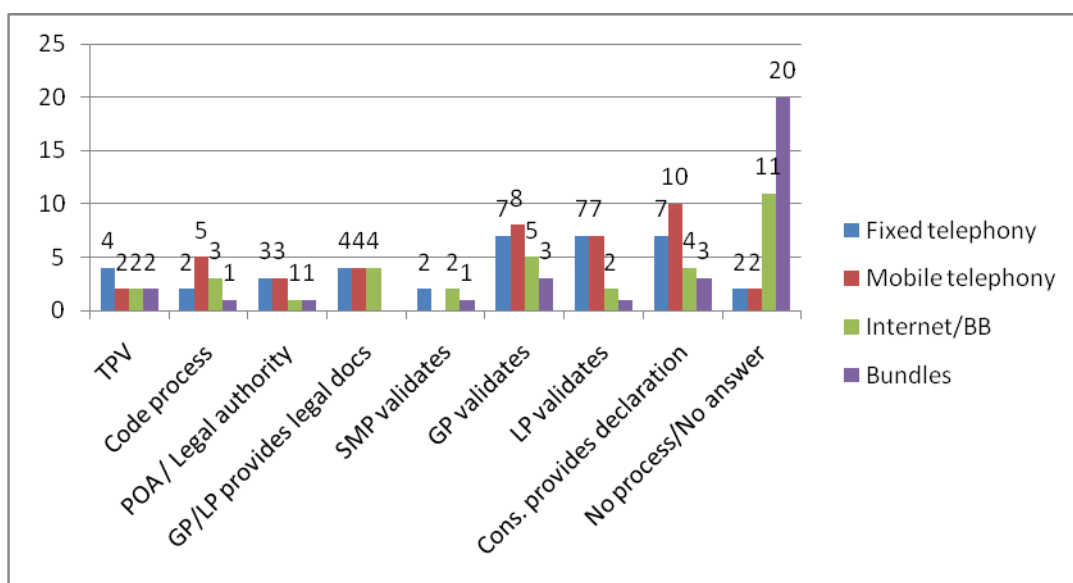
GPL processes featured most strongly in respect of fixed telephony and mobile telephony switching processes. Internet/BB switching had a more even split, although even here only five countries (Bulgaria, Lithuania (without number portability), Norway, Sweden and UK) followed a LPL process. Only two countries (Bulgaria and the UK) had LPL processes in place for both mobile telephony and internet/BB switching.

A number of countries did not have established formal switching processes for internet/BB (10) or bundled services (21). Of the 19 countries which do have a formal switching process for broadband, the majority (14) follow a GPL process. All seven countries which have a formal process for switching bundles followed a GPL process.

2) What is the customer validation process¹²?

As shown in Figure 2 below, there is a wide range of different approaches used to validate the legitimacy of the sales process across the different communications sectors¹³.

Figure 2: Customer Validation



In the fixed telephony sector, there is a relatively even spread of validation models, with the most common models being GP validation (7), LP validation (7), and a declaration provided by the consumer to the relevant service provider (7).

There is a similar spread in respect of mobile telephony, with the most common models being a declaration provided by the consumer to the relevant service provider (10), GP validates (8) and LP validates (7).

The significant feature in relation to internet/BB switching was the number of countries which do not currently have a formal process for validating consumer switching (11). Of those countries which have established a formal process, the most common models were GP

¹² Please refer to the back of this report for a glossary of terms used in this section.

¹³ Although 24 countries are categorised as following a GPL process, there was 28 responses. The Danish, Irish and Swiss models have more than one type of validation feature (this explains the slight discrepancy in the figures).

validation (5), ex-post requirements on suppliers to provide documentation validating the sale (4), a declaration provided by the consumer to the relevant provider (4) and code-based processes (3).

As described above, there are seven countries that have formally established switching processes in respect of bundled services. Of those, five NRAs responded to the question on validating consumer switching; the most common approaches to validation were GP validation models (3), processes where the consumer is required to provide a declaration of their interest (3) and TPV models (2).

Case Study: Ireland - process for fixed telephony switching

Irish customers must sign a Customer Authorisation Form ('CaF'), use an independent TPV process or an in-house verified TPV process ('VCaF'), none of which require the customer's signature, and GPs may elect to use their own TPV bodies or fill out an online 'e-caf' form to change their customer's telephone service. Two Consumer References (in most cases the customer telephone number and appropriate account number) are used to confirm the authenticity of the account/account holder to be switched. The telephone call between the customer and GP for both TPV and V-CaF is recorded and must be produced within two days if the transfer is challenged. If the CaF, TPV, V-CaF or E-CaF record cannot be produced then the switch is not valid. The selling processes (concluded by TPV, V-CaF and E-CaF) are protected by statutory regulations, including Distance Selling Regulations.

Any previous service provider may contact the customer on any other matter which does not directly relate to the provision of the customer's telephone. Customers also have the right to request that no further contact should be made at all from previous service provider, or any party conducting marketing by phone.

To affect the switch, the customer does not need to contact the LP, although customers may need to contact the LP in relation to existing contractual commitments. The LP may send a letter to the customer to verify that they have consented to the change, and customers only need to respond if they did not consent to the change.

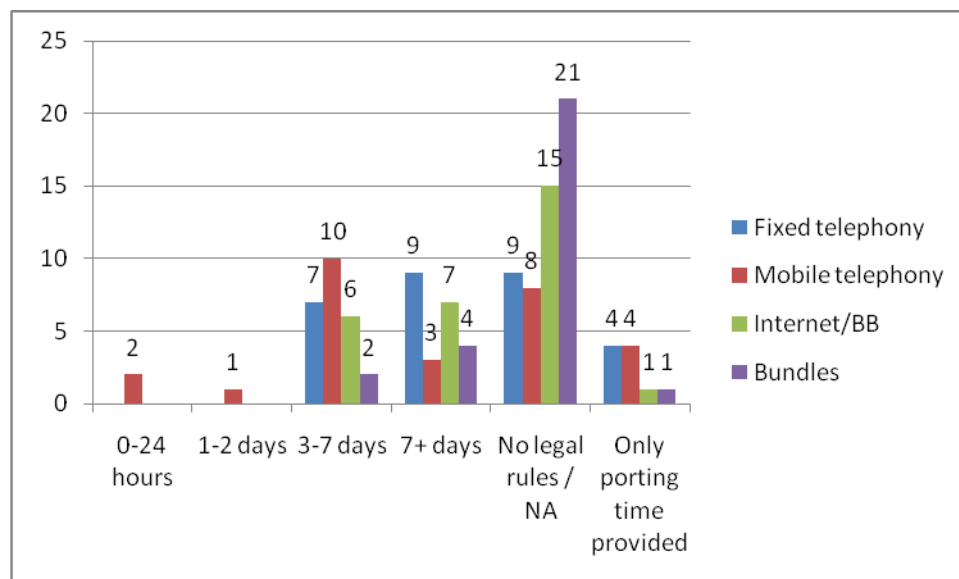
According to the Eurobarometer survey data, Ireland is one of the Member States which had most consumers try to switch their fixed telephony service providers in the last two years (28%) and had the most consumers who changed their service providers (26%). Also of

note, a high proportion of fixed telephony consumers in Ireland (69%) found it fairly or very easy to compare the offers of various service providers, relative to other Member States.

3) What is the length of the overall switching process?

In assessing responses on the overall length of the switching process, it is evident that there is a spread in terms of the overall length of switching. This is shown in Figure 3 below.

Figure 3: Length of overall switching process (for all, or at least part, of the switching process)



In respect of fixed telephony, nine NRAs responded as not having maximum lengths of time in respect of the overall switching process. Of those NRAs that responded as having maximum lengths, no NRA claimed that they could enable a switch within two days. Seven NRAs responded by stating that they could enable a switch within three to seven days, with a further nine NRAs responding that they generally required a period of more than seven days.

For mobile telephony services two countries (Ireland and Malta) enabled switching within 24 hours while another (the UK) enabled switching to take place within one to two days. Ten NRAs responded that switching takes between three to seven days, with a further three NRAs responding that switching takes longer than seven days.

In relation to internet/BB switching, the majority of NRAs (15) responded that they do not have legally defined maximum switching periods. Of those that do, six countries enable switching within three to seven days and a further seven countries take longer than seven

days. Of the few countries with established switching periods for bundled switching, switching typically took longer than seven days.

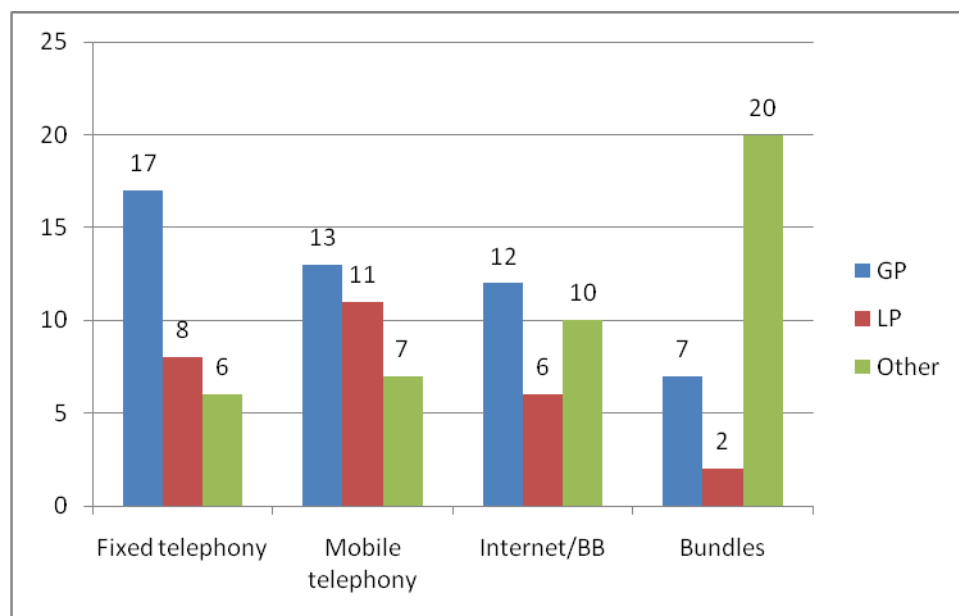
4) *What is the process for cancellation of contracts?*

There was a mixed response in terms of the process for cancellation of contracts, as shown in Figure 4 below.

Fixed telephony switching was predominantly GPL¹⁴, with 17 NRAs responding that they have an established switching process whereby the contracts would be automatically cancelled following contact with the GP. Eight NRAs commented that cancelling contracts required the LP to be contacted. Six NRAs responded that they follow slightly different models (including having to contact both service providers).

In mobile telephony, the picture was more mixed, with 13 NRAs responding that they follow a GPL process for cancelling contracts, while 11 NRAs responded that cancelling contracts required the LP to be contacted. Seven NRAs responded that they follow slightly different models.

Figure 4: *Process for cancellation of contracts*



¹⁴ GPL cancellation means that consumers' contracts with their existing service provider(s) are cancelled automatically as a consequence of the switching request, and there is no requirement for the consumer to make contact with their existing service provider(s) in order to terminate contracts.

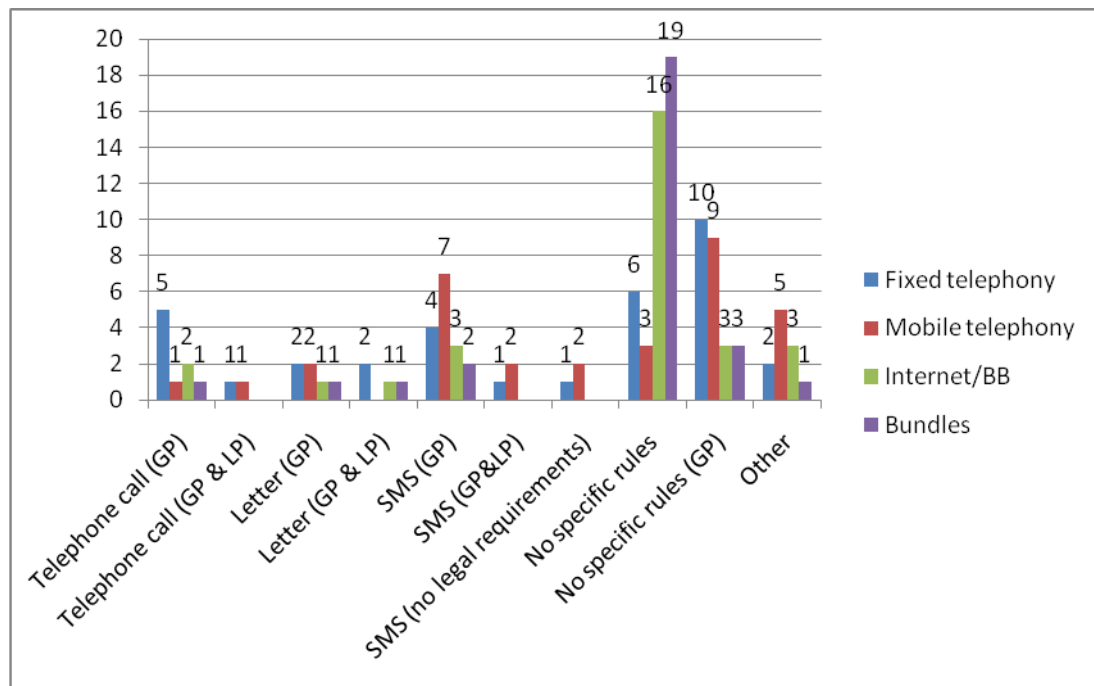
Of those countries that have an established switching process for internet/BB, most (12) followed a GPL model and six required the LP to cancel contracts. A similar picture emerges in relation to bundled services and, of those countries that have an established process, seven follow a GPL model in respect of cancellation of contracts, with only two following a LPL model.

5) How are consumers informed that the switch is going ahead?¹⁵

The method for informing consumers of the details of the transfer is varied, including communication by telephone, letters or SMS. This is shown in Figure 5 below.

The overwhelming majority of responses by NRAs show the GP to be responsible for providing information to consumers about the details of the switch. However, many countries appear to have very few rules or regulations in place to cover this aspect of switching – particularly in relation to internet/BB and bundled switching (16 and 19, respectively). In a number of cases, however, this was due to the fact that maximum switching/porting periods were prescribed by law (particularly for fixed and mobile telephony) or because the NRAs did not have powers in this regard. However, despite the lack of formal regulation, it is still common practice for service providers to contact the consumer in most of these countries.

Figure 5: How are consumers informed about the details of the switch?



¹⁵ In some countries, more than one answer was given, indicating that the consumer has a choice regarding the method of contact.

In fixed telephony, the most popular methods are typically GPL, with the most common practice being GPL but with no specified means (10) followed next by a telephone call from the GP (5). Six countries had no specific process at all to follow. A similar picture emerges in relation to mobile telephony, with again the most common method being GPL but with no specified method (9) followed by an SMS from the GP (7). Three countries had no specific processes to follow.

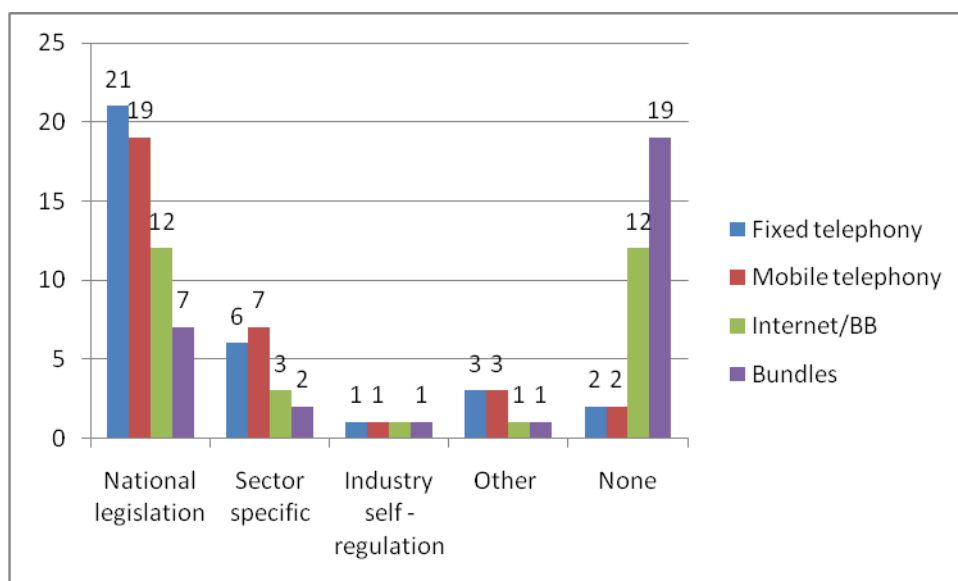
Seven countries had established a process for informing consumers of the transfer in relation to internet/BB switching. Of those that did, it was evenly spread between telephone calls, letters and SMS. The majority of countries (19) do not currently have a process in place for informing consumers that the switch is going ahead in respect of switching bundled services.

(b) Enforcement

*What are the rules and requirements on service providers concerned with...*¹⁶

i) ... stopping GPs engaging in irresponsible sales and marketing activity?

Figure 6: Rules and requirements on service providers concerned with stopping GPs engaging in irresponsible sales and marketing activity.



¹⁶ Please note that some countries have rules and regulations that fall within more than one category. As such, not all responses will add to 28.

**Other' encompasses those responses which did not easily fall in the pre-defined categories.*

As shown in Figure 6 above, national legislation, usually with a consumer protection focus, is the predominant method by which NRAs combat irresponsible sales and marketing activity such as mis-selling or slamming. This is the case for 21 countries in respect of fixed telephony, 19 countries in respect of mobile telephony and 12 countries for internet/BB. The majority of these countries also have a separate consumer or competition authority that enforces this kind of legislation.

Several responses, however, also referred to sector-specific rules¹⁷ for tackling irresponsible sales and marketing activity. This is the case for six countries in respect of fixed telephony services, seven countries for mobile telephony, and three countries for internet/BB.

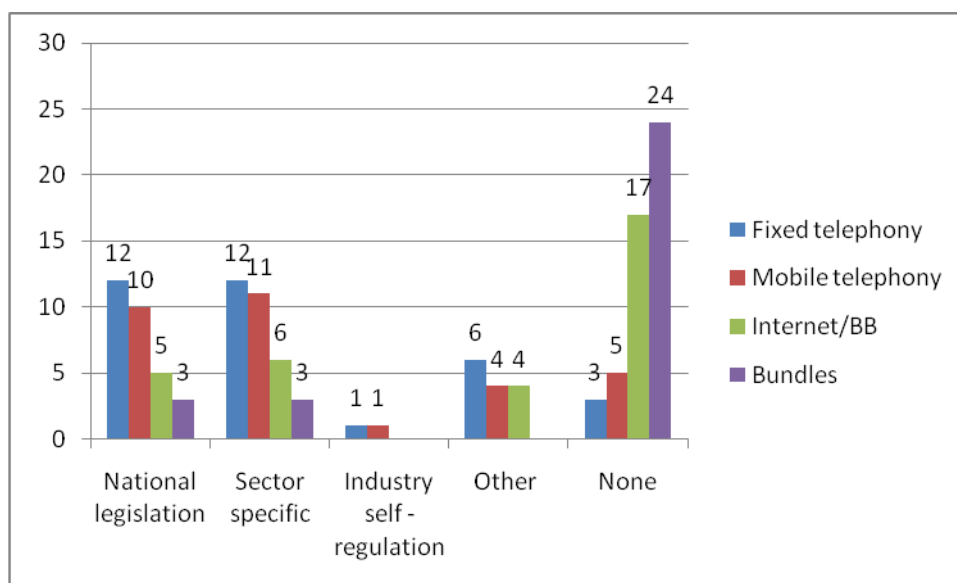
There was little by way of response to this question in respect of bundled services, with 19 NRAs having no information to provide on this. Seven NRAs, however, responded that they have some form of consumer protection provisions that apply to bundled services in the form of national legislation.

ii) ... the LP's attempts to frustrate the switching process?

The responses to this question showed that there have been greater efforts on the part of NRAs to tackle this problem through the introduction of sector-specific rules than is the case in relation to irresponsible sales and marketing activity.

¹⁷ Rules which only apply to a particular sector and have no relevance outside that sector.

Figure 7: Rules and requirements on service providers concerned with LPs' attempts to frustrate the switching process



**'Other' encompasses those responses which did not easily fall in the pre-defined categories.*

In reviewing responses, 12 NRAs (for fixed telephony), ten NRAs (for mobile telephony) and five NRAs (for internet/BB) responded that they use national legislation as the primary method for enforcement. A similar picture emerges in relation to using sector-specific rules, with 12 NRAs (for fixed telephony), 11 NRAs (for mobile telephony), six NRAs (for internet/BB) and three NRAs (for bundled services), all responding that sector-specific rules were used alongside national legislation.

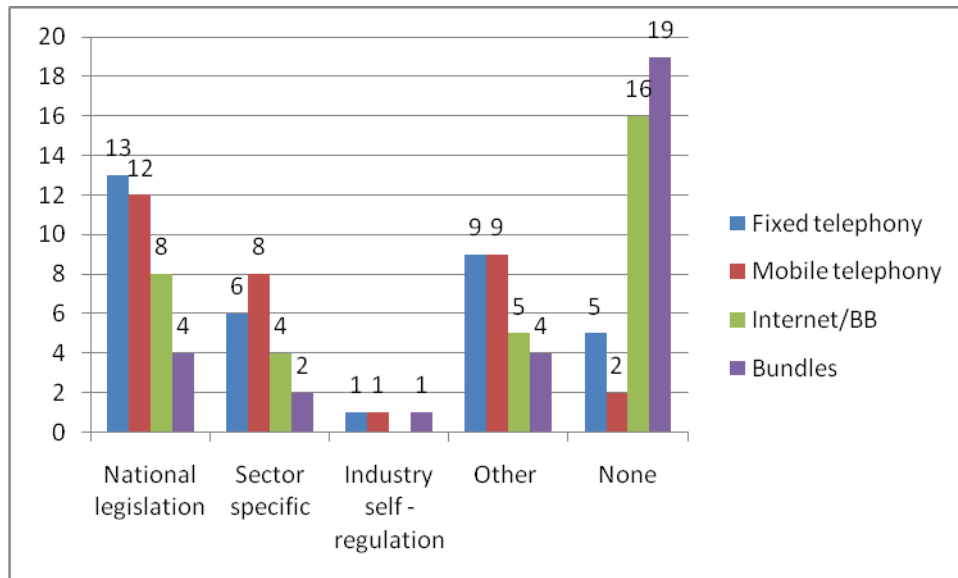
In evaluating responses, there was little evidence to suggest that industry self-regulation was an approach that was used widely across Europe, with only Poland having adopted such a model.

Again, in respect of bundled services, the significant finding was the high proportion of NRAs with no formal regulation in place to address LPs' actions for switching involving bundles of services (24). This was also the case in respect of internet/BB services, with 17 NRAs having no regulation in place to address this problem.

iii) ... contractual obstacles such as whether any restrictions are placed on the ability for CPs?

Again, the responses to this question showed that there had been efforts on the part of NRAs to tackle this problem through the introduction of sector-specific rules.

Figure 8: Rules and requirements on service providers concerned with contractual obstacles



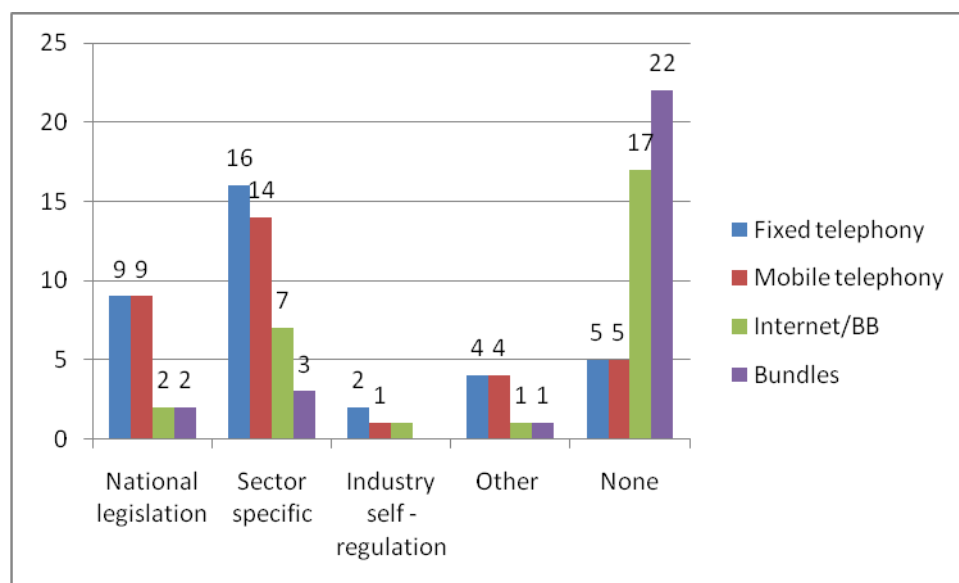
**'Other' encompasses those responses which did not easily fall in the pre-defined categories.*

Of those NRAs that responded, 13 NRAs stated that they use national legislation as the primary method for enforcement in the fixed telephony sector). A further 12 NRAs (for mobile telephony) and eight NRAs (for internet/BB) also fall into this category. In respect of sector-specific rules, six NRAs (for fixed telephony), eight NRAs (for mobile telephony), four NRAs (for internet/BB) and two NRAs (for bundled services) responded that this was the primary method for enforcement.

Again, there was a limited response back in respect of internet/BB and bundled services, with 16 and 19 NRAs respectively responding that they have no rules or regulations in place to limit the application of restrictive clauses in contracts.

iv) ... adherence to switching process requirements, such as porting requirements?

Figure 9: Rules and requirements on service providers concerned with adherence to switching process requirements, such as porting requirements



**'Other' encompasses those responses which did not easily fall in the pre-defined categories.*

In evaluating responses, NRAs generally supported the establishment of sector-specific rules to enforce adherence to switching requirements. This is the case in respect of 16 NRAs in the fixed telephony sector and 14 NRAs for the mobile telephony sector. Nine NRAs said that they enforced using national legislation in the fixed telephony sector, with the same number applying similar general consumer provisions in the mobile sector. There were only two positive responses referring to the use of national legislation in both the internet/BB and bundled services sectors.

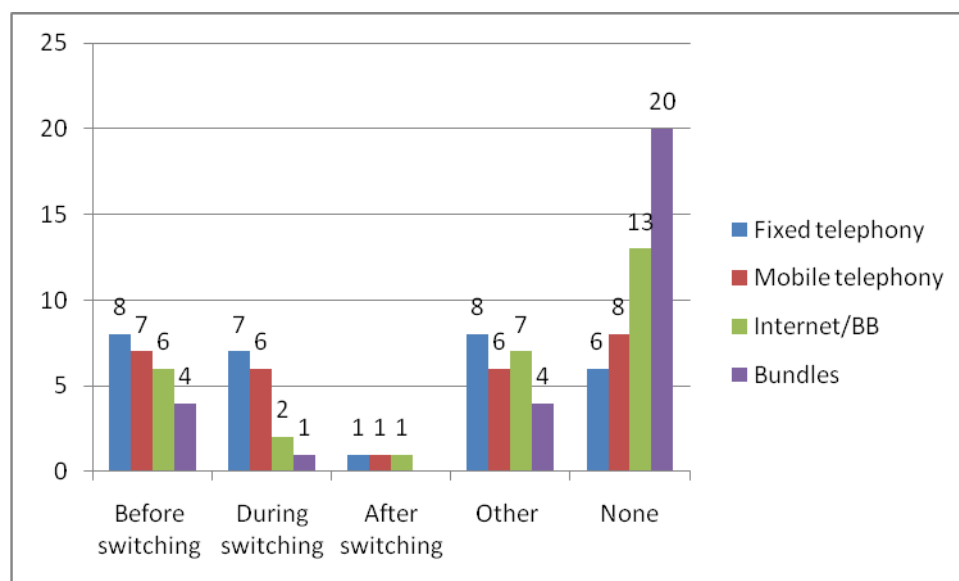
Again, based on responses received, few countries have adopted a model of self-regulation in this regard (two for fixed telephony, one for mobile telephony and one for internet/BB).

v) ... cooling-off periods? At which stage of the switching process (i.e. before/during/after) does a cooling-off period happen?

There was a wide range of responses in respect of cooling off periods, with NRAs reporting a number of different processes and timescales. In many cases it was difficult to easily allocate the responses to pre-defined categories. In respect of those NRAs where it is possible to allocate responses in terms of 'before', 'during' and 'after' switching, responses were broadly similar. For fixed telephony, eight NRAs reported that cooling-off periods happened before switching, seven NRAs reported that cooling-off happened during

switching and one after switching. A similar picture emerged for both the mobile telephony and internet/BB sectors, with seven and six NRAs respectively reporting that cooling-off happened before switching, six and two NRAs respectively reporting that switching happened during switching and one NRA for each sector reporting that cooling-off happened after switching.

Figure 10: At which stage of the switching process (i.e. before/during/after) does a cooling-off period happen?



*Other encompasses those responses which did not easily fall in the pre-defined categories.

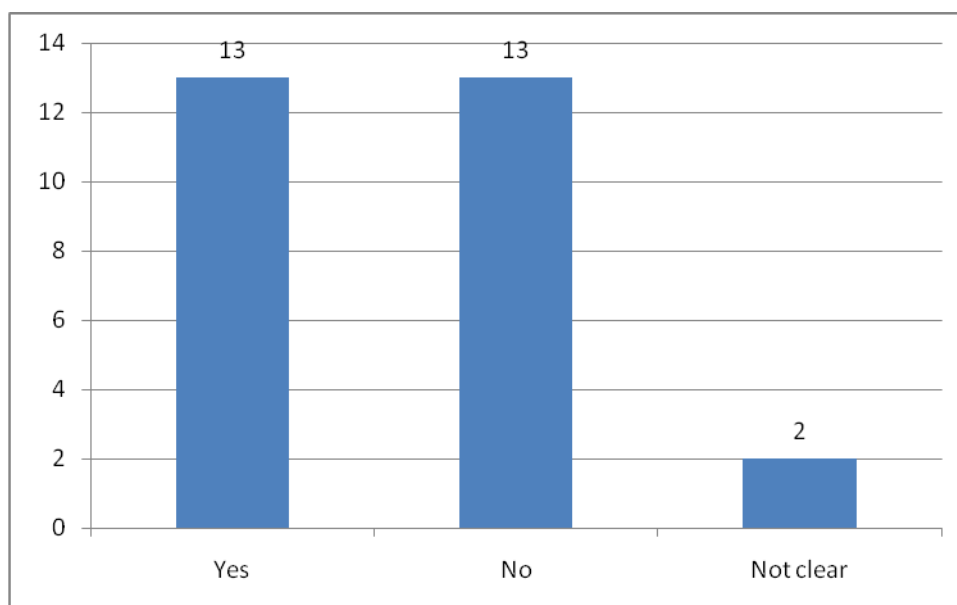
A high proportion of responses also commented that *cooling-off* periods were not a relevant feature within their jurisdictions. This was the case for six NRAs (for fixed telephony), eight NRAs (for mobile telephony), 13 NRAs (for internet/BB) and 20 NRAs in relation to bundled services.

(c) Harmonised switching processes

1. Does harmonisation of switching processes currently exist?

As Figure 11 below shows, 13 NRAs reported having a harmonised approach to switching albeit, it should be noted, that relatively few countries currently have a completely harmonised process across all sectors. There is an even split to this question amongst NRAs, with 13 NRAs reporting that they did not currently have harmonised switching processes. This is shown in Figure 11 below.

Figure 11: Extent to which harmonisation of switching processes currently exists as reported by NRAs



Case study: Spain - harmonised switching processes

Spain uses a TPV body for all three main communications services. The consumer is able to give oral consent via telephone. This conversation is recorded and stored as proof of the customer's intentions. The third party is completely independent of both the service provider and the NRA.

Also from the customer's point of view, the Spanish number portability process is the same both for fixed and mobile lines.

In order to switch from one standalone service/ bundle to another standalone service/bundle consumers have two options:

- (i) Cancel his/her actual contract and register with a new service provider.
- (ii) Start a portability process in which he/she keeps the same telephone number and keeps or changes the rest of the services (in case of a bundle)

The Eurobarometer survey data shows that, in comparison with other Member States, Spain has a high rate (28%) of switching internet service providers. It is one of the Member States which had the most (26%) users trying to switch mobile telephony phone network providers and featured the most users who effectively changed providers.

2. Is a lack of harmonised switching processes a concern in your country?

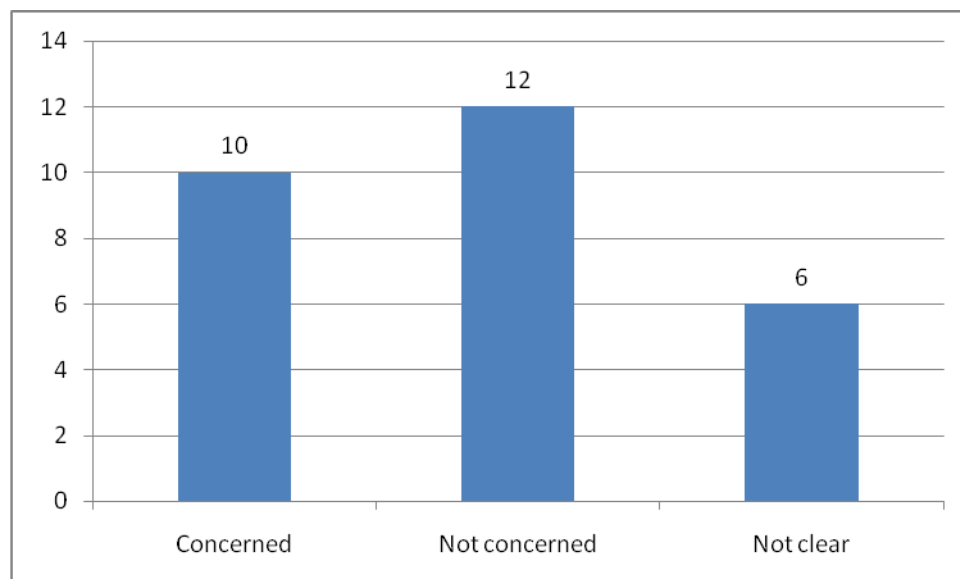
The aim of this question was to understand the extent to which lack of harmonised switching processes was a concern amongst NRAs in terms of potentially making it more difficult for consumers to switch where bundled services were involved.

There were different views expressed in the responses in respect of whether this was a concern, with 10 NRAs expressing concern and 12 NRAs not expressing any concern about the lack of harmonised switching processes. This is shown in Figure 12 below.

The reasons for concern were broadly similar, including concern relating to potential service outage for the consumer (from Greece), concerns relating to the potential impact on the customer experience of switching due to multiple switching processes (from Ireland, the UK, Romania and Sweden). In addition, the Swedish NRA also raised concerns about a lack of harmonised switching processes giving rise to additional contractual barriers.

The Portuguese NRA commented that complications with the existence of different switching procedures may, in particular, arise when substituting a bundled offer for a non-bundled offer, as this may require consumers to use different procedures when contacting the new service provider(s).

Figure 12: Extent to which lack of harmonisation of switching processes is a concern as reported by NRAs



3. What are the obstacles to establishing a single switching process?

The aim of this question was to understand what, if any, obstacles and challenges have been identified by NRAs in respect of establishing a harmonised (single) switching process for all communications services.

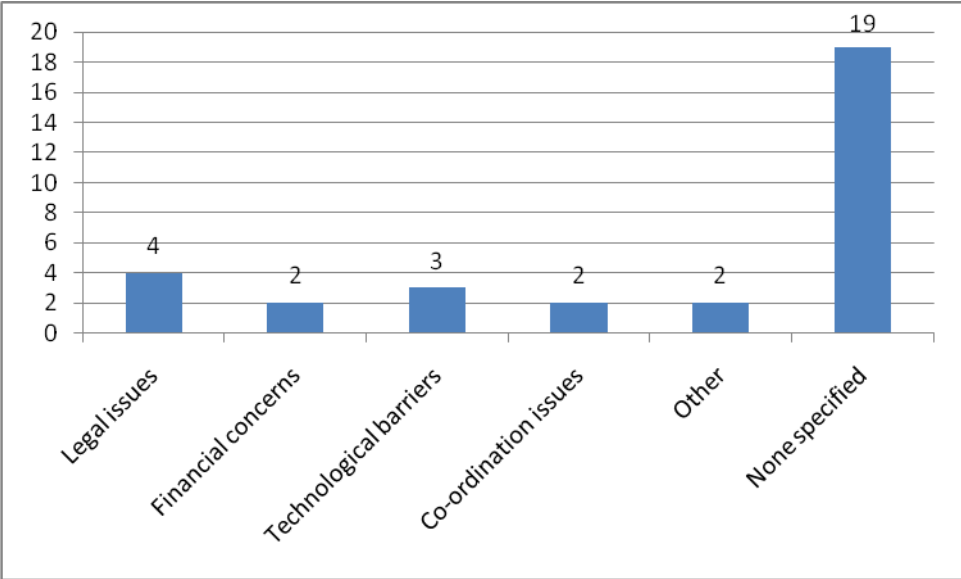
As Figure 13 below shows, relatively few countries responded in relation to 'obstacles to a single switching process'. Of those which did, Bulgaria and Ireland both noted that there would be human and financial resource impacts to implement a truly harmonised switching process. They also acknowledged that any attempts to overhaul the switching process may require a solid legal foundation.

The UK NRA observed a lack of proper collective incentives for the industry to devise a single switching process. It noted that service providers had divergent views on how switching should work, with differing views towards acquisition and retention, based on commercial interests. A similar view was put forward by the Danish NRA, who noted that some service providers did not want switching processes to be *"too simple"*. The Greek NRA also raised concerns regarding the ability of serviced providers to undertake the necessary co-ordination required for a single combined switching process.

NRAs from France, Italy and Turkey noted that differences in access technologies made it hard to have a single switching process.

The Irish NRA raised cost as a likely factor, and noted that the design and implementation of a common switching platform and supporting processes could be quite complex. It was also not clear under which legal provisions they could seek to implement such a solution. Similar legal concerns were raised by Swedish and Swiss NRAs.

Figure 13: Obstacles to establishing a single switching process.



4. Obstacles to switching

Introduction

The second section of the questionnaire focused on the potential obstacles that consumers may face when looking to switch service providers. The questionnaire highlighted a number of potential obstacles related to switching and asked NRAs to provide details of the problems which were most relevant to them in respect of fixed telephony, mobile telephony, internet/BB and bundles.

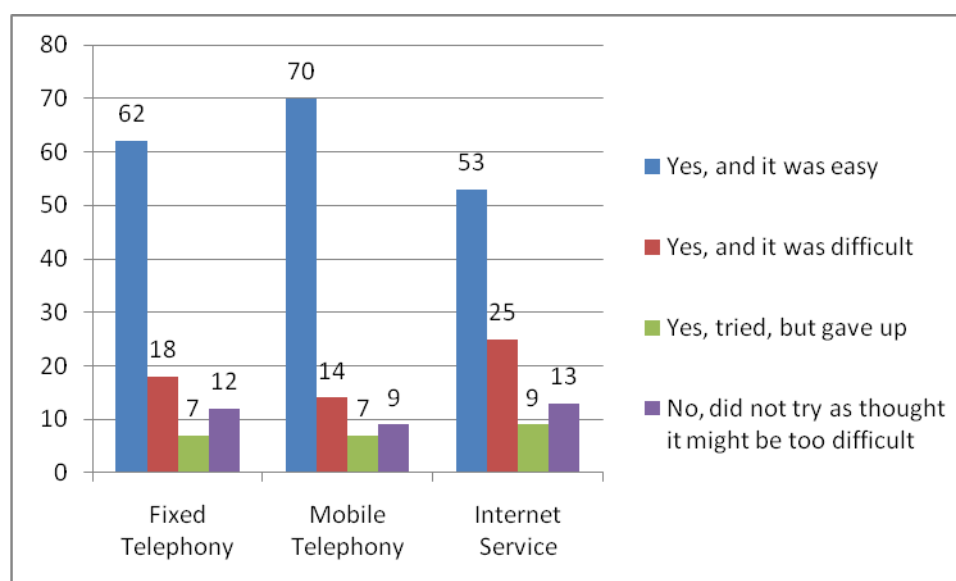
Accordingly, the overall aim of this section is to summarise responses received and the extent to which the identified obstacles are a problem across different communications services. In particular, we will seek to highlight any key differences or similarities between the regulatory experiences/perceptions of NRAs and also present several relevant case studies related to some of the identified obstacles¹⁸.

In analysing responses received, it is also important to have regard to the results of the Eurobarometer survey to which we referred in the Introduction. The survey revealed that the majority of consumers surveyed had not switched services in the previous two years because they did not want to. The main reason for not switching was that consumer perceived that their *“current provider offers the best value for money”*. Also, of importance was that consumers perceived that *“the cost and effort requested in switching is too large”*.

Of those consumers interested in switching, most were able to do so without problems, but a substantial minority anticipated or experienced difficulties. As can be seen in figure 14 below, when asked if they had tried to switch in the last two years, some found it so difficult they gave up, while others did not attempt to switch because of difficulties they perceived.

¹⁸ It is important to note that in responding to questions relating to obstacles NRAs used different criteria, including relevant consumer surveys and/or complaints received from end-users.

Figure 14. Consumers' views on switching service providers



Source: Flash Eurobarometer 243 about Consumer's views on switching service providers

Identified obstacles to switching

In analysing responses from NRAs on the biggest obstacles to switching, the following four figures 15-18 show the results broken down by the four sectors for which we requested information. For each of the responses, we have sought to categorise the described obstacles in terms of whether, based on our analysis of the responses, these are a major obstacle, a relevant obstacle, a limited obstacle or no problem. Also, there were a number of obstacles where certain NRAs elected not to respond or where they stated that the obstacle was “not applicable”.

Figures 15 – 18 below show the levels of obstacles experienced in each of the four areas we looked at – fixed telephony, mobile telephony, internet/BB and bundles. The findings are then discussed in more detail below, obstacle by obstacle, in order of the biggest issues identified by NRAs¹⁹.

¹⁹ Several NRAs did not provide information relating to obstacles on all the switching processes in their countries but only on their “regulated” switching processes (e.g. number portability, call pre-selection, LLU, etc). For this reason, the results presented may not always fully reflect all aspects of switching in particular countries – but rather only those switching processes which have rules applied. Furthermore, in answering the questions on bundles, several NRAs identified the individual processes involved in switching to and from bundles, whereas other NRAs followed the approach of indicating the rules/processes in place for switching the bundle offer as a whole.

Figure 15: Obstacles to switching fixed telephony services

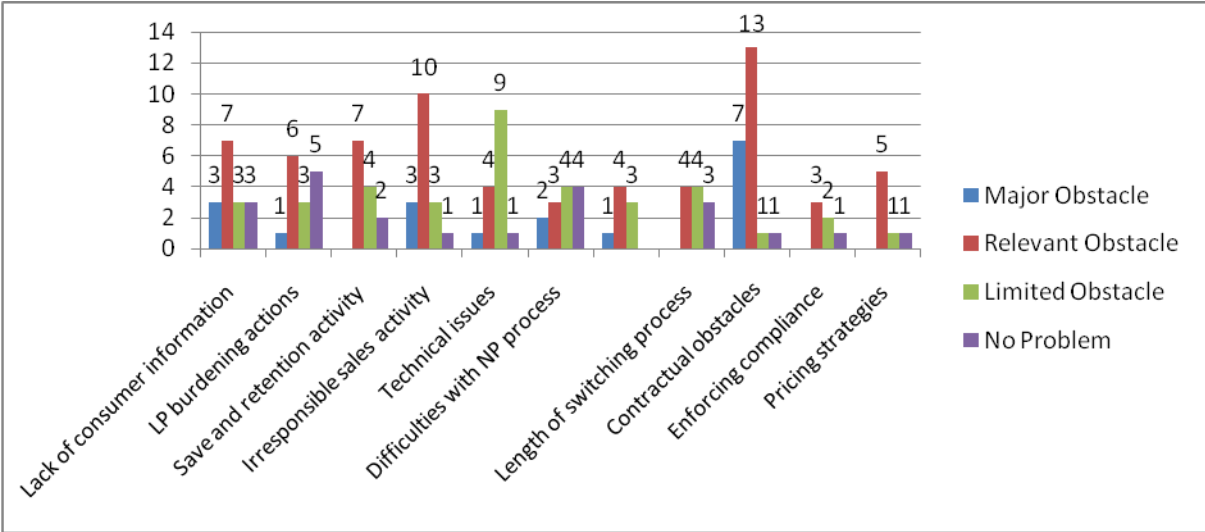


Figure 16: Obstacles to switching mobile telephony services

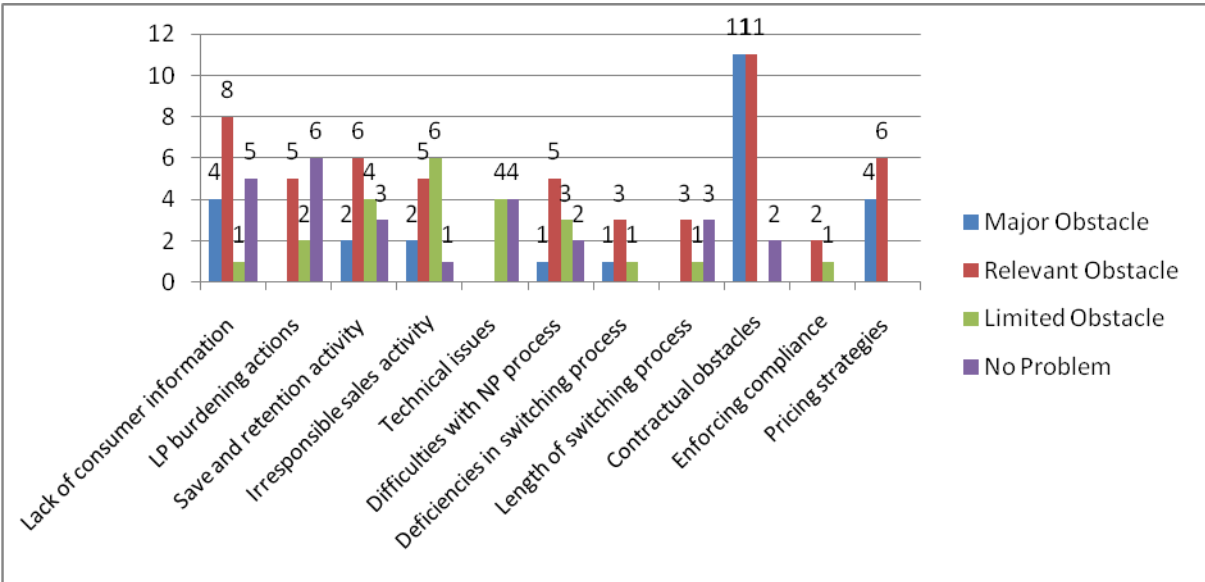


Figure 17: Obstacles to switching internet/BB services

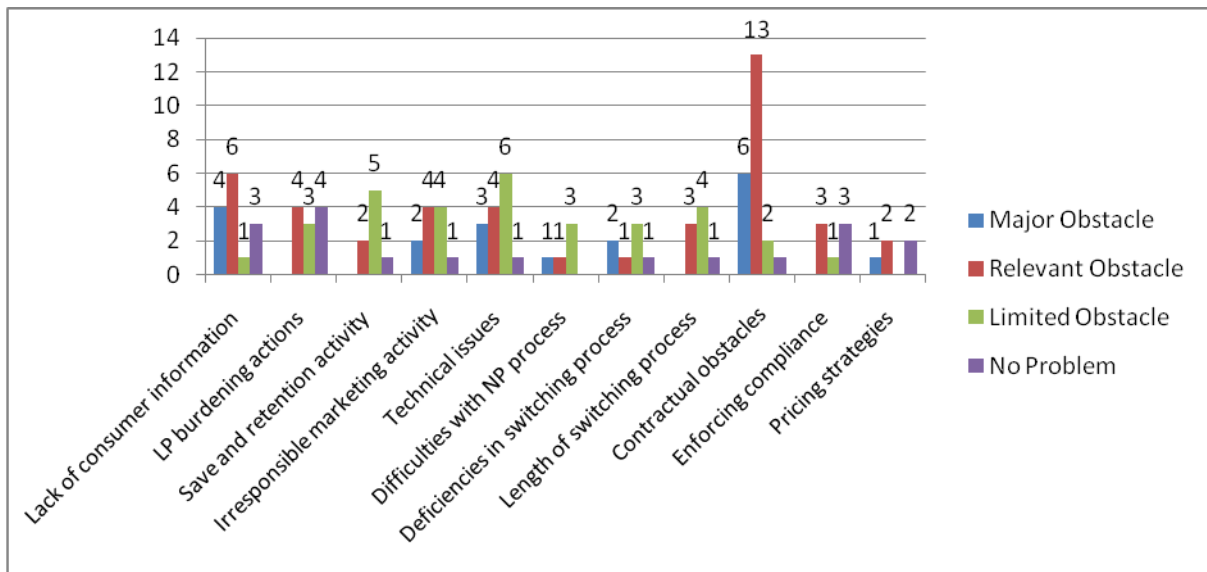
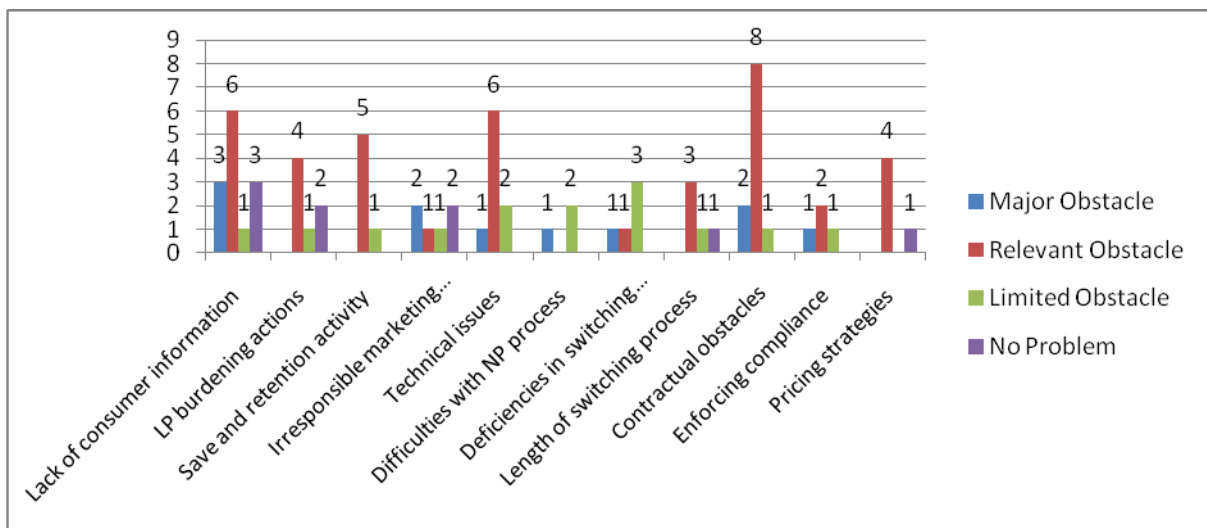


Figure 18: Obstacles to switching bundled services



1) Contractual obstacles which have the effect of discouraging switching, or which create disputes between the consumer and Losing Provider due to the consumer’s intention to switch

This was the single biggest obstacle to switching identified by NRAs, being the main concern for fixed telephony, mobile telephony, internet/BB and bundles.

Concerns expressed in relation to contractual obstacles were broadly similar, involving restrictive terms and conditions and, in particular, financial penalties for leaving during an MCP. In addition to the existence of fixed contractual term periods, additional concern was raised where contracts containing such terms were connected with subsidised equipment as

this may create additional contractual obstacles. Contractual terms providing for the automatic renewal of MCPs (also known as rollover contracts) was also highlighted as a growing concern by a number of NRAs.

The issue of the transparency and fairness of charges, including ETCs and MCPs, was a particular concern in the UK during recent years. This resulted in Ofcom conducting a review of Additional Charges during 2007/2008, culminating in the publication of *Ofcom review of Additional Charges* in December 2008.

Seven NRAs (from Belgium, Czech Republic, Greece, Italy, Romania, Switzerland and the UK) described contractual obstacles as being a major obstacle for switching fixed telephony services; interestingly, of those countries, only the Netherlands follows an LPL switching process – the rest are GPL. A further 13 NRAs (from Austria, Estonia, France, Germany, Hungary, Lithuania, Malta, Poland, Portugal, Slovakia, Slovenia, Spain and Sweden) reported contractual obstacles as being a relevant obstacle and one NRA (from Ireland) described it as a limited problem.

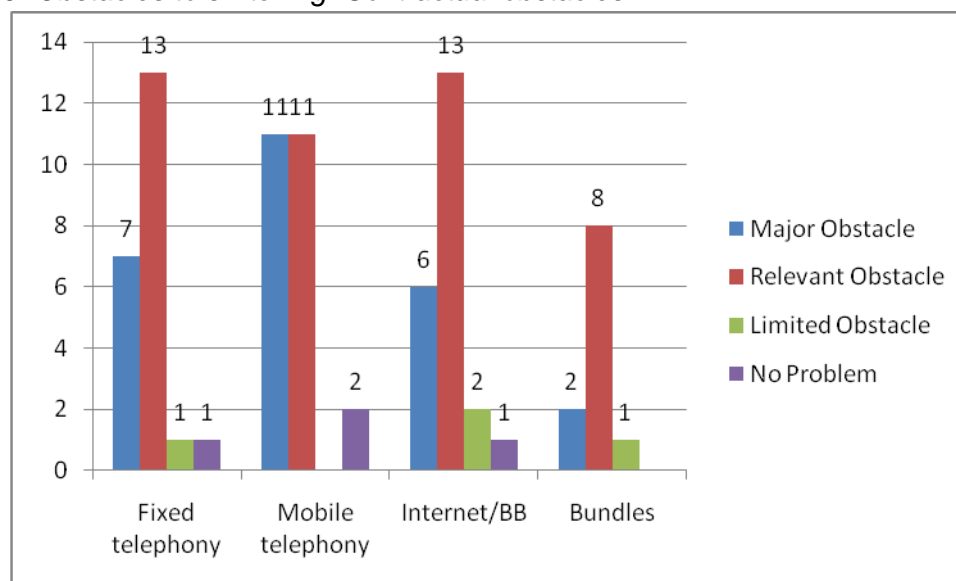
Eleven NRAs (from Belgium, Czech Republic, Finland, France, Italy, Malta, Portugal, Romania, Slovenia, Spain and Switzerland) described contractual obstacles as being a major obstacle for switching mobile telephony services. A further eleven NRAs (from Austria, Bulgaria, Germany, Greece, Hungary, Ireland, Lithuania, Norway, Poland, Slovakia and Sweden) described contractual obstacles as being a relevant problem for switching mobile telephony services.

Six NRAs (from Belgium, Greece, Italy, Romania, Switzerland and the UK) described contractual obstacles as being a major obstacle in relation to switching internet/BB services. Thirteen NRAs (from Austria, Bulgaria, Denmark, Finland, France, Germany, Hungary, Lithuania, Malta, Portugal, Slovenia, Spain and Sweden) described contractual obstacles as a relevant obstacle for switching internet/BB services.

Both Belgian and Greek NRAs considered contractual obstacles to be a major obstacle for switching bundled services, while a further eight NRAs (from Denmark, France, Malta, Netherlands, Portugal, Slovenia, Spain and Switzerland) viewed these obstacles as being a relevant obstacle to switching bundled services.

More details are shown in Figure 19 below.

Figure 19: Obstacles to switching: Contractual obstacles



In response to the stakeholder consultation, BEUC and SSE agreed with these findings, citing contractual obstacles as the most significant issue for the whole communications sector. SSE, with extensive experience in the energy market, stated that contractual obstacles are more prevalent in the retail communications market than any other sector.

On the other hand, Orange and Wind do not recognise contractual costs as a major obstacle. Orange is keen to promote closer cooperation between operators and stresses the need for the implementation of common rules used by all operators, with Wind suggesting that consumers should be fully aware of the switching procedures.

Case Study: France - contractual obstacles²⁰

In 2007, the French Parliament passed legislation, commonly referred to as the 'Chatel Law', which limited the impact of contractual obstacles.

Although this consumer-focused legislation has additional applications outside the scope of the telecommunications sector, it exerts considerable influence over contracts between consumers and telecoms providers.

The legislation provides that MCPs cannot exceed 24 months. If the MCP is greater than 12

²⁰ Another example of action to tackle contractual obstacles is a law passed in Portugal in June 2010 which establishes limits on the amounts that can be charged for unlocking equipment such as handsets and early termination of contracts, and states that contracts may not exceed 24 months.

months, service providers are required to propose the same offer with an MCP of less than 12 months. If, for example, an MCP is longer than 12 months, but the consumer wishes to leave the agreement after just 12 months, the service provider is prohibited from charging an ETC of more than a quarter of all monthly subscriptions due until the end of the contract term. Chatel Law also stipulates that ETCs cannot be higher than the cost to the provider of losing a customer. Finally, the contract cancellation process cannot take more than 10 days.

2) Lack of consumer information

Lack of consumer information was also highlighted as a main obstacle to switching within communications markets.

Key concerns raised in relation to lack of consumer information included lack of clarity in pricing structure and lack of adequate price comparison information or the homogeneity of services offered. There was concern that this may lead to consumer's underestimating the benefits of switching and lead to behavioural biases that may prevent consumers from actively participating in the market and taking decisions to switch. These issues are also covered in chapter 3 of the 2008 OECD report on "*Enhancing competition in telecommunications: protecting and empowering consumers*". Other concerns involved how well consumers were informed of the switching process and the implications of switching. Spain, for example, noted that consumers are not usually informed that they must also cancel any other services using the fixed line i.e. internet connection when they switch to a new supplier.

These findings are reinforced by the Eurobarometer survey on consumer switching which found that, although consumers found it easier to compare offers in the electronic communications sector, there were still around a quarter of consumers who found it difficult to do so (24% in Internet services, 27% of mobile telephony and 25% of fixed telephony customers).

Lack of consumer information was cited as a major obstacle by three NRAs in relation to fixed telephony switching (from Greece, Malta and Norway). Seven NRAs (from Bulgaria, Hungary, the Netherlands, Poland, Portugal, Romania and Spain) all highlighted lack of consumer information as a relevant obstacle.

A similar picture emerged in the mobile telephony sector, with four NRAs (from Bulgaria, France, Iceland and Malta) describing lack of consumer information as a major obstacle, and

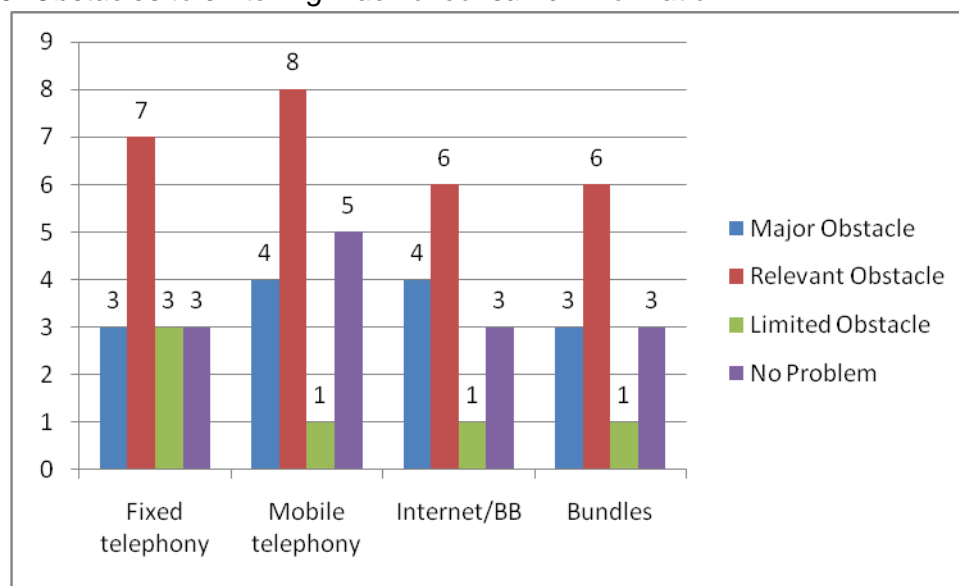
eight NRAs (from Greece, Hungary, the Netherlands, Norway, Poland, Portugal, Romania and the UK) describing this as a relevant obstacle.

In terms of internet/BB switching, lack of consumer information was considered to be a major obstacle by four NRAs (from France, Greece, Norway and Romania) and a relevant obstacle by six NRAs (from Bulgaria, Hungary, Malta, the Netherlands, Portugal and Spain).

For bundled services, lack of consumer information was viewed as a major obstacle by three NRAs (from France, Greece and Romania) and a relevant obstacle by six NRAs (Bulgaria, Iceland, Malta, the Netherlands, Spain and Portugal). This is shown in Figure 20 below.

In response to the stakeholder consultation, BEUC, Orange and Wind cited a lack of consumer information as a significant obstacle in the fixed telephony sector, with BEUC also viewing it as a problem in the mobile telephony sector. Wind believes that switching processes cannot be viewed as effective unless the consumer understands them or finds them easy to use, and Orange is keen to promote the important educational role that NRAs can play.

Figure 20: Obstacles to switching - lack of consumer information



Case Study: Greece - ensuring consumers are well informed of the switching process

The Greek NRA, EETT, has attempted to address concerns about a lack of consumer information by passing decision 488/82/2008 entitled 'Code of Practice for the Provision of Electronic Communications Services to Consumers'.

This decision introduced a number of formal rules to govern the fixed telephony switching process and, as a result, fixed telephony service providers are required to keep the consumer informed of the progress of their application. Information concerning the approval / rejection / implementation / time must now be passed on to the consumer.

In the past, a lack of awareness of the switching process has been a significant issue for the NRA. Around 90% of the complaints the EETT receive can be attributed to a lack of information on the fixed telephony switching process.

3) Irresponsible or dishonest sales and marketing activity by the Gaining Provider

Irresponsible sales and marketing activity rated relatively highly as a concern from NRAs. This came typically in the form of mis-selling or slamming²¹ activity – both of which cause serious harm and distress to consumers. The concerns raised were broadly similar across different jurisdictions, notably slamming, misrepresentation by suppliers and misleading information. This is probably to be expected given the prominence of GPL processes across Europe and the fact that, typically, GPL processes provide less upfront validation than LPL processes.

The key concerns that arose in this area related to attempted customer acquisition without the explicit agreement of the customer; this included false or misleading information when purchasing services or instances of slamming, which is where consumers find themselves with a new contract without their knowledge and/or consent.

This is mentioned as being a major obstacle by three NRAs (from Belgium, Greece, and the UK) in relation to fixed telephony switching. A further ten NRAs (from Estonia, Finland, France, Germany, Hungary, Ireland, the Netherlands, Poland, Slovakia and Sweden) described this as a relevant obstacle in the fixed line sector. Of those, both Hungary and the Netherlands, while following an LPL process, reported concerns with this particular issue.

Case Study: Irresponsible sales and marketing practice (UK)

The UK NRA, Ofcom, regarded this to be one of the most important obstacles for fixed telephony switching, and highlighted various unacceptable sales practices, including

²¹ Where consumers are switched between suppliers without their knowledge or consent.

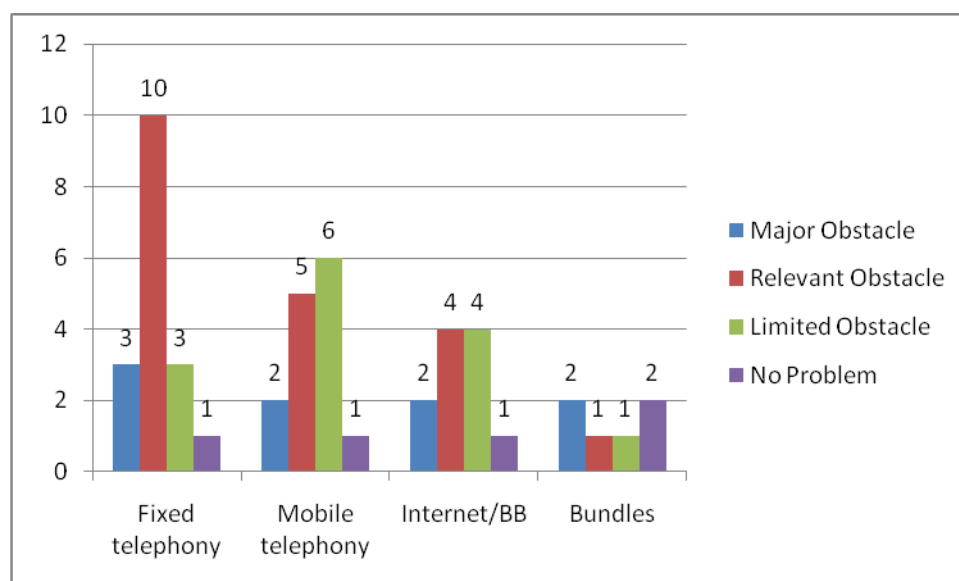
misrepresentation. Ofcom introduced sales and marketing rules in 2005, requiring service providers to adopt, and comply, with codes of practice in relation to their sales and marketing activity. In addition, Ofcom opened an industry-wide monitoring and enforcement programme. More recently, Ofcom has introduced a new General Condition (GC24) aimed at strengthening safeguards in this area.

Two NRAs (from Belgium and the UK) viewed this obstacle as a major concern in relation to mobile telephony switching. A further five NRAs (from Bulgaria, Finland, Lithuania, Poland and Slovakia) reported irresponsible or dishonest sales as a relevant obstacle in relation to mobile telephony switching.

Two NRAs (from Belgium and Greece) considered irresponsible or dishonest sales to be a major obstacle to switching internet/broadband suppliers, with a further four NRAs (from France, Germany, Hungary and Lithuania) describing this issue as a relevant obstacle to switching.

This particular obstacle was also highlighted by two NRAs (from Belgium and Greece) as a major obstacle for bundled switching. The French NRA considered this to be a relevant obstacle, while the Portuguese NRA considered it to be a limited obstacle but commented that it is worthy of monitoring.

Figure 21: Obstacles to switching - irresponsible or dishonest sales and marketing activity by the GP



In response to the stakeholder consultation, BEUC considered irresponsible sales and marketing practices as problematic issues in the fixed and mobile telephony sectors. It also stated that the aforementioned issues (contractual obstacles, lack of consumer information and irresponsible sales activity) are interlinked and actually reinforce each other.

4) Technical issues which may impact switching

Technical difficulties may take the form of service failures during, or as a result of switching. This may include billing problems that arise as a result of the switching process itself.

A number of obstacles were raised in relation to technical issues. These included difficulties in getting the necessary technical assistance when changing service provider, switching between platforms and potential loss of service.

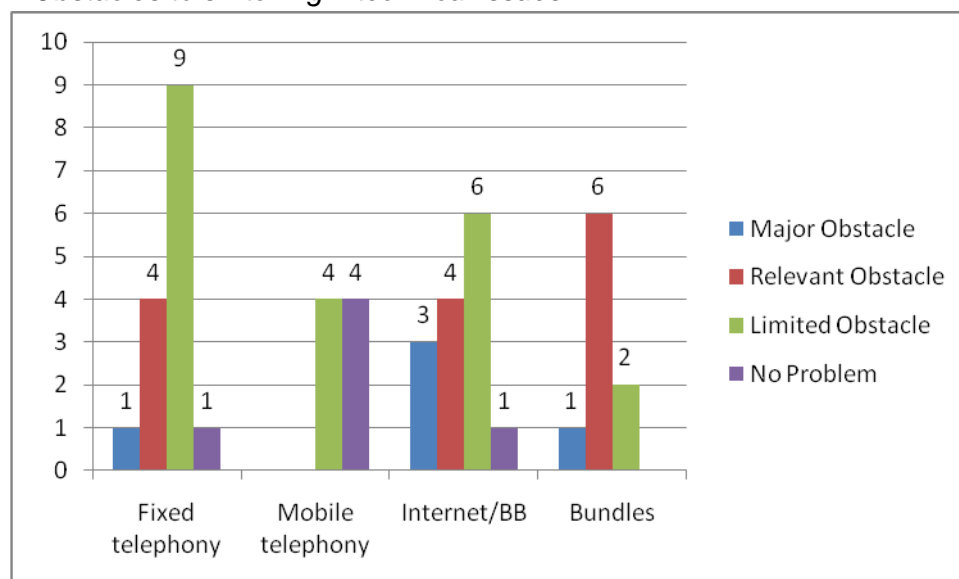
Only one NRA (Greece) described technical issues as being a major obstacle for switching fixed telephony services. A further four NRAs (from Belgium, Italy, Norway and Poland) described this issue as being a relevant obstacle.

No NRA viewed this as being a major/relevant obstacle in relation to mobile telephony switching, with four NRAs (from Austria, France, Italy and Lithuania) highlighting this as a limited obstacle.

Three NRAs (from Greece, Norway and Sweden) considered that technical issues were a major obstacle in relation to switching internet/BB services, while four NRAs (from Denmark, Italy, Netherlands and Spain) considered this to be a relevant obstacle for internet/BB switching.

One NRA (from Greece) viewed technical issues as a major obstacle to switching for bundled services, while six NRAs (from Bulgaria, Denmark, Ireland, Netherlands, Spain and the UK) considered this to be a relevant obstacle for bundled services. More details are shown in Figure 22 below.

Figure 22: Obstacles to switching – technical issues



In response to the stakeholder consultation, 3 Group were keen to point out that the indirect routing of calls to ported numbers arguably creates a technical dependency on the donor network. BEUC indicated that technical problems were most prevalent in the broadband and bundled offers. Wind suggests that the lack of synchronisation between bundled services is another relevant technical obstacle.

Case study: Malta - e-mail mobility rules

In January 2010, the Maltese regulator, MCA, published a consultation document which proposed that when consumers switch to an alternative ISP, the previous ISP forwards e-mail traffic to new email addresses designated by customers for a temporary period following the switch.

These proposals aimed to facilitate the subscribers' decisions to switch between ISPs by ensuring that, after switching, customers will continue to receive e-mails addressed to their previous e-mail address. The implementation of such measures would make Malta one of the first countries to introduce email mobility services. The consultation is available at: www.mca.org.mt/infocentre/openarticle.asp?id=1385&pref=47.

5) Actions by the Losing Provider to burden the switching decision by the consumer

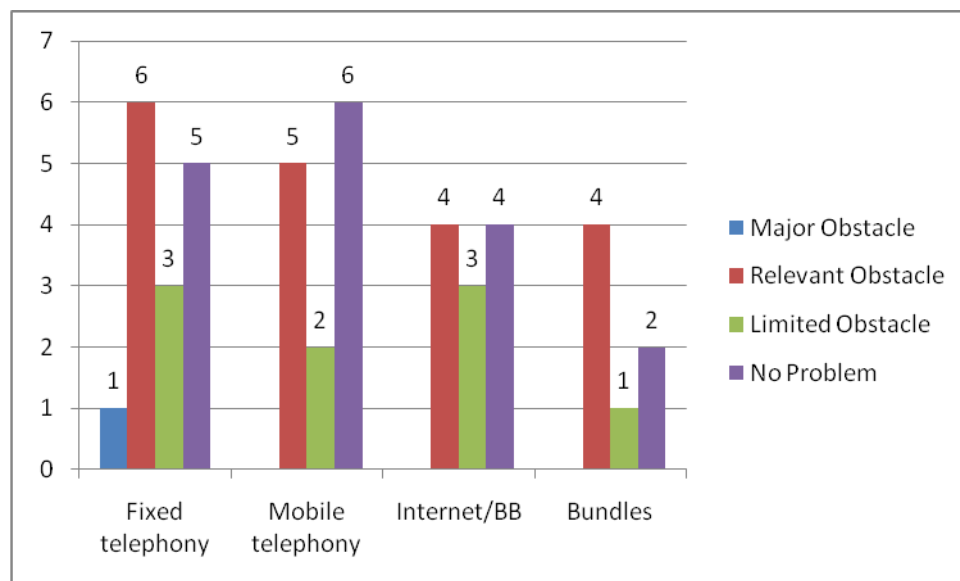
This obstacle was not generally viewed as a major obstacle in relation to fixed telephony switching, with only Spain highlighting this as a major obstacle. Six NRAs (Bulgaria, France,

Ireland, Poland, Portugal and the UK) considered this as being a relevant obstacle in the fixed telephony sector. Despite no NRA reporting the actions of LPs to be a major obstacle to consumer switching within the mobile telephony, five NRAs (from Bulgaria, Germany, Poland, Portugal and the UK) described this as a relevant obstacle.

In terms of concerns raised, these included: LPs deliberately failing to provide authorisation codes to other suppliers, or failing to act appropriately, following a request to transfer away; consumers being discouraged from switching through the threat of penalties; sanctions and debt recovery action; or LPs failing to share relevant data with the GP.

No NRA viewed this as a major obstacle in relation to internet/BB or bundled switching. Only four NRAs (from France, Germany, Portugal and Greece) considered this obstacle to be relevant in relation to internet/BB switching, while four NRAs (from Bulgaria, Denmark, Portugal and France) considered this a relevant obstacle in relation to bundled switching. This is shown in Figure 23 below.

Figure 23: Obstacles to switching - actions by the LP to burden the switching decision by the consumer



The prominence of GPL processes probably explains why few countries highlighted concerns relating to actions undertaken by the LP to discourage switching, given that these sorts of problems typically feature where consumers are required to contact their existing service provider(s) in order to initiate the switch.

In response to the stakeholder consultation, BEUC expressed major concerns over the alleged failure of certain companies to supply migrations codes to consumers looking to

switch, In addition, Wind had serious reservations about LPs' ability to delay or refuse a switching request in the fixed telephony market.

Case Study: Italy – tackling actions by the LP to burden the switching decision by the consumer

As a means of validating the customer's switching request, the consumer is required to provide the GP with a migrations code. This code is produced by the LP and contains all the relevant information needed to initiate the switching process. A secondary 'secret code' is contained within this unique ID and ultimately prevents the GP from randomly generating illegitimate codes.

The 'secret code' was introduced by Agcom deliberation n.52/09/CIR with the overall aim of tackling the actions of LPs to frustrate the switching process and reducing the instances of irresponsible/dishonest sales activity, such as mis-selling and slamming.

Depending on the consumer's request, the LP must be able to provide the switching code in a number of different forms (via letter, telephone, invoice etc.). The opportunities for the LP to burden the switching process are limited as the LP can only stop the procedure in specific pre-defined instances (see Agcom deliberations n.274/07/CONS and 41/09/CIR).

The Eurobarometer survey data show that, after Finland, Italy has one of the highest rates of usage of mobile telephony services (90%). In comparison with other Member States, Italy is one of the Member States which had the most consumers try to switch mobile phone network providers (24%) and fixed telephony phone providers (29%) in the previous two years and had the most of the above mentioned service users that effectively changed their service providers.

6) Save and retention activity by the Losing Provider

Another concern linked to LP involvement in the switching process is that of save/retention activity whereby the existing service provider aims to retain the consumer during the switchover period. Save and retention activity by the LP can create an obstacle to switching in several ways. Many service providers will operate these kind of practices in an attempt to retain the customer before or during the switching process – the ultimate aim being to

prevent them transferring to a rival. Even once the consumer has switched, the LP could attempt to win-back the consumer from their new service provider.

Key concerns about save and retention noted by NRAs included use of information to tempt back former consumers and aggressive save/retention activity where consumers are requesting authorisations codes in order to switch away.

The Portuguese NRA described save and retention activity as a major obstacle to switching in the fixed telephony sector in the past – but noted that due to actions taken to address this problem, it is only considered as a relevant obstacle today. Seven other NRAs viewed this as being a relevant problem (from the Czech Republic, Greece, Ireland, Poland, Portugal, Slovakia and Switzerland).

Case Study: Portugal - prohibiting winback on SMP fixed telephony SMP operators

The Portuguese regulator, ANACOM, described this practice as being, in the context of call pre-selection, a major problem in the past. Consequently, in 2006, it introduced a prohibition²² on telephony SMP operators taking measures to win-back customers during a certain period. Initially this was a 6-month period but in 2006 it was reduced to 4 months (this period is counted from the moment the customer's pre-selection activation request is received, thus including the period of time between the presentation of the request and the date of activation of the facility). During this period, the SMP operators are prevented from attempting to win back customers. ANACOM does not consider this is a major problem anymore, although it is still considered a relevant issue.

According to the Eurobarometer survey, Portugal is among those Member States which had most (25%) fixed telephony phone service users try to switch their service providers in the previous two years and had the most users who effectively changed their providers.

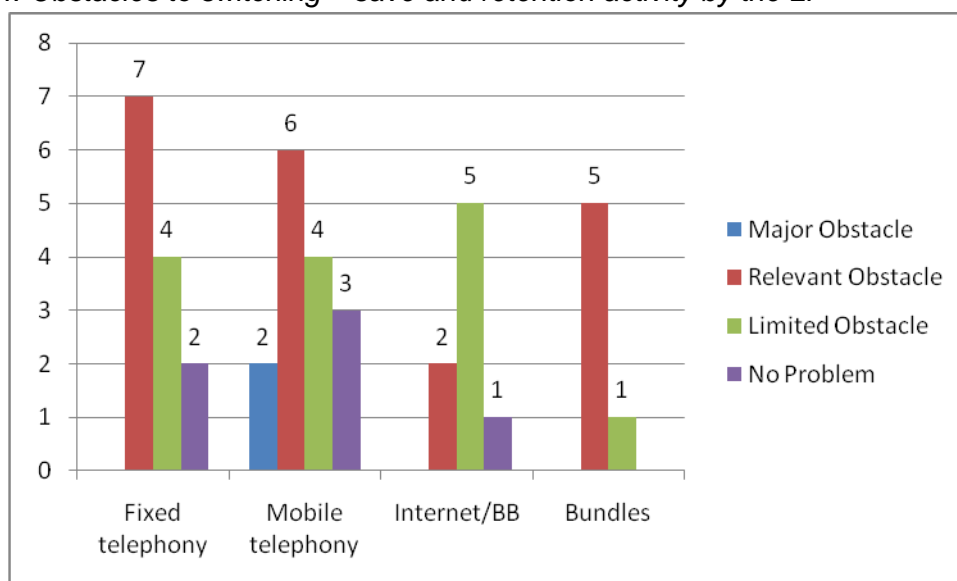
Two NRAs (from Spain and the UK) described save and retention activity as a major concern in relation to mobile telephony switching. A further six NRAs (from the Czech Republic, Greece, Poland, Portugal, Slovakia and Switzerland) considered this to be a relevant obstacle.

²² ANACOM's determination approved in 25 May 2006:
www.anacom.pt/render.jsp?categoryId=195402&languageId=1

This was not viewed as a major obstacle in relation to switching internet/BB or bundled services, with no NRA reporting this as being a major obstacle. However, two NRAs (from Greece and Ireland) considered this as being a relevant obstacle to switching within the internet/BB sector, while five NRAs (from Bulgaria, Greece, Iceland, Ireland and Portugal) viewed this to be a relevant issue in respect of bundled switching. This is shown in Figure 24 below.

In response to the stakeholder consultation, SSE expressed concerns over LP save/retention activity and highlighted the various opportunities available to an LP who seeks to burden the switching process. BEUC described this as “*bad sales practices*”. The 3 Group expressed concerns over the aggressive save/retention activities of some LPs. Similarly, Orange views save/retention activity as being particularly detrimental to the “*fluidity of the market*”. Wind had similar concerns about save/retention activities in the mobile market.

Figure 24: Obstacles to switching – save and retention activity by the LP



7) Difficulties arising from the number porting process which impact on the switching process

A number of NRAs identified various obstacles to switching arising out of the number porting process. The responses acknowledged the detrimental effect that such problems were having on the overall consumer experience and consequently the levels of switching within the sector.

Concerns raised in relation to porting processes by NRAs included technical failures and disputes between suppliers - ultimately leading to further charges being passed onto the consumer. In addition, the level of inter-operator charges and cost-reflected charges to consumers for porting was also raised as an obstacle on the basis that, where porting resulted in a high level of cost, this could have the effect of discouraging porting and/or switching.

Two NRAs (from Greece and Romania) viewed this as a major obstacle to switching in the fixed telephony sector. Three NRAs (from Denmark, Germany and Poland) described this issue as being a relevant obstacle to switching fixed telephony services.

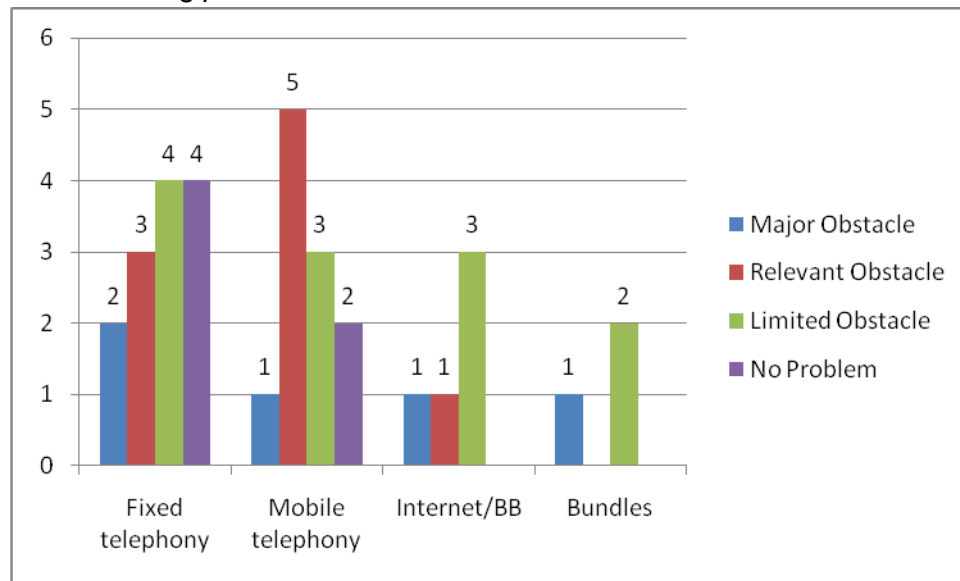
In the mobile telephony sector, only the Netherlands reporting this as being a major obstacle on account of high volumes of consumer complaints received. Five NRAs (from Germany, Italy, Poland, Romania and Spain) described this issue as being a relevant obstacle.

In relation to internet/BB switching, only five NRAs highlighted this as a concern to any extent at all. Of those five, only Greece and Sweden considered this to be a major or relevant obstacle respectively while Austria, France and the UK viewed this issue to be a limited obstacle to switching.

Only the Greek NRA considered number portability issues to be a concern to any extent within bundles services switching, considering it as a major obstacle. More details are shown in Figure 25 below.

In response to the stakeholder consultation, BEUC supported the view that the level of inter-operator charges and cost-reflected charges to consumers for porting could discourage switching in relation to the difficulties experienced when attempting to port "*provider-specific services (e.g. email addresses)*".

Figure 25: Obstacles to switching: difficulties arising from the number porting process which impact on the switching process



8) Pricing strategies of operators in the retail market (e.g. differences between on-net and off-net tariffs)

A key concern raised by NRAs here, in particular, was in relation to the variance in on-net and off-net tariffs, such as where service providers offered free or very low on-net tariffs but much higher price for off-net tariffs. Other concerns raised include inter-operator charges, such as for porting, or termination rates, all of which may result in higher charges being passed on to consumers.

No NRA viewed the pricing strategies of operators in the retail market as a major obstacle in the fixed telephony sector. Five NRAs (from Belgium, Czech Republic, Ireland, Malta and Slovenia) described this as being a relevant issue within their countries.

Four NRAs (from Norway, Portugal, Slovenia, and Switzerland) described the differences between on-net and off-net tariffs as a major obstacle in respect of switching mobile telephony services. A further seven NRAs (from Belgium, Bulgaria, Czech Republic, Ireland, Malta Romania and Sweden) reported this problem to be a relevant concern.

The Portuguese NRA, ANACOM, in particular, believes that pricing strategies - namely the existence of high differences between on-net and off-net tariffs - “create a tariff mediated network effect that distorts the competition in favour of large operators”. A recent study from the Portuguese Competition Authority reinforced these conclusions: “As operators adopt

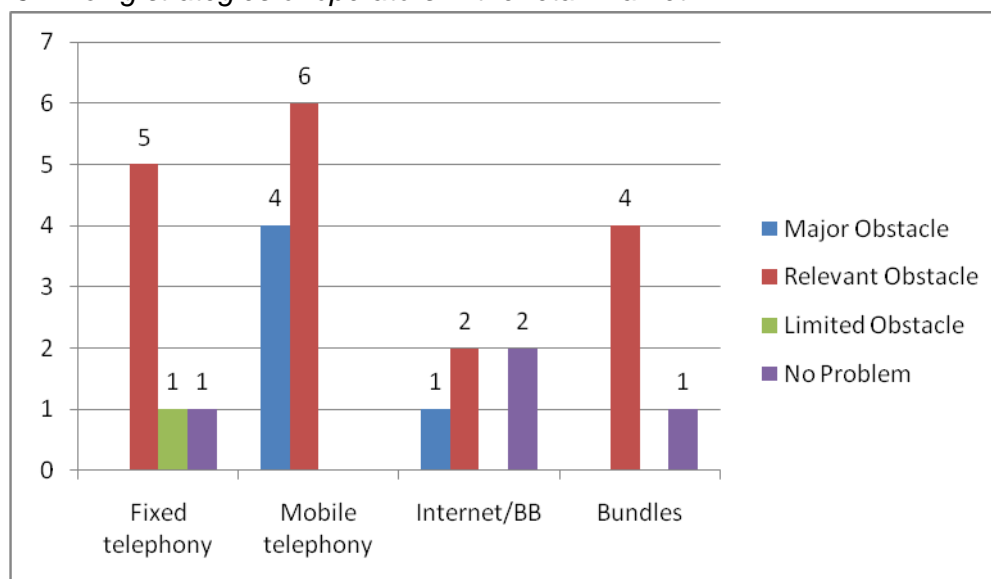
pricing strategies based on on-net/off-net differentiation, where on-net prices are very low when compared with off-net prices, consumers prefer to subscribe (and to stay) with operators where their contact network". This view was supported by ANACOM's research in 2008 that found 45% of respondents indicating the main reason for choosing a mobile telephony service provider was based on the provider that their network of family and friends were on.

In this context, it is interesting to note that according to the Eurobarometer survey, the most common reason given for staying with current service providers for the majority of mobile telephony consumers across Europe (46%) is that *"the current provider offers the best value for money"*. This may, at least partially, reflect the fact that the network effect (described above) associated to the *"current provider offers"* is perceived by the mobile consumers as an advantage (*"the best value for money"*) and therefore induces them not to switch. This average is higher than the ones registered for fixed telephony (40%) or internet/BB (44%), supporting the importance of pricing strategies in the retail market as an obstacle to switching in the mobile sector.

The only NRA which considered pricing strategies of operators in the retail market to be a major obstacle in relation to internet/BB switching was the Slovenian NRA. Only two NRAs (from Hungary and Ireland) considered this to be a relevant obstacle in relation to internet/BB switching.

The pricing strategies of service providers with regard to bundles were raised as a major concern by four NRAs (from Belgium, Bulgaria, Ireland and Malta). More details are shown in Figure 26 below.

Figure 26: Pricing strategies of operators in the retail market



9) Deficiencies in the switching process

Deficiencies in the switching process could involve back-office process difficulties and incompatibilities that may lead to a poor consumer experience. This may be due to a lack, or inadequacy, of an underlying migrations process.

Concerns raised by NRAs include the lack of a specified time frame for switching when there is a change of physical networks, lack of processes for closing down existing accounts and, specifically, the process for managing outstanding contractual liabilities. A particular problem in the UK has been the lack of effective migration paths for a number of possible broadband migrations (and home movers) scenarios (particularly in respect of switching away from full LLU services)²³.

Deficiencies in the switching process were generally not reported as a significant obstacle in relation to fixed telephony switching, with only the Greek NRA identifying this as a major problem, and, in particular, concerns about the lack of a specified time frame for switching involving a change of physical networks. Four NRAs (from Finland, Hungary, Poland and Slovakia) described this as being a relevant obstacle.

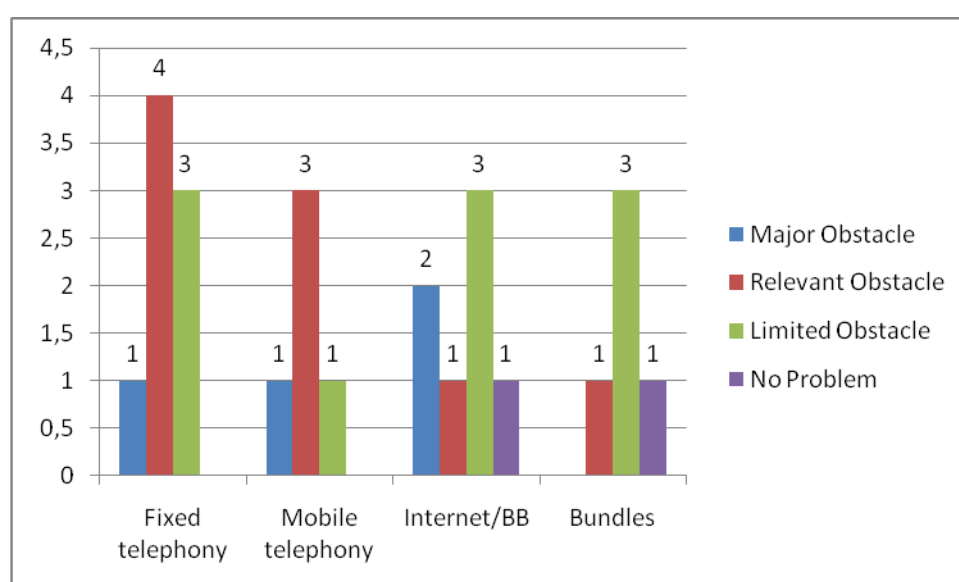
Deficiencies in the switching process were not viewed as a significant obstacle for switching mobile telephony services, with only the Slovenian NRA raising the issue as a major

²³ As a consequence, Ofcom commissioned an independent body (the Office of the Telecommunications Adjudicator) to work on its behalf with the industry to address underlying process deficiencies. This has proved extremely valuable.

concern. Three NRAs (from Bulgaria, Poland and Slovakia) reported deficiencies in the switching process as being a relevant obstacle in their country in relation to switching mobile telephony services.

Only two NRAs (from Greece and the UK) considered deficiencies in the switching process to be a major obstacle in respect of internet/BB switching, with one NRA (Hungary) viewing this as a relevant obstacle for internet/BB switching. This was largely considered to be a low level concern in respect of bundled services, with a total of five NRAs (from France, Greece, Ireland, Portugal and the UK) highlighting deficiencies in the switching process as an obstacle to some extent. More details are shown in Figure 27 below.

Figure 27: Obstacles to switching: deficiencies in the switching process



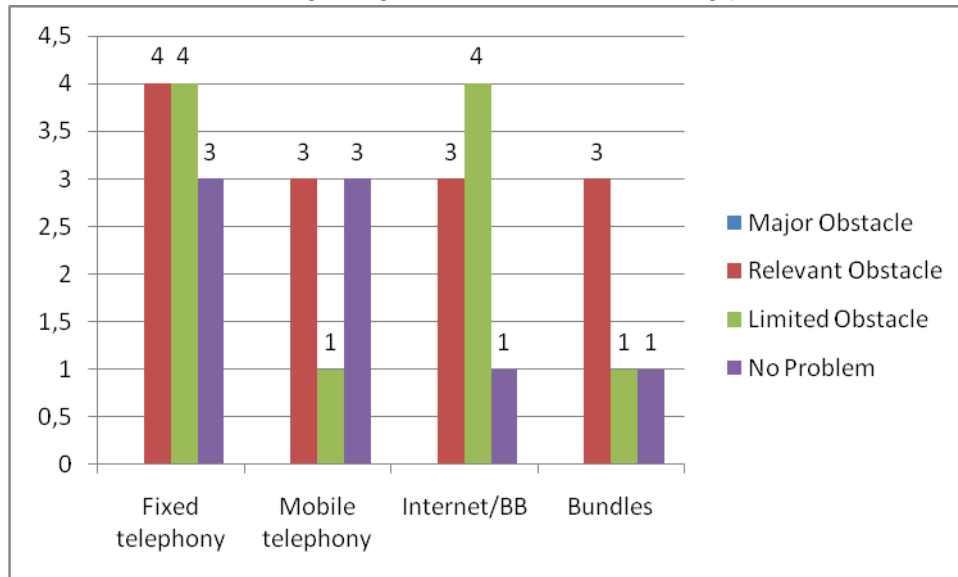
10) The length of the overall switching process

The length of the overall switching process could be an important factor for consumers in weighing up the benefits of switching to a different service provider. For the purposes of this report, the switching period is defined as the period between the consumer's agreement to enter into service with the new service provider and the new service becoming active.

In respect of fixed telephony switching, no NRA viewed this as a major concern. Four NRAs (from Czech Republic, Germany, Portugal and Romania) viewed this issue as being a relevant obstacle. A further four NRAs (from Austria, France, Estonia and Iceland) described this issue as a limited obstacle. In terms of the mobile telephony, three NRAs (from Czech Republic, Portugal and Romania) described this obstacle as a relevant concern.

A similar picture emerged in the internet/broadband and bundles with three NRAs each considering this issue to be a relevant concern (from Norway, Portugal and Spain for internet/broadband and from Ireland, Portugal and Spain with regard to bundles). More details are shown in Figure 28 below.

Figure 28: Obstacles to switching: length of the overall switching process



The length of the overall switching process is not generally considered by NRAs as a major inhibitor of switching within European communications markets. Indeed, this is borne out by the fact that many countries have strict porting lead times without having equivalent maximum switching time requirements.

Ireland provided the shortest switching time across different communications services, and had an end to end process time for switching mobile telephony services of between 2 and 24 hours.

Also, most countries followed longer rather than shorter time periods for switching, with the majority being within timescales of 3-7 days or 7+ days. Again, this is potentially another possible consequence of GPL processes being prevalent amongst NRAs, where lower upfront validation typically requires a longer switchover period in order to make sure that the consumer is aware of the switch and can cancel the pending order where necessary.

Case Study: Ireland - number porting process

In May 2001, the Office of the Director of Telecommunications Regulation issued a public

consultation document, *Implementing Full Mobile Number Portability in Ireland (ODTR01/36, www.comreg.ie/fileupload/publications/odtr0136.pdf)*. This document included the requirements, and some fundamental design criteria, for Mobile Number Portability (MNP).

A steering committee, the Mobile Number Portability Committee (MNPC), consisting of senior representatives of fixed and mobile operators in Ireland was formed in August 2001 at the behest of the Irish NRA, ComReg. In addition task-focused working groups were convened and facilitated by ComReg. These focused on specific issues such as technical design, process design and the design of the IT architecture for MNP. It was agreed early on, in order to meet the fundamental requirements for MNP, that a central database would be used. All operators would have to connect to the database independently.

The commercial negotiation to source a company charged with managing the central database was carried out independently by the MNPC. The technical and commercial/contractual agreements of those negotiations are not known to ComReg. The solution was implemented in 2003. While the target is for porting to happen within a day, the vast majority of mobile ports occur in **two hours or less**, which is very quick by international standards.

ComReg believes that MNP has been very successful in Ireland because it is GP-led and because a centralised database is in place to which all operators connect. ComReg intervened and continues to intervene on regulatory issues alone. It is not involved in the day-to-day running of the central MNP database.

According to the Eurobarometer survey data, Ireland has a very high usage (88%) of mobile phone services.

11) Difficulties for the NRA in enforcing operators' compliance with switching requirements

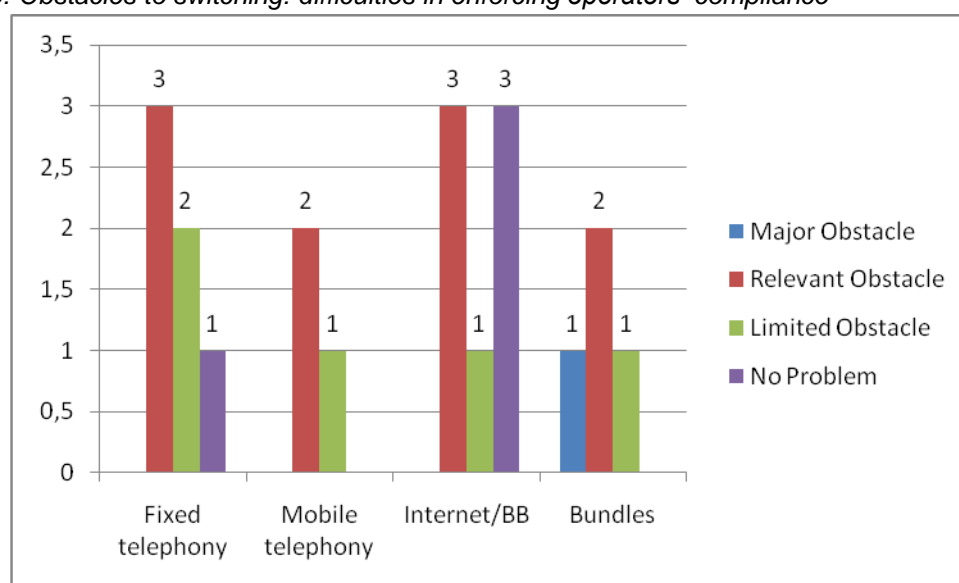
No NRAs viewed difficulties enforcing operator's compliance with switching requirements as a major obstacle to switching.

For fixed telephony switching, three NRAs (from Bulgaria, Netherlands and Poland) described this as a relevant obstacle. A similar picture emerged in relation to switching mobile telephony services where no NRA considered this issue to be a major obstacle, and only two NRAs (Bulgaria and the Netherlands) described it as a relevant problem. It is

interesting to note that these countries operate a LPL process to some extent. Again, no NRAs described this as a major obstacle for switching internet/BB services, and three NRAs (Bulgaria, the Netherlands and Sweden) viewed this as a relevant obstacle.

In relation to switching bundled services, Sweden cited the lack of an available porting process as being a major obstacle to the switching of bundled packages. Additional concerns were raised by Bulgaria and the Netherlands who viewed this as a relevant obstacle. More details are shown in Figure 29 below.

Figure 29: Obstacles to switching: difficulties in enforcing operators' compliance



Case study: Belgium – enforcing mis-selling rules

From analysis of the responses received, it is clear that irresponsible or dishonest marketing activity is a concern across fixed telephony, mobile telephony and internet/BB sectors in Belgium. In 2008, The Ombudsman recorded a large number of complaints about illicit practices as regards customer acquisition (without an explicit agreement of the customer).

In an attempt to address this issue, the Belgian NRA, BIPT, introduced sector-specific legislation. The Belgian Telecoms Act gives BIPT greater powers of enforcement and, in particular, extends the remedies available to the NRA when enforcing mis-selling rules.

One of the most notable provisions permits the NRA to issue a fixed penalty notice of €750 to the guilty provider in a case of mis-selling/slamming. It is also worth noting that the

consumer is entitled to a full refund as a means of compensating them for the harm caused.

Other

Another obstacle raised by NRAs was the unlocking of handsets. The concern here was that certain mobile phone models are sold at a discount by mobile telephony service providers with the handset locked to that particular supplier's network. This created an obstacle to switching by limiting the ease by which consumers can switch to another mobile telephony service provider.

5. Recommended best practices to facilitate switching

This section aims to identify recommended best practices to facilitate switching in the context of fixed telephony, mobile telephony, Internet/BB and for switching bundles, including some or all of these services. As already mentioned, the recommended best practices are predominantly focused on the ability of consumers to switch, and have been developed in light of responses to the questionnaire and, in particular, the shared experiences of NRAs regarding the applied regulatory tools each one has developed to facilitate switching in their countries. In developing the best practice principles, the various related academic works, reports and surveys already mentioned were taken into account, as were the suggestions from stakeholders.

When implementing best practices, it is also important to note that trade-offs may emerge in relation to the extent to which any of these can be pursued given the fact that there may be tensions between some of the recommended best practices. For instance, there may be a trade-off between making switching easier for consumers (which typically means there is a lower level of customer validation) and protecting consumers from mis-selling and slamming activity (which typically leads to a higher level of customer validation in the switching process). Another trade-off may exist between making switching easier for consumers and ensuring consumers are fully informed of the full implications of the switching process (typically resulting in increased contact points for the consumer, potentially introducing additional friction to the switching process).

Accordingly, examples of potential trade-offs in relation to the switching process may include:

- a. ease of switching vs. consumer protection;
- b. ease of switching vs. well informed consumers (number of contact points);
- c. speed vs. reliability;
- d. costs vs. risks;
- e. costs vs. time to implement; and
- f. control vs. engagement.

However, whether such trade-offs arise - and, if so, the consideration of these trade-offs - are likely to be different depending on a number of factors, including the national conditions

of the country and the competitive dynamics of the electronic communications market for which they are being assessed. It will therefore be necessary for each NRA to assess how best to apply these recommendations, based on their own assessment of these considerations.

Establishment of best practices to facilitating switching

In light of this report's analysis of the NRAs' questionnaire responses, the identification of relevant case studies and taking into account the various related academic works, reports and surveys already mentioned, and suggestions from stakeholders, this section of the report sets out BEREC's recommendations on best practices to facilitate switching.

In considering best practices, BEREC is proposing to group these under two broad categories; firstly, practices which aim to support a positive consumer experience (and address issues relating to 'direct harm'²⁴) and, secondly, those principles which aim to encourage positive impacts on competition and welfare (and address issues relating to 'indirect harm'²⁵). These are discussed in more detail below.

BEREC notes that the best practice principles should be applied in light of all relevant legal requirements, including provisions in the Universal Services Directive, particularly Article 30(4), 30(5) and 30(6).

Switching processes to support a positive consumer experience

It is important that the switching process results in a positive experience for consumers. Consumers will only benefit from competition where they have confidence in the switching process. Where this is not the case, consumers will be unwilling to engage effectively in the competitive process.

²⁴ For the purpose of this report, this is defined as the impact on the consumer *during* the switching process, e.g. the time spent to arrange switching, service disruptions, the hassle (number of touch points), notice periods, double billings etc... In other words, the switching costs.

²⁵ For the purpose of this report, this is defined as the impact of a given switching process on consumers but which does *not necessarily occur during* the switching process (long-term impact). This impact occurs indirectly via the effect of the switching process on competition.

Amongst other things, this requires that consumers who choose to switch between service provider(s) be able to do so through the availability of simple and transparent procedures, without undue complexity and disruption.

In light of analysis of the questionnaire responses, as well as other relevant considerations (mentioned above), BEREC recommends the following best practices to facilitate switching:

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

- i. The overall switching process should be as quick and reliable as possible, with a specified maximum time for the switch to take.*
- ii. Consumers should be responsible for the beginning of the switching process and should be made aware of its conclusion.*
- iii. Consumer involvement should be no more than necessary in order to ensure that the burden of switching is not unduly onerous.*
- iv. The switching process should be seamless and invisible to the consumer.*
- v. Conditions and procedures to terminate contracts should not act as a disincentive to switching.*
- vi. Consumers should be able to transfer more than one service at a time. This is particularly relevant in the context of switching to, from and between, bundled services.*
- vii. In this context, the most effective method of facilitating switching between service providers, based on the available evidence, is where the process is managed by the new service provider as the primary contact point (GP-led).*

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

- i. Registered evidence of the consumer's authorisation to switch service provider*

should be kept, for a reasonable period, in the light of national legislation, by the service providers.

- ii. The overall switching process should take into account consumer protection considerations, including an opportunity for consumers to stop the switch happening where they have not given consent to the switch or where they simply wish to change their mind*
- iii. There should be clarity on the type and level of information that needs to be made available to new customers, both at the point of sale and after the sale has been concluded.*
- iv. There should be a quick and reliable restoration process so that consumers switched in error can have their original service restored quickly, with minimum effort, and at no cost.*
- v. There should be clarity about consumers' key rights and choices.*
- vi. Consumers' legal rights and best interests must be protected.*

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

- i. A brief and precise description of the switching process.*
- ii. Information to be made available on the progress of the switching process.*
- iii. Information of the respective roles and responsibilities of all parties involved in the switching process (including the former service provider, the new service provider and the consumer).*
- iv. Information on when the switch will take place and how long the process is expected to take and the value of any fees associated with the process.*

- v. *Information about the key terms and conditions of the new service, including contractual liabilities and cancellation rights.*
- vi. *The potential for contractual liabilities (e.g. Early Termination Charges) with the existing service provider(s).*
- vii. *The potential for any loss of other services and the maximum length of time of loss of service, and the potential for any change to contractual conditions, namely if the service has been purchased within a bundle.*

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

- i. *Service providers to act in a responsible and transparent manner in alerting consumers to the existence of additional charges, including Early Termination Charges and Minimum Contract Periods, so that consumers understand the charges they pay.*
- ii. *Service Providers to ensure that charges are fair, justified and proportionate.*

Switching processes to encourage a positive impact on competition and welfare

It is important that switching processes should have positive impacts on competition and welfare and be carried out in as cost-efficient a manner as possible in order to prevent them from distorting the competitive process. Where this is not the case, it is likely that competition will be damaged as service providers are likely to be unwilling to compete for customers on the grounds it may not be commercially viable for them to do so. In this case, those suppliers who choose to compete for consumers may ultimately pass any costs onto consumers, and this may result in consumers being deterred from switching.

In this regard, BEREC recommends the following best practices to facilitate switching:

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

- i. *Ensure that the switching process is non-discriminatory and does not unduly favour one service provider over another. Wherever the principles of equivalence²⁶ and symmetry²⁷ can be reasonably applied, they should be.*
- ii. *Avoid distortions to the competitive process by ensuring that all service providers act fairly and responsibly during the switching process.*
- iii. *Work across different sales channels as far as possible so that switching processes do not discriminate against different service providers' chosen sales channels e.g. telesales, online and face-to-face.*

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

- i. *A switching process that is efficient and cost effective to operate, including technically simple.*
- ii. *Consumers will not be subject to any fees imposed by the service providers as a result of the service providers' own errors during the switching.*
- iii. *The process should be highly automated, with the need for manual intervention minimised.*
- iv. *Validation processes should not be unnecessarily burdensome so that high rejection/error rates are minimised.*
- v. *The process encourages a level of co-operation between all service providers involved in the switching process in order to facilitate consumer switching. Where considered necessary, this could be done by promoting an industry framework for cooperation between all relevant service providers in order to facilitate the transparent and inclusive governance of consumer switching arrangements so that these can be developed by industry, as markets evolve, under appropriate regulatory direction.*
- vi. *Without prejudice to the protection of confidential or commercially sensitive*

²⁶ Means the switching process should be available to all service providers on equal and non-discriminatory terms, wherever possible; that is the switching costs for switching services should not be significantly higher than another for no justifiable reason.

²⁷ Means that seamless switching opportunities should be available across all communications services on equal and non-discriminatory terms wherever possible; that is the switching costs for switching services should not be significantly higher than another for no justifiable reason.

information, the new service provider should be able to access the relevant service/line characteristics so that it is able to manage the relationship with the customer and, in particular, easily identify whether there are aspects of the service that cannot be supported.

- vii. The process for recovering switching costs or new customer acquisition costs (e.g. through prices charged per ported numbers and unlocking SIM cards) should be objectively justifiable, proportionate, non-discriminatory and transparent, and should be likely to contribute to efficient switching processes and effective competition.*

Transparency measures to facilitate switching

When implementing best practices to facilitate switching, it is also important for NRAs to have regard to other measures which enable consumers to participate in the electronic communications market including, of particular relevance, issues related to transparency of consumer information. The provision of consumer information plays a critical role in competitive markets. This is because markets work best when consumers are fully informed about what they are buying. Without this, consumers may make incorrect decisions and / or be reluctant to switch.

However, some 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. Where this is the case, there may be a role for NRAs in supporting consumers in their decision-making to help them make effective choices.

Such issues are not the focus of this report which, as above, is predominantly focused on the ability of consumers to switch (and not the willingness). However, issues related to transparency of information and methods of information were considered in the ERG's report, *ERG (2009) Report on Transparency of Tariff Information*. It is also an issue which has been considered in other previous reports (for instance, *ERG (2005) Report on Transparency of retail prices (with implementation of Number Portability)*).

The ERG report on Transparency of Tariff Information noted that tariff transparency was an area of concern which was raised by NRAs in a significant number of countries. More specifically, in reflecting the positions expressed by NRAs in their responses to the questionnaire, it also noted the following:

- a. **Lack of transparency (the “end-user transparency problem”)** may mean that **consumers do not find it easy to make informed decisions and compare services**. This may be because the information does not exist or is deceptive. It might also be because the information consumers are presented with is complex, not easy to interpret and/or set out in a number of different places, which makes it difficult to interpret and/or compare. Transparency problems can be generated and amplified by a variety of factors, including the increasing number and diversity of offers, the complexity of tariff plans, the bundling of services and the deficient presentation of information by service providers.
- b. **Such negative consequences can be prevented by giving consumers access to information which is relevant to their needs**. Information practices can be divided into three categories, according to the party who is providing the information to end-users (service providers, NRAs or third parties).

Measures which can be particularly effective in this regard include:

- The availability of accessible and independent price information which can be easily compared (e.g. through tariff calculators), so that it is simpler for consumers to make more informed and better choices on which services best suits their needs.
- The availability of accessible and comparable quality of service information on customer service information and technical or network information to enable consumers to make informed decisions and better choices on which supplier to use.
- The availability of accessible and comparable service provider complaints data to engender trust in electronic communications markets and eventually encourage switching.

The findings of the Eurobarometer survey of consumer switching reinforce the importance to consumers of transparency, including consumer information. Amongst the most popular tools for facilitating the switching decision, consumers named “*standardised comparable offers from providers*” and “*a website that tells you which provider is the cheapest*”.

6. Proposals for future work

In undertaking this project into the identification of best practices to facilitate switching, BEREC welcomes the contributions of NRAs who have provided valuable input by sharing their experiences in respect of established rules and processes to facilitate switching as well as information regarding the biggest obstacles to switching. The responses have been very detailed and raised a number of important switching-related issues which we have not been able to take forward through this report.

In this section we are therefore highlighting these issues as potential areas for future work:

- Consideration of the impact of any wholesale charges, such as the level of inter-operator charges, and the impact of such charges on retail charges to consumers for porting;
- Consideration of whether particular vulnerable groups of consumers face more difficulties in switching, and what could be done to facilitate switching for this group of consumers. In particular, we note that the 2008 Eurobarometer survey on consumer switching looked at switching from the perspective of vulnerable consumers²⁸. Amongst the survey's findings, several differences were identified, including that:
 - i. vulnerable consumers tend to switch less frequently – the biggest difference was observed regarding mobile telephony service providers, where only 9% per cent of consumer classified as “*vulnerable*” have changed service provider as opposed to 20% in the case of others. Vulnerable consumers also changed internet service providers (14% vs. 22%) and fixed telephony (14% vs. 19%) less frequently;
 - ii. vulnerable consumers were much less likely to see better prices with their new service provider when switching internet or mobile providers; and
 - iii. vulnerable consumers found it more difficult to compare offers from different service providers.

²⁸ Defined as being those with at least four of the following characteristics: older than 65 years consumers, those living in rural areas, those with a low level of education (having left school before the age of 16), out of work and / or without access to the Internet.

- Consideration of the transparency of customer information, including the transparency and fairness of additional charges, e.g. ETCs and MCPs, in light of contractual obstacles being identified as the main obstacle to switching.
- Consideration of the impact on switching of the lack of interoperability at a software and device level.
- Consideration of the viability and desirability of harmonising switching processes across the communications sector, and examination of the best way to achieve this harmonisation.
- Consideration of issues around switching of provider-specific services, such as email addresses, where this is under the remit of NRAs.
- Consideration of switching processes for business users, given the impact that the delay or burden of the switching processes may have on their commercial activity, e.g. if contact with their customers is impeded as a result.
- Consideration of the impact of migration to next generation access (NGA) on switching processes, given that managing customer switching on fibre-based networks may require a model more complex than for copper-based migrations using current technology.

Glossary of terms

Given the technical nature of some of these issues, we have provided a glossary of English terms and phrases used in this report to describe different aspects of switching:

- **Bundled services:** When a firm sells two or more services together as one combined offering on a single bill at a fixed price, which is often discounted.
- **Code-based process:** where switching requires consumers to provide a code to the GP in order to provide validation of the switch. The code is often issued by the LP to act as a unique identifier of the customer's intentions and is then presented to the new service provider.
- **Communications Provider (CP):** Internet service providers, fixed and mobile phone operators.
- **Consumer:** any natural person who uses or requests a publicly available electronic communications service for purposes which are outside his or her trade, business or profession (the definition provided by the EU Framework Directive).
- **Consumer provides declaration to GP/LP:** The consumer may be required to provide the GP and/or LP with a declaration of their intention to switch provider. The consumer will normally be expected to send a copy of their contract and/or signed letter stating their intention. This method may also be combined with some form of code process where the consumer will have to pass on the unique ID code that was provided by the LP. It may also include a declaration that the consumer is aware of the consequences (financial or otherwise) of terminating their contract with the LP.
- **Cooling-off periods:** the period of time after a purchase during which the purchaser has the right to return goods for a refund, or to cancel a contract without penalty.
- **Customer Validation Process:** the process by which the consumer, and the consumer's request to switch, are validated.
- **Early Termination Charge (ETC):** a charge for consumers who terminate their contract before the end of any minimum contract period (MCP).
- **Gaining Communications Provider (GP):** Service Provider to whom the consumer is transferring their service provision.

- **GP/LP provides documentation:** Either the GP or LP will be required to submit supporting documentation to the other as means of validating the consumers intention to switch. The required documentation may include one or more of the following: customer's signature, copy of the customer's contract, proof of customer's intentions via voice recording etc.
- **GP validates:** Customer validation performed solely by the GP.
- **Losing Communications Provider (LP):** Provider from whom the consumer is transferring their service provision.
- **LP validates:** Customer validation performed solely by the LP.
- **Minimum contract period (MCP):** a minimum (fixed-term) contractual period set at the start of a contract (often for 12 or 18 months).
- **Mis-selling:** sales and marketing activities which can include:
 - the provision of false and/or misleading information (for example, about potential savings or promising offers or gifts which do not actually exist)
 - applying unacceptable pressure to change CPs, such as refusing to leave until the consumer signs, or using threatening or otherwise intimidating behaviour.
- **National legislation:** National legislation which is not specific to the communications sector.
- **Power of Attorney:** When a consumer grants 'power of attorney' to the service provider to act on their behalf.
- **Rollover contract:** automatically renewable contracts where consumers sign up to an initial minimum contract period (MCP) and the contract is then automatically renewed at the end of each MCP unless the consumer explicitly opts out at some point before the start of the subsequent MCP. During each MCP they can only cancel their contract if they pay an early termination charge.
- **Save/retention activity:** means marketing activity which is undertaken by the losing service provider during the switchover period in an attempt to persuade their customer not to switch to a new service provider.
- **Sector-specific rules:** rules which are specific to the communications sector.

- **Slamming:** where a consumer is switched from one provider to another without the express knowledge and consent of that consumer.
- **SMP (Significant Market Power):** Article 14(2) of the EU Framework Directive defines this as where a service provider *“enjoys a position equivalent to dominance, that is to say a position of economic strength affording it the power to behave to an appreciable extent independently of competitors, customers and ultimately consumers”*.
- **SMP validates:** the wholesale provider of the relevant telecoms service will be responsible for validating the customer’s switching request. The request may come directly from the consumer but will more than likely come from the GP. It is worth noting that there may be additional rules and regulations imposed on the provider given its position of significant market power.
- **Switching:** a transfer of services between service providers whereby the new service provider facilitates the transfer on behalf of the consumer.
- **Switchover period:** the period between the consumer’s agreement to enter into service with a new provider and the new service becoming active.
- **Third Party Validation (TPV):** where the switch is validated by a third party other than the gaining or losing provider before the switch can happen.
- **'Win-back' activity:** marketing activity which is undertaken by any supplier to their previous customers after they have transferred their service provision to another service provider.

References

- ARCEP (2009). Study on mobile telephony switching cost (*Comportement des consommateurs de téléphonie mobile et changement d'opérateur*). Available at www.arcep.fr/uploads/tx_gspublication/rapport-chgmt-op-juil09.pdf.
- Beggs, Alan and Klemperer, Paul (1990). Multi-period competition with switching costs. CEPR Discussion Paper Series N° 436.
- Buehler, Stefan and Haucap, Justus (2006). "Mobile number portability" in *Journal of Industry, Competition and Trade*, vol. 4, n° 3, 2004.
- Chen, Yongmin (1997). "Paying customers to switch" in *Journal of Economics & Management Strategy*, vol. 6, n° 4, Winter 1997.
- Corrocher, Nicoleta and Zirulia, Lorenzo (2009). "Me and you and everyone we know: An empirical analysis of local network effects in mobile communications" in *Telecommunications Policy*, vol. 33, n°s 1 e 2, February-March 2009.
- EC (2009a). Consumer Markets Scoreboard – 2nd edition. Available at http://ec.europa.eu/consumers/strategy/docs/2nd_edition_scoreboard_en.pdf.
- EC (2009b). Flash Eurobarometer 243 about Consumer's views on switching service providers. Available at: http://ec.europa.eu/consumers/strategy/facts_eurobar_en.htm.
- ERG (2009) Report on Transparency of Tariff Information. Available at http://erg.eu.int/doc/publications/2009/erg_08_59rev_2_report_on_transparency_of_tariff_information.pdf.
- ERG (2005) Report on Transparency of Retail Prices (with implementation of Number Portability). Available at: http://erg.eu.int/doc/publications/retail_prices/erg_05_52_transp_retail_prices_report.pdf.

- Farrell & Klemperer (2006). "Coordination and Lock-In: Competition with Switching Costs and Network Effects". Available at www.nuffield.ox.ac.uk/economics/papers/2006/w7/Farrell_KlempererWP.pdf.
- Grzybowski, Lucasz (2008). "Estimating switching costs in mobile telephony in the UK" in Journal of Industry, Competition and Trade, vol. 8, n° 2, June 2008.
- Grzybowski, Lucasz and Pereira, Pedro (2007). Subscription choices and switching costs in mobile telephony. Available at https://editorialexpress.com/cgi-bin/conference/download.cgi?db_name=IIOC2008&paper_id=248.
- Grzybowski, Lucasz (2005). "Regulation of Mobile Telephony across the European Union: An empirical analysis" in Journal of Regulatory Economics, vol. 28, n° 1, July 2005.
- Klemperer, P.D., 1995, "Competition when Consumers have Switching Costs", Review of Economic Studies, Vol. 62, n°4, October 1995.
- Knittel, Christopher (1997). "Interstate long distance rates: search costs, switching costs and market power" in Review of Industrial Organization, vol. 12, n° 4, August 1997.
- Kraft, Jackie and Salies, Evens (2006). The cost of switching internet providers in the French broadband industry, or why ADSL has diffused faster than other innovative technologies. Available at www.ofce.sciences-po.fr/pdf/dtravail/WP2006-16.pdf.
- Lee et al (2006). "Estimating the extent of potential competition in the Korean mobile telecommunications market: Switching costs and number portability" in International Journal of Industrial Organization, vol. 24, n° 1, January 2006.
- Lorincsz, Lázlo and Nagy, Peter (2007). Switching costs in telecommunications. Conclusions from a Hungarian survey. Available at: http://infrapont.hu/dokumentumok/switching_costs.pdf.
- Lyons, Sean (2009). "Measuring the benefits of mobile number portability". Available at <http://econpapers.repec.org/paper/tcdtcduee/tep2009.htm>.

Maicas, J.P. et al (2009). "Reducing the level of switching costs in mobile communications: The case of Mobile Number Portability" in *Telecommunications Policy*, vol. 33, n° 9, October 2009.

OECD (2008). "Enhancing competition in telecommunications: protecting and empowering consumers". Available at [www.oalis.oecd.org/oalis/2007doc.nsf/LinkTo/NT00005FB2/\\$FILE/JT03246386.PDF](http://www.oalis.oecd.org/oalis/2007doc.nsf/LinkTo/NT00005FB2/$FILE/JT03246386.PDF)

Ofcom (2009). "Consultation document on protecting consumers from fixed-line mis-selling". Available at http://stakeholders.ofcom.org.uk/consultations/protecting_consumers_misselling

Ofcom (2008). "Review of Additional Charges". Available at <http://stakeholders.ofcom.org.uk/binaries/consultations/addcharges/statement/addchargestatement.pdf>

Office of the Director of Telecommunications Regulation (2001). Consultation document, *Implementing Full Mobile Number Portability in Ireland (ODTR01/36)*. Available at www.comreg.ie/fileupload/publications/odtr0136.pdf

Office of Fair Trading and the Department of Trade & Industry (2003). "Switching Costs - Part One: Economic models and policy implications" (page 39). Available at www.oft.gov.uk/shared_oftr/reports/comp_policy/oft655.pdf

Padilla, Jorge (1995). "Revisiting Dynamic Duopoly with Consumer Switching Costs" in *Journal of Economic Theory*, vol. 67, n° 2, December 1995.

Shy, Oz (2002). "A quick-and-easy method for estimating costs" in *International Journal of Industrial Organization*, vol. 20, n° 1, January 2002.

Swann, Peter and Birke, Daniel (2006), "Network effects and the choice of mobile phone operator", *Journal of Evolutionary Economics*, n° 16, pp 65-84.

To, Theodore (1996). "Multi-period competition with switching costs: An overlapping generations formulation" in *The Journal of Industrial Economics*, vol. 44, n°1, March 1996.

Viard, V. Brian (2001). Do switching costs make markets more or less competitive?: the case of 800-number portability. Available at www.ckgsb.edu.cn/personalsites/brianviard/pdf/portability.pdf.

Annex: Questionnaire

Section 1: Approaches to switching across different services

1a) Processes

For each service (fixed, mobile, internet) we would like to know the **processes** used in your country to facilitate switching and provide safeguards to consumers. Please fill in the following table to describe the approaches to switching between communications providers in your country. If you would find it easier to describe the processes using diagrams rather than text this would be fine.

NB: for the purposes of this questionnaire we are following the definition for VoIP (Voice over Internet Protocol) being used for the Commission's 15th Implementation Report. VoIP should be included under *Fixed telephony* where it is provided as an alternative to a publicly available telephone service and is purchased separately from internet access. VoIP should be included under *Internet services* if it is purchased as part of internet access.

	Fixed telephony	Mobile telephony	Internet	Bundled services (please reply 'Not Applicable' if there is no process for consumers of a bundle of services)
1. Who does the consumer need to contact in order to switch? For example: - the Gaining Provider - the Losing Provider				

- Third Party Validation body				
	Fixed telephony	Mobile telephony	Internet	Bundled services (please reply 'Not Applicable' if there is no process for consumers of a bundle of services)
<p>2. Is there a Customer Validation Process? If so, please describe it briefly. (the process by which the consumer, and the consumer's request to switch, are validated)</p> <p>For example:</p> <ul style="list-style-type: none"> - what details are needed in order to ensure that it is a valid switching request? - how is the consumer's consent / authorisation recorded (e.g. written signature, voice contact?) - is the validation and authorisation performed by the LP, GP or a third 				

party body?				
	Fixed telephony	Mobile telephony	Internet	Bundled services (please reply 'Not Applicable' if there is no process for consumers of a bundle of services)
<p>3. How long should the overall switching process take? (the legally defined maximum length of time between the consumer's agreement to enter into service with a new CP and the new service becoming active)</p> <p>If appropriate, please indicate how long the porting process takes within the overall switching process.</p>				
<p>4. What is the process for a consumer to cancel an existing contract when they want to</p>				

<p>switch?</p> <p>- do contracts get automatically cancelled as part of the switching process?</p> <p>OR</p> <p>- does the consumer have to actively cancel their contract with the LP?</p> <p>OR</p> <p>- does the consumer submit a contract termination request to the GP, which then forwards the necessary documentation to the LP or Third Party body?</p>				
<p>5. Is the consumer informed that the switch is going ahead? If so, how and by whom?</p>				
<p>Please provide further information as necessary:</p>				

--

1b) Enforcement - what rules have been put in place in your country to facilitate switching between communications providers?

	Fixed telephony	Mobile telephony	Internet	Bundled services (please reply 'Not Applicable' if there is no process for consumers of a bundle of services)
1. Please give details of all rules and legal requirements on service providers concerned with:				
i) GPs engaging in irresponsible sales and marketing activity, such as mis-selling and slamming activity				
ii) LP attempts to frustrate the switching process by placing unnecessary obstacles in the way of consumers, such as not providing Authorisation Codes				
iii) Contractual obstacles, such as whether any restrictions are placed on the ability for CPs to use: <ul style="list-style-type: none"> - length of minimum contract periods - minimum notice periods - the notice period which a consumer must give their supplier before they can bring their contract to an end. - Early Termination Charges - charges or service fees for leaving a provider, even when the consumer is outside their 				

minimum contract period - rollover contracts - specific requirements for terminating contracts				
	Fixed telephony	Mobile telephony	Internet	Bundled services (please reply 'Not Applicable' if there is no process for consumers of a bundle of services)
iv) Adherence of CPs to switching process requirements, such as porting requirements				
v) Cooling-off periods: - at which stage of the switching process (ie before/during/after) does a cooling-off period happen? - how is the switch-back handled if the consumer changes their mind during the cooling-off period? - are the rules different depending on where the consumer agreed to switch – i.e. agreeing to switch by phone or internet being considered distance selling?				
vi) Other legal requirements on providers				
2. Please give details of any other, non-legally binding , rules or guidelines for service providers to facilitate switching between communications providers.				

--	--	--	--	--

3. Are these rules policed and enforced? If so, how and by which authority(s)? What are the NRA's powers in relation to enforcement of switching where there may be evidence of non-compliance of switching requirements?

1c) Harmonised switching processes

Different switching processes for different services (eg for fixed telephony and broadband) may make it more complicated for a bundled consumer to switch providers. **Is this a concern in your country? If yes, what are the consumer harm and / or competition aspects behind this concern?**

Is there any harmonisation of switching processes in your country that applies to two or more communications services? If yes, please give details.

If the switching processes are not harmonised, have you considered the possibility of greater harmonisation of switching processes or a single switching process for all communications services? If so, what are your reasons? Please give details.

What, if any, obstacles and challenges have you identified to establishing a single switching process?

Section 2: Obstacles to switching

In this section, we would like to identify the biggest problems and issues in your country with relation to switching between communications providers. This section is divided into four parts – one looking at switching in fixed telephony, one for mobile telephony, one for switching between internet service providers, and the last for switching to, from or between bundled services.

2a) Fixed telephony

Please look at the list below and indicate which issues (**choose a maximum of four**) provide the biggest obstacles to switching between communications providers in your country, providing details of the problems you have come across to try and address these issues (**maximum 5 paragraphs**). It would also be helpful if you could indicate which of the issues you select is the biggest in your country.

Issues	Your experiences
1) Lack of consumer information e.g. - lack of consumer awareness of switching process and how easy / difficult it is - lack of tariff transparency - lack of price comparison information	
2) Actions by the Losing Provider to burden the switching decision by the consumer e.g. not providing the consumer with the authorisation code needed to switch	
3) Save and retention activity by the Losing Provider e.g.- activities to save or retain the consumer and prevent them from switching before or	

<p>during the switching process</p> <ul style="list-style-type: none"> - win-back practices after the switching process, including data protection considerations - using information about former consumers to target marketing 	
<p>4) Irresponsible or dishonest sales and marketing activity by the Gaining Provider e.g. mis-selling or slamming activity</p>	
<p>5) technical issues which may impact switching e.g. technical service failures / losses during or as a result of switching; or billing problems that result as a result of switching;</p>	
<p>6) Difficulties arising from the number porting process which impact on the switching process e.g. technical failures of disputes between operators</p>	
<p>7) Deficiencies of the switching process i.e. back-office process holes and incompatibilities that may lead to a poor consumer experience due to either the lack, or inadequacy, of the underlying migrations process</p>	
<p>8) The length of the overall switching period i.e. the period between the consumer's agreement to enter into service with a new CP and the new service becoming active</p>	
<p>9) Contractual obstacles which have the effect of discouraging switching, or which create disputes between the consumer and Losing Provider due to the consumer's intention to switch e.g. - contract length, including long minimum contract periods</p> <ul style="list-style-type: none"> - requirement to return free or discounted equipment - penalties for early termination of contract - service fees or other compensation payments to the Losing Provider 	

- remaining consumer debt to the Losing Provider - use of rollover contracts - unfair conditions in the contracts	
10) Difficulties for the NRA in enforcing operators' compliance with switching requirements	
11) Pricing strategies of operators in the retail market (e.g. differences between on-net and off-net tariffs)	
12) Other – please specify	

2b) Mobile telephony

Please look at the list below and indicate which issues (**choose a maximum of four**) provide the biggest obstacles to switching between communications providers in your country, providing details of the problems you have come across to try and address these issues (**maximum 5 paragraphs**).

It would also be helpful if you could indicate which of the issues you select is the biggest in your country.

Issues	Your experiences
1) Lack of consumer information e.g. - lack of consumer awareness of switching process and how easy / difficult it is - lack of tariff transparency - lack of price comparison information	
2) Actions by the Losing Provider to burden the switching decision by the consumer e.g. not providing the consumer with the authorisation code needed to switch	
3) Save and retention activity by the Losing Provider	

<p>e.g. - activities to save or retain the consumer and prevent them from switching before or during the switching process</p> <ul style="list-style-type: none"> - win-back practices after the switching process, including data protection considerations - using information about former consumers to target marketing 	
<p>4) Irresponsible or dishonest sales and marketing activity by the Gaining Provider e.g. mis-selling or slamming activity</p>	
<p>5) technical issues which may impact switching e.g. technical service failures / losses during or as a result of switching; or billing problems that result as a result of switching;</p>	
<p>6) Difficulties arising from the number porting process which impact on the switching process e.g. technical failures of disputes between operators</p>	
<p>7) Deficiencies of the switching process i.e. back-office process holes and incompatibilities that may lead to a poor consumer experience due to either the lack, or inadequacy, of the underlying migrations process</p>	
<p>8) The length of the overall switching period i.e. the period between the consumer's agreement to enter into service with a new CP and the new service becoming active</p>	
<p>9) Contractual obstacles which have the effect of discouraging switching, or which create disputes between the consumer and Losing Provider due to the consumer's intention to switch e.g. - contract length, including long minimum contract periods</p> <ul style="list-style-type: none"> - requirement to return free or discounted equipment - penalties for early termination of contract - service fees or other compensation payments to the Losing Provider 	

- remaining consumer debt to the Losing Provider - use of rollover contracts - unfair conditions in the contracts	
10) Difficulties for the NRA in enforcing operators' compliance with switching requirements	
11) Pricing strategies of operators in the retail market (e.g. differences between on-net and off-net tariffs)	
12) Other – please specify	

2c) Internet access

Please look at the list below and indicate which issues (**choose a maximum of four**) provide the biggest obstacles to switching between communications providers in your country, providing details of the problems you have come across to try and address these issues (**maximum 5 paragraphs**).

It would also be helpful if you could indicate which of the issues you select is the biggest in your country.

Issues	Your experiences
1) Lack of consumer information e.g. - lack of consumer awareness of switching process and how easy / difficult it is - lack of tariff transparency - lack of price comparison information	
2) Actions by the Losing Provider to burden the switching decision by the consumer e.g. not providing the consumer with the authorisation code needed to switch	

<p>3) Save and retention activity by the Losing Provider e.g. - activities to save or retain the consumer and prevent them from switching before or during the switching process - win-back practices after the switching process, including data protection considerations - using information about former consumers to target marketing</p>	
<p>4) Irresponsible or dishonest sales and marketing activity by the Gaining Provider e.g. mis-selling or slamming activity</p>	
<p>5) technical issues which may impact switching e.g. technical service failures / losses during or as a result of switching; or billing problems that result as a result of switching;</p>	
<p>6) Difficulties arising from the number porting process which impact on the switching process e.g. technical failures of disputes between operators</p>	
<p>7) Deficiencies of the switching process i.e. back-office process holes and incompatibilities that may lead to a poor consumer experience due to either the lack, or inadequacy, of the underlying migrations process</p>	
<p>8) The length of the overall switching period i.e. the period between the consumer's agreement to enter into service with a new CP and the new service becoming active</p>	
<p>9) Contractual obstacles which have the effect of discouraging switching, or which create disputes between the consumer and Losing Provider due to the consumer's intention to switch e.g. - contract length, including long minimum contract periods</p>	

<ul style="list-style-type: none"> - requirement to return free or discounted equipment - penalties for early termination of contract - service fees or other compensation payments to the Losing Provider - remaining consumer debt to the Losing Provider - use of rollover contracts - unfair conditions in the contracts 	
10) Difficulties for the NRA in enforcing operators' compliance with switching requirements	
11) Pricing strategies of operators in the retail market (e.g. differences between on-net and off-net tariffs)	
12) Other – please specify	

2d) Bundled services

Please look at the list below and indicate which issues (**choose a maximum of four**) provide the biggest obstacles to switching between communications providers in your country, providing details of the problems you have come across to try and address these issues (**maximum 5 paragraphs**).

It would also be helpful if you could indicate which of the issues you select is the biggest in your country.

Issues	Your experiences
1) Lack of consumer information e.g. - lack of consumer awareness of switching process and how easy / difficult it is - lack of tariff transparency - lack of price comparison information	

<p>2) Actions by the Losing Provider to burden the switching decision by the consumer e.g. not providing the consumer with the authorisation code needed to switch</p>	
<p>3) Save and retention activity by the Losing Provider e.g. - activities to save or retain the consumer and prevent them from switching before or during the switching process - win-back practices after the switching process, including data protection considerations - using information about former consumers to target marketing</p>	
<p>4) Irresponsible or dishonest sales and marketing activity by the Gaining Provider e.g. mis-selling or slamming activity</p>	
<p>5) technical issues which may impact switching e.g. technical service failures / losses during or as a result of switching; or billing problems that result as a result of switching;</p>	
<p>6) Difficulties arising from the number porting process which impact on the switching process e.g. technical failures of disputes between operators</p>	
<p>7) Deficiencies of the switching process i.e. back-office process holes and incompatibilities that may lead to a poor consumer experience due to either the lack, or inadequacy, of the underlying migrations process</p>	
<p>8) The length of the overall switching period i.e. the period between the consumer's agreement to enter into service with a new CP and the new service becoming active</p>	

<p>9) Contractual obstacles which have the effect of discouraging switching, or which create disputes between the consumer and Losing Provider due to the consumer's intention to switch e.g. - contract length, including long minimum contract periods</p> <ul style="list-style-type: none"> - requirement to return free or discounted equipment - penalties for early termination of contract - service fees or other compensation payments to the Losing Provider - remaining consumer debt to the Losing Provider - use of rollover contracts - unfair conditions in the contracts 	
<p>10) Difficulties for the NRA in enforcing operators' compliance with switching requirements</p>	
<p>11) Pricing strategies of operators in the retail market (e.g. differences between on-net and off-net tariffs)</p>	
<p>12) Other – please specify</p>	