

# Notification under Section 94 of the Communications Act 2003 of Contravention of General Condition 17

Notification served on TelXL Limited (“TelXL”) by the Office of  
Communications (“Ofcom”)

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have been redacted. Redactions are indicated by “[<del>]”**

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## **NOTIFICATION TO TELXL LIMITED (“TelXL”) UNDER SECTION 94 OF THE COMMUNICATIONS ACT 2003 OF CONTRAVENTION OF GENERAL CONDITION 17**

### **Ofcom’s determination**

1. Ofcom hereby determines that there are reasonable grounds for believing that TelXL has contravened, and is contravening, General Condition 17.8 (“GC17.8”). Specifically:
  - a. TelXL is a Communications Provider (as defined in General Condition 17 “GC17”).
  - b. Ofcom has allocated to TelXL certain Telephone Numbers beginning 070 (“070 numbers”), which are designated under the National Telephone Numbering Plan (“NTNP”) for Personal Numbering Services.
  - c. In the course of its business, TelXL provides services to its Customers that are to be used, or are used, with 070 numbers.
  - d. GC17.8 requires TelXL to take all reasonably practicable steps to secure that its Customers, in using Telephone Numbers, comply with the provisions of GC17, where applicable, and the provisions of the NTNP.
  - e. TelXL has failed to take all reasonably practicable steps to secure that its Customers comply with the provisions of GC17 and the NTNP with regard to 070 numbers.

The reasons for Ofcom’s determination are set out in the explanatory statement accompanying this Notification.

### **General Condition 17**

2. Section 94 of the Communications Act 2003 (“the Act”) allows Ofcom to issue a notification to a person where Ofcom has reasonable grounds for believing that a person is contravening, or has contravened, a condition set under section 45 of the Act.
3. Section 45 of the Act grants Ofcom the power to set conditions binding communication providers, namely persons who provide an electronic communications network and/or an electronic communications service.
4. On 22 July 2003, the Director General of Telecommunications (“the Director”) issued a notification under section 48(1) of the Act setting, pursuant to section 45 of the Act, certain general conditions, as set out in the schedule to the notification (“the General Conditions”). The General Conditions took effect from 25 July 2003.
5. The General Conditions apply to all communications providers. GC17 sets out the requirements for the allocation, adoption and use of Telephone Numbers.
6. GC17 requires that:

*“The Communications Provider shall install, maintain and adjust its Public Electronic Communications Network so that it routes Signals and otherwise operates in accordance with the National Telephone Numbering Plan and any allocation of Telephone Numbers made by [Ofcom] from time to time.”*

7. GC 17.8 further requires that:

*“The Communications Provider shall take all reasonably practicable steps to secure that its Customers, in using Telephone Numbers, comply with the provisions of this Condition, where applicable, and the provisions of the National Telephone Numbering Plan”.*

**The National Telephone Numbering Plan (“NTNP”)**

8. The NTNP published by Ofcom on 11 August 2005 provides that 070 numbers are designated for use with “Personal Numbering Services”, defined to mean:

*“a service based on number translation that enables end-users to be called or otherwise contacted, using a single personal telephone number, and to receive those calls or other communications at almost any telephone number, including mobile numbers.”*

9. NTNP Part B provides restrictions on the adoption of telephone numbers. Paragraph B1 provides:

*“Those to whom Ofcom has Allocated any Telephone Number listed in Part A of the Plan shall not Adopt or otherwise use them, except in accordance with the applicable designation given for that number range.”*

10. Furthermore, paragraph B3.2.1 of the NTNP provides:

*“Those Adopting Personal Numbers shall not share with any End-User any revenue obtained from providing a Personal Numbering Service”.*

11. Ofcom allocated numbers beginning 070050 and 070405 to TelXL in June 2003. Numbers beginning 070408 were allocated to TelXL in July 2003 and numbers beginning 070080 were allocated to TelXL in March 2004.

12. During the twelve months from January to December 2005, Ofcom has received more than 90 complaints relating to 070 numbers which are allocated to TelXL. From the complaints, it appears that certain 070 numbers allocated to TelXL have not been used, or are not being used, with Personal Numbering Services.

13. Ofcom has considered whether TelXL has taken all reasonably practicable steps to secure that its Customers, in using the 070 numbers allocated to TelXL, comply with the provisions of the NTNP.

14. Ofcom has concluded, for the reasons set out in the explanatory statement that accompanies this Notification, that TelXL has not taken all reasonably practicable steps to secure that its Customers, in using 070 numbers allocated to TelXL, comply with the provisions of the NTNP.

**Action required by TelXL**

15. TelXL is required to comply with GC17.8 by:

- a. taking all reasonably practicable steps to secure that its customers comply with the provisions of the NTNP. Ofcom considers that in the case of TelXL, those reasonably practicable steps include, but are not limited to TelXL:

- i. Including an explicit obligation within TelXL's terms and conditions for the provision of services used with 070 numbers that the Customer comply with the specific restrictions on the use of 070 numbers as set out in the NTNP;
    - ii. Providing information and training for Customers regarding their obligations in relation to the use of 070 numbers, including by those to whom the Customer re-sells those services, and requiring Customers to consider and indicate their understanding of that information as part of the sales process;
    - iii. Maintaining a record of information and training provided to Customers on the restrictions on the use of 070 numbers;
    - iv. Regularly and actively monitoring usage of 070 numbers by Customers with a view to uncovering potential misuse;
    - v. Developing and documenting a process for handling complaints on misuse of 070 numbers and maintaining a record of any investigations and action taken in relation to misuse of 070 numbers; and
    - vi. Developing a policy for action that will be taken when non-compliance is identified.
  - b. providing a compliance plan to Ofcom by 20 March 2006 detailing the steps TelXL has taken or is taking to comply with (a) above.
16. In accordance with section 94(4) of the Act, TelXL has until 20 March 2006 in which to make representations to Ofcom about matters contained in this notification.
17. If TelXL does not comply with all the requirements set out at paragraph 15 above, Ofcom may issue an enforcement notification under section 95 of the Act and/or may impose a penalty on TelXL under section 96 of the Act.

### **Interpretation**

18. Words or expressions used in this Notification have the same meaning as in the General Conditions or the Act except as otherwise stated in this Notification.

**David Stewart**

**Director of Investigations**

**17 February 2006**

# Explanatory Statement

## Summary

- S1. General Condition 17 (“GC17”) imposes obligations on communications providers in relation to the adoption and use of telephone numbers. One of the obligations imposed on communications providers is a requirement to take certain steps to reduce the risks of misuse of telephone numbers by customers (including resellers) to whom the communications provider offers services for use with particular numbers, where restrictions on the use of those numbers have been imposed, for example under the National Telephone Numbering Plan<sup>1</sup> (“NTNP”).
- S2. Specifically, General Condition 17.8 (“GC17.8”) requires that a “Communications Provider” (defined in GC17) take all reasonably practicable steps to secure that the “Customers” (as defined in GC17) of the Communications Provider, in using telephone numbers, comply with GC17, where applicable, and the provisions of the National Telephone Numbering Plan (“NTNP”).
- S3. The NTNP provides that 070 numbers are designated for use with “Personal Numbering Services”. A “Personal Numbering Service” is defined to mean:
- “a service based on number translation that enables end-users to be called or otherwise contacted, using a single personal telephone number, and to receive those calls or other communications at almost any telephone number, including mobile numbers.”*
- S4. Ofcom allocated certain numbers beginning 070 to TelXL in 2003 and 2004.
- S5. Ofcom subsequently received numerous complaints relating to 070 numbers within those number ranges. From the complaints, it appeared that certain 070 numbers allocated to TelXL have not been used, and are not being used, for Personal Numbering Services, as required by the NTNP.
- S6. On the basis of the complaints received, Ofcom opened an investigation to consider whether TelXL had complied with its obligations under GC17.
- S7. Following an investigation, Ofcom believes, for the reasons set out in this explanatory statement, that TelXL has not taken all reasonably practicable steps to secure that its Customers, in using 070 numbers allocated to TelXL, comply with the provisions of GC17 and the NTNP. Accordingly, Ofcom has reasonable grounds for believing that TelXL is contravening, and has contravened, GC 17.8.
- S8. Ofcom therefore gives TelXL a notification under section 94 of the Communications Act 2003 (the “Act”). This explanatory statement sets out Ofcom’s reasons for the decision to issue that notification.
- S9. The notification issued by Ofcom requires TelXL to comply with GC 17.8 by:

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<sup>1</sup> The latest version of the NTNP was published by Ofcom on 11 August 2005 (see <http://www.ofcom.org.uk/telecoms/ioi/numbers/> )

- a. taking all reasonably practicable steps to secure that its Customers comply with the provisions of the NTNP (and setting out specific examples of such steps TelXL could take); and.
- b. providing a compliance plan to Ofcom by 20 March 2006 detailing the steps TelXL has taken or is taking to comply with (a) above.

S10. TelXL has until 20 March 2006 to in which to make representations to Ofcom about the matters contained in the notification accompanying this explanatory statement.

S11. If TelXL does not comply with the notification by taking all reasonably practicable steps to secure that its Customers comply with the provisions of GC17 and the NTNP, and providing a compliance plan to Ofcom, Ofcom may issue an enforcement notification under section 95 of the Act and/or may impose a penalty on TelXL under section 96 of the Act.

## Section 1

# Background

### General Condition 17

- 1.1 Section 45(1) of the Act gives Ofcom the power to set certain conditions binding on communications providers.
- 1.2 On 22 July 2003, the Director General of Telecommunications issued a notification under section 48(1) of the Act setting certain general conditions of entitlement (the “General Conditions”), pursuant to section 45(1) of the Act, to take effect from 25 July 2003. The General Conditions apply to all communications providers.
- 1.3 General Condition 17 (“GC17”) imposes obligations on communications providers in relation to the adoption and use of telephone numbers. One of the obligations imposed on communications providers is a requirement to take certain steps to reduce the risks of misuse of telephone numbers by customers (including resellers) to whom the communications provider offers services for use with particular numbers, where restrictions on the use of those numbers have been imposed, for example under the National Telephone Numbering Plan<sup>2</sup> (“NTNP”).
- 1.4 Specifically, GC17.8 requires that:

*“The Communications Provider shall take all reasonably practicable steps to secure that its Customers, in using Telephone Numbers, comply with the provisions of this Condition, where applicable, and the provisions of the National Telephone Numbering Plan”.*

### Personal Numbering Services

- 1.5 Part A of the NTNP sets out the numbers that Ofcom has determined are available for allocation as telephone numbers in accordance with section 56(1)(a) of the Act. Part B of the NTNP sets out restrictions set by Ofcom on the adoption and other uses of those numbers in accordance with section 56(1)(b) and (c) of the Act.
- 1.6 Section B1 of the NTNP states:

*“Those to whom Ofcom has Allocated any Telephone Number listed in Part A of the [NTNP] shall not Adopt or otherwise use them, except in accordance with the applicable designation given for that number range.”*

- 1.7 Part A of the NTNP provides that numbers beginning 070 are designated for the provision of Personal Numbering Services. A “Personal Numbering Service” is defined to mean:

*“a service based on number translation that enables end-users to be called or otherwise contacted, using a single personal telephone number, and to*

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<sup>2</sup> The latest version of the NTNP was published by Ofcom on 11 August 2005 (see <http://www.ofcom.org.uk/telecoms/ioi/numbers/>)

*receive those calls or other communications at almost any telephone number, including mobile numbers.”*

1.8 Furthermore, section B3.2 of the NTNP states:

*“B3.2.1 Those Adopting Personal Numbers shall not share with any End-User any revenue obtained from providing a Personal Numbering Service.”*

### **The 070 guidelines**

1.9 Oftel recognised in its statement, “Restoring Trust in Personal Numbers”<sup>3</sup>, dated 31 October 2001, that there had been an increasing number of complaints concerning abuses in the 070 number range. These problems had begun to undermine consumer and industry confidence in personal numbering services. Oftel took steps to prohibit revenue sharing with end-users of 070 numbers, and produced guidelines to provide further clarification on what it considered to be acceptable use of 070 numbers<sup>4</sup>.

1.10 However, Oftel, and then Ofcom, continued to receive complaints about misuse of 070 numbers. Early in 2004, Ofcom responded to the continuing complaints about the misuse of 070 numbers, by published its own guidelines on 24 January 2004 on the acceptable use of 070 numbers<sup>5</sup> (the “070 Guidelines”), which revised and developed Oftel's earlier guidelines.

1.11 The 070 Guidelines clarify Ofcom's view as to what does, and does not, constitute a valid Personal Numbering Service. Specifically, 070 numbers should offer ‘find-me’-style services that allow an end-user to be contacted using a single telephone number that would connect calls to various alternative destinations. 070 numbers should benefit the person being called, and that the called party must be in charge of the destination number. If the called party is not aware that he or she has been allocated an 070 number, benefit does not accrue to that person, but to the calling party, and this is not an acceptable use of the 070 range as defined in the NTNP. Similarly, if the service requires the addition of a Personal Identification Number (PIN) or the stating of a name, to either a human or automated switchboard operator or through a menu selection of any sort, it must be offered on another number range. The 070 Guidelines also state that it is not acceptable to promote 070 numbers as a way of making (as opposed to receiving) international calls. Such services must be offered on other number ranges.

1.12 The NTNP sets no formal ceiling on charges for calls to personal numbers. Current charges for calls to 070 numbers are typically in the region of 30-50p per minute. This partly reflects the higher costs with routing calls to a variety of possible destinations (for example, to a fixed line at home, to a fixed line at work, to the user's mobile number or to an overseas destination). Ofcom is concerned that in some cases 070 numbers are being used to provide Premium Rate Services (PRS). The operation of controlled PRS costing more than 10p per minute (using 09 number ranges) is subject to specific regulatory rules governed by ICSTIS. 070 numbers should not used as means of avoiding the regulation of controlled PRS by ICSTIS.

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<sup>3</sup> <http://www.ofcom.org.uk/static/archive/oftel/publications/numbering/pers1001.htm>

<sup>4</sup> [http://www.ofcom.org.uk/static/archive/oftel/ind\\_info/numbering/070guide.htm](http://www.ofcom.org.uk/static/archive/oftel/ind_info/numbering/070guide.htm)

<sup>5</sup> [http://www.ofcom.org.uk/telecoms/loi/numbers/num\\_070\\_guide](http://www.ofcom.org.uk/telecoms/loi/numbers/num_070_guide)

## **TelXL**

- 1.13 TelXL supplies a range of services including personal numbering services on numbers beginning 070, PRS on numbers beginning 090, and other number translation services (“NTS”) on numbers beginning 08. TelXL has a network which comprises four switches: two at its offices in Birmingham and two in London. It is a relatively small business, with fewer than ten employees.
- 1.14 Ofcom allocated numbers beginning 070050 and 070405 to TelXL in June 2003. Numbers beginning 070408 were allocated to TelXL in July 2003 and numbers beginning 070080 were allocated to TelXL in March 2004. As set out above, numbers beginning 070 should be used for Personal Numbering Services only.
- 1.15 On 1 January 2006, TelXL was providing a total of 9,852 active 070 numbers to its customers.
- 1.16 For the twelve month period from 1 January 2005, traffic to 070 numbers allocated to TelXL accounted for 36% of all traffic on TelXL’s network by number of calls and 28% of all traffic by volume of minutes. Ofcom estimates that traffic to 070 numbers accounted for over 40% of TelXL’s revenues in 2005.

## Section 2

# Ofcom's investigation

### The first investigation

2.1 During the course of 2004, Ofcom received a number of complaints about the possible misuse of 070 numbers that had been allocated to TelXL. Many of the complaints were from consumers complaining that they received a missed call on their mobile phone from an 070 number. On 1 October 2004, Ofcom opened an own-initiative investigation into possible misuse of 070 numbers and/or persistent misuse of an electronic communications network or service by TelXL and another communications provider, Xero 9 Limited. Ofcom closed that investigation on 11 January 2005 following the disconnection of the relevant numbers and those on which similar services were being provided by TelXL (and Xero 9 Limited), and the cancellation of the reseller agreement between TelXL's Customer, Ingotz Net Services Limited ("Ingotz"), and Ingotz's Customer, Red Kite Design Services. In closing the investigation, Ofcom wrote to TelXL (and Xero 9 Limited) reminding them of their obligations under GC17. The closure summary for the first investigation is published in Ofcom's Competition Bulletin.<sup>6</sup>

### The further complaints

- 2.2 Following the closure of the first investigation in January 2005, Ofcom continued to receive complaints from consumers and other Communications Providers about the possible misuse of 070 numbers which had been allocated to TelXL. These complaints alleged that 070 numbers allocated to TelXL were being misused in a number of different ways.
- 2.3 In total, Ofcom received over 90 complaints about alleged misuse of 070 numbers allocated to TelXL during the twelve months from January to December 2005. This represented 6.6% of all complaints about 070 scams received by Ofcom during this time, and was almost double the number of complaints about alleged misuse of TelXL's 070 numbers during 2004.
- 2.4 Some of the complaints appeared to be very similar to the complaints that led to the first investigation, for example, complaints about a 'missed call' appearing on a mobile phone, prompting the consumer to ring the number back. In such cases, the 'missed call' may be of such short duration that it is not possible for the call be answered. As the number begins 070, it is commonly assumed to be a call from another mobile phone, and consumers are generally unaware of the cost associated with returning the call. When the 070 number is called, the consumer may hear a series of recorded messages which encourage the caller to continue the call for as long as possible. The consumer may only become aware of the relatively high charge for the call when the consumer receives their phone bill.

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<sup>6</sup> [http://www.ofcom.org.uk/bulletins/comp\\_bull\\_index/comp\\_bull\\_ccases/closed\\_all/cw\\_788/](http://www.ofcom.org.uk/bulletins/comp_bull_index/comp_bull_ccases/closed_all/cw_788/)

- 2.5 Another type of complaint received by Ofcom about 070 numbers allocated to TelXL concerned apparent 'fax scams'. Such fax scams appear to have generally targeted small businesses such as estate agents, B&Bs and hotels. The scam appears to involve a telephone call or email to the target, requesting various details to be faxed to an 070 number (for example, property information or room availability/rates). In some cases, it has also been alleged that the receiving fax machine has been adjusted so that it takes even longer than usual for the fax to be transmitted, which increases the cost of the call for the sender. In some cases, it is alleged that fictitious contact details have been given, which suggests that such cases are not genuine requests for the information.
- 2.6 In both these types of cases the ultimate aim is to generate traffic to specific 070 numbers in order to generate inbound revenue. This would imply that the "End User" of the 070 numbers in question – i.e. the person controlling the destination to which the calls are routed – is, in fact, receiving a share of the retail call revenue paid by the calling party. The use of 070 numbers as part of these types of scam is therefore likely to be non-compliant with the NTNP restrictions on use, and revenue-sharing of this type is specifically prohibited under the NTNP.
- 2.7 Another possible misuse of the 070 numbers allocated to TelXL concerned numbers which were advertised by 2 Tel Limited, trading as '0871 Global' during August 2005 for making international calls. The use of 070 numbers for making international calls (as opposed to receiving them) is clearly identified as a misuse of 070 numbers in the 070 Guidelines. In this particular instance, the advertised numbers were brought to TelXL's attention and TelXL confirmed that the relevant numbers were suspended.

### **Ofcom's second investigation**

- 2.8 As a result of the further complaints received following the conclusion of the first investigation, Ofcom opened a second investigation on 18 August 2005 to investigate whether TelXL was misusing 070 numbers and/or persistently misusing an electronic communications network or service.
- 2.9 A notice under Section 135 of the Act was issued to TelXL on 31 October 2005 ("the first information request"). The first information request required TelXL to provide, by noon on 7 November 2005, certain documents and information regarding its procedures for managing compliance with GC17 in relation to TelXL's 070 numbers. (This notice had been issued to TelXL in draft for comment on 24 October 2005. TelXL commented on the draft by telephone on 26 October 2005. In particular, TelXL queried whether it needed to provide the information for all numbers listed in the Annex to the notice. Ofcom confirmed that TelXL was required to provide all the requested information.)
- 2.10 In particular, the first information request required TelXL to provide:
  - Details of TelXL's Numbering Plan;
  - Details of specific measures taken by TelXL to ensure its compliance with GC17.8;
  - Details of TelXL employees responsible for ensuring compliance;
  - Details of any additional measures taken by TelXL to ensure compliance since the first investigation; and

- Specific information relating to certain 070 numbers allocated to TelXL for which Ofcom was made aware of concerns, namely:
  - Details of the relevant TelXL customer;
  - Details of the service provided;
  - Confirmation on whether revenue share had occurred with this customer.

2.11 In response to the first information request, Ofcom received from TelXL certain information as follows:

- a. An e-mail sent on 7 November 2005 (3:26 pm) from Nigel Fox attaching electronic copies in Word format of TelXL's current 'Number Management Plan' and of TelXL's current (v 2.0) standard 'Re-seller Agreement in respect of Telecommunications Services';
- b. An e-mail sent on 8 November 2005 (4:21 pm) from Nigel Fox attaching an electronic copy in Microsoft Excel format of a spreadsheet containing certain details of usage of listed 070 numbers;
- c. An e-mail sent on 11 November 2005 (2:47 pm) from Nigel Fox attaching an electronic copy in Word format of certain correspondence (via e-mail) between TelXL and other persons regarding use of 070 numbers;
- d. An e-mail sent on 16 November 2005 (3:23 pm) from Nigel Fox attaching an electronic copy in Word format of a document explaining TelXL's response to all seven questions set out in the first information request.

2.12 A second notice under Section 135 of the Act was issued to TelXL on 24 January 2006 in draft form, requesting further information regarding its management of the 070 personal numbers allocated to it. The notice was issued in draft form in accordance with Ofcom's standard procedure to allow TelXL to comment on the content or deadline of the notice.

2.13 The second notice required TelXL to provide:

- The volume of TelXL business relating to provision of 070 numbers, relative to other TelXL activities;
- Copies of all relevant customer agreements relating to provision of 070 numbers by TelXL;
- Details of terms on which revenue is shared with TelXL's customers in relation to provision of 070 numbers;
- Details of whether TelXL provided 070 numbers direct to End Users or solely to resellers;
- Details of TelXL's web-based ordering service in relation to 070 numbers;
- Copies of TelXL's Terms and Conditions;
- Details of training provided by TelXL to its customers;
- Details of all documentation provided by TelXL to its customers in relation to appropriate use of 070 numbers;
- Explanation of all processes for actively monitoring and analysing the use of 070 numbers;
- Further information of the customers to whom certain 070 numbers were provided by TelXL;
- Details of the process TelXL follows when it becomes aware that an 070 number may be being inappropriately used by a third party;

- Further details on specific investigations carried out by TelXL on inappropriate use of 070 numbers which led to disconnection of numbers from the system; and
- Call volume information and revenue share for certain 070 numbers where inappropriate use had been suspected.

2.14 On 25 January 2005, Ofcom visited TelXL's premises in Birmingham to discuss TelXL's management of its 070 numbers, and to view its call management systems and web-based customer portal. Following that meeting and in the light of discussions with TelXL which took place by telephone on 27 January 2006, Ofcom amended the draft notice which had been issued to TelXL for comment on 24 January 2006, and issued a revised notice to TelXL on 30 January 2006 ("the second information request"). The deadline for receipt of the requested information was changed to a staggered deadline, with some of the specified information due by noon on 7 February 2006, and the remainder of the specified information due by noon on 10 February 2006.

2.15 In response to the second information request, TelXL provided Ofcom with certain documents and information as follows:

- a. an email from Nigel Fox dated 7 February 2006 (11.38am), attaching:
  - i. an electronic copy in Excel format of Call Data Records (CDRs) for certain 070 numbers allocated to TelXL;
  - ii. an electronic copy in Excel format of a spreadsheet showing details of the management of certain 070 numbers allocated to TelXL, including the relevant Client, Reseller(s) and End User to whom 070 numbers have been sub-allocated (see paragraph 3.8 for a description of what these terms mean in this context);
  - iii. an electronic copy in Word format of some of the relevant information from TelXL's customer website;
  - iv. an electronic copy in Word format of a document setting out TelXL's partial response to the second information request;
  - v. an electronic copy in Word format of an example of TelXL's 'Re-seller Agreement in respect of Telecommunications Services' (v1.0);
  - vi. an electronic copy in Excel format of an outpayments report listing the monthly outpayments made in relation to certain 070 numbers allocated to TelXL;
  - vii. an electronic copy in Excel format of a usage summary report; and
  - viii. an electronic copy in Excel format of a summary of total call minutes and revenue for certain 070 numbers allocated to TelXL.
- b. an email from Nigel Fox dated 10 February 2006 (5.29pm), attaching:
  - i. an electronic copy in Word format of a document setting out TelXL's response to the second information request; and
  - ii. an electronic copy in Excel format of a spreadsheet proving details for the particular numbers listed in Annexes 1 and 2 of Ofcom's second information request.

2.16 On 6 February 2006, Ofcom also obtained some call traffic data from BT relating to some of the 070 numbers allocated to TelXL.

### Section 3

## Ofcom's Decision

### Breach of General Condition 17.8

3.1 General Condition 17.8 requires that:

*"The Communications Provider shall take all reasonably practicable steps to secure that its Customers, in using Telephone Numbers, comply with the provisions of [GC17], where applicable, and the provisions of the National Telephone Numbering Plan."*

3.2 Each of the elements of GC17.8 is considered in turn below.

#### **Communications Provider**

3.3. The term "Communications Provider" is defined in General Condition 17.12 ("GC 17.12"):

*"...a person who provides an Electronic Communications Network or an Electronic Communications Service"...*

3.4. For the purposes of the General Conditions, "Electronic Communications Network" is defined as:

*"(a) a transmission system for the conveyance, by the use of electrical, magnetic or electro-magnetic energy, of Signals or any description; and*

*(b) such of the following as are used, by the person providing the system and in associating with it, for the conveyance of the Signals-*

*(i) apparatus comprised in the system;*

*(ii) apparatus used for the switching or routing of the Signals; and*  
*(iii) software and stored data."*

"Electronic Communications Service" is defined as:

*"any service consisting in, or having as its principal feature, the conveyance by means of an Electronic Communications Network of Signals, except in so far as it is a Content Service".*

3.5. TelXL has a network which includes four switches, linked by transmission services. TelXL uses its network to route calls (that is, to provide services to other companies or individuals such as number translation and call forwarding). Therefore, TelXL is a Communications Provider ("CP") as defined in GC17.12, as it provides both an Electronic Communications Network and an Electronic Communications Service.

## Customers

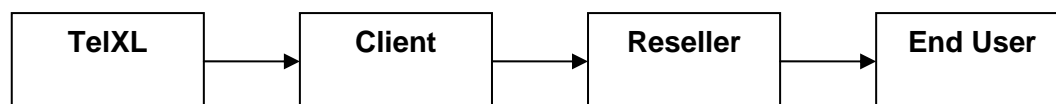
3.6. The term “Customers” is defined for the purposes of the General Conditions to include the following:

- “(i) the persons to whom the network or service is provided in the course of any business carried on as such by the CP;*
- (ii) the persons to whom the CP is seeking to secure that the network or service is so provided;*
- (iii) the persons who wish to be provided with the network or service, or who are likely to become persons to whom the network or service is so provided”.*

The above definition includes persons whose potential use of the network or service is for the purpose of, or in connection with, a business.

3.7 From information gathered during this investigation, Ofcom understands that TelXL does not contract directly with End Users (that is, with companies or people who wish to be reached via a single 070 number) to provide 070 numbers. Instead, TelXL contracts with a number of resellers (whom TelXL refers to as “clients”). These ‘client’ resellers may then, in turn, contract with other downstream resellers in respect of the 070 numbers. Therefore, for any 070 number allocated to TelXL by Ofcom, a number of parties may be involved in a contractual chain starting with TelXL and ending with the End User to whom calls to the 070 number will actually be routed.

3.8 TelXL itself uses the following terminology to describe the various parties in a typical contractual chain, as summarised by the diagram below:



- “Client” means (in this context) any person which has a direct contractual relationship with TelXL for the provision of 070 numbers allocated to TelXL;
- “Reseller” means (in this context) any person which has a contractual relationship with a Client of TelXL and/or another Reseller for the provision of 070 numbers allocated to TelXL, but which is not an End User;
- “End User” means (in this context) any person who has a contractual relationship with another person (which may be a Client or a Reseller) for the provision of 070 numbers allocated to TelXL and which uses the 070 numbers for its own purposes. In this context, the End User is the called party who decides the destination to which calls are routed at different times.

3.9 Applying these definitions to GC17.8, TelXL’s Clients are “Customers”. However, it should be noted that if a Client or a Reseller were to use an 070 number for its own internal purposes and thereby receive calls to that number and decide on the calls’ destination, then for this specific number, the Client or

Reseller would also be the End User. The key issue in identifying the End User for any given number is to understand which person is deciding where calls to the 070 number are routed at any given time and which person is receiving the calls.

### ***Compliance with GC17 and NTNP***

3.10 There are a number of different requirements arising from GC17 and the NTNP relating to the allocation, adoption and use of 070 numbers as set out in section 1 of this document. These include, in particular, that:

- 070 numbers are used only for Personal Numbering Services, i.e. services enabling end-users to be called or otherwise contacted using a single personal telephone number; and
- there is no sharing of revenue obtained from the use of 070 numbers with end-users.

3.11 As noted above, the complaints on which Ofcom has based its investigation all concerned the alleged misuse of 070 numbers allocated to TelXL, i.e. the use of 070 numbers in a manner that is inconsistent with the requirements of GC17 and the NTNP. However, the fact that 070 numbers allocated to TelXL may be being misused is not, by itself, a contravention of GC17, insofar as it is not TelXL that is misusing the numbers. In order to determine whether there are reasonable grounds to believe that TelXL has failed to comply with GC17.8, it is necessary to consider what steps TelXL has taken to secure the compliance with GC 17 and the NTNP by its Customers, and whether those steps constitute “all reasonable practicable steps” that might have been taken. Ofcom has therefore focused on the steps taken by TelXL to ensure that its Customers comply with the requirements of the NTNP relating to the use of 070 numbers.

### ***All reasonably practicable steps***

3.12 In considering whether TelXL has taken “all reasonably practicable steps” to secure that its Customers comply with the provisions of the NTNP, Ofcom has considered all the information provided by TelXL during the investigation. The information gathered focused on identifying:

- What steps TelXL takes to secure compliance by its Customers with the NTNP in relation to the use of 070 numbers; and
- The effectiveness of these activities in actually securing compliance and any gaps that might exist.

### **What steps does TelXL take?**

3.13 In assessing the steps TelXL takes, Ofcom has considered:

- **Contractual provisions:** the contractual terms and other relevant provisions TelXL has in place with its Customers to ensure that 070 numbers allocated to TelXL and provided to Customers are used in accordance with the requirements of the NTNP and GC17;
- **Information provided to its Customers:** the steps taken by TelXL to ensure its Customers are fully aware of all the relevant restrictions on the use of 070 numbers, including information provided at point of sale;

- **Monitoring of usage:** The steps taken by TelXL to monitor usage of 070 numbers by its Customers in order to identify potential non-compliance;
- **Reacting to complaints:** The steps taken by TelXL when it receives information about potential non-compliant use of 070 numbers via complaints from Ofcom, other operators and other third parties (e.g. affected Customers);
- **Action against non-compliance:** The steps taken by TelXL against its Customers when non-compliant use of 070 numbers is identified.

However, it should be noted that in considering whether TelXL takes all reasonably practicable steps, Ofcom has considered TelXL's overall approach, rather than simply assessing each step in isolation.

#### *Contractual provisions*

3.14 TelXL currently has about 20 Clients. TelXL informed Ofcom that all but one of these Clients has signed TelXL's 'Re-seller Agreement in respect of Telecommunications Services', version 1.0. The one remaining Client has contracted to the terms set out in TelXL's 'Re-seller Agreement in respect of Telecommunications Services', version 2.0.

3.15 Both versions of the 'Re-seller Agreement in respect of Telecommunications Services' include the following provisions:

**“5. Mutual Obligations of the Parties**

5.1 *Both parties shall use the Service in accordance with and otherwise comply with all applicable laws and codes of conduct and comply with all directions, consents and recommendations of OFCOM, ICSTIS and any other applicable authority.*

**6. Reseller Obligations**

6.1 *The Reseller undertakes to use its best endeavours to ensure that its Customers will not use the Service for any improper or unlawful purpose and that the Reseller will comply with any reasonable instruction issued by TelXL, which concerns the use of the Service and will hold at all relevant times during the duration of this Agreement all appropriate licences which may be required to enable it to resell the Service.*

6.2 *[...]*

6.3 *The Reseller hereby agrees that in respect of the resale of Numbers prefixed 070 it shall not share with End Users any revenue, which it receives from TelXL (or from any third party) in respect of the provision of a personal numbering service. For the sake of clarity this clause shall not apply to the resale of the said Numbers to a Customer who itself then resells the Numbers (a “Sub-Reseller”) but in the event of resale to a Sub-Reseller the Reseller hereby undertakes that it will require its Sub-Reseller as a term of such resale to undertake that any revenue which the Sub-Reseller obtains from providing a personal numbering service is not shared with its customers.”*

3.16 Furthermore, both versions contain the following provision:

*“4.2 The Reseller hereby agrees that the Service supplied by TelXL to the Reseller shall be subject to TelXL’s Terms and Conditions as set out in this Agreement and the TelXL Standard Terms and Conditions listed on the TelXL Web Site under Information Links.”*

Version 2.0 of the agreement differs from version 1.0 by adding at the end of paragraph 4.2: *“This agreement takes precedence should the agreements conflict.”*

3.17 TelXL has stated that any Client signing up to TelXL’s reseller agreement has access to the “Add Services Wizard” via the TelXL customer website. Ofcom understands that the “Add Services Wizard” is also available to Resellers (as defined in paragraph 3.8 above), but not to End Users. In other words even though a Reseller does not contract directly with TelXL for provision of services, the Reseller can order additional services direct from TelXL via the website. When Clients or Resellers use the Wizard to select new 070 numbers for their Customers, they are asked to check a tick-box stating that they agree to the terms and conditions of these services.

3.18 These Terms and Conditions state:

*“The “Add Services Wizard” is available to Resellers and allows the selection of available numbers at the Reseller’s discretion. Where this is utilised to create services the Reseller is obliged to, and must, confirm their understanding and acceptance of any applicable rules established by Ofcom, ICSTIS or any other legal or regulatory body in respect of the management of those services. In particular “personal numbers” must only be used in conjunction with services which exactly meet the Ofcom numbering scheme. If there is any doubt the prior approval of Ofcom must be gained....”*

*Information provided by TelXL to its Customers*

3.19 TelXL has been asked to provide details of the information made available to its Customers in relation to the appropriate use of 070 numbers, including any training given to new Customers by TelXL.

3.20 TelXL has stated that all new Clients receive “training” as soon as possible. This training covers a number of areas. TelXL has stated:

*“The training includes instructing [Clients] to look at the OFCOM numbering scheme and ICSTIS guidelines, includes outlining to the trainees the specific requirements of our system in the respect of the use of the available numbers and the specific rules and regulations that apply to each type and the ICSTIS and OFCOM rules that apply in particular to Personal and Premium rate services.”*

3.21 No documentation is available to detail the training given in respect of use of 070 numbers, but Clients are supplied with copies of the TelXL Number Management Plan. This states at section 3.1.2:

*“Within the terms of the Reseller Agreement is a specific section regarding Personal numbers. These terms are very similar to the details within the OFCOM National Numbering Plan in that it specifies that “End Users” cannot receive a payment and calls can only be directed to either a UK mobile or a*

*“Follow Me” service. With this type of TelXL customer, TelXL do allow calls to be targeted to a UK landline number, but where it’s to access equipment owned by the Reseller/Service Provider which in turn provides a “Follow Me” service. An “Outpayment” is allowed in this case, but only to the Reseller”*

3.22 TelXL clarifies that only Clients receive training direct from TelXL. Clients are responsible for training their Resellers and End Users.


3.23 When Clients or Resellers use the “Add Services Wizard” to add a new 070 number, they are presented with a specific dialogue box stating:

*“WARNING: Service on 070XXX... (and possibly others) start with the 070 prefix. 070 number ranges can only be used for Follow Me Services as per the OFCOM Numbering Scheme. By accepting these terms you are accepting liability as a Service Provider for any miss-use (sic) or complaints regarding these 070 numbers.”*

This dialogue box appears above the checkbox for agreeing to TelXL’s terms and conditions.

3.24 TelXL has confirmed that no other documentation is provided to new Clients at the point of sale or when adding services.

#### *Monitoring 070 numbers*

3.25 TelXL states that it monitors all voice channels of its network in real time in its Birmingham office. [  ] TelXL states that as it is a small operator any influx of traffic can easily be seen. TelXL further states that it manually runs reports several times through the day to check on the grand totals, totals by End User and totals by number. However, TelXL has clarified that to make reports manageable they will only show the top 100 items. TelXL does not run specific reports as standard to highlight usage of 070 numbers.

#### *Reacting to complaints*

3.26 TelXL states that all complaints from third parties (be they Ofcom, other operators or individuals) are directed to Nigel Fox, Director of TelXL. Mr Fox will apparently then interrogate the system to check details of the service installed on the relevant 070 number(s). Call Data Records (CDRs) will then be collected to check call volumes and where calls have been delivered. All this data is then compared to the nature of the complaint. If TelXL believes there is a clear problem of non-compliant use of the 070 number it will disconnect the numbers and inform the relevant Client. The Client will then contact the appropriate Reseller to identify the party causing the complaint. TelXL and the Client will then determine whether it is appropriate to disconnect a Reseller and/or End User in total. If it is not clear after considering a complaint that the 070 number has been mis-used then TelXL will ask the relevant Client to gather as much information as possible on the services to establish whether they should be deactivated.

3.27 Services can be deactivated by TelXL, Clients or Resellers via the website. They can also deactivate the whole business of End Users.

3.28 TelXL states that revenue share is not passed to Resellers in respect of disconnected numbers although it does appear to be passed to Clients.

*Action against non-compliance*

3.29 Ofcom provided details of 84 070 numbers allocated to TelXL where concerns of usage during the last 12 months had been raised and asked TelXL for details of the services offered behind those numbers and any action taken by TelXL. The specific numbers had come to Ofcom's attention through a combination of consumer complaints to the Ofcom Contact Centre, concerns raised by other operators and numbers identified by Ofcom during its own investigations. Some, but not all, of the complaints had been forwarded to TelXL at the time they were received.

3.30 For 37 of these numbers, TelXL stated that the numbers had been "disconnected on investigation". Ofcom asked for details of the investigations in seven cases and the action taken by TelXL.

- In two of the seven cases, TelXL stated that its Client had carried out its own investigation after large volumes of traffic were identified over a weekend;
- In four of the seven cases, the TelXL investigation was triggered by a referral from Ofcom;
- In one case, TelXL investigated the number on its own initiative;
- In six of the seven cases, TelXL provided service to a Client who provided service to a Reseller who provided service to a sub-Reseller. On investigation, action was taken to deactivate the entire business of the sub-Resellers and their Customers;
- In four of the seven cases, the Reseller purchasing service from a Client was the same. This Reseller and all its Customers were eventually deactivated by TelXL and its Clients later in 2005.

3.31 Ofcom asked for details of all correspondence with Clients, Resellers and/or End-Users as part of its investigations. Only limited correspondence in the form of brief emails was available and for only three of the seven cases.

**Assessing the effectiveness of steps taken by TelXL and whether there are other reasonably practicable steps that TelXL could also take**

*Contractual provisions:*

3.32 Given TelXL's decision to sell via Clients, it is important that its basic Reseller Agreement is absolutely clear about the restrictions on the use of 070 numbers set by the NTNP and the obligations this places on Clients.

3.33 Section 5 of the Reseller Agreement refers to a mutual obligation on TelXL and the Client to comply with all applicable laws and codes of conduct and all directions, consents and recommendations of Ofcom. No specific mention is made of the NTNP or Ofcom's 070 Guidelines.

3.34 Section 6 refers to the prohibition of Revenue Share with End Users and requires that Clients ensure that its Resellers do not share revenue with their Customers. As detailed below it is not clear that this requirement is enforced on Clients.

- 3.35 The terms and conditions refer to the Ofcom numbering scheme rather than the NTNP. This reflects a lack of clarity about the specific restrictions which apply.
- 3.36 In addition, it appears from the information provided by TelXL to Ofcom that the contractual provisions regarding the use of 070 numbers are not always effectively enforced. In particular, Ofcom notes that although TelXL's contractual relationship is with its Customers, and indeed, this is the contractual relationship which is relevant for the purposes of GC17.8, TelXL appears to have proceeded to share revenue with its Customers even when it appears to believe that 070 numbers have been misused (albeit by End Users or Resellers).
- 3.37 Furthermore, it appears to Ofcom on the basis of discussions with Nigel Fox during Ofcom's visit to TelXL's offices that TelXL is aware that in some instances the Client or Reseller may also be the End User. At the time of those discussions, it was brought to TelXL's attention that this raised concerns about revenue sharing with Resellers, when they are also the End User. TelXL does not appear to currently take any steps to prevent revenue sharing or suspend services in such circumstances.

*Information provided by TelXL to its Customers:*

- 3.38 TelXL's Client training only appears to be directed at new Clients soon after Reseller Agreements have been signed. Even here, the level of detail provided about the restrictions on the use of 070 numbers is unclear as TelXL has not documented any training given. Clients appear to be provided with TelXL's Number Management Plan which provides a brief description of restrictions on use of 070 numbers. No training appears to be given in relation to the need to secure compliant use of the 070 numbers by the Client's Resellers and that Reseller's Customers. No additional training appears to be given to existing Clients periodically on use of 070 numbers to ensure the restrictions are understood.
- 3.39 Clients or Resellers are alerted to the restrictions on the use of 070 numbers when using the "Add Service Wizard" on the TelXL website. However, this only refers to the Ofcom numbering scheme and Follow Me Services. No reference is made to the NTNP (including the prohibition on revenue share) or the 070 Guidance.
- 3.40 Clients do not appear to be provided with access to the NTNP and the 070 Guidance and certainly do not sign up to acknowledge that these have been seen and understood. Furthermore, on the basis of discussions with TelXL during the course of this investigation, it appears to Ofcom that TelXL itself may have some lack of clarity about the acceptable use of 070 personal numbers.
- 3.41 It appears reasonable to Ofcom, having regard to commitments made by other communications providers in similar cases, that TelXL should take steps to ensure that its staff and Customers understand and acknowledge the specific restrictions placed on usage of 070 numbers. For example, other CPs have taken steps to improve their in-house staff training, and have introduced enhanced procedures for drawing a customer's attention to the restrictions on the use of 070 numbers.

*Monitoring usage:*

- 3.42 It appears to Ofcom that monitoring the call patterns to certain 070 numbers or to certain End Users or Resellers with significant volumes of 070 numbers would identify mis-use of the numbers in certain cases. TelXL does not appear to take steps to monitor the services provided on 070 numbers by End Users nor to require its Clients to do so.
- 3.43 TelXL appears to have the systems capability to monitor usage patterns for different types of traffic, but does not yet specifically produce reports for 070 number usage either by specific 070 number or by particular End Users/Resellers with significant volumes of 070 numbers. The standard 'top 100' reports that TelXL does produce appear unlikely to highlight 070 numbers due to the volumes of calls associated with 0870 numbers compared to 070 numbers.
- 3.44 Ofcom is aware that other communications providers have established reports which identify particular trends in volumes on 070 numbers which may alert them to potential mis-use issues. For example, one CP which contacted Ofcom during 2005, with information about a scam it had identified and stopped, explained that it had been alerted to the possible misuse by a regular report on the revenue figures associated with particular numbers. Another CP which provided a personal numbering compliance plan to Ofcom was developing its software to ensure that it would be alerted of any revenue or monthly traffic increases above a certain margin. If the alert was triggered, a manager or director would investigate further.
- 3.45 Furthermore, when Ofcom visited TelXL's offices in Birmingham, Nigel Fox agreed that any monitoring of call traffic in real time was dependent on either himself or another employee looking at the screen. As TelXL is a small business, there were periods during the day when no-one would be monitoring the call traffic. Ofcom also observed that there would be limited value from real time monitoring of call traffic in detecting possible mis-use of 070 numbers, as legitimate business on TelXL's other number ranges would often produce a sharp increase in calls to a particular number, for example, if an advertisement had been recently broadcast on television.
- 3.46 Notwithstanding this, it would also appear from the information provided by TelXL during this investigation that extremely high usage on 070 numbers was not identified or investigated in reasonable timeframes. For example, over 10-12 September 2005, TelXL's CDRs show call volumes in excess of 24 hours for each day on separate 070 numbers and as high as 200 hours in a day for one particular number. Four of the five numbers identified were disconnected by TelXL, but not immediately. One number was disconnected on 12 September 2005 but only after a further 200 hours of traffic was sent that day. The other three numbers were disconnected on 15 September even though usage was excessively high from 10-12 September on all the numbers.
- 3.47 Such high call volumes can be seen on 070 numbers due to the 'follow-me' nature of personal numbering services, i.e. calls to an 070 number can be routed to different destinations. If one call to a particular 070 number is followed by a second call before the first call has ended, the second call may be routed to a different destination from the first call, with the relevant CDRs showing overlapping calls. For example, the first call may be directed to a mobile, which is answered, and then during the ensuing conversation, a second call is

directed to the person's home telephone number. However, this 'follow-me' functionality makes 07 numbers a target for misuse, as high call volumes can be generated to one number. Ofcom would expect a genuine personal numbering service to only have a limited level of overlapping calls, and certainly not such high call volumes over any 24 hour period.

*Reacting to complaints:*

- 3.48 It appears equally important that, as well as monitoring usage, TelXL has processes in place to ensure that it reacts to any complaints raised by third parties about potential misuse of numbers allocated to TelXL.
- 3.49 TelXL has set out its standard approach to dealing with complaints received. It is not clear under which circumstances TelXL may consider it appropriate to deactivate a particular number, all services provided to the particular End User or all services provided to a Reseller (and consequently all End Users supplied by that Reseller).
- 3.50 TelXL does not appear to have any formal process for registering complaints received, or tracking investigations and action taken. This appears to be confirmed by the fact that TelXL has been unable to provide such information during the course of this investigation, other than copies of emails relating to a few numbers.

*Action taken against non-compliance*

- 3.51 Although Ofcom's main concern is that TelXL does not appear to be taking all reasonably practicable steps to prevent and identify possible mis-use of 070 numbers when it occurs, Ofcom is also concerned about TelXL's lack of documented procedures for taking action against any non-compliance that does occur. Ofcom believes that it is reasonably practicable for TelXL to act against any identified non-compliance by its Customers (whether identified by TelXL itself, or by another person) in order to reduce the potential for ongoing non-compliance.
- 3.52 TelXL has provided some details of action taken once it has become aware of potential concerns with 070 usage. However, all action appears to be focused on End Users and Resellers/sub-Resellers. No action appears to be taken against Clients under the contract terms. It is not clear, for instance, that Clients are asked to provide details of the contractual terms they have in place with Resellers in respect of the provision of 070 numbers. Furthermore, it appears that in some instances, Clients may receive revenue share relating to 070 numbers which have been misused. This does not provide an incentive on TelXL's Clients (its Customers for the purposes of GC17.8) to ensure that they themselves comply with the NTNP and GC17.

**Conclusions**

- 3.53 Ofcom has considered whether TelXL has taken all reasonably practicable steps to secure that its Customers using 070 numbers allocated to TelXL comply with the provisions of the NTNP. During the course of this investigation, Ofcom issued two separate notices on TelXL under section 135 of the Act and has obtained detailed information from TelXL relating to TelXL's management of 070 numbers allocated to it. Ofcom also visited TelXL's premises in Birmingham to gain a greater understanding of both TelXL's network and TelXL's management of its 070 numbers. In addition, Ofcom obtained traffic

data from BT, and considered steps taken by other CPs to secure that their Customers using 070 numbers comply with the provisions of GC17 and the NTNP.

3.54 On the basis of the information provided to Ofcom by TelXL during the course of this investigation, including consideration of the steps TelXL states that it currently takes (as set out in paragraphs 3.13-3.31 above) Ofcom recognises that TelXL appears to be taking some steps to ensure that its Customers comply with the provisions of GC17 and the NTNP. However, Ofcom believes that:

(a) The volume of complaints made about misuse of TelXL's 070 numbers during 2005 suggests that there may be some discrepancy between TelXL's stated policies and procedures and what actually happens in practice, and the lack of fully documented records relating to TelXL's existing procedures and policies prevents Ofcom from dispensing with this concern;

(b) although Ofcom recognises that TelXL appears to have taken some steps to ensure that its Customers comply with the provisions of GC17 and the NTNP, Ofcom does not consider that TelXL has taken **all** reasonably practicable steps, as Ofcom has identified a number of significant gaps in these processes as set out above.

3.55 Ofcom considers that the steps that TelXL should reasonably take in order to ensure that its Customers do not misuse 070 numbers include, but are not necessarily limited to, the following:

- i. Including an explicit obligation within TelXL's terms and conditions for the provision of services used with 070 numbers that the Customer comply with the specific restrictions on the use of 070 numbers as set out in the NTNP;
- ii. Providing information and training for Customers regarding their obligations in relation to the use of 070 numbers, including by those to whom the Customer re-sells those services, and requiring Customers to consider and indicate their understanding of that information as part of the sales process;
- iii. Maintaining a record of information and training provided to Customers on the restrictions on the use of 070 numbers;
- iv. Regularly and actively monitoring usage of 070 numbers by Customers with a view to uncovering potential misuse;
- v. Developing and documenting a process for handling complaints on misuse of 070 numbers and maintaining a record of any investigations and action taken in relation to misuse of 070 numbers; and
- vi. Developing a policy for action that will be taken when non-compliance is identified.

3.56 Ofcom considers that the steps set out above in paragraph 55(i)-(vi) are all reasonably practicable for TelXL to undertake, taking into account TelXL's size and resources. Although TelXL's current policies and procedures may partially cover some of these steps, Ofcom considers that TelXL needs to take further action in order to meet its obligations under GC 17.8. The first action is to develop the existing policies and procedures as discussed above. The second is to apply these policies consistently, given that Ofcom's investigation has

established that TelXL's existing policies and procedures, as described by TelXL in response to Ofcom's first and second information requests, currently may not be either consistently or rigorously followed.

- 3.57 Ofcom has now completed its investigation and has concluded that there are reasonable grounds for believing that TelXL is contravening and has contravened GC17.8, by failing to take all reasonably practicable steps to secure that its Customers comply with the provisions of GC17 and the NTNP.
- 3.58 Ofcom requires TelXL to provide a compliance plan to Ofcom by 20 March 2006 detailing the steps TelXL has taken or is taking to comply with GC17.8.