



Changes to 0870

Changes to 0870 calls and modifications to the
supporting regulations

Consultation

Publication date:

2 May 2008

Closing Date for Responses:

15 June 2008

Contents

Section		Page
1	Summary	3
2	Introduction	13
3	Proposed Changes	19
4	Additional stakeholder submissions	24
5	Option Appraisal and Impact Assessment	30
6	The Material Change Test	36
7	Legal tests for proposed modifications	37
8	Next Steps	45

Annex		Page
1	Summary of Impact Assessment	47
2	Economic Analysis	52
3	Notification of a proposed modification under Section 48(2) of the Act	64
4	Notification of a proposed modification to General Condition 17	67
5	Notification of proposals for a modification to the National Telephone Numbering Plan	70
6	Notification of proposals under section 49(4) of the Act	73
7	Notification of a proposed modification to General Condition 14	76
8	Responding to this consultation	88
9	Ofcom's Consultation Principles	90
10	Consultation response cover sheet	91
11	Consultation Questions	93
12	Glossary	94

Section 1

Summary

Overview

In April 2006 we decided to implement a package of measures to address consumer and industry concerns about NTS

- 1.1 Number Translation Services (NTS) calls are calls to 08 numbers ('NTS numbers'), though as explained later in the document, there are a few exceptions.
- 1.2 In April 2006, we concluded a major review of our policy about NTS and announced a package of measures designed to improve consumer protection, pricing transparency and to address some Industry problems that led to persistent disputes that Ofcom was called upon to resolve.
- 1.3 We decided to implement some of the changes straightaway and others over the following two years in order to give everyone time to prepare.

We proposed a major change to the way 0870 calls are charged

- 1.4 Our proposals included a major change to the way 0870 calls are charged to improve pricing transparency and to address some industry problems. We decided to repair the linkage between charges for 0870 calls and national calls to geographic numbers so that callers would normally pay no more to call an 0870 number than to call a geographic number. If communications providers ('CPs') want to depart from this convention and charge more than their national rate for a 0870 call, it was our original intention that they would have to provide a free-of-charge announcement telling the caller the price of the call.
- 1.5 In order to implement these changes we need to undertake a final consultation about our proposed changes to the regulations for 0870 calls so that the new rules can take effect. We originally intended to publish this consultation in autumn 2007 in order that the changes could take effect from Feb 2008. However, we have taken extra time to reconsider whether we should require the use of pricing announcements after it became clear they might cause serious problems for machine-to-machine calls including personal, fire and burglar alarms, leading to potential life threatening consequences.

We have decided not to require the use of pricing announcements and are presenting modified proposals

- 1.6 We are proposing that we should implement the changes to the way 0870 calls are charged but have modified our proposals in the light of the problems that might be caused by announcements. Instead of announcements we are proposing that CPs wishing to charge more for 0870 calls than for geographic calls would be subject to new requirements to display their 0870 charges prominently on price lists and advertising/ promotional materials.
- 1.7 These new requirements will build on the present obligations contained in General Condition 14 where CPs are required to give equal prominence to NTS and geographic call prices in all price lists and promotional materials. Under our new

requirements the existing obligations will extend to include 0870 now that these are no longer NTS calls. In addition CPs are required to state clearly, wherever they advertise any call prices, discount schemes, inclusive packages and bundles which include calls, whether or not NTS and 0870 calls are included in such schemes. One other new requirement is that CPs should only refer to 0870 calls as national rate in their advertising, promotional material and retail bills where their 0870 and geographic prices are the same.

We are seeking stakeholder comments

- 1.8 Before we can implement the changes to the regulations, we are required by law to conduct a public consultation. In this document we are seeking comments about the modifications to the regulations and to the revisions to the policy in light of the problems with alarm services. The changes that we need to make to the regulations are:
- modify the designation for 0870 calls in the National Telephone Numbering Plan ('the Plan') and the associated Numbering Application Forms;
 - modify General Condition 17 to make the new designation for 0870 calls applicable to all communications providers;
 - modify the definition of NTS calls to remove the regulatory support for revenue sharing;
 - modify General Condition 14.2 to include 0870 calls now that they will no longer be classified as NTS
- 1.9 This document contains the draft legal notifications of the changes to the regulations required to implement the changes.
- 1.10 We are seeking stakeholder comments on our proposals and have allowed 6 weeks for responses. Once we have reviewed the responses to the consultation we will publish a statement specifying our conclusions. Assuming we do not make any significant changes in response to stakeholder comments, we anticipate that the statement will contain the final legal notifications implementing our proposals.

The NTS Policy Review

- 1.11 This section provides a brief introduction to NTS and an overview of our review to explain the context of the changes to the regulations that we are proposing. We have provided some more detail in the next section, but for a full explanation, you should refer to the consultation and statement documents¹.

NTS calls combine the call routing features of non-geographic numbers with a payment mechanism

- 1.12 NTS numbers are examples of non-geographic numbers in that the number dialled does not relate to a specific geographic location, but instead relates to a particular service. At a technical level, the NTS number dialled by a caller is 'translated' by the network to a geographic number to deliver the call to its destination. Often, the translation is provided in conjunction with other call routing services that help

¹ See paragraph 2.13 for details of where to find these documents on our website.

businesses answer calls more efficiently. These may include distribution of calls between multiple sites, routing calls according to the caller's location, recorded announcements and emergency call routing to an alternative location in event of a fire or flood etc.

- 1.13 Another important aspect of NTS calls is that (with the exception of Freephone calls) they are generally charged at higher rates than ordinary calls and the user of the number may receive a share of the call charge to help pay for the service provided. Alternatively a share of the call charge may be used to pay for the call routing services mentioned above.

The combination of the call routing services and the payment mechanism allow businesses to provide a wide range of services

- 1.14 NTS provides organisations and individuals with a combination of call routing services and an efficient mechanism to charge callers small sums. This allows them to provide a range of services to callers, including sales lines, customer service/enquiries and recorded information services. They are also widely used to provide dial-up pay-as-you-go internet services.
- 1.15 Some of the services are funded entirely from call charges such as pay-as-you-go internet services, fax-to-email services, information and entertainment services. Others such as sales and customer service lines are typically only partially funded by call charges.

Our review looked at a range of problems with NTS against a background of declining consumer confidence in NTS

- 1.16 We think that NTS enables organisations to supply consumers with many useful services, some of which would not otherwise be available. However, we decided to carry out a review because there were a range of concerns about NTS including consumer concerns about:
- consumer protection – there were concerns about a rise in scams previously seen on 09 numbers that were beginning to affect 08 numbers and more general concerns that a lack of consumer protection measures might mean businesses were using 08 numbers to overcharge consumers;
 - pricing transparency – our research showed that consumers have a very low awareness of the price of 084 and 087 calls;
 - misleading advertising – the breakdown of the linkage between 0845 and 0870 call charges and local and national call charges means that consumers pay more for 0845/0870 calls than local/national calls, giving rise to a potential for misleading advertising when 0845 and 0870 numbers are advertised as local and national rate;
 - adult services – there was concern that Sexual Entertainment Services were operating on 08 numbers where they are less easily barred than those operating on 09 numbers. Unlike Sexual Entertainment Services operating on 09 numbers, those operating on 08 numbers were not regulated by the premium rate services regulator PhonepayPlus;

- call centre waiting times – many consumers are annoyed by long call centre waiting times and some people are worried that when 08 numbers are used, waiting times may be deliberately extended to make extra money from callers;
- provision of public services – there has been growing concern about the use of 08 numbers for the provision of public services. These concerns have been exacerbated by the fact that NTS numbers can not be accessed from all foreign networks, making it difficult for those overseas to access UK public services.

1.17 These concerns have contributed to a decline in consumer confidence in NTS.

1.18 There were also industry concerns about several aspects of the regulatory regime for NTS. Most notably, the residual linkage between 0845 and 0870 call charges and BT's local and national call charges means that the revenues that CPs receive for calls from BT customers are effectively beyond their control and subject to changes in BT's prices. This creates considerable uncertainty for CPs and businesses that use 0870 numbers and who rely on a share of the call revenue to fund their services.

1.19 We examined each of the concerns and undertook research to get a better understanding of the situation. For instance, we took a particularly close look at the concerns about contact centre waiting times. We made calls to a representative selection of call centres and found no correlation between call charges and waiting times. This suggests that long holding times are a symptom of poor customer service rather than a deliberate attempt to make more money.

We decided to take steps to improve pricing transparency and consumer protection

1.20 We proposed a package of measures designed to address the problems identified, whilst ensuring the availability of a wide range of services.

1.21 The measures we proposed were designed to provide additional protection for consumers and also to improve pricing transparency. The measures include:

- new rules to make it easier for consumers to find out about CPs' charges for NTS calls;
- repair of the linkage between 0870 call charges and charges for national calls to geographic numbers (see below for a more detailed explanation);
- better consumer protection by bringing the more expensive NTS calls (0871, 0872 and 0873) within premium rate services regulation;
- Sexual Entertainment Services currently operating on 08 numbers required to move to the 09 number ranges designated for Sexual Entertainment Services;
- a further review of the 0845 range in two years time with a view to repairing the linkage between 0845 call charges and charges for local calls to geographic numbers; and
- advice to the public sector on use of 08 numbers for public services.

1.22 The measures were also designed to address the underlying causes of Industry disputes that Ofcom is called upon to solve.

- 1.23 Some of the proposed measures were disruptive for CPs and service providers (SPs) using NTS so we implemented the less disruptive measures first, while delaying the rest to give relevant parties time to prepare. We acknowledged that the preparation time defers consumer benefits from the changes. However, we also needed to consider the legitimate interests of the CPs and SPs. If we had implemented all the changes more quickly, both might have incurred additional costs which could have been passed on to consumers.

We have already implemented some of the measures

- 1.24 In August 2006 we implemented new rules that require CPs to provide information about NTS call charges in their promotional material and also to make NTS calls as prominent as ordinary geographic calls in their price lists and on their websites.
- 1.25 In March 2007, we gave notice that providers of Sexual Entertainment Services operating on 08 numbers would need to move their services to the ranges set aside for Sexual Entertainment Services in the 09 range by 8 November 2007. At the same time we also increased consumer protection by bringing Sexual Entertainment Services charged at less than 10p per minute within the remit of PhonepayPlus the premium rate services regulator.

The way 0870 calls are charged has caused several problems

- 1.26 When the 0870 range was introduced, calls were charged at BT's national rate for geographic calls. Consequently, 0870 numbers were known as 'national rate' numbers. During the last few years, the linkage between 0870 charges and national geographic call charges has effectively broken down because geographic calls have been included in call packages and discounted much more than 0870 calls. Also a much larger proportion of consumers now use CPs other than BT who are not bound by the linkage. All this has resulted in most people paying much more for 0870 calls than for national calls to geographic numbers.
- 1.27 We have taken steps to stop CPs and SPs referring to 0870 calls as national rate but this term is still widely used and may mislead callers.
- 1.28 Even though the linkage to BT's national geographic call charges is damaged, BT still sets the rate for 0870 calls that its customers make. This creates considerable uncertainty for other CPs who operate 0870 numbers because the payments they receive may be varied by BT at short notice. This uncertainty also has knock-on effects for businesses that rely on revenue-shares to fund the services they provide. This uncertainty is a contributory factor in a succession of disputes between BT and other CPs that Ofcom and its predecessor Oftel have been called upon to resolve.

We decided to repair the linkage between 0870 call charges and national call charges

- 1.29 To address the problems with 0870 calls, we decided to repair the linkage between charges for 0870 calls and national calls to geographic numbers so that callers would normally pay no more to call an 0870 number than to call a geographic number. If CPs want to depart from this convention and charge more than their national rate for a 0870 call, it was our original intention that they would have to provide a free-of-charge announcement telling the caller the price of the call, in order to make prices as transparent as possible.

It has become apparent that announcements might cause serious disruption

- 1.30 When Ofcom introduced a requirement for pricing announcements on 070 (Personal Numbers) in an unrelated policy initiative the announcements interfered with a small number of social alarm services (typically used by the elderly and infirm to summon assistance). Ofcom also became aware there were a much larger number of security alarm services using 0870 numbers than was thought to be the case. As these services may also be susceptible to interference from announcements this further increased the risk of significant disruption associated with the deployment of announcements.
- 1.31 In order to avoid such a serious risk Ofcom decided not to require announcements and considered other ways in which CPs could inform their customers that 0870 calls are charged above their rates for geographic calls. Ofcom identified two options:
- Option A - Remove the option of charging more than the geographic rate for 0870 calls, and require 0870 calls to be included in call packages on the same basis as geographic calls; and
 - Option B: Stronger price publication requirements combined with an active programme of enforcement. Under this option, in addition to the existing price publication requirements for NTS calls, the onus would be on CPs to ensure that clear information on the pricing of 0870 calls is made available to consumers, when they sign up for a service package and before they make 0870 calls. CPs wishing to charge more for 0870 calls than for geographic calls would be subject to requirements to display their 0870 charges prominently on price lists and advertising/ promotional materials. On price lists, charges for 0870 calls would have to be given the same prominence as charges for calls to geographic numbers. On promotional material, where charges for calls to geographic numbers are quoted, maximum charges for calls to 0870 numbers (or to all 08 numbers) should also be given. Where prices for call packages are shown, it should be clearly stated whether 0870 calls are included in the package. If they are not included, the maximum charges for 08 calls should also be shown. In addition CPs should only refer to 0870 calls as national rate in their advertising, promotional material and retail bills where these prices align with their geographic call prices. These requirements would be actively monitored and vigorously enforced.
- 1.32 It should be noted that, under either of these options, it is unlikely that revenue sharing on the 0870 range would continue. This is because, as discussed further below, the scope for revenue sharing depends on the application of the NTS Call Origination Condition ('the NTS Condition'), which requires BT to originate NTS calls at cost, and to pass the remaining retail revenues to the terminating CP, who may then share them with the recipient of the call. As part of the policy package set out in the April 2006 Statement, it was proposed that 0870 calls should be removed from the scope of the NTS Condition. This proposal is not affected by the pre-announcement issue outlined above. As a result, revenue sharing is likely to cease on the 0870 range and we would expect this to be associated with lower charges for 0870 call termination, and lower retail prices.
- 1.33 Our assessment is that Option A would be effective in promoting price transparency and reducing consumer confusion over the pricing of 0870 calls, as it would establish a general rule that 0870 calls are no more expensive than geographic calls and are included in calling plans on that basis. At the same time, we acknowledge that Option A would be a comparatively intrusive regulatory intervention, as it would place some

restriction on the pricing freedom of Originating Communications Providers ('OCP'). We are keenly aware of our statutory duty to minimise the burden of regulation and to ensure that regulatory intervention is proportionate.

- 1.34 Option B is a less intrusive approach which nevertheless would place a clear responsibility on CPs to ensure that their customers are made aware of 0870 call charges. Our assessment is that it would also improve transparency and should lead to greater consumer price awareness. It would ensure that consumers have ready access to information on the price of calls when deciding to sign up with a particular SP, or when checking call prices, for example, on provider websites.
- 1.35 In this context it is relevant to note that some fixed and mobile CPs have recently improved the visibility of NTS call charges on their websites, in accordance with the existing requirements of General Condition 14.2, which already sets price publication rules for NTS calls. While we welcome this improvement, there is still some way to go. A number of CPs do not yet appear to be fully compliant with the price publication requirements of GC 14.2, particularly in relation to pricing information on promotional material. We are currently considering the case for enforcement action in this area.
- 1.36 It is also the case that the difference between 0870 and geographic call prices has narrowed on some CP networks over the past year or so. In addition, in the case of many mobile packages, geographic and 0870 calls are charged at the same rate outside of the bundles of inclusive calls. The key differences are that calls to 08 numbers, including 0870, are rarely included in those bundles whereas geographic calls are always included.
- 1.37 Ofcom's initial view is that it would be more proportionate to adopt Option B in the first instance. Ofcom therefore proposes to go ahead with the implementation of Option B. We believe that CPs should step up their efforts to provide pricing information for 0870, as well as other NTS calls and consider that this should be underpinned by a stronger set of price publication requirements. Under Option B 0870 calls would remain subject to the rules on price publication applying to all NTS calls and these rules would be extended to ensure providers state clearly where 0870 and other NTS calls are excluded from their bundles and other discount packages. The new requirements would be supported by an active programme of compliance monitoring and enforcement. In addition, we propose carry out market research at regular intervals, to assess the impact of the new rules on consumer price awareness in respect of 0870 calls.
- 1.38 If it becomes apparent that, within 12 months of implementation, the new rules are not having a significant impact on consumer price awareness, Ofcom's intention would be to return to this issue, and to consider what other measures may be appropriate, including the possible implementation of Option A.

Revenue-sharing may no longer be viable under the new arrangements

- 1.39 Under the current arrangements for 0870 calls revenue sharing is possible partly because calls are charged at higher rates than ordinary geographic calls and partly because regulation under the NTS Condition. The NTS Condition requires BT to pay most of the call charge to the Terminating Communications Provider ('TCP'), after deducting only its costs. This is in direct contrast with geographic calls where the OCP pays only a small cost-based termination charge to the terminating operator (i.e. the one that hosts the number). Although other CPs are not bound directly by this arrangement, almost all 0870 calls pass via BT's network on their way from

originating network to terminating network and BT collects the same termination payment for these calls as those originating on its own network.

- 1.40 We are proposing to remove 0870 calls from the scope of the NTS Condition. We will not ban revenue-sharing on 0870 numbers, but it is likely to come to an end because the combination of the price reductions and the removal of 0870 calls from the scope of the NTS Condition means that the revenues that CPs receive for 0870 calls may be insufficient for them to offer a share to businesses.
- 1.41 Another reason for removing 0870 calls from the scope of the NTS Condition was because we were worried that once 0870 calls were included in call packages some people might make lots of free calls to their own 0870 numbers in order to earn a revenue share. This might have made it difficult for CPs to keep 0870 calls in call packages, thereby defeating the object of the changes.
- 1.42 Removing 0870 calls from the scope of the NTS Condition will also remove the revenue uncertainty that was the underlying cause of disputes between CPs.

Implementation Arrangements

- 1.43 We are proposing that the new rules should now take effect from the end of the third month following publication of the statement confirming the changes. This will give everyone time to prepare and make the necessary changes to their price advertising to comply with the new rules now that the requirement for pre-call price announcements has been withdrawn. It also ensures the timing aligns with the end of a monthly wholesale billing cycle.
- 1.44 However, in the event that the current dispute over the termination rates that will apply under the new rules is not resolved by that date², the changes will take effect from the end of the month that Ofcom's determined rates are published in BT's Carrier Price List.

Related Work

Our Numbering Review considered how we could manage the future supply of numbers to improve pricing transparency and consumer confidence in NTS

- 1.45 In July 2006, we also completed a strategic review of our numbering policy. This review considered our long term policy for all types of numbers, not just 08 numbers. The review didn't reconsider the problems addressed by the NTS Review but considered how our wider numbering policy might help improve consumer confidence in NTS and how it might help improve pricing transparency. We made several proposals about NTS:
- a new long term approach for 08 numbers whereby services would be described a two-digit level (080, 084 and 087) rather than the three-digit level as at present (e.g. 0800, 0844, 0845, 0870 and 0871). The new approach means that new three-digit ranges can be introduced to accommodate demand without adding to the list of number ranges to remember;
 - introduction of a new type of number, beginning 03 for those businesses and public services that require a national presence and the call routing services

² See paragraphs 2.27 to 2.30

associated with NTS but who do not wish to make an additional charge for consumers to contact them; and

- we decided to explore ways in which we could modify the definitions for 08 numbers so that they give useful information about prices given that retail prices vary by network.

The first 03 numbers have recently been brought into use

- 1.46 Ofcom has already allocated 03 numbers to a number of CPs and some are already in use. Calls to 03 numbers cost no more than the rate the caller pays for a geographic call. We felt that the introduction of this new range presented an opportunity to have slightly different arrangements to 0870 calls to help establish a trusted reputation for 03 numbers. Unlike 0870 calls, CPs do not have an option to charge higher rates and revenue sharing is prohibited.

Two more consultations are required to finish implementing the package of measures from the NTS Review

- 1.47 We need to undertake two more consultations to complete the implementation of the measures from the NTS Review.
- 1.48 We decided to increase consumer protection for the most expensive 08 numbers (0871, 0872 and 0873) by bringing them under the control of the premium rate services regulator PhonepayPlus. Now that PhonepayPlus has completed its own consultation on the rules it should apply to 0871/2/3 numbers we have issued a further consultation to formally accept those rules and to extend our premium rate services powers to encompass those ranges. The further consultation entitled “Extending Premium Rate Services Regulation to 087 numbers”³ was issued on the same date as this document.
- 1.49 We also announced our intention to undertake a further review of the 0845 range with a view to adopting similar measures as 0870. We scheduled the review for 2008 to allow time for pay-as-you-go internet services to decline since they accounted for a large proportion of the calls to 0845 numbers when we did our initial review. In the light of recent changes to the difference between some providers’ 0845 and geographic prices Ofcom will consider the timing of the 0845 review when the 0870 consultation has been completed.

About this Consultation

- 1.50 We are seeking stakeholders views about our proposals for 0870 numbers, In particular we are seeking comments about the proposed modifications to the regulations and to the revisions to our proposals in light of the problems with pre-call announcements. In this consultation we have not reconsidered the wider issues or revisited the full set of options considered in our original policy review. Our initial view is there has not been a material change that would be likely to lead Ofcom to reach a different conclusion. However we will also consider comments on the wider NTS policy issues in light of the time that has elapsed since the policy review was concluded in April 2006.
- 1.51 The changes that we need to make to the regulations are:

³ <http://www.ofcom.org.uk/consult/condocs/087prs/>

- modify the designation for 0870 calls in the National Telephone Numbering Plan ('the Plan') and modify the associated Numbering Application Forms to specify that 0870 calls should be charged at no more than the callers national rate except where the charges have been published in accordance with GC14.2, or in the case of Public Pay Telephones, where the extent of the charges are displayed in a manner that is reasonably accessible to a caller before making a call;
- modify General Condition 17 to make the revised designation for 0870 calls in the Plan applicable to all CPs rather than just BT as would otherwise be the case;
- modify the definition of NTS calls in Schedule 1 of Annex A of the "Review of the fixed narrowband wholesale exchange line, call origination, conveyance and transit markets"⁴ which will have the effect of removing 0870 calls from the scope of the NTS Condition (Condition AA11);
- modify General Condition 14.2 to extend its requirements to include 0870 calls now that they will no longer be classified as NTS.

1.52 Condition AA11 is a Significant Market Power ('SMP') condition. When we make a change to an SMP Condition we must either undertake a full review of the market to which the condition applies or demonstrate there has not been a material change in market conditions since we undertook the previous review. We think the latter is the case in this instance and have included our economic assessment of the market in annex 2.

1.53 These changes are explained in more detail later in the document.

1.54 We have allowed 6 weeks for you to respond commencing on 2 May 2008. So we must receive your response by 5pm on 15 June 2008. Please look at annexes 8, 9 and 10 for details of how to submit your response.

1.55 Once we have reviewed the responses to the consultation we will publish a statement specifying our conclusions. If we do not make any significant changes to the proposals, we anticipate that the statement will contain the final notifications implementing our proposals.

⁴ Published by Ofcom on 28 November 2003:
http://www.ofcom.org.uk/consult/condocs/narrowband_mkt_rvw/nwe/fixednarrowbandstatement.pdf

Section 2

Introduction

2.1 This section provides an introduction to NTS, the current regulatory regime and Ofcom's NTS policy review as it relates to the changes to the regulatory arrangements for 0870 calls that this consultation seeks to introduce. For a full description of the NTS Review and the rationale for the changes that Ofcom is seeking to implement through this consultation, please see the 2006 NTS Statement⁵.

What are Number Translation Services ('NTS')

- 2.2 NTS calls are calls to numbers identified in the National Telephone Numbering Plan⁶ ('the Plan') as Special Services numbers (broadly, numbers that start with 08). In addition, NTS includes calls to the legacy 0500 Freephone numbers, which whilst still in use, are not listed in the Plan as they are no longer available for new allocations. Calls to 0844 04 numbers for Surfetime internet access services and calls to 0808 99 numbers for Flat Rate Internet Access Call Origination ('FRIACO') are not included.
- 2.3 NTS numbers are examples of non-geographic numbers in that the number dialled does not relate to a specific geographic location, but instead relates to a particular service. At a technical level, the NTS number dialled by a caller is 'translated' by the network to a geographic number to deliver the call to its destination.
- 2.4 For a given NTS call, there can be several different CPs involved in conveying the call from the caller to the organisation or individual receiving the call. This includes an OCP, on whose network the call commences, and a Terminating Communications Provider (TCP), on whose network the NTS number resides. The OCP and the TCP may be the same for some calls. There may also be a CP carrying the call between the OCP and the TCP (this is known as a 'transit' service).
- 2.5 A key feature of NTS is that the regulatory framework makes revenue sharing possible between the TCP and the organisation or individual receiving the call. In this way, the regulatory regime supports the use of NTS as a micro-payment mechanism for the various services which can be accessed via 08 and 09 numbers. The caller pays the OCP for the call. The OCP passes on a terminating payment to the TCP, who is then able (subject to commercial viability) to share some of this revenue with the individual or organisation using the NTS number, the SP.
- 2.6 Services offered using '08' NTS numbers are similar to those using the '09' number range except that prices range from free to caller up to a maximum of 10ppm (from a BT landline). Types of services include information services, some technical helplines, access to telephone banking, sales and customer service lines and dial-up pay-as-you-go internet services.
- 2.7 Because of the lower prices charged for '08' NTS calls generally, the scope for consumer detriment from making long calls and from fraudulent activity is generally considered less of an issue. However, there is still potential for consumers to accrue

⁵ See paragraph 2.13 for the location of this document on our website.

⁶ A document published from time to time under section 56 of the Communications Act 2003

high phone bills over a billing cycle where there may be frequent or long-duration use of lower priced services.

The Current Regulatory Framework for NTS

- 2.8 Current regulatory policy for NTS calls was established in 1996 with the aim of encouraging the growth in the provision of access to new and cheaper, value added services via the telephone. This was achieved by transferring the retail profit from the price of the call from the OCP to the TCP who in turn could choose to share some of this profit with their SP. customers. SPs could then use that revenue share in order to fund innovative services.
- 2.9 The key elements of this policy were retained following the introduction of a new regulatory regime for electronic communications networks and services on 25 July, 2003, based on five new EU Communications Directives. Under the new regime, Oftel (Ofcom's predecessor) carried out a series of market reviews. Among the markets and technical areas reviewed was that relating to wholesale services provided over fixed public narrowband networks. These services consist of wholesale exchange line services, call origination, local-tandem conveyance and transit, inter-tandem conveyance and transit, single transit and interconnection circuits. The review took the form of two consultations, in March and August 2003 and a Final Statement and Notification entitled "*Review of the fixed narrowband wholesale exchange line, call origination, conveyance and transit markets*", published in November 2003⁷ ('the 2003 Narrowband Market Review').
- 2.10 As a result of this review the Director General of Telecommunications (the 'Director') concluded that BT had Significant Market Power ('SMP') in the market for 'call origination on public fixed narrowband networks' and imposed a range of SMP services conditions on BT, including the requirement to provide NTS Call Origination ('the NTS Condition').
- 2.11 The 2003 Narrowband Market Review designated Condition AA11 as the requirement to provide NTS call origination which reads as follows:

"Condition AA11

Requirement to provide NTS Call Origination

AA11.1 The Dominant Provider shall provide NTS Call Origination as soon as it is reasonably practicable to every Third Party who reasonably requests it in writing.

AA11.2 Without prejudice to paragraphs AA11.3 and AA11.4 below and where a request is covered by paragraph AA11.1 above, the Dominant Provider shall provide NTS Call Origination on fair and reasonable terms, conditions and charges and on such terms, conditions and charges as the Director may from time to time direct.

AA11.3 The Dominant Provider shall pass the Net Retail Call Revenue to the Third Party that is purchasing the NTS Call Origination, less the charges referred to in Condition AA11.4 below.

AA11.4 The Dominant Provider shall make no charges for providing NTS Call Origination covered by paragraph AA11.1 except for:

⁷ http://www.ofcom.org.uk/consult/condocs/narrowband_mkt_rvw/nwe/fixednarrowbandstatement.pdf

- (a) a charge for the Call Origination Service used to originate the NTS Call;
- (b) a charge for the NTS Retail Uplift; and
- (c) a charge for bad debt relating to the retailing by the Dominant Provider of Premium Rate Services calls.

AA11.5 The Dominant Provider shall comply with any direction the Director may make from time to time under this Condition AA11.

AA11.6 This Condition AA11 is without prejudice to the generality of the provisions in Conditions AA1(a) to AA7 above.”

- 2.12 A key feature of the NTS Condition is an obligation on BT both to originate and, crucially, to retail calls to NTS numbers on behalf of TCPs. This creates a mechanism for TCPs to collect micro payments from consumers and to share these payments with SPs (who use NTS numbers to provide content or other services) without TCPs or SPs having to bill consumers directly themselves. BT is only permitted to make cost-related charges for originating and retailing NTS calls and must pass the remaining revenues over to the TCP.
- 2.13 Another relevant feature of the NTS regulatory regime is the Plan. As mentioned above, the various NTS number ranges have different designations for use. For example, the 080 range is designated as a range where no charges are made to customers unless those charges are notified to the customer at the beginning of the call. In selecting a particular NTS number block, a TCP takes on an obligation to use the numbers in accordance with the designations given in the Plan. In this sense, the TCP is restricted in its use of NTS numbers.
- 2.14 The current designation for 0870 calls specifies that they should be charged at the BT's Standard National Call Retail Price (before discounts and call packages) for BT customers inclusive of value added tax. The price charged by other OCPs may vary. As discussed in paragraph 2.17, this linkage to national call charges is broken because most callers pay more for 0870 calls than they do for national calls to geographic numbers.

Ofcom's NTS Review

- 2.15 On 18 April 2006 Ofcom published the regulatory statement “NTS A Way Forward” (the 2006 NTS Statement), concluding Ofcom's re-examination of the regulatory framework for Number Translation Services (‘NTS’) calls in the UK. The first and second consultations and the final policy statements are available on the Ofcom website at:
- i) [NTS: Options for the Future, first consultation published October 2004](http://www.ofcom.org.uk/consult/condocs/ntsoptions/)
 - ii) [NTS: A Way Forward, second consultation published September 2005](http://www.ofcom.org.uk/consult/condocs/nts_forward/)
 - iii) [NTS: A Way Forward, final policy statement published April 2006](http://www.ofcom.org.uk/consult/condocs/nts_forward/statement/)
- 2.16 The review considered a range of consumer and industry concerns about the regulatory framework for NTS. These included pricing transparency, consumer

protection, misleading advertising, call centre waiting times and the growing use of 08 numbers for the delivery of public services and adult services. For a full description of the policy issues considered in the review, see section 4 of the NTS: A Way Forward consultation.

The 0870 Range

- 2.17 One aspect of the current regulatory regime examined in Ofcom's review was the regulatory arrangements applied to 0870 calls. Ofcom noted that the linkage between the prices paid by callers for 0870 calls and national geographic call charges had broken down with the result that most callers pay more for calls to 0870 numbers than for national geographic calls. Ofcom considered that the broken linkage, reducing pricing transparency, resulted in consumers paying more than they expect and was leading to misleading advertising as 0870 numbers were still widely advertised as 'national rate' despite earlier action by Ofcom to deter the use of this term.
- 2.18 Ofcom also noted that the linkage between 0870 and geographic call charges generated uncertainty for TCPs since the amount they receive for 0870 calls made from BT lines is effectively beyond their control and is the residual amount obtained by deducting BT's cost-based charges for call origination from BT's standard geographic call charges, less applicable discounts. As a result, CPs faced a high degree of revenue uncertainty as do their customers whose revenue shares depend on the amount received by the TCPs. This situation had contributed to a succession of interconnection disputes between CPs, several of which had required regulatory intervention.
- 2.19 Ofcom also considered the broken linkage to geographic charges for 0870 calls and other issues served to undermine consumer confidence in NTS as a whole and 0870 in particular and unless action was taken the credibility of NTS in general, as a means of accessing value added services would continue to decline.
- 2.20 Ofcom considered a range of options to address these and the other concerns about the operation of the NTS regime and after consultation decided to implement a package of measures. For a full description of the measures see the NTS: A Way Forward Statement.
- 2.21 To address the concerns relating to the 0870 range, Ofcom decided to:
- repair and extend the linkage between 0870 calls charges and charges for calls to geographic numbers so that calls to 0870 numbers will be charged at the same rate as national calls to geographic numbers from all fixed and mobile phones, including payphones. Where an OCP chooses to charge 0870 calls at a higher rate than a geographic call, it was intended that they would be required to provide a free of charge pre-announcement informing the caller of the price of the call; and
 - remove the regulatory support for revenue sharing from 0870 calls.
- 2.22 In order to provide time for CPs and SPs to prepare for these changes, Ofcom decided implementation should be delayed until 1 February 2008.
- 2.23 Ofcom considered the changes to the arrangements for 0870 calls would bring about:
- an improvement in price transparency;

- greater revenue certainty for TCPs; and
 - fewer interconnection disputes requiring regulatory intervention.
- 2.24 It is also likely that the changes will result in a reduction in average 0870 call prices particularly from fixed networks.
- 2.25 A summary of the parts of the impact assessment relating to the changes to 0870 is provided in Annex 1.

Changes to the proposals

- 2.26 As indicated in paragraphs 1.30 and 1.31 above, before Ofcom consulted on the regulatory changes needed to implement the new policy for 0870 calls we became aware of the risks posed to alarm systems by the potential use by some OCPs of pre-call announcements. As a consequence this consultation also discusses the options for implementing the changes whilst taking account of the risks to alarms. These options are described in Sections 1 and 3 and in the Options Appraisal and Impact Assessment at Section 5.

UK-wide Numbers

- 2.27 When the April 2006 NTS Statement was published Ofcom was also consulting on a strategic review of the UK's numbering resources⁸. Amongst other things, the review considered how Ofcom should accommodate future demand for numbers. Ofcom decided to introduce a new range ('03') of non-geographic numbers charged at geographic prices on which revenue sharing would not be permitted⁹. The new range is intended for those businesses and public services that require a national presence but do not wish to make an additional charge to consumers for contacting them. Whilst this clearly presented an opportunity for services to operate on a new number range with a clear pricing message that would not be confused with NTS, Ofcom considered it unlikely that this alone would solve the concerns about 0870. Ofcom therefore decided to proceed with the changes to 0870 described above.
- 2.28 Ofcom decided that in common with 0870, 03 calls should be charged at geographic prices but, unlike 0870, Ofcom decided that the new range provided more flexibility to provide a clearer message to consumers by omitting the pre-announcement option and prohibiting revenue sharing.

0870 Call Termination Charges

- 2.29 The modification to the NTS Condition means that BT will no longer be obliged to originate 0870 calls on behalf of TCPs on the terms specified in the NTS Condition. This new circumstance means that termination charges for 0870 calls were subject to commercial negotiation between CPs. On 31 August 2007, Ofcom accepted a dispute between BT and various other CPs about 0870 call termination charges under the new arrangements. On 16 November 2007 Ofcom issued a draft determination setting out the proposed termination rates for 0870 calls and the methodology used to set the charges. This was in anticipation that it would resolve the dispute by 31 December 2007 in accordance with the statutory timescale for

⁸ "Telephone Numbering – safeguarding the future of numbers"

<http://www.ofcom.org.uk/consult/condocs/numberingreview/>

⁹ <http://www.ofcom.org.uk/consult/condocs/numbering03/statement/>

disputes set out in the Act. Details of the dispute can be found in Ofcom's Competition and Consumer Bulletin¹⁰.

- 2.30 In considering the responses to the draft determination Ofcom decided that to await the outcome of the appeals lodged against Ofcom's determination of disputes between T-Mobile and BT, O2 and BT, Hutchison 3G and BT and BT and each of Hutchison 3G, Orange Personal Communications Services and Vodafone relating to mobile call termination rates. We note that those appeals relate to the approach adopted in determining "reasonableness" for the purposes of the end-to-end connectivity obligation, and may therefore be of direct relevance to the outcome of the 0870 dispute. Ofcom's investigations team therefore considered it appropriate to await the judgment of the Competition Appeal Tribunal in the above appeals before issuing a final determination to resolve the 0870 dispute. The judgment is anticipated in the near future.
- 2.31 Ofcom came to the view that exceptional circumstances had arisen since the 0870 dispute was accepted for resolution and that the requirement to resolve the dispute in four months, in accordance with section 188(5) of the Act, will not therefore apply in this case. However, this will be kept under review should a judgment of the Competition Appeal Tribunal not be forthcoming within an appropriate timescale.
- 2.32 As a result of this delay there is a risk that the dispute may not be resolved before the changes arising from this consultation are due to be implemented. In this event implementation can not take place until the new termination rates are determined and brought into effect through publication in BT's Carrier Price List. This is because BT has a contractual obligation to pay the existing NTS termination rates for 0870 until any revised rates are agreed between BT and its TCP customers or determined by Ofcom.

¹⁰ http://www.ofcom.org.uk/bulletins/comp_bull_index/comp_bull_ocases/open_all/cw_963/

Section 3

Proposed Changes

3.1 As indicated in Section 2, Ofcom has decided to:

- repair and extend the linkage between 0870 calls charges and charges for calls to geographic numbers so that calls to 0870 numbers will be charged at the same rate as national calls to geographic numbers from all fixed and mobile phones, including payphones. Where an OCP chooses to charge more for 0870 calls than for a geographic call, they will be required to comply with new strict and precise guidelines setting out how their charges for 0870 calls should be brought to their consumers' attention; and
- remove the regulatory support for revenue sharing from 0870 calls.

3.2 In order to implement these changes we need to change four regulations. This section describes the changes we propose to make.

A Revised Designation for 0870 Calls in the Plan

3.3 We propose to replace the current designation for 0870 calls in the Plan with a new one that will establish the convention that 0870 calls should be charged at no more than the rate that callers pay for calls to geographic numbers. Where OCPs decide not to follow this rule they will be responsible for ensuring their consumers understand what 0870 calls cost and will be subject to price publication requirements which will be strictly enforced.

3.4 Since we published our statement, BT has told us that technical difficulties would make it prohibitively expensive for them to implement announcements for public payphones. They have therefore requested that they be allowed to specify 0870 call charges on information notices displayed adjacent to payphones which already specify their geographic call charges. We think this alternative is appropriate and are mindful that any costs BT incurred implementing announcements would likely be passed on to consumers to some extent. We have therefore decided to allow CPs to specify 0870 call charges on notices that are permanently affixed adjacent to payphones as an alternative to announcements.

3.5 The current designation for 0870 calls is:

Special Services higher rate: charged (before discounts and call packages) at BT's Standard National Call Retail Price for BT Customers inclusive of value added tax (the price charged by other Originating Communications Providers may vary).

3.6 We propose the following designation:

Calls to non-geographic numbers at a geographic rate: charged at no more than the caller would pay for a call to a Geographic Number (including discounts and call packages), except where the extent of the charges have been published in accordance with **General Condition 14.2** or, in the case of Public Pay Telephones, where the extent of the charges are displayed in a manner that is reasonably accessible to a caller before making a call.

- 3.7 We think the revised designation makes clear that unless the OCP's published pricing information states otherwise in a form that accords with General Condition 14.2 (which will be amended to apply to 0870 numbers), 0870 calls must be charged at no more than a national geographic call taking into account any call packages or other discount arrangements. So for example, if a call package has no additional charges for calls up to an hour at evenings and weekends, this would apply to 0870 calls, as well as for calls to geographic numbers.
- 3.8 The proposed designation requires that the OCP should clearly state what their 0870 prices are in pence per minute or per call, whether any additional call set up charges apply and whether or not 0870 calls are included in any discount schemes or inclusive call allowances.
- 3.9 The proposed designation would not mean that the call prices of different OCPs would be the same. Each OCP has the freedom to set its own charges for geographic and 0870 calls.
- 3.10 The reference to prices charged by other CPs is no longer needed because the change to General Condition 17 that we are proposing will make the new designation for 0870 calls applicable to all OCPs.

A Modification to the Application Form for Special Services Numbers

- 3.11 Ofcom publishes a set of forms that CPs must use when they apply for allocations of numbers from Ofcom. Ofcom must satisfy certain legal tests and must consult when it wishes to modify these forms.
- 3.12 The application form S8 (application form for Special Services – numbers starting 08) lists the designations of each of the 08 number ranges. We therefore need to update the description of 0870 in form S8 to align with the new designation for 0870 in the Plan.

A Modification to General Condition 17

- 3.13 All CPs are required to comply with the General Conditions set by Ofcom. General Condition 17 specifies rules relating to the allocation, adoption and use of telephone numbers.
- 3.14 We want the new designation for 0870 calls to apply to all CPs. In order to achieve this, we propose to amend paragraph 17.12 of General Condition 17. The current text is:

Where Customers of a Communications Provider are making calls to either UK-wide Numbers (03) or Personal Numbering Service (070) Numbers, the Communications Provider shall comply with the designations for those numbers in the National Telephone Numbering Plan.

- 3.15 This condition requires CPs to comply with the designations for 03 and 070 numbers. By adding a reference to 0870 numbers we can alter the condition so that it also requires CPs to comply with the designation for 0870 numbers. We therefore propose to revise this condition as follows:

Where Customers of a Communications Provider are making calls to either UK-wide Numbers (03), Personal Numbering Service (070) numbers, or Special Services numbers with the prefix 0870, the Communications Provider shall comply with the designations for those numbers in the National Telephone Numbering Plan.”

A Modification to the SMP Condition in the Market for Call Origination on Fixed Public Narrowband networks

- 3.16 As discussed in paragraphs [2.9 to 2.10] regulatory support for revenue sharing derives from the NTS Condition which is a regulation applied to BT as a remedy to its SMP in the market for call origination on fixed public narrowband networks.
- 3.17 NTS Calls are defined in Part 1 of Schedule 1 of the Notification published in Annex A of the 2003 Narrowband Market Review.
- 3.18 In order to remove regulatory support from 0870 calls we need to place 0870 calls outside the scope of the NTS Condition. We think the best way to do this would be to modify the definition of ‘NTS Calls’ at the start of Schedule 1 to the SMP conditions notified in the 2003 Narrowband Market Review to exclude 0870 calls. The sole effect of this change would be to remove 0870 calls from the scope of the NTS Condition.
- 3.19 The current definition is:
- (yy) “NTS Calls” means a call to a number identified in the Numbering Plan for the United Kingdom as a Special Service number or a Premium Rate Service number
- plus calls to 0500 Freephone numbers;
 - excluding calls to 0844 04 numbers for Surftime Internet access services and calls to 0808 99 numbers for FRIACO;
- 3.20 We propose to modify the definition as shown below:
- (yy) “NTS Calls” means a call to a number identified in the Numbering Plan for the United Kingdom as a Special Service number or a Premium Rate Service number
- plus calls to 0500 Freephone numbers;
 - excluding calls to 0844 04 numbers for Surftime Internet access services and calls to 0808 99 numbers for FRIACO;
 - excluding calls to 0870 numbers:

A Modification to General Condition 14

- 3.21 All CPs are required to comply with the General Conditions set by Ofcom. General Condition 14 specifies rules relating to Codes of Practice and dispute resolution.
- 3.22 We want to extend the requirements of General Condition 14 to include the new designation for 0870 calls because the proposed modification to the SMP condition (discussed above) would mean they would no longer be classified as NTS calls. In

order to achieve this, we propose to amend paragraph 14.2 of General Condition 14 which currently reads:

Codes of Practice for Premium Rate Services and NTS Calls

14.2 Within two months of this Condition entering into force, all Originating Communications Provider who provide PRS or NTS calls, as appropriate shall:

- (a) establish and thereafter maintain a Code of Practice for the provision of information relating to Premium Rate Services for its Domestic and Small Business Customers, which conforms with the Guidelines set out in Annex 1 to this Condition;
- (b) establish and thereafter maintain a Code of Practice for NTS Calls for its Domestic and Small Business Customers, which conforms with the Guidelines set out in Annex 2 to this Condition; and
- (c) comply with the provisions of the Code of Practice referred to at This condition requires communications providers to comply with the relevant Codes of Practice.

- 3.23 By adding a reference to 0870 numbers we can alter the condition so that it also requires CPs to comply the same Codes of Practice extended to include calls to 0870 numbers. We therefore propose to revise this condition as follows:

Codes of Practice for Premium Rate Services, NTS Calls and calls to 0870 numbers

14.2 All Originating Communications Provider who provide PRS or NTS calls, as appropriate shall:

- (a) establish and thereafter maintain a Code of Practice for the provision of information relating to Premium Rate Services for its Domestic and Small Business Customers, which conforms with the Guidelines set out in Annex 1 to this Condition;
- (b) establish and thereafter maintain a Code of Practice for NTS and 0870 Calls for its Domestic and Small Business Customers, which conforms with the Guidelines set out in Annex 2 to this Condition; and
- (c) comply with the provisions of the Code of Practice referred to at 14.2 (a) and (b) above.

- 3.24 We also want to strengthen the specific price publication requirements given in the associated Guidelines to ensure consumers are made aware where discount packages and bundles which include geographic also include or exclude NTS and 0870 calls. To achieve this we have added a requirement to the Guidelines associated with General Condition 14.2 specifying that wherever providers state their prices for such packages and bundles, in price lists and other publicity material, they must clearly state whether this price includes or excludes NTS and 0870 calls.

- 3.25 In making these changes we have also updated the definition of an Originating Communications Provider associated with General Condition 14 and in paragraph 3.1 of Annex 1 to remove any confusion involving the responsibilities of providers with no physical network. These providers do not physically originate calls but they do have the same responsibilities for ensuring their customers understand the costs of NTS and 0870 calls. We have also amended the definition to include both Domestic and Small Business consumers.
- 3.26 All of these changes can be seen at Annex 7 to this document.
- 3.27 Once these changes have been implemented Ofcom plans a programme of monitoring both of levels of compliance with the new rules by OCPs and whether consumers' awareness of their provider's actual 0870 prices improves over time.
- 3.28 Appropriate enforcement action will be taken where compliance levels fall below those specified. However, even if prices are easily accessible, if consumers remain unaware of what they are paying Ofcom will consider whether any further strengthening of 0870 regulation is required.

Section 4

Additional stakeholder submissions

Some Stakeholders Think we Should Reconsider our Decision in the Light of New Information

- 4.1 Since we published the 2006 NTS Statement, some CPs and SPs have told us that new information has become available that we should consider before implementing these changes. Apart from the problems with the use of pre-call announcements (which are discussed elsewhere in this document) we did not think that stakeholders had submitted any new information that would warrant further consultation, a review of our impact assessment or any further delay before we implement the changes to 0870 and 0871.
- 4.2 Although we responded directly to the stakeholders at the time their points were raised, in the interest of transparency we feel it would also be useful to share their concerns and our views with a wider audience in this consultation.
- 4.3 In this section, we discuss these submissions and give our views.

0844 and 0871 are not a satisfactory substitute for 0870 numbers due to limited International access

- 4.4 Some stakeholders have argued that 0844 and 0871 numbers are not satisfactory substitutes for services migrating from 0870 numbers since access to them from foreign networks is more limited than to 0870 numbers. Several have cited the fact that BT does not support access to 0844 and 0871 numbers on its international circuits as a particular problem. One stakeholder has argued that Ofcom downplayed the impact of this problem in the NTS Consultation.
- 4.5 Ofcom disagrees with the stakeholder that believes that Ofcom has downplayed the impact of this problem in its consultation. This issue was raised by respondents to the 2006 NTS Consultation. As a result, Ofcom undertook further research and analysis and reported its findings in the 2006 NTS Statement (see paragraphs 4.47 to 4.51 and Annex 4 of the 2006 NTS Statement). Ofcom agreed with stakeholders there was some validity to these arguments and also noted that BT blocks most internationally originated traffic to 0871 numbers because of concerns about fraud. Ofcom estimated that the lack of access to 0871 numbers might affect at most 2.75% of 0870 traffic following migration to 0871. Ofcom concluded that the problem was not sufficiently serious for to undermine the case for proceeding with its proposals.
- 4.6 Since the publication of the statement, Ofcom has met with several CPs that have large international gateway businesses. These discussions confirmed Ofcom's earlier view that some UK based international gateway operators have barred international access to 0844 and 0871 numbers because they have encountered problems with fraud or other scams. In such cases, the international gateway provider can be faced with a refusal by a foreign CP to pay for fraudulent usage. They then have to invoke time consuming Artificial Inflation of Traffic (AIT) procedures in order to recover these sums from the TCP that hosts the 08 numbers called.
- 4.7 Ofcom is encouraged that BT has announced that it will enable international access to 0844 and 0871 numbers when PhonepayPlus assume responsibility for regulation of 0871 numbers. This should improve international access to all 08 numbers not just

those hosted by BT. Ofcom hopes that other international gateway providers will follow BT's example.

- 4.8 Ofcom also notes that international access to 08 numbers has been a problem that has persisted for some years and that despite the international dimension, in many ways it is a classic PRS style problem since those making fraudulent calls from abroad are acting on behalf of an SP in the UK that is the beneficiary of the scam.
- 4.9 Ofcom has reviewed its conclusions in the light of renewed stakeholder concerns and remains of the view that limitations on international access are not significant enough to warrant revising its proposals or delaying implementation.

Ofcom Underestimated the Impact of Poor International Access to 0844 and 0871 Numbers on EU Cross Border Trade

- 4.10 One stakeholder has argued that when assessing its proposals for the 0870 range, Ofcom underestimated the impact of the lack of international access to 0844 and 0871 numbers on EU cross border trade.
- 4.11 Ofcom considers it unlikely that EU cross border trade between EU member states and the UK would be materially affected by the changes to 0870 numbers given the small proportion of 0870 traffic that originates abroad and the availability of alternative number ranges that have better international access than 0844 and 0871 numbers. Ofcom considers that in most cases SPs that require international access would be able to continue to use their 0870 number or adopt an alternate number such as a geographic number. These alternatives may not constitute a satisfactory substitute for those services that use the revenue-sharing mechanism and are not able to recover their costs in another way. Again, the impact is likely to be small as this group would be a subset of the proportion of 0870 traffic originating abroad.

Charges for 0870 Services Will Be Much Higher Than Anticipated

- 4.12 Some stakeholders have argued that under the new arrangements TCPs will charge SPs to receive 0870 calls and also for associated call routing services. They argue these charges add significantly to SPs' costs, and are much higher than anticipated in the consultation. They argue that Ofcom should review its impact assessment to take these costs into account. Some have quoted BT's pricing announcement¹¹ as an indication of the likely level of charges.
- 4.13 Ofcom does not agree with this view. Ofcom considers there is no evidence that the cost of 0870 services will rise as a result of its proposals, rather that in the absence of the revenue-sharing mechanism, SPs may have to pay for the services directly and recover the costs from their customers via other means. The possibility that TCPs may charge SPs directly to receive 0870 calls and for associated services was discussed in the consultation and was taken into account in the impact assessment.
- 4.14 In the 2006 NTS Consultation, Ofcom considered the impact of its proposals on the charges TCPs make to SPs for 0870 services. Ofcom noted that termination charges for 0870 calls would be a matter for commercial negotiation between OCPs and TCPs. Ofcom also discussed the possibility that TCPs might charge SPs directly to receive 0870 calls and for associated call routing services depending on the outcome

¹¹ On xx 2007, BT announced its standard prices for 0870 calls. These are 3.5p per minute for basic call receipt and 4.5p per minute if additional routing services are also provided.

of commercial negotiations (see paragraphs 6.38, 6.39 and 6.41). Ofcom also discussed the options available to SPs (paragraph 6.39), noting that SPs could either:

- continue to provide services on the same number without a revenue share (and possibly with higher charges from their SPs for the services they receive in connection with calls to their NTS number) and either absorb the loss of revenue and possible additional costs or raise charges in downstream markets to cover the loss;
- migrate their services to either the 0844, 0871 or 09 ranges and continue revenue sharing with regulatory underpinning; or
- exit the NTS market.

4.15 Given these options, Ofcom considers SPs would be able migrate to an alternate number to avoid additional charges or to recover any additional charges levied by TCPs/resellers for 0870 services from charges for their goods or services provided in downstream markets and should not therefore incur losses. Consequently, Ofcom considers additional charges incurred by SPs for 0870 services should not be counted as a cost of Ofcom's proposals and does not consider the precise level of charges for 0870 services to be material to the impact assessment.

4.16 Ofcom also notes that it allowed an extended implementation period in order to give businesses time to prepare for this change and to budget for any additional charges.

Ofcom Didn't Give Sufficient Prominence to the Possibility that SPs Might Need to Pay to Receive 0870 Calls

4.17 One stakeholder has argued that Ofcom did not give sufficient prominence in the 2006 NTS Consultation, associated plain English summary and press release to the possibility that SPs might have to pay to receive calls and for associated network services. They argue that SPs were not therefore adequately forewarned about the likely impact of Ofcom's proposals. They argue that this lack of prominence amounted to a failure to consult effectively in line with Ofcom's statutory obligations.

4.18 In the 2006 NTS Consultation, Ofcom clearly signalled that its proposals would be likely to have a major impact on the financial arrangements for 0870 calls. The consultation summary, press release and plain English summary all clearly stated that Ofcom's proposals would be likely to result in a large reduction in retail prices for 0870 calls and the cessation of revenue-sharing. Ofcom therefore considers that sufficient clarity was provided.

4.19 Ofcom also notes that the charges paid by SPs to CPs are a commercial matter and are likely to vary according to a range of factors such as the charging models adopted by CPs, 0870 call termination charges (also subject to commercial negotiation), other services provided in addition to basic termination, call volumes and overall contract size. Ofcom therefore considers it would have been difficult to provide any meaningful guidance in the consultation about charges SPs pay for 0870 services and that to do so would have been inappropriate as it would be likely to have set expectations that may have been misleading.

Charging Service Providers for 0870 Services is Inefficient

- 4.20 One stakeholder has argued that the new arrangements for 0870 calls are likely to result in a 'double billing and collection inefficiency' that was not taken into account in Ofcom's impact assessment. The argument here is that it would be inefficient for callers to pay call charges and also for TCPs to charge SPs for 0870 calls and associated network services that are funded from 0870 call charges under the current arrangements. They also argue that billing and collection costs for calls charged at just a few pence per minute are very significant.
- 4.21 Ofcom agrees that the current arrangements provide an efficient micro-payment mechanism by which individual callers may be charged small sums of money. For example, an 0870 number may provide an efficient mechanism by which an SP might charge a caller 20p from a 5 minute call via a revenue-sharing arrangement with a TCP. In this context we agree that billing and collection costs may be significant.
- 4.22 Ofcom does not agree that it is inefficient for TCPs to charge SPs directly for 0870 services. SPs would typically receive multiple calls and may also purchase additional services (such as call routing services) and therefore the sums involved are larger than for individual calls. Ofcom therefore does not agree that the impact assessment should be revised.
- 4.23 Ofcom acknowledges that some TCPs and resellers may feel their services are better suited to the revenue-sharing mechanism than direct billing. In such cases, TCPs and resellers have the option of using an alternative number range.

Insufficient Change Number Announcement Capacity

- 4.24 One stakeholder noted that BT has indicated that it may not have Changed Number Announcements ('CNA') capacity for all its 0870 customers and was concerned this will force SPs to retain their 0870 numbers and incur additional call termination charges. The stakeholder argued that Ofcom should review its impact assessment to take into account the additional costs that SPs would incur.
- 4.25 Businesses that decide to migrate to new numbers have a variety of options for handling calls to their 0870 numbers. Ofcom assumed that most users would wish to continue to answer 0870 calls for an interim period and only a minority of users would wish to deploy CNA.
- 4.26 When assessing migration costs, Ofcom did not assume that demand for CNA would exceed supply. Indeed, it is not clear that demand will actually exceed supply, and this restriction may, in any case, apply only to the minority of 0870 users that are hosted by BT. As discussed in paragraph 4.15, Ofcom would also assume that businesses would in general be able to recover any additional termination charges and would not therefore incur losses as a result of CNA capacity limitations. Ofcom therefore assumes that any impact on migration costs would be minimal.

BT Does Not Plan to Charge 0870 Calls Above its Geographic Rates

- 4.27 One stakeholder argued that BT's announcement that it intends to charge 0870 calls at geographic prices will alter the impact of the Ofcom's measures for 0870 by preventing TCPs from requiring BT to charge calls to their 0870 numbers at higher rates.

- 4.28 Under existing arrangements TCPs are not able to specify the charges that apply to 0870 calls. Oftel established 0844 and 0871 expressly to allow this without changing the requirement that 0845 and 0870 should be priced at headline local and national rates less any discounts OCPs choose to offer. The forthcoming changes to the designation for 0870 calls in the National Telephone Numbering Plan are not intended to introduce the ability for TCPs to set retail prices for 0870 calls from the BT network. Rather, they are designed to repair and extend the linkage between 0870 call charges and the national geographic call charges consumers actually pay. Under the new arrangements, BT and other OCPs will continue to set retail prices for 0870 calls. BT's decision to charge 0870 calls at geographic rates does not therefore close off any option for TCPs or alter the impact of Ofcom's measures.

Ofcom Underestimated the Proportion of Businesses Likely to Migrate From 0870 Numbers

- 4.29 One stakeholder believes that Ofcom may have underestimated the proportion of businesses likely to migrate from 0870 numbers (if our proposals are implemented) by failing to inform a sample of businesses canvassed that the proposed changes to 0870 calls might result in them having to pay to receive 0870 calls.
- 4.30 This is not the case, as reported in the 2006 NTS Consultation, (see paragraph A14.3) the businesses were informed they might have to pay to receive calls.

Ofcom Should Delay the Changes to 0870 and 0871

- 4.31 Some SPs and TCPs asked Ofcom to postpone the changes to 0870 calls and implementation of PhonepayPlus regulation for 0871. They argued that SPs have not been able to decide whether to retain their existing 0870 numbers or to migrate to an alternative number range because important information is not yet available. Their view is that in order to make their decision, SPs need to know:
- the commercial arrangements for 0870 services under the new arrangements so that they can quantify the overall cost of continuing to operate their services on 0870 numbers;
 - the Code of Practice that PhonepayPlus will apply to 0871 numbers, so that they can decide whether 0871 numbers would be suitable for their services; and
 - the commercial arrangements for 03 services so that they can decide whether 03 numbers would be suitable for their services.
- 4.32 Some SPs and TCPs have also argued that once they are in possession of this information they would need a further extended period of at least a year to migrate their services to new number ranges if necessary.
- 4.33 These stakeholders argued this information will not be available until:
- Call termination charges for 0870 and 03 calls are agreed, most likely via dispute(s) resolved by Ofcom; and
 - PhonepayPlus has published its policy statement on its Code of Practice for 0871 regulation and Ofcom has completed its consultation to approve the 0871 Code.
- 4.34 Ofcom considers that it would be useful but not essential for SPs to have information on the wholesale charges before deciding how to react to the changes. Ofcom

considers that for most SPs, the broad scale of the change to financial arrangements for 0870 calls will be the deciding factor in their decision to retain their 0870 number or to migrate. These are driven by the reduction in retail prices on BT lines from about 6p to 3.25p (per minute in the daytime) and the withdrawal of regulatory support for revenue sharing. Ofcom acknowledges that some TCPs/resellers may choose not to finalise their commercial terms for SPs until 0870 call termination charges are determined. Ofcom also considers that TCPs/resellers could assist their SP customers by giving indicative pricing based on Ofcom's proposed rates in the draft dispute determination published in November 2007. SPs also have the option to postpone their decisions until revised commercial terms for 0870 calls are agreed. Those that take this approach and subsequently decide to migrate to an alternate number range may need to operate their 0870 services under new terms for a period until migration has been completed. Ofcom considers that during the extended notice period provided, SPs have had ample time to consider their options and to budget for the additional charges for their 0870 services based on reasonable assumptions. As noted in paragraph 4.15, Ofcom would expect that SPs to be able to recover any additional costs for 0870 services from charges for goods or services provided in downstream markets and should not therefore incur losses.

- 4.35 Ofcom notes that termination charges for 03 calls have been agreed services are already in operation. Ofcom would only intervene in this if we were required to resolve a dispute, a process that normally takes 4 months. However, Ofcom concedes there is a possibility of a dispute between CPs about termination charges following the conclusion of the dispute on 0870 call termination charges currently being considered by Ofcom.
- 4.36 In relation to the changes affecting 0871, PhonepayPlus published its statement on how the 11th Code of Practice will be applied to 0871 services in November 2007. In parallel with this consultation on 0870 changes Ofcom is also consulting¹² on a proposal to modify the PRS Condition (effectively extending PRS regulation to 0871 numbers).
- 4.37 As a consequence of this most stakeholders will have sufficient detail about the likely nature of 0871 regulation to make an informed decision about the suitability of the 0871 range for their services. Service providers considering a move to 0871, also have the option of delaying their decision until Ofcom publishes the policy statement on 0871 regulation later this year.

¹² <http://www.ofcom.org.uk/consult/condocs/087prs/>

Section 5

Option Appraisal and Impact Assessment

Introduction

- 5.1 The analysis presented in this section represents an impact assessment, as defined in section 7 of the Communications Act 2003 (the Act).
- 5.2 You should send any comments on this impact assessment to us by the closing date for this consultation. We will consider all comments before deciding whether to implement our proposals.
- 5.3 Impact assessments provide a valuable way of assessing different options for regulation and showing why the preferred option was chosen. They form part of best practice policy-making. This is reflected in section 7 of the Act, which means that generally we have to carry out impact assessments where our proposals would be likely to have a significant effect on businesses or the general public, or when there is a major change in Ofcom's activities. However, as a matter of policy Ofcom is committed to carrying out and publishing impact assessments in relation to the great majority of our policy decisions. For further information about our approach to impact assessments, see the guidelines, Better policy-making: Ofcom's approach to impact assessment, which are on our website:
http://www.ofcom.org.uk/consult/policy_making/guidelines.pdf

The September 2005 NTS Consultation

- 5.4 In the September 2005 NTS Consultation Ofcom described its research and the policy issues that it had identified. Ofcom defined its policy objectives for NTS, assessed a range of options to address those issues and proposed to implement a package of measures (selected from the options) over the following two years to address the policy issues.
- 5.5 The September 2005 NTS Consultation also contained Ofcom's Impact Assessment for the package of measures. Ofcom revised certain aspects of its proposals and its Impact Assessment in light of the responses to the consultation. A summary of the proposals made is contained at Annex 1 of this document.
- 5.6 One of the measures proposed was to improve pricing transparency for 0870 calls by repairing the broken linkage with the prices charged by OCPs for geographic calls and removal of the regulatory support for revenue sharing.
- 5.7 The analysis presented in this section constitutes an addition to the impact assessment provided in the September 2005 NTS Consultation as modified in the April 2006 NTS Statement.

Revised options for 0870 policy

- 5.8 As a direct consequence of the withdrawal of the ability to use pre-announcements Ofcom has considered other means for achieving improved price transparency and consumer price awareness on 0870 calls. Having considered a number of alternatives, Ofcom developed two options for implementing the stated policy. This section discusses the merits and disadvantages of each and why Ofcom is proposing its chosen option.

5.9 The two options we have discussed are:

- Option A – to require all OCPs to charge 0870 calls at no more than the price of geographic calls and also require 0870 calls to be included in call packages on the same basis as geographic calls; and
- Option B – to align 0870 and geographic call prices but retain the ability for OCPs to charge different prices on condition they comply with a strengthened set of price publication requirements for 0870 (and NTS) calls.

Option A – all OCPs should charge no more than their geographic price for 0870 calls and include these in discount schemes and price bundles in the same way as for geographic calls.

Benefits

5.10 This option has the advantage of removing any ambiguity surrounding the commonly used description of 0870 calls as ‘national rate’.

5.11 Currently few if any fixed OCPs charge the same for 0870 calls as for geographic calls. Some mobiles charge the same inland rate for some NTS calls and for geographic calls which have exceeded the free call allowance included within packages and bundles. BT charges most of its customers more for 0870 calls and does not count any 0870 calls in inclusive bundles. Other fixed networks charge similar or higher rates than BT again excluding 0870 calls from bundles. Mobiles often charge considerably more than fixed networks and again exclude 0870 calls from bundles.

5.12 Despite these differences providers of services using 0870 numbers commonly advertise calls to their services as national rate. TCPs selling 0870 numbers also sell them on the basis that services can be charged for at the national rate. This practice is entirely misleading but continues despite efforts by Ofcom, the Advertising Standards Authority and Trading Standards authorities to prevent it.

5.13 Requiring all OCPs to charge the same as for their geographic calls would address the price transparency issues and ensure that consumers are not being misled by confusing pricing messages. It would establish a general rule that 0870 calls would not be more expensive than geographic calls, which consumers could rely on and which help to restore consumer confidence in the 0870 range.

Disadvantages

5.14 The main disadvantage of Option A is that it is a comparatively interventionist form of regulation which would reduce the pricing freedom of OCPs with respect to 0870 calls. Ofcom has a statutory duty to minimise the burden of regulation and to adopt the least interventionist approach which is likely to be effective in achieving the relevant policy objective, which in this case is price transparency.

5.15 It should be noted in this context that, under Option A, OCPs would not be required to charge a standard, uniform price for 0870 calls. They would still have the ability to set their own rates, and to compete against each other on that basis. The constraint in this case relates to the relationship between 0870 and geographic call charges, and the requirement to include 0870 calls in calling plans. This is a more interventionist approach than Option B, the focus of which is on the provision of better information on 0870 call prices.

Impact for Consumers

- 5.16 From a price transparency perspective, consumers would benefit from Option A because it would establish a general rule that 0870 calls cost no more than calls to geographic numbers, and are included in calling plans in the same way as geographic calls.
- 5.17 Against this, it is possible that some consumers might be negatively affected by the requirement to treat 0870 calls in the same way as geographic calls. In a competitive market, suppliers often choose to reflect differences in the costs of service provision or consumer willingness-to-pay in the prices they charge for different services. Following the implementation of the proposed reforms, the costs of providing 0870 calls may still be marginally higher than the costs of geographic calls, and the demand characteristics of the two call types may also differ.
- 5.18 Given the freedom to choose, some OCPs might therefore continue to charge somewhat higher rates for 0870 and geographic calls, even after the proposed reforms (notably the removal of 0870 calls from the NTS Call Origination Condition and the probable end of revenues sharing on this range) have been put into effect. As a result, it is possible that Option A would lead to lower prices for 0870 but marginally higher prices for geographic calls. Depending on their pattern of call usage, some consumers may be worse off as a result.

Impact for Communications Providers

- 5.19 Option A is unlikely to raise any concerns for TCPs who will be paid the same for terminating 0870 calls under both Options A and B. This is because the majority of calls either originate from BT lines or are routed via the BT network for termination on other TCPs networks. BT is thereby responsible for virtually all termination payments even where calls are originated by other OCPs. BT's wholesale payments for termination will be the same in all cases regardless of which network originates the call or how much consumers are charged.
- 5.20 OCPs, however, face a possible reduction in revenues by virtue of having to include 0870 calls in packages and bundles. As a consequence OCPs would face absorbing the loss in revenue or increasing their package or geographic call prices to compensate

Option B – all OCPs should charge their geographic price for 0870 calls and include these in discount schemes and price bundles in the same way as for geographic calls. Those that elect not to do so must comply with specific price publication requirements contained in the revised General Condition 14.2, extended to include 0870 calls. This option would be accompanied by an active programme of compliance monitoring and enforcement action would be taken where required.

Benefits

- 5.21 This option would put the onus firmly on CPs to ensure that their customers know how much they are paying for 0870 calls. The existing price publication rules for NTS calls would be applied to 0870 calls and these rules would be amended to include an explicit requirement to indicate on price lists and promotional material whether 0870 calls are included in calling plans; where they are not included, the maximum charge for 0870 calls, or some broader category of NTS calls, would have to be stated. Option B also addresses the practice by some CPs of referring to 0870 calls as national rate in advertising, promotional material and retail bills when their prices for

0870 and geographic calls are not the same. The new rules state that CPs should only refer to 0870 calls as national rate in their advertising, promotional material and retail bills where these prices align with their geographic call prices. Ofcom recognises that implementing this new rule may have implications for some billing systems and we welcome comments on how long would be needed to make the necessary changes.

- 5.22 We consider that this option would lead to an improvement in price transparency for 0870 calls and should contribute to an improvement in consumer price awareness. We acknowledge that there is inevitably some uncertainty over the likely impact on price awareness, as some consumers may pay little attention to the pricing information included in price lists and promotional material. We would therefore propose to monitor the impact of this option on price awareness, through periodic consumer research. If, within 12 months of the introduction of the new rules, the results of this research indicated that the policy was having little effect, we would review the policy and consider how it might be strengthened, including for example through a move to Option A.

Disadvantages

- 5.23 The main question mark against Option B is around how effective it would be in raising consumer awareness of 0870 call prices. Whilst it would ensure that consumers have access to price information, on both price lists and promotional material, there is of course no guarantee that all consumers would take the time to read it. Unlike Option A, it would stop short of establishing a general rule that 0870 calls should cost no more than geographic calls. As a result, some consumers may be less aware of how much they will be charged, when they make 0870 calls.
- 5.24 It is not possible at this stage to gauge with any precision the likely effectiveness of Option B in raising price awareness. The impact of the existing price publication requirements for NTS calls might have provided some guide, but no research evidence is yet available on this matter, and patchy compliance by CPs with the existing rules would in any case hamper a proper evaluation.
- 5.25 We would therefore propose, if Option B is implemented, to monitor both compliance with the new rules and their effectiveness in raising price awareness through periodic consumer research. If it fails to achieve the desired improvement in price awareness, stronger measures would be considered.

Rationale for choosing Option B

- 5.26 In February 2007, we made the decision to introduce the 03 number range, which was designed to increase certainty, trust and confidence in the numbers that consumers use to call public services, voluntary organisations and companies who want a national presence.
- 5.27 While non-geographic numbers starting with 08 were being used as a single point of contact for businesses and public services that have a national presence and identity, consumers expressed a poor level of confidence in those numbers, with many not knowing that revenue sharing operated on those services.
- 5.28 We therefore created the 03 number range for those organisations who desired a national presence, but who did not want consumers to pay call charges above geographic rates for calling them.

- 5.29 The key features of the 03 number range are:
- a strict requirement that the call tariffs for 03 numbers are the same as the call tariffs to geographic (01 & 02) numbers;
 - the same discounts that apply to geographic numbers apply to 03 numbers; and
 - a prohibition on revenue sharing.
- 5.30 We believe the introduction of the 03 number range and the conditions imposed on it are appropriate as it is a new and easily identifiable number range for end users who wish to provide a national service to their customers with the additional benefit of providing the same level of consumer trust attached to geographic numbers.
- 5.31 The 03 number range provides a means to reduce demand on some 08 numbers and has increased transparency in charging by creating a clear distinction between revenue sharing and non-revenue sharing numbers.
- 5.32 The introduction of the 03 number range while retaining the 08 number range for revenue sharing services was a proportionate way to promote consumer confidence and trust.
- 5.33 We do not think, at present, there are similar arguments in favour of linking call tariffs for 0870 numbers to geographic call tariffs as there are alternative means available to increase transparency in charging for calls to these numbers that should be fully explored first.
- 5.34 A further reason for not proposing the 03 rules for 0870 is that it would be much more disruptive to change the pricing rules for an established and widely used number range such as 0870 than for a new range such as 03. The potential impact of including 0870 calls within flat rate calling plans, for example, would be much greater than the impact of including 03 calls, as the volume of calls would be much greater. The likelihood of consequential increase in the cost of call packages would also be correspondingly higher.
- 5.35 Under Option B, Ofcom expects average 0870 call prices from fixed networks to fall significantly. This is because the removal of the Call Origination Condition from 0870 calls is likely to lead to an end to revenue sharing on the range, and a significant reduction in the charges which OCPs have to pay to TCPs for terminating 0870 calls. The level of 0870 call termination charges under the new regime is currently the subject of a dispute between BT and a number of TCPs, the outcome of which remains, uncertain. Ofcom would nevertheless expect to see a significant reduction in termination charges from their current levels, and for this to be reflected in lower retail call prices.
- 5.36 In summary 03 and 0870 are quite different cases and the pricing rules that work for the former would present additional challenges if applied to the latter. Ofcom has therefore concluded that it would be premature at this stage to implement Option A on the 0870 range. We are determined that price transparency and consumer price awareness should be improved for 0870 calls. At this stage, however, we consider that CPs should take responsibility for achieving this objective by improving the quality of the price information made available to their customers. We therefore propose, in line with our duty to adopt the least intrusive method of achieving our regulatory objectives, to go ahead with the implementation of Option B. At the same

time, we propose to monitor the effectiveness of this approach and to consider tougher measures if it fails to achieve the desired objective.

Impact for Consumers

- 5.37 The new designation of 0870 in the Numbering Plan describes how calls should be charged at geographic rates except where clearly stated in all published pricing materials. We consider it likely that some major fixed network operators will charge the same for 0870 and geographic calls. This in turn is likely to lead to some competitive pressure for other CPs to do the same. To the extent that CPs choose to align their 0870 and geographic call charges, the objective of price transparency will have been achieved, and consumer price awareness is likely to improve as a result.
- 5.38 To the extent that CPs choose not to align 0870 and geographic call prices, they will be required to state clearly the maximum charges for 0870 calls on price lists and promotional material. This requirement will be closely monitored and actively enforced and will again help to improve price transparency and awareness.
- 5.39 At the same time, as noted above, we would expect the implementation of Option B to be accompanied by a significant reduction in the price of 0870 calls, associated with the likely end to revenue sharing on this range.

Impact for Communications Providers

- 5.40 As previously stated TCPs will be unaffected by the choice of either Options A or B.
- 5.41 Option B is likely to be welcomed by OCPs who may regard the restriction of their pricing freedom on a well established and popular number range, under Option A, as disproportionate. Option B will allow competition to set the new prices for 0870 calls but Ofcom may still intervene if consumers' awareness of prices does not improve over time.

Section 6

The Material Change Test

- 6.1 As discussed in Section 3, we propose to remove the regulatory support for revenue sharing on 0870 calls. To do this we need to modify an SMP Condition in the market for call origination on fixed public narrowband networks.
- 6.2 Under section 86 of the Act, Ofcom may set, modify or revoke an SMP services condition without conducting a new market analysis process. if it is satisfied that there has not, since the condition was set or last modified, or since the relevant market power determination was made (as the case may be), been a material change in the market identified or otherwise used for the purposes of the market power determination by reference to which the condition was set or last modified.

Application of the Material Change Test to the Market for Call Origination

- 6.3 Ofcom is, in accordance with section 86(1) of the Act, satisfied there has not been a material change in either the definition of the market for call origination on fixed public narrowband networks, or Ofcom's assessment of BT's SMP within this market, since the last full review of the this market in the 2003 Narrowband Market Review.
- 6.4 Ofcom's analysis and conclusions can be found at Annex 4 to this document.
- 6.5 In this context, it is to be noted that, were any material changes in economic and technological developments to occur in these markets in the future, Ofcom will consider appropriate timings for carrying out a market review of them under section 84(2) of the Act.
- 6.6 This is the second time that Ofcom has found no material change – the first occasion was in Ofcom's "Review of BT's Network Charge Controls" published in August 2005 (the 2005 NCCR).

Section 7

Legal tests for proposed modifications

- 7.1 Ofcom regulates the communications sector under the framework established by the Act. The Act requires that Ofcom meet certain legal tests when setting, revoking or modifying regulations. In this section, we list the legal tests that apply to each of the changes we are proposing to make. We then describe how we think the proposed changes satisfy the tests.
- 7.2 As discussed in more detail in Section 2 of this document, in the 2006 Statement, Ofcom concluded that it should make certain changes to the charging arrangements for 0870 calls and that they should take effect from February 2008 (referred to below as 0870 changes'). As described in Section 3, Ofcom proposes to make certain modifications to regulations in order to implement those changes.

Purpose of this consultation

- 7.3 The procedures for setting, modifying or revoking regulations are set out in Act. In this case the relevant sections are:
- Section 60 – modification of the Plan;
 - Section 49 – modification of the Numbering Application Forms;
 - Section 48 – Modification of General Conditions; and
 - Section 48, 49 and 86 – modifications to SMP Conditions.
- 7.4 Under each of these sections, Ofcom is required to publish notifications of the proposed modifications and to give interested parties an opportunity to comment on its proposals. The consultation period must be not less than one month after the day of publication of the notifications.
- 7.5 Annexes 4-8 contain the four notifications of the proposed changes.
- 7.6 Ofcom is inviting written views and comments by **5pm on 15 June 2008** on the proposed modifications, to the regulations and to the revisions to our stated policy.
- 7.7 Details of how to respond can be found at Annexes 8, 9 and 10.
- 7.8 Ofcom will give careful consideration to all comments received during the consultation period and in light of the comments received may give effect to the proposals set out in this document, with or without modification, by publication of a Notification and explanatory statement. Ofcom aims to publish this document in the summer.
- 7.9 As Ofcom considers that the draft measures might affect trade between Member States, the European Commission and the other NRAs may make comments within the consultation period for the public (national) consultation, the details of which are set out in Section 6 of this document.
- 7.10 If the European Commission believes that the market definitions proposed in Section 3 of this document, or Ofcom's proposals to remove 0870 calls from the scope of

NTS Condition would create a barrier to the single market or if it has serious doubts as to its compatibility with Community law, and issues a notice under Article 7(4) of the Framework Directive, Ofcom is required by section 82 of the Act to delay adoption of these draft measures for a further period of two months while the European Commission considers its position.

Impact Assessment

- 7.11 Under section 7 of the Act, Ofcom has a duty to undertake impact assessments when it proposes to do anything in connection with carrying out its functions and it considers that its proposals are important.
- 7.12 The September 2005 Consultation contained Ofcom's option appraisal and impact assessment for the changes to 0870 calls that this consultation seeks to implement. Ofcom revised the impact assessment in the light of stakeholder responses to the consultation and reported on those changes in the April 2006 Statement. As a consequence no further impact assessment (IA) or option appraisal has been carried out in this consultation.
- 7.13 Ofcom is consulting only on the measures which implement the decision notified in the April 2006 NTS Statement and does not consider any new information has come to light that would warrant a further review of the IA.

Section 3 – Ofcom's general duties

- 7.14 Section 3(1) of the Act sets out the principal duty of Ofcom. That duty is:
- a) to further the interests of citizens in relation to communications matters; and
 - b) to further the interests of consumers in relevant markets, where appropriate by promoting competition.
- 7.15 Ofcom is required by section 3(1) to carry out its functions in line with this duty.
- 7.16 Section 3(2) of the Act further requires that in fulfilling the principal duty specified in section 3(1) that Ofcom secure the availability of a wide range of electronic communications services.
- 7.17 Ofcom considers that the 0870 Changes fulfil these duties by addressing the problems identified in the September 2005 Consultation in relation to 0870 calls. Ofcom considers that each of the proposed modifications (the 0870 Changes) will have the effect as described below:
- modifying General Condition 17 to include 0870 calls will extend the applicability of the pricing information for 0870 calls contained in the designation to consumers who use OCPs other than BT, thereby improving pricing transparency;
 - modifying the Plan and the Application Form S8 will align the designation for 0870 calls more closely with charges consumers actually pay for national geographic calls; and
 - reduce the incidence of misleading advertising (where 0870 calls are advertised as 'national rate') which causes consumers to be charged more than they expect for 0870 calls and which also reduces pricing transparency; and

- help improve consumer confidence in 0870 calls and NTS more generally by addressing the broken linkage between 0870 and geographic call charges that has been a source of confusion for consumers and has led some to question whether businesses that use 0870 numbers have deliberately sought to mislead them about charges for 0870 calls; and
- reduce the welfare loss for consumers associated with calls they do not make because inaccurate pricing perceptions and lack of confidence in NTS cause them to avoid making calls to 0870 numbers and NTS more generally.

7.18 Section 3(4) of the Act lists further factors that Ofcom must take into account to the extent they are relevant in each particular case when fulfilling its functions. Ofcom considers that the following are relevant to the 0870 Changes:

- the desirability of promoting competition in relevant markets;
- the desirability of encouraging investment and innovation in relevant markets;
- the needs of persons with disabilities, of the elderly and of those on low incomes; and
- the opinions of consumers in relevant markets and of members of the public generally;

7.19 Ofcom has taken these factors into account in developing its proposals and considers they are consistent with these considerations. In relation to promoting competition and encouraging innovation and investment, Ofcom acknowledges the 0870 changes will cause short term disruption but considers that its proposals serve these objectives by:

- addressing consumers concerns and the lack of pricing transparency that might otherwise act as a disincentive for CPs and SPs to provide services using NTS;
- reducing the revenue uncertainty for CPs and SPs (associated with the combination of the NTS revenue sharing mechanism and the linkage between 0870 calls charges and BT's geographic call charges) that might otherwise act as a disincentive for CPs and SPs to offer services using NTS; and
- promoting competition by addressing the revenue uncertainty, associated with the current arrangements, that is a contributory factor in disputes between CPs.

Section 4 – European Community requirements for regulation

7.20 Section 4 of the Act requires Ofcom to act in accordance with the six European Community requirements for regulation, including the requirement to promote the interests of all persons who are citizens of the European Union.

7.21 Ofcom considers that the measures described in Section 2 promote the interests of all persons who are citizens of the European Union by promoting better pricing transparency, improving consumer confidence, promoting competition and encouraging innovation and investment as discussed in more detail above.

Modification to the Plan

- 7.22 As set out in section 56(2) of the Act when revising the Plan, Ofcom must do so in compliance with the requirements set out in section 60 of the Act. Section 60 of the Act provides for the modification of documents referred to in the Numbering Conditions (which include the Plan) and sets out the test that has to be passed in order to modify the Plan. The test is that the revision or modification of the Plan is:
- a) objectively justifiable in relation to the matters to which it relates;
 - b) not such as to discriminate unduly against particular persons or against a particular description of persons;
 - c) proportionate to what the modification is intended to achieve; and
 - d) in relation to what it is intended to achieve, transparent.
- 7.23 Ofcom also has a general duty under section 63(1) of the Act in carrying out its numbering functions:
- “a) to secure that what appears to them to be the best use is made of the numbers that are appropriate for use as the telephone numbers; and
- b) to encourage efficiency and innovation for that purpose.”
- 7.24 The proposed modifications to the Plan are set out in Annex 5.
- 7.25 Ofcom considers that the proposal to modify the Plan in regard to the designation of 0870 numbers meets the tests set out in sections 60(2) and 47(2) of the Act being:
- **objectively justifiable**, in that it addresses Ofcom’s policy objectives of improving pricing transparency, consumer confidence and reducing disputes between CPs about interconnection charges. Pricing transparency in relation to 0870 calls will be improved by repairing the broken linkage between 0870 call charges and geographic call charges. Repairing the linkage will reduce the incidence of misleading advertising when 0870 calls are advertised as ‘national rate’ which is a source of consumer distrust about NTS. At the wholesale level the revised designation combined with the removal of regulatory support for revenue sharing (the change to the SMP Condition) will give greater revenue certainty for TCPs and a reduced incentive for interconnection disputes requiring regulatory intervention.
 - **not unduly discriminatory** because the proposed modification will apply to all CPs and SPs using 0870 numbers;
 - **proportionate** in that Ofcom’s impact analysis demonstrates that the proposed modification to the Plan together with the other measures proposed are the most beneficial of the options considered to address the problems identified; and
 - **transparent** insofar as the nature and obligations are clearly set out in the September 2005 NTS Consultation, the April 2006 NTS Statement and this consultation document.
- 7.26 Ofcom further considers that it is fulfilling its general duty as to telephone number functions as set out in section 63(1) of the Act in making proposals by:

- **securing the best use of numbers** in that the proposed modification to the Plan will provide greater clarity to consumers about 0870 call charges by repairing the broken linkage between 0870 call charges and geographic call charges; and
- **encouraging efficiency and innovation**, in that the proposed modifications will:
 - help address consumer confusion and distrust in relation to 0870 calls and NTS more generally (stemming from the broken linkage between 0870 call charges and geographic call charges) which might otherwise deter innovation and investment in NTS; and
 - facilitate innovation by re-establishing the 0870 number range as a range charged at geographic call prices.

Modification to the Numbering Application Form S8

7.27 General Condition 17.9 states that:

"When applying for an Allocation of Telephone Numbers, the Communications Provider shall:

- a) use an appropriate application form as directed by the Director from time to time as he thinks fit;
- b) provide such information as is required by such application form."

7.28 Before making a change to an appropriate application form, Ofcom must satisfy the tests set out in section 49(2) of Act:

"A person must not give, modify or withdraw the direction, approval or consent unless he is satisfied that to do so is:

- a) objectively justifiable in relation to the networks, services, facilities, apparatus or directories to which it relates;
- b) not such as to discriminate unduly against particular persons or against a particular description of persons;
- c) proportionate to what it is intended to achieve; and
- d) in relation to what it is intended to achieve, transparent."

7.29 Numbering Application Form S8 lists the designation of each 08 number range and must therefore be updated to reflect the proposed designation for 0870.

7.30 The proposed modifications to Form S8 are set out in Annex 6.

7.31 Ofcom considers the proposed modification to the Form S8 meets the tests in section 49(2) being:

- **objectively justifiable** in that Ofcom has proposed to modify the designation of 0870 numbers and it is essential that Form S8 reflects the current designation so that CPs have accurate information when they apply for allocations of telephone numbers from Ofcom;

- **not unduly discriminatory** in that the proposed modification to Form S8 will apply uniformly to all undertakings seeking allocations of 08 numbers from Ofcom;
- **proportionate** in that the proposal introduces the minimum necessary change to achieve the stated aim; and
- **transparent** in that the intent and obligations of the modification to Form S8 have been clearly set out in this document.

Modification to General Condition 17

7.32 As set out under section 47(1) of the Act, when modifying a General Condition, Ofcom must be satisfied that the test set out under section 47(2) has been met. The test is that the modification of the condition is:

- (a) objectively justifiable in relation to the networks, services, facilities, apparatus or directories to which it relates;
- (b) not such as to discriminate unduly against particular persons or against a particular description of persons;
- (c) proportionate to what the condition or modification is intended to achieve; and
- (d) in relation to what it is intended to achieve, transparent.

7.33 The proposed modifications to General Condition 17 to include 0870 calls in the requirements of General Condition 17.12 are set out in Annex 4. Ofcom is satisfied these meet the tests set out in section 47(2) being:

- **objectively justifiable** in that it achieves Ofcom's stated policy objectives of improving price transparency in relation to 0870 calls beyond that provided by the revised designation for 0870 calls by extending the applicability of the designation to all OCPs especially given the increasing proportion of calls originated on networks other than BT's which would otherwise undermine the transparency provided by the proposed designation;
- **not unduly discriminatory** because the proposed modification does not benefit particular undertakings, and will be applied uniformly to all OCPs;
- **proportionate** in that Ofcom's impact analysis demonstrates that the proposed modification together with the other measures proposed are the most beneficial of the options considered to address the problems identified. Also that the proposals introduce the minimum necessary additional regulation in order to achieve the desired objectives and there will be no additional burden on any other services; and
- **transparent** insofar as the nature and obligations are clearly set out in the September 2005 NTS Consultation, the April 2006 NTS Statement and this consultation document.

Modification to the SMP Condition

7.34 As set out under section 47(1) of the Act, when modifying an SMP condition, Ofcom must be satisfied that the test set out under section 47(2) has been met. The test is that the modification of the condition is:

- (a) objectively justifiable in relation to the networks, services, facilities, apparatus or directories to which it relates;
- (b) not such as to discriminate unduly against particular persons or against a particular description of persons ;
- (c) proportionate to what the condition or modification is intended to achieve; and
- (d) in relation to what it is intended to achieve, transparent.

7.35 The proposed modifications under section 48(2) of the Act, to the definition of NTS Calls in part 1 of Schedule 1 of the Notification are set out in Annex 4. Ofcom is satisfied that these meet the tests set out in section 47(2) of the Act being:

- **objectively justifiable**, in that:
 - it addresses Ofcom's policy objectives of improving pricing transparency, consumer confidence and reducing disputes between CPs about interconnection charges;
 - the proposed modification will improve pricing transparency by drawing a distinction between 0870 which may no longer be capable of supporting revenue sharing and the other 08 ranges that will support revenue sharing;
 - the modification should result in lower call prices since OCPs will be likely to retain a greater proportion of 0870 calls charges reducing the incentive to charge higher prices which would undermine the objective re-establishing the convention that 0870 calls should be charged at geographic rates;
 - the proposed modification should provide greater revenue certainty to TCPs and SPs in relation to 0870 calls reducing the incentive for interconnection disputes requiring regulatory intervention; and
 - it reduces the opportunity for arbitrage that could occur as a result of the combination of the new designation for 0870 calls while keeping 0870 calls within the scope of Condition AA11¹³.
- **not unduly discriminatory** because the proposed modification does not benefit particular undertakings, and will be applied uniformly to all CPs and users of 0870 numbers.

¹³ If 0870 calls remain within the scope of Condition AA11 there would continue to be some scope for revenue sharing. The revised designation for 0870 calls is likely to result in 0870 calls being included in flat rate call packages. This means there would be an opportunity for calls to make additional calls to 0870 numbers at no additional cost solely in order to generate a revenue share.

- **proportionate** on the grounds that the proposals are the minimum necessary to achieve the stated objectives and that they reduce the level of regulation applied to 0870 calls.
- **transparent** insofar as the intent and obligations are clearly set out in the September 2005 NTS Consultation, the April 2006 NTS Statement and this consultation document.

Modification to General Condition 14

7.36 As set out under section 47(1) of the Act, when modifying a General Condition, Ofcom must be satisfied that the test set out under section 47(2) has been met. The test is that the modification of the condition is:

- (a) objectively justifiable in relation to the networks, services, facilities, apparatus or directories to which it relates;
- (b) not such as to discriminate unduly against particular persons or against a particular description of persons ;
- (c) proportionate to what the condition or modification is intended to achieve; and
- (d) in relation to what it is intended to achieve, transparent

7.37 The proposed modifications to General Condition 14 to include 0870 calls in the requirements of General Condition 14.2 are set out in Annex 7. Ofcom is satisfied these meet the tests set out in section 47(2) being:

- **objectively justifiable** in that it upholds Ofcom's stated policy objectives of improving price transparency in relation to 0870 calls beyond that provided by the revised designation for 0870 calls by ensuring that 0870 call prices are made readily accessible in price lists and all other published material containing pricing information;
- **not unduly discriminatory** because the proposed modification does not benefit particular undertakings, and will be applied uniformly to all OCPs;
- **proportionate** in that Ofcom's impact analysis demonstrates that the proposed modification together with the other measures proposed introduce the minimum necessary additional regulation in order to achieve the desired objective of achieving the greatest degree of price transparency in the absence of pre-call announcements or compulsory pricing rules; and
- **transparent** insofar as the nature and obligations are clearly set out in the September 2005 NTS Consultation, the April 2006 NTS Statement and this consultation document.

Section 8

Next Steps

- 8.1 Ofcom is seeking stakeholders written views and comments about its proposals for 0870 numbers. In particular Ofcom is seeking comments on:
- The options proposed as alternatives to pricing announcements and Ofcom's evaluation of the options;
 - the draft notification amending the designation for 0870 numbers in the Plan to modify the designation for 0870 calls; and
 - the draft notification amending references to the designation for 0870 calls in the Numbering Application Forms;
 - the draft notification modifying the definition of NTS Calls in Part 1 of Schedule 1 of the Notification which is contained in Annex A of the 2003 Narrowband Market Review as discussed above.
 - the draft notification modifying General Condition 17.12.
 - the draft notification modifying General Condition 14.2
- 8.2 Ofcom refers stakeholders to Annexes 8, 9 and 10 to this consultation for details of how to respond.
- 8.3 Ofcom set out its decision to implement the changes this consultation seeks to implement in the 2006 NTS Statement following stakeholder consultation. However, in recognition of the length of time that has elapsed and the issues that have been brought to light about pre-call announcements Ofcom is not only seeking comments on the draft notifications or the withdrawal of announcements but on any aspect of our NTS proposals where stakeholders consider they have new information or views that have not been properly considered before. We have accordingly allowed a six week consultation period, under the terms of our recently revised guidelines.
- 8.4 Comments should be received by **5pm on 15 June 2008**.
- 8.5 Ofcom would find it helpful if respondents would structure their response according to the list of questions listed in Annex 11.
- 8.6 When Ofcom has considered any representations made in response to the proposals set out in this document, including any made by the European Commission and other NRAs, it may under sections 48(5) and 80(6) of the Act give effect to these proposals, with or without modifications, by making the modifications to the SMP services conditions, General Conditions, Plan and numbering application forms in question. Ofcom would do so by publishing a further notification accompanied by a further and final explanatory statement.
- 8.7 As regards the proposed modified directions, Ofcom may under section 49(9) of the Act give effect to them, with or without modifications, after having considered any consultation responses. Ofcom hopes to resolve the dispute over termination charges before publication of the statement following this consultation. It is necessary

for the new interconnection rates to be decided before the new policy comes into effect.

- 8.8 Subject to the outcome of this consultation, Ofcom intends that these changes should take effect at the end of the 3rd month following the date of publication of the statement notifying the changes. In the event that the termination rate dispute remains unresolved by that date the changes shall take effect at the end of the month following publication of the determined termination rates in BT's Carrier Price List.
- 8.9 Whilst Ofcom cannot fetter its discretion in advance in this respect, it does not, at present, expect to have a further round of consultation. However, in the event that Ofcom did decide following the consultation process to make substantial and material modifications to its final decision, it would be necessary to re-consult. That said, in the interests of a fair and open consultation, Ofcom considers that it has identified in this document the main features of its proposals that it would ultimately wish to adopt.

Annex 1

Summary of Impact Assessment

- A1.1 The September 2005 NTS Consultation¹⁴ contained Ofcom's IA for its proposals, which Ofcom reviewed in light of the responses to the consultation. As discussed in this section 4 of the April 2006 NTS Statement¹⁵, Ofcom revised certain aspects of its IA in the light of the responses and has also revised certain aspects of its proposals.
- A1.2 The analysis presented in section 4 of the September 2005 Consultation when read in conjunction with the rest of that document and the April 2006 Statement represent Ofcom's final IA for the proposals as defined in section 7 of the Act.
- A1.3 In accordance with section 7 of the Act, in producing the IA, Ofcom has had regard to such general guidance as it considers appropriate, including related Cabinet Office Guidelines.

The proposals

- A1.4 In section 6 of the September 2005 NTS Consultation Ofcom proposed a range of policy options to address each of the policy issues. These are summarised in the table below.

Policy Issue	Options considered
A. Revenue sharing on 08 numbers	<p>A1: Maintain revenue sharing – revenue sharing would continue on 08 numbers.</p> <p>A2. Ending revenue sharing on 08 numbers – Revenue sharing would be restricted to 09 numbers.</p>
B. The retail pricing of 0845 and 0870 calls	<p>B1. The status quo - retaining the current pricing and interconnection arrangements for 084 and 087 numbers.</p> <p>B2. Extended retail price competition – amend the Plan to enable TCPs to select the price points to be applied to number blocks, from within a specified range (i.e. the same arrangements as applied to the 0844 and 0871 ranges). This option was Option 2, Ofcom's preferred option in the October 2004 Consultation.</p> <p>B3. Retail prices set by Ofcom – This option has been proposed by some CPs and would involve Ofcom setting the retail prices for 0845 and 0870 calls for BT customers though retail price regulation</p> <p>B4. Restore the geographic linkage for 0845 and/or 0870 calls after an interim period– This option would involve Ofcom amending the Plan and the General Conditions of Entitlement to restore the linkage between 0845/0870 calls and the prices that consumers actually pay for geographic calls after an interim period. The</p>

¹⁴ http://www.ofcom.org.uk/consult/condocs/nts_forward/

¹⁵ http://www.ofcom.org.uk/consult/condocs/nts_forward/statement/

Policy Issue	Options considered
	<p>designations would apply to all providers (including mobiles and payphones) not just BT.</p> <p>B5. Restore the geographic linkage for 0845 and/or 0870 calls and withdraw regulatory support for revenue sharing after an interim period – This option is a variation on Option B4 and would involve Ofcom removing the regulatory support for revenue sharing in conjunction with the reestablishment of the geographic linkage for 0845/0870 calls.</p>
C. Price transparency on 084 and 087 numbers	<p>C1. Status quo – This option would involve maintaining the current pricing transparency measures such as the ASA/CAP guidance for the advertising of 084 and 087 numbers.</p> <p>C2. Restore link to geographic tariffs for 0845/0870 – Evaluation of Option B4 to gauge its effectiveness as a measure to improve pricing transparency.</p> <p>C3. Extend pricing designations in the Plan – This option would consist of amending the General Conditions of Entitlement to extend the pricing designations of the Plan to all fixed providers (excluding public payphones) on the 0844 and 0871 number ranges.</p> <p>C4. Bringing some 08 numbers within the regulatory regime for PRS – This option would involve extending Ofcom's and PhonepayPlus's remit to cover some of the 08 number range so that SPs were subject to the provision of the PhonepayPlus code relating to price publication.</p> <p>C5. More stringent obligations on OCPs – This option would involve amending General Condition 14 which deals with consumer codes of practice and is the subject of a separate consultation document that will be published in the near future.</p> <p>C6. Call pre-announcements – This option would involve providing pre-announcements for calls on the 084 and 087 number ranges indicating to the caller the likely price of the call.</p> <p>C7. Signal price through number range – This option would consist of using the numbering range to signal the price of the call e.g. 0801 would cost 1ppm and 0802 would cost 2ppm etc.</p>
D. Consumer protection on 084 and 087 numbers	<p>D1. Status quo – No additional consumer protection measures.</p> <p>D2. Extending PRS regulation to 0871 numbers – This option would consist of extending the PRS regulatory regime to 0871 numbers to bring these numbers within PhonepayPlus's remit thereby requiring SPs to operate under PhonepayPlus's code provisions.</p> <p>D3. Extending PRS regulation to adult services currently provided on 08 numbers – This option would involve amending the Plan to</p>

Policy Issue	Options considered
	<p>clarify that adult services must only use the 0908 and 0909 ranges and secondly to extend the definition of Controlled PRS regulation to all adult services regardless of price.</p> <p>D4. No revenue sharing for locked-in calls to 084 and 087 numbers – This option would involve preventing calls to services classified as locked-in from revenue sharing on 08 number ranges to eliminate any potential for consumer detriment</p>
E. Waiting times for call centre services provided on 084 and 087 numbers	<p>E1. Status quo – This option would consist of maintaining the current regime, that is, call centres could continue to revenue share and there would be no requirements relating to call waiting times.</p> <p>E2. Stop call centres using 084/087 numbers – This option would involve preventing call centres from using the 084 or 087 number ranges which permit revenue sharing.</p> <p>E3. Regulate service levels for call centres using revenue sharing 08 numbers – This option would involve Ofcom regulating service levels for call centres using revenue sharing numbers.</p>
F. Public services provided on 084 and 087 numbers	<p>F1. Status quo – This option would involve retaining the current regulatory regime and providing the COI with best practice guidance on the use of 084 and 087 numbers for public services.</p> <p>F2. Stop public sector organisations using revenue-sharing 08 numbers – This option would involve the banning of public sector organisations from operating on revenue sharing 08 numbers.</p>

A1.5 These options were reviewed again in section 4 of the April 2006 NTS Statement where the responses received were considered in summary and again in detail in Annexes 1 and 2 of that document. In relation to the proposal to re-establish the link between 0870 and geographic calls Ofcom said the following:

Re-establishing the linkage to geographic call charges for 0870 calls

- A1.6 Under this proposal, the Plan would be amended to establish the convention that calls to 0870 numbers should in general be charged for in the same way as national calls to geographic numbers in the UK. It was also proposed that CPs would be able to depart from this convention, but only if they included a free-to-caller price announcement at the start of the call.
- A1.7 As previously discussed, since announcing this proposal it became clear that such announcements could interfere with a number of machine-to-machine calls including personal, fire and security alarms, leading to potential life threatening consequences.
- A1.8 In order to avoid such a serious risk we are proposing that CPs wishing to charge more for 0870 calls than for geographic calls would be subject to requirements to display their 0870 charges prominently on price lists and advertising and promotional materials. These requirements would be actively monitored and vigorously enforced.

- A1.9 It was proposed that the convention linking 0870 and geographic call charging would apply to all OCPs regardless of the type of network used to make the call. So, for example, a 0870 call from a mobile phone or a payphone would be charged on the same basis as national calls to a UK geographic number, made from the same phone.
- A1.10 The proposal would also mean that 0870 calls would be included in call packages. So for example, if a call package has no additional charges for calls up to an hour at evenings and weekends, this would apply to 0870 calls, as well as for calls to geographic numbers.
- A1.11 This would not mean that the call prices of different OCPs would be the same. Each OCP would be free to set its own charges for geographic and 0870 calls. They would, however, be required to comply with the convention that 0870 calls must be charged on the same basis as national calls to geographic numbers unless a price pre-announcement is provided.
- A1.12 Many OCPs charge all calls to geographic numbers at the same rate and make no distinction between “national” and “local” calls. In this situation, the proposal would mean that 0870 calls have to be charged on the same basis as calls to all UK geographic numbers.
- A1.13 We described this proposal as ‘restoring the geographic link’ because since the introduction of the NTS regime in 1996, the retail price of 0870 calls for BT customers has been linked to BT’s standard retail call charges, net of applicable discounts for national calls to geographic numbers. However, the link has broken down because very few BT customers now pay the standard rates for geographic calls. Most of BT’s residential customers, for example, are now on one of the BT Together call packages where geographic calls cost less than the standard rates and many other providers have lower rates for geographic calls than 0845 and 0870 calls. The aim of the proposal was to restore the link, by ensuring that 0870 prices were the same as the geographic call charges that consumers actually pay.
- A1.14 The main benefit of the proposal is that it would improve tariff transparency and consumer price awareness. Our research had shown that most consumers have little awareness of how much they are charged for 0870 calls. This is partly because the link to geographic charges has broken down, as described above, and partly because it only ever applied to calls made from BT lines – other fixed and mobile OCPs normally charge different rates for geographic and 0870 calls. The proposal would allow a very simple pricing message to be given to consumers, which is that all OCPs would charge 0870 calls on the same basis as calls to geographic numbers, unless a price pre-announcement is provided.
- A1.15 In the September 2005 Consultation Ofcom estimated that the welfare loss for consumers associated with reduced call volumes because of inaccurate price perceptions for 0870 call prices was approximately £115m. Taking into account the likely migration of some services to other number ranges, Ofcom estimated that re-establishing the geographic linkage for 0870 calls had a maximum potential benefit of around £58m per year, resulting from the improvement in pricing transparency and consequent reduction in welfare loss. It is unlikely that restoring the geographic link would achieve the whole of this amount, but it could be expected to make a significant contribution to the achievement of this benefit.
- A1.16 Another benefit of restoring the geographic link is that it would help to overcome the problem of misleading advertising of 0870 numbers. Calls to these numbers are still

sometimes advertised as being charged at “national rates”, even though they are generally much more expensive than national geographic calls. Under our proposal, consumers could be assured, either that 0870 calls would be charged on the same basis as national calls, or that they would be informed of the call charge at the start of the call.

- A1.17 The proposal would also bring some benefits to consumers in terms of lower call prices. For example, the daytime rate for a 0870 call from a BT line would fall from 7.91 pence per minute to 3 pence per minute, for a customer on BT’s BT Together Option 1 or 2 calling packages and the prices charged by other OCPs would also be likely to fall. It was recognised in the September 2005 Consultation that these price reductions would to some extent be offset by price increases elsewhere, because SPs would no longer receive a share of the call revenues or have services (such as call routing functionality) funded from call charges. A travel agent, for example, might increase the price of holidays to offset these losses. However, Ofcom has estimated there was still likely to be a net benefit to consumers, perhaps running into tens of millions of pounds per year.
- A1.18 On the debit side, it was recognised that the reduction (or complete loss) of the revenue share would be disruptive for the SPs using 0870 numbers, and for the CPs and resellers who provide them with inbound call services. It was estimated that 35-45% of businesses (likely to account for 45% to 55% of the traffic) currently using 0870 numbers would migrate to other number ranges in order to maintain their revenue share, and that this could involve them collectively incurring a one-off migration cost of £83-107m.
- A1.19 Ofcom’s overall assessment was that, over a period of several years, the benefits of restoring the geographic link would outweigh the costs.

Annex 2

Economic Analysis

The market for call origination

- A2.1 Ofcom does not believe that there has been a material change in either the definition of the market for call origination on fixed public narrowband networks or Ofcom's assessment of BT's SMP within this market, since the last full review of this market in the 2003 Narrowband Market Review.
- A2.2 This is the second time that Ofcom has found no material change – the first occasion was in Ofcom's "Review of BT's Network Charge Controls" published in August 2005 (the 2005 NCCR).
- A2.3 This section outlines the reasons for this view.

The material change test

- A2.4 Under specific circumstances, Ofcom can set, modify or revoke an SMP services condition without conducting a new market analysis process. The framework for doing this, and Ofcom's intention to follow this procedure for certain of the services covered in this Explanatory Statement, are described in section 3 of the explanatory statement.
- A2.5 Where Ofcom seeks to set, modify or revoke an SMP services condition, it may only do so under section 86 of the Act if it is satisfied that there has not, since the condition was set or last modified, or since the relevant market power determination was made (as the case may be), been a material change in the market identified or otherwise used for the purposes of the market power determination by reference to which the condition was set or last modified.
- A2.6 The alternative way of setting, modifying or revoking an SMP services condition, rather than satisfying that material change test, is for Ofcom to review, under section 84 of the Act, the market power determination by reference to which the condition in question was set.
- A2.7 Section 84 requires Ofcom to carry out further analyses of the identified services market either:
- where Ofcom considers it an appropriate interval to do so for the purposes of reviewing market power determinations made on the basis of an earlier analysis or deciding whether to make proposals for the modification of SMP services conditions set by reference to a market power determination made on such a basis (section 84(2)); or
 - as soon as reasonably practicable after recommendations are made by the European Commission that affect the matters that were taken into account, or could have been taken into account, in the case of the last analysis of the market in question (section 84(3)).
- A2.8 With regard to the fixed call origination market covered in this Explanatory Statement, Ofcom is, in accordance with section 86(1)(b) of the Act, satisfied that

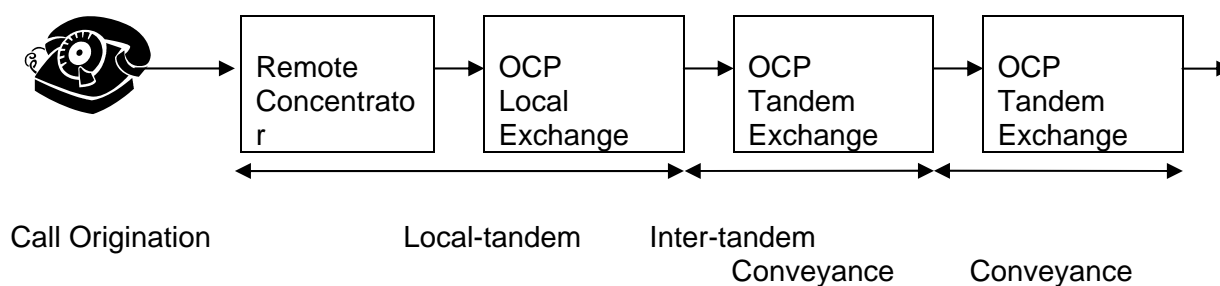
there has been no material change since the 2003 Narrowband Market Review. Ofcom's reasons for this view are set out below.

- A2.9 In this context, it is to be noted that, were any material changes in economic and technological developments to occur in these markets in the future, Ofcom will consider appropriate timings for carrying out a market review of them under section 84(2) of the Act. It is also possible that the European Commission would make a new Recommendation that might affect the matters previously taken into account in making BT's market power determinations in 2003. If so, this would trigger an Ofcom review of the relevant markets under section 84(3) of the Act.

Call origination on fixed narrowband networks

- A2.10 The 2003 Narrowband Market Review set out the market definition and SMP analyses relating to call origination and defined all origination as the service that conveys calls originating on a customer's exchange line from the remote concentrator to and over the local exchange, as illustrated in Figure A6.1 below.

Figure A6.1 Call origination



- A2.11 The market in the Hull area differs from that in the rest of the UK, in that in the Hull area, Kingston is the only provider of call origination services. Call origination differs from that provided in the rest of the UK because there are no separate local and tandem exchanges and all originated calls use a single, averaged origination service that may or may not include conveyance between the local/tandem exchanges.

- A2.12 The market for call origination on fixed narrowband networks includes the following elements:

- Retail markets; including
 - fixed and mobile voice calls;
 - fixed narrowband access and broadband internet access;
 - disaggregated narrowband markets; including
 - metered and unmetered narrowband internet services;
 - geographic and non-geographic voice calls;
 - residential and business calls;
 - fixed narrowband voice and voice services originating on broadband;
 - geographic markets; and

- Wholesale markets, including
 - Fixed narrowband call types;
 - residential and business calls;
 - geographic markets

Retail Markets

- A2.13 Market definitions are first carried out at the retail level because the demand for wholesale services is derived from the demand for retail services.
- A2.14 The characteristics of the retail markets have remained largely unchanged since 2003 with the possible exception of the growth in voice services originating on broadband (VoIP – see below). As detailed later in this section, whilst significant volumes of calls are made using VoIP, very few consumers view VoIP as a substitute for narrowband calls. At this point in time VoIP has had only a marginal effect on the market for retail call origination and this seems unlikely to change in the immediate future.
- A2.15 As a consequence Ofcom is satisfied that there has been no material change in these markets since they were defined in the 2003 Narrowband Market Review, and further that there is unlikely to be such change prior to the next NCCs, due to commence in October 2009, that might lead to different market definitions.

Separate markets for fixed and mobile voice calls

- A2.16 The 2003 Narrowband Market Review discussed that, on the demand side, mobile access is not a substitute, but more of an adjunct to fixed access. The 2003 Narrowband Market Review also discussed the results of an Oftel survey which showed that 78% of UK households had a fixed access phone in addition to a mobile phone, and suggested that if mobile access was to be regarded as a substitute to fixed access, this figure would have been lower. The 2003 Narrowband Market Review concluded that, given the price differential between mobile voice calls and fixed voice calls, it was unlikely that there would be effective demand side substitution in response to a SSNIP by a hypothetical monopolist.
- A2.17 In assessing whether this reasoning still applies to this part of the market definition Ofcom has reviewed information from its own Nations and Region Communications Market Report, 24 May 2007, Ofcom's Communications Market 2006 report as well as by some additional consumer market research, on fixed narrowband services, which was carried out for Ofcom in spring 2007.
- A2.18 The Nation and Region Communications Market report shows that 80% of UK households have both a fixed access phone and a mobile phone, slightly higher than the Oftel survey reported. This would suggest that mobile access is not viewed as a substitute, but more as an addition to fixed access. The Communications Market 2006 report shows that in 2005 mobile calls accounted for more about 31% of all UK originated calls, while the percentage of fixed calls origination showed a decrease, but total voice volume (origination) per fixed line has been stable at 71 minutes for the last couple of years.
- A2.19 That same report shows that the average call prices for mobile and fixed calls between 2000 and 2005, taking rental and bundles into account, have been

decreasing, but the gap between these two prices remain significant (more than 100%) albeit slowly reducing. For 2005, the average fixed line call is reported to cost 6.5 pence per minutes and the average mobile call 14.6 pence per minutes. The consumer market research carried out during spring 2007 exposes that this price differential is identified by consumers as an important reason for using fixed line rather than a mobile when they telephone from their house or their office (that is, a place where they can choose between fixed and mobile calling. This research further describes the likely reaction of consumers facing a 10% increase in fixed call prices. Only 6 to 7% of the consumers responded that they might switch some of their fixed calls to their mobile – on average they would switch only a third of their calls. This is likely to make it profitable for a hypothetical monopolist to raise its price in this manner and can be interpreted as a sign that fixed and mobile are not substitute and should not be viewed as part of the same relevant product market.

- A2.20 On the supply side, Ofcom believes that there continues to be limited scope for substitution between mobile and fixed narrowband access services, largely due to the high sunk costs associated with building a fixed narrowband access network, and the economies of scale and density that characterise communications access networks.
- A2.21 Having considered this latest evidence Ofcom remains of the view that mobile voice services are in a separate market to fixed voice services.

Separate markets for fixed narrowband access and broadband internet access

- A2.22 The 2003 Narrowband Market Review found that the main characteristics that distinguish broadband internet access from narrowband internet access are:
- the service is always-on;
 - the possibility of using voice and data simultaneously; and
 - it has a faster downstream speed.
- A2.23 Demand side substitution was found to be limited due to these distinct functionalities and the underlying cost differences between broadband and narrowband internet access. Since 2003, broadband prices have fallen further and a significantly higher speed always-on connection is now available at prices closer to dial-up unmetered narrowband. As well as increasing the use of traditional internet services such as emailing and general surfing, the rise of broadband has also seen an increase in the use of content such as gaming, gambling, downloading of music, movies and videos and on-demand radio and TV broadcasts. There has also been an increase in the number of consumers using the internet to purchase goods or services.
- A2.24 Ofcom has considered whether substitution between narrowband and broadband is now such that narrowband is constrained by broadband. However, there are narrowband users for whom the increased content and higher speed capability is not valued sufficiently in relation to the price they have to pay. Such users could be either metered or unmetered narrowband internet users.
- A2.25 Metered narrowband internet users are likely to be those whose main usage is restricted to emails and surfing the internet rather than downloading music, games and videos. The prices they pay are based on the time of the day they use the internet and their monthly costs are likely to be significantly lower than broadband

internet access. For these users, a limited price rise may not incentivise them to switch to a high speed service, particularly given switching costs such as the connection fee and modem.

- A2.26 Unmetered narrowband users on the other hand are likely to be those who would like the flexibility to use the internet at any time during the month and pay one fixed monthly fee. Although prices for unmetered internet access are generally lower than for broadband, the highest adoption of broadband has come from the users of unmetered narrowband. However, migration does not of itself imply that a SSNIP in the price of narrowband or broadband services would be unprofitable. It is not clear that switching between narrowband and broadband is sensitive to small changes in relative prices. It could be argued that those who have upgraded to broadband were those users who valued the high speed and extra functionality of broadband enough to be willing to pay a higher price for broadband. Remaining narrowband users may have a lower willingness to pay and may therefore be unlikely to switch due to switching costs. Given the closeness in the monthly prices of unmetered internet access and some broadband internet access products, it is reasonable to suggest that those continuing on unmetered narrowband do not have a preference for the always-on or the extra content available at current prices. Differing consumer requirements for narrowband and broadband internet access supports a view that they are separate markets.
- A2.27 In order for supply side substitution to constrain the price of narrowband internet access, there must be rapid and low-cost entry from broadband suppliers not currently supplying narrowband services. However, the UK's largest broadband internet access providers are already present in narrowband and hence cannot exert any additional constraint on a hypothetical monopolist in narrowband internet access if prices were raised by 10% above the competitive level.
- A2.28 As a consequence, Ofcom considers that the developments in broadband internet since 2003 serve only to reinforce the belief that there remain separate markets for narrowband and broadband internet access at the retail level.

Separate markets for metered and unmetered narrowband internet services

- A2.29 Consumer research, undertaken for the 2003 Narrowband Market Review, found limited substitution between metered and unmetered internet access and that any switching that had occurred was mainly from metered to unmetered. Those switching to unmetered access were likely to do so due to considerations other than price; such as the flexibility and freedom of anytime access.
- A2.30 Usage of narrowband internet services has declined significantly since 2003 with the increased availability and reduced cost of broadband access. Ofcom believes that those continuing on metered access do so not only because they may prefer to pay only when the service is used, but also because they are likely to be lighter users of the internet and may be unwilling to pay the premium required for unmetered narrowband access.
- A2.31 On the supply side, a potential entrant would need to incur significant costs to build a fixed narrowband network that could provide both metered and unmetered internet calls. This is because unmetered provision has in practice required build-out to BT's DLEs (or use of Interconnection Extension Circuits (IECs) in order to use the DLE FRIACO wholesale unmetered call origination product. This entails a significant barrier to entry in the timescale relevant to supply-side substitution. In addition, widespread broadband growth has meant that unmetered narrowband

internet access is now widely perceived as a declining service, which renders further entry by new suppliers in response to a SSNIP unlikely.

- A2.32 Ofcom therefore believes that there remain separate markets for metered and unmetered narrowband internet access at the retail level.

Separate markets for geographic and non-geographic voice calls

- A2.33 Geographic calls are calls to a specific geographic location. Non-geographic calls are made of a number of types of calls that offer the consumer an information service or a value added service, such as directory enquiries (“DQ”) service, personal numbering services (“PNS”) or number translation services (“NTS”). Calls to NTS make up the majority of non-geographic calls and include calls to freephone charitable helplines and premium rate information services as well as dial-up internet access.
- A2.34 Voice non-geographic calls have characteristics that differentiate them from geographic calls. In particular, non-geographic calls are based on a single number and a tariff charge that does not depend on the location of the caller and called party. In consumer’s perception, as geographic and non-geographic calls provide different types of services, it is unlikely that consumers will consider them substitutes. This is discussed further below.
- A2.35 On the supply side, the only retailers of non-geographic calls (OCPs) are those retailing geographic calls already hence supply side substitution cannot provide any additional constraint to that already identified on the demand side.
- A2.36 Ofcom therefore considers that there are separate retail markets for geographic and non-geographic calls.

Disaggregation of non-geographic call types

- A2.37 Oftel considered, in the 2003 Narrowband Market Review, whether different types of non-geographic calls belong to different retail markets. Three types of non-geographic calls were considered: DQ services; personal numbering services (PNS); and NTS. It was noted that each call type serves a particular purpose. DQ services allow the caller to obtain directory information, PNS allows the called party to be reached anywhere regardless of location, whilst NTS numbers provide access to a range of services such as customer support and dial-up internet access.
- A2.38 Oftel considered whether, if the price of an NTS call, for example, was raised above the competitive level, customers might switch to a service provided behind a number reserved for DQ services, or vice versa. It considered that this was unlikely because of the different nature of the services provided on NTS numbers and on numbers allocated to DQ services. It also noted that the fact that DQ numbers belong to a specific number range, and are shorter than NTS numbers, could represent a barrier to switching.
- A2.39 Ofcom remains of the view that, facing a 5-10% increase in retail prices, NTS call customers would be unlikely to switch to calling a 118 service which is exclusively reserved for DQ services only. Furthermore, services currently offered on NTS ranges would not meet the criteria for the allocation of a 118 code. Consequently, the different nature of the services offered by NTS and DQ service providers makes such demand-side substitution between them extremely unlikely.

- A2.40 PNS service enables individuals to be reached regardless of location via a variety of means. Callers to a personal number can be switched to any chosen geographic number nominated by the called party, any mobile number or to messaging and voicemail services. Some NTS numbers are used by individuals as replacements for geographic numbers and in these cases there is some similarity with PNS. The vast majority of NTS numbers, however, are used to provide access to services and it is these which determine whether NTS and PNS are substitutes. Clearly a 5-10% increase in the price of NTS call prices would not cause consumers to switch to calling PNS numbers which do not offer access to any of the services offered via NTS.
- A2.41 Oftel also considered whether supply-side substitution could be sufficient to place NTS and other non-geographic call types in the same retail market. Oftel noted that the different business models associated with each type of non-geographic call could limit supply side substitution possibilities. In any case, as most retail call providers, then as now, provide access to PNS, DQ and NTS services, it is unlikely that supply-side substitution could provide an additional constraint, over and above any identified by an analysis of demand-side substitution possibilities.
- A2.42 Ofcom therefore believes that there continue to be separate retail markets for the different non-geographic call types.

Separate markets for residential and business calls

- A2.43 Put simply residential calls are those made by ordinary domestic consumers whereas business calls are made by employees of registered businesses.
- A2.44 Demand side substitution is unlikely given that suppliers are able to identify residential and business consumers and charge different tariffs. Residential tariffs are designed for relatively low levels of usage from individual lines whereas business tariffs operate across small and large businesses, ranging from single to multiple lines, and are designed to cater for volumes of calls generated by each. They may also include the costs of providing additional services such as business directory entries. Given the differing call requirements of residential and business users and the ability of suppliers to distinguish between these two groups of customers and tariff accordingly residential consumers have little to gain by switching to business tariffs and vice versa.
- A2.45 In the absence of CPS (a remedy which depends on a finding of SMP in the call origination market), operators would have to build their own access networks in order to provide call services to customers. As residential and business customers still tend to be in different geographic locations, a potential competitor would need to incur significant sunk costs to switch supply between residential and business markets. This limits the potential for supply side substitution.
- A2.46 Ofcom is therefore minded to believe that at the retail level residential and business calls are still separate markets.

Retail markets for fixed narrowband voice and voice services originating on broadband

- A2.47 Voice over Internet Protocol (VoIP) previously referred to as Voice over broadband ("VoB") services allow the end-user to make and receive calls using a broadband connection by, for example, using digital subscriber line ("DSL") or cable broadband links. They typically use Voice over internet protocol ("VoIP") technology for the

conveyance of calls rather than traditional telephone networks. Access to VoIP services can be provided through an analogue telephone adapter, which allows the use of an ordinary telephone handset with the existing broadband internet connection. VoIP services therefore have the potential to offer consumers access to alternative service providers, cheaper lines and calls, and advanced features, such as call messaging.

- A2.48 VoIP services that originate on broadband technology are as yet a small proportion of the market, and it is unclear if current VoIP tariffs are at the competitive level, or are above it, making the SSNIP test difficult to use. An important consideration in comparing VoIP and PSTN voice services is that the tariffs reflect different uses of the respective network. Fixed (PSTN) voice tariffs are composed of the cost of origination and conveyance and termination on the PSTN network. On the other hand, VoIP users do not have to pay for broadband access and origination. The cost of broadband access is included in the cost the user pays to obtain broadband internet access. The VoIP service therefore currently carries only an incremental cost to the broadband access and origination product already purchased by the consumer. The consumer market research carried out in spring 2007 further highlights that very few consumers would consider switching to VoIP in response to a 10% increase in fixed call prices.
- A2.49 In addition, since VoIP is only provided to those customers who have chosen to take broadband internet access, it clearly cannot be a substitute to others who have no broadband internet access. Ofcom's 2006 Communications Market report reported that in spring 2006 about 11.1 million customers had chosen broadband internet access and 1.8 million households were actively using VoIP, whereas PSTN voice is available to 48 million customers. The consumer research carried out during spring 2007 indicates that all VoIP users have a requirement for a fixed line service and that only 9% of them view VoIP as their main service. VoIP is used mainly for geographic calls (especially international calls) via PC-to-PC.
- A2.50 It is reasonable to assume that usage of VoIP services will continue to grow. Indeed broadband internet access services are likely to grow further since the DSL roll-out makes it now possible for almost 99% of the households to access broadband. In addition according to The Communication Market Report across Nations and Regions 2007 about 30% of consumers with internet and not currently using VoIP are certain, likely or fairly likely to use VoIP in the next six months. However promising these developments are, for the foreseeable future, significant numbers of consumers are likely to continue to use narrowband voice services. As a consequence the current market definitions are likely to hold.
- A2.51 Ofcom therefore considers that fixed narrowband voice services are in a separate market to voice services that originate on broadband.

Retail geographic market

- A2.52 The 2003 Narrowband Market Reviews discussed that, although there could be different competitive pressures in different geographic areas (such as where cable providers compete with BT), the definition of markets using the hypothetical monopolist test would lead to a proliferation of markets. This, when considered along with the dynamic nature of communications markets, would be likely to mean that the boundary between areas where there are different competitive pressures would be unstable and change over time, rendering the market definition obsolete. It is not clear that determining ex-ante where the boundary would be is an exercise that can be carried out with any degree of accuracy. Therefore an alternative

approach would be to define a single geographical market but recognising that this single market has local geographical characteristics. This policy seemed justified, by BT's policy (required for basic retail telephony services covered by the USO) of setting uniform national prices.

- A2.53 With the possible exception of services to large business customers spending over £1 million per year, BT's retail prices remain uniform which means that any response by BT to competition in a given area in the form of lower prices would apply throughout the UK (excluding the Hull area). This suggests that the geographical extent of the relevant markets should be regarded as the whole of the UK (excluding the Hull area), and the Hull area. Ofcom thus considers that the extent of the geographical market is the whole of the UK, excluding the Hull area where a uniform constraint holds.

Wholesale Market definitions

Fixed narrowband call types

Demand side substitution

- A2.54 The analysis of the retail markets leads to the view that at the retail level different call types are not substitutes on the demand side. This is because each call type has a different functionality (e.g. metered and unmetered, geographic and non-geographic) that is not perceived to be substitutable by consumers. Where different call types require different wholesale inputs (eg. metered call origination and unmetered call origination), those inputs are unlikely to be viewed as effective demand side substitutes. There may be some call types where the wholesale input is the same such as for geographic and non-geographic calls. However, non-geographic calls require an additional wholesale origination input that provides suppliers of such calls with billing access to the customer. Where this is the case, such types of wholesale call origination would also not be viewed as demand side substitutes.

Supply side substitution

- A2.55 A characteristic of fixed communications networks is the existence of significant economies of scale and scope. As any provider of call origination will seek to exploit the economies of scale and scope, it will tend to provide call origination services for a number of different call types. Therefore, supply side substitution into any particular call type is unlikely to provide any additional competitive constraint because all providers would provide call origination for all call types.

Cluster market

- A2.56 Providers of call origination services compete for customers rather a particular service to different customers. This distinction is important because it reinforces the view that providers of call origination compete to provide a range of services across a customer's access line rather than limited services across many access lines. Such competition means that customers choose the provider who can provide the range of services at the lowest price. The fact that all call origination services are purchased in a cluster from the same provider suggests that all call origination services should be treated as part of the same market.
- A2.57 However, consumers choose to purchase either narrowband PSTN or narrowband ISDN calls from a provider. This suggests that PSTN and ISDN call origination

cannot both be part of the same market on the basis of the cluster market argument. However, in practice, only BT provides both types of call origination and BT's costs and prices do not differ. Customers purchasing call origination services would still face a common pricing constraint. Hence both PSTN and ISDN may be treated as part of the same wholesale market for call origination.

Residential and business calls

A2.58 Although, at the retail level, business and residential customers have different demand characteristics and may face different prices, at the wholesale level, call origination charges to competing providers are the same, irrespective of whether they provide residential or business services. Although, on the supply side, the scope for substitution is limited, given the high costs facing a business call origination provider seeking to build out its network to residential customers, this suggests that for practical purposes there is a common pricing constraint.

Conclusion

A2.59 Ofcom's conclusion is that there is a single wholesale market for residential and business call origination.

Wholesale geographic market

Ofcom's approach to defining geographic markets.

A2.60 In the last market review, Ofcom used the following approach to geographic market definition. It was noted that a strict definition of markets using the hypothetical monopolist test could lead to a proliferation of markets unless call origination, call termination or transit at different exchanges could be regarded as substitutes. This, when considered along with the dynamic nature of communications markets, would be likely to mean that the boundary between areas where there are different competitive pressures would be unstable and change over time, rendering the market definition obsolete. It concluded that determining ex-ante where the boundary would be was an exercise that could not be carried out with any degree of accuracy. For instance, there may be areas that have uniform competitive conditions (such as cable companies providing a retail constraint on BT), but it may not be possible to find a suitable aggregator for such areas. For all these reasons, Ofcom believes that it is reasonable to consider there to be a national market, albeit with differing local conditions.

A2.61 Given that there has been no significant change in the geographic area covered by competing providers of call origination services since the last review, and none is expected in the foreseeable future, and uniform pricing continues, Ofcom believes that no change is needed to its definition of a single market in the UK excluding the Hull area.

Assessment of SMP in wholesale narrowband call origination the UK excluding the Hull Area

A2.62 The 2003 Narrowband Market Review discussed that BT had SMP in the market for wholesale call origination. This conclusion was arrived at on the basis of analysing market shares, the ease of market entry, economies of scale, countervailing buyer power and switching costs.

A2.63 Ofcom has considered the market with respect to the same criteria and finds no material change in each of the above criteria used to determine SMP. BT's share of call origination minutes has declined only slightly to 77% in the second quarter of 2005/06 from 79% at the second quarter of 2003/04 (see table A3.1 below) when the previous 'no material change finding was made. There has been no significant new entry into the market primarily because of the obstacles presented by economies of scale combined with sunk costs.

A2.64 Table A3.1 BT's market share in call origination (%)

Period	BT ¹⁶	Cable	Other
2000	69.7	16.3	13.9
2001	73.2	15.4	11.4
2002	77.9	13.3	8.8
2003	79.1	11.8	9.2
2004	78.8	12.0	9.2
2005	78.0	13.2	8.8
2000 Q1	69.2	16.6	14.2
2000 Q2	64.6	17.2	18.2
2000 Q3	72.8	15.6	11.6
2000 Q4	72.3	15.9	11.8
2001 Q1	73.1	15.8	11.1
2001 Q2	73.2	15.5	11.3
2001 Q3	73.3	15.3	11.4
2001 Q4	73.3	14.9	11.8
2002 Q1	75.6	14.5	9.9
2002 Q2	77.1	13.6	9.3
2002 Q3	78.9	12.8	8.3
2002 Q4	79.9	12.3	7.8
2003 Q1	80.2	11.9	7.9
2003 Q2	79.0	11.7	9.3
2003 Q3	78.7	11.6	9.7
2003 Q4	78.4	11.8	9.8
2004 Q1	78.6	11.8	9.5
2004 Q2	78.9	12.2	8.9
2004 Q3	79.0	11.9	9.1
2004 Q4	78.6	12.1	9.3
2005 Q1	78.4	12.7	8.9
2005 Q2	77.9	13.1	9.0
2005 Q3	77.7	13.3	8.9
2005 Q4	78.0	13.7	8.3
2006 Q1	77.6	13.6	8.7
2006 Q2	77.2	13.5	9.4

Source Ofcom

NB: These

¹⁶ Figures for BT include calls made by VoIP and on shared LLU lines. Ofcom currently has no definitive data on volumes of VoIP originated calls but since, currently (August 2007), approximately 80% of LLU lines are shared the majority of calls made on LLU lines will be BT originated.

Conclusions and forward look on SMP in wholesale call origination

- A2.65 The next few years will be a period of transition including the migration of BT's services from the public switched telephone network ("PSTN") to BT's Next Generation Network ("21CN"). In a longer timescale, BT is also proposing to invest in replacing its current copper access network with fibre-based "Next Generation Access" (NGA).
- A2.66 There will be no direct equivalent to call origination on the NGN because the 21CN will not feature DLEs. The closest substitute appears likely to be a "metro node origination" service (conveyance from the MSAN to the metro node). The question then is whether there is likely to be substitutability between metro node origination and (DLE) call origination such that they can be considered as part of the same market.
- A2.67 Ofcom believes that metro node origination should not be regarded as a sufficiently good substitute for call origination to be regarded as part of the same market. This is because it seems likely that many metro nodes will be in different geographical locations to the existing exchanges and hence building out to the new locations may involve significant cost. In addition, the technical interfaces available at metro nodes are expected to be different to those available at existing switches, and changing to the new interfaces is also likely to involve costs which are significant in relation to a small rise in the price of call origination on the PSTN.
- A2.68 As both PSTN and 21CN are operated by BT, supply-side substitution is not a relevant factor. BT would clearly not wish to undermine its own price increase by such means.
- A2.69 Even if substitution at the wholesale level, between conveyance over the PSTN and 21CN, is not possible, it might still be that both 21CN and PSTN products should be placed in the same market. This would be the case if substitution between customers at the retail level meant that there was a common constraint between the charges for PSTN based services and those for 21CN-based services. However, since both types of services would be offered only by BT, this would not affect the analysis of market power for which the definition of the relevant market is required. In view of this, Ofcom does not consider them as representing a material change to the market that is the subject of this review.
- A2.70 Ofcom's view is that the definition of the market for wholesale call origination on narrowband networks will remain unchanged through the duration of this review as providers will continue to purchase the same service at their existing PSTN interfaces irrespective of how the service is provided by BT. Consequently, BT's current SMP in the market is unlikely to be eroded until such time that other direct access networks expand their customer base and are able to compete in a significant manner with BT. New entry into this market is constrained by the high entry barriers in the form of sunk costs. Therefore Ofcom believes that BT is likely to continue to have SMP in wholesale call origination for the foreseeable future.

Annex 3

Notification of a proposed modification under Section 48(2) of the Act

Modification to Part 1 of Schedule 1 of the Notification published in Annex A of Review of the fixed narrowband, wholesale exchange line, call origination, conveyance and transit markets published by the Director General Of Telecommunications on 28 November 2003.

1. OFCOM in accordance with section 48(2) of the Act hereby proposes the following modification of part 1 of Schedule 1 of the Notification published in Annex A of Review of the fixed narrowband, wholesale exchange line, call origination, conveyance and transit markets published by the Director General Of Telecommunications on 28 November 2003.

2. The draft modification is set out in the Schedule to this Notification.

3. In this Notification:

(i) “the Act” means the Communications Act 2003;

(ii) “SMP Conditions” means as set out in the Schedule to the Notification under section 48(1) of the Communications Act 2003 published by the Director General on 28 November 2003; and

(iii) “OFCOM” means the Office of Communications.

4. Except insofar as the context otherwise requires, words or expressions shall have the meaning assigned to them in this Notification and otherwise any word or expression shall have the same meaning as in the Act.

5. For the purpose of interpreting this Notification:

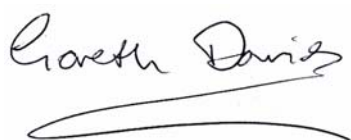
(i) headings and titles shall be disregarded; and

(ii) the Interpretation Act 1978 shall apply as if this Notification were an Act of Parliament.

6. The Schedule to this Notification shall form part of this Notification.

7. The modification set out in the Schedule to this Notification shall take effect on XX XXXX 2008.

Signed by



Gareth Davies

A person authorised by Ofcom under paragraph 18 of the Schedule to the
Office of Communications Act 2003

2 May 2008

Schedule

SCHEDULE 1

The SMP services conditions imposed on BT under sections 45, 87, 88 and 90 of the Communications Act 2003 as a result of the analysis of the markets set out in paragraph 1(a) of this Notification in each of which BT has been found to have significant market power (“SMP conditions”)

Part 1: Application, definitions and interpretation relating to the SMP conditions in Part 2

1 The SMP conditions in Part 2 of this Schedule 1 shall, except insofar as it is otherwise stated therein, apply to each and all of the markets set out in paragraph 1(a) of this Notification and to Interconnection Circuits.

2 In this Schedule 1:

(xx) “NTS” means number translation services;

(yy) “NTS Calls” means a call to a number identified in the Numbering Plan for the United Kingdom as a Special Service number or a Premium Rate Service number

- plus calls to 0500 Freephone numbers;

- excluding calls to 0844 04 numbers for Surftime Internet access services and calls to 0808 99 numbers for FRIACO; and

- **excluding calls to 0870 numbers:**

(zz) “NTS Call Origination” means originating NTS Calls and retailing those NTS Calls to the End-User on behalf of the Third Party who has requested NTS call origination;

Annex 4

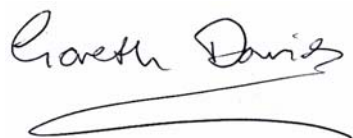
Notification of a proposed modification to General Condition 17

Proposal for modification of General Condition 17 on Allocation, Adoption, and Use of telephone numbers which is set out in the Schedule to the Notification under section 48(1) of the Communications Act 2003 (the “Act”) published by the Director General of Telecommunications on 22 July 2003

1. OFCOM in accordance with section 48(2) of the Act hereby make the following proposal for the modification of General Condition 17 on Allocation, Adoption and Use of telephone numbers;
2. The draft modification is set out in the Schedule to this Notification;
3. The effect of, and OFCOM's reasons for making, the modification referred to in paragraph 1 above is set out in the accompanying document to this Notification;
4. OFCOM considers that the modification referred to in paragraph 1 above complies with the requirements of sections 45 to 50 of the Act, as appropriate and relevant to each of the modifications;
5. In making the modification set out in this Notification, Ofcom has considered and acted in accordance with their general duties in section 3 of the Act and the six Community requirements in section 4 of the Act and their duty as to telephone numbering in section 63 of the Act;
6. The modification shall enter into force on XXXXXXXX;`
7. Representations may be made to Ofcom about the proposal by **5pm on 15 June 2008**;
8. A copy of this Notification has been sent to the Secretary of State in accordance with section 50(1)(b) of the Act ;
9. In this Notification:
 - i) “the Act” means the Communications Act 2003; and
 - ii) “OFCOM” means the Office of Communications;
10. Except insofar as the context otherwise requires, words or expressions shall have the meaning assigned to them in this Notification and otherwise any word or expression shall have the same meaning as it has in the Act.
11. For the purpose of interpreting this Notification:
 - i) headings and titles shall be disregarded; and

- ii) the Interpretation Act 1978 shall apply as if this Notification were an Act of Parliament.

12. The Schedule to this Notification shall form part of this Notification.

A handwritten signature in black ink, appearing to read "Gareth Davies". The signature is written in a cursive style and is positioned above a horizontal line that spans the width of the signature.

Gareth Davies

Director of Competition

A person authorised by OFCOM under paragraph 18 of the Schedule to the Office of Communications Act 2002

2 May 2008

Schedule

Modification of General Condition 17: Allocation, Adoption and Use of telephone numbers which is set out in the Schedule to the Notification under section 48(1) of the Communications Act 2003 published by the Director General of Telecommunications on 22 July 2003

1. General Condition 17 shall be modified as set out below:

A. “Requirements in connection with the use of telephone numbers

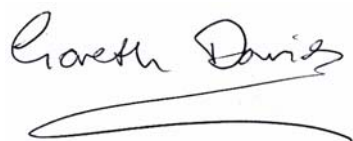
17.12 Where Customers of a Communications Provider are making calls to either UK-wide Numbers (03); Personal Numbering Service (070) numbers, or non-geographic numbers with the prefix 0870, the Communications Provider shall comply with the designations for those numbers in the National Telephone Numbering Plan.”

Annex 5

Notification of proposals for a modification to the National Telephone Numbering Plan

1. Ofcom, in accordance with section 60(3) of the Communications Act 2003 (the “Act”), hereby makes the following proposal for a modification to the provisions of the National Telephone Numbering Plan (the “Plan”);
2. The draft modification to the Plan is set out in the Schedule to this Notification;
3. The reasons for making the proposal and the effect of the modification are set out in the accompanying document to this Notification;
4. Ofcom considers that the proposed modification complies with the requirements in section 60(2) of the Act;
5. In making the modification set out in this Notification, Ofcom has considered and acted in accordance with their general duties in section 3 of the Act and the six Community requirements in section 4 of the Act and their duty as to telephone numbering in section 63 of the Act;
6. The modification shall enter into force on **XX XXXX 2008**;
7. Representations may be made to Ofcom about the proposal by 5pm on 15 June 2008;
8. Copies of this Notification and the accompanying statement have been made available to the Secretary of State.
9. In this Notification:
 - ‘Act’ means the Communications Act 2003;
 - ‘Condition’ means General Condition 17 of the General Conditions of Entitlement set by the Director by way of publication of a Notification on 22 July 2003;
 - ‘Director’ means the Director-General of Telecommunications as appointed under section 1 of the Telecommunications Act 1984;
 - ‘Ofcom’ means the Office of Communications; and
 - ‘Plan’ means the National Telephone Numbering Plan published from time to time by Ofcom.

Signed by

A handwritten signature in black ink that reads "Gareth Davies". The signature is written in a cursive style and is underlined with a long, horizontal stroke.

Gareth Davies

A person authorised by Ofcom under paragraph 18 of the Schedule to the Office of Communications Act 2003

2 May 2008

Schedule

In Part A1 (Public Telephone Network Numbers) of the Plan the entry for 0870 shall be replaced with the following: –

0870	Calls to non-geographic numbers at a geographic rate charged at no more than the caller would pay for a call to a Geographic Number (including discounts and call packages), except where call charges have been published in accordance with General Condition 14.2 or, in the case of Public Pay Telephones, where call charges are displayed in a manner that is reasonably accessible to a caller before making a call.
------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

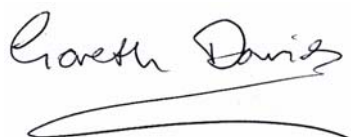
Annex 6

Notification of proposals under section 49(4) of the Act

Proposal for making a Direction under paragraph 17.9(a) of the Condition relating to an application form S8 for 08 numbers

1. Ofcom hereby makes the following proposal for a Direction to be given under paragraph 17.9(a) of the Condition.
2. The draft Direction is set out in the Schedule to this Notification.
3. The reasons for making the proposal and the effect of the draft Direction are set out in the accompanying consultation document.
4. Representations may be made to the Ofcom about the proposed draft Direction until 5pm on 15 June 2008.
5. Copies of this Notification have been sent to the Secretary of State in accordance with section 50(1)(b) of the Act.
6. Except as otherwise defined in this Notification, words or expressions used shall have the same meaning as they have been ascribed in the Act.
7. In this Notification:
 - o "Act" means the Communications Act 2003;
 - o "Condition" means General Condition 17 of the general Conditions of Entitlement set by the Director on 22 July 2003 pursuant to section 45 of the Act by way of publication of a Notification pursuant to section 48(1) of the Act;
 - o "Director" means the Director General of Telecommunications as appointed under section 1 of the Telecommunications Act 1994; and
 - o "Ofcom" means the Office of Communications.

Signed by



Gareth Davies

A person authorised by Ofcom under paragraph 18 of the Schedule to the Office of Communications Act 2003

2 May 2008

Schedule

Direction under paragraph 17.9(a) of the Condition

Where as-

A. paragraph 17.9(a) of the Condition provides that when applying for an allocation or reservation of Telephone Numbers, the Communications Provider shall use an appropriate application form as directed by the Director from time to time as he thinks fit;

B. by virtue of the Transitional Provisions, references to the Director in General Condition 17 should be read as references to Ofcom;

C. for the reasons set out in the Statement accompanying this Direction Ofcom are satisfied that the application form in the Annex to this Direction is appropriate for use by Communications Providers when applying for an Allocation or reservation of Telephone Numbers;

D. for the reasons set out in the Statement accompanying this Direction Ofcom are satisfied that this Direction is:

- objectively justifiable in relation to the networks, services, facilities, apparatus or directories to which it relates;
- not such as to discriminate unduly against particular persons or against a particular description of persons;
- proportionate to what it is intended to achieve; and
- in relation to what it is intended to achieve, transparent.

E. for the reasons set out in the Statement accompanying this Direction Ofcom are satisfied that they acted in accordance with the relevant duties set out in sections 3 and 4 of the Act;

F. a notification of a proposal to give this Direction was given under section 49(4) of the Act on XX XXXX 2008 (the 'Notification');

G. a copy of the Notification was sent to the Secretary of State in accordance with section 50(1)(b) of the Act;

H. in the Notification and accompanying consultation document Ofcom invited representations about any of the proposals therein by 5pm on 15 June 2008;

I. by virtue of section 49(9) of the Act, Ofcom may give effect to the proposal set out in the Notification, with or without modification, only if-

- they have considered every representation about the proposal that is made to them within the period specified in the notification; and
- they have had regard to every international obligation of the United Kingdom (if any) which has been notified to them for this purpose by the Secretary of State;

J. Ofcom received responses to the Notification and have considered every such representation made to them within the period specified in the Notification and accompanying consultation document and these representations are discussed in [Chapter X of the Statement accompanying this Direction]; and the Secretary of State has not notified Ofcom of any international obligation of the United Kingdom for this purpose;

NOW, THEREFORE, OFCOM, PURSUANT TO PARAGRAPH 17.9(a) OF THE CONDITION, HEREBY DIRECT THAT-

1. For the time being, the application form S8 in the Annex to this Direction shall be used by Communications Providers when applying for an allocation or reservation of **Services or Special Services** starting 08.
2. In this Direction-
 - 'the Act' means the Communications Act 2003;
 - 'Allocation' shall have the same meaning as in the Condition;
 - 'Communications Provider' shall have the same meaning as in the Condition;
 - 'the Condition' means General Condition 17 of the General Conditions of Entitlement set by the Director on 22 July 2003 pursuant to section 45 of the Act by way of publication of a Notification pursuant to section 48(1) of the Act;
 - 'the Director' means the Director-General of Telecommunications as appointed under section 1 of the Telecommunications Act 1984;
 - 'Ofcom' means the Office of Communications;
 - 'Telephone Number' shall have the same meaning as in paragraph 1 of Part 1 of the Schedule to the Notification published by the Director on 22 July 2003 under section 48(1) of the Act;
 - 'Transitional Provisions' means sections 408 and 411 of the Act, the Communications Act 2003 (Commencement No. 1) Order 2003 and the Office of Communications Act 2003 (Commencement No. 3) and Communications Act 2003 (Commencement No 2) Order 2003.
3. Except in so far as the context otherwise requires, words or expressions shall have the meaning assigned to them. Otherwise, any word or expression shall have the same meaning as it has:
 - (i) in the National Telephone Numbering Plan published from time to time by Ofcom pursuant to section 56 of the Act;
 - (ii) if, and only if, it has no meaning ascribed as mentioned in (i) above, and only if the context so permits, in General Condition 17 (entitled 'Allocation, Adoption and Use of Telephone Numbers') in Part 2 of the Schedule to the Notification published by the Director on 22 July 2003 under section 48(1) of the Act;
 - (iii) if, and only if, it has no meaning ascribed as mentioned in (i) and (ii) above, and only if the context so permits, in paragraph 1 of Part 1 of the Schedule to the Notification published by the Director on 22 July 2003 under section 48(1) of the Act;
 - (iv) and if, and only if, it has no meaning ascribed as mentioned in (i), (ii) and (iii) above, and only if the context so permits, in the Act.
4. The Interpretation Act 1978 shall apply as if this Direction were an Act of Parliament.
5. Headings and titles shall be disregarded.

Annex 7

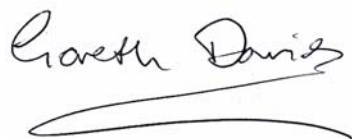
Notification of a proposed modification to General Condition 14

Proposal for modification of General Condition 14 on code of practice and Dispute Resolution which is set out in the Schedule to the Notification under Section 48(1) of the Communications Act 2003 published by the Director General of Telecommunications on 22 July 2003.

1. OFCOM in accordance with section 48(2) of the Act hereby make the following proposals for the modification of General Condition 14 on code of practice and Dispute Resolution;
2. The draft modification is set out in the Schedule to this Notification;
3. The effect of, and OFCOM's reasons for making, the proposals referred to in paragraph 1 above is set out at Sections 3 and 4 of the accompanying explanatory statement;
4. OFCOM consider that the proposed modification referred to in paragraph 1 above complies with the requirements of sections 45 to 50 of the Act, as appropriate and relevant to each of the proposals;
5. In making the proposals set out in this Notification, Ofcom has considered and acted in accordance with their general duties in section 3 of the Act and the six Community requirements in section 4 of the Act;
6. Representations may be made to OFCOM about the proposals set out in this Notification and the accompanying statement by 5pm on 5 December 2005;
7. The modification shall enter into force on [one month after publication of final notification];
8. Copies of this Notification and the accompanying statement have been sent to the Secretary of State in accordance with section 50(1)(a) of the Act.
9. In this Notification:
 - (i) "the Act" means the Communications Act 2003;
 - (ii) "OFCOM" means the Office of Communications; and
10. Except insofar as the context otherwise requires, words or expressions shall have the meaning assigned to them in this Notification and otherwise any word or expression shall have the same meaning as it has in the Act.
11. For the purpose of interpreting this Notification:
 - (i) headings and titles shall be disregarded; and

(ii) the Interpretation Act 1978 shall apply as if this Notification were an Act of Parliament.

12. The Schedule to this Notification shall form part of this Notification

A handwritten signature in black ink that reads "Gareth Davies". The signature is written in a cursive style and is positioned above a long, horizontal, slightly wavy line that serves as a decorative underline.

Gareth Davies

A person authorised by Ofcom under paragraph 18 of the Schedule to the Office of Communications Act 2002

2 May 2008

Schedule

Proposal for modifications to General Condition 14 on code of practice and Dispute Resolution which is set out in the Schedule to the Notification under section 48(1) of the Communications Act 2003 published by the Director General of Telecommunications on 22 July 2003

General Condition 14 on code of practice and Dispute Resolution shall be deleted and replaced in its entirety as follows:

14. CODES OF PRACTICE AND DISPUTE RESOLUTION

Basic Code of Practice regarding provision of Public Electronic Communications Services

14.1 The Communications Provider shall produce a basic code of practice for its Domestic and Small Business Customers which sets out at least where such customers may avail themselves of the information required to be published under Condition 10.2, as relevant to the provision of Public Electronic Communications Services. The code of practice shall be drafted in plain English which is easy to understand, and copies of the code of practice shall be provided on request and free of charge to any Domestic and Small Business Customer.

Codes of Practice for Premium Rate Services, NTS Calls¹⁷ and calls to 0870 numbers¹⁸

14.2 All Originating Communications Providers who provide Premium Rate Services, NTS calls or calls to 0870 numbers, as appropriate shall:

(a) establish and thereafter maintain a Code of Practice for the provision of information relating to Premium Rate Services for its Domestic and Small Business Customers, which conforms with the Guidelines set out in Annex 1 to this Condition;

(b) establish and thereafter maintain a Code of Practice for NTS Calls **and calls to 0870 numbers** for its Domestic and Small Business Customers, which conforms with the Guidelines set out in Annex 2 to this Condition; and

(c) comply with the provisions of the Code of Practice referred to at 14.2 (a) and (b) above.

14.3 The codes of practice referred to in Condition 14.2 shall be drafted in plain English which is easy to understand, and copies of the codes of practice shall be provided on request and free of charge to any Domestic and Small Business Customer.

Codes of Practice for Complaints^{19,20}

¹⁷ Providing citizens and consumers with improved information about Number Translation Services and Premium Rate Services, Statement and notification, 19 April 2006.

¹⁸ To be added

¹⁹ Protecting citizens and consumers from mis-selling of fixed-line telecommunications services, Notification, 13 April 2005.

14.4 Within one month of this Condition entering into force, the Communications Provider shall establish and thereafter maintain procedures that conform with any applicable Code of Practice for Complaints for the handling of complaints made by its Domestic and Small Business Customers in relation to the provision of Public Electronic Communications Services.

Codes of Practice for Sales and Marketing

14.5 Those Communications Providers who provide Fixed-line Telecommunications Services shall:

(a) establish and thereafter maintain a Code of Practice for Sales and Marketing for dealing with its Domestic and Small Business Customers, which conforms with the Guidelines set out in Annex 3 to this Condition; and

(b) comply with the provisions of the Code of Practice for Sales and Marketing established according to Condition 14.5(a) above.

14.6 The Code of Practice for Sales and Marketing shall be drafted in plain English which is easy to understand, and copies of it shall be provided on request and free of charge to any Domestic and Small Business Customer, and be prominently available on the Communications Provider's public website.

Dispute Resolution

14.7 The Communications Provider shall implement and comply with a Dispute Resolution Scheme, including any final decision of the Dispute Resolution Body made in accordance with that Scheme, for the resolution of disputes between the Communications Provider and its Domestic and Small Business Customers in relation to the provision of Public Electronic Communications Services.

Code on the provision by Service Providers of consumer protection information for the provision of Services²¹

14.8 Within two months of this Condition entering into force, all Service Providers shall:

(a) comply with the requirements set out in the Code at Annex 4.

14.9 In this Condition²²:

²⁰ Protecting consumers from mis-selling of telecommunications services, Notification, 22 May 2007 – deleting text in 14.5 and adding text in 14.6.

²¹ Regulation of VoIP Services, Notification, 29 March 2007, obligations in Annex 4 in force from 29 May 2007.

²² Protecting citizens and consumers from mis-selling of fixed-line telecommunications services, Notification, 13 April 2005 – applies to insertion of definitions (a), (d), (h), (j), (m) – (p), and (s) – (v), Providing citizens and consumers with improved information about Number Translation Services and Premium Rate Services, Statement and notification, 19 April 2006 - applies to insertion of definitions (i), (k) and (l), Regulation of VoIP Services, Notification, 29 March 2007 - applies to insertion of definitions (q) and (r), Protecting consumers from

(a) “Cable Network” means a hybrid fibre-coax Electronic Communications Network that uses a combination of optical fibres and coaxial cable;

(b) “Communications Provider” means a person who provides Public Electronic Communication Services to Domestic and Small Business Customers;

(c) “**Code of Practice for Complaints**” means a code of practice approved from time to time by the Director for the purpose of this Condition in accordance with sections 52 and 53 of the Act;

(d) “**Code of Practice for Sales and Marketing**” means a Code of Practice established in accordance with Condition 14.5(a);

(e) “**Dispute Resolution Body**” means the body of persons responsible for administering a relevant Dispute Resolution Scheme;

(f) “**Dispute Resolution Scheme**” means procedures approved or established from time to time by the Director for the purpose of this Condition in accordance with sections 52, 54 or 55 of the Act;

(g) “**Domestic and Small Business Customer**” means, in relation to a Communications Provider, a Customer of that Provider who is neither-

(i) himself a Communications Provider; nor

(ii) a person who is such a Customer in respect of an undertaking carried on by him for which more than ten individuals work (whether as employees or volunteers or otherwise);

(h) “**Fixed-line Telecommunications Services**” means Narrowband call and/or line rental services provided to Domestic and Small Business Customers;

(i) “**Guidelines**” mean the guidelines as set out in either Annex 1, 2 or 3 to this Condition;

(j) “**Narrowband**” means services provided over a traditional Public Telephone Network, excluding services provided over a Cable Network;

(k) “**NTS Calls**” means calls to numbers identified in the National Telephone Numbering Plan as Special Services operating on the 08 number range and including calls to 0500 freephone numbers, but excluding calls to 0844 04 numbers for Surftime internet access services, calls to 0808 99 numbers for flat rate internet access call origination and calls to 0870 numbers;

(l) “**Originating Communications Provider**” means any Communications Provider that provides call origination services to Domestic and Small Business Customers but excluding Payphone Service Providers;

(m) “**Publicly Available Telephone Services**” means a service available to the public for originating and receiving national and international calls and access to

misselling of telecommunications services, Notification, 22 May 2007 – applies to insertion of definitions (a) “Cable Network” and (j) “Narrowband”, modification of definition (h) “Fixed-line Telecommunications Services” and deletion of definitions (a) “Carrier Pre-selection”, (j) “Indirect Access”, (o) “Pre-selected Provider”, (p) “Relevant Period”, (s) “Subscriber”, (t) “Wholesale Calls”, (u) “Wholesale Inputs”, (v) “Wholesale Line Rental”.

Emergency Organisations through a number or numbers in a national or international telephone numbering plan, and in addition may, where relevant, include one or more of the following services: the provision of operator assistance services, Directory Enquiry Facilities, Directories, provision of Public Pay Telephones, provision of service under special terms, provision of specific facilities for End-Users with disabilities or with special social needs and/or the provision of non-geographic services;

(n) “**Public Telephone Network**” means an Electronic Communications Network which is used to provide Publicly Available Telephone Services; it supports the transfer between Network Termination Points of speech communications, and also other forms of communication, such as facsimile and data; (o) “Service” means a Public Electronic Communication Service, but only to the extent it comprises the conveyance of speech, music or sounds;

(p) “**Service Provider**” means a provider of a Service;

Annex 1 to General Condition 14

[Draft] Guidelines for codes of practice for handling customer enquiries and complaints about Premium Rate Services

1. Introduction and overview

- 1.1 The key objective of these Guidelines is to ensure that Originating Communications Providers provide their domestic and small business customers with readily accessible and accurate information relating to Premium Rate Service (“PRS”) calls;
- 1.2 These Guidelines seek to ensure that there is a clear framework within which Originating Communications Providers should be working, providing reassurance to customers and consumer representatives as to what constitutes good practice in the provision of information to customers in relation to complaints and enquiries about PRS calls.

2. Status of code

- 2.1 All Originating Communications Providers who provide PRS are required under General Condition 14.2 to establish a Code of Practice for PRS Calls for their domestic and small business customers (the “Code”), which conforms with these Guidelines, and to comply with the provisions of the Code.
- 2.2 Compliance with the Code does not guarantee compliance with any other legal requirements.
- 2.3 Non-compliance with the Code does not affect the validity of any contract between the company and the consumer, unless otherwise provided by law.

3. Customer information and advice

- 3.1 The Originating Communications Provider that is responsible for the retail billing of PRS Calls to the end-user shall publish the usage charges required to be published under General Condition 10.2(d)(ii) for **PRS NTS** Calls on its website.
- 3.2 Originating Communications Providers shall provide the following information and advice to their customers:
 - (i) information about the role of Originating Communications Providers in relation to:
 - a. general PRS enquiries and requests for number checks via the number-checker facilities provided by PhonepayPlus”) on the PhonepayPlus website (www.phonepayplus.org.uk);
 - b. dealing with formal complaints about abuses of service content, the PhonepayPlus Code of Practice and alleged scams.
- 3.3 In so doing Originating Communications Providers shall provide:

- (i) Information about the role and remit of PhonepayPlus in dealing with complaints and how to go about making a formal complaint to PhonepayPlus via the website, helpline or by in writing;
- (ii) information about the tariffs that apply on their network for calls to any PRS number range;
- (iii) basic information about how PRS services work including whether the call(s) in question were routed to service providers (SPs) hosted on the Originating Communications Provider's own network or on the network of a Terminating Communications Provider (TCP), together with a basic explanation of how revenue sharing with SPs operates;
- (iv) information about how consumers can bar access from their telephone to all or specific PRS number ranges for reasons of cost or content;
- (v) information about the purpose of the Telephone Preference Service ("TPS") and Fax Preference Service ("FPS") and how to go about registering with such services;
- (vi) information about how internet diallers operate and how consumers can identify and take action, such as improving their computer's security, to avoid further instances of these or similar scams;
- (vii) in the case of mobiles, in addition to the above, information about how premium rate SMS/MMS/WAP billed services operate and how consumers can unsubscribe from these;
- (viii) information on the role of the Telecoms Ombudsman schemes in resolving disputes concerning PRS calls;
- (ix) information on other options available to consumers for seeking refunds in cases of abuse or scams involving PRS calls;
- (x) contact details of individual SPs or the TCPs which host them; and where available – typically via PhonepayPlus' website at www.phonepayplus.org.uk;
- (xi) SPs customer service contact details where consumers can obtain further information about services provided on the PRS numbers found on their bills.

4. Processes and Procedures

- 4.1 Procedures should be in place for Originating Communications Providers' enquiry and helpdesk staff to know of the existence and content of the Code in order for them to be able respond to complaints and enquiries about PRS calls and to monitor their compliance with the Code.
- 4.2 There should be fully documented procedures in place to make customers and advice agencies aware of the existence and content of the Code, for example by referring to the Code in sales and marketing literature and by making the Code available through Originating Communications Providers' websites.
- 4.3 The Code shall be drafted in plain English, which is easy to understand, and copies of the Code are to be provided on request, and free of charge, to customers.

- 4.4 The Code shall include the name and contact details (including e-mail address) of the Originating Communications Provider's representative who is responsible for the Originating Communications Provider's compliance with the Code.

5. Terms used in these Guidelines

- 5.1 Terms used in these Guidelines shall have the same meaning, if any, as set out in Condition 14.

Annex 2 to General Condition 14

[Draft] guidelines for codes of practice for the publication of prices of calls to Number Translation Services and calls to 0870 numbers

1. Introduction and overview

- 1.1 The key objective of these Guidelines is to ensure that Originating Communications Providers provide their Domestic and Small Business Customers with readily accessible and accurate information relating to the usage charges for NTS Calls on their networks.
- 1.2 These Guidelines seek to ensure that there is a clear framework within which Originating Communications Providers should be operating in relation to the publication and provision of information to Domestic and Small Business Customers about usage charges for NTS Calls
- 2.1 All Originating Communications Providers who provide NTS Calls and calls to 0870 numbers are required under General Condition 14.2 to establish a Code of Practice for NTS Calls for their domestic and small business customers (the “Code”), which conforms with these Guidelines and to comply with the provisions of the Code.

2. Status of code

- 2.2 Compliance with the Code does not guarantee compliance with any legal requirement.
- 2.3 Non-compliance with the Code does not affect the validity of any contract between the company and the consumer, unless otherwise provided by law.

3. Customer information and advice

- 3.1 The Originating Communications Provider that is responsible for the retail billing of NTS Calls and for calls to 0870 numbers, where these are not charged at the Originating Communications Provider's geographic price including discounts and packages, to the end-user shall publish the usage charges required to be published under General Condition 10.2(d)(ii) for NTS Calls and calls to 0870 numbers on its website and in published price lists in a way that gives those charges the same prominence in terms of location and format given to charges for geographic calls, calls to mobiles and call packages, including bundles.
- 3.2 Without prejudice to the generality of paragraph 3.1, Originating Communications Providers to give prominence to the following, in particular:
 - (i) any usage charges that apply for calls to freephone numbers including details of when those charges will apply;

(ii) usage charges for NTS Calls which include variations by time of day. For example, 08xx calls are charged at x pence per minute or per call during weekday evenings inclusive of value added tax;

(iii) usage charges for calls to 0870 numbers which include variations by time of day. For example, 0870 calls are charged at x pence per minute or per call during weekday evenings inclusive of value added tax;

(iv) whether or not any special offers, discount schemes or call bundling arrangements apply to NTS Calls and calls to 0870 numbers, including details of which arrangements apply to which numbers; and additionally

4. Customer information and advice: advertising, promotional material and new customers

4.1 Originating Communications Providers shall publish in their advertising and promotional material which refer to call pricing, alongside maximum prices applying to NTS Calls and calls to 0870 numbers, a clear reference as to where on websites and published price lists the complete set of NTS Call charges, as specified in paragraph 3.2, can be found.

4.2 When a new customer signs up for the provider's service, Originating Communications Providers shall provide, alongside maximum prices applying to NTS Calls and calls to 0870 numbers in the relevant correspondence, a clear reference as to where on websites and published price lists the complete set of NTS and 0870 call charges, as specified in paragraph 3.2, can be found.

4.3 Wherever an Originating Communications Provider states a price for a call package or bundle which includes geographic calls the Originating Communications Provider must include a prominent statement indicating whether or not this price includes NTS Calls and calls to 0870 numbers.

4.4 Originating Communications Providers' should only describe calls to 0870 numbers as national calls or priced at the national rate in advertising, promotional material and consumer's retail bills, where their prices for calls to 0870 numbers are the same as their prices for geographic calls.

5. Processes and Procedures

5.1 Procedures should be in place for Originating Communications Providers' enquiry and helpdesk staff to know of the existence and content of the Code in order for them to be able respond to complaints and enquiries about NTS Calls and calls to 0870 numbers and to monitor their compliance with the Code.

5.2 There should be fully documented procedures in place to make customers and advice agencies aware of the existence and content of the Code, for example by referring to the Code in sales and marketing literature and by making the Code available through Originating Communications Providers' websites.

5.3 The Code shall be drafted in plain English, which is easy to understand, and copies of the Code are to be provided on request, and free of charge, to customers.

5.4 The Code shall include the name and contact details (including e-mail address) of the Originating Communications Provider's representative who is responsible.

6. Terms used in these Guidelines

6.1 Terms used in these Guidelines shall have the same meaning, if any, as set out in Condition 14.

Annex 8

Responding to this consultation

How to respond

- A8.1 Ofcom invites written views and comments on the issues raised in this document, to be made **by 5pm on 15 June 2008**.
- A8.2 Ofcom strongly prefers to receive responses using the online web form at <http://www.ofcom.org.uk/consult/condocs/0870calls/howtorespond/form> as this helps us to process the responses quickly and efficiently. We would also be grateful if you could assist us by completing a response cover sheet (see Annex 3), to indicate whether or not there are confidentiality issues. This response coversheet is incorporated into the online web form questionnaire.
- A8.3 For larger consultation responses - particularly those with supporting charts, tables or other data - please email NTS@OFCOM.ORG.UK attaching your response in Microsoft Word format, together with a consultation response coversheet.
- A8.4 Responses may alternatively be posted or faxed to the address below, marked with the title of the consultation.
- Geoff Brighton
Competition Group
Riverside House
2A Southwark Bridge Road
London SE1 9HA
- Fax: 020 7783 4109
- A8.5 Note that we do not need a hard copy in addition to an electronic version. Ofcom will acknowledge receipt of responses if they are submitted using the online web form but not otherwise.
- A8.6 It would be helpful if your response could include direct answers to the questions asked in this document, which are listed together at Annex 11. It would also help if you can explain why you hold your views and how Ofcom's proposals would impact on you.

Further information

- A8.7 If you want to discuss the issues and questions raised in this consultation, or need advice on the appropriate form of response, please contact Geoff Brighton on 020 7783 4175.

Confidentiality

- A8.8 We believe it is important for everyone interested in an issue to see the views expressed by consultation respondents. We will therefore usually publish all responses on our website, www.ofcom.org.uk, ideally on receipt. If you think your response should be kept confidential, can you please specify what part or whether all of your response should be kept confidential, and specify why. Please also place such parts in a separate annex.

- A8.9 If someone asks us to keep part or all of a response confidential, we will treat this request seriously and will try to respect this. But sometimes we will need to publish all responses, including those that are marked as confidential, in order to meet legal obligations.
- A8.10 Please also note that copyright and all other intellectual property in responses will be assumed to be licensed to Ofcom to use. Ofcom's approach on intellectual property rights is explained further on its website at <http://www.ofcom.org.uk/about/accoun/disclaimer/>

Next steps

- A8.11 Following the end of the consultation period, Ofcom intends to publish a statement later in 2007.
- A8.12 Please note that you can register to receive free mail Updates alerting you to the publications of relevant Ofcom documents. For more details please see: http://www.ofcom.org.uk/static/subscribe/select_list.htm

Ofcom's consultation processes

- A8.13 Ofcom seeks to ensure that responding to a consultation is easy as possible. For more information please see our consultation principles in Annex 2.
- A8.14 If you have any comments or suggestions on how Ofcom conducts its consultations, please call our consultation helpdesk on 020 7981 3003 or e-mail us at consult@ofcom.org.uk . We would particularly welcome thoughts on how Ofcom could more effectively seek the views of those groups or individuals, such as small businesses or particular types of residential consumers, who are less likely to give their opinions through a formal consultation.
- A8.15 If you would like to discuss these issues or Ofcom's consultation processes more generally you can alternatively contact Vicki Nash, Director Scotland, who is Ofcom's consultation champion:

Vicki Nash
Ofcom
Sutherland House
149 St. Vincent Street
Glasgow G2 5NW

Tel: 0141 229 7401
Fax: 0141 229 7433

Email vicki.nash@ofcom.org.uk

Annex 9

Ofcom's Consultation Principles

A9.1 Ofcom has published the following seven principles that it will follow for each public written consultation:

Before the consultation

A9.2 Where possible, we will hold informal talks with people and organisations before announcing a big consultation to find out whether we are thinking in the right direction. If we do not have enough time to do this, we will hold an open meeting to explain our proposals shortly after announcing the consultation.

During the consultation

A9.3 We will be clear about who we are consulting, why, on what questions and for how long.

A9.4 We will make the consultation document as short and simple as possible with a summary of no more than two pages. We will try to make it as easy as possible to give us a written response. If the consultation is complicated, we may provide a shortened version for smaller organisations or individuals who would otherwise not be able to spare the time to share their views.

A9.5 Under Ofcom's recently revised consultation guidelines we normally allow six weeks for responses to consultations on issues of general interest.

A9.6 There will be a person within Ofcom who will be in charge of making sure we follow our own guidelines and reach out to the largest number of people and organizations interested in the outcome of our decisions. This individual (who we call the consultation champion) will also be the main person to contact with views on the way we run our consultations.

A9.7 If we are not able to follow one of these principles, we will explain why. This may be because a particular issue is urgent. If we need to reduce the amount of time we have set aside for a consultation, we will let those concerned know beforehand that this is a 'red flag consultation' which needs their urgent attention.

After the consultation

A9.8 We will look at each response carefully and with an open mind. We will give reasons for our decisions and will give an account of how the views of those concerned helped shape those decisions.

Annex 10

Consultation response cover sheet

- A10.1 In the interests of transparency and good regulatory practice, we will publish all consultation responses in full on our website, www.ofcom.org.uk.
- A10.2 We have produced a coversheet for responses (see below) and would be very grateful if you could send one with your response (this is incorporated into the online web form if you respond in this way). This will speed up our processing of responses, and help to maintain confidentiality where appropriate.
- A10.3 The quality of consultation can be enhanced by publishing responses before the consultation period closes. In particular, this can help those individuals and organisations with limited resources or familiarity with the issues to respond in a more informed way. Therefore Ofcom would encourage respondents to complete their coversheet in a way that allows Ofcom to publish their responses upon receipt, rather than waiting until the consultation period has ended.
- A10.4 We strongly prefer to receive responses via the online web form which incorporates the coversheet. If you are responding via email, post or fax you can download an electronic copy of this coversheet in Word or RTF format from the 'Consultations' section of our website at www.ofcom.org.uk/consult/.
- A10.5 Please put any parts of your response you consider should be kept confidential in a separate annex to your response and include your reasons why this part of your response should not be published. This can include information such as your personal background and experience. If you want your name, address, other contact details, or job title to remain confidential, please provide them in your cover sheet only, so that we do not have to edit your response.

Cover sheet for response to an Ofcom consultation

BASIC DETAILS

Consultation title:

To (Ofcom contact):

Name of respondent:

Representing (self or organisation/s):

Address (if not received by email):

CONFIDENTIALITY

Please tick below what part of your response you consider is confidential, giving your reasons why

Nothing	<input type="checkbox"/>	Name/contact details/job title	<input type="checkbox"/>
Whole response	<input type="checkbox"/>	Organisation	<input type="checkbox"/>
Part of the response	<input type="checkbox"/>	If there is no separate annex, which parts?	

If you want part of your response, your name or your organisation not to be published, can Ofcom still publish a reference to the contents of your response (including, for any confidential parts, a general summary that does not disclose the specific information or enable you to be identified)?

DECLARATION

I confirm that the correspondence supplied with this cover sheet is a formal consultation response that Ofcom can publish. However, in supplying this response, I understand that Ofcom may need to publish all responses, including those which are marked as confidential, in order to meet legal obligations. If I have sent my response by email, Ofcom can disregard any standard e-mail text about not disclosing email contents and attachments.

Ofcom seeks to publish responses on receipt. If your response is non-confidential (in whole or in part), and you would prefer us to publish your response only once the consultation has ended, please tick here.

Name

Signed (if hard copy)

Annex 11

Consultation Questions

Question 1: Do you have any comments on the pricing transparency options considered and Ofcom's proposal to implement Option B?

Question 2: Do you have any comments on the draft notification in Annex 3 to make a change to the SMP Condition?

Question 3: Do you have any comments on the draft notification in Annex 4 of a proposed amendment to General Condition 17 to make the proposed designation for 0870 calls applicable to all OCPs?

Question 4: Do you have any comments on the draft notification in Annex 5 of a proposed amendment to the National Telephone Numbering Plan introducing the revised designation for 0870 calls?

Question 5: Do you have any comments on the draft notification in Annex 6 of a proposed amendment to numbering application form S8 to align it with the revised designation for 0870 calls in the National Telephone Numbering Plan?

Question 6: Do you have any comments on the draft notification in Annex 7 of a proposed amendment to General Condition 14?

Question 7: Do you have any further comments?

Annex 12

Glossary

Communications Act 2003 ('the Act'): This established Ofcom, set out its duties, and the powers which Ofcom has to discharge those duties.

Communications Provider ('CP'): a Person who provides an Electronic Communications Network or Electronic Communications Service.

Geographic Number: A telephone number from the Plan where part of its digit structure contains geographic significance used for routing calls to the physical location of the network termination point of the subscriber to whom the number has been assigned.

National Telephone Numbering Plan ('the Plan'): a document published by Ofcom setting out telephone numbers available for allocation and restrictions on the Adoption and other users of those numbers as provided for in section 56(3) of the Act.

Non-geographic number: Numbers which are used to identify a type of service rather than a geographical location. These services include NTS and PRS numbers. Mobile and Personal numbers are also non geographic numbers.

NTS: Number Translation Service, is a telephone service using a number in the 08 and 09 range but excluding the 0844 04 range used for Surfetime internet access services and the 0808 99 range used for Flat Rate Internet Access Call Origination Services. At a technical level, the NTS number dialled is translated by the network to a geographic number to deliver the call to its destination. NTS are also subject to Condition AA11 and therefore support revenue sharing. This consultation relates to Ofcom's policy review of 08 numbers so we use NTS to mean 08 numbers in this document though strictly it also includes 09 numbers.

NTS Condition: The SMP condition that provides regulatory support for revenue sharing for NTS calls. The NTS Condition is Condition AA11 as set out in Part 2 of Schedule 1 to the Notification in Annex A of the fixed narrowband, wholesale exchange line, call origination, conveyance and transit markets published by the Director General Of Telecommunications on 28 November 2003.

PRS: Premium Rate Service. A particular type of Number Translation Service, currently provided on 09 numbers. Calls are generally charged above 10p per minute from a BT line (e.g., above rates for calls to 08 numbers).

PSTN: Public Switched Telephone Network is an electronic communications network comprised of the interconnection of the world's circuit-switched public telephone networks.

Ranges [Sub]: A number range is a set of contiguous numbers of a specified or unspecified size. For instance 08 is the designated range for premium rate numbers, and 0845 and 0870 are sub-ranges that can currently be used for services which may be receiving a share of call revenues.

Significant Market Power (SMP): The Significant Market Power test is set out in European Directives. It is used by National Regulatory Authorities (NRAs) such as Ofcom to identify those communications providers who must meet additional obligations under the relevant Directive.