



Wholesale Mobile Call Termination Review (second consultation)

1) INTRODUCTION

FleXtel welcomes this consultation, if only to be given the opportunity to severely criticise it.

Although, no doubt an eminent piece of academic work, this consultation is both complex and intractable, and largely irrelevant, unlike Ofcom's recent **Review of Non Geographic calls services**.

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

1. **A lengthy document** – being both challenging to understand and inaccessible to most readers. This written tome, including the 15 annexes and 5 complex spreadsheets, is **over 400 pages long**, much of which includes complex and in some cases suspect cost modelling.
2. **Backward looking** – since it attempts to continue to deal with the symptoms of opaque retail call pricing information and the resulting market failure.
3. **Narrow scope** and thereby ignores the wider issues that make this micro-regulatory approach wholly unnecessary.

We therefore suggest that:

1. **This consultation is further evidence of the failure of Ofcom and the EU Commission to regulate the Telecoms Market in a proper and efficient manner.**
2. **Ofcom and the EU should address the underlying cause of market failure, rather than the symptoms and introduce clear, accurate and accessible retail pricing information at the point of sale (i.e. at the time of purchasing [making] a call).**

Our input to Ofcom is very similar to that for the recent NG Call Services cited above. We make no apology for this. The symptom may be different, but the cause is the same. So, we hope that our repeated input will help Ofcom, an organisation which appears to silo-work, within a narrow scope, to see the big-picture and perhaps deliver a better-targeted outcome.

In simple terms:

“Ofcom and the EU Commission need to wake-up and smell the coffee”.

2) FLEXTEL'S CREDENTIALS

FleXtel is an established provider of 08xx and 070 services. FleXtel operates an ethical business with exceptionally low levels of fraud and consumer complaint. It was founded by William Goodall, the former *Head of Telecoms*, for Vodafone (1983-1989) and who, during the period 1990-1998, worked extensively as a senior management consultant. (Advising top level management teams in the Nordic Community, EU and Eastern Europe block, including former Soviet Union countries, in order to establish fixed network interconnect and/or improving commercial terms for the deployment of fledgling GSM mobile networks).

In 1993, FleXtel founded and pioneered the UK 070 personal numbering service.

In 2006, FleXtel prepared to launch a mobile service, but suspended its plans in later 2006, after discovering in August that T-mobile had disconnected FleXtel's number ranges without notice, along with many other small mobile operators, including BT fusion. Later O2 appeared to copy T-mobile's unilateral action.

FleXtel is still awaiting the regulatory regime to be adjusted to deliver an acceptable business risk within the mobile market. In particular an extension of the end-end obligation to all OCP's would be welcomed. Alternatively, at least those OCPs, with more than 10% market share, if Ofcom deem this more proportionate.

FleXtel has engaged with Ofcom extensively since 2004, for a synopsis see:

- <http://www.flextel.com/ofcom>

For a list of FleXtel's inputs to Ofcom see:

- <http://bit.ly/flextel-ofcom-input>

FleXtel has long argued that the market does not exhibit proper competition, in the area of retail pricing for call origination, due to a lack of price transparency. We also have argued that Call Price Labelling (CPL) or similar measures need to be introduced and that Ofcom continues to deal only tactically with the symptoms of market failure resulting from price opacity. For details see:

- <http://www.flextel.com/ofcom/call-price-labelling.html>

For the above reasons FleXtel feels uniquely positioned to comment on not only the NGN market, but also on its crosscutting relationship with the mobile call origination market.

In this response we offer a potentially simpler, holistic solution to protect Consumers, clarify and simplify Ofcom's role and deliver regulatory certainty (*and thereby market model certainty*) to Carrier Providers (CPs).

Our proffered solution can be made to work in fair and equitable manner for both types of CP i.e. Origination CPs (*OCPs are those networks from which calls are dialled*) and Terminating CPs (*TCPs are those networks that deliver calls to the end user. e.g. by ringing mobiles, phones, faxes or data modems*). A CP may be both an OCP and a TCP e.g. BT. FleXtel is a TCP only network, at this time.

This solution delivers increased levels of consumer satisfaction, services innovation and inward investment and a reduction of costly inter-CP disputes, into which Ofcom is regularly drawn.

3) BACKGROUND

In 1984 retail tariffs, as seen by the consumer, were high, but very, very simple. It was easy for the consumer to check the price of a call:

- 1) Ask the BT operator, by making a free call to 100
- 2) Look in the front of the BT Phone book.

By the 1990s things were getting much more complicated, but each CP was licensed by the Department and Trade and Industry agency, Oftel. Oftel was able to control quality by demanding compliance or risk loss of licence. For example when Vodafone had the lucrative concept of charging calls per whole minute (*or part thereof*). Oftel decided this was bad for consumers, as it was deemed misleading and therefore banned it. Oftel insisted that all mobile originated calls be billed on a per second basis. This was a reasonable action, given the lack clear pricing information prevalent in the market by that time.

In 2003, as a result of EU regulations, all licences were effectively torn-up and Oftel was disbanded. A small subset of the Oftel Telecoms expertise was transferred to Ofcom.

The new rules meant that any “*cowboy outfit*” with (for example) PC based telecoms equipment could operate as a UK telecom CP. However, for a while, BT acted as a form of unofficial police force to audit the quality of interconnected CPs. This is no longer the case and a number of call aggregators have appeared in the market, in competition with BT.

Initially BT’s call tariffs were still regulated. This acted as an informal pricing anchor on the market. Now this is no longer the case. Instead, Ofcom decided (*wrongly in our opinion*) that there was adequate price competition in the market and removed these shackles from BT.

BT?

On the face of it BT’s current retail pricing looks quite simple and consumer friendly:

- <http://www.bt.com/tariffs>

But to really know what you are paying you must look here:

- <http://bit.ly/BT-general-Tariff> - 36 pages

...and depending on the dialled number here:

- <http://bit.ly/BT-special-Tariff> - 50 pages

However BT by comparison with some mobile OCPs this is all rather simple:

T-mobile?

On the face of it T-mobile retail pricing also looks quite simple and user friendly:

- <http://bit.ly/T-mobile-Priceplans>

Just choose your package and you are away.

However, read the notes and you open a Pandora’s box for special number pricing that is even more complex than BT...

- <http://www.t-mobile.co.uk/services/uk/08-09/>

Furthermore the full detail is extremely challenging to most consumers:

- <http://bit.ly/T-mobile-monthly> – 150 pages
- <http://bit.ly/T-mobile-payg> – 161 pages

Surely this unworkable situation is ridiculous and makes a mockery of Ofcom rules. In fact it is wholly unnecessary, so why does T-mobile do it? This should trouble Ofcom.

The net result is that real price competition is a myth, because consumers cannot make informed choices. The current regime of retail pricing for calls is an utter mess and the consumer has no reasonable access to call pricing prior to making (purchasing) a call.

This constructive opacity of pricing means the consumer cannot accurately compare call prices, so that the Telecom Markets in the UK and across the EU are falling into disrepute.

Price Opacity leads to Market Failure

Without proper downward retail pricing pressure, there can be no effective downward pressure on wholesale or roaming pricing. (This applies to all TCPs, mobile or fixed).

The net result is that the EU and Ofcom have had to step-in with artificial price controls, based on questionable cost models. Since such price-capping seems to be consumer complaint/media driven, there can be no regulatory certainty for long-term investors and all business models become suspect, with an increased financial risk.

4) EVIDENCE OF UK MARKET FAILURE

1) BT Retail Tariff abuses?

As a direct result of Ofcom relaxing rules, BT now charges on a per whole minutes (*or part thereof*) basis - a practice formerly banned by Oftel. BT's call set-up fee has risen from 5 pence to 9.9 pence, a rise of nearly 200%, since Ofcom unshackled BT.

BT also **rounds up** call prices to the nearest whole penny and then **rounds up** any applied VAT. This is very disturbing and should also trouble Ofcom.

Tariff Guide for Residential Customers
Extract from page 5 of 36

1) How we round the Price of a Call
Call Charge Rounding - VAT Exclusive Billing (except for, Light User Scheme, and BT Standard Rate Customers).

Each call charge will be rounded up to a whole penny, except for call charges to non-Mobile 07X numbers, which will be rounded up to a tenth of a penny. Fixed Fee prices where duration charges do not apply will be rounded up to a tenth of a penny.

The total call bill will then be **rounded up to the next whole penny** before VAT is added. VAT will be calculated **up to the next whole penny.**

BT retail pricing for calls appears to be designed to bamboozle consumers and so designed to rip-off consumers, by stealth. This activity may be in breach of the Unfair Trading Regulations 2008 and Ofcom should ask BT to justify this approach.

- <http://bit.ly/Unfair-Commercial-Practices-Directive> (sections 3.3b & 4g)

2) EU interferes with markets by enforcing price controls:

"End of 'roaming rip-off': cost of texting, calling, surfing the web abroad to plummet from today thanks to EU action" was the spin, but its action is an open admission of free market failure by the EU Commission and EU Parliament.

- <http://bit.ly/EU-price-caps>

3) Ofcom has tinkered with 0870 wholesale rates

This was a mis-targeted tactical defence by Ofcom, to try and reduce Consumer outrage at 0870 prices. It has failed. Mobile OCPs are still charging similar rates. TCPs suffer damage to fair and reasonable business models. BT was the key advocate and beneficiary.

"Which" is still critical of Ofcom and the Say-no-to-0870 campaign continues.

- <http://bit.ly/Which-0870-failure>
- <http://saynoto0870.com/>

4) Ofcom is now proposing to further tinker with Mobile termination rates.

This is tantamount to an admission of failure of both its core policy and the free market by Ofcom. It will push up mobile call prices even further, to the detriment of vulnerable citizens, the poor and the unemployed, who typically need to use prepaid mobiles. See:

- <http://bit.ly/Service-transformation-Varney-report>

So what has all this to do with this consultation?Everything.

Unless Ofcom considers the context of its regulation, it is doomed to “*fiddle while Rome burns*”. All that will result is further consumer complaint, market failure and suppression of commercial investment and technological innovation within the UK. Meanwhile Ofcom will continue to become mired in increasingly complex and costly disputes.

So Ofcom, once again, FleXtel’s advice to you is “if you are in a hole you should stop digging”.

5) THE WAY FORWARD

1. **Make Retail Price Competition Work. How?**

- a. Introduce Call Price Labelling (CPL) to deliver full retail price competition
or
- b. In lieu of CPL, enforce (e.g. via PhonepayPlus) a retail price cap limit set at:
 - i. 25% max (say) above the wholesale price of the call and
 - ii. A fixed ceiling of 15p/min for non-09x calls.

2. **Outlaw wholesale TCP prices being based on Retail OCP pricing.**

It is unworkable, does not obey the free market supply-chain model and will continue to lead to destructive costly disputes.

3. **Permit the Freedom for all TCPs (*including mobiles*) to set their own wholesale termination prices at fair and reasonable prices.**

Based on termination costs plus reasonable margin of 25% max (say). Subject to:

- a. **A wholesale price cap** of 10p/min charges outside the 09x range. (*net of VAT to avoid VAT changes disturbing this threshold*).
- b. **A ban (or at least a cap) on all per call wholesale charges** outside the 09x range. Such as used in the pager 076 market today and a source of increasing scam activity by rogue CPs.

4. **Protect smaller CPs from being bullied by large CPs How?**

Simply extend End-End (*must carry*) obligations, as per the current regime extended from BT to all OCP’s (*including mobile suppliers*) regardless of size, but subject to the performance of reasonable due diligence processes.

However, to avoid specious disputes by large OCPs, remove the “fair and reasonable terms” condition, as this is covered in item 3 above.

This would avoid a repeat of the situation where large OCPs like T-mobile and O2 disconnected small mobile CPs, without any notice or reasonable justification.

5. **All CPs to perform due diligence on all revenue sharing.**

Where funds accrued from call charges are paid to a legal entity (*including CPs*) as a network payment or service commission. (*To avoid disproportionate overheads, this to be required only before payment of first invoice*). Such funds shall be legally withheld, where due diligence processes are not completed satisfactorily due to inaction by the payee.

FleXtel now turns to Ofcom's formal questions.

These will be answered within the context developed in the foregoing sections:

Question 3.1: Do you agree with our views on whether and when new MCPs should form separate markets? Are there any factors we have not considered which should inform this view?

No. We see this aspect as irrelevant and an artefact created by Ofcom and the EU to support a house of cards.

Question 3.2: Are there any other types of providers we should also consider?

Yes, you should have consistent policy for all TCP's in the market. Ofcom is micro-regulating as usual. There is nothing special about MCP. Ofcom seems unready for convergence and is painting itself into a regulatory corner. See introductory section for a long-term holistic solution.

Question 3.3: Do you agree with our views on the specific call types that should be included in the market?

No. We see this aspect as irrelevant and an artefact created by Ofcom and the EU to support a house of cards. See introductory section for a long-term holistic solution.

Are there any factors we have not considered which should inform this view, resulting in call types other than those identified being either included or excluded from the market?

N/A. See introductory section.

Question 3.4: Do you agree with our view of that the geographic market for each of our proposed markets should be the area of the UK within which the MCP provides and can set a charge for mobile voice call termination services?

No. We see this aspect as irrelevant and an artefact created by Ofcom and the EU to support a house of cards. See introductory section for a long-term holistic solution.

Question 4.1: Do you agree with our view? Or are there other developments, not considered elsewhere in this consultation document, for potentially removing the underlying causes of SMP?

No. See introductory section for a long-term holistic solution.

Question 4.2: Do stakeholders have any comments on the analysis set out in this section?

It's far too complex and will never survive the test of time.

Question 4.3: Are there any other providers with SMP that we have not identified?

N/A. See introductory section.

Question 4.4: Do stakeholders agree with our proposed SMP assessment for the period until 2014/15?

N/A. See introductory section.

Question 5.1: Do stakeholders agree with the identified harm to consumers of excessive termination rates in the period 2011 to 2015?

N/A. See introductory section.

The harm is excessive retail rates not wholesale termination rates. Ofcom's 0870 failed experiment proves this. Mobile charging of 0800 was prior, long-term evidence of the irrelevance of high elasticity of wholesale termination rate versus retail pricing and proves them as an useless and tools that has lead to severely mis-targeted disproportionate regulation by Ofcom.

Question 5.2: Do stakeholders consider there to be any other forms of relevant consumer harm that we have not identified?

Yes, Ofcom has severely mis-judged the impact on the Vulnerable citizen, especially the homeless.

Question 7.1: do stakeholders agree with Ofcom's view regarding the need for transparency in MCT charges?

Yes, but what about retail pricing? Please address this properly, not GC14.2 fig leaves.

Question 7.2: Do stakeholders agree with our preliminary view on application of a condition requiring network access to be provided on F&R terms?

No. Further evidence this whole approach is unworkable. See introductory section.

Question 7.3: what are your views on the need for an ex ante undue-discrimination condition for the period of the next review?

No. Further evidence this whole approach is unworkable. See introductory section.

Question 7.4: Do stakeholders believe that there are any circumstances or situations where the UK differs from other EU markets to the extent that would support a departure from following the EC Recommendation?

No. This seems desperate. See introductory section.

Question 7.5: do you agree with Ofcom's proposals for its preferred set of remedies for the provision of MCT services?

No. See introductory section.

Question 9.1: Do you agree that a four-year period for the SMP remedies is appropriate?

No. See introductory section.

Question 9.2: Do you agree with our proposed modelling approach, as discussed in this section, the supporting annexes and the actual model? If not, please discuss the specific proposals you disagree with.

It's far too complex and will never survive the test of time.

Question 9.3: What is your view of the harm caused by flip-flopping? Please provide evidence to support your response.

High. It is obvious that this will lead to disruption of OCP retail tariff viability. Increased risk of AIT and arbitrage loopholes. Impact on viability of NTS routing. Instability of business models within telecom markets. Further details on request.

Question 9.4: Do you agree with our preferred option for resolving the issue of flip-flopping – i.e. charge changes restricted to the first day of each quarter and a 20% cap on individual time of day rate increases? If not, why not? Which is your preferred option and why? You may want to include discussion of the following in your response: the specifics of each option, e.g. the 20% cap in our preferred option, the effectiveness of the options in addressing the objectives, the practicalities of the options for you, any disadvantages/adverse effects of these options for you, and any other information or views that you feel are relevant to preventing flip-flopping.

Yes. This has value, but needs simplification. The one worthwhile aspect embedded in Ofcom's tome.

Question 9.5: Are there other, more proportionate solutions that we should consider?

Yes see introductory section.

Question 9.6: Is it clear which types of calls are included in, and which types are excluded from, the new charge control and in turn the compliance calculation? If not, which call types do you want clarified?

It's far too complex and will never survive the test of time.

Question 9.7: Is Ofcom taking the right steps to monitor compliance?

No, it hasn't the resources and is too expensive to do properly.

Question 9.8: Are MCPs able to provide the information required to demonstrate compliance and for Ofcom to monitor compliance?

No. The whole process is too complex.

Question 9.9: Do you agree with the conclusions of our distributional impact assessment?

No. Ofcom has severely underestimated the complexity of its proposals. This is far too academic and shows a material lack of operational experience within the Regulator.

Question 9.10: Do you agree with our EIA, that reducing MTRs will have no significant impact on any specific identifiable group? If you disagree with this statement we would welcome any evidence you hold showing why this statement might be incorrect.

No.

Ofcom is blinded by a level playing field, but the whole field is being bulldozed.

1) **FleXtel believes that Ofcom has made a gross error of judgement.** Vulnerable citizens and the poor will suffer severe detriment if termination rates are pushed too low. The cost of prepaid mobile handset and calls will rise and incoming calls may need to be charged to the mobile user. For evidence Ofcom should review the relevant USA models and the defunct RadioComm 2000 model in France (closed 2000). The GSM debate about calling party pays versus mobile party pays, circa 1986-89 should also be accessed by Ofcom. CPP won over MPP for very sound economic reasons that benefited the consumer.

2) This whole approach is suspect as it is advantageous to the business models of dominant fixed line providers, such as BT, who wish to appear to offer cheap calls, whilst charging a repeat fee for line connection.

Ofcom should remind itself - A fixed line is not viable for the homeless – this is self-evident.
