



Changes to 0870

Confirmation of changes to 0870 calls and modifications to the supporting regulations

Statement

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Section 1

Summary

Overview

- 1.1 The purpose of this Statement is to implement some important changes to the regulation of calls to 0870 numbers. The 0870 number range has been a source of significant and increasing concern for some consumers for several years. There has been a considerable amount of confusion amongst consumers over the cost of calls to 0870 numbers, compounded by the misleading advertising of these calls as being 'national rate' calls when in fact they have often been considerably more expensive than calls to geographic numbers (01 and 02 numbers). There has also been a growth in consumer complaints about 0870 calls and signs of an increase in consumer scams on 087 numbers, which threaten further to undermine consumer confidence in the range.
- 1.2 Ofcom is committed to addressing these issues and we are therefore proceeding with proposals designed to improve pricing transparency and reduce the potential for scams on the 0870 range. The changes are designed to facilitate a restoration of the linkage between the pricing of 0870 calls and calls to geographic numbers. We believe that Communications Providers ('CPs') themselves bear the primary responsibility for ensuring that consumers have a sufficient understanding of call prices to enable them to make rational decisions about using them. We will therefore look to CPs, working within the new regulations, to take steps to secure an improvement in consumer understanding of 0870 pricing. We will actively monitor the effectiveness of the new framework and will consider further action if required.

Our consultation proposals

- 1.3 In April 2006, we concluded a major review of our policy on 08 numbers 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 resolve¹.
- 1.4 Our proposals included a major change to the way 0870 calls are charged designed to improve price transparency and consumer protection for 0870 calls. We proposed bringing charges for 0870 calls into line with 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 decided not to do this 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 As this change would be disruptive for the businesses that use 0870 numbers we gave extended notice of this change in order to give them time to prepare.
- 1.6 In May 2008, we published a further consultation² (the 'Consultation') proposing a change to our proposals after it had become apparent that pricing announcements might interfere with some automated equipment that use 0870 numbers. Instead of inserting free-to-caller announcements at the start of each call to an 0870 number,

¹ NTS: A Way Forward, published 19 April 2006.

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

² Changes to 0870, published 2 May 2008. <http://www.ofcom.org.uk/consult/condocs/0870calls/>

the new requirements build on the present obligations on CPs contained in General Condition 14 in relation to the publication and promotion of NTS call prices.

- 1.7 Under the new requirements CPs will be obliged to include a prominent statement in advertising/promotional material whether or not 0870 calls are included in inclusive packages and bundles. One other new requirement is that CPs will only be permitted to refer to 0870 calls as 'national rate' in their advertising and promotional material and retail bills where their 0870 and national geographic prices are the same as for geographic calls.

Consultation Responses

- 1.8 We received 48 responses to our consultation: 26 from consumers, 14 from CPs and related organisations and 8 from businesses that offer services on 0870 numbers ('Service Providers' or 'SPs') and related organisations.
- 1.9 Stakeholders' views on our proposals were polarised in common with responses received to Ofcom's earlier consultations on 08 numbers. In their responses, consumers generally argued that the proposals did not go far enough to address their concerns about 08 numbers, which were often linked to a belief that revenue sharing should not be permitted at all for some types of services. In contrast, CPs and those involved in the provision of services on 0870 numbers contended that our proposals went too far, that they were either unnecessary or too disruptive, and that they could prejudice the viability of many services.
- 1.10 Most consumer respondents wanted Ofcom to implement additional measures to reduce the price of calls to 0870 numbers and were therefore in favour of the alternative option considered by Ofcom in the Consultation under which all CPs would be required to charge 0870 calls at geographic rates. Although consumer respondents generally regarded the proposals as a 'step in the right direction', some thought they would not be effective at improving pricing transparency since communications providers would not be compelled to charge 0870 calls at geographic rates.
- 1.11 Although there was some support amongst CP and SP respondents, most opposed our proposals arguing that the cessation of revenue sharing (as a result of the proposals) would be very disruptive for SPs and CPs as it would cause many SPs to move their services to other number ranges that support revenue sharing. CPs and SPs doubted that the proposals would be effective at improving pricing transparency particularly as they expected a significant proportion of CPs to charge 0870 calls above geographic rates.
- 1.12 Several CPs were also concerned about the impact on competition in the market for 0870 call termination and hosting (i.e. the services provided by CPs to SPs) of removing 0870 calls from BT's obligation to originate 0870 calls on regulated terms. They thought that whilst BT continued to have Significant Market Power in wholesale call origination, BT should continue to be subject to this obligation to prevent it from competing unfairly in the 0870 call termination and hosting market.

Interconnection charges dispute

- 1.13 Under the new arrangements (i.e. following implementation of Ofcom's proposals for 0870 calls) the level of call termination charges that BT would pay other CPs for terminating 0870 calls on their networks is subject to commercial negotiation. These

charges are the subject of a dispute between BT and other CPs which had been referred to Ofcom for consideration³ ('the 0870 Dispute').

- 1.14 Ofcom suspended its work on the 0870 Dispute on 18 December 2007 pending judgement from the Competition Appeals Tribunal ('CAT') on an appeal in relation to Ofcom's determination of another dispute, which raised issues relevant to the determination of the 0870 Dispute ('the TRD appeals')⁴.
- 1.15 In the light of the stakeholder comments and the linkage with the 0870 Dispute, we decided to defer finalising our conclusions on our consultation proposals until we were in a position to issue a revised draft determination of the 0870 Dispute. This was in acknowledgement of comments made by a number of respondents to the May 2008 Consultation who felt unable to judge the likely success of the policy objectives without knowing the level of the revised 0870 termination payments.
- 1.16 Work on the 0870 Dispute recommenced following publication of the CAT's final judgment in the TRD appeals on 15 August 2008 and the draft determination was published on 23 April 2009⁵.

Impact assessment

- 1.17 In view of the delay we have updated our impact assessment and have also made several changes in response to stakeholder comments. These changes include new estimates of the cost of updating vehicle signage that were previously treated qualitatively, a revision to our estimate of the benefits of improved pricing transparency and other more minor adjustments (such as inflation adjustments).
- 1.18 The reduction in termination payments and the likely cessation of revenue sharing as a result of our proposals will lead a significant proportion of SPs to move their service to other number ranges such as 0844 and 0871 that continue to support revenue sharing. We consider that the bulk of this migration has already occurred in anticipation of the implementation of our proposals (which as discussed above have been delayed beyond the original implementation date). We anticipate there may be a limited amount of further migration following publication of this statement.
- 1.19 Our final assessment of these proposals is that there is a strong case for confirming our proposals as even at the upper end of our estimates for further migration the measures would be likely to deliver a net benefit within a few years.

Implementing our proposals

- 1.20 Following consideration of the consultation responses, the revisions to our impact assessment and in the light of our provisional findings in the draft determination of the 0870 Dispute, we have decided to implement our proposals.
- 1.21 We think the changes are in the interests of consumers and, by improving pricing transparency and consumer confidence in 0870 numbers they will ultimately benefit CPs and SPs as well.

³ http://www.ofcom.org.uk/bulletins/comp_bull_index/comp_bull_ocases/open_all/cw_963/

⁴ CAT's judgments dated, respectively, 20 May 2008 and 15 August 2008 in relation to 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 in relation to fixed to mobile and mobile to mobile termination, [2008] CAT 12 and [2008] CAT 19 at <http://www.catribunal.org.uk/238/Judgments.html>

⁵ <http://www.ofcom.org.uk/consult/condocs/resolve0870calls/>

- 1.22 Complaints received by Ofcom from consumers support our view that there is a rising level of consumer concern about 08 numbers generally and 087 numbers in particular. Further given the disparity between 0870 call charges and geographic call charges and the persistence of misleading advertising involving the use of the 'national rate' term we think that retaining the current arrangements would be likely to lead to a continued decline in consumer confidence in the range. We are therefore determined that price transparency and consumer price awareness should be improved for 0870 calls.
- 1.23 In our view, there is a good chance that the reduction in termination payments resulting from our proposals will lead a significant proportion of 0870 calls to be charged at geographic rates and that this, together with the new price publication requirements in General Condition 14, will lead to a marked improvement in pricing transparency. This should contribute to an improvement in consumer confidence in the 0870 range. Consumers should also benefit from lower prices for 0870 calls.
- 1.24 We note, in this context, BT's decision to incorporate 0870 and 0845 calls in its retail call packages from 16 January 2009 in anticipation of the implementation of these 0870 measures. At least one other major operator has since responded with a similar policy and we expect the competitive pressure will encourage other CPs to follow suit. Furthermore, the termination rates proposed in our draft determination of the 0870 Dispute have been set at a level to enable BT and others to continue with this pricing strategy.
- 1.25 The measures will also address industry concerns about revenue uncertainty stemming from the linkage between termination payments and BT's retail charges under the current arrangements and in time should lead to a reduction in interconnection disputes.
- 1.26 We also consider that adopting these proposals in the first instance, rather than compelling CPs to charge 0870 calls at geographic rates, is better aligned with our duty to adopt the least intrusive method of achieving our regulatory objectives.
- 1.27 We plan to carry out market research to assess the impact of these measures on consumer pricing awareness. If it becomes apparent after 12 months that the new rules have not had a significant effect on consumer price awareness, our intention is to return to this issue and consider what other measures may be appropriate.

Changes to the relevant regulatory provisions

- 1.28 In the light of stakeholder comments we have made the following modifications to our proposals:
- redrafted the new designation for 0870 calls in the National Telephone Numbering Plan to more closely align it with that of 03 numbers for clarity;
 - made a minor revision to the wording of the modification to General Condition 17;
 - revised the text in Annex 2 of General Condition 14 so that the requirement to state whether the price of call bundles includes NTS calls is removed. (The obligation in relation to 0870 calls remains); and
 - made revisions to the text of paragraphs 3.1, 3.2(iii) and 4.3 of Annex 2 of General Condition 14 to communicate the revisions more clearly.

- This document contains:
 - a summary of the consultation responses and our comments;
 - a summary of our Impact Assessment and details the changes that we have made in response to stakeholders comments;
 - a review of the relevant legal tests for our proposals;
 - notifications of modifications to relevant regulatory rules, in particular:
 - a modification to the NTS SMP Condition (Condition AA11) in Schedule 1 of Annex A of the “Review of the fixed narrowband wholesale exchange line, call origination, conveyance and transit markets” to remove 0870 calls from the scope of the condition thereby removing the regulatory support for revenue sharing;
 - a modification to the designation for 0870 calls in the National Telephone Numbering Plan (‘the Plan’) and the associated numbering application form;
 - a modification to General Condition 17 to make the new designation for 0870 calls applicable to all communications providers rather than just BT as would otherwise be the case;
 - modifications to General Condition 14.2 and the associated annex 2 to specify how prominence should be given to the charges for 0870 calls and to set out the information which customers must be given in relation to prices for 0870 calls in advertising and promotional material, including whether or not they are included in call packages; and
 - minor clarificatory amendments to Annex 1 of General Condition 14 relating to the requirement for communications provider to have a Code of Practice for premium rate service calls (see paragraph 2.59 for details).

Implementation Arrangements

- 1.29 Ofcom has decided that the new 0870 regulations should come into effect on 1 August 2009. This will allow time for Ofcom to publish a final determination concluding its consideration of the 0870 Dispute before the new arrangements come into effect.

Section 2

Introduction

2.1 This section provides an introduction to Number Translation Services ('NTS'), the current regulatory regime and Ofcom's review of NTS policy as it relates to the changes to the regulatory arrangements for 0870 calls that we are introducing.

Number Translation Services

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 Surftime 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 Originating Communications Provider (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 numbers. The caller pays the OCP for the call. The OCP having deducted its origination and retailing costs from the retail revenue, passes on the remainder as 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' premium rate service number range except that prices for the former are substantially cheaper, ranging from free to caller up to a maximum of 10ppm (from a BT landline). Types of services include information services, some technical help lines, 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 likely to be more limited than on more expensive number ranges. However, there is still potential for consumers to accrue high phone bills over a billing cycle where there may be frequent or long-duration use of lower priced services.

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

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. Following modification in September 2005⁸, it 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.

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

⁸ Number Translation Service Retail Uplift charge control and Premium Rate Services bad debt surcharge, published 28 September 2005 <http://www.ofcom.org.uk/consult/condocs/NTSfin/>

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

(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 For the charge referred to in Condition AA11.4(c) above, the Dominant Provider shall charge the Third Party no more than 3.03 per cent of the Net Retail Call Revenue for that Premium Rate Service call.

AA11.7 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 Policy Review

- 2.15 On 18 April 2006 Ofcom published the regulatory statement “NTS A Way Forward”, concluding Ofcom's re-examination of the regulatory framework for 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 \('the 2004 NTS Consultation'\)](http://www.ofcom.org.uk/consult/condocs/ntsoptions/)

- ii) [NTS: A Way Forward, second consultation published September 2005 \('the 2005 NTS Consultation'\)](http://www.ofcom.org.uk/consult/condocs/nts_forward/)
- iii) [NTS: A Way Forward, final policy statement published April 2006 \('the 2006 NTS Statement'\)](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 2005 NTS Consultation.

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

2.17 The ability to use NTS numbers has enabled 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 we were aware of a range of concerns amongst consumers about NTS including:

- consumer protection – there were concerns about a rise in scams previously seen on 09 numbers that were beginning to affect higher cost 08 numbers. These led to 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 yet NTS calls are still commonly advertised as costing local and national rate. This is widely considered as misleading advertising;
- adult services – there was concern that, increasingly, Sexual Entertainment Services ('SES') were using higher cost 08 numbers where they are less easily barred than those operating on 09 numbers. This meant that potentially unsuitable services were more easily accessible by minors and, further, unlike SES operating on 09 numbers, those operating on 08 numbers were not regulated by the premium rate services regulator PhonepayPlus (formerly ICSTIS);
- 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.

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

- 2.19 There were also industry concerns about several aspects of the regulatory regime for NTS. Most notably, the fact that most NTS calls are routed via the BT network, regardless of whether or not they are made by BT customers, means that the revenues that CPs receive for calls to their NTS numbers are subject to BT price changes and are thus effectively beyond their control. 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.
- 2.20 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.
- 2.21 For a full description of the policy issues considered in the review you should refer to the consultation and statement documents⁹.

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

- 2.22 We proposed a package of measures designed to address the problems identified, whilst ensuring the availability of a wide range of services.
- 2.23 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;
 - SES currently operating on 08 numbers required to move to the 09 number ranges designated for SES;
 - a further review of the 0845 range 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.
- 2.24 The measures were also designed to address the underlying causes of Industry disputes that Ofcom is called upon to solve.
- 2.25 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

⁹ See paragraph 2.15 for details of where to find these documents on our website.

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

- 2.26 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.
- 2.27 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.
- 2.28 In February 2009 we published a policy statement confirming the extension of PRS regulation to services using other 087 numbers thereby bringing them within the remit of the premium rate services regulator PhonepayPlus. PhonepayPlus will begin regulating these numbers from 1 August 2009. The effect of this change is to increase consumer protection for the most expensive 08 numbers (0871, 0872 and 0873) by making these services subject to the PhonepayPlus Code¹⁰ as interpreted in a Statement of Application¹¹ ('SoA') which specifies how the Code should be interpreted for 087 Numbers.

The way 0870 calls are charged has caused several problems

- 2.29 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.
- 2.30 We have taken steps to discourage CPs and SPs from referring to 0870 calls as national rate but this terminology is still widely used and may mislead callers.
- 2.31 Even though the linkage to BT's national geographic call charges is, in effect broken, BT still sets the rate for 0870 calls that its customers make and this determines the amount BT pays out for all calls that are either made from or cross its network. This creates considerable uncertainty for other CPs who own 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.

¹⁰ <http://www.phonepayplus.org.uk/CodeOfPractice/default.asp>

¹¹ http://www.phonepayplus.org.uk/pdfs_news/0871_Services_StatementOfApplication.pdf

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

2.32 To address the problems with 0870 calls, we decided to restore 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.

In May 2008 we published a second consultation with revised proposals for the changes to 0870

2.33 In order to implement our 0870 proposals we issued a further consultation in May 2008 (the Consultation). This consultation set out detailed implementation proposals, including the necessary legal notifications. We also sought stakeholders' views on revisions to the proposals to address potential problems associated with the use of pricing announcements.

2.34 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 previously 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.

2.35 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. We identified two options and sought stakeholders' views in the Consultation:

- 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.

- 2.36 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, both options involve removing 0870 calls from the scope of the NTS Condition and would be likely to result in lower retail prices.
- 2.37 Our assessment was that Option A would be more effective in promoting price transparency and reducing consumer confusion over the pricing of 0870 calls. 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 OCPs. We are keenly aware of our statutory duty to minimise the burden of regulation and to ensure that regulatory intervention is proportionate.
- 2.38 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 CP, or when checking call prices, for example, on provider websites.
- 2.39 In this context it is relevant to note that as a result of Ofcom's recent enforcement programme¹² most fixed and mobile CPs have 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.
- 2.40 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 bundled packages whereas geographic calls are always included¹³.
- 2.41 Ofcom has concluded that it is proportionate to adopt Option B in the first instance and has therefore decided to go ahead with its implementation. We believe that CPs should be able to provide easily accessible pricing information for 0870, as well as for other NTS calls and consider that this should be underpinned by a stronger set of price publication requirements. Under Option B 0870 calls will remain subject to the rules on price publication applying to all NTS calls and these rules are being extended to ensure providers state clearly where 0870 calls are excluded or included from their bundles and other discount packages. The new requirements will be supported by an active programme of compliance monitoring and enforcement. In addition, we will carry out market research at regular intervals, to assess the impact of the new rules on consumer price awareness in respect of 0870 calls.
- 2.42 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

¹² http://www.ofcom.org.uk/bulletins/comp_bull_index/comp_bull_compcases/cw_980/

¹³ NB: BT announced its intention to include 0845 and 0870 calls in its 3 "Unlimited Plans" from 16 January 2008.

would be to return to this issue, and to consider what other measures may be appropriate.

2.43 Ofcom considers the changes to the arrangements for 0870 calls will bring about:

- an improvement in price transparency in the interests of consumers calling 0870 numbers which should contribute to more effective competition;
- an improvement in consumer protection leading to a reduced risk of scams and better consumer confidence in 0870 numbers;
- greater revenue certainty for TCPs; and
- fewer interconnection disputes requiring regulatory intervention.

2.44 It is also likely that the changes will result in a reduction in average 0870 retail call prices particularly from fixed networks.

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

2.45 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 of 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.

2.46 We are removing 0870 calls from the scope of the NTS Condition. We are not banning revenue-sharing on 0870 numbers, but it is likely to come to an end as a result of the likely reduction in termination payments that BT will make to TCPs. In the draft determination of the dispute between BT and a number of TCPs (the 0870 Dispute), Ofcom has proposed that the termination rates are set at a level that would enable BT to charge 0870 calls at geographic call rates. As a result, the revenues that TCPs receive for 0870 calls may be insufficient for them to offer a share to businesses.

2.47 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 parties might make large numbers of free calls to their own 0870 numbers in order to earn a revenue share. This "arbitrage" effect might have made it difficult for CPs to keep 0870 calls in call packages, thereby defeating the object of the changes. This consideration was taken into account in the calculation of the termination rates proposed in the draft determination of the 0870 Dispute (see paragraph 2.61 below for a discussion about the 0870 Dispute).

2.48 Removing 0870 calls from the scope of the NTS Condition should also reduce the revenue uncertainty that was the underlying cause of disputes between CPs. This is because the termination payments will no longer be linked to BT's retail prices for 0870 calls.

Changes to regulations to implement the proposals

- 2.49 In order to implement these changes to four regulations, we have made the following modifications to the relevant regulatory rules.

A revised designation for 0870 calls in the Plan

- 2.50 The current designation for 0870 calls in the Plan is replaced with a new one that would establish the convention that 0870 calls should be charged at no more than the rates that callers pay for calls to geographic numbers. Where OCPs decide not to charge more for 0870 calls they would be responsible for ensuring their customers understand what 0870 calls cost via additional price publication requirements in General Condition 14.

A modification to the application form for Special Services Numbers

- 2.51 Ofcom publishes a set of forms that CPs must use when they apply for allocations of numbers from Ofcom. The application form S8 (application form for services or Special Services – numbers starting 08) lists the designations of each of the 08 number ranges. We have modified the description of 0870 numbers on this form.

A modification to General Condition 17

- 2.52 All CPs must comply with the General Conditions set by Ofcom. General Condition 17 specifies rules in relation to the allocation, adoption and use of telephone numbers.
- 2.53 We want the new designation for 0870 calls to apply to all CPs. In order to achieve this, we proposed an amendment to paragraph 17.12 of General Condition 17 to require all CPs to comply with the designation for 0870 calls. We are implementing the modification we proposed in the Consultation, subject to minor changes to the wording of the modification.

A modification to the SMP Condition in the Market for Call Origination on Fixed Public Networks

- 2.54 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.
- 2.55 NTS Calls are defined in Part 1 of Schedule 1 of the Notification published in Annex A of the 2003 Narrowband Market Review.
- 2.56 In order to remove regulatory support for revenue sharing on calls to 0870 numbers, we are modifying the definition of NTS Calls so as to take 0870 calls outside the scope of the NTS Condition.

A modification to General Condition 14

- 2.57 We have modified specific price publication requirements applicable to OCPs given in the associated guidelines of General Condition 14 to ensure consumers are made aware where discount packages and bundles which include geographic calls also include or exclude 0870 calls. We also restrict OCPs from using the term 'national rate' in consumer communications unless they actually charge 0870 calls at geographic rates.

- 2.58 There are also some minor consequential amendments to General Condition 14.2 and the NTS annex to ensure that existing rules which apply to NTS calls also continue to apply to 0870 calls.
- 2.59 We have also taken the opportunity to make some clarificatory amendments to General Condition 14, namely:
- to update the definition of an Originating Communications Provider in General Condition 14 so that it applies to OCPs without a physical network providing call origination services to domestic and small business customers;
 - to add a new paragraph 3.1 of Annex 1 of General Condition 14 in order to align the PRS guidelines with (i) the requirement in General Condition 10 on CPs to publish their tariffs on their websites; and (ii) the NTS guidelines in Annex 2 ; and
 - to update the references to ICSTIS in Annex 1 to reflect its change of name to PhonepayPlus.

Related Work

UK-wide Numbers

- 2.60 When the April 2006 NTS Statement was published Ofcom was also consulting on a strategic review of the UK's numbering resources¹⁴. 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 permitted¹⁵. 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.

0870 Call Termination Charges

- 2.61 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 will be subject to commercial negotiation between CPs.
- 2.62 On 31 August 2007, Ofcom accepted the 0870 Dispute, a dispute between BT and various other CPs about 0870 call termination charges under the new arrangements. Details of the dispute can be found in Ofcom's Competition and Consumer Bulletin¹⁶. Ofcom published its draft determination of the 0870 dispute on 23 April 2009¹⁷.

¹⁴ "Telephone Numbering – safeguarding the future of numbers"

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

¹⁵ <http://www.ofcom.org.uk/consult/condocs/numbering03/statement/>

¹⁶ http://www.ofcom.org.uk/bulletins/comp_bull_index/comp_bull_ocases/open_all/cw_963/

¹⁷ <http://www.ofcom.org.uk/consult/condocs/resolve0870calls/>

Extending PRS Regulation to other 087 numbers

- 2.63 As noted in paragraph 2.23 one of the proposals in the NTS Policy Review was that Ofcom should 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.
- 2.64 On 5 February 2009 Ofcom published a policy statement entitled 'Extending Premium Rate Services to 087 Numbers' confirming this proposal. PhonepayPlus will start to regulate services provided on these number ranges from 1 August 2009.

Review of 0845 numbers

- 2.65 In the 2006 NTS Statement we set out plans to undertake a review of the 0845 range with a view to adopting similar measures to 0870 to address concerns about broken linkage between 0845 call charges and local geographic call tariffs.
- 2.66 We originally scheduled the 0845 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 some key providers' 0845 prices, once the 0870 changes have been implemented Ofcom will consider whether the 0845 review remains necessary and if so the appropriate timing.

Section 3

Summary of responses to the Consultation and Ofcom's comments

Introduction

- 3.1 We received 48 responses in all, 26 from consumers, 14 from communications providers that originate calls on behalf of retail consumers, referred to as "OCPs", and communications providers that terminate calls on behalf of the providers of the services, referred to as "TCPs" and their representative bodies, 7 from service providers ("SPs") and their representative bodies and one from a body representing both smaller TCPs and SPs. Those not marked as confidential were posted on the Ofcom website on receipt and can be viewed by following this link: <http://www.ofcom.org.uk/consult/condocs/0870calls/responses>
- 3.2 We have summarised the main points raised by respondents in this section. The responses submitted by CPs, SPs and representative organisations were generally more detailed than those submitted by other stakeholders. We have therefore reviewed these responses in more detail in Annex 2.
- 3.3 Stakeholders' views on our proposals were polarised in common with responses received to Ofcom's earlier consultations on 08 numbers. Consumers generally believe the proposals do not go far enough to address their concerns about 08 numbers, not only because of concerns about price transparency but often through a belief that revenue sharing should not be permitted for some types of services. CPs and those involved in the provision of services on 0870 numbers conversely regard Ofcom's proposals as either unnecessary or too disruptive and likely to prejudice the viability of many services.
- 3.4 Most consumer respondents wanted Ofcom to implement additional measures to reduce the price of calls to 0870 numbers and were therefore in favour of the alternative option considered and rejected by Ofcom in the Consultation under which all CPs would be required to charge 0870 calls at geographic rates. Although consumer respondents generally regarded the proposals as a 'step in the right direction', some thought they would not be effective at improving pricing transparency since communications providers would not be compelled to charge 0870 calls at geographic rates. Consumer respondents also made a range of suggestions aimed at controlling prices, improving pricing transparency and improving consumer protection.
- 3.5 Although there was some support amongst CP and SP respondents, most opposed our proposals arguing that the cessation of revenue sharing (as a result of the proposals) would be very disruptive for SPs and CPs as it would cause many SPs to move their services to other number ranges that support revenue. CPs and SPs doubted that the proposals would be effective at improving pricing transparency particularly as they expected a significant proportion of CPs to charge 0870 calls above geographic rates. CPs welcomed Ofcom's decision to withdraw the requirement to provide pricing announcements and opposed any requirement for them to charge 0870 calls at geographic rates.

- 3.6 Given the concerns about the disruption and effectiveness of the proposals, some CPs and SPs doubted that Ofcom's proposals were a proportionate response to the problems they aimed to address.
- 3.7 Several CPs were also concerned about the impact on competition in the market for 0870 call termination and hosting (i.e. the services provided by CPs to SPs) of removing 0870 calls from BT's obligation to originate 0870 calls on regulated terms. They thought that whilst BT continued to have Significant Market Power in wholesale Call Origination, BT should continue to be subject to this obligation to prevent it from competing unfairly in the 0870 call termination and hosting market.

Consumer responses

- 3.8 Consumer respondents generally believed that it is necessary for all OCPs to charge 0870 calls at their geographic rates in order to improve pricing transparency, in part because consumers would rarely consult OCPs price lists before making calls. Most were therefore in favour of Option A in the Consultation which would require this rather than Ofcom's preferred option (Option B in the Consultation) under which CPs would have the freedom to charge 0870 calls above their geographic rates provided they comply with specific price publication requirements.
- 3.9 There was a widely held view that if OCPs were allowed to retain the freedom to set their charges for 0870 calls they would set charges above their geographic rates, with the result that Ofcom's proposals would not achieve their main objective of improving pricing transparency. Some respondents thought that Ofcom's proposals would lead to a greater variation in retail prices resulting in a reduction in transparency.
- 3.10 Some respondents believed that Ofcom's proposals would be less effective than its original proposals (from the 2006 NTS Statement) under which OCPs would be required to give a pricing announcement if they charge 0870 calls above their geographic rates.
- 3.11 One respondent argued that an unintended side effect of Ofcom's proposals would be that consumers would confuse 0870 and 0871 numbers giving them the false impression that 0871 are charged at geographic rates. The respondent therefore favoured a requirement for all 08 calls to be charged at geographic rates for simplicity.

Ofcom's comments

- 3.12 We acknowledge that under our proposals, communications providers would retain the freedom to set retail prices for 0870 calls and that arguably it will be easier for them to set rates above geographic charges in the absence of a requirement for pre-call price announcements. In our view the extent to which this occurs will depend on the extent to which retail competition leads OCPs to align their 0870 and geographic prices. In this context we note that on 19 March 2009 Ofcom published a consultation on its Fixed Retail Narrowband Market Review proposing that with the exception of Hull, retail fixed line telephony markets are effectively competitive¹⁸. We also note that BT has consistently indicated its general support for the policy objectives in its response to this and earlier consultations but with the proviso that it may not be able to align its 0870 and geographic prices if termination rates are too high. The rates proposed in the draft determination of the 0870 Dispute, published at the same time

¹⁸ http://www.ofcom.org.uk/consult/condocs/retail_markets/

as this document, are derived from the efficient costs of terminating a geographic call, adjusted to reflect the different network arrangements used for non-geographic calls. These rates have been set at a level that would enable BT to charge geographic prices for 0870 calls and without jeopardising the sustainability of their pricing plans¹⁹. We anticipate that the competitive pressure from BT will incentivise other OCPs to do likewise in setting their retail charges for 0870 calls. In this context we note that BT has already aligned its 0870 call charges with geographic call charges for its three main consumer pricing packages in anticipation of Ofcom implementing these 0870 measures and that at least one major operator has responded with a similar pricing policy.

- 3.13 We concluded in the Consultation that implementing Option A would be likely to be more effective at improving pricing transparency. However, we also consider it likely that Option B would lead to an improvement in pricing transparency. As Option B is much less intrusive than Option A, we considered that it would be more proportionate and in better accordance with our legal duties to recommend Option B in the first instance.
- 3.14 We propose to monitor compliance with the new rules and their effectiveness in improving pricing transparency through periodic consumer research. If this fails to achieve the desired improvement in pricing awareness, we will consider other measures.
- 3.15 Regarding the view that our proposals would lead to increased variation in retail prices for 0870 calls, whilst we concede this is possible, we believe that it would be an unlikely outcome for several reasons. Firstly, under the current arrangements, OCPs have the freedom to set their retail prices and secondly, the revised interconnection arrangements will reduce termination charges, allowing OCPs greater flexibility to include 0870 calls in their retail call bundles. As discussed above, we consider that a likely outcome is that retail competition will drive a significant number of OCPs to include 0870 calls in their call packages, arguably reducing the diversity of call charges.
- 3.16 Regarding the concern that consumers may confuse 0871 and 0870 numbers and incorrectly assume that 0871 calls are charged at geographic rates. We acknowledge this is a possibility; however, a similar situation exists at the moment with 0870 calls being widely advertised as 'national rate'.

Concerns over the link between Ofcom's proposals and the outcome of the 0870 Dispute

- 3.17 Several consumer respondents raised concerns about the linkage between Ofcom's proposals and the 0870 Dispute (the dispute between BT and other CPs about 0870 call termination charges under the new arrangements i.e. after Ofcom's proposals are implemented).
- 3.18 These respondents thought that Ofcom's proposals for 0870 calls might not achieve their aims because of the uncertainty about the outcome of the 0870 Dispute. In particular whether in settling the dispute in accordance with its duties, Ofcom would be able to set termination rates at a level that is consistent with geographic retail charging.

¹⁹ NB: BT announced its intention to include 0845 and 0870 calls within its 3 "Unlimited Plans" with effect from 16 January 2008.

- 3.19 One respondent cited Ofcom's decision to delay consideration of the 0870 Dispute in order to review the judgement of the CAT on the TRD appeals. This respondent thought the judgement implied that Ofcom would have to set termination rates for 0870 calls that would be too high to support geographic charging of 0870 calls.
- 3.20 A related concern raised by several respondents was whether it was appropriate for Ofcom to consult given the uncertainties discussed above. These respondents argued that Ofcom was wasting stakeholders' time as well as its own.

Ofcom's comments

- 3.21 We understand respondents' concerns about the potential impact of the 0870 Dispute on the outcome of our proposals and also about the implications of the TRD appeals. In recognition of those concerns we decided to delay publication of this policy statement alongside the draft determination of the 0870 Dispute so that we could assess the implications of the judgments on the outcome of the dispute.
- 3.22 In light of the CAT judgments in the TRD appeals, we have revised our approach to resolving the 0870 Dispute. As noted above, the rates we have proposed in applying this revised approach are intended to enable BT to retail 0870 calls in line with its charges for geographic calls.
- 3.23 The 0870 Dispute and Ofcom's proposals in relation to 0870 calls are intimately connected. Industry negotiations about 0870 terminations rates and the subsequent dispute arose as a consequence of our proposals for 0870 calls in the 2006 NTS Statement. The objectives sought by the 0870 policy are key to our consideration of the 0870 Dispute; in turn, the outcome of the 0870 Dispute is key to the likely success of that policy. Given this interdependence, whichever approach we might have taken in relation to the timing of each of the draft determination of the 0870 Dispute and the 0870 Consultation would have given rise to uncertainty. At the time of publication of the 0870 Consultation in May 2008, we felt it was important to communicate our revised proposals to stakeholders, particularly as they may have had a bearing on the resolution of the dispute and would enable consideration of that to advance once TRD appeals were concluded. We have taken care to coordinate the publication of the draft determination of the 0870 Dispute and this policy statement.

Some believed that the proposals would be rendered ineffective by migration of services to other number ranges

- 3.24 Some respondents thought that widespread migration of services away from 0870 numbers to other 08 number ranges such as 0844, 0845 and 0871 in response to Ofcom's proposals for 0870 numbers would undermine their effectiveness. Respondents viewed the charging arrangements for other ranges as less transparent than the proposed arrangements for 0870 calls.
- 3.25 Some also thought that Ofcom should prevent businesses from charging consumers a premium for some or all types of service. They therefore viewed migration to other number ranges as detrimental. See paragraph 3.31 below for a more detailed discussion.

Ofcom's comments

- 3.26 The primary aim of our proposals was to address concerns about discrepancy between 0870 call charges and geographic charges which was causing consumer

confusion and undermining confidence in 08 numbers as 0870 numbers are still widely advertised as 'national rate'.

- 3.27 We acknowledge that the welfare benefit associated with improving pricing transparency on 0870 numbers will be reduced by migration to other ranges. This was taken into account when we assessed the overall benefit of our proposals.
- 3.28 As discussed in more detail in paragraphs A3.86 to A3.92, our final assessment of these proposals (which is necessarily a forward looking assessment for which the relevant costs and benefits are those that will be incurred in the future) is that the proposals would be likely to deliver a significant net benefit over several years.

Some respondents argued that Ofcom should take firmer measures to limit retail prices for calls to 0870 numbers

- 3.29 Several consumer respondents argued that Ofcom should take steps to limit retail calls price or to limit revenue sharing, either for 0870 numbers or all 08 numbers. Suggested measures included:
- limiting premium charged services to the 09 range and requiring 08 numbers to be charged at standard rates;
 - closing the 0870 range;
 - forcing users of 0870 numbers to move their services to 03 numbers where revenue sharing is not permitted; and
 - requiring companies that use 0870 numbers to publish geographic numbers for calls who do not wish to call their 0870 number;
- 3.30 These comments tended to be informed by the view that businesses should not be permitted to charge consumers a premium to call them, either in respect of certain types of service or more generally.

Ofcom's comments

- 3.31 In the 2004 NTS Consultation and the 2005 NTS Consultation we considered a wide range of options for 08 numbers including ending revenue sharing on 08 numbers thereby limiting revenue sharing to 09 numbers. We rejected these measures in favour of a package of measures (which included our proposals for 0870 numbers) to address consumer and industry concerns about 08 numbers. We concluded that ending revenue sharing on all 08 numbers would be highly disruptive and would have a negative effect on service availability. We remain of the view that such an approach would not be in the best interests of consumers, SPs or CPs.
- 3.32 In response to the suggestion that the 0870 range should be phased out altogether, this was an option we considered when developing our proposals for the 2005 NTS Consultation. We rejected this approach in favour of other options that would be less intrusive than closing the range which would require all services to move to other number ranges.
- 3.33 Regarding the suggestion that Ofcom should force SPs to publish geographic numbers alongside their 0870 numbers, this would effectively bypass 0870 numbers seriously undermining their usefulness to SPs. In our view, the effect would be similar to closing the 0870 number range. Given the findings of the 2004 NTS Consultation

and the 2005 NTS Consultation we do not think that such an approach would be in the best interests of consumers, SPs or CPs.

Some respondents suggested that Ofcom should implement other measures to improve pricing transparency

- 3.34 Many consumer respondents argued that pricing transparency is important and some suggested that consumers dislike of 0845 and 0870 numbers stemmed from the misdescription of 0845 and 0870 calls as 'local rate' and 'national rate'.
- 3.35 Several respondents suggested alternative measures to improve pricing transparency for calls to 08 numbers and also suggested ways in which 08 numbers could be rearranged to give meaningful price signals. These included:
- requiring businesses to specify call charges in promotional material;
 - introducing controls to prevent businesses advertising 0870 calls as 'national rate' or 0845 calls as 'local rate';
 - requiring businesses to specify how much of call charges they receive;
 - requiring all communications providers to charge the same rates for each 08 number range;
 - withdrawing 0870 numbers in order to improve transparency. Businesses could then choose between 0871 numbers that support revenue sharing and 03 numbers that are charged at geographic rates;
 - imposing a pricing ladder so that retail prices for calls to 08 numbers would be indicated by the number range e.g. calls to 081 to be charged at 1p per minute and 082 to be charged at 2p per minute etc. One respondent argued that Ofcom's statutory duties required it to impose such a linkage;
 - Whatever solution is chosen it should be followed by a major publicity campaign to inform consumers.

Ofcom's comments

- 3.36 We think that the use of the 'local rate' and 'national rate' terms (to describe 0845 and 0870 call charges) when they may be misleading has contributed to the decline in consumer confidence in 08 numbers. Addressing these concerns was one of the key objectives of the NTS Policy Review. Our proposals for 0870 numbers are designed to realign retail prices with geographic prices in recognition that it would be difficult to eliminate the use of these terms completely. As discussed in paragraph 2.65 we will also consider a further review of the 0845 range which amongst other things would consider what we could do about the local rate term. We have also taken other steps to reduce the usage of the 'local rate' and 'national rate' terms:
- In 2004 we modified the designations for 0845 and 0870 numbers in the National Telephone Numbering plans to clarify the nature of the linkage of call charges with BT's standard geographic rates. We also advised businesses that they should not use the 'local rate' and 'national rate' terms to describe 0845 and 0870 calls as they may be misleading; and

- we have also contributed to Committee of Advertising Practice guidance and Central Office of Information guidance (for public bodies) both of which advise that these terms may be misleading and should not currently be used.

3.37 Regarding the other measures suggested by respondents, each of these was considered during the course of the NTS Policy Review. We think that most of them would improve pricing transparency to some extent. However we considered that other measures performed better, particularly when the impact on stakeholders and service availability is taken into account. We therefore rejected them in favour of the proposals in the 2006 NTS Statement. We have summarised our views on the suggestions below.

Requiring businesses to specify charges in promotional material

3.38 We consider that it is reasonable that businesses that use 08 numbers should play a role in informing consumers about call charges since they are causing consumers to be charged a premium by using these numbers.

3.39 This is one of the reasons why, in the 2006 NTS Statement we decided to extend PRS regulation to the most expensive 08 numbers (the 0871, 0872 and 0873 ranges which are charged at rates above 5p per minute for BT customers). When PhonepayPlus starts to regulate these ranges in August 2009 businesses operating services on these ranges will be subject to the pricing information requirements of the PhonepayPlus Code of Practice and will therefore be required to ensure their customers are informed about call charges. In practice, most businesses discharge this obligation by specifying call charges in advertising and promotional material.

3.40 In the 2005 NTS Consultation we also considered whether we should extend PRS regulation to the less expensive 084 number ranges but concluded that there was insufficient evidence of consumer harm to justify this.

Requiring businesses to specify how much of call charges they receive

3.41 We think that some consumers would find this information useful. However, it is necessary to keep the information messages in advertising material short in order to maintain its impact. On balance, our view is that revenue share information is of secondary importance to callers to retail price information.

Requiring all communications providers to charge the same rates for each 08 number range

3.42 Requiring all CPs to charge the same rates for calls each 08 number range would be likely to make retail prices more transparent. However, it would be a highly intrusive measure for Ofcom to take as it would restrict CPs freedom to set retail prices for 08 calls and thereby limit the scope for competition.

Withdrawing 0870 numbers in order to improve transparency

3.43 As discussed in paragraphs 3.31 and 3.32 above we think our proposals for 0870 numbers will bring about a substantial improvement in transparency but would be less disruptive than withdrawing 0870 numbers.

Pricing ladder

- 3.44 This approach could improve pricing transparency though in our view it would only be fully effective if it applied to all networks not just BT as under the current arrangements. Our main concern about this approach is that it would be necessary to revise the pricing arrangements for most if not all of the existing services using 08 numbers. This would result in changes to call revenues for existing services (either reductions or increases). In our view, this would be likely to cause significant disruption as many SPs would be likely to decide to move their services to other numbers in order to maintain their services at current prices levels. This approach would also change the well known pricing associations of the existing ranges which would in the short term at least tend to reduce transparency.

Account taken of consumers' views

- 3.45 One consumer respondent argued that in developing its proposals, Ofcom had not properly taken into account the views of consumer respondents to the 2004 NTS Consultation and the 2005 NTS Consultation despite its statutory duty to protect the interests of consumers.
- 3.46 Another consumer respondent argued that Option A was the only option proposed by Ofcom in the Consultation that would fulfil Ofcom's statutory duties to protect consumers. Another thought that Ofcom's decision to select Option B raised questions about the nature of Ofcom's statutory duties.

Ofcom's comments

- 3.47 We disagree with the respondents that we have failed to properly take account of consumers' concerns. Following the 2004 NTS Consultation and the 2005 NTS Consultation and detailed consideration of responses, Ofcom decided in the 2006 NTS Statement to implement a package of measures to improve consumer protection and pricing transparency and also to address industry concerns. When setting policy, Ofcom has to balance the needs of all stakeholders. Whilst we acknowledge that some consumers would prefer that we take steps to restrict the availability of revenue sharing on 08 numbers, we believe our approach will deliver the best overall outcome for consumers and is in accordance with our statutory duties under the Communications Act 2003 ('the Act').
- 3.48 Regarding the second point, the argument here is that Ofcom's statutory duties to further the interests of consumers and to consider the opinions of consumers effectively require Ofcom to select Option A because it would be likely to be more effective at promoting pricing transparency than Option B. We disagree with this view. When developing policy, Ofcom has to consider the needs of all stakeholder groups and to balance a range of factors and legal duties in order to select the best all-round solution. This sometimes means that we select options that do not have the best performance against a particular criteria but which offer a better solution overall. In this case we consider that Option B to be better aligned with our regulatory duties (in particular to ensure that our interventions are proportionate and the least intrusive regulatory mechanism to achieve its policy objectives). We do intend, however, to monitor the effectiveness of Option B, and we will consider other measures if it does not lead to a significant improvement in pricing transparency for 0870 calls.

Consumers comments relating to consumer protection

- 3.49 Some consumer respondents raised points concerning consumer protection.

Some respondents argued that Ofcom should apply PRS regulation to all 08 numbers

- 3.50 Some respondents argued that all 08 numbers are charged at premium rates and therefore Ofcom should apply PRS regulation to all 08 numbers including Freephone calls since they are generally charged at a premium by mobile networks.

Ofcom's comments

- 3.51 We considered extending PRS regulation to 084 numbers in the 2005 NTS Consultation. We also acknowledged the risk that problematic services might migrate from 0871 numbers to 084 numbers as a result of the proposed extension of PRS regulation to 0871 numbers. We concluded that this extension of PRS regulation was not justified by the evidence of consumer harm. We also concluded that the potential for consumer harm is much smaller because the highest charge for 084 numbers for BT customers is half that for 087 Numbers (5p per minute for 084 Numbers compared with 10p per minute for 087 Numbers). In practice the scope for revenue sharing and therefore the potential harm from scams is determined by BT's call charges and industry-wide interconnection arrangements, rather than the retail price charged by other CPs.
- 3.52 In the 2006 NTS Statement Ofcom decided to extend PRS regulation to 0871 numbers²⁰ but to monitor the 084 ranges to see if problems arise. We still believe this is the best approach. Therefore we do not currently have any plans to extend PRS regulation to 084 numbers. However we will continue to monitor complaints and other indicators for signs of a rise in consumer harm.
- 3.53 There is no revenue sharing on Freephone services (in fact SPs have to pay to receive Freephone calls) so we do not think it would be appropriate to apply PRS regulation to Freephone calls since PRS regulation is designed to provide additional consumer protection for revenue-sharing services. However we acknowledge the concerns about the price of Freephone calls and calls to other 08 numbers from mobile networks. We discuss these in more detail in paragraphs 3.81 to 3.84. We also note that calls to Freephone numbers are subject to a long standing requirement for communications providers to provide a free-of-charge announcement to inform consumers if Freephone calls are chargeable.

Some respondents believe that 0870 calls are extended unnecessarily

- 3.54 Some consumers believed that calls to 0870 numbers are being extended unnecessarily by the businesses that operate them through the use of recorded announcements, menu systems or simply with long queues. These respondents argued that Ofcom should take steps to address these problems.

Ofcom's comments

- 3.55 We considered this issue in the 2005 NTS Consultation after commissioning market research to gain a better understanding of the situation. The research showed no significant correlation between the cost of calls and the waiting times, leading Ofcom to conclude that call centre waiting times are not being artificially extended to take advantage of the revenue share. Given the findings of our research we concluded

²⁰ As noted in paragraph 2.63 on 5 February 2009, Ofcom published a policy statement confirming that 0871 numbers (and the recently introduced 0872 and 0873 numbers) would be subject to PRS regulation with effect from 1 August 2009.

there are insufficient grounds to justify regulation of call centre service levels. Also Ofcom considered that it should not impose regulations to address areas of concern in downstream markets (i.e. markets outside the telecoms sector).

- 3.56 However, our proposals for 08 numbers do go some way to address these concerns. Firstly, our proposals for 0870 numbers will effectively bring an end to revenue sharing on 0870 numbers thereby reducing the concerns that 0870 calls might be being artificially extended for gain. As discussed in paragraph 2.28 PhonepayPlus will start to regulate services provided on the most expensive 08 numbers (the 0871, 0872 and 0873) ranges from August 2009. The PhonepayPlus Code of Practice provides additional protection for consumers in respect of call queuing and also provides a mechanism for consumers to seek redress in cases where unreasonable delay occurs.

Internet dialler viruses on 0870 numbers

- 3.57 Some respondents raised concerns about fraudulent use of 0870 numbers by internet dialler viruses.

Ofcom's comments

- 3.58 Ofcom has previously taken steps to address the problem of internet dialler viruses. All such services are subject to PRS regulation, and therefore fall within the remit of the PRS regulator PhonepayPlus regardless of the number range used. Work by PhonepayPlus has significantly reduced the incidence of this type of scam and PhonepayPlus is able to quickly take action when such scams are identified. Our proposals for 0870 numbers are likely to bring revenue-sharing to an end on 0870 numbers, eliminating the incentive for such services to operate on 0870 numbers.
- 3.59 We also note that the decline in dial-up internet access in favour of broadband means that fewer computers are connected to telephone lines, significantly reducing the scope for dialler viruses.

Length of consultation process

- 3.60 Several consumer respondents thought that Ofcom was taking too long to implement its proposals for 0870 numbers, and some argued that the Consultation had led to a further unnecessary delay.

Ofcom's comments

- 3.61 We understand that some consumers wanted us to implement our proposals more quickly. In 2006 we concluded that it would be appropriate for us to give an extended notice period before implementing our proposals to give CPs and SPs affected time to prepare for this major change to 0870 arrangements. It has taken us longer to implement our proposals than originally anticipated because stakeholders raised several important issues. As these issues concerned the effectiveness and safety of our proposals we believe it was appropriate for us to delay implementation whilst these points were addressed.
- 3.62 In addition, as noted above, the 0870 policy is interdependent on resolution of the 0870 Dispute. In light of the responses we have received to the 0870 Consultation, we decided that it was appropriate to co-ordinate the publication of the draft determination and this policy statement.

Service Providers and Representative Groups

3.63 We received responses from 5 SPs:

- InfoGB Media Ltd;
- Q-Systems International;
- Total Web Solutions;
- London FX Ltd;
- Wescot Credit Services.

SPs' Comments about Ofcom's proposals

3.64 With the exception of London FX, which expressed qualified support for Ofcom's proposals this group of respondents did not support Ofcom's proposals. Respondents had two main concerns:

- **Disruption for SPs:** Ofcom's proposals would be disruptive for SPs who would need to move their services to alternative numbers in order to continue to receive a revenue-share or to avoid paying to receive calls. Several respondents commented that Ofcom was interfering with a well established funding model for services or that SPs had been sold 0870 numbers by CPs on the basis that the cost of providing those services would be funded from call charges.
- **Effectiveness of the proposals:** All of the respondents thought that Ofcom's proposals would not be effective, the main reason being that:
 - the revised arrangements for 0870 calls would not be particularly transparent for consumers in the main because 0870 prices would be likely to be above geographic prices and differ between networks;
 - effectiveness of the proposals would be undermined by widespread migration of services to other number ranges;

3.65 On the last point, some respondents thought that Ofcom was simply shifting the pricing transparency problems to other number ranges and would eventually have to make changes to other number ranges such as the 0844 range to the address these problems.

3.66 InfoGB Media argued that Ofcom's record on numbering was poor and that disruption caused by regulatory intervention could be very damaging to businesses who have invested heavily in telecoms services and expensive memorable numbers. InfoGB Media further commented that Ofcom's had been changing numbering arrangements for many years and had only succeeded in making pricing arrangements unclear.

Ofcom's Comments

3.67 On the first point, we acknowledge that our proposals will lead to a significant change to the funding arrangements for 0870 services. However, we would also point out that we are acting to repair the retail pricing model for 0870 services under which the convention is that calls to 0870 numbers should be charged at national geographic rates. The breakdown of the linkage between 0870 call charges and national call

charges has led to consumer concerns as 0870 services are still widely advertised as 'national rate' although prices are significantly higher than geographic rates. In our view, failing to address this problem would be likely to lead to a further decline in consumer confidence in 0870 numbers making it increasingly difficult for SPs to continue to use 0870 numbers.

- 3.68 Some TCPs may well have offered SPs 0870 numbers on the basis that the cost of the services would be covered by call charges. In our view 0870 numbers should also have been offered on the basis that retail prices were linked to BT's national geographic call and therefore charges to SPs would be likely to increase as geographic prices declined as a result of retail competition.
- 3.69 On the second point, our proposals aim to improve pricing transparency by creating the conditions under which OCPs can align 0870 call charges with geographic rates and also by requiring OCPs to take extra steps to inform their customers if they wish to charge 0870 calls above geographic rates. We believe that our proposals should lead to a significant increase in the proportion of 0870 calls that are charged at geographic rates and that the revised transparency obligations in General Condition 14.2 will also help improve pricing transparency.
- 3.70 We acknowledge that migration to other number ranges will reduce the pricing transparency benefits associated with our proposals. This effect was taken into account when we considered the impact of our proposals. In our view, even after taking migration into account, there will be a significant benefit associated with better pricing transparency for the services that remain on 0870 numbers.
- 3.71 We disagree that migration of services to other number ranges (such as 0844 or 0871 numbers) would shift the 0870 pricing transparency problems elsewhere. The particular problem with 0870 numbers is the broken linkage with geographic call charges. Migration to other number ranges with other pricing arrangements would not cause this problem to be replicated elsewhere.
- 3.72 We acknowledge that changes to numbering arrangements can be disruptive for businesses, however we disagree that historic revisions to the National Telephone Numbering Plan have reduced pricing transparency. The major changes made in the 1990s and early 2000s were designed to provide additional numbering capacity and to simplify numbering arrangements so that consumers could more easily identify different types of service by the first two-three digits of numbers. This arrangement also serves to give consumers a rough pricing indication from the service type.

Three SPs suggested alternative measures to improve pricing transparency and address consumer concerns.

- 3.73 InfoGB Media, Q-Systems International and London FX Ltd suggested alternative approaches to 0870 call pricing to improve pricing transparency and address consumer concerns whilst minimising the disruption for SPs. In relation to retail pricing and pricing transparency the following suggestions were made:
- aligning 0870 call prices with those for 0844 numbers (i.e. up to 5p per minute for BT customers);
 - setting 0870 call prices at an unspecified retail rate that would allow SPs to receive calls without charge;

- a pricing ladder for non-geographic numbers supported by price with pricing announcements (e.g. 081 calls should cost 1p per minute, 082 calls 2p per minute etc);
- requiring all networks to charge the same price for 0870 calls or limiting retail prices from all networks; and
- limiting the price of calls from mobile networks to the sum of the designated rate in the Plan and the mobile operator's geographic rate (e.g. if a mobile operator charged 15p per minute for geographic calls, 0844 calls would be limited to the designated maximum of 5p per minute plus 15p per minute);
- requiring mobile operators to clearly state how much more they charge than fixed networks to address the concerns about mobile call charges;

3.74 In relation to call queuing the following suggestions were made:

- customer service and complaint services should not be allowed to use numbers that support revenue sharing;
- revenue sharing should be more tightly controlled to prevent SPs from earning money whilst callers are kept on hold; and
- limitations on call-queuing should be restricted to the most expensive numbers.

3.75 InfoGB Media believed that it would not be possible to eliminate scams therefore the best way to deal with them is through consumer education and the standardisation and regulation of call prices.

Ofcom's comments

Aligning prices with those of 0844 numbers

3.76 Ofcom proposed this approach for 0845 and 0870 numbers in the 2004 NTS Consultation. However, this approach was not popular with either consumer or industry respondents and was therefore abandoned in favour of the current proposal after further consultation in the 2005 NTS Consultation.

Setting 0870 call prices at an unspecified retail rate that would allow SPs to receive calls without charge

3.77 The potential benefit of this approach is that it might reduce the level of service migration away from 0870 numbers compared with our proposals. This option was considered by Ofcom in the 2005 NTS Consultation. It was rejected because it would involve Ofcom setting retail prices and also because Ofcom considered it would not be legitimate for it to set retail prices at a level that would support revenue sharing.

Requiring all networks to charge the same price for 0870 calls or limiting retail prices from all networks

3.78 This suggestion is very similar to Option A that we considered in the Consultation under which Ofcom would require all OCPs to charge 0870 calls at no more than their geographic rates. As discussed in paragraphs 2.37 to 2.41 Option A would be likely to be more effective at improving pricing transparency than our preferred option

(Option B) however, on balance we decided to implement Option B on the grounds that it will be more proportionate.

Pricing ladder for 08 numbers with pricing announcements

- 3.79 As discussed in paragraphs 2.34 to 2.35, we have concluded that pricing announcements would be likely to cause interference to some automated services so we do not think that announcements should be applied to all 08 numbers.
- 3.80 As discussed in more detail in paragraph 3.44, this approach could improve pricing transparency but would be also be disruptive because it would alter the pricing arrangements for most of the 08 ranges.

Mobile call charges

- 3.81 We recognise that the price of calls to 0870 numbers and other 08 numbers from mobile networks is causing some stakeholder concern. Across the full range of call types, we would expect that retail competition between network operators should ensure that consumers get a good deal overall.
- 3.82 However, we note that there has been a significant rise in the price of calls to 08 numbers from most mobile networks during 2008. This gives us cause for concern about whether competition is working in the best interests of consumers in this case.
- 3.83 We hope that greater pricing transparency stemming from CPs price publication obligations for 08 calls in General Condition 14.2, including the revisions now being implemented for 0870 calls will strengthen the influence of competition on the price of these calls from mobile networks.
- 3.84 Given the concerns we plan to monitor pricing trends for 08 calls from mobile networks and will consider whether any further action may be required.

Call centre queuing

- 3.85 As discussed in more detail in paragraph 3.55, we considered concerns about call centre service levels in the 2005 NTS Consultation.
- 3.86 Our proposals for 0870 numbers will effectively bring an end to revenue sharing on 0870 numbers thereby reducing concerns that 0870 calls may be artificially extended for commercial gain.

Consumer education about scams

- 3.87 In our view, measures such as PRS regulation that limit the incidence of scams are likely to be the most effective way of reducing consumer harm from scams. However we agree with InfoGB Media that consumer education about scams has a role in reducing consumer harm from scams. In this context we note that the premium rate services regulator PhonepayPlus provides information for consumers about premium rate services.

SP Representative Groups

- 3.88 We received comments from one organisation representing SPs. The Association for Interactive Media & Entertainment ('AIME') is a trade association for the Media and Entertainment industry.

- 3.89 AIME thought that Ofcom's proposals would not address the key issue of pricing clarity in a satisfactory manner. AIME thought that Ofcom's proposals would be costly and would not benefit consumers because they will remove a legitimate business model for funding improvements to customer services. AIME argued that the problem that needed to be addressed is the provision of accurate pricing information and educating consumers about the range of available services thereby enabling them to make informed choices.
- 3.90 AIME also thought that removing 0870 calls from the scope of the NTS Condition could create problems arising from BT's dominant market share.

Ofcom's Comments

- 3.91 Ofcom accepts that the objective of improving pricing clarity for 0870 call would be compromised if OCPs en masse were to reject including these calls in their price plans. However, in our view, there is a good chance that retail competition will lead a significant proportion of OCPs to charge 0870 calls at geographic rates. In this context we note that:
- BT has already aligned its 0870 call charges with geographic call charges for its three main consumer pricing packages in anticipation of Ofcom implementing these 0870 measures;
 - the proposed rates in the draft determination of the 0870 Dispute have been set at a level to enable BT to keep 0870 calls within its call packages; and
 - at least one major operator has responded with a similar pricing policy.
- 3.92 The problems stemming from BT's dominance that AIME referred were not identified. Certain CPs have raised more specific competition concerns which are dealt with at paragraph 3.122 below.

Communications Providers and representative organisations

- 3.93 We received 15 responses from CPs and representative organisations.
- BT;
 - Cable and Wireless ('C&W');
 - COLT;
 - The Federation of Communications Services ('FCS') an organisation representing predominantly smaller CPs and Service Providers;
 - Flextel;
 - IVR Response;
 - The Mobile Broadband Group ('MBG') an organisation representing mobile operators;
 - Reality Telecom;
 - Scottish and Southern Energy;

- Thus;
 - Vodafone; and
 - The UK Competitive Telecoms Association ('UKCTA') an organisation representing communications providers.
- 3.94 Three other CPs also submitted responses but asked us to withhold their names and responses.
- 3.95 Amongst this group of respondents, only BT and COLT supported Ofcom's proposals. BT welcomed Ofcom's proposal to change the NTS framework in respect of 0870 numbers but thought they would not achieve the policy objectives unless:
- Ofcom set 0870 termination rates at the same rates as geographic calls in order to enable OCPs to charge 0870 calls on the same basis; and
 - Ofcom modified its proposals to give OCPs a stronger incentive to charge 0870 calls at geographic rates.
- 3.96 COLT thought Ofcom's proposals were a pragmatic solution to the pricing transparency problems but was concerned about the impact of the proposals on competition in the termination/hosting market.
- 3.97 The other respondents in this group opposed Ofcom's proposals. A range of concerns were raised. The main points were:
- the introduction of the 03 range obviates the need for the 0870 proposals;
 - concerns about the linkage with the 0870 Dispute;
 - whether the proposals would be effective at improving pricing transparency given that OCPs would be allowed to charge 0870 calls above geographic rates;
 - whether the proposals would lead to a reduction in interconnection disputes;
 - C&W and Thus were also concerned about the impact on competition in the termination/hosting market; and
 - concerns about the impact on TCPs and SPs and whether Ofcom had accurately quantified those impacts in the IA; and
 - the view that the 3 month time period proposed for implementation of the changes following publication of this statement was insufficient.
- 3.98 Not all of this group commented about the relative merits of the two options considered by Ofcom in the consultation. Amongst those that did, views were divided between those that considered Option B preferable on the grounds that it is less intrusive because it permits OCPs to charge 0870 calls above geographic rates and those that felt any intervention was unnecessarily intrusive. No CPs expressed support for Option A believing it to be too interventionist.

Some respondents thought that 03 numbers negate the need for Ofcom's proposals

- 3.99 Thus, UKCTA and another CP thought that there was no longer any need for the 0870 proposals now that Ofcom has created another number range (03 numbers) that is charged at geographic rates.
- 3.100 The FCS argued that Ofcom's proposals were contrary to the objectives of Ofcom's Strategic Numbering Review and that Ofcom should reassess its proposals in the light of the introduction of 03 numbers.
- 3.101 A related point was that aligning prices for 0870 calls with geographic rates might confuse consumers as other 08 number ranges are charged at higher rates.

Ofcom's comments

- 3.102 These comments seem to be informed by the view that the 03 number range can satisfy demand for non-geographic numbers charged at geographic rates so there is no need to implement the 0870 proposals. In our view, this is a flawed argument since our proposals are designed to address problems that are specific to the 0870 number range (such the pricing transparency problems associated with the broken linkage to national call rates) rather than simply to create a range charged at geographic rates. In our view the availability of the 03 number range will not address the problems, unless it leads to all or at least the vast majority of SPs voluntarily moving their services to 03 numbers, this has not happened to date and in our view is unlikely to happen.
- 3.103 On the second point, the 0870 proposals were reviewed in the Strategic Numbering Review²¹ consultation in which the 03 range was first proposed. This consultation was a result of Ofcom's strategic review of the UK's numbering resources that considered how telephone numbers should be managed in the future to deliver maximum benefits to consumers. Ofcom's 0870 and 03 proposals were considered in this wider context as were stakeholder comments about the potential linkage between 0870 and 03.
- 3.104 Regarding the consistency of the 0870 proposals with the objectives of the Strategic Numbering Review we believe this comment is based on the view that realigning 0870 call charges with geographic rates is inconsistent with the creation of the 03 range and the simplified approach to describing 08 numbers under which three digit descriptions have been adopted and 087 numbers would be charged at up to 10p per minute for BT customers. The review concluded that our proposals for 0870 and the other proposals in the 2005 NTS Consultation were consistent with the long term approach to price transparency, given the policy issues associated with 08 numbers. In our view, the 0870 measures are a balanced response to a specific set of issues which have developed over the past decade. They are designed to address current problems on a legacy range and can readily (if not neatly) sit alongside the broader vision of the Strategic Numbering Review.

Effectiveness of proposals

- 3.105 Most of this group of respondents thought that Ofcom's proposals would not improve pricing transparency (and some thought they might worsen pricing transparency) because some and possibly most OCPs would charge 0870 calls above geographic

²¹ Telephone Numbering: Safeguarding the future of numbering published 23 February 2006

rates, confusing the message to consumers that 0870 calls are charged at geographic rates. In this context, several respondents thought that high prices charged by mobile operators for 0870 calls and other 08 numbers were a particular problem that Ofcom should tackle.

Ofcom's comments

3.106 We note that under the current arrangements OCPs charge a wide range of prices for 0870 calls, most if not all above geographic rates, despite the longstanding association with geographic charges and the continued description of 0870 calls as 'national rate' by CPs and SPs. We therefore think it unlikely that pricing transparency would worsen if some CPs were to continue to charge 0870 calls above geographic rates following the implementation of our proposals.

3.107 Although there is some uncertainty about the likely impact of our proposals on consumer pricing awareness, we consider that the proposals will lead to an improvement in pricing transparency because:

- in our view, there is a good chance that retail competition will lead a significant proportion of OCPs to charge 0870 calls at geographic rates. This should lead to a significant improvement in pricing transparency since consumers have a much higher awareness of geographic call charges than calls to 0870 numbers. It will also provide a simple message to consumers, which is that 0870 calls are charged on the same basis as geographic calls and are included in call packages on the same basis. In this context we note that:
 - BT has already aligned its 0870 call charges with geographic call charges for its three main consumer pricing packages in anticipation of Ofcom implementing these 0870 measures;
 - the rates proposed in the draft determination have been set at a level to enable BT to continue this alignment;
 - at least one major operator has responded with a similar pricing policy; and
- the new price publication requirements for 0870 calls in General Condition 14 will improve the visibility of 0870 call charges to consumers;
- General Condition 14 will prohibit OCPs from describing 0870 calls as 'national rate' e.g. in billing material unless their 0870 charges are aligned with geographic rates.

3.108 We plan to carry out market research to assess the impact of these measures on consumer pricing awareness. If it becomes apparent after 12 months that the new rules have not had a significant effect on consumer price awareness, our intention is to return to this issue and consider what other measures may be appropriate.

3.109 As discussed in paragraph 3.81 we recognise that the price of calls to 0870 numbers and other 08 numbers from mobile networks is causing some stakeholder concern. Given the concerns we plan to monitor pricing trends for 08 calls from mobile networks and will consider whether any further action may be required.

Enforcement of General Condition 14

3.110 Several respondents thought that the level of compliance by CPs with the existing requirements for NTS Calls in General Condition 14 was poor. These respondents argued that Ofcom's proposals (which would add new requirements) would be unlikely to be effective unless Ofcom stepped up its enforcement activity to improve compliance.

Ofcom's comments

3.111 We were initially unhappy with the level of compliance with the NTS requirements in General Condition 14.2. Since they were introduced in August 2006, Ofcom has therefore undertaken two own-initiative compliance programmes^{22 23}.

3.112 Following the completion of our second investigation we are satisfied that the large CPs that were the subject of investigation have achieved a good level of compliance.

3.113 Following the implementation of our proposals we propose to monitor compliance with the revised requirements for NTS Calls and if necessary we will take further action to ensure compliance.

Consumer Protection from Unfair Trading Regulations

3.114 The FCS, Flextel, and the MBG all thought that the Consumer Protection from Unfair Trading Regulations 2008 ('CPRs') introduced in May 2008 had a bearing on Ofcom's proposals. Several points were raised:

- Flextel thought that Ofcom should reconsider its position on pricing transparency measures in the light of the CPRs;
- The FCS thought that Ofcom's proposals were contrary to the requirements of the CPRs, though it didn't explain why; and
- The MBG thought that the CPRs set a benchmark for the amount of information that should be provided by OCPs to enable consumers to make rational purchasing decisions. MBG argued that a sector regulator must demonstrate that it has a very good reason to introduce measures that place an additional burden on providers.

Ofcom's comments

3.115 The CPRs came into force on 26 May 2008. These regulations provide wide ranging protection for consumers by placing traders under a general obligation to trade honestly and fairly, certain aspects of which are dealt with in more detail. It is for traders to ensure that the requirements of the regulations are met.

3.116 The changes which we are making in relation to 0870 calls are intended to improve pricing transparency and consumer confidence in relation to calls to 0870 numbers whereas the primary aim of the CPRs is to protect consumers from unfair trading

²² Own-initiative enforcement programme into compliance with General Condition 14.2 ("GC14.2")
http://www.ofcom.org.uk/bulletins/comp_bull_index/comp_bull_ccases/closed_all/cw_918/

²³ Second own-initiative enforcement programme: compliance with General Condition 14.2 ("GC 14.2") and General Condition 10 ("GC 10")
http://www.ofcom.org.uk/bulletins/comp_bull_index/comp_bull_compcases/cw_980/

Consequently we consider that our proposals address different objectives to the CPRs. We therefore consider it appropriate to place OCPs under additional obligations to address our objectives.

Linkage with the 0870 Dispute

3.117 BT, FCS, IVR response, and another CP all raised concerns about the linkage between Ofcom's proposals and the 0870 Dispute. Two related points were raised:

- respondents thought that Ofcom's proposals would not achieve their aim of allowing OCPs to charge 0870 calls at geographic rates and include them in call packages on the same basis as geographic calls unless termination charges for 0870 calls are closely aligned with those for geographic calls; and
- some respondents felt that as a result they could not judge the likely success of Ofcom's proposals or respond effectively to the consultation.

3.118 C&W also raised similar concerns the linkage with the dispute, arguing that it could not assess the impact of Ofcom's proposals in the NTS termination/hosting market until Ofcom had resolved the dispute and set 0870 termination rates. Cable & Wireless therefore argued that it was inappropriate for Ofcom to consult on its proposals without giving stakeholders an indication of the likely level of 0870 termination charges under the new arrangements.

3.119 We discuss C&W's concerns about the impact in the NTS termination/hosting market in paragraph 3.122 below.

Ofcom's comments

3.120 On the first point, we agree that it would be easier for OCPs to charge 0870 calls on the same basis as geographic calls if the termination charges are aligned. Ofcom has taken this into account in its consideration of the dispute.

3.121 On the second point, we refer to our response to similar points raised by consumers at paragraph 3.21 above.

Impact on competition in the 0870 termination/hosting market

3.122 C&W, COLT, FCS and Thus were concerned about the potential impact of Ofcom's proposals in the termination/hosting market for 0870 numbers (i.e. the market for the provision of 0870 numbers and associated services by TCPs to SPs).

3.123 These respondents noted that if Ofcom resolved the 0870 Dispute by setting a relatively low rate for 0870 call termination the result would effectively be a significant redistribution of 0870 call revenues from TCPs to OCPs (simply because the proportion of call charges retained by OCPs would be much larger) and that as the largest OCP, BT would be the biggest beneficiary of this change. Respondents thought that BT's origination business would gain a significant amount even allowing for reductions in retail call charges. As an illustration, C&W estimated the effect of Ofcom setting termination rates at the level proposed by BT (an average of around 0.2p per minute). Assuming BT charged geographic rates for 0870 calls, C&W estimated this would result in OCPs retaining an additional 1.3p for each call minute. At current call volumes, C&W estimated the gain to BT as an OCP would be £78 million per year, though C&W noted that migration of services to other number

ranges might be half this amount). Thus estimated the transfer of revenues to amount to £50 million p.a.

- 3.124 Respondents believed that BT might use the additional revenue to offer SPs better terms for 0870 termination/hosting, giving BT a significant commercial advantage over other TCPs who do not originate so many calls as BT and would therefore not be able to offer such attractive terms. Respondents felt this would ultimately damage competition in the NTS termination/hosting market.
- 3.125 C&W regarded the likelihood of BT leveraging its dominant position in the call origination market into the termination market as the most important competitive issue arising from Ofcom's proposals. C&W noted that Ofcom had concluded that BT would be likely to have SMP in wholesale call origination for the foreseeable future. C&W therefore argued that the impact of Ofcom's proposals could not be assessed until the dispute had been resolved and the scale of the revenue redistribution in BT's favour was known.
- 3.126 C&W urged Ofcom to proceed with its formal review of the market for NTS call termination and to impose remedies (regulations) that would address these concerns before proceeding with its proposal and before concluding its consideration of the dispute.

Ofcom's comments

- 3.127 The proposed termination payments would result in BT being able to retain more than they currently do for originating 0870 calls even allowing for lower retail charges. There is no evidence to suggest that BT will or might engage in anti-competitive behaviour of the kind suggested and we are not currently persuaded that this means that BT will have a greater incentive to do so. If BT were to offer SPs terms for termination/hosting which other operators could not match, this might constitute anti-competitive behaviour, for example because it resulted in a margin squeeze in the market for NTS termination/hosting. Should such concerns arise, BT would be vulnerable to investigation under the Competition Act 1998 ('Competition Act').
- 3.128 Ofcom suspended work on NTS Call Termination Market Review²⁴ in 2005 after it accepted a Competition Act complaint about BT's NCCN 500 charges ('The NCCN 500 Complaint')²⁵. Following publication of the final decision about this case on 1 August 2008, Ofcom is currently considering whether to recommence work on the Market Review.

Reduction in interconnection disputes

- 3.129 Several respondents in this group cited the 0870 Dispute as evidence that further disputes over 0870 call termination charges would be likely to occur and that consequently the proposals would not achieve the objective of reducing the number of interconnection disputes.

Ofcom's comments

- 3.130 The possibility that further disputes about 0870 interconnection charges cannot be discounted. However, we are hopeful that once the new arrangements are established, the prospect of recurring disputes will recede as TCPs' and SPs'

²⁴ <http://www.ofcom.org.uk/consult/condocs/ntsctmr/>

²⁵ http://www.ofcom.org.uk/bulletins/comp_bull_index/comp_bull_ccases/closed_all/cw_823/

reliance on 0870 call termination revenues to fund the services provided on 0870 numbers will be significantly reduced and the dependence of termination charges on BT's retail charges and discounts will be removed.

- 3.131 The 0870 Dispute determination will establish a methodology for setting 0870 call termination payments for BT originated 0870 calls. In a dispute raising similar issues, it is likely that the same methodology could be applied, making the dispute appropriate for referral to alternative dispute resolution. This will give BT and other CPs greater certainty about the likely outcome of such a dispute, diminishing the prospect of further disputes.

The Impact Assessment

- 3.132 Most CPs raised concerns about the Impact Assessment. The main points raised were:

- that Ofcom had underestimated the degree to which SPs would migrate their services away from 0870 numbers as a result of the proposals;
- that Ofcom had underestimated SPs migration costs and in particular that:
 - Ofcom had underestimated costs that SPs would incur to update advertising and promotional materials and signage, which some believed would be SPs' largest cost;
 - Ofcom had not taken into account the investments that some SPs had made in acquiring memorable numbers and promoting them; and
- that the proposals are not proportionate because the proposals would not improve pricing transparency and the costs would be high.

Ofcom's comments about migration

- 3.133 We have reviewed recent 0870 traffic figures to gain an understanding of the level of service migration that has already occurred in anticipation of the implementation of our proposals. We describe this analysis in more detail in Annex 4.

- 3.134 On the basis of the available evidence, we consider that services accounting for about 38% to 43% of traffic have migrated from 0870 numbers in anticipation of implementation of our proposals. This level of migration is consistent with the lower range of our estimate for the 2005 NTS Consultation (that services accounting for 45% to 55% of traffic would migrate).

- 3.135 We consider that the bulk of service migration has already taken place, however, based on stakeholder responses to the consultation it appears that some SPs may have deferred their decisions until publication of this statement and the 0870 Dispute determination. We therefore consider there may be some further migration following publication of this statement.

- 3.136 It is difficult to accurately estimate the amount of additional migration that will occur, though in our view it is likely to be quite a small amount. In particular, as discussed in Annex 5, none of the information we have seen about service migration would lead us to believe that migration would be likely to exceed the upper range of our original forecast for the 2005 NTS Consultation (55% of traffic). This was based on information provided by approximately 600 SPs in response to formal information

requests and additional questionnaires from Ofcom. We therefore consider that a further 15% migration would represent the upper limit of the range of future migration with lower figures being more likely.

- 3.137 For the purposes of our final assessment we have estimated the costs associated with a central estimate of a further 5% migration (by traffic volume) which we consider to be the likely extent of future migration and an upper estimate 15% which as discussed above we consider to be the upper limit for further migration following publication of the statement.

Ofcom's comments about migration costs

- 3.138 Respondents to the 2005 NTS Consultation raised similar concerns about the migration cost estimates. In response to those concerns we undertook further sensitivity analyses which we reported in the 2006 NTS Statement²⁶. This supported our view that our analysis of migration costs was broadly correct.
- 3.139 Based on this analysis we remain of the view that our methodology for assessing migration costs is broadly correct. We think that the concerns raised by CPs may in part relate to anecdotal evidence from individual SPs that migration costs are higher than the average amounts used in our analysis. We also considered this point in the 2006 NTS Statement. We acknowledged that there are a small number of SPs who receive very large 0870 call volumes and obtain very significant benefits from 0870 revenue shares and hosting services, and that some of these SPs may spend much more on number migration than the average amounts used in our analysis. We estimated, for example, that there may 30-40 SPs who receive over £1m per annum in revenue shares and other benefits, and that migration costs for a few of these SPs could run into hundreds of thousands of pounds. Given the very small number of firms involved, we concluded this would not alter the overall picture, or the validity of the migration cost estimates.
- 3.140 Regarding investments in memorable numbers, we note that none of the respondents provided any evidence in support of the view that some 0870 numbers have a significant level of consumer recognition. We also note that SPs can continue to use existing 0870 numbers that have a significant level of consumer recognition. In addition we note that charges levied by TCPs for memorable numbers are small on average (our desk research indicates these are typically £20 to £100).
- 3.141 In the light of stakeholder comments and in view of the delay since the Consultation we have updated our cost estimates for our final assessment of the proposals. This final analysis is necessarily a forward looking assessment and therefore only the costs relating to migration that may occur in future are relevant to our assessment. Costs relating to past migration have already been incurred and could not be recovered if we decided not to proceed with our proposals and are therefore not relevant to our final assessment. Our revised cost estimates are therefore based on the 5% to 15% range of further migration discussed in paragraph 3.137.
- 3.142 We have retained the methodology used in the 2005 NTS Consultation for our updated cost estimates, with two exceptions, made in response to stakeholder comments:
- We have reviewed our approach to signage costs which were considered qualitatively in the 2006 NTS Statement and have made a new estimate of

²⁶See paragraphs A5.38 to A5.45 of the 2006 NTS Statement.

vehicle signage costs. This estimate needs to be treated with caution since we do not have sufficient information to produce a detailed estimate;

- We have developed a methodology for assessing the cost (to SPs) of updating advertising and promotional material over relatively short periods (less than one year) and have used this to estimate the costs that SPs that have not yet migrated might incur should they decide to migrate their services in a relatively short time period (less than one year) following publication of our statement. This estimate also needs to be treated with caution since we do not have sufficient information to produce a detailed estimate.

3.143 When updating our cost estimates we have also taken the opportunity to adjust the cost inputs for inflation since the 2005 NTS Consultation.

3.144 Figure 1 below summarises our estimate of the costs ranging from our central to upper migration estimates.

Figure 1: Summary of costs²⁷

(£ millions)	Cost for migration ranging between central and upper migration estimates (i.e. 5% to 15% by traffic volume) following publication of statement
Service Providers	
Stationery and Website costs	13 to 38
Advertising and promotional material	2 to 13
Vehicle Signage	0.5 to 4
Building Signage	Not estimated but thought to be low
Communications Providers	
Preparatory costs	not estimated
Consumers	
Misdialled calls	3 to 8
Total	19 to 63

3.145 We discuss this additional analysis in more detail in Annex 4.

Ofcom's comments on the proportionality of the proposals

3.146 With impact assessments it is often the case that not all of the costs and benefits can be quantified and typically costs are easier to quantify than benefits. The evaluation of policy proposals must therefore be partly qualitative. In this case we were able to

²⁷ Copy of Figure 6 in Annex 4.

estimate most of the identified costs, however there were no reliable means to quantify some of the costs and benefits. However, we have described each of the costs and benefits we were not able to quantify reliably and have taken them into account in reaching our decision. Our statutory duties also require that in reaching our decision we take account of a number of factors in ensuring that we meet our duties under section 3 of the Act. In accordance with our duties we have considered the opinions of consumers and members of the public generally, as well as the costs that may be incurred.

3.147 We consider that our proposals will deliver a range of benefits, namely:

- an improvement in pricing transparency leading consumers to make more calls, with an associated improvement in consumer welfare;
- preventing consumer harm from a future rise in scamming activity;
- improved consumer confidence in 0870 numbers or conversely preventing a decline in consumer confidence in 0870 numbers, both delivering a consumer welfare benefit;
- lower 0870 call prices for consumers;
- greater revenue certainty for TCPs and indirectly SPs; and
- a reduction in interconnection disputes.

3.148 We consider these to be significant benefits; however we were only able to quantify the benefits associated with an improvement in pricing transparency and were unable to fully quantify the other benefits, notably those associated with better consumer protection.

3.149 We acknowledge that there is some uncertainty about the likely impact of our proposals on consumer pricing awareness, however as discussed in paragraph 3.107 we consider that the proposals will lead to significant improvement.

3.150 The main cost impact of the proposals is that they will cause CPs and particularly SPs to incur setup costs associated with migration of services from 0870 numbers to other numbers. The proposals will add a small addition to the regulatory burden on CPs by adding to their price publication obligations. Given the large number of stakeholders involved, the migration costs are inevitably significant.

3.151 As discussed in paragraph 3.141 above our final assessment of these proposals is necessarily a forward looking assessment and therefore only the costs relating to migration that may occur in future are relevant to our assessment.

3.152 Figure 2 below illustrates that:

- for our central migration estimate even a modest improvement in pricing transparency as a result of our proposals alone would suffice to provide a positive net benefit on a forward looking basis over 5 years for all the elasticity values illustrated; and
- for our upper migration estimate even a modest improvement in pricing transparency as a result of our proposals alone would suffice to provide a positive net benefit on a forward looking basis over 10 years.

3.153 Once the other benefits are taken into account, we consider that the proposals would be likely to lead to a significant net benefit within a few years.

Figure 2: Forward looking assessment of net benefit of improvements in pricing transparency²⁸

Improvement in consumers pricing perceptions of 0870 calls from fixed lines over 5 years (Average price estimated by consumers for calls from fixed lines)	Net benefit to consumers of improvements in pricing perceptions over 5 years on a Net Present Value ('NPV') basis ^{29 30} after deduction of migration and misdial costs that may be incurred in future (£ millions)			
	Range shows sensitivity to further service migration ranging from central to upper migration estimates (i.e. 5% to 15% by traffic volume)			
	Price elasticity			
	-0.2	-0.3	-0.4	-0.6
From 36p to 30p per minute	22 to (25)	43 to (10)	64 to 5	106 to 36
From 36p to 25p per minute	52 to (3)	88 to 23	125 to 50	201 to 105
From 36p to 20p per minute	78 to 15	128 to 52	179 to 89	287 to 167
From 36p to 15p per minute	100 to 31	162 to 76	226 to 123	362 to 221

Improvement in consumers pricing perceptions of 0870 calls from fixed lines over 10 years (Average price estimated by consumers for calls from fixed lines)	Net benefit to consumers of improvements in pricing perceptions over 10 years on a Net Present Value ('NPV') basis ^{31 32} after deduction of migration and misdial costs that may be incurred in future (£ millions)			
	Range shows sensitivity to further service migration ranging from central to upper migration estimates (i.e. 5% to 15% by traffic volume)			
	Price elasticity			
	-0.2	-0.3	-0.4	-0.6
From 36p to 30p per minute	79 to 16	129 to 52	179 to 89	282 to 163
From 36p to 25p per minute	148 to 66	234 to 129	322 to 192	505 to 325
From 36p to 20p per minute	205 to 108	322 to 193	444 to 281	700 to 466
From 36p to 15p per minute	250 to 140	392 to 243	541 to 351	859 to 582

²⁸ Copy of Figure 7 in Annex 3.

²⁹ Future values discounted using the Social Time Preference Rate (3.5 %)

(<http://greenbook.treasury.gov.uk/annex06.htm>)

³⁰ Assuming that pricing perceptions progress from the initial to final figures in 5 equal increments over the period.

³¹ Future values discounted using the Social Time Preference Rate (3.5 %)

(<http://greenbook.treasury.gov.uk/annex06.htm>)

³² Assuming that pricing perceptions progress from the initial to final figures in 5 equal increments over the period.

Stakeholder comments about the legal instruments

Comments about the proposed amendment to General Condition 14

3.154 Cable & Wireless, Thus, UKCTA and CP1 criticised the proposed amendment to General Condition 14 in paragraph 4.3 of Annex to the General Condition which stated :

“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.”

3.155 These CPs considered that the inclusion of NTS calls in addition to 0870 calls within the scope of paragraph 4.3 fell outside the scope of the Consultation since Ofcom had not assessed the impact of including NTS calls within this requirement or sought stakeholders’ views.

3.156 UKCTA was also concerned that the term ‘prominent’ was ambiguous and suggested that Ofcom should revise the text or issue additional guidance to ensure that the new obligations are applied consistently by all OCPs.

3.157 The MBG asked Ofcom to clarify OCPs obligations under the proposed amendment to General Condition 14.2, in particular whether they would be obliged always to specify 0870 pricing information or only when the advertising/promotional material contains pricing information.

3.158 SSE noted that certain changes had been made to GC14 and Annex 1 in the modification proposed in the 0870 Consultation (to GC 14.9(k) and Annex 1, paragraph 3.1 and 3.2) but these had not been highlighted as modifications. SSE questioned whether the proposed modification to paragraph 3.1 of Annex 1 could be made in these circumstances.

Ofcom’s comments

3.159 In our statement, “*Review of the 070 personal numbering range*”, published on 27 February 2009³³, a modification was made to Annex 2 of General Condition 14, incorporating paragraph 4.3 in respect of NTS calls and calls to 070 numbers to take effect on 28 August 2009. In the light of the comments we have received in response to the 0870 consultation, we accept that the inclusion of NTS calls within the scope of paragraph 4.3 widens the scope of this clause beyond that intended. We have therefore removed the reference to NTS calls, revising paragraph 4.3 as follows.

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 calls to 0870 numbers [and calls to Personal Numbers].

3.160 We continue to be satisfied that calls to 070 personal numbers should remain within the scope, given the market failure associated with the lack of pricing transparency

³³ <http://www.ofcom.org.uk/consult/condocs/070options/statement/>

identified for 070 calls. We continue to believe that these price publication requirements will enable consumers to understand tariffs for 070 calls more easily³⁴.

- 3.161 In relation to UKCTA's comment, in our view the term 'prominent' is concise and clearly communicates the intention which is that the statement about whether 0870 calls are included in call packages should be displayed in a manner that is particularly noticeable. We acknowledge that there is a degree of flexibility about how this requirement should be discharged in practice. We think this is appropriate as the media in which this information is displayed is likely to vary widely. Ofcom will monitor compliance with the revised General Condition 14 and will consider whether any further guidance may be appropriate.
- 3.162 We have revised paragraph 4.3 of Annex 2 to General Condition 14 to make it clearer that it applies where advertising or promotional material states a price for a call package or bundle incorporating geographic call. In these circumstances, the requirement is to publish a prominent statement within that advertising or promotional material as to whether 0870 calls are included in the price of that call package or bundle.
- 3.163 SSE has rightly pointed out certain modifications are included in the proposed revision of General Condition 14, but were not highlighted in full in the 0870 consultation. One of these – a modification to GC14.9(k) to exclude 0870 calls from the definition of NTS calls – was implemented in the modifications made in our statement "*Review of the 070 personal numbering range*". Another simply updates the references from ICSTIS to PhonepayPlus in paragraph 3.2 of Annex 1 to reflect the organisation's change of name and is highlighted in the modification of GC 14 at Annex 10.
- 3.164 The last, a new paragraph 3.1 added to Annex 1, is not a substantive change to existing obligations but merely a clarification aligning the PRS Code with the existing obligation in GC10 on OCPs to publish tariffs on their website and the NTS Code in annex 2 to GC14. We note that the provision was partially highlighted in the 0870 consultation and there was reference to it in the text of the consultation³⁵. In these circumstances, we are satisfied that we can proceed to make the modification, which is highlighted at Annex 10.
- 3.165 Finally, in the interests of clarity, we have refined the wording of the modifications to paragraphs 3.1 and 3.2.(iii) of Annex 2.

Comments about the proposed amendment to the Numbering Plan and Numbering Application Forms

- 3.166 BT noted that 0870 numbers have always been described as 'national rate' and 0845 numbers as 'local rate'. BT thought that 0870 numbers should continue to be described as 'national rate' to build on this association and emphasise the distinction between 0845, 0870 and 03 numbers. BT also thought that the revised designation should be made as consistent with the designation for 03 numbers as possible. BT thus offered revised text for the designations in the Plan which could also be used in numbering application form S8:

³⁴ See paragraphs 3.45 to 3.60, 4.38-4.43 and 4.27-4.32, *Review of the 070 personal numbering range*.

³⁵ Paragraph 3.25, *Changes to 0870*, 2 May 2008.

Numbers at a national rate: calls charged at the same rate the customer would pay to call a UK national rate Geographic Number, with calls to 0870 numbers counting towards inclusive call minutes if the customer has remaining inclusive minutes to UK Geographic Numbers, and included in any discount structures that apply to UK Geographic Numbers, 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.”

Ofcom’s comments

- 3.167 When developing our proposals we considered whether to retain the ‘national rate’ description in the revised designation for 0870 numbers. In our view most consumers would currently associate both the terms with geographic call rates. However, in practice few CPs now maintain a local/national charging distinction for geographic call tariffs. We therefore considered that the ‘national rate’ term would become less meaningful over time. Furthermore, by virtue of the modification to General Condition 14, OCPs can only describe 0870 calls as national calls or priced at the national rate in their advertising where they price such calls at geographic rates. While our objective is to restore the linkage between retail prices for 0870 calls and geographic call rates, OCPs are not obliged to price 0870 calls at these levels. To reflect this and in order to avoid ambiguity, we concluded that it was not appropriate to describe 0870 numbers as “national rate” or “geographic rate” in the 0870 designation.
- 3.168 Regarding consistency with the designation for 03 numbers, the tariff description in the designation was intended to be similar but more succinct than that used for 03 numbers. On balance we agree with BT that there is merit in aligning the designation as closely far as possible to signal to CPs that the tariff descriptions are similar (but not identical).
- 3.169 We have therefore decided to modify the designation as follows (here highlighting and strikethroughs are used to indicate differences from the consultation version rather than the current designation):

~~Calls to non-geographic numbers at a geographic rate~~ Non-Geographic Number: charged at up to the same rate the customer would pay to call a UK Geographic Number ~~(including discounts and call packages)~~, with calls to 0870 numbers counting towards inclusive call minutes if the customer has remaining inclusive minutes to UK Geographic Numbers, and included in any discount structures that apply to UK Geographic Numbers, 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.

Comments about the proposed amendment to General Condition 17

- 3.170 BT questioned whether Ofcom wished to differentiate between the descriptions of 0870 numbers and 03 numbers in the proposed modification to General Condition 17, particularly if it were Ofcom’s intention to allocate 03 ranges for expansion when the 0870 range exhausts rather than opening new additional 087X ranges. BT suggested that the amendment to General Condition 17 in Annex 4 could be

simplified by just adding “and 0870” to the text in brackets after “03” and deleting the remainder of the new text.

Ofcom’s Comments

- 3.171 In our Numbering Review³⁶, we concluded that once the 0870 range is exhausted we should accommodate future growth in demand for non-revenue sharing non-geographic numbers in the 03 range rather than introduce additional 08 ranges. However, we do not consider that the differing descriptions of 0870 and 03 numbers used in the modification risk undermining this approach or risk causing confusion, particularly as the primary audience of General Condition 17 is communications providers rather than consumers.
- 3.172 The purpose of the proposed descriptions of 03 and 0870 numbers in paragraph 17.12 is simply to provide describe the number ranges to which this clause applies. As we have decided not to use the term ‘UK-wide numbers’ to describe 0870 calls we think it better not to make the amendment suggested by BT. However, we propose to modify paragraph 17.12 as shown below to remove the reference to Special Services because under the revised designation in the Plan, 0870 numbers will no longer be defined as Special Services. The revised version of paragraph 17.12 is as follows:

Where Customers of a Communications Provider are making calls to either UK-wide Numbers (03), Harmonised numbers for harmonised services of social value (116XXX numbers) or Non-Geographic Numbers starting 0870, the Communications Provider shall comply with the designations for those numbers in the National Telephone Numbering Plan.

Comments about Ofcom’s economic analysis

- 3.173 In connection with our proposal to modify the NTS Condition, we undertook economic analysis of the market for call origination on fixed public networks in order to satisfy ourselves that there had not been a material change in this market.
- 3.174 Cable & Wireless questioned whether there was a need for the removal of 0870 calls from the scope of the NTS Condition given the no material change finding of Ofcom economic analysis.

Ofcom’s Comments

- 3.175 Before modifying a SMP condition, it is a statutory requirement to consider whether there has been a material change in the market in which the SMP determination was made. While 0870 calls have been excluded from the scope of the NTS condition, BT otherwise remains subject to it in relation to the origination of NTS calls and, as set out in Ofcom’s consultation on the findings of its review of the wholesale fixed narrowband markets, it is proposed that this should continue.³⁷
- 3.176 The purpose of the NTS condition is to regulate the price that BT can charge TCPs for the origination of NTS calls. The rates that BT must pay to TCPs henceforth for the termination of 0870 calls will be set by the 0870 dispute.

³⁶ <http://www.ofcom.org.uk/consult/condocs/numberingreview/statement/>

³⁷ Paragraph 15.9, Review of the wholesale fixed narrowband markets, 19 March 2009
http://www.ofcom.org.uk/consult/condocs/review_wholesale/

3.177 We describe our final conclusions on the economic analysis in section 5.

Comments about the proposed amendment to the NTS Condition

3.178 None of the respondents commented on the proposed text of the amendment to the NTS Condition though as discussed elsewhere in this section and Annex 2 some SPs suggested that Ofcom should not implement its proposals and should not therefore modify the NTS Condition.

Implementation Timescale

3.179 A number of CPs argued that in proposing a 3 month implementation timescale Ofcom had not properly considered the interests of CPs and SPs. They argued that:

- Some SPs have been unable to make informed decisions about whether to retain their 0870 numbers because of the uncertainty about the outcome of the 0870 Dispute determination and had not been able to decide whether 0871 numbers would provide a suitable alternative until the recent publication of the 0871 Statement; and
- 3 months was insufficient time for CPs to notify SPs that they would be billed to receive 0870 calls.

3.180 Accordingly views were expressed that Ofcom should defer implementation of the proposals for at least 6 months delay and some argued that 12 months should be allowed. This latter view was because of the time needed for businesses to assess their options before making any necessary changes to marketing materials, contact information and signage before switching to new numbers.

3.181 Only one CP agreed with Ofcom's 3 month implementation proposal.

Ofcom's comments

3.182 We discussed these concerns in the Consultation³⁸.

3.183 We remain of the view that for most SPs the broad scale of the change to financial arrangements for 0870 calls (driven by the reduction in retail prices and the withdrawal of regulatory support for revenue sharing) will be the deciding factor in their decision to retain their 0870 number or migrate. We would therefore expect that in this respect that most SPs would be able to make an informed decision about whether to migrate prior to the final resolution of the 0870 Dispute. This view is supported by our review of recent traffic trends (see Annex 4) which led us to conclude that the majority of SPs that would be likely to move their services have already done so.

3.184 We acknowledge that some SPs might regard the decision as finely balanced and may have postponed their decision until Ofcom issues either its draft or final determination of the 0870 Dispute. SPs that take this approach would have to operate their services under the new commercial terms for 0870 calls on an interim basis. As discussed in the Consultation we consider that SPs have had sufficient time to consider their options and to budget for any additional charges for 0870 services based on reasonable assumptions. As also discussed in the Consultation, we would expect SPs to be able to recover any additional charges for 0870 services

³⁸ See paragraphs 4.31 to 4.37 of the Consultation.

from charges for goods or services provided in downstream markets and should not therefore incur losses.

- 3.185 PhoneyPayPlus published its statement setting out how the PhoneyPayPlus 11th Code of Practice would be applied to 0871 services in November 2007 and Ofcom gave its initial response to stakeholder comments about the application of PRS regulation in May 2008. Whilst we acknowledge there was an element of uncertainty until Ofcom published the 0871 Statement on 5 Feb 2009 we consider that most SPs have had sufficient detail about the likely nature of PRS regulation for 0871 numbers to make informed decisions about the suitability of 0871 numbers for their services.
- 3.186 A further factor is that following BT's decision to incorporate 0870 and 0845 calls in its retail call packages from 16 January 2009 (in anticipation of the implementation of these 0870 measures) we have received representations from two large CPs requesting Ofcom to implement the changes as soon as possible. These CPs have or wish to reduce their 0870 calls prices in response to BT and lower termination payments following implementation of the changes would facilitate this.
- 3.187 For the reasons discussed above, in our view implementing our proposals without further delay will not cause undue inconvenience to CPs and SPs. We are also mindful that Ofcom extended the original implementation timetable (in the 2006 NTS Statement) in response to requests from CPs and SPs and that the delay in publication of this statement has effectively extended the notice period beyond three years. On balance we consider that proceeding immediately with implementation strikes an appropriate balance between the interests of CPs and SPs and those of stakeholders more generally.
- 3.188 We have therefore decided that the changes should be implemented on 1 August 2009 i.e. a notice period of more than a little more than three months. We have set the implementation date set at the beginning of the calendar month to simplify the change to interconnection billing arrangements.

Section 4

Ofcom's Decision

The decision

- 4.1 Having considered stakeholders comments to the Consultation and further comments made in response to subsequent information requests in relation to the 0870 Dispute we have decided to implement the revised policy proposals set out in the consultation with the revisions discussed in Section 3.
- 4.2 The modifications to SMP Condition AA11, General Condition 17, the National Telephone Numbering Plan, the application form S8 for 08 numbers and General Condition 14 are contained in Annexes 6 to 10 of this statement. The modifications shall take effect on 1 August 2009.
- 4.3 In making this decision we have taken into account the following factors.

Communications Act Tests

- 4.4 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.
- 4.5 The procedures for setting, modifying or revoking regulations are set out in Act. In this case the relevant sections are:
 - Sections 56 and 60 – modification of the Plan;
 - Section 49 – modification of the Numbering Application Forms;
 - Sections 48 and 49 – modification of General Conditions; and
 - Sections 48, 49 and 86 – modifications to SMP Conditions.
- 4.6 In accordance with these sections, Ofcom published notifications of the proposed modifications in the Consultation on 2 May 2008 and gave interested parties an opportunity to comment on its proposals. The consultation period concluded on 16 June 2008.

Consideration of Responses

- 4.7 Ofcom gave careful consideration to all the comments received during the consultation period. Section 3 contains a discussion of the main points raised by respondents and Ofcom's comments. More detailed consideration of respondents' comments is at Annex 2.

Impact Assessment

- 4.8 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.

- 4.9 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. In light of responses received to the May 2008 consultation and of the time that has elapsed since April 2006, Ofcom has updated its assumptions in the original impact assessment (IA) and its revised findings are summarised in Annex 3.

Section 3 – Ofcom's general duties

- 4.10 Section 3(1) of the Act sets out the principal duty of Ofcom. That duty is, in carrying out its functions:
- 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.
- 4.11 Under section 3(2) of the Act, the outcomes that Ofcom is required to secure in fulfilling the principal duty specified in section 3(1) include securing the availability throughout the UK of a wide range of electronic communications services.
- 4.12 Section 3(4) of the Act lists further factors to which Ofcom must have regard, so far as they appear to Ofcom to be relevant, in carrying out its functions in accordance with its principal duty. 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;
- 4.13 Ofcom considers that its decision to implement its policy proposals in relation to 0870 calls by making the modifications set out in Annexes 6 to 10 satisfy its statutory duties under section 3 of the Act.
- 4.14 First, the modifications will further the interests of consumers calling 0870 numbers as set out 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 geographic calls;
 - encourage OCPs to align their 0870 call charges with those of geographic calls (and to incorporate 0870 calls into call packages), thereby addressing consumer

concerns by improving price transparency and reducing the retail price of such calls;

- 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;
- help improve consumer confidence in 0870 calls 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 which results from avoiding making calls to 0870 numbers because of inaccurate pricing perceptions and lack of confidence in 0870 numbers.

4.15 As set out in the updated impact assessment at Annex 3, these benefits outweigh the additional costs that service providers are likely to incur as a result of the loss of revenue sharing or migration to other NTS numbers.

4.16 Second, it is considered that the enhanced pricing transparency that will result from the modifications will increase consumers' ability to exercise choice and this should contribute to more effective competition.

4.17 It has been contended that the migration of TCPs to other NTS number ranges resulting from these changes will have an adverse effect on competition. On the currently available evidence, however, we consider that this will not result in a distortion of competition nor an inefficient reduction in the range of services available. This is based on our analysis of competition in call termination and NTS hosting on NTS number ranges in Ofcom's recent decision in the NCCN 500 Complaint.

4.18 One of the key conclusions on market definition in the NCCN 500 Complaint based on an analysis of demand and supply side substitution was that all NTS number ranges (including 0870) were in the same market. This conclusion was based on the potential for supply-side substitution and the homogeneity of competitive conditions rather than demand-side substitution. In particular, we made the following findings:

- consumer research indicated that consumers' perceptions of the relative cost to them of calling NTS numbers depends on the number range. These perceptions reflect real differences in the prices of calls to different NTS number ranges and the type of services that tend to be offered on them;
- given consumer sensitivity, service providers may be reluctant to switch to other number ranges because this may have an impact on call volumes. The extent of that reluctance and, hence, the scope for demand-side substitution was difficult for Ofcom to determine;
- once a TCP has established the network platform needed to terminate NTS calls, the platform can be used equally for all types of NTS voice calls. In addition, the marketing and distribution arrangements for the various NTS ranges are very similar;³⁹

³⁹ The NCCN 500 Complaint, paragraph 4.103.

- given that little additional cost need be incurred to terminate calls on additional number ranges (at least in the case of voice calls⁴⁰), a monopoly supplier of termination/hosting on the 09 or 087 ranges could be additionally constrained by supply-side substitution from CPs currently providing termination on 0845 number ranges;
- although some TCPs specialise in providing services on particular number ranges (notably in relation to 0845 traffic), there are also smaller TCPs who are also present in the provision of NTS termination in 09 and 087 number ranges, which is suggestive of a degree of homogeneity of competitive conditions not necessarily reflected in market shares;⁴¹ and
- relationships between TCPs and NTS SPs are not based on geographic considerations so that termination/hosting services provided anywhere in the UK are likely to be seen by NTS SPs as demand-side substitutes.

4.19 We consider that the key determinants of market definition in the NCCN 500 Complaint, in particular the scope for supply-side substitution, are unlikely to have changed materially since the analysis was carried out (the NCCN 500 Complaint looked at the market from 1/04/04 to 1/01/06). The absence of significant barriers to supplying call termination/hosting services on alternative NTS number ranges indicates that TCPs currently terminating 0870 calls can operate across all NTS number ranges.⁴² Hence even if an NTS termination/hosting business was to stop providing 0870 termination/hosting services, it could easily supply on other ranges (e.g. where revenue sharing was available) and could re-enter the 0870 range if 0870 became profitable again.

4.20 It has also been argued that the reduction in termination rates and the increase in revenues for BT as OCP give rise to a potential competition concern. This issue has also been raised in relation to the 0870 Dispute. As we have noted in section 3, any anti-competitive conduct by BT could be investigated under the Competition Act. There is no evidence to suggest that BT will or might engage in such conduct following these changes. Furthermore, the contention that the changes introduced by this statement and the outcome of the draft dispute determination would give BT a greater incentive or ability to engage in anti-competitive conduct is not made out.

4.21 Finally, as noted above, TCPs are able to operate across all NTS number ranges. A reduction in the revenues they receive from 0870 termination as a result of these changes does not restrict the maximum revenue they can earn, since costs can be

⁴⁰ It is likely to be more difficult for providers of NTS voice call termination, in response to a 10% increase in NTS data call net termination charges, to supply NTS data call termination. For instance, entry would require investment in IP networks. These network investments are likely to be substantial since digital local exchange (“DLE”) interconnection is required and would suggest entry within a year would be unlikely. Even if entry within a year were possible, suppliers operating in voice that are not operating in data tend to be small-scale, and the likelihood of such operators placing an effective constraint on existing operators in data therefore appears low.

Accordingly, Ofcom considered that there is likely to be an asymmetry between likely entry from data to voice, with possible barriers for those operating in voice, who seek to supply data termination but not vice versa. However, Ofcom considers that the possibility of asymmetric supply-side substitution from data to voice combined with the evidence on common pricing constraints suggests that voice and data NTS call termination can be regarded as part of a single market. The NCCN 500 Complaint, paragraphs 4.134, 4.135, 4.141. Ofcom also notes that 0870 calls tend to be voice only.

⁴¹ The NCCN 500 Complaint, paragraph 4.106.

⁴² Ofcom notes there may be some barriers to expansion within a number range for smaller TCP’s due to interconnections costs – see the NCCN 500 Complaint

recovered from service providers or by migrating to other NTS number ranges where revenue sharing remains available. Therefore, we are satisfied that there should not be a material adverse impact on their willingness to invest and innovate.

Section 4 – European Community requirements for regulation

- 4.22 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.
- 4.23 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.

Modifications

- 4.24 The modifications being made are as follows:
- Modification to the Plan (Annex 8);
 - Modification to the Numbering Application Form S8 (Annex 9);
 - Modification to General Condition 17 (Annex 7);
 - Modification to General Condition 14 (Annex 10); and
 - Modification to BT's SMP condition AA11 (Annex 6).
- 4.25 Before making such modifications, Ofcom must be satisfied under section 60(2) (in relation to modification of the Plan), section 47(2) in relation to modification of a condition and section 49(2) of the Act in relation to modification of a direction, that they are:
- 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.
- 4.26 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.”
- 4.27 The proposed modifications to the Plan are set out in Annex 8.

4.28 Ofcom considers that the modifications meet the tests set out in sections 47(2), 49(2) and 60(2) of the Act being:

- **objectively justifiable**, in that they address 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 the modifications aimed at repairing the broken linkage between 0870 call charges and geographic call charges and improving price transparency in relation to 0870 calls. 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 of 0870 numbers combined with the removal of regulatory support for revenue sharing (the change to the SMP Condition) will contribute to OCP's ability and willingness to charge 0870 calls at geographic rates.
- **not unduly discriminatory**. As a result of these modifications, the interconnection arrangements for 0870 will be similar to those for geographic calls with OCPs paying a small charge for call termination rather than the much larger payment under the current NTS arrangement. Although this change will result in OCPs keeping a greater proportion of 0870 call charges than at present (and TCPs a smaller part), we do not consider that changing the charging model in this way is unduly discriminatory.

As set out above, we consider that the modifications will further the interests of consumers by enhancing price transparency and thereby improving consumer confidence in 0870 numbers. While we recognise that TCPs will incur costs as a result of the changes, as demonstrated in the impact assessment at Annex 3, these are outweighed by the benefits that the policy will bring. In particular we consider that the restoration of consumer confidence will bring benefits to TCPs and SPs providing services on the 0870 range.

While the revenues that TCPs earn from terminating 0870 calls will be reduced, we consider that there is scope to charge SPs for 0870 hosting services. As discussed in paragraph A3.75, SPs should be able to recover most of their additional costs via charges for other products or services in their primary markets.

Furthermore, while OCPs will retain a greater proportion of 0870 call revenues, this is not without cost since they will be subject to additional publication requirements following the modification of General Condition 14. As discussed at paragraph 3.12, we consider that they will also be subject to competitive pressure to retail 0870 calls at geographic levels

Taking all these considerations in the round, we are satisfied that these changes are not unduly discriminatory.

- **proportionate** in that Ofcom's impact analysis demonstrates that the modifications 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 2005 NTS Consultation, the 2006 NTS Statement, the Consultation and this statement.

4.29 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 modifying the Plan:

- **securing the best use of numbers** in that the 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.

Section 5

The Material Change Test

- 5.1 As described in Section 2, we are removing the regulatory support for revenue sharing on 0870 calls. To do this we need to modify BT's SMP Condition in relation to NTS call origination by removing 0870 calls from the scope of that condition.
- 5.2 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 ('the Material Change Test'). BT's NTS call origination SMP condition was set by reference to the market power determination made by the Director General of Telecommunications on 28 November 2003 in relation to BT in the market for call origination on fixed public narrowband networks.

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

- 5.3 We described in Annex 2 of the Consultation our analysis and provisional findings that there has been no material change in the market for call origination on fixed public narrowband networks or the determination of BT's SMP within this market since the last full review in 2003. None of the respondents to the Consultation commented on our analysis and conclusions in relation to the Material Change Test.
- 5.4 On 19 March 2009, Ofcom published a consultation "Review of the wholesale fixed narrowband markets"⁴³ in which it considered the definitions of these markets and proposed SMP findings and appropriate remedies ('the Wholesale Markets Review consultation'). Because of developments in network topologies used to convey calls, the definition of call origination proposed in the Wholesale Markets Review consultation differs from that adopted in the 2003 market review, covering both the supply of call origination and the exchange line.⁴⁴ In addition, the Wholesale Market Review consultation proposed that there may be scope for substitution of wholesale call origination to alternative networks, either through direct access or by using LLU. Even taking this into account, however, it proposed that BT continued to have SMP in the supply of wholesale call origination in the UK, excluding the Hull area, with a share in excess of 70%.⁴⁵ In addition, Ofcom found that there has been limited change in the NTS market structure during the life of the NTS call origination SMP condition imposed on BT and proposed that it should remain in place, subject to a review of the relevant charge control in September 2009 and modifications made in the light of Ofcom's NTS policy.⁴⁶
- 5.5 Accordingly, Ofcom is, in accordance with section 86(1) of the Act, satisfied there has not been a material change in the market for call origination on fixed public narrowband networks for the purposes of the determination of BT's SMP within this market by reference to which the SMP condition in relation to NTS call origination was last modified in 2005.

⁴³ http://www.ofcom.org.uk/consult/condocs/review_wholesale/

⁴⁴ See paragraphs 6.8 – 6.11, supra.

⁴⁵ See paragraphs 6.61 – 6.65 and 6.82 – 6.85, supra.

⁴⁶ See Section 15, supra.

Annex 1

List of respondents

A1.1 We received 48 responses to our consultation: 26 from consumers, 14 from communications providers and related organisations and 8 from businesses and related organisations. The names of respondents who gave permission for their names to be published were:

Consumers	Service Providers, Communications Providers and Representative Bodies
Mr R Banks	AIME
Mr L Carr	BT
Mr C Davies	Cable & Wireless
Cllr RD Feltham	COLT Telecom
Mr D Hickson	Federation of Communications Services (FCS)
Mr P Holttum	Flextel
Mr N Lawrence	InfoGB Media Ltd
Mr D Lindsay	Interactive Voice Response (IVR)
Mr N R Hill	London FX
Mr G Purcell	Mobile Broadband Group
Mr M Rigg	Q-System International
Mr J Shersby	Reality Telecom
Mr C Torrero	Scottish and Southern Energy (SSE)
Mr M Vukasinovic	Skycom
In addition 12 respondents asked for their names to be withheld	Thus
	Total Web Solutions
	UKCTA
	Vodafone
	Wescot Credit Services
	In addition 3 communications providers asked for their responses to be treated as Confidential

Annex 2

Review of Communications Provider Consultation Responses

A2.1 We have summarised the main points raised by respondents in section 3. The responses submitted by CPs and representative organisations were generally more detailed than those submitted by other stakeholders. We have therefore reviewed these responses in more detail in this section.

OCPs

COLT (also a TCP)

- A2.2 COLT regarded Ofcom's proposals as a pragmatic approach to the 0870 pricing transparency problems, but had concerns regarding the potential competitive effects of Ofcom's proposals in the termination/hosting market for 0870 calls. In particular, COLT was also concerned that industry is unable to assess the overall impact of Ofcom's proposals effectively until Ofcom had issued a final determination in the 0870 Dispute and had determined the interconnection rates that would apply under the new arrangements.
- A2.3 Regarding the impact on the termination/hosting market COLT thought that even after allowing for reductions in retail prices, Ofcom's proposals would significantly increase the revenues retained by BT for 0870 calls because of the reduction in termination payments. COLT noted that BT still has SMP in wholesale call origination and was concerned that the increased revenues might distort the termination/hosting market by allowing BT to continue to offer revenue-shares to its SP customers whilst other TCPs would not be able to do this. COLT also thought that BT's ability to offer better terms than its competitors would cause SPs to transfer their 0870 numbers from other TCPs to BT.
- A2.4 COLT also raised three points relating to the implementation of Ofcom's proposals and further policy work on 08 numbers.
- A2.5 Implementation period: COLT argued that Ofcom had given insufficient weight to the interests of TCPs and their SPs when proposing a three month implementation period. They regarded this as too short particularly in light of their concerns about the potential impact of the reductions in termination payments. COLT noted that CPs would not be able to present their SP customers with revised commercial terms until after the publication of the revised interconnect rates in the final determination of the 0870 Dispute. COLT suggest a period of 6 months from publication of the interconnect rates determination to ensure that both CPs and SPs can make informed decisions and take appropriate action before the changes are implemented.
- A2.6 Pricing transparency obligations for business services: COLT noted that under Ofcom's proposals CPs would be permitted to charge 0870 calls above geographic rates provided they comply with the revised price publication requirements in an amended version of General Condition 14.2. COLT noted that the proposed amendment to General Condition 14.2 applies only to services provided to consumers and small businesses. COLT assumed that CPs supplying services to medium/large businesses would not be subject to any particular pricing

transparency requirements in relation to 0870 calls but asked Ofcom to confirm this would be the case.

- A2.7 Timing of the 0845 review: COLT also noted Ofcom's intention to carry out a further review of 0845 with a view to adopting similar measures as 0870. COLT suggested that in the absence of specific consumer concerns relating to 0845 Ofcom should reconsider whether such a review is necessary. COLT urged Ofcom to clarify its intentions and the timetable for the review since 0845 provides a possible alternative for customers wishing to migrate from the 0870 number range.

Ofcom's Comments

- A2.8 We discuss stakeholders' comments about the impact on competition in the termination/hosting market in paragraph 3.122.
- A2.9 In the 2006 NTS Statement, Ofcom extended the implementation notice period in response to representations from CPs about the implementation timetable. Given that more than 3 years notice of the changes has been given, we consider that sufficient notice has been given. We acknowledge that TCPs may need the revised termination rates before finalising their revised commercial terms for SPs, however we remain of the view that the broad scale of the change in the commercial terms will be the deciding factor for most SPs rather than the precise level. As discussed in more detail in paragraphs 3.182 to 3.188 our view is that a three month implementation period will not cause undue inconvenience. We have therefore decided that the changes should be implemented on 1 August 2009.
- A2.10 The publication requirements in the revisions to General Condition 14 apply to services offered to consumers and SMEs. The principle is that information about usage charges for 0870 calls must be readily accessible and accurate, making it clear what prices are charged for 0870 calls and whether these are included in packages.
- A2.11 We originally scheduled the 0845 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 some key providers' 0845 prices, once the 0870 changes have been implemented Ofcom will consider whether the 0845 review remains necessary and if so the appropriate timing.

Communications Provider 1

- A2.12 CP1 asked Ofcom not to publish its name nor place its response on the Ofcom website.
- A2.13 CP1 believed that Ofcom's proposals for 0870 are unnecessary, especially now 03 numbers are available, General Condition 14.2 is established and recent UKCTA research⁴⁷ indicates that businesses are concerned that Ofcom proposals for 0870 designed for consumer protection may have unintended consequences for businesses, in particular that they might impose inefficient costs on business. CP1 argued that regulatory impact analyses should therefore examine explicitly the likely impact of a regulatory proposal on all customer types separately.

⁴⁷ <http://www.ukcta.org.uk/20080430%20UKCTA%20Business%20Customer%20Report.pdf>

- A2.14 CP1 stated that it is for non-dominant originating operators to set prices according to the needs of their customers and the competitive environment, reflecting their various operating costs and business plans. They welcomed Ofcom's recognition of this in relation to 0870 and notwithstanding concerns over the removal of regulatory support for revenue share, agree that originating operators should be free to charge a higher rate for 0870 than their geographic rate.
- A2.15 CP1 also welcomed the withdrawal of the pre-call announcement proposal as CP1 believed it would have been unlikely that a cost effective and proportionate solution could be found which would overcome the interference by announcements with machine to machine calling systems.
- A2.16 Of the two options, CP1 preferred Option B accompanied by an enforcement programme for General Condition 14.2, but argued that price publication requirements must be clear. CP1 provided an example indicating how the approach to price publication varies between networks.
- A2.17 CP1 did not support Option A on the grounds that OCPs should be free to charge 0870 calls above geographic rates if they wish. Ofcom's proposal for termination rates in the November 2007 draft determination of the 0870 Dispute set a peak rate figure of approximately 1 pence per minute compared to that for geographic calls of approximately 0.25 pence per minute. At this level CP1 thought that Option A would force OCPs to absorb the extra cost in their retail call package pricing.
- A2.18 CP1 also commented on the proposed modification to General Condition 14.2, specifically paragraph 4.3 in Annex 2 which sets a new requirement for OCPs to make a prominent statement in promotional material about whether NTS and 0870 calls are included in retail call packages and bundles. The concerns were that:
- the obligation for CPs to inform their customers where 0870 calls are included in call packages is not justified and may result in increased consumer confusion where the various NTS ranges are treated differently by OCPs depending on the price packages they offer. Furthermore, the inclusion of NTS calls widened the scope of paragraph 4.3 beyond 0870 calls and had not been consulted on by Ofcom; and
 - the meaning of the term 'prominent' is unclear.
- A2.19 CP1 expressed concern about the uncertainty faced by SPs due to the delay concluding Ofcom's work on 0870. CP1 argued that SPs would require a minimum of 6 months notice to prepare for the changes following publication of the interconnect rates determination by Ofcom.

Ofcom's Comments

- A2.20 We disagree with the view that the opening of the 03 number range negates the need to proceed with its 0870 proposals (see our more detailed comments at paragraph 3.102). The 0870 proposals address problems associated with 0870 numbers (such as the pricing transparency problems associated with the broken linkage between 0870 and geographic call prices). The fact that 03 has a similar pricing policy to that proposed for 0870 does not address this issue.
- A2.21 For the reasons discussed in paragraphs 3.182 to 3.188, we consider that a three-month implementation period will not cause undue inconvenience to CPs and SPs.

- A2.22 We recognise that the proposals will be disruptive for businesses that use 0870 numbers. The impact on businesses was assessed and taken into consideration in our assessment of the proposals. We think it is in business's interests to address the problem with the broken linkage to geographic call charges to avoid consumer confidence in 0870 numbers being further undermined. In response to business concerns about the cost of migration we extended the notice period to help reduce the cost of migration.
- A2.23 We accept CP1's and other respondents concerns about the use of the term "*NTS calls and calls to 0870 numbers*" in relation to General Condition 14 and have amended the wording in paragraph 4.3 of Annex 2 to General Condition 14 to remove references to NTS. The existing obligation to publish usage charges for NTS calls, including whether discounts or bundling arrangements apply to them, in published price lists and websites remains, however. Many consumers have no idea that NTS calls fall outside most pricing plans. It is therefore essential that those who do look at their provider's price lists can easily find out which calls are in their bundle and which are not.

Communications Provider 2

- A2.24 Communications Provider 2 ('CP2') asked Ofcom not to publish its name or response.
- A2.25 CP2 believed that Ofcom's proposals for 0870 are unnecessary and would undermine the construct of the Plan adding to consumer confusion. With 03 now operating CP2 argued there is no longer any need to implement the 0870 proposals. CP2 thought that Ofcom should take heed of industry concerns and abandon its 0870 proposals. CP2 suggested that these changes will place a significant burden on TCPs.
- A2.26 Notwithstanding these reservations CP2 generally concurred with the proposals set out in the consultation, but believed that certain aspects are inappropriate or require amendment.
- A2.27 CP2 supported Option B and believed it to be a proportionate and reasonable framework to govern 0870 prices and provides a balance between ensuring consumers are protected and providing OCPs with the ability to innovate and compete to the benefit of all stakeholders. CP2 thought that Option A constitutes intrusive regulation which would constrain competition and undermine the viability of call origination. CP2 believed that the 03 range is sufficient to serve the requirement of a non-geographic range charged at no more than geographic retail rates and that to constrain 0870 prices in the same way would be unnecessary duplication.
- A2.28 CP2 also welcomed the removal of announcements which it thought were unduly onerous, complex and costly for OCPs.
- A2.29 CP2 highlighted the linkage with the 0870 Dispute, stating that in order for Ofcom's proposals to have the desired effect they must be complemented by a balanced and proportionate interconnect charging regime. CP2 thought that the charges proposed in the draft determination of the 0870 Dispute were too high to facilitate geographic pricing or even a significant fall in 0870 prices and would thus undermine Ofcom's policy objectives.
- A2.30 Regarding the proposed amendment to General Condition 14.2 CP2 welcomed the proposed requirements and enforcement programme but thought that the

terminology used in Annex 2 has the potential for multiple interpretation and subjectivity. In particular, CP2 highlighted the following terms:

- in paragraph 3.2 OCPs are required to “give prominence” to certain pieces of information;
- paragraph 4.1 obliges OCPs to provide “a clear reference” as to where on websites and published price lists certain information can be found; and
- paragraph 4.3 requires OCPs to include a “prominent statement” indicating whether or not NTS and 0870 calls are included in price packages (see paragraph 5.15 for the full text of 4.3).

A2.31 CP2 encouraged Ofcom to ensure that OCPs’ responsibilities are absolutely clear, removing ambiguity and scope for interpretation by providing a clearer set of guidelines or examples to enable OCPs to develop and assess their compliance.

A2.32 CP2 noted that whilst the 0870 proposals have been public for some time and many SPs have been preparing for the changes others have either taken no action or are simply unaware of them. CP2 urged Ofcom to undertake a programme of communication aimed at businesses and consumers advising of the changes, their implications and for SPs what alternative options are open to them.

Ofcom’s Comments

A2.33 We refer to our comments on CP1’s views above about the introduction of 03 having negated the need for the 0870 changes.

A2.34 In light of the CAT judgments in the TRD appeals, we have revised our approach to resolving the 0870 Dispute. The rates we have proposed in applying this revised approach are derived from the efficient costs of terminating a geographic call, adjusted to reflect the different network arrangements used for non-geographic calls. These rates have been set at a level that would enable BT to charge geographic prices for 0870 calls and without jeopardising the sustainability of their pricing plans.

A2.35 Ofcom’s channels of communication with SPs and consumers are principally press announcements and statements on our website. We believe OCPs are best placed to communicate to their consumers and TCPs to their SP customers.

A2.36 In our view, the terminology referred to by CP2 is clear and consistent. We acknowledge that there is a degree of flexibility about how these requirements should be discharged in practice. We think this is appropriate as the media in which this information is displayed is likely to vary widely. Ofcom will monitor compliance with the revised General Condition 14 and will consider whether any further guidance may be appropriate.

BT (also a TCP)

A2.37 BT welcomed Ofcom’s proposals to change the 0870 framework but thought they would not address the concerns of consumers or TCPs. BT stated that the objective of restoring the link between 0870 and geographic calls would only be achieved if:

- 0870 termination rates are broadly similar to geographic rates;

- there are sufficient incentives, and disincentives, in place to make charging other than geographic prices unattractive to OCPs.
- A2.38 BT thought that the proposed changes to the Plan, General Condition 14 and General Condition 17 should go some way to improving price transparency for consumers but are insufficient to constrain OCPs from charging 0870 calls above geographic rate if termination rates are higher than for geographic calls.
- A2.39 BT stated that transparency is not the only issue to be addressed; call charges which are higher than those for calls to geographic numbers is as much, if not more, of an issue. BT also thought that the value of 0870 being known as “national rate” is undermined by allowing OCPs to charge differently. Consequently BT believed that on their own, measures to improve pricing transparency will be insufficient to restore consumer confidence in the 0870 number range. BT thought that without some further disincentive for OCPs to charge above geographic prices the proposals would not achieve the policy objectives.
- A2.40 BT also warned Ofcom against setting a variety of termination rates which would lead to 0870 becoming a multi-tariff range.
- A2.41 BT welcomed Ofcom’s recognition that alternative pricing transparency measures are required for BT’s public payphones. BT noted that payphones already contain user notices advising callers that 0870 calls are excluded from the national geographic rate and BT provide a free-to-caller number for payphone users that can be used to obtain pre-call pricing information.
- A2.42 BT agreed with the proposed modification of the SMP condition to remove 0870 from NTS regulation which BT saw as a positive step.
- A2.43 BT made several comments relating to the proposed modification to General Condition 17 and the proposed modification to the designation of 0870 numbers in the Plan. We discuss these comments in paragraphs 3.154 to 3.172.
- A2.44 ***Termination Rates***
- A2.45 BT also made comments in relation to the proposed termination rates proposed in the draft determination of the 0870 Dispute published on 18 December 2007. These were passed to the investigation team dealing with the 0870 Dispute for consideration.

Ofcom’s Comments

- A2.46 OCPs are free to charge 0870 calls above geographic levels provided that they comply with the new publication requirements in General Condition 14. We consider, nevertheless, that these measures are a proportionate means of achieving the policy objective of restoring the linkage between retail charges for 0870 calls and those for geographic calls. We note that BT has already included 0870 calls in its call packages and the proposed termination rates in the 0870 Dispute draft determination have been set at a level which will enable BT to continue doing so. At least one major operator has already responded with a similar policy and we anticipate that competitive pressure will encourage others to follow suit.
- A2.47 Ofcom proposes to monitor the extent to which OCPs depart from national geographic pricing and the extent to which the pricing transparency objectives are

achieved. If after a period of adjustment it becomes evident that consumers understanding of 0870 charges remains poor we will consider what further action we might take to achieve the policy objectives.

Mobile Broadband Group ('MBG')

A2.48 The MBG welcomed Ofcom's decision to abandon the requirement for pre-call announcements adding that this experience highlights the need to conduct thorough impact assessments and consultation with stakeholders.

A2.49 The MBG stated that the existing NTS measures in General Condition 14 are already cumbersome for mobile operators and the proposals would make them even more cumbersome.

A2.50 The MBG believed that Ofcom had not demonstrated that its proposals are proportionate, and also questioned their effectiveness. The MBG therefore asked Ofcom to withdraw its proposals and assess the effectiveness of the existing measures in General Condition 14.2 before proposing additional measures.

A2.51 In relation to the proportionality and effectiveness of the proposals, the MBG made several points:

- **Consumer Protection from Unfair Trading Regulations:** the MBG thought that the Consumer Protection from Unfair Trading Regulations (introduced in May 2008) set a benchmark for the amount of information that should be provided by OCPs to enable consumers to make rational purchasing decisions. MBG argued that a sector regulator must demonstrate that it has a very good reason to introduce measures that place an additional burden on providers;
- **Need for additional measures:** The MBG thought that Ofcom needed to justify the need for the additional pricing transparency measures for 0870 calls given that all NTS calls are already subject to 'equal prominence' requirements under General Condition 14;
- **0870 prices are peripheral to consumers purchasing decisions:** Noting that Ofcom's figures indicate that 0870 call revenues represent a very small proportion of telecoms spend (less than 1%), the MBG argued that it seemed irresponsible and disproportionate to implement further pricing transparency requirements for 0870 calls when at first sight, the additional information is so peripheral to consumers purchasing decisions; and
- **Wider context:** MBG urged Ofcom not to look at 0870 in isolation. It noted that mobile sales propositions are already reasonably complex and under other initiatives Ofcom is mandating other equal prominence measures such as for contract length, early termination fees and data speeds. The more items that are required to have prominence, inevitably the less prominent they become. The MBG also referred to research indicating that consumers have a limited appetite for all but the most important details.

A2.52 Noting that in the 2006 NTS Statement, Ofcom had said that "it is not its [Ofcom's] role to develop advertising guidance and believes this is best undertaken by organisations with specialist expertise in this area such as the ASA/CAP, LACORs, Trading Standards services, the RACC and ICSTIS"⁴⁸, the MBG asked why Ofcom

⁴⁸ Paragraph A2.299 of the 2006 NTS Statement.

had decided to specify advertising guidance for OCPs in the proposed modification to General Condition 14.2 and why it had also proposed to incorporate existing ASA guidance into General Condition 14.2⁴⁹.

- A2.53 The MBG also asked Ofcom to clarify OCPs obligations under the proposed amendment to General Condition 14.2, in particular whether they would be obliged always to specify 0870 pricing information or only when the advertising/promotional material contains pricing information.

Ofcom's Comments

- A2.54 The potential impact of pre-announcements was considered by Ofcom prior to the 2005 NTS Consultation. We also considered stakeholder submissions about the potential that they might interfere with automated equipment such as alarms. At that time, Ofcom's assessment was that the potential for interference was low. In the light of the problems encountered when announcements were applied to 070 numbers (in an unrelated policy initiative) and new information indicating that a much larger number of security alarms use 0870 numbers than previously understood we revised our assessment of the impact and modified our proposals.
- A2.55 For the reasons set out at paragraphs 3.146 to 3.152, we consider that these measures are a proportionate means of achieving the policy objective of restoring the link between retail prices for 0870 calls and geographic calls.
- A2.56 We do not consider that the measures are more burdensome for mobile operators. First, they apply equally to all OCPs. Second, although the proportion of calls to 0870 numbers from mobiles is relatively low, there is some stakeholder concern about the price of 0870 calls from mobiles. We will be monitoring this in order to determine whether further action may be required. Last, in response to the comments from MBG and others, we have removed NTS calls from the scope of paragraph 4.3 of Annex 2 to General Condition 14, which should make it easier to give prominence to the 0870 statement.
- A2.57 The Consumer Protection from Unfair Trading Regulations 2008 ('CPRs') came into force on 26 May 2008. These regulations provide wide ranging protection for consumers by placing traders under a general obligation to trade honestly and fairly. It is for traders to ensure that the requirements of the Regulations are met.
- A2.58 We note that the primary focus of the CPRs is protecting consumers from unfair trading whereas Ofcom's proposals aim to improve transparency in relation to OCPs service packages and 0870 calls, which should help to restore consumer confidence in 0870 calls and enhance their ability to exercise choice. We therefore consider it appropriate to place OCPs under additional obligations to address this objective.
- A2.59 Ofcom generally defers to the ASA in matters relating to guidance for marketers and advertisers. However, in this case Ofcom considers it appropriate to place OCPs under a specific obligation (in General Condition 14) to give information about 0870 calls in support of its policy objectives. Ofcom's comments in the 2006 NTS Statement quoted by the MBG related to a discussion about the most appropriate wording for call price indications for NTS calls and should not be interpreted as a statement that Ofcom would never implement requirements relating to advertisements.

⁴⁹ http://www.asa.org.uk/cap/advice_online/ad_alerts/Advertising+0845+and+087+numbers.htm

- A2.60 We have revised paragraph 4.3 of Annex 2 to General Condition 14 to make it clearer that it applies where advertising or promotional material states a price for a call package or bundle incorporating geographic calls. In these circumstances, the requirement is to publish a prominent statement within that advertising or promotional material as to whether 0870 calls are included in the price of that call package or bundle.
- A2.61 It should be noted that there are separate requirements in paragraph 3.1 and 3.2 of Annex 2 which relate to the information which must be included in published price lists and websites. We have amended the obligation under paragraph 3.2 to give prominence to usage charges in relation to 0870 calls so that it only applies where such calls are not charged at the geographic price, including discounts and packages. The obligation to give prominence in price lists and on the website to the inclusion or not of 0870 calls in call packages, discounts and special offers remains.

Scottish and Southern Energy (“SSE”)

- A2.62 SSE agreed that Option A is too intrusive but believed recent events since the 2006 NTS statement mean Option B is also more intrusive than it needs to be to achieve Ofcom’s objectives. The events referred to are namely:
- Ofcom's review of the form of General Conditions (the ‘General Condition Review’);
 - Ofcom's own initiative investigation into compliance with General Conditions 10 and 14; and
 - Ofcom's consultation on additional charges.
- A2.63 The review of General Conditions proposed a new General Condition 23 on sales and marketing of mobile services which included new thinking on how General Conditions should be structured. This proposed a general set of high level obligations with additional guidance published separately. This is consistent with reducing the regulatory burden. SSE thought the 0870 consultation provided an opportunity to reformat Annex 2 (and Annex 1) to General Condition 14.2 together with General Condition 14 itself along the lines of the proposed General Condition 23. If Ofcom proceeded with Option B in SSE’s view this would impose requirements (and associated costs) on OCPs that the General Condition Review may shortly afterwards revise or withdraw.
- A2.64 SSE thought that Ofcom’s investigation into General Condition 14 compliance may lead to a clear statement of how suppliers should set out pricing information.
- A2.65 SSE believed that removing the NTS designation from 0870 and removing support for revenue sharing will enable competitive forces to drive down 0870 prices without trying to steer OCPs to charge these calls at a particular level.
- A2.66 SSE preferred an even handed approach to price publication where all providers and not just those who charge above geographic rates, are required to make their prices clear and to state whether 0870 calls are included in packages.
- A2.67 SSE offered a suggested way forward for Ofcom to consider adopting the form of the proposed review of General Conditions. For NTS numbers this could be:

“1. A supplier shall take all reasonable steps to ensure that any pricing information it publishes is clear on the following points:

a) whether or not NTS calls are included in any of its packages and if so, to what extent;

b) whether or not calls to 0870 numbers are included in any of its packages and if so, to what extent;

c) if the calls mentioned in a) and b) above are not included in the supplier's packages, the maximum charge for each of these types of call; and

d) in the case of summary information on pricing, where a customer can obtain the detailed pricing information relevant to the calls mentioned in a) and b).

2. Where a customer signs up for a supplier's service, the supplier shall provide pricing information that is clear on the points mentioned in parts a) to d) of paragraph 1.”

A2.68 This form of General Condition could be supplemented by guidelines developed to highlight best and acceptable practice on areas such as “prominence” of information and other items that are currently covered by the annex to General Condition 14.2. These guidelines could address any further points emerging from the investigation and consultation on additional charges mentioned above. SSE suggest that this approach would have the following advantages:

- a reduction in formal regulation in line with Ofcom's commitment to a light touch approach;
- easier changes to the content of guidelines to reflect changes in the market or Ofcom guidance in related areas;
- a reduction in compliance costs and risk across the industry as detailed prescriptive requirements in the General Condition are removed to the status of guidelines.

A2.69 SSE suggested that this approach would not impact on Ofcom's ability to enforce compliance.

A2.70 In relation to the proposed designation in the Plan for 0870 calls SSE stated that Ofcom has no need to either specify a preferred charging rate for these calls or make a distinction in the publication requirements (which should be set out in high level terms) between suppliers who have different policies on charging. If SSE's suggested approach is adopted, the definition for the 0870 entry in the Plan could be reduced to something like:

“Calls to non-geographic numbers, whose charges are subject to the pricing publication requirements set out in General Condition 14.2 or, in the case of Public Pay Telephones,.....”

A2.71 Ofcom may also be able to deal with the Payphone requirements in General Condition 14.2 rather than the Plan.

- A2.72 SSE agreed with Ofcom's proposal for a 3 month implementation period.
- A2.73 SSE also commented on changes to Annex 1 of General Condition 14.2 that had not apparently been consulted upon or highlighted in the Consultation. SSE also made some minor comments on the detailed drafting of the modification to General Condition 14:
- SSE would not expect to see footnotes numbered 17 to 20 in the formal notification of a change to the General Condition, as these only tend to appear in the consolidated versions of the General Conditions issued by Ofcom from time to time to show where amendments have been made since the General Conditions were originally issued in 2003. It also appears that footnotes 19 and 20 are attached to the wrong heading in any case.
 - An addition to the end of the definition of NTS calls at 14.9(k) has not been highlighted in yellow.
 - In Annex 2, at paragraph 3 there has been a change to the heading and in paragraph 3.2(iv) the end of the sentence has been changed from "which arrangements apply to which number range" to "which arrangements apply to which numbers; and additionally".
- A2.74 SSE suggest that, if feasible, it would be useful to separate obligations on how calls to telephone numbers are charged from the obligations within the National Numbering Plan which seems to be largely concerned with what different ranges of telephone numbers mean and therefore of prime relevance to TCPs rather than OCPs. As an OCP SSE suggests that all relevant obligations on prices to customers should be set out in General Conditions. The proposed format for the description of 0870 numbers in the consultation suggests that such a link with an obligation in a General Condition could be made.
- A2.75 SSE also notes that some aspects of the Plan are specific to BT Retail pricing and question whether this should continue given Ofcom's commitment to support competition in the retail market to the benefit of customers. It would also appear that some of the issues that Ofcom has had to deal with in relation to 0870 numbers stem from the formal links these numbers have had with the pricing policies of BT.

Ofcom's Comments

- A2.76 Ofcom thanks SSE for its helpful suggestions on the format for revised wording of the General Condition 14 in relation to NTS calls. However, such extensive revisions to the format of General Condition 14 are outside the scope of this particular consultation and should be considered as part of an overall review of the format and content of the General Conditions of Entitlement when this is undertaken. Ofcom's review of the form of the General Conditions has been suspended owing to operational priorities and may or may not be resumed at some future date. In this particular case, Ofcom has identified a requirement for specific requirements in relation to 0870 calls and we are not persuaded that an alternative way of describing the requirements would reduce the burden on CPs, other than by making them easier to understand. In this context we note that we have revised the amendments to Annex 2 of General Condition 14 to make them easier to understand (see paragraph 3.154).
- A2.77 Ofcom's own initiative review of compliance with General Condition 14.2 has looked at the extent to which the pricing information published by a range of key fixed and

mobile providers meets the requirements of the condition. Where any were found to be non-compliant the providers were given a time period to make the necessary changes and to demonstrate to the investigation team that their information meets the required standard. The output from the investigation will not include additional published guidance, although individual CPs may have been given specific, informal guidance during the course of the investigation.

- A2.78 SSE's suggested designation for 0870 calls for the Plan makes no mention of the linkage between 0870 and national geographic call charges. Given the longstanding association we believe that repairing and building on this linkage would be more likely to improve transparency than removing it completely as SSE suggest. The revised designation for 0870 calls also removes the association with BT call charges and extends the applicability of the pricing information in the Plan (for 0870 calls) to all OCPs.
- A2.79 We discuss SSE's comments about the drafting of the modification to General Condition 14 in paragraphs 3.163 and 3.164.

Vodafone

- A2.80 Vodafone said it had substantial misgivings about Ofcom's evolving policy towards 0870 but did not repeat these in this response.
- A2.81 Vodafone agreed that Ofcom should adopt Option B because in its view Option A is plainly inconsistent with Ofcom's statutory duty to adopt the least intrusive method of achieving regulatory objectives.

Ofcom's Comments

- A2.82 Ofcom does not propose to comment on Vodafone's comments.

TCPs

Communications Provider 3

- A2.83 Communications Provider 3 ('CP3') asked Ofcom not to publish its name or response.
- A2.84 As a general remark, CP3 commented that it was difficult if not impossible to respond to this consultation without knowing the outcome of the 0870 termination rate dispute.

0870 numbers are used for legitimate and valuable services

- A2.85 CP3 stated that business provide their customers with valuable services on 0870 numbers that justify a higher charge than geographic calls. It therefore thought that Ofcom could take other measures that would preserve the benefits but also tackle the abuse (if any) on these numbers. However, CP3 saw no evidence of problems with revenue sharing on 0870 and 0871 numbers and asked Ofcom to give a clear insight into numbers of complaints and sources of concerns.
- A2.86 Instead of ending revenue sharing, CP3 argued that Ofcom should focus on fighting abuse such as high charges from mobiles which would not be addressed by Ofcom's proposals.

- A2.87 CP3 thought Ofcom must bear some responsibility for the apparent lack of customer awareness of the costs for calling 0870 numbers which CP3 believed remains insufficiently proven. CP3 argued that Ofcom could have sought to increase customer awareness by means of marketing campaigns and enforcements procedures but had failed to do so and is now imposing dis-proportionate measures such as the removal of revenue sharing from 0870 numbers.
- A2.88 In any case, CP3 thought reductions in NTS call charges could be achieved by increasing competition in the market. Reductions in prices similar to those seen for geographic calls could result from stimulating rather than suffocating competition in this market.

Not effective for consumer protection

- A2.89 CP3 thought that Ofcom's proposals would not improve price transparency because OCPs, particularly mobile operators would be free to charge 0870 calls above geographic rates whilst consumers would think that 0870 calls would be charged on the same basis as geographic calls.
- A2.90 Based on comments made by BT at an industry meeting, CP3 thought the proposals would lead BT to raise its 0870 call charges to cover increased termination payments for 0870 calls. CP3 argued that it is not acceptable for Ofcom to enable BT to charge customers more, increase its profits and push its competitors and their SP customers out of the market to the detriment of the consumers and BT's competitors.
- A2.91 CP3 also thought that Ofcom's proposals would lead SPs to migrate their services from 0870 to 0871 numbers with the result that callers would pay around 2p per minute more than at present.
- A2.92 CP3 noted that in paragraph 4.13 of the consultation Ofcom had stated that it is likely that the proposals would lead SPs to recover the costs of providing 0870 services from their consumers by other means. CP3 thought this would lead to consumers who have hitherto enjoyed free services on 0870 numbers having to pay for them. CP3 said it did not understand how this qualifies as customer protection.

Not proportionate

- A2.93 CP3 observed that users of 0870 numbers that migrate to other numbers will be forced to incur excessive costs relating to the loss of a well known number, printing new letterheads, business cards, flyers and other promotional material and updating websites and customer communications. In recent years, many companies have invested heavily in their telecommunication systems. Changing existing numbers will prove very costly especially to SMEs through the loss of value of their existing, sometimes expensive memorable numbers, costs of printing, sign writing etc. This will be an additional burden in an already challenging economic climate.
- A2.94 CP3 quoted from figures given in the original impact assessment noted that:
- the total welfare loss through inaccurate price perceptions for 0870 call prices was approximately £115m and that re-establishing the geographic linkage for 0870 calls had a maximum potential benefit of around £58m per year; and

- the costs incurred by the expected 35-45% of businesses who would migrate to other number ranges in order to maintain their revenue share would total £83-107m.
- A2.95 CP3 held that the one-off migration cost of £83-107m does not include loss of revenue and loss of past investments or the impact on several thousands of end users that use 0870 numbers for services such as fax-to-email or find-me-follow-me services. This apart CP3 asserted that a maximum potential benefit of around £58m per year against a cost of £83-107m for migration only was far from proportionate and fails to meet the tests set out in section 60 (2) and section 47(2) of the Act.
- A2.96 Quoting Ofcomment.com⁵⁰, CP3 noted that businesses may suffer a dramatic increase in their call charges when revenue shares disappear and may also have to fund the features embedded in 0870 which are currently free of charge. CP3 also stated that many 08 resellers do not have the necessary billing platforms and will be forced out of the market.
- A2.97 Instead of destroying a successful industry CP3 argued that Ofcom should seek to achieve price transparency by other means such as asking OCPs to be more open about their 0870 prices, encouraging competition in the 0870 market, carrying out marketing campaigns alerting the public about the pricing of these and other numbers and improving Ofcom's enforcement program towards the relatively small number of businesses abusing these numbers.
- A2.98 CP3 thought that Ofcom could take more specific measures to address problems identified in its consultation document such as by penalising OCPs responsible for misleading advertising quoting 0870 numbers as national rate and by re-classifying 0870 in another way such as "standard" instead of "national" rate.
- A2.99 CP3 considered it hard to believe that the revenue uncertainty causing disputes between CPs will be solved by simply removing 0870 calls from the scope of the NTS Condition and thus effectively removing revenue sharing. This is not the kind of good governance expected from the UK telecom regulator.

Discriminatory

- A2.100 CP3 disagreed with Ofcom's statement that its proposals are not unduly discriminatory because the proposed modifications would apply to all CPs and SPs using 0870 numbers and would not benefit particular undertakings. CP3 believed the proposals favour OCPs, in particular mobile operators and BT. CP3 therefore thought that the proposals do not meet the non-discrimination tests for modifications to the Plan, General Conditions and SMP Conditions in section 47 and section 60 of the Act.
- A2.101 Additionally CP3 said it was unclear what impact the removal of the NTS Condition from 0870 will have on the market. Ofcom imposed a range of SMP services conditions on BT, including the requirement to provide NTS Call Origination in recognition of its SMP in call origination. Ofcom is now removing the obligation on BT to originate 0870 calls on behalf of TCPs on terms specified in the NTS condition, whilst at the same time allowing BT to increase its retail prices and force its competitors and SPs out of the market. This appears to be promoting the opposite of its statutory goals.

⁵⁰ Ofcomment.com is an independent website established to give advice to users of 0870 numbers in light of Ofcom's proposed changes. It is not provided or sanctioned by Ofcom

A2.102 CP3 added that whereas Ofcom claimed to be promoting competition and encouraging innovation and investment in NTS by reducing revenue uncertainty associated with the revenue sharing pricing model it is merely annihilating the revenue generated on 0870 numbers. So called revenue uncertainty has never acted as a disincentive for CPs and SPs to offer services using NTS rather revenue sharing has proved to be an incentive for CPs and SPs to use NTS.

No transparency

A2.103 CP3 disagreed that the transparency test in Section 60 of the Act has been met. Firstly because it was not clear whether TCPs or SPs are under any price transparency obligations or whether these apply only to OCPs. Secondly because users of 0870 numbers were unable to make any decision about keeping their number or migrating elsewhere without knowing the outcome of the 0870 Dispute. This is truer because of the uncertainty surrounding the regulatory future of alternative ranges such as all 084X, 087X, 070 or 03.

A2.104 For business to retain a revenue share their only alternatives appear to be 0844 and 0871 which currently can not receive calls from overseas. Calls to 087 numbers may be blocked by European carriers when they are re-classified as PRS. Ofcom's decisions thus have repercussions on cross border trade between the UK and other EU member states and may affect the free movement of services in the EU internal market.

A2.105 CP3 asked what criteria led Ofcom to assert that only a small proportion of 0870 traffic originates from abroad. Large numbers of faxes to 0870 numbers originate from outside the UK. Whilst this may constitute only a small proportion of 0870 traffic the contents (e.g. official contracts and other commercial documents which are often sent by fax which is more secure than email) could have a huge impact on cross border commerce.

A2.106 CP3 concluded that owing to the many uncertainties about the changes to 0870, 0871 and other ranges, the implementation period for any changes on these numbers should be at the very least 12 months. Alternatively Ofcom could apply the changes to new numbers but "ring-fence" existing numbers for a minimum of 12 months to allow operators, service providers and end users enough time to implement the changes.

Not objectively justifiable

A2.107 CP3 argued that the proposals are not objectively justifiable and do not meet the tests set out in Section 60 of the Act because they would not bring about:

- an improvement in price transparency;
- greater revenue certainty for TCPs; and
- fewer interconnection disputes requiring regulatory intervention.

Ofcom's Comments

A2.108 Ofcom will refer to the comments made under each of CP3's sub-headings.

0870 numbers are used for legitimate and valuable services

- A2.109 We discuss stakeholder comments about the linkage with the 0870 Dispute in paragraph 3.117.
- A2.110 We agree with CP3 that 0870 numbers are used to provide services that consumers find valuable. We believe that consumers should have a better understanding of the charges for calling 0870 numbers and, where retail prices for such calls are above geographic call prices, this should be accompanied by a good level of price transparency. The broken linkage between 0870 charges and geographic charges has created a particular transparency problem that in our view needs to be addressed in order to improve transparency and consumer confidence. We believe the changes are in the long term interests of SPs, even though they will lead to short term disruption, since by improving consumer confidence, their willingness to call 0870 numbers, may increase. The proposals should not force SPs to discontinue their services. SPs are free to migrate their to other NTS ranges to retain a revenue share or retain their 0870 numbers funding their 0870 services from their primary products or other activities.
- A2.111 We disagree with CP3 that we have not presented any evidence of problems with 0870 and 0871 numbers that would justify our proposals for these ranges. This was discussed at length in the 2004 NTS Consultation and the 2005 NTS Consultation and included for example independent research in to consumers' price perceptions.
- A2.112 We do not think that marketing campaigns run by Ofcom to raise awareness about 0870 prices would be a particularly effective or proportionate alternative to our proposals. In our view, it would be difficult to give consumers a clear message about 0870 pricing without addressing the problem of the broken-linkage to geographic call charges. We also think that it would be necessary for Ofcom to spend very large sums of money in order to make a significant impact on consumer awareness. More generally, the primary responsibility for informing consumers about call charges rests with OCPs and they are best able to inform their customers about call charges in a competitive market where there is a great diversity pricing and packaging.
- A2.113 We agree that retail price competition should have a role in exerting downward pressure on NTS call charges. The 0870 measures and the more generally the NTS obligations in General Condition 14 are supportive of this objective since they aim to improve the visibility of NTS tariffs to consumers.

Not effective for consumer protection

- A2.114 Whilst we acknowledge that there is some uncertainty about the likely impact of these changes on consumer pricing awareness, we consider that they will lead to an improvement in pricing transparency because:
- in our view, there is a good chance that retail competition will lead a significant proportion of OCPs to charge 0870 calls at geographic rates. This should lead to a significant improvement in pricing transparency since consumers have a much higher awareness of geographic call charges than calls to 0870 numbers. It will also provide a simple message to consumers, which is that 0870 calls are charged on the same basis as geographic calls and are included in call packages on the same basis. In this context we note that:
 - BT has already aligned its 0870 call charges with geographic call charges for its three main consumer pricing packages in anticipation of Ofcom implementing these 0870 measures;

- the proposed rates in the draft determination of the 0870 Dispute have been set at a level to enable BT to keep 0870 calls within its call packages; and
- at least one major operator has responded with a similar pricing policy;
- the new price publication requirements for 0870 calls in General Condition 14 will improve the visibility of 0870 call charges to consumers, by requiring CPs that charge 0870 calls above geographic rates to specify their 0870 call charges more prominently; and
- General Condition 14 will prohibit OCPs from describing 0870 calls as 'national rate' e.g. in billing material unless their 0870 charges are aligned with geographic rates.

A2.115 We plan to carry out market research to assess the impact of these measures on consumer pricing awareness. If it becomes apparent after 12 months that the new rules have not had a significant effect on consumer price awareness, our intention is to return to this issue and consider what other measures may be appropriate.

A2.116 As discussed in more detail in paragraphs 3.81 to 3.84 we recognise that the price of calls to 0870 numbers and other 08 numbers from mobile networks is causing some stakeholder concern. Given the concerns we plan to monitor pricing trends for 08 calls from mobile networks and will consider whether any further action may be required.

A2.117 Regarding the suggestions that the level of termination payments might lead BT to raise its 0870 call charges, we note that the termination rates proposed in the draft determination of the 0870 Dispute have been set at a level that is consistent with geographic charging. Also as discussed above, BT has already incorporated 0870 calls into its call packages.

A2.118 Regarding the concern that BT might raise its 0870 retail prices in order to force its CP competitors and SPs out of the market. Given the potential impact of such price rises on its own retail business and its termination/hosting business it is not clear that BT would have an incentive or ability to engage in behaviour of the type suggested by CP3. However should concerns arise Ofcom could investigate whether alleged anti-competitive behaviour amounted to a breach of the Competition Act.

A2.119 We agree that some SPs may migrate their services from 0870 numbers to 0871 numbers. From observations of call patterns since our proposals were announced it appears that most migration from 0870 numbers has been to 084 numbers rather than 0871 numbers.

A2.120 Under the current arrangements, services provided on 0870 numbers are not free to consumers as calls are charged at a premium to provide SPs with a revenue share. Following implementation of our proposals it is likely that SPs would seek to recover 0870 service costs that were previously covered by revenue share payments from customers via charges for other products or services in their primary markets. This change will simply result in consumers paying for 0870 services in a different way, not an increase in charges.

Not proportionate

A2.121 Prior to putting forward the 0870 proposals in the 2006 NTS Consultation we assessed the impact of our proposals on services currently using 0870 numbers

(which includes fax-to-email or find-me-follow-me services) including migration costs, discussing our findings in the 2005 NTS Consultation. We have reviewed and updated our estimates in light of stakeholder responses to the Consultation (see Annex 3). We remain of the view that our estimates are a fair assessment of these costs and that our proposals are a proportionate response to the policy issues taking into account the costs and benefits. As discussed in paragraphs A3.88 to A3.94 our final assessment is that the proposals would be likely to deliver a significant net benefit over several years.

- A2.122 We would expect that SPs would seek to recover 0870 service costs that were previously covered by revenue share payments from customers via charges for other products or services in their primary markets. We think it is likely that SPs would be able to recover most of their costs in this way, though as discussed in more detail in Annex 3, we think that there would be a residual amount that SPs would not be able to recover in the short term. This was taken into account in the impact assessment.
- A2.123 We acknowledge that some CPs may finance the services they provide to SPs solely from call charges and may not currently have the capability to bill SPs. Those that do not wish to develop this capability can transfer their services to other NTS ranges that will continue to support revenue sharing.
- A2.124 We have commented in paragraph A2.112 above about the suggestion that Ofcom should run media campaigns to inform consumers about 0870 call charges.
- A2.125 Ofcom has implemented or has proposed a variety of means to address the problems with 0870 numbers, including several of those suggested by CP3, namely:
- In 2004 Ofcom withdrew the 'national rate' designation for 0870 calls from the Plan in 2004 and re-designated 0870 calls as 'Special Services: Higher Rate' and advised CPs that they should no longer use the 'national rate' term;
 - At that time Ofcom also asked the Committee of Advertising Practice to issue guidance to advertisers advising against the use of the 'national rate' term;
 - In 2006, Ofcom modified General Condition 14, requiring OCPs to give greater prominence to their charges for NTS calls. Ofcom has also run two own-initiative enforcement programmes to ensure a good level of compliance with these obligations;
 - Under the 0870 proposals, OCPs will have new obligations to inform consumers about 0870 call charges.
- A2.126 In our view it is still necessary to address the problems stemming from the broken linkage between 0870 call charges and geographic charges. In our view, failing to address this problem would be likely to lead to a further decline in consumer confidence in 08 numbers. Ofcom would draw CP3's attention to the public campaigns being waged against 0870 and the principles of revenue sharing. Whilst we may not agree with all the views expressed we do accept that many of the concerns are valid and require intervention.
- A2.127 The possibility that further disputes about 0870 interconnection charges cannot be discounted. However, we are hopeful that once the new arrangements are established, the prospect of recurring disputes will recede as TCPs' and SPs'

reliance on 0870 call termination revenues to fund the services provided on 0870 numbers will be significantly reduced and the dependence of termination charges on BT's retail charges and discounts will be removed.

- A2.128 The 0870 Dispute determination will establish a methodology for setting 0870 call termination payments for BT originated 0870 calls. In a dispute raising similar issues, it is likely that the same methodology could be applied, making the dispute appropriate for referral to alternative dispute resolution. This will give BT and other CPs greater certainty about the likely outcome of such a dispute, diminishing the prospect of further disputes.

Discriminatory

- A2.129 Under our proposals, the interconnection arrangements for 0870 will be similar to those for geographic calls with OCPs paying a small charge for call termination rather than the much larger payment under the current NTS arrangement. Although this change will result in OCPs keeping a greater proportion of 0870 call charges than at present (and TCPs a smaller part), we do not consider that changing the charging model in this way is unduly discriminatory.
- A2.130 As set out above, we regard the measures that we are introducing as a proportionate means of addressing the problems associated with 0870 calls. We consider that they will further the interests of consumers by enhancing price transparency and thereby improving consumer confidence in 0870 numbers. While we recognise that TCPs will incur costs as a result of the changes, as demonstrated in the impact assessment at Annex 3, these are outweighed by the benefits that the policy will bring. In particular we consider that the restoration of consumer confidence will bring benefits to TCPs and SPs providing services on the 0870 range.
- A2.131 While the revenues that TCPs earn from terminating 0870 calls will be reduced, we consider that there is scope to charge SPs for 0870 hosting services. As discussed in paragraph A2.120, SPs should be able to recover most of their additional costs via charges for other products or services in their primary markets.
- A2.132 Furthermore, while OCPs will retain a greater proportion of 0870 call revenues, this is not without cost since they will be subject to additional publication requirements following the modification of General Condition 14. As discussed at paragraph 3.107, we consider that they will also be subject to competitive pressure to retail 0870 calls at geographic levels
- A2.133 Taking all these considerations in the round, we are satisfied that these changes are objectively justified and not unduly discriminatory.
- A2.134 Regarding the concern that BT might raise its 0870 retail prices in order to force its CP competitors and SPs out of the market. Given the potential impact of such price rises on its own retail business and its termination/hosting business it is not clear that BT would have an incentive or ability to engage in behaviour of the type suggested by CP3. However should concerns arise Ofcom could investigate whether alleged anti-competitive behaviour amounted to a breach of the Competition Act.

No transparency

- A2.135 In our view, the transparency requirements under section 60 of the Act (which relate to modifications of the Plan) have been met. The modification to the designation for 0870 numbers in the Plan is intended to ensure that it reflects the modifications that have been made to General Condition 14, in relation to 0870 calls. These modifications concern the obligations of OCPs in relation to the publication of call prices. These modifications were consulted upon and we have made changes to the wording of the modification to the Numbering Plan and to General Condition 14, in light of the comments we received to improve the clarity of the changes we are making.
- A2.136 Ofcom has not made any changes to TCPs and SPs obligations in relation to the adoption and use of telephone numbers which are specified in the Numbering Plan and General Condition 17. Therefore TCPs' and SPs' obligations in relation to 0870 numbers will be the same as for other telephone numbers. Ofcom has also made a modification to General Condition 17 to require OCPs to comply with the revised designation for 0870 calls. We also consider this modification to be transparent in what it is intended to achieve.
- A2.137 Whilst we understand that it would be useful for SPs to know the outcome of the 0870 Dispute before deciding how to react to Ofcom's proposals, we do not consider it necessary for the 0870 Dispute to be resolved in order for the proposed modification to the Plan to be transparent in what they are intended to achieve as required by section 60 of the Act.
- A2.138 Ofcom acknowledges the view expressed by several respondents about not being able to comment on the proposals or decide how to react until the outcome of the 0870 termination dispute is known. This is discussed at paragraph 3.17.
- A2.139 We consider that we have given stakeholders sufficient information about our plans for other number ranges for them to make informed decisions about whether those ranges would be suitable for their services should they decide to migrate. We also consider that it is not necessary that the outcome of recent or planned consultations relating to other number ranges to be known in order for the proposed modification to the Plan to be transparent as required by section 60 of the Act.
- A2.140 We described our research into international access to 08 numbers in detail in Annex 4 to the 2006 NTS Statement. We concluded on the basis of data provided by BT and Cable & Wireless that only a small proportion of 0870 traffic originates abroad and, from our own research, that access to 0870 and 0871 from foreign networks is patchy. Furthermore, since 2006, overseas access to alternative number ranges has improved – all UK international carriers have opened access to the 0844 and 0871 ranges and are in the process of informing their overseas counterparts of their availability and costs.
- A2.141 Accordingly, we remain of the view that it is unlikely that EU cross border trade between EU member states and the UK would be materially affected by the proposals given the small proportion of 0870 traffic that originates abroad and given that SPs could retain their 0870 numbers or use alternative number ranges (including geographic numbers that have better international access than 08 numbers).
- A2.142 We have discussed stakeholders' comments about the implementation timescale for our proposals in paragraph 3.179.

Not objectively justifiable

A2.143 We have responded above to CP3's comments about the effectiveness of the proposals in respect of pricing transparency, reduction in disputes and greater revenue certainty. In our view, the proposals are objectively justifiable.

Federation of Communications Services (FCS)

A2.144 The FCS is a trade association representing predominantly smaller CPs and SPs.

A2.145 FCS supported the clear and simple approach and the underlying logic of Ofcom's Strategic Numbering Review which FCS believed is clearly contradictory to the approach outlined in the NTS proposals and has resulted in the delays and confusion which they had seen since original publication of the 2006 NTS statement.

A2.146 The FCS thought the consultation was too narrow as it concentrates only on 0870 and thus conflicts with the wider transparency aims of the Strategic Numbering Review. In FCS's view, Ofcom's proposals do not address the concerns of consumers or CPs and had missed the opportunity to address the issue of transparency particularly of mobile pricing.

A2.147 FCS thought the lack of price transparency is the key problem that Ofcom should take steps to address rather than altering the interconnection arrangements for 0870 calls. In FCS's view, removing 0870 from the NTS Condition would only benefit BT and would therefore harm competition and would also result in consumers losing the one firm basis for understanding 0870 prices.

A2.148 FCS also drew Ofcom's attention to the CPRs which came into force in May 2008 which it considered had a bearing on the proposals.

A2.149 FCS also thought the CAT judgement on the TRD appeals would have an impact on Ofcom's consideration of the 0870 Dispute and therefore the 0870 proposals. FCS argued that in the light of the judgement, Ofcom should consult stakeholders about a revised approach that would take into account the problems with price announcements, the CAT judgement and the implications of 03 numbers.

A2.150 In FCS view, an unfortunate feature of the proposals is that they would enable OCPs to charge what they wish when TCPs are unable to do so to the detriment of competition and innovation.

A2.151 In FCS view the existing requirements of General Condition 14.2 had not so far been effectively enforced.

Ofcom's Comments

A2.152 We agree with FCS that there is a need to improve price transparency, particularly in relation to 0870 calls. Given the longstanding linkage between 0870 call charges and geographic call charges and continuing widespread use of the 'national rate' term we think that repairing the linkage as proposed would be likely to be more effective than simply implementing additional price publication obligations.

A2.153 In our NTS policy review, culminating in the 2006 NTS Statement, we gave careful consideration to the interaction of our proposals for 0870 numbers with the broader Strategic Numbering Review vision of a simplified approach to describing 08 numbers under which three digit descriptions have been adopted and 087 numbers

would be charged at up to 10p per minute for BT customers.⁵¹ Our position remains as stated in the 2006 NTS Statement, namely that, our proposals for 0870 and the other proposals in the 2005 NTS Consultation are consistent with the long term approach to price transparency, given the policy issues associated with 08 numbers. In our view, the 0870 proposals are a balanced response to a specific set of issues which have developed over the past decade. They are designed to address current problems on a legacy range and can readily (if not neatly) sit alongside the broader vision of the Strategic Numbering Review.

- A2.154 The delay implementing our proposals is due to the need to revise our proposals to address the announcements problems and the linkage with the 0870 Dispute rather than any tension between the objectives of the Strategic Numbering Review and the 0870 proposals.
- A2.155 As discussed in more detail in paragraphs 3.105 to 3.109 we consider that our proposals will lead to an improvement in pricing transparency, not detract from it. We have discussed stakeholders' comments about the potential impact on competition of this change in paragraphs 3.122 to 3.128.
- A2.156 We discuss FCS and other stakeholders' comments about the CPRs in paragraphs 3.114 to 3.116.
- A2.157 The CAT judgements in the TRD appeals have had an effect on the way in which Ofcom resolves the 0870 Dispute. Ofcom suspended its consideration the 0870 Dispute specifically to await the judgements and consider their implications. We have described our revised approach in the draft Determination.
- A2.158 We acknowledge FCS concern about enforcement of the NTS obligations in General Condition 14. We were also initially unhappy with the level of compliance and as discussed in more detail in paragraph 3.110 have undertaken two own-initiative investigations to improve compliance.

IVR Response Ltd (IVR)

- A2.159 IVR thought that the effectiveness of price transparency through OCP compliance with General Condition 14.2 would largely depend upon two factors that were not transparent at the time of the consultation. These were the 0870 call termination charges and the outcome of Ofcom's own initiative investigation into compliance with the existing requirements for NTS calls in General Condition 14.
- A2.160 In IVR's view 0870 call termination charges would determine whether OCPs would retail 0870 calls at geographic prices and include them in packages or charge higher rates. The CAT judgement (on the TRD appeals) rejected Ofcom's 'gains from trade' methodology which Ofcom had also used to set the proposed termination rates in the draft determination of the 0870 Dispute. Until the dispute is resolved IVR held that it is difficult to comment on whether Ofcom's proposals would have the desired effect of allowing OCPs to charge 0870 calls at geographic rates.
- A2.161 Many industry groups, consumers and TCPs have repeatedly stated that price transparency is a core issue for the success of NTS services, by enabling the consumer to trust using NTS services and businesses to benefit by adopting them. In IVR's view Ofcom's own-initiative investigations into OCPs' compliance with the

⁵¹ Paragraphs 1.51 – 1.54, 2006 NTS Statement

NTS requirements in General Condition 14 supported its view that OCPs' compliance is woeful. Until the investigation is completed IVR thought it was difficult to comment on the effectiveness of the NTS requirements in General Condition 14.

A2.162 IVR assumed that, whatever the eventual outcome of the CAT judgement it is likely that the new 0870 termination rates will be high as evidenced by the rate in Ofcom's initial draft determination of the 0870 Dispute. However, if they are too high it is unlikely that 0870 retail prices would fall or that 0870 calls would be included in pricing bundles. On the other hand if they are too low BT could be £30-£40m better off enabling BT to offer a better 0870 proposition to SPs than its TCP competitors.

A2.163 Further IVR was concerned that if in resolving the 0870 Dispute Ofcom set 0870 termination rates at a high rate they would ultimately impact on the success of 03 since the commercial structures are almost identical to 0870 and TCPs would be likely to seek comparable rates for 03 calls. This would impact on OCPs since they are required to charge 03 calls at no more than geographic rates.

A2.164 IVR argued that the policy issues surrounding 0870 are now wider than when the April 2006 NTS statement was published. IVR suggested that Ofcom should re-examine these wider challenges as a whole and include 0845 within the scope of this examination. IVR also recommended Ofcom reduce the 0870 termination rate to that of 0845 calls as an interim measure. IVR thought the benefits of this move are;

- 0845 is already captured under General Condition 14 requirements;
- 0870 call prices would fall for many consumers due to the 0845 price designation being lower;
- there are no current disputes involving 0845;
- Ofcom would be in a position to deal with the 0845 local and 0870 national together saving valuable time and resource;
- the outcomes of the CAT judgement would be known;
- the outcome of the investigation into General Condition 14 compliance would also be known and the issues identified and rectified;
- the 03 number range would not be compromised; and
- TCPs would still receive a revenue share albeit much reduced.

A2.165 IVR thought that a further review would give Ofcom time to request call data from TCPs for 0870, 0845 and other NTS traffic, to identify trends that have arisen since the 2006 NTS statement.

A2.166 Whilst not resolving the 0870 issues in the short term in IVR's view the eventual benefits of a wider review would outweigh the delay and bring the 0845 review forward.

A2.167 Ofcom's Comments

A2.168 As discussed in section 3, we delayed publication of this statement in recognition of IVR and other stakeholder concerns about the linkage with the 0870 Dispute. The

termination rates proposed in the revised draft determination of the 0870 Dispute are set a level that we consider will provide the correct incentives for OCPs to follow the policy pricing objectives.

- A2.169 We agree that compliance with the NTS requirements in General Condition 14 is an important part of our package of measures for NTS calls and it is therefore important to achieve a good level of compliance. We were initially unhappy with the level of compliance and as discussed in more detail in paragraph 3.110 since the NTS requirements were introduced in August 2006, Ofcom has therefore undertaken two own-initiative compliance programmes. During the course of the most recent investigation Ofcom asked a number of fixed and mobile OCPs to take action to satisfy Ofcom that they are compliant with General Condition 14.2. These OCPs provided Ofcom with written assurances that they will ensure compliance and, where appropriate, provided Ofcom with advertising and promotional material demonstrating their compliance.
- A2.170 Following the completion of our second investigation we are satisfied that the CPs that were the subject of investigation have achieved a good level of compliance. Following the implementation of our proposals we propose to monitor compliance with the revised requirements for 0870 Calls and if necessary we will take further action to ensure compliance.
- A2.171 The 0870 termination payments proposed by Ofcom in the draft determination of the 0870 Dispute are designed to enable the recovery of the costs for terminating a geographic call with an adjustment for near-end handover. The rates are necessarily higher than those for geographic calls to allow for the different characteristics of these two call types. However, in our view, these rates will enable alignment of 0870 call charges with geographic retail charging of 0870 calls.
- A2.172 The proposed termination payments would result in BT and other OCPs being able to retain more than they currently do for originating 0870 calls. There is no evidence to suggest that BT will or might engage in anti-competitive behaviour of the kind suggested and we are not currently persuaded that BT will have a greater incentive do so. If BT were to offer SPs terms for termination/hosting which other operators could not match, this might constitute anti-competitive behaviour, for example because it resulted in a margin squeeze in the market for NTS termination/hosting. Should such concerns arise, BT would be vulnerable to investigation under the Competition Act.
- A2.173 We acknowledge that the conclusion of the 0870 Dispute might prompt a renegotiation of termination charges for 03 calls. Although there are clearly similarities between the ranges, if a dispute about 03 termination charges were referred to Ofcom, Ofcom would consider the case on its merits taking into account the requirement for calls to be charged at no more than geographic rates.
- A2.174 Regarding IVR's suggestion that Ofcom should align 0870 call termination payments with those for 0845 calls as an interim measure. This approach might deliver some benefits for consumers in terms of reduced prices for 0870 calls whilst maintaining termination payments at a level that would continue to support a small revenue share, thereby reducing the impact on SPs compared with our proposals. However, in our view, the drawback of this approach is that it would not fully address the price transparency problem as it would be likely to cause OCPs to keep 0870 calls charges above geographic rates and might lead to further consumer confusion by creating a new association of 0870 calls with local rates. It would therefore only warrant consideration as an interim measure as suggested by IVR. In

order for Ofcom to align 0870 call termination payments with those for 0845, it would be necessary for Ofcom to consult stakeholders on a revision to the designation for 0870 calls to match the 0845 designation. Given the work involved in consulting on an interim solution and the implementation delays that have already occurred we consider that it would be better to proceed with implementation of the permanent solution as proposed.

Flextel

A2.175 In Flextel's opinion, Ofcom's proposals would reduce pricing transparency and would not protect consumers since they would allow OCPs to set call charges. Flextel also thought that the proposals would fruitlessly fetter TCPs' discretion to set termination charges for 0870 calls to the detriment of fair competition and service innovation.

A2.176 Flextel thought the proposals would not achieve any of the original policy objectives from the 2005 NTS Consultation, namely:

- Price transparency;
- Range and choice of services;
- Consumer protection;
- Promotion of competition; and
- Reduced regulatory intervention.

A2.177 Flextel also argued that Ofcom's consultation was too narrowly drawn since it failed to address the wider issue of pricing transparency for all number ranges.

A2.178 Flextel cited a series of events which it regarded as related to the 0870 proposals as evidence that Ofcom should abandon its proposals and re-consult stakeholders about how to proceed. These events were:

- the problems with pre-call announcements leading to Ofcom's decision to revise the 0870 proposals;
- the launch of the 03 range by Ofcom;
- the draft determination of the 0870 Dispute;
- Ofcom's decision to delay further consideration of the 0870 Dispute pending the CAT consideration of the TRD appeals; and
- the Consumer Protection from Unfair Trading Regulations 2008.

A2.179 Flextel believed that removing 0870 from the scope of the NTS Condition is inappropriate since it would lead to interconnection disputes between CPs which will favour BT to no consumer benefit.

Ofcom's comments

A2.180 Whilst we acknowledge that there is some uncertainty about the likely impact of our proposals on consumer pricing awareness, we consider that the proposals will lead to an improvement in pricing transparency because:

- in our view, there is a good chance that retail competition will lead a significant proportion of OCPs to charge 0870 calls at geographic rates. This should lead to a significant improvement in pricing transparency since consumers have a much higher awareness of geographic call charges than calls to 0870 numbers. It will also provide a simple message to consumers, which is that 0870 calls are charged on the same basis as geographic calls and are included in call packages on the same basis. In this context we note that:
 - BT has already aligned its 0870 call charges with geographic call charges for its three main consumer pricing packages in anticipation of Ofcom implementing these 0870 measures;
 - the proposed rates in the draft determination of the 0870 Dispute have been set at a level to enable BT to keep 0870 calls within its call packages; and
 - at least one major operator has responded with a similar pricing policy;
- the new price publication requirements for 0870 calls in General Condition 14 will improve the visibility of 0870 call charges to consumers, by requiring CPs that charge 0870 calls above geographic rates to specify their 0870 call charges more prominently; and
- General Condition 14 will prohibit OCPs from describing 0870 calls as 'national rate' e.g. in billing material unless their 0870 charges are aligned with geographic rates.

A2.181 We also intend to monitor the extent to which our proposals achieve the objectives and will consider what alternative measures could be taken if price perceptions do not improve.

A2.182 Although the proposals will be disruptive for TCPs and SPs in the short term, we do not think that it is in interests of competition and service innovation to perpetuate a regime in which the price of 0870 calls from BT lines is linked to a headline rate that few people actually pay. Addressing this problem will improve price transparency and consumer confidence and will therefore support competition and service innovation.

A2.183 We do not think our proposals should limit the range and choice of services available as under the revised arrangements for 0870 calls, TCPs can raise their charges to their SP customers to offset the reduction in termination payments or offer services on other and 09 number ranges where revenue share payments are available at similar levels to those currently available on 0870 numbers.

A2.184 As discussed in paragraph 3.129 we also think there is a good chance that once the new arrangements are in place they will lead to a reduction in the level of interconnection disputes.

A2.185 We considered measures to improve pricing transparency for all telephone numbers in our strategic review of numbering policy that we concluded in July 2006. More

generally, as part of our ongoing programme of work on numbering we are also considering long term pricing transparency across all number ranges. Our view is that none of the options currently under consideration would provide a short term solution to improve price transparency for 0870 calls.

- A2.186 We acknowledge that the problems with pricing announcements and the linkage with the 0870 Dispute have caused us to revise certain aspects of our proposals and to delay implementation pending progress with the dispute. However, we do not consider that these events would warrant us abandoning our proposals as Flextel suggests. We have sought stakeholders' comments on these developments in the Consultation and have considered their responses before deciding to implement our proposals.
- A2.187 We do not consider the introduction of 03 numbers or the Consumer Protection from Unfair Trading Regulation 2008 to have a strong bearing on our consideration of the 0870 proposals. As discussed in paragraph 3.99 the 0870 proposals are designed to address problems that are specific to the 0870 number range (such the pricing transparency problems associated with the broken linkage to national call rates) rather than simply to create a range charged at geographic rates. In our view the availability of the 03 number range will not address the problems, unless it leads to all or at least the vast majority of SPs voluntarily moving their services to 03 numbers, this has not happened to date and in our view is unlikely to happen.
- A2.188 The changes which we are making in relation to 0870 calls are intended to improve pricing transparency and consumer confidence in relation to calls to 0870 numbers whereas the primary aim of the CPRs is to protect consumers from unfair trading. Consequently we consider that our proposals address different objectives to the CPRs. We therefore consider it appropriate to place OCPs under additional obligations to address our objectives.

Reality Telecom ('Reality')

- A2.189 Reality expressed strong reservations about the proposals, believing they would not achieve Ofcom's objectives due to the rise of mobile originated calls. Reality was also concerned about the high cost to CPs and SPs which it argued were not properly quantified and would not be offset by consumer benefits.
- A2.190 Reality preferred Option B on the grounds that it would be less intrusive.
- A2.191 Reality thought Ofcom's focus on measures to address short term concerns such as 0870, would result in piecemeal regulation rather than an overarching market based approach to provide a longer term solution. Reality felt that its concerns about the costs associated with Ofcom's approach were underlined by Ofcom's statements that it would consider further measures to improve price transparency in relation to 0870 calls if the proposals were not effective in this respect. In Reality's view, Ofcom should consider whether improving consumers' awareness of call prices is the correct objective.
- A2.192 Reality noted that OCPs have many different call prices and argued that it would not be practical to display all of them on bills etc and this would not be welcomed by consumers. Reality argued that Ofcom's focus should be to ensure charges are available and easy to access by whatever medium providers choose e.g. online, help lines etc.

A2.193 In relation to the timing of introduction of the changes Reality considered that 3 months is too short as it will be difficult for operators to give clear notice to service providers before they start being billed to receive 0870 calls. Further if the 0870 termination dispute has not been resolved by the time of the statement there would continue to be uncertainty about when the new charges would start. For this reason Reality argued that Ofcom should allow at least 6 months before implementing the proposals. In Reality's view, there has been one false start already and SPs would be reluctant to change their arrangements unless they have a clear date. This is because of the clear disadvantages of moving from 0870 notably the lack of inbound international access and low public awareness of 0844 creating the need for a fixed date to stimulate a change from 0870.

A2.194 Ofcom's comments

A2.195 In our view the costs to industry of the 0870 changes have been properly quantified. We described our estimates in the 2005 NTS Consultation and in the 2006 NTS statement we described further sensitivity checks that were made in response to stakeholder comments. We have reviewed and updated the IA and discuss stakeholder comments on the IA in more detail in Annex 3 and in section 3. In our view, the proposals are a proportionate response to the policy issues.

A2.196 We set out our long term approach to pricing transparency for all telephone numbers in our strategic review of numbering that concluded in 2006. The review concluded that our proposals for 0870 and the other proposals in the 2005 NTS Consultation were consistent with the long term approach to price transparency, given the policy issues associated with 08 numbers.

A2.197 In our view the policy issues associated with 08 numbers and in particular the problems associated with the broken linkage to geographic call charges for 0870 calls, justify measures in addition to OCPs' general price transparency obligations.

A2.198 Regarding the suggestion that Ofcom should concentrate on ensuring that CPs make their charges readily available to consumers, OCPs are already subject to a price publication obligation (for consumer & small business telephony charges) in General Condition 10. Given that the problems that our proposals aim to address have arisen despite this obligation we believe that the proposals are justified.

A2.199 We discuss stakeholders' comments about implementation timing in paragraph 3.179.

Skycom (TCP - reseller)

A2.200 In Skycom's view the proposals would be likely to worsen price transparency rather than improve it because OCPs would be free to set their charges for 0870 calls, leaving callers to consult their suppliers 'small print' to ascertain call prices.

A2.201 Skycom appreciated that efforts will be made to make sure individual CPs publish the costs of calling 0870 numbers on their websites etc, but argued this measure could have been pursued in isolation two years ago. In Skycom's view the destruction of a whole layer of industry and the extreme interventions proposed are significantly inferior to just asking CPs to be more open about their call pricing.

A2.202 Skycom also queried why Ofcom has prioritised measures for 0870 when most consumers remain unaware that their mobile operator charges them an average of

15ppm to call a "Freephone" number, especially with the introduction of new ranges like 03, which without intervention shall probably fall prey to the same problems?

Ofcom's Comments

- A2.203 We note that under the current arrangements OCPs charge a wide range of prices for 0870 calls, most if not all above geographic rates, despite the longstanding association with geographic charges and the continued description of 0870 calls as 'national rate' by CPs and SPs. We therefore think it unlikely that pricing transparency would worsen if some CPs were to continue to charge 0870 calls above geographic rates following the implementation of our proposals.
- A2.204 Whilst we acknowledge that there is some uncertainty about the likely impact of our proposals on consumer pricing awareness, we consider that the proposals will lead to an improvement in pricing transparency for the reasons given in paragraph A2.180.
- A2.205 We plan to carry out market research to assess the impact of these measures on consumer pricing awareness. If it becomes apparent after 12 months that the new rules have not had a significant effect on consumer price awareness, our intention is to return to this issue and consider what other measures may be appropriate.
- A2.206 Given the longstanding linkage between 0870 call charges and geographic call charges and continuing widespread use of the 'national rate' term, we think that our proposals (which involve repairing the geographic linkage in conjunction with the new price publication requirements in General Condition 14) would be likely to bring about a greater improvement in pricing transparency than simply taking steps to improve price awareness.
- A2.207 Given the long-standing obligation for OCPs to provide price announcements if they charge for Freephone calls we do not think that Ofcom should have prioritised Freephone calls for action over 0870 calls.

Cable & Wireless (C&W)

- A2.208 C&W said that at the time of the April 2006 NTS statement, it expected the loss of revenue share to result in the vast majority of services moving to other numbers. In the event the barriers to change including the enormous costs resulting from the loss of 0870 numbers has meant that relatively few businesses have made the decision to switch.
- A2.209 In C&W's view the outcome of the 0870 Dispute was fundamental to the impact of the proposed changes. C&W discussed the merits of high and low 0870 call termination rates but concluded that ultimately the proposals can only be judged properly when termination rates are known. It was likely that the winners will be consumers through lower prices and OCPs through higher retentions whilst TCPs would face a loss of revenue and having to seek payment from SPs for terminating calls. C&W estimated that a 1p per minute increase in the retention by OCPs would result in a 'windfall gain' of as much as £100m with BT the major beneficiary. As an illustration, C&W estimated the effect of Ofcom setting termination rates at the level proposed by BT (an average of around 0.2p per minute). Assuming BT charged geographic rates for 0870 calls, C&W estimated this would result in OCPs retaining an additional 1.3p for each call minute. At current call volumes, C&W estimated the gain to BT as an OCP would be £78 million per year, though C&W noted that migration of services to other number ranges might be half this amount). This would

give BT control of both origination and termination of the majority of these calls and would have a serious impact on competition in NTS.

- A2.210 C&W argued that it is irrelevant whether 0870 remains an NTS number or takes on another designation while BT continues to have SMP in the origination of 0870 calls.
- A2.211 C&W added that Ofcom has struggled to provide evidence of the benefit of 0870 changes to the market and in this case they will not only destabilise the market but also hand BT a clear competitive advantage in a market where it is already found to be dominant. C&W further concluded that Ofcom's proposals fail to meet Section 3(4) of the Act by entirely failing to promote competition in relevant markets and creating a situation which forestalls competition.
- A2.212 C&W discussed the merits and drawbacks of a range of suggested options Ofcom may consider. These included proceeding with the current proposals but with termination rates set at either below or equal to those resulting from the NTS formula, completing the suspended NTS call termination market review and applying appropriate remedies and closing the 0870 range altogether. C&W also restated its long held view that Ofcom should complete the suspended market review of NTS call termination and apply remedies which make it possible to set appropriate 0870 interconnect rates that balance the needs of all parties.
- A2.213 C&W also had concerns about Ofcom's assertion that Service Providers can recover additional costs from end-users. This could only pass the cost of lost revenue share to consumers leading to short-term price inflation until competition is able to again drive down prices.
- A2.214 C&W argued that implementation of any changes should be delayed for a minimum period of 6 months from the point the agreed termination rates are published in the BT Carrier Price List.
- A2.215 In conclusion C&W argued that the use of the phrase "*includes NTS Calls and calls to 0870 numbers...*" in the new clause 4.3 to General Condition 14 is significantly beyond the narrow focus of the 0870 consultation and that there is no comment on the expansion of the clause or any attempt to quantify the need for such an increase in scope.

Ofcom's Comments

- A2.216 We disagree with C&W's view that we have not presented evidence of the benefits of the 0870 measures. The NTS Policy Review consisted of two major consultations that were supported by a great deal of research and analysis. During the course of the consultations, Ofcom met with many stakeholders and considered consultation responses from over 1400 respondents. We presented ample evidence in the consultations about the lack of pricing transparency and also the consumer concerns about 08 numbers. We consider that failing to address these problems risk a further decline in consumer confidence which could make it increasingly difficult for businesses to use 08 numbers. In our view, there is a particular risk that the broken linkage between 0870 call charges and geographic call charges will damage consumer confidence since 0870 calls are widely known and advertised as 'national rate' even though calls charges are generally much higher. Whilst we acknowledge that the 0870 measures will cause short term disruption for SPs, we consider it is in CPs' and SPs' interests to address these problems.

- A2.217 We consider that the 0870 measures are consistent with our duty under section 3(4) of the Act to promote competition and have set out our reasoning in section 4 of this document.
- A2.218 We discuss C&W's and other stakeholders' comments concerned about the impact of the removal of 0870 calls from the scope of the NTS Condition on competition in the 0870 call termination/hosting market in paragraph 3.122.
- A2.219 Ofcom suspended work on NTS Call Termination Market Review in 2005 after it accepted a Competition Act complaint about BT's NCCN 500 charges ('The NCCN 500 Complaint'). Following publication of the final decision about this case on 1 August 2008, Ofcom is currently considering whether to recommence work on the Market Review.
- A2.220 C&W's comments about 0870 termination rates were passed to the investigation team dealing with the 0870 Dispute for consideration.
- A2.221 We accept C&W's and other respondents' concerns about the use of the term "*NTS calls and calls to 0870 numbers*" in relation to General Condition 14 and have amended the wording in paragraph 4.3 of Annex 2 to General Condition 14 to remove references to NTS. The existing obligation to publish usage charges for NTS calls, including whether discounts or bundling arrangements apply to them, in published price lists and websites remains, however. Many consumers have no idea that NTS calls fall outside most pricing plans. It is therefore essential that those who do look at their provider's price lists can easily find out which calls are in their bundle and which are not.
- A2.222 For the reasons discussed in paragraphs 3.182 to 3.188, we consider that a three-month implementation period will not cause undue inconvenience to CPs and SPs.

Thus

- A2.223 Thus recognised the need to continue to strive to raise consumer awareness of retail tariffs for UK number ranges, this being a key finding from Ofcom's 2005 research into Number Translation Services. However Thus disagreed with Ofcom's proposals arguing that by making 0870 numbers an exception to the rule that 08 numbers are all NTS numbers would lead to consumer confusion. Thus therefore urged Ofcom to maintain the NTS arrangements for 0870 calls.
- A2.224 Thus also argued that the need for the proposals had been undermined by the creation of 03 numbers which had already filled the gap in the market for a non-geographic service charged at geographic rates. Citing research by Indepen for the UKCTA response to the 2005 NTS Consultation, Thus argued that maintaining the current arrangements for 0870 calls would be more beneficial for consumers.
- A2.225 In Thus's view, much of the consumer concern about 0870 numbers stemmed from the high prices charged by mobile operators. Thus argued that Ofcom has failed to tackle the root cause of consumer concerns and is inflicting 'collateral damage' on fixed line providers.
- A2.226 Thus said it had received information from some of its SP customers indicating that Ofcom had seriously underestimated the migration costs that large organisations would incur when moving from 0870 numbers to other number ranges in response to Ofcom's proposals. Thus also thought that Ofcom had not taken account of the

need of large organisations to run their old and new numbers in parallel for several years to avoid loss of business.

A2.227 Thus also made several comments relating to the implementation of the proposals.

A2.228 Thus thought that Ofcom should allow a notice period of at least 6 and preferably 12 months because of the confusion about the timing and extent of planned changes, not least the delay to the 0871 consultation about extending PRS regulation to 0871 numbers. As a result Thus has not been able to recommend what alternative ranges SPs should migrate to. UK businesses need time to assess the options before making necessary changes to marketing collateral, contact information and signage which can take over a year to complete.

A2.229 In setting 0870 termination rates in the 0870 Dispute Thus thought Ofcom should strike a balance between setting rates that are too low and fail to take account of non-geographic termination costs or at such a high level to make it impossible to include 0870 within retail call plan pricing. Thus thought that charges should follow the BT element based approach taking into account the higher costs of collecting and terminating non-geo traffic, the circuits used to receive and distribute calls and an allowance for receiving transit calls. All factors for which TCPs have to pay. To depart from this convention would involve averaging termination payments which would result in some double tandem traffic being subsidised by single tandem calls, unfairly favouring some CPs.

A2.230 BT continues to be dominant in call origination whilst competition in NTS termination makes it a substantial net originator of 0870 calls. Thus thought that this would give BT a windfall gain of as much as £50m under Ofcom's proposals. In Thus view this should be minimised by setting the highest possible termination rate consistent with not forcing OCPs to charge above geo prices.

A2.231 Thus also sought clarity on the changes to General Condition 14 where section 4.3 appears to apply to all NTS and not just 0870. Such changes should be contained in a broader NTS consultation with appropriate justification. Thus also sought guidance on Ofcom's use of the word 'prominent'.

Ofcom's Comments.

A2.232 Given the longstanding linkage between 0870 call charges and geographic call charges and continuing widespread use of the 'national rate' term in our view, the proposals build on the existing 'rule' about 0870 calls. We therefore think it is unlikely to cause consumer confusion as Thus suggests.

A2.233 Our proposals are designed to address problems that are specific to the 0870 number range (such the pricing transparency problems associated with the broken linkage to national call rates) rather than to create a range charged at geographic rates. In our view the availability of the 03 number range will not address the problems, unless it leads to all or at least the vast majority of SPs voluntarily moving their services to 03 numbers, this has not happened to date and in our view is unlikely to happen.

- A2.234 We reviewed the Indepen research for UKCTA in the 2006 NTS Statement⁵², concluding that under equally plausible assumptions, Ofcom's proposals would deliver a greater benefit than keeping prices at current levels or thereabouts.
- A2.235 Whilst the price of 0870 calls from mobile phones may have contributed to consumers concerns about 0870 calls, in our view, it is not the main cause of them. We think there is a need to improve transparency for 0870 calls originating on all networks.
- A2.236 In our view the costs to industry of the 0870 changes have been properly quantified. We described our estimates in the 2005 NTS Consultation and in the 2006 NTS statement we described further sensitivity checks that were made in response to stakeholder comments that Ofcom may have underestimated the costs incurred by large SPs. We have reviewed and updated the IA and discuss stakeholder comments on the IA in more detail in Annex 3 and in section 3. In our view, the proposals are a proportionate response to the policy issues.
- A2.237 We discuss Thus and other stakeholders' comments about the impact of the 0870 measures on competition in the market for 0870 call termination/hosting in paragraph 3.122.
- A2.238 Regarding the points raised by Thus about implementation:
- Thus's comments in relation to the termination rates which are the subject of the 0870 Dispute have been taken into account in the draft determination.
 - In our view, implementation should proceed after 3 months as proposed. We have discussed stakeholders' comments about the implementation period and have described the implementation in paragraph 3.179.
 - In response to stakeholder comments about the scope of the proposed modification to General Condition 14, we have removed the reference to NTS from paragraph 4.3. See paragraph 3.154 for a more detailed discussion of this point.

UKCTA (representing CPs)

- A2.239 UKCTA said that its members recognise that consumer awareness of the retail tariffs for the 08 number range must be improved. However, UKCTA did not believe that Ofcom's plan to remove the NTS underpinning of 0870 makes any sense and urged Ofcom to reconsider its plans.
- A2.240 UKCTA believed the concerns identified by Ofcom would be addressed by focusing on improving consumer understanding of the actual or likely price of calls to 08 number ranges.
- A2.241 In December 2005 UKCTA commissioned the consultancy Indepen to review Ofcom's proposals for NTS. The review included a cost benefit analysis comparing Ofcom's proposals with an alternative solution. In UKCTA view, this analysis demonstrated that greater benefit could be achieved by increasing pricing transparency alone, including the implementation of Ofcom's proposals for General Condition 14.

⁵² See paragraphs 4.23 to 4.29 and A2.441 to A2.461 of the 2006 NTS Statement.

- A2.242 Since the Indepen report was published the 03 number range has been launched providing non-geographic services priced at geographic rates. In UKCTA's view there is no longer any need to reclassify 0870 when 03 provides virtually the same functionality, is distinct from the non-geographic 08 range and does not confuse the existing numbering plan. UKCTA argued that Ofcom should retain the NTS underpinning for 0870 to preserve consistency with the rest of the numbering plan.
- A2.243 UKCTA recently conducted research into business communications in the UK where Ofcom's changes to 0870 were highlighted as one of main areas of concern for UK businesses and were seen as an unnecessary cost. The report showed how there are a number of re-printing and other communication costs when a number is changed which if incurred unnecessarily, represent a drain on business resources.
- A2.244 UKCTA argued that the delays and possible changes from the original proposals damaged CPs reputation even though they are not responsible for them. The perception is that this situation arose because Ofcom was focused on potential harm to consumers and ignored the legitimate interests of business users of 0870 numbers.
- A2.245 Ofcom was advised in responses to previous NTS consultations about the possible detrimental effects on UK business but appears to have ignored these comments. Whilst Ofcom cannot be blamed for wanting to protect consumers, the perception remains that Ofcom's thinking is perceived as a "knee-jerk response".
- A2.246 In UKCTA's view Ofcom have never been able to provide empirical evidence to justify such a radical and destabilizing change. With 03 now available, and with proposals to enhance General Condition 14, a policy rethink on 0870 is now required which could save UK businesses future expense and further unnecessary disruption.
- A2.247 UKCTA also made several comments about the detail of the proposals and the implementation arrangements.
- A2.248 Should Ofcom decide to proceed with the plans for 0870 then a period of twelve and at the very least six month months should be allowed prior to implementation. The previous false start on changes to 0870 and continued delay over the arrangements for 0871 has left many businesses even more confused. UK businesses need time to assess the options available to them and establish the most appropriate migration path, before starting to make the necessary changes to marketing collateral (which in many cases can take over a year to change).
- A2.249 UKCTA also had concerns over the revised wording of General Condition 14. In particular while the consultation relates purely to changes to 0870, Ofcom have proposed wording in section 4.3 by requiring CPs to include a statement on 'whether or not this price includes NTS Calls and calls to 0870 numbers'. In UKCTA's view this significantly widens the scope of Ofcom's proposals and is not accompanied by any further explanation, evidence or argument. If Ofcom wish to make such a change to GC14 then it should be contained within an appropriately titled and researched consultation to ensure that all stakeholders are alerted.
- A2.250 UKCTA was also concerned by Ofcom's use of the term 'prominent statement' in paragraph 4.3 of the Annex to General Condition 14 and sought further guidance as to what Ofcom consider 'prominent' as they believed such a term to be ambiguous and open to a degree of interpretation. UKCTA urged Ofcom to use less ambiguous language within GC14 or published suitable guidance on what it considers to be

sufficiently prominent in the context of tariff transparency. UKCTA is in no doubt that responsible CPs will make every effort to ensure that their pricing for 0870 and other services is well understood, however in a multi-supplier environment it is crucial that every CP is clear about what is required.

Ofcom's Comments

- A2.251 We note that UKCTA's response echoed largely those of its constituent members who also responded. Ofcom refers UKCTA to its comments on those points in this annex.
- A2.252 Given the longstanding linkage between 0870 call charges and geographic call charges and continuing widespread use of the 'national rate' term, we think that our proposals (which involve repairing the geographic linkage in conjunction with the new price publication requirements in General Condition 14) would be likely to bring about a greater improvement in pricing transparency than simply taking steps to improve price awareness.
- A2.253 As discussed above in our comments about Thus's response, we do not agree that the Indepen research demonstrated that an alternative approach suggested by Indepen would be more effective at improving pricing transparency.
- A2.254 As discussed above in our comments about Thus's response we do not agree that introduction of the 03 range obviates the need for the 0870 proposals. We have also commented on the consistency of our proposals for 0870 numbers with the rest of the Plan.
- A2.255 We disagree with the UKCTA view that Ofcom's proposals are a "knee-jerk" reaction to consumer concerns or that Ofcom has sought to address consumers concerns whilst ignoring the legitimate interests of businesses. The NTS Policy Review consisted of two major consultations that were supported by a great deal of research and analysis. During the course of the consultations, Ofcom met with many stakeholders and considered consultation responses from over 1400 respondents. We presented ample evidence in the consultations about the lack of pricing transparency and also the consumer concerns about 08 numbers. We consider that failing to address these problems risk a further decline in consumer confidence which could make it increasingly difficult for businesses to use 08 numbers. In our view, there is a particular risk that the broken linkage between 0870 call charges and geographic call charges will damage consumer confidence as consumers since they are widely known and advertised as 'national rate' even though calls charges are generally much higher. Whilst we acknowledge that the 0870 measures will cause short term disruption for SPs, we consider it is in CPs and SPs interests to address these problems. We also note that in response to CP and SP concerns we deferred implementation of the proposals to give additional preparation time.
- A2.256 We have discussed stakeholders' comments about the implementation timetable in paragraphs 3.182 to 3.188.
- A2.257 We discuss UKCTA's comments about the modification to General Condition 14 in paragraph 3.154.

Annex 3

Impact Assessment and discussion of modifications made in light of stakeholder comments

Introduction

- A3.1 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
- A3.2 This section contains a summary of Ofcom's impact assessment followed by a description of the amendments Ofcom has made in light of stakeholder responses to the Consultation. The summary takes account of these modifications where appropriate.
- A3.3 The September 2005 NTS Consultation⁵³ contained Ofcom's IA for its proposals, which Ofcom reviewed in light of the responses to the consultation and modified in the April 2006 NTS Statement⁵⁴.
- A3.4 As discussed in more detail below, in the Consultation, Ofcom revised certain aspects of its proposals and considered two alternative options. The analysis presented in section 5 of the Consultation contained an evaluation of the two options. As the revised proposal was very similar in effect to the original proposal, Ofcom considered that the original impact assessment was for the most part still valid. The analysis presented in the Consultation therefore constituted an addition to the original impact assessment (contained in the September 2005 NTS Consultation as modified in the April 2006 NTS Statement) in relation to those aspects of the proposals that Ofcom proposed to revise.
- A3.5 The analyses discussed above when read in conjunction with the additional analysis presented in this document represent Ofcom's final IA for the proposals as defined in section 7 of the Act.
- A3.6 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.

⁵³ http://www.ofcom.org.uk/consult/condocs/nts_forward/

⁵⁴ http://www.ofcom.org.uk/consult/condocs/nts_forward/statement/

The 2005 NTS Consultation policy options

- A3.7 In the October 2004 NTS Consultation, Ofcom identified a range of policy issues for NTS calls and considered a wide range of options to address them. After consideration of stakeholder responses, Ofcom considered alternative options and presented revised proposals in the 2005 NTS Consultation.
- A3.8 In section 6 of the 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 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>

Policy Issue	Options considered
	<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 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</p>

Policy Issue	Options considered
	08 numbers – This option would involve Ofcom regulating service levels for call centres using revenue sharing numbers.
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>

The 2006 NTS Statement

- A3.9 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.
- A3.10 Amongst other things, Ofcom concluded that it should proceed with its proposal to re-establish the linkage to geographic call charges for 0870 calls (Options B2 and C2 in the options listed above).
- A3.11 Under this proposal, the Plan would be amended to establish the convention that calls to 0870 numbers should in general be charged 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.
- A3.12 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.
- A3.13 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.
- A3.14 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.
- A3.15 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.
- A3.16 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 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.

The May 2008 Consultation

- A3.17 It subsequently became clear that price announcements could interfere with some types of machine-to-machine calls including personal, fire and security alarms, leading to potential life threatening consequences.
- A3.18 In order to avoid such a serious risk, in the Consultation (published in May 2008), we considered two revised approaches to re-establish the linkage to geographic call charges for 0870 calls that would not involve the use of price announcements. These options 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.
- A3.19 Option A and Option B are in effect variations on the original proposals, retaining the main features of the original proposals, i.e. a revised designation for 0870 calls and the withdrawal of regulatory support for revenue sharing on 0870 numbers resulting in the end of revenue sharing on 0870 numbers. We considered that the impact on SPs of either option would be the same as the original proposal (i.e. Option A and Option B would have the same impact on SPs and TCPs in terms of service migration from 0870 numbers). We therefore relied on our earlier assessment of these impacts.
- A3.20 We considered that the main difference between Option A, Option B and the original proposals was in relation to the benefits they would bring, most notably in terms of price transparency. Our assessment of the options therefore focused on this aspect.
- A3.21 We considered that Option A would be more effective at improving pricing transparency than Option B since it would oblige all CPs to charge 0870 calls at geographic rates. However, Option A was also significantly more intrusive than Option B because it would limit OCPs freedom to set retail prices for 0870 calls.
- A3.22 After considering these options, we concluded that Option B was most closely aligned with our policy objectives and regulatory duties, in particular our duty to adopt the least intrusive method of achieving our regulatory objectives. We therefore proposed to implement Option B. It was considered that, without having first attempted to address the transparency issue through Option B, the implementation of Option A might be regarded as disproportionate. In reaching this conclusion, we took account of the fact that the impact of Option B on pricing transparency is at this stage inevitably uncertain. However, we proposed to monitor

the effectiveness of Option B and to consider further measures if it does not bring about the desired improvement in price transparency for 0870 calls.

Rationale for Choosing Option B

- A3.23 Having reviewed the responses to the Consultation and updated our IA we remain of the view that our assessment of the policy options in the Consultation is correct.
- A3.24 We are determined that price transparency and consumer price awareness should be improved for 0870 calls. At this stage, however, CPs should take responsibility for achieving this objective by improving the quality of the price information made available to their customers.
- A3.25 Option B is less intrusive than Option A because it does not restrict OCPs freedom to set retail prices for 0870 calls. As discussed in more detail later in this section we consider there is a good chance that under Option B retail competition will lead a significant proportion of OCPs to charge 0870 calls at geographic rates leading to a significant improvement in pricing transparency since consumers have a much higher awareness of geographic call charges than calls to 0870 numbers. Option B will also address the other policy issues with associated benefits (as also discussed in later in this section).
- A3.26 We believe that Option B achieves a better balance between our policy objectives and our regulatory duties, in particular our duty to adopt the least intrusive method of achieving our regulatory objectives because it is less intrusive than Option A and is likely to deliver significant benefits. In our judgement, the incremental benefit of Option A over Option B in terms of the likely improvement in price transparency is insufficient to justify its adoption in preference to Option A without first trying Option B given that Option A would be a more intrusive measure to adopt.
- A3.27 We have therefore decided to implement Option B with minor amendments. In reaching this conclusion, we took account of the fact that the impact of Option B on pricing transparency is at this stage inevitably uncertain. We will, however, monitor the effectiveness of Option B and if it does not lead to a significant increase in price transparency for 0870 calls, we will consider whether other measures are required.

0870 and the 03 number range

- A3.28 In February 2007, we introduced 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.
- A3.29 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.
- A3.30 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.
- A3.31 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.

A3.32 The features of the 03 range are very similar to those considered under Option A for 0870 numbers, although Ofcom did not propose that revenue sharing should be banned.

A3.33 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.

A3.34 The 03 number range is also intended to meet future demand for non-geographic numbers charged at geographic rates and has increased transparency in charging by creating a clear distinction between revenue sharing and non-revenue sharing numbers.

A3.35 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.

A3.36 We do not think, at present, there are similar arguments in favour of linking call tariffs for 0870 numbers to geographic call tariffs in the same manner as 03 numbers as there are alternative means such as Option B available to address the policy issues associated with 0870 numbers (such as the need to increase pricing transparency) that should be fully explored first.

Summary of impact assessment

A3.37 In the light of stakeholder comments and in view of the delay since the Consultation we have updated our impact assessment for our final assessment of the proposals.

A3.38 Our final analysis is necessarily a forward looking assessment. It would not be desirable even if possible to base our final decision on a reassessment of the overall impact of the proposals since some migration will have occurred already and this will have resulted in some costs. These costs are not relevant to our final assessment since they can not be recovered even if we decided not to proceed with the proposals. Such an evaluation would also be complex as a great deal has changed since we carried out our original assessment in 2005.

A3.39 In our evaluation we have therefore examined the migration that has occurred to date in order to inform our estimates of the migration that may occur following confirmation of the proposals. Our revised cost estimates are therefore based on our estimate of migration that may occur following publication of this statement. For the purposes of our final assessment we have modelled two cases (see annex 4 for discussion):

- a central estimate of 5% further migration (by traffic volume) representing the likely level of future migration; and

- a upper estimate of 15% (by traffic volume) representing the likely upper limit of future migration.

A3.40 The following summary is based on these updated estimates which are described in more detail in annexes 4 and 5.

Benefits

Better price transparency

A3.41 In the September 2005 NTS Consultation, we found that consumers have a very low awareness of the price of NTS calls and tend to overestimate prices by a considerable margin. We also found that a significant proportion of consumers are wary of calling NTS numbers mainly because of concerns about prices. These factors cause consumers to make inefficient purchasing decisions, typically to avoid making calls because they overestimate call charges.

A3.42 We consider that our proposals for 0870 calls will contribute to a significant improvement in pricing transparency because:

- in our view, there is a good chance that retail competition will lead a significant proportion of OCPs to charge 0870 calls at geographic rates. This should lead to a significant improvement in pricing transparency since consumers have a much higher awareness of geographic call charges than calls to 0870 numbers. It will also provide a simple message to consumers, which is that 0870 calls are charged on the same basis as geographic calls and are included in call packages on the same basis. In this context we note that:
 - BT has already aligned its 0870 call charges with geographic call charges for its three main consumer pricing packages in anticipation of Ofcom implementing these 0870 measures and at least one major operator has responded with a similar initiative;
 - the rates proposed in the draft determination have been set at a level to enable BT to continue this alignment;
- the new price publication requirements for 0870 calls in General Condition 14 will improve the visibility of 0870 call charges to consumers; and
- General Condition 14 will prohibit OCPs from describing 0870 calls as 'national rate' e.g. in billing material unless their 0870 charges are aligned with geographic rates.

Quantification of the benefits of better pricing transparency

A3.43 Pricing misperceptions have a negative impact on welfare because some potential callers will place a value on making calls that is higher than is actually charged but lower than the price which the caller believes it would be charge if it made the call (the 'perceived price'). As a result, some callers will be deterred from making (welfare-enhancing) calls. Conversely, some consumers will underestimate call prices and will therefore be encouraged to make calls or to make longer calls. Given the extent of the disparity between caller perceptions and actual prices this inefficiency may be very significant.

- A3.44 There are a number of difficulties associated with quantifying this type of detriment; in particular it requires an estimate of the sensitivity of callers to changes in perceived call prices – that is, the price elasticity of demand.
- A3.45 In the 2005 NTS Consultation we estimated that for elasticity values ranging from -0.2 to -0.4, the total consumer detriment from pricing misperceptions could range from £74 million to £155 million per annum. We also noted that an elasticity of -0.3 is likely to be a conservative estimate (i.e. one that would tend to underestimate the detriment associated with pricing misperceptions).
- A3.46 As discussed in more detail in Annex 5, in response to stakeholder responses to the Consultation we have updated our estimates of the potential benefits of an improvement in pricing transparency resulting from our proposals. Figure 3 below illustrates our estimates of the benefits to consumers of a range of possible improvements in pricing perceptions resulting from our proposals. The main changes are:
- To better illustrate the potential range of benefits we have shown the benefits on a net present value basis over 5 and 10 years for a range of possible improvements in price perceptions and price elasticities;
 - we have used updated 0870 traffic figures and have illustrated the sensitivity of the results to further migration following publication of the statement ranging from our central estimate to our upper estimate (i.e. 5% to 15% migration by traffic volume) (see annex 4); and
 - we have excluded mobile originated calls from our estimates for the reasons set out in Annex 5. This reduces our estimate of the overall welfare loss associated with price misperceptions for 0870 calls.

Figure 3: Potential benefit of better pricing transparency⁵⁵

Improvement in consumers pricing perceptions of 0870 calls from fixed lines over 5 years (Average price estimated by consumers for calls from fixed lines)	Benefit to consumers over 5 years on a Net Present Value ('NPV') basis ^{56 57} (£ millions) Range shows sensitivity to further service migration ranging from central to upper migration estimates (i.e. 5% to 15% by traffic volume)			
	Price elasticity			
	-0.2	-0.3	-0.4	-0.6
From 36p to 30p per minute	40 to 29	61 to 44	82 to 59	124 to 90
From 36p to 25p per minute	70 to 51	106 to 77	143 to 104	219 to 159
From 36p to 20p per minute	96 to 69	146 to 106	197 to 143	305 to 221
From 36p to 15p per minute	118 to 85	180 to 130	244 to 177	380 to 275

⁵⁵ This figure is a copy of Figure 11 in Annex 5.

⁵⁶ Future values discounted using the Social Time Preference Rate (3.5 %)

(<http://greenbook.treasury.gov.uk/annex06.htm>)

⁵⁷ Assuming that pricing perceptions progress from the initial to final figures in 5 equal increments over the period.

Improvement in consumers pricing perceptions of 0870 calls from fixed lines over 10 years (Average price estimated by consumers for calls from fixed lines)	Benefit to consumers over 10 years on a Net Present Value ('NPV') basis ⁵⁸ (£ millions) Range shows sensitivity to further service migration ranging from central to upper migration estimates (i.e. 5% to 15% by traffic volume)			
	Price elasticity			
	-0.2	-0.3	-0.4	-0.6
From 36p to 30p per minute	97 to 70	147 to 106	197 to 143	300 to 217
From 36p to 25p per minute	166 to 120	252 to 183	340 to 246	523 to 379
From 36p to 20p per minute	223 to 162	340 to 247	462 to 335	718 to 520
From 36p to 15p per minute	268 to 194	410 to 297	559 to 405	877 to 636

A3.47 As discussed in paragraph A3.42 above we believe that our proposals should bring about a significant improvement in pricing transparency for 0870 calls.

A3.48 Inevitably we cannot be certain at this stage about the extent to which our proposals will improve consumers' perceptions of call prices. In part this is because we can not be certain of the extent to which OCPs will align 0870 prices with geographic prices. However as noted above, we consider there is a good chance that retail competition will lead a significant proportion of OCPs to align 0870 call charges with geographic prices, particularly as BT and others have already made this move in anticipation of the confirmation of our proposals. Therefore to illustrate the potential benefits we have estimated the consumer benefits for a range of possible improvements in price perceptions – varying from an upper value of 30p per minute to a lower value of 15p per minute.

A3.49 We believe that even an elasticity of -0.3 is likely to be a conservative estimate of consumers' responsiveness to price changes. In other words, elasticities of -0.2 or -0.3 are likely to underestimate the benefit from our proposals. On balance we would tend to place more weight on the welfare estimates associated with elasticities of -0.4 or above (in magnitude) compared to those assuming elasticities of -0.3 or less (in magnitude). We also note that consumers typically overestimate the price of geographic calls by a considerable margin so we would tend to emphasise the top two rows as the most likely range of improvement in price perceptions (i.e. reductions in price perceptions from 36p to 30p or 25p) with potential consumer benefits of 59 to 219 over 5 years and 145 to 523 over 10 years.

A3.50 Annex 4 contains a more detailed discussion of these estimates.

Lower call prices for consumers

A3.51 The proposals would also bring some benefits to consumers in terms of lower call prices. For example, the daytime rate for a 0870 call for fixed line operators call packages are currently typically 6p to 8p per minute compared with geographic rates which range from nil for those customers whose call packages include geographic calls to typically 4p to 5p for those whose geographic calls are metered.

A3.52 It was recognised in the September 2005 Consultation that 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

⁵⁸ Assuming that pricing perceptions progress from the initial to final figures in 5 equal increments over the first five years and are stable thereafter.

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.

- A3.53 In addition, reductions in actual prices may increase the scope for future reductions in perceived prices to bring benefits to consumers. Increased pricing transparency means that customers' perceptions of prices are likely to move towards actual prices over time. If these actual prices themselves fall, for example from 6p or 8p to 4p to 5p in line with the prices set out in paragraph A3.51 above, then the maximum benefit to consumers from aligning perceived prices to the new lower call prices is increased⁵⁹.

Revenue certainty

- A3.54 The linkage between 0870 call termination payments and BT's geographic call charges generates uncertainty for TCPs because termination payments for calls originated by BT and transited by BT are effectively outside their control and subject to change when BT alters its retail prices or discounts for 0870 calls.
- A3.55 The proposals will address this problem for 0870 call by removing the dependence of termination charges on BT's 0870 call retail charges and discounts, thereby giving TCPs (and indirectly SPs) greater revenue certainty.
- A3.56 The problem of revenue uncertainty will also be solved for services that migrate from 0870 numbers to other 08 number ranges such as 0844 and 0871 since charges for calls to these numbers for BT customers are specified by TCPs and are not linked to retail prices set by BT.

Reduction in interconnection disputes

- A3.57 Although there is a reasonable likelihood of further interconnection disputes we consider that once the new arrangements are established the prospect of recurring disputes (which have been a feature of NTS) will recede as TCPs' and SPs' reliance on 0870 termination revenues to fund their services will be significantly reduced and as noted above the dependence of termination payments on BT's retail prices and discounts will be removed. We therefore consider that in the medium term the proposals will lead to a reduction in interconnection disputes.

Consumer protection

- A3.58 We consider that the available evidence indicates that there is a small but rising number of scams on 087 numbers. Complaints received by Ofcom from consumers support our view that there is a rising level of consumer concern about 08 numbers. In the 2005 NTS Consultation we reported that Ofcom had received 126 complaints relating to 08 numbers during the previous year. In the year ending 31 October 2008, Ofcom received 2354 complaints about 08 numbers. These included 1128

⁵⁹ A price reduction which does not result in any change in the quantity purchased will benefit consumers but create an exactly offsetting loss to sellers. In conventional cost-benefit analysis therefore, price reductions result in net benefits to the economy only where there is an increase in the quantity purchased (and consumers' willingness to pay is greater than the marginal cost of production). This is consistent with the approach we have adopted in calculating the benefits of pricing transparency, where we assume that the volume of calls made depends on the perceived price rather than the actual price and the benefit to consumers arises in increases in the quantity purchased.

complaints about call queuing times, 323 about internet dialler scams⁶⁰ and 117 about other misuses of 087 numbers.

A3.59 In the 2006 NTS Statement, Ofcom decided to address the consumer concerns by:

- re-establishing the linkage to geographic call charges for 0870 calls and removing the regulatory support for revenue sharing, thereby reducing the scope for consumer harm from 0870 calls; and
- extending PRS regulation to other 087 numbers⁶¹ in order to improve consumer protection.

A3.60 As discussed in Section 2, 0871, 0872 and 0873 numbers will be subject to PRS regulation from August 2009.

A3.61 These measures are intended to perform two other functions as well as addressing scams that are already present. These are:

- To prevent a future rise in consumer harm from scamming activity which we consider would be likely to occur in the absence of PRS regulation. This is because the persistent occurrence of scams (such as call-back scams) on 087 Numbers indicates that the revenue shares available are sufficiently high to make 087 Numbers attractive to persons that operate scams. Also, the application of PRS regulation to other revenue-sharing ranges would be likely to cause persons that operate scams to use 087 Numbers if they remain outside the scope of PRS regulation. Past experience has also shown that the level of scamming activity can rise very rapidly. A major advantage of PRS regulation is that PhonepayPlus can act quickly to address new scams when they arise, reducing the consumer harm caused.
- To bolster consumer confidence in 087 numbers by providing additional protection to address other consumer concerns such as excessive call waiting times and having to pay a premium rate to complain about poor customer service.

A3.62 There are no reliable means of quantifying the benefits associated with preventing scamming in this case partly because of the difficulty of assessing the future level of scamming activity that PRS regulation will prevent. We were also unable to assign a value to the distress to consumers associated with scams and excessive waiting times. However, we note that scams cause consumers considerable distress, suggesting that the benefit associated with reducing consumer distress would be much higher than the associated call charges.

A3.63 In our view, failing to address these problems would be likely to lead to a decline in consumer confidence in 0870 numbers, making consumers more wary of calling them and SPs more wary of using them for their services. We believe it is clear that there is a cost to consumers arising from this loss of confidence but it is difficult to be precise about the way in which it affects the value which callers derive from calls to 0870 numbers. For our purposes, we assume that its effect is to reduce customers' willingness to pay for calls to 0870 numbers and hence, we assume, to

⁶⁰ Internet diallers are subject to PRS regulation so these complaints relate to scams that have occurred despite PRS regulation.

⁶¹ The 0871, 0872 and 0873 ranges i.e. those ranges that are charged above 5p per minute for BT customers.

lead to a uniform percentage reduction in the volume of calls to 0870 numbers at any given price. We quantify the resultant reduction in consumer welfare in a way which is consistent with our estimate of the benefits of improving price perceptions, which is based on a calculation of the resulting increase in consumers' surplus. Consumers' surplus is the difference between customers' willingness to pay and the price they actually pay.

- A3.64 However, for a number of reasons, it is difficult to quantify these benefits using this method. Firstly, it is inherently difficult to estimate the potential decline in consumer confidence and the resultant impact on call volumes that would arise without a change in regulation with any precision. Secondly, the estimated reduction in consumer surplus that would arise from a fall in confidence is much more sensitive to the shape and position of the demand curve than the price transparency benefits presented above. This sensitivity arises because estimates of the consumer detriment associated with a decline in consumer confidence rely on information about consumers' demand at all prices at which demand is positive, including prices which are very much higher even than the current perceived level (see the discussion in Annex 5). Of course there is no actual information on demand at such prices.
- A3.65 For the purposes of our calculations we have assumed that the demand curve takes the same standard non-linear form used to calculate the estimates of the price transparency benefits in Figure 3. Figure 4 below shows how the resulting estimates of the costs of reduced confidence vary depending on the assumed price elasticity of demand and the extent of the assumed reduction in call volumes. The estimates in Figure 3 and Figure 4 both use the current level of demand as their starting points and have been calculated independently of each other. In practice the pricing transparency and consumer protection benefits would occur simultaneously. Because our estimates of the benefits of our proposals do not take account of this interaction, our view is that they are likely to be conservative.

Figure 4: Potential costs to consumers of reducing confidence

Reduction in demand due to loss of confidence in 0870 numbers	Cost to consumers over 5 years on a Net Present Value (NPV) basis ⁶² (£ millions)			
	Price elasticity			
	-0.2	-0.3	-0.4	-0.6
1%	50	40	30	20
5%	270	180	140	90
10%	550	370	280	180

- A3.66 It can be seen that the potential benefits from avoiding even quite small reductions in demand are significant when estimated in this way. However, it should be noted that the above estimates do not take account of the fact that any shift in the demand curve for 0870 calls (from a loss of confidence) would prompt migration of services to other ranges and lead to increases in demand for other goods and services - with partially offsetting welfare effects. In addition, they may be dependent on the assumption that loss of confidence can be represented by a uniform reduction in willingness to pay. If for example, it were assumed that consumers suffered a loss only from the calls no longer made as a result of reduced confidence, with no

⁶² Future values discounted using the Social Time Preference Rate (3.5%) (<http://greenbook.treasury.gov.uk/annex06.htm>)

change in the value to them of calls which they continue to make, the calculated cost would be very much smaller (around £5 million for a 5% volume reduction and around £20 million even for a 10% reduction with an elasticity of -0.2). However, this would take no account of the distress and other costs arising from scamming and so we believe it is likely to underestimate the true costs of loss of confidence in 0870 numbers, perhaps considerably so.

- A3.67 Faced with declining consumer confidence, SPs would have to decide whether to retain their 0870 numbers, accepting declining call volumes or ultimately to move their services to other number ranges, such as the 0871 and 09 range that are subject to PRS regulation. In the extreme, a large increase in scams on 0870 numbers could effectively discredit the range, forcing the majority or even all SPs to move their services to other ranges. Moving to new numbers would cause SPs to incur costs. Based on our migration cost estimates discussed in Annex 4, we estimate the upper limit of migration costs to be around £250 million if all 0870 services were to move elsewhere.
- A3.68 In practice, a decline in consumer confidence would be likely to lead to both a reduction in traffic volumes and service migration. If serious problems arose, Ofcom could consider action to address the problems such as extending PRS regulation to some or all services using 0870 numbers. However, it would take time for these trends to become apparent and for Ofcom to consult stakeholders on detailed proposals during which time, significant damage to consumer confidence could occur.

Summary of benefits

A3.69 Figure 5 below summarises the benefits of the proposals.

Figure 5: Summary of benefits

Benefit	Value
Better pricing transparency	see Figure 3 for range for benefits
Lower call prices	some residual benefit to consumers perhaps running into some 10s of millions
Consumer protection	
Prevention of consumer harm from scams	Not quantified
prevention of future decline in consumer confidence	Not quantified but see Figure 4 for illustration indicating potential scale
Revenue certainty (i.e. reduction in revenue uncertainty)	Not quantified
Reduction in interconnection disputes	Not quantified

Impact on Consumers

A3.70 The main benefits for consumers would be:

- an improvement in consumer pricing perceptions leading them to make more calls, with an associated improvement in consumer welfare;
- the incidence of consumers being misled by advertisements that describe 0870 calls as 'national rate' would diminish if a greater proportion of calls are charged at geographic rates;
- preventing consumer harm from a future rise in scamming activity;
- improved consumer confidence in 0870 numbers, making them more confident about calling 0870 numbers or conversely preventing them from becoming more reluctant to call them. There would be associated improvement in consumer welfare or conversely a decline in consumer welfare would be prevented; and
- lower retail prices, would also benefit consumers to some extent.

A3.71 The other impacts for consumers would be:

- **Misdialling** - Service migration would also be likely to lead to consumers 'misdialling' by calling 0870 numbers for services that have moved to other numbers. The extent of this problem would depend on the success of strategies adopted by SPs to reduce misdialling. As discussed in annex 4 we estimate the cost to consumers associated with future migration would be £3 million to £8 million.
- **Changes to call charges** – migration of services to other number ranges will also lead to changes in the price that consumers pay for calls to those services in future. Depending on the range and the price points that SPs choose and individual CPs call charges, charges to consumers might go up or down on average. The available evidence indicates that only a minority of services have migrated to other 087 numbers such as the 0871 range which support higher price points (up to 10p per minute for BT customers) we therefore consider it likely that most migration has been to numbers such as 0844 and 0845 which generally have lower prices from fixed lines (up to 5p per minute for BT customers) during daytime hours. Prices for most 0844 numbers are the same at all times of day and are therefore generally more expensive to call from fixed lines than 0870 numbers during evening and weekends. However, we note that the majority of 0870 traffic is in the daytime. Mobile call charges to 08 numbers are more varied making the impact much more specific to the network and calling plan used. Some charge 084 numbers at higher rates than 0870 numbers and others charge all 08 calls at the same rate.

Impact on Service Providers

A3.72 Our proposals will result in a reduction in termination payments for 0870 calls. This will have a knock-on effect on the revenue-share payments available to SPs, most likely eliminating revenue-share and possibly resulting in TCPs charging SPs to receive 0870 calls and also to charge for services provided in association with 0870 numbers.

- A3.73 The major impact of this change on SPs will be that a significant proportion migrate their services to other 08 or 09 numbers in order to maintain their revenue share and associated services charges at current or similar levels. We estimate that SPs accounting for approximately 38% to 43% of 0870 traffic have already moved their services in anticipation of the implementation of our proposals. We consider that the bulk of service migration has already occurred, however we expect a limited amount of further migration to occur following publication of the statement. Our upper estimate for this migration is 15% by traffic volume.
- A3.74 Migration will cause SPs to incur costs primarily in relation to updating stationery, advertising/promotional material and signage etc with their new numbers. Given the large number of SPs involved the costs of this migration are inevitably significant. Ofcom extended the notice period prior to implementation of the proposals partly in order to reduce the incremental cost to SPs by allowing them more time to update these materials as part of the normal replacement cycle.
- A3.75 SPs that decide to continue to provide services on their existing numbers would have to either absorb the loss of revenue (and possible additional costs) or raise charges in downstream markets to cover the loss. As noted above, we consider that SPs would be likely to offset most of this revenue reduction by raising prices in downstream markets (i.e. their primary business markets). However we consider that SPs might not be able to fully offset these costs at least in the short term, leading to a revenue loss for SPs perhaps running into some tens of millions of pounds per year.⁶³

Impact on Communications Providers

- A3.76 In the text below, we have described the impact on originating communications providers, terminating communications providers and providers of hosting services separately. In practice, some CPs offer more than one of these services.

Originating Communications Providers

- A3.77 Our proposals will establish the convention that 0870 calls will normally be charged at geographic rates. The removal of 0870 calls from the scope of the NTS Condition will allow termination payments for 0870 calls to fall to levels that are closely aligned with those for geographic calls. The result of the change in the interconnection arrangements is likely to be that OCPs keep a larger proportion of retail call charges than at present and as a result there would be a transfer of call revenues away from TCPs and SPs and in favour of OCPs.
- A3.78 The reduction in termination payments should make it easier for OCPs to charge 0870 calls on the same basis as geographic calls, including them in call packages on the same basis as geographic calls.
- A3.79 CPs that decide to charge 0870 calls at geographic rates will need to update their tariffs and price lists to reflect this change. As most CPs regularly revise their tariffs and service offerings in response to competition and other external factors, we consider it unlikely that most OCPs would incur significant incremental costs. Some OCPs may wish to actively promote their revised 0870 prices. In our view such

⁶³ 0870 numbers are used by SPs to provide a very wide range of services. These amounts are very small in relation to the size of the downstream markets for these services, we have therefore assumed that there would not be any resultant elasticity effects in those markets.

marketing/sales activity would be likely to generate a net benefit in terms of increased sales, retention or increased call volumes.

A3.80 OCPs that wish to continue to charge 0870 calls above geographic rates will be required to take additional steps to inform consumers that they charge 0870 calls above geographic rates. The requirements in addition to those that already apply to all NTS calls are:

- Wherever an OCP states the price of a call package or bundle that includes geographic calls, the CP must include a prominent statement about whether or not the package includes 0870 calls; and
- OCPs may only describe 0870 calls as 'national rate' in advertising material, promotional material and consumer bills if they charge 0870 calls at geographic rates.

A3.81 Implementation of these changes would be likely to cause some CPs to incur incremental costs, though in some cases, CPs may be able to make these changes as part of regular or planned pricing revisions. We consider that these updates should cause OCPs to incur only modest incremental costs.

Terminating Communications Providers and provider of hosting services

A3.82 We consider it likely that most TCPs will have informed their SP customers about Ofcom's 0870 proposals and will have kept them informed of developments. We assume that most CPs would use regular communications channels (such as sales/account management personnel or newsletters) for this purpose. We consider that these updates should cause TCPs to incur only modest incremental costs. Some TCPs may also take a commercial decision to provide additional assistance/advice to SP customers.

A3.83 TCPs will also need to revise their charges to SPs for 0870 services to reflect the revised terminations payments. Under the current arrangements many CPs regularly revise their charges to reflect changes to termination payments, we therefore consider this activity as business as usual which should have only a minor impact on most TCPs. Some TCPs may need to renegotiate commercial agreements with SPs to reflect the changes. Ofcom extended the notice period for the changes in part to give TCPs more time to complete this process satisfactorily.

A3.84 A minority of TCPs may offer services that are funded entirely from call charges and may not have the capability to bill SPs directly or may not wish to adopt this charging model. This group would be likely to require their SP customers to move to alternative 08 or 09 number ranges.

A3.85 Ofcom acknowledged there was a risk that some providers of termination/hosting services might lose some business if some SPs decided to discontinue their services. Based on an analysis of hosting revenues, Ofcom concluded that a plausible estimate of the revenues at risk was £3 million to £7 million in the hosting market which Ofcom estimated to be worth £25 million in 2003.

Summary of costs

A3.86 The 0870 measures will lead a significant proportion of SPs to migrate their services to other 08 or 09 numbers in order to maintain their revenue share and associated services charges at current or similar level. Given the large number of

SPs involved the costs of this migration are inevitably large. We consider the migration costs to be the most significant impact from a cost perspective.

A3.87 Figure 6 below summarises our updated cost estimates. The revisions we have made are discussed in more detail in Annex 4.

Figure 6: Summary of costs

(£ millions)	Cost for migration ranging between central and upper migration estimates (i.e. 5% to 15% by traffic volume) following publication of statement
Service Providers	
Stationery and Website costs	13 to 38
Advertising and promotional material	2 to 13
Vehicle Signage	0.5 to 4
Building Signage	Not estimated but thought to be low
Communications Providers	
Preparatory costs	not estimated
Consumers	
Misdialled calls	3 to 8
Total	19 to 63

Comparison of Costs and Benefits

A3.88 With impact assessments it is often the case that not all of the costs and benefits can be quantified and typically costs are easier to quantify than benefits. The evaluation of policy proposals must therefore be partly qualitative. In this case we were able to estimate most of the identified costs, however there were no reliable means to quantify some of the costs and benefits. However, we have described each of the costs and benefits we were not able to quantify reliably and have taken them into account in reaching our decision. Our statutory duties also require that in reaching our decision we take account of a number of factors in ensuring that we meet our duties under section 3 of the Act. In accordance with our duties we have considered the opinions of consumers and members of the public generally, as well as the costs that may be incurred.

A3.89 Our analysis indicates that the potential value of the benefits of the proposals would be significant. However we were only able to quantify the potential benefits associated with an improvement in pricing transparency and were unable to fully quantify the other benefits, notably those associated with better consumer protection.

- A3.90 The main cost impact of the proposals is that they will cause CPs and particularly SPs to incur setup costs associated with migration of services from 0870 numbers to other numbers. The proposals will add a small addition to the regulatory burden on CPs by adding to their price publication obligations. Given the large number of stakeholders involved, the migration costs are inevitably significant.
- A3.91 As discussed in paragraph A2.37 our final assessment of these proposals is necessarily a forward looking assessment and therefore only the costs relating to migration that may occur in future are relevant to our assessment. Costs relating to past migration have already been incurred and could not be recovered if we decided not to proceed with our proposals and are therefore not relevant to our final assessment.
- A3.92 As discussed above we consider that the bulk of service migration has already occurred, however we expect a limited amount of further migration to occur following publication of the statement. Our central and upper estimates for this migration are 5% and 15% (by traffic volume) respectively. As illustrated in Figure 6 above our estimate of the one-off cost associated with this range of further migration is £19 million to £63 million.
- A3.93 Figure 7 below illustrates that:
- For our central migration estimate even a modest improvement in pricing transparency as a result of our proposals alone would suffice to provide a positive net benefit on a forward looking basis over 5 years for all the elasticity values illustrated; and
 - For our upper migration estimate even a modest improvement in pricing transparency as a result of our proposals alone would suffice to provide a positive net benefit on a forward looking basis over 10 years.
- A3.94 Once the other benefits are taken into account, we consider that the proposals would be likely to lead to a significant net benefit within a few years.

Figure 7: Forward looking assessment of net benefit of improvements in pricing transparency

Improvement in consumers pricing perceptions of 0870 calls from fixed lines over 5 years (Average price estimated by consumers for calls from fixed lines)	Net benefit to consumers of improvements in pricing perceptions over 5 years on a Net Present Value ('NPV') basis ^{64 65} after deduction of migration and misdial costs that may be incurred in future (£ millions)			
	Range shows sensitivity to further service migration ranging from central to upper migration estimates (i.e. 5% to 15% by traffic volume)			
	Price elasticity			
	-0.2	-0.3	-0.4	-0.6
From 36p to 30p per minute	22 to (25)	43 to (10)	64 to 5	106 to 36
From 36p to 25p per minute	52 to (3)	88 to 23	125 to 50	201 to 105
From 36p to 20p per minute	78 to 15	128 to 52	179 to 89	287 to 167
From 36p to 15p per minute	100 to 31	162 to 76	226 to 123	362 to 221

Improvement in consumers pricing perceptions of 0870 calls from fixed lines over 10 years (Average price estimated by consumers for calls from fixed lines)	Net benefit to consumers of improvements in pricing perceptions over 10 years on a Net Present Value ('NPV') basis ^{66 67} after deduction of migration and misdial costs that may be incurred in future (£ millions)			
	Range shows sensitivity to further service migration ranging from central to upper migration estimates (i.e. 5% to 15% by traffic volume)			
	Price elasticity			
	-0.2	-0.3	-0.4	-0.6
From 36p to 30p per minute	79 to 16	129 to 52	179 to 89	282 to 163
From 36p to 25p per minute	148 to 66	234 to 129	322 to 192	505 to 325
From 36p to 20p per minute	205 to 108	322 to 193	444 to 281	700 to 466
From 36p to 15p per minute	250 to 140	392 to 243	541 to 351	859 to 582

Revisions to the Impact Assessment in the light of stakeholder comments and new information

A3.95 We have updated our impact assessment in the light of stakeholder responses to the Consultation. The main changes are summarised below.

A3.96 The preceding summary takes account of these changes.

⁶⁴ Future values discounted using the Social Time Preference Rate (3.5 %)

(<http://greenbook.treasury.gov.uk/annex06.htm>)

⁶⁵ Assuming that pricing perceptions progress from the initial to final figures in 5 equal increments over the period.

⁶⁶ Future values discounted using the Social Time Preference Rate (3.5 %)

(<http://greenbook.treasury.gov.uk/annex06.htm>)

⁶⁷ Assuming that pricing perceptions progress from the initial to final figures in 5 equal increments over the period.

0870 traffic and migration

A3.97 We have also used recent 0870 traffic figures as inputs to our final assessment. We have used these traffic figures to estimate the amount of migration that has already occurred since we announced our proposals in the 2005 NTS Consultation.

A3.98 To illustrate the sensitivity of the results to further migration following publication of the statement, we have modelling a central case and upper limit case for further migration.

A3.99 See Annex 4 for discussion.

Treatment of costs that has already occurred

A3.100 As our impact assessment is a forward looking assessment, costs that have already been incurred and are not recoverable (most notably migration costs) are not taken into consideration in the final assessment.

Revised estimate of pricing transparency benefits

A3.101 We have updated our estimates of the potential benefits of improvements in pricing transparency resulting from our proposals. The main changes are:

- To illustrate better the potential range of benefits we have shown the benefits on a net present value basis over 5 and 10 years for a range of possible improvements in price perceptions and price elasticities;
- we have used updated 0870 traffic figures and have modelled the sensitivity of the result to the central and upper migration cases; and
- we have excluded mobile originated calls from our estimates for the reasons set out in Annex 5. This reduces our estimate of the overall welfare loss associated with price misperceptions for 0870 calls.

A3.102 These revisions are described in Annex 5.

Revised estimate of consumer protection benefits

A3.103 We have discussed the benefits of improved consumer protection in more detail and have estimated the potential welfare loss to consumers (i.e. the dis-benefit) associated with a decline in calls to 0870 numbers stemming from a decline in consumer confidence (see paragraphs A3.58 to A3.68).

Revised estimate of SP migration costs

A3.104 We have updated our cost estimates for our final assessment of the proposals. This final analysis is necessarily a forward looking assessment and therefore only the costs relating to migration that may occur in future are relevant to our assessment. We have therefore modelled the costs associated with our central and upper estimates of further migration.

A3.105 We have retained the methodology used in the 2005 NTS Consultation for our updated migration cost estimates, with two exceptions, made in response to stakeholder comments:

- we have made new estimates of vehicle signage costs which were previously considered qualitatively;
- we have made new estimates of advertising/promotional material costs.

A3.106 See Annex 4 for a more detailed discussion.

Other Adjustments

A3.107 Some of the inputs to the model were sourced in 2005 as part of our original impact assessment for the 2005 NTS Consultation. We have updated these inputs to account for inflation, assuming 3% annual inflation.

Annex 4

Updated cost estimates

- A4.1 Our proposals would be likely to prompt some SPs to migrate their services from 0870 numbers to alternate number ranges with similar pricing and interconnection arrangements. As part of our impact assessment we therefore estimated the extent of this migration and the likely costs that SPs would incur.
- A4.2 We reported our estimates in the 2005 NTS Consultation and in the 2006 NTS Statement we revised our estimates in the light of stakeholder comments. In the 2006 NTS Statement we also described further sensitivity analysis that we had undertaken in response to stakeholder concerns that we might have underestimated SPs migration costs. Having reviewed this analysis in the light of stakeholder responses to the Consultation we remain of the view that our methodology for assessing migration costs is broadly correct.
- A4.3 In the light of stakeholder comments and in view of the delay since the Consultation we have updated our cost estimates for our final assessment of the proposals. This final analysis is necessarily a forward looking assessment and therefore only the costs relating to migration that may occur in future are relevant to our assessment. Our revised cost estimates are therefore based on our estimate of migration that may occur following publication of this statement.
- A4.4 We have retained the methodology used in the 2005 NTS Consultation for our updated cost estimates, with two exceptions, made in response to stakeholder comments:
- we have reviewed our approach to signage costs which were considered qualitatively in the 2006 NTS Statement and have made new estimates of vehicle signage costs;
 - we have made new estimates of advertising/promotional material costs.
- A4.5 When updating our cost estimates we have also taken the opportunity to adjust the cost inputs for inflation since the 2005 NTS Consultation.
- A4.6 Below, we describe the stakeholder comments, the changes we have made and our revised estimates.

Stakeholder Comments about migration costs

- A4.7 Some of the respondents to the Consultation and the 0871 Consultation (which also considered the cost of updating stationery, advertising/promotional material and signage but in connection with the application of PRS regulation to 0871 numbers) raised concerns that Ofcom had underestimated SP migration costs. Two points were raised:
- that some SPs may have deferred their decision to migrate until this statement and the 0870 Dispute draft determination are published, effectively shortening the notice period and pushing up their migration costs; and

- that Ofcom had not fully estimated the costs of updating advertising/promotional material and signage, which some felt would be the most significant cost associated with our proposals.

Traffic and Service provider migration

- A4.8 We have reviewed recent 0870 traffic figures and information provided by stakeholders to gain an understanding of the level of service migration that has already occurred in anticipation of the implementation of our proposals for 0870 numbers.
- A4.9 Figure 8 below shows Ofcom's most recent estimate of 0870 traffic and our estimate of service migration to other 08 number ranges as a result of our proposals. However, as traffic patterns on 084 and 087 numbers are subject to other trends there is some uncertainty about the extent of service migration to date. In our judgement, the 38% to 43% range quoted specifies the likely extent of migration to date.

Figure 8: 0870 Traffic and Migration

0870 Traffic Year Ending March 09 Ofcom estimate (billions of call minutes per annum)	Estimated service migration to Mar 09 resulting from 0870 proposals (% of year ending Mar 05 traffic volume)
2.9 to 2.6	38% to 43%

- A4.10 In the 2005 NTS Consultation we estimated the potential impact of the 0870 proposals and concluded that between 35% and 45% of SPs accounting for 45% to 55% of 0870 traffic might wish to move their services to alternate number ranges in order to continue to receive a revenue-share (or other benefits in kind derived from revenue shares).
- A4.11 Since implementation of our proposals was unexpectedly delayed beyond the original implementation date, we consider it likely that most of the service migration resulting from our proposals would already have taken place. We also note that migration to date is consistent with the lower range of our estimates for the 2005 NTS Consultation. However, responses to the Consultation indicate that further migration may occur following publication of this statement. Several CPs urged Ofcom to give a further extended notice period because some of their SP customers were waiting for Ofcom to issue this statement before deciding whether to migrate to alternate numbers.
- A4.12 We acknowledge that some SPs may have decided to defer their decision until the publication of this statement and the draft determination of the 0870 Dispute. In our view this is likely to be a small group since the withdrawal of revenue-share payments as a result of our proposals is likely to have been the deciding factor for most SPs rather than the much narrower area of uncertainty surrounding the precise level of termination payments for 0870 calls under the new arrangements that is being considered in the 0870 Dispute.
- A4.13 We also note that:

- respondents made these comments during the period allowed for responses to the Consultation (2 May 2008 to 16 June 2008) and that based on the traffic trends it appears that significant migration has taken place since that time, suggesting that some of the SPs referred to by the CPs may have subsequently migrated their services; and
- in its consultation response C&W noted that the level of migration had been lower than it expected because many of its SP customers (who are generally large businesses) had decided to retain their 0870 numbers in order to avoid the expense and inconvenience of moving to alternative numbers.

A4.14 On balance, we consider that the available evidence indicates the bulk of service migration has already taken place. However, based on stakeholder responses to the Consultation it appears that some SPs may have deferred their decisions until publication of this statement and the 0870 Dispute determination. We therefore consider there may be some further migration following publication of this statement.

A4.15 It is difficult to accurately estimate the amount of additional migration that will occur, though in our view it is likely to be quite a small amount. In particular none of the information we have seen about service migration would lead us to believe that migration would be likely to exceed the upper range of our original forecast for the 2005 NTS Consultation (55% of traffic). This was based on information provided by approximately 600 SPs in response to formal information requests and additional questionnaires from Ofcom. We therefore consider that a further 15% migration would represent the upper limit of the range of future migration with lower figures being more likely.

A4.16 For the purposes of our final assessment we have modelled two cases:

- a central estimate of 5% further migration (by traffic volume) representing the likely level of future migration; and
- a upper estimate of 15% (by traffic volume) representing the likely upper limit of future migration (as discussed above).

Advertising/promotional material

A4.17 We remain of the view that our methodology and assessment of the advertising/promotional materials is correct and that the majority of SPs should not incur additional costs for updating advertising/promotional material. However, in the light of stakeholder comments we have adopted a new methodology to assess the costs that might be incurred by SPs that have delayed their decision to migrate until publication of this statement.

Review of methodology for assessing advertising/promotional material costs

A4.18 In annex 14 of the 2005 NTS Consultation we discussed the costs that SPs might incur to update advertising/promotional material. We concluded that most SPs would replace such materials at least on an annual basis and could therefore update telephone numbers without additional cost as part of the normal replacement cycle during the notice period prior to implementation of our proposals. However, we acknowledged that some SPs might have a longer replacement cycle for some materials and might therefore incur costs.

- A4.19 In view of stakeholder responses to the 2005 NTS Consultation, Ofcom also extended the notice period in part to reduce the incremental costs to SPs associated with migration. It has actually taken longer to implement our proposals than originally anticipated, effectively extending the notice period to more than 3 years.
- A4.20 Given the lengthy notice period, we remain of the view that most SPs should not incur additional costs to update advertising/promotional material. We acknowledge that the need to revise the proposals and the linkage with the 0870 Dispute has generated some uncertainty for SPs, however in our view, the broad scale of the change to the charging arrangements has been the deciding factor for most SPs. As noted above we believe the available evidence indicates that most SPs that plan to migrate their services have already done so.

Amended approach for estimating advertising/promotional material costs for SPs that have deferred migration

- A4.21 To estimate the advertising/promotional material costs for SPs that have deferred migration decisions until publication of this statement we have used the methodology developed for the 0871 Statement. We have applied this methodology to the central and upper estimates of future migration (as discussed above).
- A4.22 As discussed above, we assume that most SPs would replace their advertising/promotional material on at least an annual basis. Therefore the incremental cost to SPs is dependent on the period over which they migrate their services. We think it likely that most of the SPs that have deferred their migration decisions are either able to migrate easily with minimal expense or are prepared to continue to operate their 0870 numbers for an interim period in order to effect a smooth transition and to minimise the expense of migrating. We have assumed that on average, SPs would migrate their services over a six month period and therefore half could avoid the costs discussed below by updating these materials as part of the regular replacement cycle.

Methodology

- A4.23 There is a wide variety of advertising and promotional material in use ranging from corporate brochures to promotional flyers. The costs of these materials also vary according to the size and finish of the material. For example we obtained the following quotations:
- £1600 for 400 copies of a 24 page glossy colour brochure with a thick cover (i.e. £4 per copy) ; and
 - £414 for 5000 copies of a glossy colour folded A4 flyer (i.e. 8p per copy).
- A4.24 In order to accurately estimate the cost incurred by SPs to update their advertising/promotional material with their new numbers it would be necessary to know:
- the types of material used by SPs;
 - the proportion of SPs that publish their 0870 numbers in promotional material;
 - the replacement cycle of the material (for example, items such as corporate brochures might be printed infrequently and used over an extended period

whereas promotional material for mail shots would be more likely to be printed and used over a short period);

- whether SPs would replace the material or use inserts, stickers or covering letters to update existing stocks.

A4.25 In the absence of reliable information about these factors, we have based our estimates on a set of assumptions we consider to be reasonable. Our starting assumption is that SPs would take a pragmatic approach that would minimise their overall costs.

A4.26 We estimate that it would cost SPs 9p⁶⁸ including labour to add a compliment slip sized colour insert to advertising/promotional material and 6p⁶⁹ including labour to add a sticky label (Assuming an effective labour rate of £11.03 per hour⁷⁰ and assuming each label/insert takes 15 seconds to add). We have assumed that SPs would choose the most cost effective option and would therefore:

- replace unused stocks of promotional materials if they are cheaper than inserts; and
- use inserts/stickers for more expensive materials such as brochures.

A4.27 On this basis, we assume that SPs costs for advertising/promotional material would not exceed the cost of adding inserts to advertising/promotional materials.

A4.28 In the absence of any detailed information about the incidence of 0870 numbers in promotional material and the amount of material that each SP would need to update, we have used a traffic profile for 087 numbers as the basis for our estimates. This profile was derived from information supplied by CPs in 2005 in response to a formal information request from Ofcom under section 135 of the Act.

A4.29 We also assumed that:

- Only a small proportion of 0870 numbers generating low traffic volumes (less than 100 minutes per month) would appear in advertising/promotional material;
- the volume of material to be updated/replaced would on average be related to the traffic volumes (i.e. an 0870 number generating a small volume of traffic would be likely to appear on a smaller volume of advertising/promotional material than an 0870 number generating a large volume of traffic).

A4.30 Applying these high level assumptions to the traffic profile, we assumed that:

- 0870 numbers with very low volumes of traffic (less than 10 minutes per month) would not appear in advertising/promotional material;
- a small proportion of 0870 numbers with low volumes of traffic (less than 100 minutes per month) would appear in advertising/promotional materials and volumes of advertising/promotional material would be relatively small. We assumed that updated/replacement advertising/promotional material would be

⁶⁸ Based on a quotation of £210 for 5000 colour compliment slips

⁶⁹ Assuming a sheet of 14 labels costs 20p plus 2p to print on a laser printer

⁷⁰ Measuring Administrative Costs <http://www.berr.gov.uk/bre/policy/simplifying-existing-regulation/administrative-burdens/page44061.html>

required for only 5% to 10% of 0870 numbers with these traffic volumes and on average SPs would need to update/replace 5000 items;

- a larger proportion of 0870 numbers with higher traffic volumes (greater than 100 minutes per month) would appear in advertising/promotional material. We assumed that updated/replacement advertising/promotional material would be required for between 25% and 50% of 0870 numbers with these traffic volumes. For those with traffic volumes of between 100 and 999 minutes per month, we assumed that 5000 items would need to be updated/replaced and for those generating traffic volumes over 1000 minutes per month we assumed that 15,000 items would need to be updated.

Cost estimate

- A4.31 Applying the methodology described above and assuming an average migration period of 6 months we estimate the costs to SPs of updating advertising/promotional materials for migration ranging between our central and upper estimates (i.e. 5% to 15% by traffic volume) would range from £2 million to £13 million. We also note that SPs could take steps to minimise their costs such as running down existing stocks in anticipation of migration or retaining their 0870 numbers for a longer period in order to reduce the need for replacement materials. As our estimate doesn't allow for this, we believe our estimate would tend to overstate the costs.
- A4.32 These estimates should be treated with caution as we have limited information to base some of the assumptions used, particularly the volume of material that SPs would have to update on average. We have also based our estimates on averages for each of the traffic bands discussed above. Clearly some businesses would not align with these averages and in some case may have much higher or lower expenditure. However, we believe these estimates give an approximate indication of the likely size of the overall costs involved.

Vehicle Signage

- A4.33 In the 2005 NTS Consultation we reported that we had not estimated the costs due to uncertainty about how many vehicles might need to be updated and the associated costs. We therefore considered vehicle signage costs qualitatively in our assessment of the proposals.
- A4.34 In response to stakeholder concerns we have developed a methodology for estimating these costs. In the absence of reliable information about these factors, we have based our estimates on a set of assumptions we consider to be reasonable. We describe our methodology below.

Methodology

- A4.35 As with advertising/promotional material, our starting assumption is that SPs would take a pragmatic approach that would minimise their overall costs. We have therefore assumed that SPs would use stickers to update vehicles with the necessary pricing information or would use pricing announcements at the start of calls (at least as an interim measure) if vehicle signage costs would be high.
- A4.36 Our own research into the cost of vehicle signage indicates that additional stickers could be purchased for as little as £80. However we acknowledge that some SPs might prefer more elaborate solutions.

A4.37 In the absence of any detailed information about the number of vehicles displaying 0870 numbers, we have used the traffic profile for 087 numbers discussed in paragraph A4.28 as a basis for our estimates. We assumed that:

- the overall incidence of 0870 numbers on vehicles is low (on the basis of our observations that 0870 numbers are not commonly displayed on vehicle signage);
- the traffic profile provides an indication of the size of the vehicle fleet advertising each 0870 number (i.e. 0870 numbers generating low traffic volumes would be likely to be displayed on only a small fleet of vehicles).

A4.38 Applying these high level assumptions to the traffic profile, we assumed that

- 0870 numbers with very low volumes of traffic (less than 10 minutes per month) would not appear on vehicle signage;
- 2% to 10% of 0870 numbers with traffic volumes between 11 and 999 minutes per month would appear on vehicle signage and would be likely to be associated with small vehicle fleets (such as those of small/medium business). We assumed that on average 3 vehicles would need to be updated at a cost of £100 per vehicle plus £13.12 labour⁷¹; and
- 2% to 10% of 0870 numbers with traffic volumes of 1000 minutes per month or more would appear on vehicle signage and would likely to be associated with larger vehicle fleets. We assumed that on average 10 vehicles would need to be updated at a cost of £250 per vehicle plus £13.12 labour⁷¹.

A4.39 We have assumed on average SPs would have a four year replacement cycle for their vehicles so that one quarter of vehicle signage would be replaced annually. We have also assumed that signage would be updated during routine vehicle maintenance and would not therefore incur additional downtime.

Cost estimate

A4.40 Applying this methodology we estimate that for migration ranging between our central and upper estimates (i.e. 5% to 15% by traffic volume) the cost of updating vehicle signage would range from £0.5 million to £4 million.

A4.41 We note that SPs could retain their existing 0870 numbers at least on an interim basis if vehicle signage costs are high, suggesting that our estimates may overstate the costs that would be incurred.

A4.42 These estimates should be treated with caution as we have limited information to base some of the assumptions used. We have also based our estimates on averages for each of the traffic bands discussed above. Clearly some businesses would not align with these averages and in some case may have much higher or lower expenditure. However, we believe these estimates give an approximate indication of the likely size of the overall costs involved.

⁷¹ 1 hour at mechanic rates listed in Measuring Administrative Burdens
<http://www.berr.gov.uk/bre/policy/simplifying-existing-regulation/administrative-burdens/page44061.html>

Building Signage

- A4.43 In the 2005 NTS Consultation we noted that some SPs would need to update building signage currently displaying 0870 numbers should they decide to migrate to alternate number ranges. We also reported that we had not estimated the costs due to uncertainty about how many buildings might need to be updated and the associated costs.
- A4.44 We remain of the view that we have insufficient information about the incidence of 0870 numbers on building signage and about how SPs would react to produce an estimate. In particular, we do not have sufficient information about the proportion that would use low costs means such as stickers to update existing signage rather than incur higher replacement costs.
- A4.45 On the basis of our observations that 0870 numbers are not commonly displayed on building signage, we believe that building signage costs are unlikely to be amongst the significant costs associated with our proposals. As with other types of signage, our assumption is that SPs would adopt a pragmatic approach that would minimise costs.

Stationery and website costs

- A4.46 We have estimated the stationery and website costs for migration ranging between our central and upper estimates. We have adjusted the cost inputs for inflation but have otherwise followed the methodology described in the 2005 NTS Consultation and the 2006 NTS Statement.
- A4.47 We have assumed that SPs that have deferred migration until publication of this statement would subsequently migrate over a six month period and that most of this group would need to update their advertising/promotional material during this period⁷². However, we expect that many SPs would have taken steps to minimise their costs by running down existing stocks in anticipation of migration. As our estimate doesn't allow for this, we believe our estimate would tend to overstate the costs.
- A4.48 Applying this methodology we estimate that for migration ranging between our central and upper estimates (i.e. 5% to 15% by traffic volume) the cost of updating stationery and websites to range from £13 million to £38 million.

Summary of SP migration costs

- A4.49 Figure 9 below summarises our updated estimates of SP migration costs

⁷² In the 2005 NTS Consultation we assumed a four year replacement cycle for stationery in order to give a conservative estimate. This suggests that 7/8ths of SPs that postponed their decision to migrate would need to update stationery following publication of this statement.

Figure 9: Summary of Service Provider (SP) migration costs

(£ millions)	Cost for migration ranging between central and upper migration estimates (i.e. 5% to 15% by traffic volume) following publication of statement
Stationery and Website costs	13 to 38
Advertising and promotional material	2 to 13
Vehicle Signage	0.5 to 4
Building Signage	Not estimated but thought to be low
Total	16 to 55

Misdialled calls

- A4.50 Service migration would be likely to result in some consumers misdialling (i.e. calling the numbers for services that have migrated). We described our methodology for estimating these costs in Annex 5 of the 2006 NTS Statement.
- A4.51 We estimate the misdialled call costs for migration ranging between our central and upper estimates (i.e. 5% to 15% by traffic volume) to be approximately £3 million to £8 million.

Annex 5

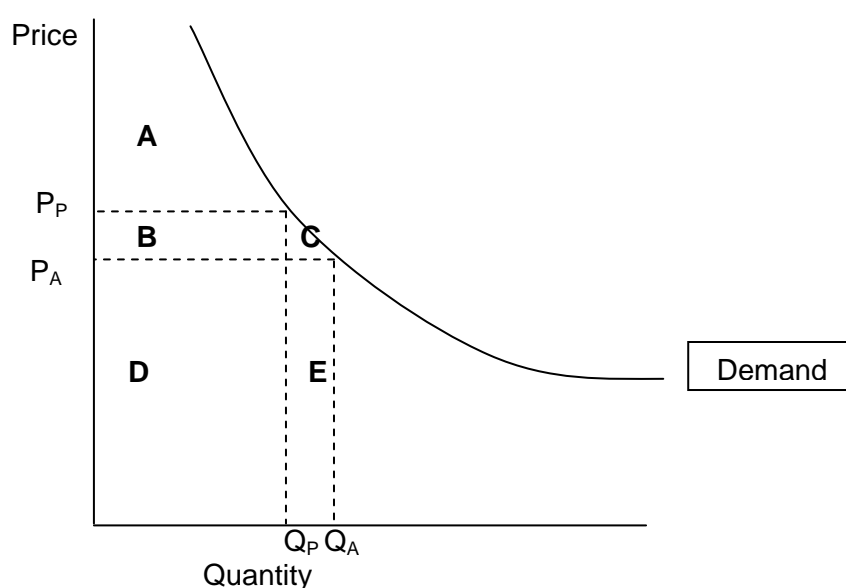
Further analysis of pricing transparency benefits

- A5.1 In the light of stakeholder comments about the value of the pricing transparency benefits associated with the proposals we have undertaken further analysis to illustrate these benefits.
- A5.2 Pricing misperceptions have a negative impact on welfare because some potential callers will overestimate call prices, and will therefore either be deterred from making calls or feel pressurised to keep calls as short as possible. Conversely, some consumers will underestimate call prices and will therefore be encouraged to make calls or to make longer calls. Both cases cause a loss of consumer welfare. Our research indicates that most consumers overestimate call prices. As in the monopoly cases, levels of consumer surplus and consumption will be lower, but unlike monopoly prices, consumer misperceptions will not lead to increased producer surplus since sellers do not benefit from higher perceived prices. Given the extent of the disparity between caller perceptions and actual call charges for 0870 numbers, the detriment associated with this inefficiency may be very significant.

The 2005 NTS Consultation

- A5.3 In the 2005 NTS Consultation we described our methodology for quantifying this type of detriment⁷³. We compared consumer welfare at perceived prices against a counterfactual where consumers know the actual price of the call. We assumed a standard formulation for a non-linear demand curve of $Q = Ae^{-\lambda p}$. Figure 10 below illustrates this.

Figure 10: Consumer detriment due to pricing misperceptions



⁷³ See paragraphs 5.58 to 5.63 of the 2005 NTS Consultation for more details.

- A5.4 Figure 10 shows the equilibrium price and quantity for the actual price - PA, QA and for the perceived price - Pp, Qp. Here the welfare loss associated with pricing misconceptions is equal to the area C.
- A5.5 In the 2005 NTS Consultation we noted that quantifying this type of detriment is problematic, in particular because it is necessary to make a number of assumptions in the absence of detailed information about certain aspects of consumer behaviour.
- A5.6 One of the most significant of these is that we were unable to determine how often consumer decisions to call 0870 numbers are influenced by pricing messages that advertise 0870 numbers as 'national rate'. Our survey results indicate that the way in which numbers are advertised contributes significantly to consumers perceptions of the price of NTS calls, but for simplicity we assumed no 0870 numbers are advertised as 'national rate'. We also based our calculations on the average perceived price, i.e. we did not individually calculate the welfare loss associated with each type of caller (i.e. those that think 0870 calls are free, those that think they costs £1 per minute etc) as found in the survey data. The calculations assume that each type of caller makes the same number of calls per head on average, since we do not have detailed data on which to base a more precise calculation.
- A5.7 Another significant factor is that it is necessary to estimate the sensitivity of callers to changes in perceived call prices – that is, the price elasticity of demand. We discuss this factor in more detail in paragraph A5.21 below.
- A5.8 In the 2005 NTS Consultation we estimated that for elasticity values ranging from -0.2 to -0.4, the total consumer detriment from pricing misperceptions could range from £74 million to £155 million per annum. We also noted that an elasticity of -0.3 is likely to be a conservative estimate (i.e. one that would tend to underestimate the detriment associated with pricing misperceptions). However, given the assumptions discussed above, we also cautioned that there is a significant degree of uncertainty in the estimates.
- A5.9 In the 2005 NTS Consultation we also noted that our proposals would not eliminate pricing misperceptions entirely. In other words, our proposals are unlikely to recover the full consumer detriment referred to above, but only some portion of this detriment on a recurring (i.e. year-on-year) basis. Therefore the size of the consumer will benefit depend on the degree of improvement in price perceptions. We concluded that our proposals for 08 numbers, including the 0870 proposals would lead to a significant improvement in pricing transparency, however, we didn't estimate the precise level of improvement that might be achieved.

Updated estimates

- A5.10 The methodology used to derive the new estimates is essentially the same as that used in the 2005 NTS Consultation as discussed above.
- A5.11 In order to better illustrate the potential benefits of improvements in consumer pricing perceptions resulting from our proposals, we have presented the potential benefits for a range of improvements in pricing transparency and price elasticities that we consider reasonable for 0870 calls. The benefits are likely to be recurring (i.e. the measures are likely to lead to an enduring improvement in consumer price perceptions). We consider they would be likely to continue beyond 5 years, perhaps considerably so. We have therefore presented the benefits on a Net Present Value ('NPV') basis over 5 and 10 years. This is shown in Figure 11 below.

A5.12 These figures are not directly comparable with the estimates in the 2005 NTS Consultation as they are based on the updated traffic and migration estimates discussed in Annex 4.

A5.13 Each of the entries in the body of the tables in Figure 11 below illustrates the sensitivity of the results to the full range of traffic volumes associated with our Mar 09 traffic estimate and migration ranging between our central and upper estimates (i.e. 5% to 15% by traffic volume) (as discussed in Annex 4) (i.e. each entry represents the transparency benefits associated with the residual 0870 traffic assuming 43% (38% + 5%) to 58% (43% + 15%) migration).

Figure 11: Potential consumer benefit of better pricing transparency

Improvement in consumers pricing perceptions of 0870 calls from fixed lines over 5 years (Average price estimated by consumers for calls from fixed lines)	Benefit to consumers over 5 years on a Net Present Value ('NPV') basis ^{74 75} (£ millions) Range shows sensitivity to further service migration ranging from central to upper migration estimates (i.e. 5% to 15% by traffic volume)			
	Price elasticity			
	-0.2	-0.3	-0.4	-0.6
From 36p to 30p per minute	40 to 29	61 to 44	82 to 59	124 to 90
From 36p to 25p per minute	70 to 51	106 to 77	143 to 104	219 to 159
From 36p to 20p per minute	96 to 69	146 to 106	197 to 143	305 to 221
From 36p to 15p per minute	118 to 85	180 to 130	244 to 177	380 to 275

Improvement in consumers pricing perceptions of 0870 calls from fixed lines over 10 years (Average price estimated by consumers for calls from fixed lines)	Benefit to consumers over 10 years on a Net Present Value ('NPV') basis ⁷⁶ (£ millions) Range shows sensitivity to further service migration ranging from central to upper migration estimates (i.e. 5% to 15% by traffic volume)			
	Price elasticity			
	-0.2	-0.3	-0.4	-0.6
From 36p to 30p per minute	97 to 70	147 to 106	197 to 143	300 to 217
From 36p to 25p per minute	166 to 120	252 to 183	340 to 246	523 to 379
From 36p to 20p per minute	223 to 162	340 to 247	462 to 335	718 to 520
From 36p to 15p per minute	268 to 194	410 to 297	559 to 405	877 to 636

A5.14 As is evident from Figure 11, the estimated consumer benefits are sensitive to our assumptions about the improvements in pricing perceptions, the price elasticity and the migration away from 0870 numbers following publication of the statement.

A5.15 We believe that our proposals should bring about a significant improvement in pricing transparency for 0870 calls because:

⁷⁴ Future values discounted using the Social Time Preference Rate (3.5 %)

(<http://greenbook.treasury.gov.uk/annex06.htm>)

⁷⁵ Assuming that pricing perceptions progress from the initial to final figures in 5 equal increments over the period.

⁷⁶ Assuming that pricing perceptions progress from the initial to final figures in 5 equal increments over the first five years and are stable thereafter.

- in our view, there is a good chance that retail competition will lead a significant proportion of OCPs to charge 0870 calls at geographic rates. This should lead to a significant improvement in pricing transparency since consumers have a much higher awareness of geographic call charges than calls to 0870 numbers. It will also provide a simple message to consumers, which is that 0870 calls are charged on the same basis as geographic calls and are included in call packages on the same basis. In this context we note that:
 - BT has already aligned its 0870 call charges with geographic call charges for its three main consumer pricing packages in anticipation of Ofcom implementing these 0870 measures;
 - the rates proposed in the draft determination have been set at a level to enable BT to continue doing so;
- the new price publication requirements for 0870 calls in General Condition 14 will improve the visibility of 0870 call charges to consumers, by requiring CPs to specify their 0870 call charges more prominently; and
- General Condition 14 will prohibit OCPs from describing 0870 calls as ‘national rate’ e.g. in billing material unless their 0870 charges are aligned with geographic rates.

A5.16 Inevitably we cannot be certain this stage about the extent to which our proposals will improve consumers’ perceptions of call prices. In part this is because we can not be certain of the extent to which OCPs will align 0870 prices with geographic prices. However as noted above, we consider there is a good chance that retail competition will lead a significant proportion of OCPs to align 0870 call charges with geographic prices, particularly as BT has already made this move in anticipation of Ofcom implementing these 0870 measures. Therefore to illustrate the potential benefits we have estimated the consumer benefits for a range of possible improvements in price perceptions – varying from an upper value of 30p per minute to a lower value of 15p per minute.

A5.17 We note that consumers typically overestimate the price of geographic calls by a considerable margin so we would tend to emphasise the top two rows as the most likely range of improvement in price perceptions (i.e. reductions in price perceptions from 36p to 30p or 25p).

Interpretation of results

A5.18 As noted above, there is some degree of uncertainty in these estimates due to the need to make a number of assumptions in the absence of detailed information about certain aspects of consumer behaviour. In particular we would highlight the following points, each of which are discussed in more detail below:

- price perception trends absent the proposals;
- retail price trends;
- sensitivity of results to price elasticity;
- sensitivity of results to choice of demand curve; and
- forward look.

Consumer price perception trends absent the proposals

A5.19 Ofcom's research for the 2004 NTS Consultation, the 2005 NTS Consultation, the strategic review of numbering and most recently for the 070 Consultation all show that consumers consistently over estimate charges for 0870 calls. The research shows that consumers' perceptions of fixed line call prices have risen during this period, increasing from 30p in the July 2004 research to 36p in the June 2005 research and most recently to 41p in the May 2008 research. Arguably therefore, consumers' perceptions of call prices might continue to rise absent implementation of our proposals. Given this trend we think it reasonable to assume that absent further steps to improve transparency (or other developments that might improve transparency), that price perceptions would be unlikely to fall. Therefore, for the purposes of our estimates, we have assessed the benefits against a counterfactual of constant price perceptions.

Retail price trends

A5.20 In addition, reductions in actual prices may increase the scope for future reductions in perceived prices to bring benefits to consumers. Increased pricing transparency means that customers' perceptions of prices are likely to move towards actual prices over time. If these actual prices themselves fall, for example from 6p or 8p to 4p to 5p, in line with the prices set out in paragraph A3.51, then the maximum benefit to consumers from aligning perceived prices to the new lower call prices is increased⁷⁷.

Price elasticity

A5.21 In the 2005 NTS Consultation we noted that an elasticity of -0.3 is likely to be a conservative estimate (i.e. one that would tend to underestimate the detriment associated with pricing misperceptions). This view is supported by, for example, the following quote from Rappoport, P. N. and Taylor, L. D. (1997) ;: "The conventional view in the literature is that the price elasticity is of the order of -0.3 to -0.4 for intralata calls and -0.7 for long-haul interstate calls".

A5.22 The distinction between intralata and interstate calls in the US is somewhat analogous to that between local and national calls in the UK. An assumption that the elasticities of demand for 0870 calls is similar to that for local calls is likely to be conservative therefore, since in terms of price and probably, purpose of the call, they are likely to be more similar to national calls. However, such estimates of call price elasticities from UK data as are available suggest that national call price elasticities do tend to be somewhat lower than those of long-distance calls in the US. We believe that an elasticity of -0.4 is likely to be reasonable for the UK therefore and indeed could still be seen as conservative, relative to the estimate of -0.7 for interstate calls. Therefore on balance we would tend to place more weight on the welfare estimates associated with the elasticities of -0.4 or above (in magnitude), compared to those assuming elasticities of -0.3 or less (in magnitude).

⁷⁷ A price reduction which does not result in any change in the quantity purchased will benefit consumers but create an exactly offsetting loss to sellers. In conventional cost-benefit analysis therefore, price reductions result in net benefits to the economy only where there is an increase in the quantity purchased (and consumers' willingness to pay is greater than the marginal cost of production). This is consistent with the approach we have adopted in calculating the benefits of pricing transparency, where we assume that the volume of calls made depends on the perceived price rather than the actual price.

Choice of demand curve

A5.23 We have assumed a standard non-linear demand curve in order to characterise the demand for 0870 calls away from the current point of consumption. This assumption should be perfectly reasonable for relatively small movements away from the initial consumption point. However, the estimates of consumer benefit become more sensitive to the choice of demand curve the further we move away from the initial point. In other words, the larger the expected improvement in price perceptions, the more sensitive are our estimates of the consumer benefit to the choice of demand curve. Therefore, we would encourage some caution in interpreting the results for the largest improvements in price transparency.

Forward look

A5.24 Although we have presented the results of a 5 and 10 year NPV, we acknowledge that both a 5 and a 10 year horizon involve a considerable amount of uncertainty (for example with respect to demand for 0870 calls, the evolution of call prices from fixed and mobile, and the type of services that might be offered over 0870 numbers) which can not be reliably incorporated into these estimates. Therefore we emphasise that the results should be interpreted as the benefits that would be expected to arise in a 'no change' scenario (i.e. one which assumes that demand etc. remains constant over the period).

Impact of mobile call pricing on pricing transparency benefits

A5.25 A separate point raised by stakeholders is whether variations between fixed and mobile call charges would have a significant impact on the pricing transparency benefits. Charges for calls to 0870 numbers from mobile phones are typically higher than from fixed lines, potentially reducing the benefit associated with better pricing perceptions for calls originated from mobile phones. When we estimated the pricing transparency benefits in 2005 we did not have any information about consumers' perceptions of the price of calls from mobile phones so for the calculations we assumed perceptions to be the same as for calls from fixed lines. We also assumed that all mobile originated calls were charged at the same rates as calls from fixed lines. We viewed these approximations as reasonable for our illustration given the uncertainty associated with other aspects of our estimates such as price elasticity.

A5.26 A further factor is that since we reviewed the 2005 NTS Consultation estimates for the Consultation, there has been a significant rise in charges for calls to 087 numbers from mobile phones. Rates for popular packages offered by the largest mobile operators have risen from around 15-25p per minute to 15-40p per minute. We estimate that in December 2008 the traffic weighted average charge for calls to 087 Numbers was about 30p per minute. This figure is close to the average consumer perception of the price of calls to 0870 numbers from fixed lines at 36p per minute. Assuming consumers perceptions of the price of calls to 0870 numbers from mobile phones and fixed lines are broadly aligned (as discussed above) this suggests the benefit associated with improved pricing perceptions would be relatively small for mobile originated calls, particularly as better pricing transparency would be unlikely to completely correct consumer misperceptions.

A5.27 Ofcom's research shows that the proportion of telephone calls originating from mobile phones has been steadily increasing during recent years. This trend is being driven by the availability of calling packages with large call allowances which encourages consumers to make more calls from mobile phones to numbers that are included in calling packages (principally fixed and mobile numbers). It also

encourages consumers to use their mobile phones at home in preference to fixed lines. As mobile operators do not generally include calls to 087 numbers in calling packages, calls to 087 numbers do not appear to be subject to a similar trend. Ofcom's analysis of traffic information for the years 2002/3 to 2004/5 (the latest in Ofcom's possession that has sufficient detail to perform this analysis) shows that the proportion of mobile originated calls to 087 numbers declining by 5% during this period to 30%. Given this trend, we think it reasonable to assume for the purposes of this estimate that the proportion of calls to 0870 numbers originating from mobile phones will remain approximately constant at 30% throughout the period under consideration.

- A5.28 In light of these points we have revised our estimates to take account of the variation in charges between fixed lines and mobile phones. To give a conservative estimate we have excluded mobile originated calls from our revised estimate of the benefits of better pricing perceptions presented in Figure 11 above. This revision reduces our estimate of the overall welfare loss associated with consumer price misperceptions for 0870 numbers.

Annex 6

Notification of a modification under Section 48(2) of the Act to SMP Condition AA11

Modification of SMP Condition AA11 in Part 1 of Schedule 1 to the Notification published in Annex A of the fixed narrowband, wholesale exchange line, call origination, conveyance and transit markets statement published by the Director General Of Telecommunications on 28 November 2003 (as amended).

WHEREAS

- A. On 28 November 2003, pursuant to sections 48(1) and 79 of the Act, the Director General of Telecommunications made a market power determination to the effect that BT has significant market power in the market for call origination on fixed public narrowband networks for the UK excluding the Hull area and set certain SMP conditions on BT to take effect on 28 November 2003, unless otherwise stated in Schedule 1 thereto.
- B. The SMP Conditions referred to in recital (A) included SMP Condition AA11.
- C. On 28 September 2005, OFCOM published a notification under section 48(1) of the Act, modifying SMP Condition AA11, entitled 'Charges between Communications Providers: Number Translation Services Retail Uplift charge control and Premium Rate Services bad debt surcharge'.
- D. On 2 May 2008 OFCOM published a notification under section 48(2) of the Act setting out their proposals for the modification of the SMP Condition AA11 (the "First Notification").
- E. A copy of the First Notification was sent to the Secretary of State in accordance with section 50(1)(a) of the Act, the European Commission and to the regulatory authorities of every other Member State in accordance with section 50(3) of the Act.
- F. In the First Notification and accompanying consultation document 'Changes to 0870', OFCOM invited representations about any of the proposals set out therein by 16 June 2008.
- G. By virtue of section 48(5) of the Act, OFCOM may give effect to any proposals to modify SMP Conditions as set out in the First Notification, with or without modification, where:
 - (i) they have considered every representation about the proposals made to them within the period specified in the First Notification; and
 - (ii) 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.
- H. OFCOM received 48 responses to the First Notification and have considered every such representation made to them in respect of the proposals set out in the First

Notification and the accompanying consultation document; and the Secretary of State has not notified OFCOM of any international obligation of the United Kingdom for this purpose.

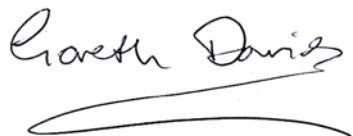
- I. The European Commission has not made a notification for the purposes of Article 7(4) of the Framework Directive as referred to in section 83 of the Act.

THEREFORE

1. OFCOM, in accordance with sections 48(1) and 86 of the Act, hereby make the following modifications to SMP Condition AA11, as set out in the Schedule to this Notification.
2. The modifications contained in this Notification are made by reference to the market power determination under section 79 of the Act by the Director on 28 November 2003, whereby BT was determined to have significant market power in the market for call origination on fixed public narrowband networks in the UK (excluding the Hull area). As set out in Section 5 of the accompanying explanatory statement 'Changes to 0870', OFCOM are satisfied that there has been no material change in that market since that determination was made.
3. OFCOM consider that the modifications referred to in paragraph 1 above comply with the requirements of sections 45 to 50 and sections 78 to 92 of the Act, as appropriate and relevant to the modifications.
4. The effect and reasons for making the modifications referred to in paragraph 1 above is set out at Sections 2, 4 and 5 of the accompanying explanatory statement 'Changes to 0870'.
5. In taking the measures set out in this Notification, OFCOM have 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. Copies of this Notification and the accompanying explanatory statement have been sent to the Secretary of State in accordance with section 50(1)(a), and to the European Commission in accordance with section 50(2) of the Act.
7. In this Notification (including the recitals and the Schedule) –
 - (i) "the Act" means the Communications Act 2003;
 - (ii) "BT" means British Telecommunications plc;
 - (iii) "SMP Conditions" means the conditions 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
 - (iv) "OFCOM" means the Office of Communications.
8. 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.
9. For the purpose of interpreting this Notification, headings and titles shall be disregarded.

10. The Interpretation Act 1978 shall apply as if this Notification were an Act of Parliament.
11. The Schedule to this Notification shall form part of this Notification.
12. The modification set out in the Schedule to the Notification shall take effect on 1 August 2009.

Signed by

A handwritten signature in black ink, appearing to read "Gareth Davies". The signature is written in a cursive style and is positioned above a long, horizontal, slightly curved 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

23 April 2009

Schedule

SCHEDULE 1

Modification to SMP condition AA11 imposed on BT under sections 45, 87, 88 and 90 of the Communications Act 2003 as a result of the market power determination made by the Director General of Telecommunications on 28 November 2003 that BT has significant market power in the market for call origination of fixed public narrowband networks for the UK (excluding the Hull area)

A) In Part 1 of Schedule 1 to the November 2003 Notification (“Application, definitions and interpretation relating to the SMP conditions in Part 2”), the following modifications are made:

1 In paragraph 2(yy) of Part 1, Schedule 1 (definition of “NTS Calls”), insert the following after “FRIACO;”:

“and

- excluding calls to 0870 numbers;”

Annex 7

Notification of a modification under section 48(1) to General Condition 17 of the General Conditions of Entitlement

Modification of General Condition 17 of Part 2 of the General Conditions Notification, regarding Allocation, Adoption, and Use of Telephone Numbers under section 48(1) of the Act

WHEREAS

- A. The Director General of Telecommunications issued the General Conditions Notification which took effect on 25 July 2003 by way of publication of a notification pursuant to section 48(1) of the Act.
- B. On 8 March 2006, OFCOM published a notification under section 48(1) of the Act, modifying General Condition 17, entitled 'National Single Non-Emergency Number'.
- C. On 8 March 2007, OFCOM published a notification under section 48(1) of the Act, modifying General Condition 17, entitled 'Conditions regulating Sexual Entertainment Services'.
- D. On 31 May 2007, OFCOM published a notification under section 48(1) of the Act, modifying General Condition 17, entitled 'Raising confidence in telephone numbers'.
- E. On 20 February 2009, OFCOM published a notification under section 48(1) of the Act, modifying General Condition 17, entitled 'Harmonised European numbers for services of social value'.
- F. On 27 February 2009, OFCOM published a notification under section 48(1) of the Act, modifying General Condition 17, entitled 'Review of the 070 personal numbering range'.
- G. On 2 May 2008 OFCOM issued a notification pursuant to section 48(2) of the Act setting out their proposals for the modification of General Condition 17 (as amended) ("the First Notification");
- H. A copy of the First Notification was sent to the Secretary of State in accordance with section 50(1)(a) of the Act;
- I. In the First Notification and the accompanying consultation document 'Changes to 0870', OFCOM invited representations about any of the proposals set out therein by 16 June 2008;
- J. By virtue of section 48(5) of the Act, OFCOM may give effect to any proposal to modify General Condition 17 as set out in the First Notification, with or without modification, where:
 - (i) they have considered every representation about the proposals made to them within the period specified in the First Notification; and

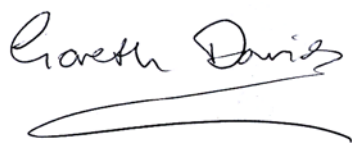
- (ii) they have had regard to every international obligation of the United Kingdom (if any) which has been notified to them for this purpose by the Secretary of State;
- K. OFCOM received 48 responses to the First Notification and have considered every such representation made to them in respect of the proposals set out in the First Notification and the accompanying consultation document; and the Secretary of State has not notified OFCOM of any international obligation of the United Kingdom for this purpose;

THEREFORE

1. OFCOM, in accordance with sections 48(1) of the Act, hereby makes the following modification to General Condition 17 on Allocation, Adoption and Use of Telephone Numbers (as amended).
2. The modification to General Condition 17 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 2 above is set out at Sections 2 and 4 of the accompanying explanatory statement 'Changes to 0870'.
4. OFCOM considers that the modification referred to in paragraph 2 above complies with the requirements of sections 45 to 50 of the Act.
5. In making the modification set out in this Notification, OFCOM have 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. A copy of this Notification has been sent to the Secretary of State in accordance with section 50(1)(a) of the Act.
7. In this Notification (including the recitals and the Schedule) –
 - (i) "the Act" means the Communications Act 2003;
 - (ii) "the General Conditions Notification" means as set out in the Schedule to the notification under section 48(1) of the Act published by the Director General of Telecommunications on 22 July 2003;
 - (iii) "OFCOM" means the Office of Communications.
8. 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.
9. For the purpose of interpreting this Notification, headings and titles shall be disregarded.
10. The Interpretation Act 1978 shall apply as if this Notification were an Act of Parliament.
11. The Schedule to this Notification shall form part of this Notification.
12. The modification set out in the Schedule to the Notification shall take effect on 1 August 2009.

Changes to 0870

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 2002

23 April 2009

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

General Condition 17 shall be modified as set out below:

- A. The wording in General Condition 17.12 shall be replaced with the following text (new additions shown in bold type and deletions in strike-through):

“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), Harmonised numbers for harmonised services of social value (116XXX numbers) **or Non-Geographic Numbers starting 0870**, the Communications Provider shall comply with the designations for those numbers in the National Telephone Numbering Plan.”

Annex 8

Notification of a modification under section 56(2) of the Act to the National Telephone Numbering Plan

WHEREAS

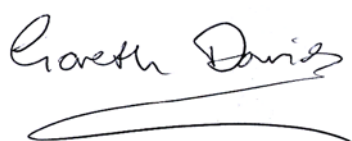
- A. Section 56(2) of the Act provides that it shall be OFCOM's duty from time to time to review the Plan and make such revisions that they think fit, provided such revisions are made, so far as applicable, in accordance with section 60 of the Act.
- B. Section 60 of the Act applies where General Condition 17 is a numbering condition for the time being having effect by reference to provisions of the Plan.
- C. On 2 May 2008, OFCOM issued a notification pursuant to section 60(3) of the Act setting out their proposals for a modification to Part A of the Plan (the "First Notification").
- D. A copy of the First Notification was sent to the Secretary of State.
- E. In the First Notification and accompanying consultation document 'Changes to 0870', OFCOM invited representations about any of the proposals set out therein by 16 June 2008.
- F. By virtue of section 60(5) of the Act, OFCOM may give effect to any proposals to modify the Plan as set out in the First Notification, with or without modification, where:
 - (i) they have considered every representation about the proposals made to them within the period specified in the Notification; and
 - (ii) 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.
- G. OFCOM received 48 responses to the First Notification and have considered every such representation made to them in respect of the proposals set out in the Notification and the accompanying consultation document 'Changes to 0870'; and the Secretary of State has not notified OFCOM of any international obligation of the United Kingdom for this purpose.

THEREFORE

- 1. OFCOM, in accordance with section 56(2) of the Act (the "Act"), hereby makes the following modification to the provisions of the Plan.
- 2. The modification to the Plan is set out in the Schedule to this Notification.
- 3. The reasons for making the modification and the effect of the modification are set out in Sections 2 and 4 of the accompanying explanatory statement to this Notification, 'Changes to 0870'.

4. OFCOM considers that the 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 1 August 2009.
7. Copies of this Notification and the accompanying statement have been made available to the Secretary of State.
8. In this Notification:
 - (i) 'Act' means the Communications Act 2003;
 - (ii) 'OFCOM' means the Office of Communications; and
 - (iii) 'Plan' means the National Telephone Numbering Plan published from time to time by OFCOM.
9. Except insofar as the context otherwise requires, words or expressions have the meaning assigned to them in this Notification and otherwise any word or expression has the same meaning as in the Act.
10. For the purpose of interpreting this Notification, headings and titles shall be disregarded.
11. The Interpretation Act 1978 applies as if this Notification were an Act of Parliament.
12. The Schedule to this Notification forms part of this Notification.

Signed by

A handwritten signature in black ink, appearing to read 'Gareth Davies', with a long horizontal flourish underneath.

Gareth Davies

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

23 April 2009

Schedule

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

0870	Non-Geographic Number: charged at no more than the caller would pay for a call to a Geographic Number with calls to 0870 numbers counting towards inclusive call minutes to Geographic Numbers if the customer has remaining inclusive minutes to Geographic Numbers and included in any discount structures that apply to Geographic Numbers, 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.
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Annex 9

Notification of a Direction under section 49(4) of the Act to numbering application form S8

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

Whereas

- 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 2 May 2008 (the 'First Notification').
- G. A copy of the First Notification was sent to the Secretary of State in accordance with section 50(1)(b) of the Act.
- H. In the First Notification and accompanying consultation document, 'Changes to 0870', OFCOM invited representations about any of the proposals therein by 5pm on 16 June 2008.

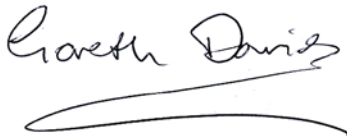
- I. By virtue of section 49(9) of the Act, OFCOM may give effect to the proposal set out in the First Notification, with or without modification, only if -
- (i) they have considered every representation about the proposal that is made to them within the period specified in the First Notification; and
 - (ii) 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 48 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 Section 3 and Annex 2 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.
- K. In considering whether to make the modification proposed in the First Notification, OFCOM have complied with all relevant requirements set out in section 49 of the Act.

THEREFORE

1. OFCOM, pursuant to paragraph 17.9(a) of the Condition, direct that with effect from 1 August 2009, 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 Notification -
 - '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 (as amended) 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 the Condition;
 - (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 (as amended);
 - (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.
6. The Annex to this Notification forms part of this Notification.

Signed by

A handwritten signature in black ink, appearing to read 'Gareth Davies', with a long horizontal flourish underneath.

Gareth Davies

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

23 April 2009



SERVICES OR SPECIAL SERVICES APPLICATION - NUMBERS STARTING '08'

<u>Service Type:</u>	<u>Number range starting:</u>	<u>Number block size:</u>
Freephone Numbers	0800 XXXX	1000
	080 80XX to 080 87XX	10,000
Special Services basic rate: up to and including 5p for BT customers (non-internet)	0843 and 0844 2XX to 0844 9XX	10,000
Special Services basic rate: BT's Standard Local Call Retail Price for BT customers	0845 XXX	10,000
Special Services higher rate: up to and including 10p for BT customers (non-internet)	0871 2XX to 0871 9XX, 0872 XXX and 0873 XXX	10,000
<p>Special Services higher rate: BT's Standard National Call Retail Price for BT customers</p> <p><u>Non-Geographic Number: charged at no more than the caller would pay for a call to a Geographic Number with calls to 0870 numbers counting towards inclusive call minutes to Geographic Numbers if the customer has remaining inclusive minutes to Geographic Numbers and included in any discount structures that apply to Geographic Numbers, 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.</u></p>	0870 XXX	10,000

Internet Services Free to Caller	0808 90XX	1000
Internet Services Free to Caller – Flat Rate Internet Access Call Origination (FRIACO) product	0808 99XX	1000
Internet Services incorporating un-metered access up to and including 5p for BT customers	0844 04XX	1000
Non 'BT Discount Scheme' - Internet Services incorporating un-metered access up to and including 5p for BT customers	0844 00XX	1000
Internet Services metered access up to and including 5ppm for BT customers	0844 09XX	1000
Non 'BT Discount Scheme' - Internet Services metered access up to and including 5ppm for BT customers	0844 05XX	1000
Internet Services incorporating un-metered access up to and including 10p for BT customers	0871 04XX	1000
Non 'BT Discount Scheme' - Internet Services incorporating un-metered access up to and including 10p for BT customers	0871 01XX	1000
Internet Services metered access up to and including 10ppm for BT customers	0871 09XX	1000
Non 'BT Discount Scheme' - Internet Services metered access up to and including 10ppm for BT customers	0871 05XX	1000
Internet for Schools (1 block required per Service Provider)	0820 XXXX	10,000
Inbound Routing Codes	08993 XX to 08999 XX	10,000

Definitions and Interpretation

1. 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 by the Director on 22nd July 2003 pursuant to section 56 of the Communications Act 2003 (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 22nd 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 22nd July 2003 under section 48(1) of the Act; and
- (iv) 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.

2. The Interpretation Act 1978 shall apply as if this Application Form were an Act of Parliament.

3. FRIACO (Flat Rate Internet Access Call Origination) means the provision of Flat Rate Internet Access Call Origination via a wholesale unmetered internet access product.

(Applicants should ensure that all sections have been completed where relevant – incomplete Application Forms may not be processed within the 3-week deadline).

1. <u>Your reference (optional):</u>	
2. <u>Applicant details and date of application:</u> Your name, company name, address, direct telephone, direct fax, direct e-mail, mobile. <i>(Where you are acting on behalf of a Communications Provider (eg a consultant, solicitor, etc), and if you have not previously supplied one, you should enclose a letter from that Communications Provider confirming that you are authorised to represent it).</i>	<u>Date of application:</u>
3. <u>Communications Provider details:</u> If different from 2. above (eg where you are a consultant, solicitor, etc), provide the name and address of the Communications Provider on behalf of whom you are applying for Telephone Numbers.	

4. Declaration of ‘Public Electronic Communications Network’ or ‘Public Electronic Communications Service’

The information requested in Annex A helps Ofcom to assess your eligibility to be allocated Telephone Numbers.

If you are a provider of a Public Electronic Communications Network:

confirm whether you have previously supplied the information requested in Annex A (or information equivalent to it), to Ofcom’s Numbering Unit; or

if not, you must complete in full all relevant questions in Annex A and submit it along with this form.

If you have previously supplied the information in Annex A, then move onto the next question – you do not need to submit Annex A with this form.

If you are a provider of Public Electronic Communications Services:

you **MUST** complete all relevant questions in Annex A each time you apply for Telephone Numbers and submit it with this form.

(For providers of Public Electronic Communications Networks, please ensure you have previously supplied the information requested, before you confirm this – your application may be rejected if this is not the case).

5. Telephone Numbers required:

When completing the table below, you should give a 1st and 2nd choice for each type of Telephone Number block applied for in case the block you've applied for is not available at the time the application is processed;

Where applying for **0844 and 0871 (non-internet)** blocks, select those within the appropriate tariff as indicated on the web site. If there are no available blocks, you should indicate this below alongside the tariff you require (note that from a certain date – of which Ofcom will advise you – tariffs for 0844 numbers will no longer appear on the web site but you will still need to indicate the tariff you intend to use for BT customers for these blocks). The Numbering Unit will open a new range and then contact you; and Ensure that a maximum of 15 blocks are entered on this Application Form. A new Form S8 should be completed for further blocks.

		Number block Type? e.g. Freephone, Internet Freephone, BT Standard Local Call Retail Price, BT Standard National Call Retail Price, Internet FRIACO, etc. (state which)	Code - first 4 digits after initial '0' e.g. 8004 - Freephone, 8456 – BT Standard Local Call Retail Price, etc. (SABC)	Next 2 digits of number e.g. 34 (DE)	Next digit of number (F digit) only required for blocks that are issued in blocks of 1000 numbers – see top of Form (F)	Tariff for each number block (including VAT): for 0844 and 0871 (non-internet) blocks show tariff (to nearest 1p for BT customers) from those tariffs on web site	Confirm if BT Discount Scheme or Non 'BT Discount Scheme' will apply to block (where relevant) (see Oftel Direction)	Planned 'In-Service' Date (applications should not be submitted more than 6 months prior to in-service date)	Forecast of expected Adoption in 1 st 12 months (%)	Forecast of expected Adoption in 2 nd 12 months (% cumulative)
e.g. 1 st Block	1 st Choice	Freephone	8006	21	3	free to caller		mid Oct 2003	20	80
	2 nd Choice	Freephone	8005	36	2	free to caller		mid Oct 2003	20	80
e.g. 2 nd Block	1 st Choice	Internet Freephone	8089	02	2	free to caller		beg. Sep 2003	40	100
	2 nd Choice	Internet Freephone	8089	05	5	free to caller		beg. Sep 2003	40	100
e.g. 3 rd Block	1 st Choice	Up to and including 10p for BT customers (Non-Internet)	8442	34		4ppm	Non 'BT Discount Scheme'	end Nov 2003	15	90
	2 nd Choice	Up to and including 10p for BT customers (Non-Internet)	8443	33		4ppm	Non 'BT Discount Scheme'	end Nov 2003	15	90
1 st Block	1 st Choice									
	2 nd Choice									
2 nd Block	1 st Choice									
	2 nd Choice									
3 rd Block	1 st Choice									
	2 nd Choice									
4 th Block	1 st Choice									
	2 nd Choice									
5 th Block	1 st Choice									
	2 nd Choice									

5. continued

		Number block Type? e.g. Freephone, Internet Freephone, BT Standard Local Call Retail Price, BT Standard National Call Retail Price, Internet FRIACO, etc. (state which)	Code - first 4 digits after initial '0' e.g 8004 - Freephone, 8456 – BT Standard Local Call Retail Price, etc. (SABC)	Next 2 digits of number e.g. 34 (DE)	Next digit of number (F digit) only required for blocks that are issued in blocks of 1000 numbers – see top of Form (F)	Tariff for each number block (including VAT): for 0844 and 0871 (non-internet) blocks show tariff (to nearest 1p for BT customers) from those tariffs on web site	Confirm if BT Discount Scheme or Non 'BT Discount Scheme' will apply to block (where relevant) (see Oftel Direction)	Planned 'In-Service' Date (applications should not be submitted more than 6 months prior to in-service date)	Forecast of expected Adoption in 1st 12 months (%)	Forecast of expected Adoption in 2nd 12 months (% cumulative)
6 th Block	1 st Choice									
	2 nd Choice									
7 th Block	1 st Choice									
	2 nd Choice									
8 th Block	1 st Choice									
	2 nd Choice									
9 th Block	1 st Choice									
	2 nd Choice									
10 th Block	1 st Choice									
	2 nd Choice									
11 th Block	1 st Choice									
	2 nd Choice									
12 th Block	1 st Choice									
	2 nd Choice									
13 th Block	1 st Choice									
	2 nd Choice									
14 th Block	1 st Choice									
	2 nd Choice									
15 th Block	1 st Choice									
	2 nd Choice									

6. Service and Market:

For each of the Telephone Number blocks applied for above, give a brief description of the type of Public Electronic Communications Service for which the Telephone Numbers applied for will be Adopted, and the market to be served by the service e.g. calling-card for UK customers, e-fax, internet access, etc.

7. Adoption of existing Telephone Number blocks:

For each type of Telephone Number block applied for above, you should provide details, in the table below, of any other number blocks in the same category (and at the same tariff – where relevant) that you have been allocated to date - consistent with its duty in the Communications Act 2003 to secure best use of numbers Ofcom requires a justification for applying for further numbering capacity where there may be non-utilised numbers.

Number block Type? e.g. Freephone, Internet Freephone, BT Standard Local Call Retail Price, BT Standard National Call Retail Price, Internet FRIACO, etc. (state which)	Code – first 6 or 7 digits after initial '0' – show as SABC DE F (see top of Form for number of digits to specify)			Tariff for BT customers (only needs to be entered for 0844 and 0871 (non- internet) blocks	Confirm if BT Discount Scheme or Non 'BT Discount Scheme' applies to the block (where relevant) (see OfTel Direction)	Total Numbers Allocated to End Users: ie, in use or ported out (Numbers or %)	Total Number s not in use but contract ed out (Number s or %)
	(SABC)	(DE)	(F)				
Freephone	8005	28	6			942	8
Internet Services metered access up to and including 5p for BT customers	8440	95	4			860	35
Special Services up to and including 10p for BT customers (non-internet)	8446	23		4ppm	Non 'BT Discount Scheme'	6540	2050
Local Rate	8459	56				7560	180

(You should e-mail this application form to numbering.applications@ofcom.org.uk)

Form S8 - Annex A

A1. Confirmation of Status:

Ofcom generally only Allocates Telephone Numbers to providers of Public Electronic Communications Networks.

Ofcom may also Allocate numbers, where number resource implications do not preclude allocation, to providers of a Public Electronic Communications Service. Ofcom would also normally expect to see that the provider has arrangements in place for its service to be carried over a network, and, where appropriate, would usually expect the provider to have taken reasonable steps to seek a sub-allocation of Telephone Numbers of the type applied for prior to making the application.

Providers of Public Electronic Communications Networks

Ofcom needs certain information from you in order to determine whether or not you are a provider of a Public Electronic Communication Network. You will only need to provide this information with your first application.

Please provide details of:

- a) the Electronic Communications Network on which the Telephone Numbers applied for are intended to be Adopted;

(a diagram may be useful to assist Ofcom in assessing your eligibility for Telephone Numbers)

- b) the Electronic Communications Service which you are intending to provide over that network.

Providers of Public Electronic Communications Services

In order to determine whether or not you are a provider of a Public Electronic Communications Service, Ofcom needs certain information from you. Please provide details of:

- c) the Electronic Communications Service which you are intending to provide with the Telephone Numbers applied for. Please also provide details of the network on which the numbers you are applying for will be Adopted.

<p>A2. <u>Applications from providers of Public Electronic Communications Services</u></p> <p>If you are applying for Telephone Numbers as a provider of Public Electronic Communications Services, where appropriate Ofcom would usually expect your company to have already taken reasonable steps to obtain a sub-allocation of Telephone Numbers of the type you are applying for from a provider of a Public Electronic Communications Network.</p> <p>a) Have you taken steps to obtain a sub-allocation of Telephone Numbers of the type for which you are applying? If not, would you please provide a justification for that; and</p> <p>b) If you have taken steps, would you provide a brief description of the steps you have taken, and state why did you not obtain a sub-allocation?</p>	
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<p>A3. <u>Interconnection arrangements</u></p> <p>Describe your Interconnection arrangements (or those of the provider of a Public Electronic Communications Network on whose network the Telephone Numbers applied for would be Adopted), if any, with other Communications Providers – a simple network diagram may be useful.</p>	
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(You should e-mail this application form to numbering.applications@ofcom.org.uk)

Annex 10

Notification of a modification to General Condition 14 of the General Conditions of Entitlement

Modification of General Condition 14 of Part 2 of the General Conditions Notification, regarding Codes of Practice and Dispute Resolution (as amended) under section 48(1) of the Act

WHEREAS

- A. The Director General of Telecommunications issued the General Conditions Notification which took effect on 25 July 2003 by way of publication of a notification pursuant to section 48(1) of the Act.
- B. On 13 April 2005, OFCOM published a notification under section 48(1) of the Act, modifying General Condition 14, entitled 'Protecting citizens and consumers from mis-selling of fixed line telecommunications services'.
- C. On 19 April 2006, OFCOM published a notification under section 48(1) of the Act, modifying General Condition 14, entitled 'Providing citizens and consumers with improved information about Number Translation Services and Premium Rate Services'.
- D. On 29 March 2007, OFCOM published a notification under section 48(1) of the Act, modifying General Condition 14, entitled 'Regulation of VoIP Services'.
- E. On 22 May 2007, OFCOM published a notification under section 48(1) of the Act, modifying General Condition 14, entitled 'Protecting consumers from mis-selling of telecommunications services'.
- F. On 27 February 2009, OFCOM published a notification under section 48(1) of the Act, modifying General Condition 14, entitled 'Review of the 070 personal numbering range'.
- G. On 2 May 2008, OFCOM issued a notification pursuant to section 48(2) of the Act setting out their proposals for the modification of General Condition 14 (as amended) ("the First Notification").
- H. A copy of the First Notification was sent to the Secretary of State in accordance with section 50(1)(a) of the Act;
- I. In the First Notification and the accompanying consultation document, entitled 'Changes to 0870', OFCOM invited representations about any of the proposals set out therein by 16 June 2008.
- J. By virtue of section 48(5) of the Act, OFCOM may give effect to any proposal to modify General Condition 14 as set out in the First Notification, with or without modification, where:

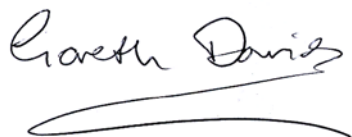
- (i) they have considered every representation about the proposals made to them within the period specified in the First Notification; and
 - (ii) they have had regard to every international obligation of the United Kingdom (if any) which has been notified to them for this purpose by the Secretary of State.
- K. OFCOM received 48 responses to the First Notification and have considered every such representation made to them in respect of the proposals set out in the First Notification and the accompanying consultation document; and the Secretary of State has not notified OFCOM of any international obligation of the United Kingdom for this purpose.

THEREFORE

1. OFCOM, in accordance with sections 48(1) of the Act, hereby modifies General Condition 14 on Codes of Practice and Dispute Resolution (as amended).
2. The modifications to General Condition 14 are set out in the Schedule to this Notification.
3. The effect of, and OFCOM's reasons for making the modifications referred to in paragraph 2 above is set out at Sections 2 and 4 of the accompanying explanatory statement 'Changes to 0870'
4. OFCOM considers that the modifications referred to in paragraph 2 above complies with the requirements of sections 45 to 50 of the Act.
5. In making the modifications set out in this Notification, OFCOM have 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. A copy of this Notification has been sent to the Secretary of State in accordance with section 50(1)(a) of the Act.
7. In this Notification (including the recitals and the Schedule) –
 - (i) “the Act” means the Communications Act 2003;
 - (ii) “General Conditions Notification” means as set out in the Schedule to the Notification under Section 48(1) of the Act published by the Director General of Telecommunications on 22 July 2003;
 - (iii) “OFCOM” means the Office of Communications.
8. Except insofar as the context otherwise requires, words or expressions have the meaning assigned to them in this Notification and otherwise any word or expression has the same meaning as in the Act.
9. For the purpose of interpreting this Notification, headings and titles shall be disregarded.
10. The Interpretation Act 1978 applies as if this Notification were an Act of Parliament.
11. The Schedule to this Notification forms part of this Notification.

12. The modification set out in the Schedule to the Notification takes effect on 1 August 2009, with the exception of the wording in square brackets, which takes effect on 28 August 2009 in accordance with the modification of 27 February 2009.

Signed by

A handwritten signature in black ink, appearing to read "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

23 April 2009

Schedule

Modifications to General Condition 14 on Codes of Practice and Dispute Resolution 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, as amended.

General Condition 14 on Codes of Practice and Dispute Resolution is modified as set out below:

1. The wording in General Condition 14.2 is deleted and replaced with the following text –

“Codes of Practice for Premium Rate Services, NTS Calls, calls to 0870 numbers [and calls to Personal Numbers]

14.2 Within two months of this Condition entering into force, all Originating Communications Providers who provide Premium Rate Services, NTS calls, calls to 0870 numbers [or calls to Personal 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, calls to 0870 numbers [and calls to Personal 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 Codes of Practice referred to at 14.2 (a) and (b) above.”

2. In General Condition 14.9 –

- (i) in paragraph (l) the words “and calls to 0870 numbers” shall be inserted after “call origination” in the definition of “NTS Calls”
- (ii) in the paragraph (m) the definition of “Originating Communications Provider” shall be replaced with the following –

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

3. The Annexes to General Condition 14 are modified as set out below (for clarity, new text and deletions are highlighted in yellow and shown underlined and struck out respectively) –

Annex 1 to General Condition 14

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 Calls on its website.**
- 3.43.2** 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 **the Independent Committee for the Supervision of Telephone Information Services (“ICSTIS”) PhonepayPlus** on the **ICSTIS PhonepayPlus** website (**www.icstis.org.uk** **www.phonepayplus.org.uk**);
 - b. dealing with formal complaints about abuses of service content, the **ICSTIS PhonepayPlus** Code of Practice and alleged scams.
- 3.23.3** In so doing Originating Communications Providers shall provide:

- (i) information about the role and remit of ICSTIS PhonepayPlus in dealing with complaints and how to go about making a formal complaint to ICSTIS 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 ICSTIS PhonepayPlus's website at www.icstis.org.uk 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

Guidelines for codes of practice for the publication of prices of calls to Number Translation Services, 0870 calls [and Personal Numbers]

- 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, 0870 calls [and calls to Personal Numbers] 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, 0870 calls [and calls to Personal Numbers].
- 2. Status of code**
- 2.1 All Originating Communications Providers who provide NTS Calls, 0870 calls [and calls to Personal Numbers] are required under General Condition 14.2 to establish a Code of Practice 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: published price lists and websites**
- 3.1 The Originating Communications Provider that is responsible for the retail billing of NTS Calls, 0870 calls [and calls to Personal Numbers] to the end-user shall publish the usage charges required to be published under General Condition 10.2(d)(ii) for NTS Calls, 0870 calls [and calls to Personal 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 shall 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) except where these are charged at the Originating Communications Provider’s geographic price including discounts and packages, usage charges for 0870 calls 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”;

~~(iii)~~(iv) usage charges for calls to Personal Numbers which include variations by time of day. For example, “070 calls are charged at x pence per minute or per call during weekday evenings inclusive of value added tax”;

(iv)(v) whether or not any special offers, discount schemes or call bundling arrangements apply to NTS Calls, **0870 calls** [and calls to Personal Numbers], including details of which of those arrangements apply to which number range;

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, **calls to 0870 numbers** [and calls to Personal 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, **calls to 0870 numbers** [and calls to Personal Numbers] in the relevant correspondence, a clear reference as to where on websites and published price lists the complete set of NTS Call, **0870 call** [and Personal Numbers call] charges, as specified in paragraph 3.2, can be found.

4.3 Wherever an Originating Communications Provider states **in their advertising or promotional material** a price for a call package or bundle which includes geographic calls the Originating Communications Provider must include **in that advertising or promotional material** a prominent statement indicating whether or not this price includes **NTS Calls 0870 calls** [and calls to Personal 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 consumers' 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, **calls to 0870 numbers** [and calls to Personal 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 for the Originating Communications Provider's compliance with the Code.

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 3 to General Condition 14

Guidelines for sales and marketing codes of practice for Fixed-Line Telecommunications Services

The following elements to be included within sales and marketing codes of practice

1. Introduction and overview

1.1 Objectives to be outlined:

- to provide Domestic and Small Business Customers (“Customers”) with protection from harmful conduct arising from irresponsible sales and marketing activity;
- to ensure good practice and responsible selling in the marketing of Fixed-line Telecommunications Services, and to help Customers understand the service and behaviour to be expected;
- to provide a clear framework within which responsible Communications Providers (“Providers”) should be working, providing reassurance to Customers and consumer representatives as to what constitutes good practice in the sales and marketing of Fixed-line Telecommunications Services.

1.2 The code to deal primarily with issues arising before, during and at the point of sale, with particular emphasis on the avoidance of mis-selling and misrepresentation, and ensuring customer understanding of the services offered and the key terms of any contracts they are entering into.

1.3 Procedures to be in place for sales and marketing staff, and agents, to be informed of the Codes of Practice for Sales and Marketing (“the Code”) and its contents, and for monitoring their compliance with it.

1.4 Procedures to be in place, and fully documented, for Customers and advice agencies to be made aware of the Code and its contents such as, for example, making reference to the Code in sales and marketing literature, as part of the Providers’ “notification of transfer” letter (referred to in paragraphs 6.11 and 6.12).

1.5 Codes to be drafted in plain English, and to be made available on public websites, and copies of it to be provided on request, and free of charge, to Customers.

1.6 A named person, responsible for compliance, with relevant contact details, including an e-mail address, to be provided.

2. Status of code

2.1 Codes to explain that Providers who engage in sales and marketing for Fixed-line Telecoms Services are required under General Condition 14.5 to establish the Code in accordance with these Guidelines, and comply with the provisions of the Code.

2.2 Codes to explain that compliance with the Code does not guarantee compliance with any legal requirement.

2.3 Codes to explain that 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. Sales, marketing advertising and promotion

- 3.1 Customer approaches may occur in a wide range of ways e.g. by TV, radio or press advertising, promotions in shops or shopping centres, post, fax, electronic mail, telephone or in person. Regardless of the way in which sales and marketing activities are conducted, Providers to act responsibly and compliantly.
- 3.2 Customers' legal rights and wishes to be respected where they have registered with any relevant preference service, including the Mailing Preference Service, the Telephone Preference Service, the Fax Preference Service and the E-mail Preference Service.
- 3.3 Advertising and promotion to comply with the British Codes of Advertising and Sales Promotion and all other applicable advertising codes. In addition, advertising and promotional literature to be clear, unambiguous, accurate and fair, containing no false or misleading information about price, value or service and, in particular, must not denigrate other Providers.

4. Recruitment and sales training

- 4.1 Appropriate procedures to be set up for the selection of staff involved with direct contact with customers for the purposes of sales and marketing activity.
- 4.2 Providers to be responsible for ensuring that sub-contractors (third party agencies) also set up equivalent selection procedures. Third party agencies shall not include resellers to whom telephony services are sold on a wholesale basis.
- 4.3 Whilst operating within current employment legislation, recruitment of sales staff to have regard to:
- behaviour and appearance, recognising that the sales person may be seen as the "public face" of the industry;
 - security – references and relevant convictions for criminal offences to be checked and taken into account;
 - evidence of mis-selling or lack of integrity in any previous selling employment.
- 4.4 The following requirements related to sales staff based in the UK to be observed:
- the applicant must provide proof of National Insurance number, proof of address and two references;
 - referees cannot be related to the applicant;
 - business referees must not both be from the same company;
 - if a sales person leaves for any reason a copy of his or her sales records (including all recordings and notes on sales) will be retained for a minimum period of six months;
 - reasonable endeavours to be made to retrieve the identification badges of staff leaving the company.
- 4.5 For sales-staff not based in the UK, equivalent procedures to be applied, and documented.

4.6 Providers to satisfy themselves that they have taken reasonable steps to ensure that every such person is trained so as to have a sufficient understanding that any relevant advice given by such person is not misleading. Topics covered to include:

- arrangements for competition in the supply of telecommunications in the UK;
- the different telephone options provided by the company and how these differ from other competitive telecoms products (which may or may not be offered by the company); for example, Indirect Access, Carrier-Pre Selection, Wholesale Line Rental or Wholesale Calls;
- the process for ordering the telephone service;
- the relevant principles of consumer protection law;
- the prices charged by the employing company and its other terms and conditions of service and, in particular, methods of payment, duration of contract and any termination fees;
- the nature, and cost, of any additional services on offer;
- the process for cancelling the contract both during the cooling-off period and at any time following commencement of the service;
- the existence of the sales and marketing Code of Practice and the benefits provided; and
- the procedure for handling customer complaints.

4.7 Responsibility for compliance with the Code by representatives, and any sales agency acting on their behalf, to lie with the Provider. The Provider to identify the title of the person accountable for ensuring that the company and its agents observe the Code, and the title of the person responsible for handling complaints relevant to the code.

4.8 Remuneration systems, to be documented, and not to be such as to encourage misleading or exploitative sales practices. The Provider to be kept informed of incentive schemes used by any agencies it employs for sales and marketing.

5. **Customer contact**

5.1 Discretion to be used when visiting consumers' homes, particularly during the hours of darkness. No face to face contact to be made outside the hours of 08.00 to 20.00, and no telephone calls to be made outside the hours of 08.00 to 21.00, unless at the customer's request

5.2 Representatives involved in face-to-face sales and marketing to be issued with identity badges that clearly display the name of the Provider they represent and a unique identification number for that representative. The identity badge to also display the representative's name, a photograph of the representative and an expiry date for validity of the card. The information on the card to be presented in such a way that does not require close examination. Identity cards must also be made available with key information in Braille, on request

- 5.3 All representatives to immediately identify themselves, the company they represent and the purpose of the call and the expected call duration. If visiting or meeting in person, they should draw the Customers' attention to their identity card.
- 5.4 Reasonable steps to be taken to keep informed of local authority initiatives, password schemes etc, such as the Local Distraction Burglary Initiative.
- 5.5 All representatives to be courteous, use appropriate language and offer clear and straightforward explanations. All information should be factual and accurate. Representatives should not misrepresent the services being offered by the Provider nor those of other Providers. Representatives should not engage in conduct that misleads or deceives or is likely to mislead or deceive Customers. Representatives to ensure that Customers entering into contracts understand, and intend to enter into them.
- 5.6 Representatives to cease contact with any person who indicates that the contact is inconvenient, unwelcome, inappropriate or too long. If the Customer requests it, the discussion to be ended immediately and, if making a doorstep call, the premises to be left immediately.
- 5.7 Representatives not to abuse the trust of vulnerable Customers e.g. those who are elderly or whose first language is not English, or who have special needs. Providers should have a policy regarding such Customers, including that their representatives do not pursue sales presentations to Customers whom they believe may be vulnerable.
- 5.8 Where there is sheltered housing, nursing homes or residential care facilities contact to be made with the warden or other person in authority before any approach is made to the Customer.
- 5.9 No sales or marketing activity to be conducted that is directed to those who are under the legal age for entering into contracts.
- 5.10 Sales and marketing campaign records to be maintained for six months, including the date and the approximate time of the contact with the Customer. Records to be such as to allow subsequent identification of the salesperson(s) involved and to assist in dealing with any complaint or query.

6. Entering into a contract – information, order forms and contracts

- 6.1 All reasonable steps to be taken to ensure that the person entering into a contract is authorised to enter into the contract for the Fixed-line Telecommunications Services/bills at the premises, and that the person entering into a contract understands, and intends to enter into the contract (i.e. explicit consent of the Customer is obtained before transferring a line).
- 6.2 Order forms and contract forms to be designed such that the contractual nature of the document is clear to the Customer, and it contains a statement of the contractual nature of the document immediately adjacent to where the Customer signs the document so the statement cannot easily be obscured or concealed. Customers to sign over the word "contract".
- 6.3 The Customer to be given the information set out in this paragraph, in writing, and during the sales call, in a clear, comprehensible, prominent and accurate manner.

- essential information including the identity of the company, its address, telephone, fax and e-mail contact details, as appropriate;
 - a description of the telephone service sufficient to enable the customer to understand the option that the customer has chosen, and how it works;
 - information about the major elements of the service, including the cost of any standing charges, the payment terms, line rental, key call types and details of “protected or special support” arrangements;
 - the arrangements for provision of the service, including the order process and, as accurately as possible, the likely date of provision. Where there may be significant delay in the likely date of provision, the Customer to be informed;
 - the existence of a right of cancellation, the duration of the switchover period during which time that right may be exercised and the process for exercising it;
 - the period for which the charges remain valid; and
 - any minimum period of contract, minimum contract charges, and any early termination charges, if applicable.
- 6.4 Customers to be made aware of the existence of the Code, and preferably provided with a summary. Copies of it to be provided on request, and free of charge, to Customers.
- 6.5 At the Customers request, full written information about tariffs to be made available.
- 6.6 If a Customer signs an order form following face to face contact, or enters into a written contract, the customer must be given a copy of the order form or contract, as well as the following details in writing either at the same time or within 5 working days, unless previously supplied in writing prior to contract:
- Information about any after-sales services or guarantees; and
 - Arrangements for the termination of the contract.
- 6.7 Orders placed by distance selling means to comply with Distance Selling Regulations, which are set out in the table below.
- 6.8 In the case of internet orders, a well sign-posted hyperlink to this information which is easily visible to the web site visitor to be prominently displayed with the information being capable of being easily downloaded and printed.
- 6.9 During the switchover period (i.e. the period before a Customer’s order can be activated) there should be “no cost” cancellation for Customers where they change their mind. Customers to be made aware that they have the right to change their mind during the switchover period.
- 6.10 Customers to be permitted to cancel orders and terminate contracts by telephone, in writing, by fax or by e-mail.
- 6.11 Providers to send a mandatory letter in accordance with the industry-agreed process informing the customer of the details of the transfer, and the following to be clearly communicated:

- date of notification;
- CLI(s) affected;
- list of services affected/unaffected, e.g. IA call barring;
- date of switchover;
- the sender's contacts details for any queries.

6.12 The notification will be by letter although may be sent electronically where Customers have initiated contact by applying online, and have confirmed online that they wish all future correspondence to be sent electronically. Otherwise Customers would need to positively request by written correspondence that information be sent electronically.

6.13 Providers to keep under review the procedures by which contracts are agreed and to take appropriate steps to prevent recurrence of any problem identified.

6.14 In all cases, Customers to be contacted along similar timescales to the industry-agreed process described in paragraph 6.11 to confirm that the Customer understands that they have entered into an agreement, are happy to proceed with the agreement and are content with the way in which the sales and marketing activity was conducted.

6.15 Such Customer contact to be either part of the mandatory Customer "notification of transfer" letter referred to in paragraph 6.11 or through a separate process. This contact to be made by a person not engaged directly in activities leading to the promotion of sales contracts.

6.16 If it is found that the contract was not understood or intended, or if the order matured before the expiry of the switchover period, and the Customer wishes to cancel, Providers to terminate the contract without charge or other penalty to the Customer.

7. **Consumer protection and other legal requirements**

7.1 Procedures to comply with all applicable legislation and appropriate amendments (see table below for examples).

8. **Audit**

8.1 Providers to carry out regular audits of systems, procedures and documentation to ensure that they are acting compliantly with all aspects of the Code.

9. **Customer complaints procedure**

9.1 Providers' internal procedures for handling Customer complaints to also include those relating to their sales and marketing activities. Providers to ensure that all their staff and representatives who deal directly with Customers are made aware of this procedure, and that they should inform Customers of the existence of their complaints procedure in accordance with their current obligations.

9.2 The complaints procedure to set out how Customers may complain about the company's sales and marketing activity and what further steps are available if they believe their complaint has not been dealt with satisfactorily.

9.3 In addition, Customers also to be made aware of any dispute resolution arrangements as recognised by Ofcom. Currently Ofcom has approved two schemes: the Office of

the Telecommunications Ombudsman (“Otel0”) and the Communications and Internet Services Adjudication Scheme (“CISAS”).

9.4 Providers to liaise regularly with Ofcom and the relevant consumer groups to monitor the number and nature of complaints under its code.

10. **Distributing the code: creating awareness**

10.1 The Code to be available to Customers on request, free of charge and in a reasonable range of formats, and to be made available on the Provider’s public website.

Legislation of particular relevance to sales and marketing of particular telephony products

Particular attention is drawn to the following regulations (as amended, where appropriate), in addition to all other appropriate consumer protection law and advertising Codes of Practice

	Title	Comment
1.	The Unfair Terms in consumer Contracts Regulations 1999 SI 1999 No 2083	<ul style="list-style-type: none"> introduces controls over unfair standard terms in contracts with consumers requires written contracts with consumers to be in plain, intelligible language
2.	The Consumer Protection (Cancellation of Contracts Concluded away from Business Premises) Regulations 1987 SI 1987 No 2117	<ul style="list-style-type: none"> requires that written notice of cancellation rights (min 7 days) in prescribed form is given to consumers entering into contracts at their homes or in other places (e.g. shopping precincts)
3.	The Consumer Protection (Distance Selling) Regulations 2000 SI 2000 No 2334	<ul style="list-style-type: none"> requires extensive information to consumers before and after consumers enter into contracts using channels of marketing such as direct response press or TV adverts, telemarketing, mail order, etc requires cancellation rights (min 7 working days) to be given to consumers, starting from the date of delivery of prescribed information provides that making demands for payment for services not ordered by consumer is a criminal offence
4.	Various Misleading Advertising Regulations	
5.	Consumer Protection Act 1987 (Part III)	

<p>6.</p>	<p>Consumer protection legislation</p>	<p>Civil responsibilities</p> <ul style="list-style-type: none"> • Misrepresentation Act 1967 • Unfair Contract Terms 1977 • Sales of Goods Act • Supply of Goods and Services Act 1982 • Consumer Protection 1987 • Sale and Supply of Goods Act 1994 • Control of Misleading Advertising Regulations 1988 SI 1988 No 915 • Consumer Protection (Cancellation of Contracts concluded away from Business Premises) Regulations 1987 SI 1987 No 2117 • Unfair Terms in Consumer Contracts Regulation SI 1999 No 2083 <p>Criminal liabilities</p> <ul style="list-style-type: none"> • Trade Descriptions Acts 1968 • Administration of Justice Act 1970 • Fair Trading Act 1973 • Price Act 1974 • Consumer Protection Act 1987 (Parts II, III, IV and V) • Consumer Protection (Cancellation of Contracts concluded away from Business Premises) Regulations 1987 SI 1987 No 2117 • Consumer Protection (Distance Selling) Regulations 2000 SI No 2334
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Annex 4 to General Condition 14

Code on the provision by Service Providers of consumer information to Domestic and Small Business Customers for the provision of Services

Provision

1. This code (the 'Code') sets out the minimum requirements for all Service Providers to ensure that their Domestic and Small Business Customers are provided with information about any feature and/or limitation in that Service Provider's Service that differs from a Publicly Available Telephony Service provided over the Public Telephone Network, in the ways set out in paragraph 4 below.
2. Different sections of the Code may be applicable to different Service Providers, depending on what Services the Service Provider is providing.
3. These requirements are in addition to the information required to be made available by the Service Provider under the General Conditions of Entitlement and any Codes of Practice set under the General Conditions of Entitlement.

Scope

4. The Code requires the Service Provider to provide information to its Domestic and Small Business Customers on:
 - a) service reliability;
 - b) Emergency Calls;
 - c) the ability to Port Numbers; and,
 - d) Other information for Domestic and Small Business Customers.

Service Reliability

5. Each Service Provider shall provide to its Domestic and Small Business Customers clear and readily accessible information regarding whether its Service may cease to function if there is a power cut or power failure, or a failure of the Broadband Connection.
6. The information in paragraph 5 above shall be provided during the Sales Process, within the Terms and Conditions of Use, and in any User Guide issued by the Service Provider.
7. The following text is an indicative example of the information to be provided in paragraph 5 above, that can be adapted to the specific requirements of Service Providers:

"IMPORTANT INFORMATION: If your Broadband Connection fails, your voice service will also fail. Your service may cease to function if there is a power cut or failure. These failures may be caused by reasons outside our control."

Emergency Calls

8. Some Services may not offer any access to Emergency Calls or access to Emergency Calls may be offered by the Service Provider over its Service but the reliability of this access may be affected by a power cut or power failure, or by failure of the Customer's Broadband Connection.
9. This section is intended to ensure that Service Providers provide their Domestic and Small Business Customers with relevant information about their ability to make Emergency Calls.

No Access to Emergency Calls

10. Where the Service provided by the Service Provider does not provide access to Emergency Calls, the Service Provider shall:
 - a) provide the Domestic and Small Business Customers, clear and readily accessible information at the Point of Signature, in the Terms and Conditions of Use and in any User Guide; that its Service does not provide access to Emergency Calls. The same information must also be provided to prospective Domestic and Small Business Customers as part of the Sales Process;
 - b) take reasonable steps to ensure that Domestic and Small Business Customers acknowledge in the form of a signature (or online equivalent), at the Point of Signature, that they understand that the Service will not provide any access to Emergency Calls, (the following text is an example of the wording that could be used):
 - a) "I understand that this service does not allow calls to the emergency services numbers 999 and 112."
 - c) provide evidence to Ofcom of the acknowledgement in paragraph 10 (b) above, within five working days; following a written request from Ofcom;
 - d) as part of the Terms and Conditions of Use, supply its Domestic and Small Business Customer with a clear and readily accessible printed statement, or an on-screen statement that the Domestic and Small Business Customer is encouraged to print out, that Emergency Calls cannot be made using the Service;
 - e) during the Sales Process, give the Domestic and Small Business Customer the choice whether to receive Labels (at no charge, other than reasonable postage and packaging if applicable) which state that Emergency Calls cannot be made using the Service, and recommend that the Domestic and Small Business Customer use these Labels on or near the relevant Service Access Terminal;
 - where a screen or display is used with the Service, a Label could be an on-screen message or display using a clear and readily accessible graphic, words or icon that Emergency Calls cannot be made using the Service; or
 - in these and other circumstances a Label could be (at the Customer's choice) either a piece of paper to be attached to the Service Access Terminal or software facilities for producing such labels (e.g. a PDF file).

- f) if Emergency Calls are made from the Service Access Terminal, provide a network announcement stating (for example):

“Calls to Emergency Services cannot be made from this handset; please hang up and call from an alternative telephone service such as a traditional landline or mobile phone.”

- g) This announcement shall be interspersed with a Number Unavailable Tone for the benefit of hearing-impaired users.

Reliability of Access to Emergency Calls

11. Where the Service Provider provides access to Emergency Calls but the Service may cease to function if there is a power cut or failure or a failure of the Broadband Connection the Service Provider shall:
- a) provide its Domestic and Small Business Customers with clear and readily accessible information, during the Sales Process, in the Terms and Conditions of Use and in any User Guide; that, although access to Emergency Calls is provided, the Service may cease to function if there is a power cut or failure, or a failure of the Broadband Connection;
 - b) take reasonable steps to ensure that Domestic and Small Business Customers acknowledge in the form of a signature (or online equivalent), at the Point of Signature, that they understand that Emergency Calls will fail if there is a power cut or failure, or a failure of the Broadband Connection, (the following text is an example of the wording that could be used):

“I understand that this service allows calls to the emergency services numbers 999 and 112. However I understand that calls will fail if there is a power cut or my broadband connection fails.”

- c) provide evidence to Ofcom of the acknowledgement in paragraph 11 (b) above, within five working days; following a written request from Ofcom;
- d) during the sales process, give the Domestic and Small Business Customer the choice whether to receive (at no charge other than reasonable postage and packaging if applicable), Labels which state that Emergency Calls may fail:
 - where a screen or display is used with the Service, a Label would normally be an on-screen message or display using a clear and readily accessible graphic, words or icon that Emergency Calls cannot be made using the Service; and
 - in other circumstances a Label would normally be (at the Customer’s choice) either a piece of paper to be attached to the Service Access Terminal or software facilities for producing such labels (e.g. a PDF file).

Emergency Location Information

12. In respect of Emergency Location Information:
- a) where the Service provided by the Service Provider does provide access to Emergency Calls and the Service is to be used principally at a single fixed location, the Service Provider shall require its Domestic and Small Business

Customers to register with it the address of the place where the Service is going to be used prior to activation of the Service (the location information), so that up-to-date location information can be used for Emergency Location Information;

- b) where the Service Provider has reasonable expectation that, or has been informed that, the service is to be accessed from several locations, the Service Provider shall recommend that its Domestic and Small Business Customers register and update the location information with it, whenever accessing the Service from a new location, so that up-to-date information can be used for Emergency Location Information;
- c) the Service Provider shall advise its Domestic and Small Business Customer at the Point of Signature, in any User Guide, and in any Terms and Conditions of Use of any limitations on the location information that will be provided to the Emergency Services as Emergency Location Information, if the location information they have provided is not up-to-date. This advice shall be clear and readily accessible;
- d) where the Service Provider does not provide Emergency Location Information, it shall provide clear and easily accessible information to this effect to all Domestic and Small Business Customers at the Point of Signature, in any User Guide, and in any Terms and Conditions of Use. The same information shall also be made available to prospective Domestic and Small Business Customers as part of the Sales Process.

Ability to Port Numbers

13. Where the Service Provider does not offer Number Portability, the Service Provider shall provide clear and readily accessible information to its Domestic and Small Business Customers in any User Guide and the Terms and Conditions of Use to this effect. The same information shall also be provided to prospective Domestic and Small Business Customers as part of the Sales Process.

Other information for Customers

14. In addition to the requirements set out above, the information describing the Service made available by a Service Provider to a prospective Domestic and Small Business Customer shall make it clear and readily accessible as part of the Sales Process if any of the following facilities or features are not available by means of the Service:
 - access to a Directory Enquiry Facility;
 - access to operator assistance services (as described in General Condition 8.1);
 - Calling Line Identification Facilities;
 - provision of a Directory on request;
 - special measures for end users with disabilities (as described in General Condition 15); and
 - the non-itemisation of calls which are made from a Subscriber's telephone which are free of charge.

15. The Service Provider shall also make clear and readily accessible, any restrictions on the Number Ranges or Country Codes that may be called using the Service. Where such numbers cannot be dialled, it is recommended that dialling such numbers should produce the standard Number Unavailable Tone.

DEFINITIONS

For the purposes of the Code, the definition of the following terms is:

'Broadband Connection' means the Domestic or Small Business Customer's broadband service which provides speeds which are higher than those attainable over a dial up connection which are 56kbit/s over an analogue line; 64kbit/s over an ISDN2 digital channel and 128kbit/s over the two bonded channels of an ISDN2 line;

'Calling Line Identification Facilities' means facilities by which the Telephone Number of a calling party is presented to the called party prior to the call being established;

'Country Codes' means the international dialling code e.g. 44 for the UK;

'Emergency Calls' means calls to 999 or 112 or its equivalent;

'Emergency Location Information' means information concerning the location from where a call to the Emergency Organisations can be made, that is provided by Service Providers to Emergency Organisation's Operators as part of the handling of such a call;

'Internet Protocol' means the method by which data is sent over the internet or intranet;

'Label' means a mechanism for annotating a Service Access Terminal with a brief message. A Label can consist of an electronic notice that is displayed whenever the Service is used or (at the Customer's choice) either a piece of paper to be attached to the Service Access Terminal or software facilities for producing such labels (e.g. a PDF file);

'Number Portability' the facility by which a Domestic and Small Business Customer can transfer their Telephone Number when switching between Service Providers;

'Number Ranges' means a set of contiguous numbers of a specified or unspecified size;

'Number Unavailable Tone' means a continuous tone which differs from dial tone and indicates a dialled number is unavailable or out of service;

'Point of Signature' means the point in the process of concluding a contract immediately before the Domestic and Small Business Customer indicates his/her agreement to enter into the contract;

'Port Numbers' means the process to transfer Telephone Numbers to a new Service Provider;

'Sales Process' means the process of providing information to the prospective Domestic and Small Business Customer about the Service and of establishing the Domestic and Small Business Customer's requirements for the Service before the making of the contract to provide that Service. This includes leaflets and marketing material. It does not include advertisements;

'Service Access Terminal' means the equipment used to access the Service;

'Terms and Conditions of Use' means the contract agreed by the Domestic and Small Business Customer for the provision of the Service;

'User Guide' means the document giving the Domestic and Small Business Customer information about how to use the Service. This does not include any document concerned solely with the operation of a Service Access Terminal.

Annex 11

Glossary

- A11.1 **Communications Act 2003 ('the Act')**: This established Ofcom, set out its duties, and the powers which Ofcom has to discharge those duties.
- A11.2 **Communications Provider ('CP')**: a Person who provides an Electronic Communications Network or Electronic Communications Service.
- A11.3 **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.
- A11.4 **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.
- A11.5 **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.
- A11.6 **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 Surftime 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.
- A11.7 **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.
- A11.8 **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).
- A11.9 **PSTN**: Public Switched Telephone Network is an electronic communications network comprised of the interconnection of the world's circuit-switched public telephone networks.
- A11.10 **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.

A11.11 **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.