



Dispute between TelNG and Three regarding TelNG's compliance with GC17 and the NTNP

This version is non-confidential.
Confidential redactions are
indicated by [✂]

Publication date:

Final
Determination
22 July 2016

About this document

This document sets out our final determination for resolving a dispute between TelNG and Three regarding whether or not TelNG's UK03 service, which enables customers to call international destinations using 03 numbers, involves revenue-sharing in contravention of the requirements of the National Telephone Numbering Plan and therefore General Condition 17.

General Condition 17 places obligations on communications providers in relation to the use of telephone numbers. These include a requirement to comply with the National Telephone Numbering Plan which, in relation to the 03 number range, prohibits communications providers from directly or indirectly sharing with any end-users or calling parties any revenue obtained from providing a service on those numbers.

Contents

Section		Page
1	Summary	4
2	The Dispute	7
3	Analysis and provisional conclusions	13
4	Responses and our final conclusions	22
Annex		Page
1	Determination to resolve a dispute between TeING and Three	32

Glossary of terms

AIT: Artificial inflation of traffic.

CP: Communications provider.

December 2014 Statement: 'The 03 Number Range. Decision to clarify that revenue-sharing with callers is prohibited on the 03 number range', 11 December 2014. See: <http://stakeholders.ofcom.org.uk/binaries/consultations/03-modification/statement/statement.pdf>.

Dispute: This regulatory dispute, opened on 1 April 2016, between TelNG and Three concerning whether the TelNG UK03 service is compliant with the National Telephone Numbering Plan.

February 2007 Statement: 'Raising confidence in telephone numbers. Including new 'UK-wide' 03 numbers and a consultation to amend General Condition 17', 13 February 2007. See: <http://stakeholders.ofcom.org.uk/binaries/consultations/numbering03/summary/03.pdf>

Final Determination: This document.

NTNP: The National Telephone Numbering Plan, the most recent version of which was published by Ofcom on 1 July 2015. See: http://stakeholders.ofcom.org.uk/binaries/telecoms/numbering/Numbering_Plan_July2015.pdf

OCP: Originating communications provider.

Parties: TelNG and Three.

Provisional Conclusions: Ofcom document entitled "*Dispute between TelNG and Three regarding TelNG's Compliance with GC17 and the NTNP. Provisional Conclusions*", dated 1 June 2016.

SIA: BT's Standard Interconnect Agreement (available on www.btwholesale.com).

SP: Service provider.

Submission: Dispute submission from TelNG dated 20 February 2016 and supplemented on 1 March and 9 March.

TCP: Terminating communications provider.

TelNG: TelNG Limited, whose registered company number is 05503631.

The Act: The Communications Act 2003.

Three: Hutchison 3G UK Limited whose registered company number is 3885486 trading under the name of 'Three'.

UK03 service: The service offered by TelNG Limited that provides customers with 03 numbers which can be routed to international destinations. See: www.uk03.co.uk.

Section 1

Summary

- 1.1 This document (the “Final Determination”) sets out Ofcom’s determination to resolve the matters in dispute.
- 1.2 The dispute was brought by TelNG Limited (“TelNG”) regarding a decision by Hutchison 3G UK (“Three”) to treat TelNG’s UK03 service,¹ an international call through service using 03 numbers, as involving revenue-sharing in contravention of the National Telephone Numbering Plan (“NTNP”) and, as a result, of General Condition 17 (“GC17”).
- 1.3 When we first opened the 03 number range, we made it clear that revenue-sharing with end users was not permitted for 03 numbers and amended the NTNP to reflect this.² In December 2014³ we published a statement (the “December 2014 Statement”) to clarify that callers are end-users with respect to 03 calls and therefore that communications providers (“CPs”) are prohibited from sharing with callers any revenues they receive, directly or indirectly, from calls to 03 numbers. The statement also includes a non-exhaustive list of examples of direct and indirect revenue-sharing.
- 1.4 TelNG argued in its submission that the UK03 service does not constitute revenue-sharing as the calling party is paying for a call, and receives no benefit other than being able to complete a call.⁴ Three argued the service does involve revenue-sharing, as TelNG uses the termination charge it receives from terminating the 03 call to pay for an international call, which Three considers to be an additional service.

Scope

- 1.5 The scope of the dispute is “*whether TelNG’s UK03 service is compliant with GC17 and the National Telephone Numbering Plan*”.
- 1.6 Details of the dispute, its scope, the Provisional Conclusions and non-confidential versions of comments made by the parties and other stakeholders can be found in Ofcom’s Competition and Consumer Enforcement Bulletin.⁵

Provisional Conclusions

- 1.7 Having gathered evidence from the Parties and carried out an assessment of the issues, we provisionally concluded that revenue-sharing, as that term is used in the NTNP, does take place on the UK03 service.

¹ Further details about the UK03 service can be found in Section 3.

² National Telephone Numbering Plan – available at:

http://stakeholders.ofcom.org.uk/binaries/telecoms/numbering/Numbering_Plan_July2015.pdf. The restrictions on the adoption and use of 03 numbers are set out in paragraphs B3.2.1-B3.2.3.

³ ‘The 03 Number Range: Decision to clarify that revenue-sharing with callers is prohibited on the 03 number range’ (the “December 2014 Statement”). See

<http://stakeholders.ofcom.org.uk/binaries/consultations/03-modification/statement/statement.pdf>.

⁴ Dispute submission dated 20 February 2016.

⁵ http://stakeholders.ofcom.org.uk/enforcement/competition-bulletins/closed-cases/all-closed-cases/cw_01177/

- 1.8 We explained that 03 numbers are intended to be used to provide organisations with a national, UK, presence. By using the numbers to allow callers to make an international call, TeiNG is providing an additional service. As there are no other revenue streams associated with the UK03 service, this additional service can only be funded by the revenue received by TeiNG for terminating the 03 call. The December 2014 Statement makes clear that the funding of additional services from the payments received from 03 calls constitutes revenue-sharing and is therefore prohibited by the NTNP and not compliant with GC17. We therefore considered that TeiNG should cease providing the UK03 service in its current format, and proposed that we would make a formal declaration to that effect.
- 1.9 We published our Provisional Conclusions on 1 June 2016 and allowed interested parties two weeks to comment.

Final determination

- 1.10 In response to the Provisional Conclusions TeiNG and Three, as well as one interested party, provided comments.
- 1.11 In its response TeiNG did not agree with our analysis and argued, amongst other things, that the international call-through service is compliant with the NTNP and GC17, that the funding of the international call can properly be viewed as coming out of the overall international call-through service revenues⁶, of which the 03 termination revenue is a very small part, and that our decision is expanding the classes of service which are not permitted to be provided on 03 numbers.
- 1.12 We do not consider it appropriate to look at international call through services as a whole in the way suggested by TeiNG. We consider that calls to 03 numbers are quite separate from calls to 084 and 087 numbers and note that TeiNG's comments appear inconsistent with evidence it has previously provided, which suggest that TeiNG's intention is for the calls on the 03 number range to be self-funding. In drawing our conclusions that the service involves revenue share we are not adding any restrictions to those already in place and have simply assessed whether TeiNG's use of 03 numbers complies with the existing regulations.
- 1.13 Having reviewed the comments received from stakeholders, we do not consider it appropriate to depart from the Provisional Conclusions to make our final determination to resolve this dispute.
- 1.14 We therefore remain of the view that TeiNG's UK03 service involves the provision of an additional service that is funded by the sharing of revenue from 03 calls and that it is therefore inconsistent with the requirements of the NTNP and GC17. Specifically, we conclude that:
- 1.14.1 TeiNG's UK03 service is providing an additional service to the use of the 03 number, in the form of an international call;
 - 1.14.2 TeiNG is using the termination revenue from the 03 call to fund, in whole or in part, the international call and that this constitutes revenue-sharing, contrary to the requirements of the NTNP and GC17.4; and

⁶ TeiNG also offers international call-through on 084 and 087 numbers which can be accessed via TeiNG's website (www.UK03.co.uk).

- 1.14.3 TeiNG should take immediate steps to ensure that it brings itself into compliance with the NTNP and GC17.
- 1.15 Consequently our final determination (attached in Annex 1) sets out that:
 - 1.15.1 TeiNG is obliged to ensure that its UK03 service complies with the NTNP and GC17 in its use of numbers from the 03 range;
 - 1.15.2 the UK03 service in its current form does not comply with that obligation; and
 - 1.15.3 In light of our determination that the UK03 service's use of 03 numbers contravenes GC17, continuation of the service using the 03 number range would be considered a breach of GC17.
- 1.16 It should be noted that the analysis carried out in this dispute, and the conclusions drawn, relates to the specific circumstances under which 03 numbers are used as part of TeiNG's UK03 service. Any other service offered, by TeiNG or any other CP, on the 03 number range would need to be considered on its own merits on a case by case basis.

Structure of the remainder of this document

- 1.17 The background to and details of the dispute, including a summary of the parties' original submissions, are set out in **Section 2**. Our analysis and reasoning behind the provisional conclusions are set out in **Section 3**. Section 2 and 3 are largely unchanged from the Provisional Conclusions document. **Section 4** sets out the comments received from parties and our final conclusions and determination to resolve this dispute, including setting out the rights and obligations of the parties to the dispute.

Section 2

The Dispute

Background to the dispute

- 2.1 TeING and Three have previously been in dispute about matters relating to TeING's use of the 03 number range and TeING has previously sought to refer these disputes (with somewhat different scopes to the present dispute) to Ofcom.
- 2.1.1 In November 2014 Ofcom declined to handle a dispute relating to Three blocking calls to TeING 03 numbers that Three considered constituted artificial inflation of traffic ("AIT"). This decision was on the basis that the grounds on which it was brought were essentially contractual as between Three and TeING.
- 2.1.2 In March 2015 Ofcom declined to handle a dispute relating to two call through services run by TeING on the 03 number range, which offered calls to international numbers and to 0800 numbers for the price of an 03 call. Ofcom considered that there were alternative means for resolving the dispute due to imminent changes in applicable regulation for 0800 numbers and the fact that contractual AIT dispute proceedings were underway under the Standard Interconnect Agreement ("SIA") in relation to the international call through service.
- 2.2 The present dispute between the parties relates to the UK03 international call through service, and in particular the use of 03 numbers within this service, with TeING asking Ofcom to determine whether it involves revenue-sharing in contravention of the NTNP and GC17.

The parties to the dispute

- 2.3 TeING describes itself as being a "provider of inbound numbering, IVR^[7] services, SIP trunks^[8] and wholesale termination" and states that it "operates its own IP-based network in the UK to enable their provision" and interconnects with BT. It is a provider of both public electronic communications networks and services.
- 2.4 Three is a mobile network operator providing mobile telephony services in the UK. Three owns and operates its own telecommunications network, offering wholesale and retail services to both business and residential customers.

Submissions made by the parties

TeING

- 2.5 In its dispute submission dated 20 February 2016, TeING explained that it was in dispute with Three regarding whether the UK03 service involves revenue-sharing in breach of the NTNP. TeING's position was that it does not as the calling party pays for the call and receives no benefit other than being able to complete the call.

⁷ Interactive Voice Response.

⁸ Session Initiation Protocol (SIP) - a Voice over Internet protocol (VoIP) service.

- 2.6 It explained that commercial negotiations with Three had failed and that Three was withholding revenue from TelNG under the conditions set out in Annex E of the BT SIA, which relate to AIT.⁹
- 2.7 TelNG therefore requested that Ofcom resolve this dispute by determining whether or not TelNG's UK03 service involves revenue-sharing and is therefore in breach of the NTNP.
- 2.8 TelNG has not sought a specific remedy. However, were Ofcom to make a declaration that TelNG's UK03 service was compliant with the NTNP, this would appear to remove the basis for Three's withholding of revenue. Likewise, a declaration that TelNG's UK03 service is not compliant with the NTNP would lead to the service stopping, at least on the 03 number range. TelNG has stated that "*should Ofcom determine that TelNG's UK03 service is contrary to the NTNP, TelNG will of course cease to provide the service*".¹⁰
- 2.9 In its response to an information request under section 191 of the Communications Act 2003 (the "Act") on 3 May 2016, TelNG made various observations with regards to whether or not its UK03 service involves revenue-sharing and the possible consequences of a conclusion that it does.
- 2.10 TelNG noted the concerns about revenue-sharing that Ofcom had raised in the December 2014 Statement,¹¹ but argued that it is relevant that: (i) UK03 is a genuine communication service, (ii) there are no circumstances where this service provides the caller with anything other than the call, and (iii) it does not artificially inflate traffic in the network as evidenced by the average call to the service being just over six minutes in duration (i.e. consistent with normal use to make international calls).
- 2.11 TelNG also noted Ofcom's comments in the December 2014 Statement about indirect revenue-sharing. TelNG argued that in relation to the UK03 service:
- callers are paying only for the call;
 - the B-leg (from TelNG to the call recipient) is an integral part of the call, and its provision cannot be viewed as an "additional service";
 - none of the other statements made in the December 2014 Statement in relation to indirect revenue-sharing apply to the UK03 service; and
 - none of the examples in the statement support Three's claim that TelNG's service provides indirect revenue-sharing with end-users within that term's intended meaning.
- 2.12 TelNG additionally argued that, although not directly relevant to this dispute, it is worth examining the effect of expanding the scope of the meaning of "indirect revenue share" to cover the prohibition of using the termination revenue from 03 calls to provide anything other than the A-leg of the call – that from the caller to TelNG. In doing so TelNG identified a number of examples of what it sees as innovative and cost-saving services provided today on 03 numbers at no additional cost to the end-

⁹ Available via www.btwholesale.com.

¹⁰ TelNG's dispute submission.

¹¹ See paragraphs 1.3 and 1.4 of the December 2014 Statement.

user which, in its view, would have to cease or change business models. These included:

- Conference calling – providers have automated conference calling and driven costs down far enough that providers can now offer commercially viable conference calling on 03 with no further billing;
- Smart routing – used, for example, to route an 03 number to one of a number of locations based on the calling party's location; and
- 03 numbers – to, for example, provide a business with an 03 number mapped to a geographic number to give them a national presence at no extra cost.

2.13 Finally, TelNG noted that, although it could use a 084x number to provide the service, typical call charges for these numbers of between 10p and 45p per minute mean that the cost to the caller is such that it no longer makes sense to use the service.

Three

2.14 In its response to TelNG's dispute submission Three set out its view that the UK03 service represents revenue-sharing. In support of this view Three pointed Ofcom to the way in which the service is described on TelNG's website, noting that it explained that the UK03 service:

*"...works because we receive a small payment for calls made to our 03 numbers, and we're able to use this to pay for the international call."*¹²

2.15 In its submission Three argued that using 03 wholesale revenues in this way to fund additional services constitutes revenue-sharing, which is prohibited by Ofcom. Three made reference to paragraph 4.37 of the December 2014 Statement and the clarification that: "[t]he funding of additional services through above-cost termination charges would be an example of revenue-sharing. In other words, additional services must be funded by other means".

Accepting the dispute

2.16 After considering the initial submissions received from TelNG and Three, we considered that the dispute met the relevant statutory criteria and that it was appropriate for Ofcom to handle it in accordance with section 186 of the Act. Accordingly, we decided to handle the dispute for resolution on the basis of section 186(2) and (3) of the Act.

2.17 Firstly, it is a dispute regarding obligations in the form of general conditions, imposed under section 45 of the Act. Secondly, it is a dispute between CPs. Finally, it is not an excluded dispute, in particular because we did not consider alternative means were likely to offer a prompt and satisfactory resolution in accordance with section 186(3) of the Act in this case.

¹² Three referred to wording from https://www.telng.com/callthrough_03.html. The link no longer works and the place where TelNG currently describes its UK03 service (<http://www.uk03.co.uk>) does not include that particular wording.

- 2.18 In reaching this view, we took into account that the parties had commenced litigation with regards to withheld payments. However, we did not consider that this litigation was likely to offer prompt and satisfactory resolution due to the timescales involved and the possibility of resolution being on grounds other than those forming the subject matter of the dispute. Since opening the dispute, we understand these proceedings have been withdrawn and the parties have agreed that the outcome of this dispute will resolve the issue that gave rise to the litigation.
- 2.19 Accordingly, we opened the Dispute on 1 April 2016 and we informed the parties of our decision.

The scope of the dispute

- 2.20 We defined the scope of the dispute as determining: '*whether TeiNG's UK03 service is compliant with GC17 and the National Telephone Numbering Plan*'. The scope is published on the Competition and Consumer Enforcement Bulletin on Ofcom's website.¹³

Interested parties

- 2.21 When we published details of the Dispute on 4 April 2016, we asked interested parties to register their interest by 18 April 2016. Telefonica, [X], EE, Lexgreen and QX Telecom Ltd all expressed an interest in the outcome of this dispute.

Information relied on

- 2.22 This final determination draws on information provided by the parties. This includes, in particular:
- 2.22.1 TeiNG's dispute submission dated 20 February 2016, its supplementary submission of 1 March 2016 and e-mails of 1 March and 9 March 2016 ("the Submission");
 - 2.22.2 Three's submission on the dispute of 17 March 2016;
 - 2.22.3 TeiNG's response of 3 May 2016 to Ofcom's section 191 information request of 19 April 2016;
 - 2.22.4 TeiNG's submission of 16 June 2016 in response to the Provisional Conclusions and email of 11 July 2016;
 - 2.22.5 Three's submission of 15 June 2016 in response to the Provisional Conclusions;
 - 2.22.6 [X] submission of 8 June 2016 in response to the Provisional Conclusions; and
 - 2.22.7 TeiNG's response of 30 June 2016 to Ofcom's second section 191 information request of 23 June 2016.
- 2.23 Our analysis also refers to:

¹³ http://stakeholders.ofcom.org.uk/enforcement/competition-bulletins/closed-cases/all-closed-cases/cw_01177/

- 2.23.1 BT's SIA;
- 2.23.2 Ofcom's February 2007 Statement;
- 2.23.3 Ofcom's December 2014 Statement;
- 2.23.4 The requirements of GC17 and the NTNP (July 2015); and
- 2.23.5 Ofcom's Provisional Conclusions published on 1 June 2016.

Legal framework for the consideration of disputes

- 2.24 Section 185(3) of the Act enables any party to a dispute covered by section 185(1), (1A) or (2) to refer it to Ofcom. Section 185(1) relates generally to disputes about the provision of network access, including those between different CPs. Section 185(1A) relates more specifically to disputes over entitlement to network access between CPs and persons identified, or within a class identified, in a condition imposed on the CP under section 45. Section 185(2) relates to any other disputes relating to rights or obligations in conditions imposed under section 45.
- 2.25 Section 186(2) of the Act provides that, where a dispute is referred to Ofcom in accordance with section 185(3), Ofcom must decide whether or not it is appropriate to handle it. In relation to disputes falling within section 185(1), section 186(2A) allows Ofcom to take into account its priorities and available resources. However, under section 186(3), Ofcom must decide that it is appropriate for it to handle disputes falling within section 185(1A) or (2) unless there are prompt and satisfactory alternative means available for resolving the dispute which would be consistent with the Community requirements set out in section 4 of the Act.
- 2.26 Ofcom's powers in relation to determining a dispute are limited to those set out in section 190 of the Act. Except in relation to disputes relating to the management of the radio spectrum, Ofcom's main power is to do one or more of the following:
 - 2.26.1 make a declaration setting out the rights and obligations of the parties to the dispute (section 190(2)(a));
 - 2.26.2 give a direction fixing the terms or conditions of transactions between the parties to the dispute (section 190(2)(b));
 - 2.26.3 give a direction imposing an obligation to enter into a transaction between themselves on the terms and conditions fixed by Ofcom (section 190(2)(c)); and
 - 2.26.4 give a direction requiring the payment of sums by way of adjustment of an underpayment or overpayment, in respect of charges for which amounts have been paid by one party to the dispute, to the other (section 190(2)(d)).
- 2.27 A determination made by Ofcom to resolve a dispute binds all the parties to that dispute (section 190(8)).
- 2.28 When resolving a dispute under the provisions set out in sections 185 to 191 of the Act, Ofcom is exercising one of its functions. As a result, when Ofcom resolves disputes it must do so in a manner which is consistent with both Ofcom's general duties in section 3 of the Act, and the six Community requirements set out in section 4

of the Act, which give effect, amongst other things, to the requirements of Article 8 of the Framework Directive.¹⁴

¹⁴ Directive 2002/21/EC of 7 March 2002.

Section 3

Analysis and provisional conclusions

Analytical framework

- 3.1 As set out in Section 2 above, this dispute concerns TeING's UK03 service, which enables customers to call international destinations using 03 numbers, and whether or not this service involves revenue-sharing in contravention of the NTNP.
- 3.2 In the section below we:
- 3.2.1 set out the provisions of GC17 and the NTNP that are relevant to the issues raised by the parties;
 - 3.2.2 explain how we interpret revenue-sharing in relation to the 03 range in the NTNP, in particular by reference to published Ofcom policy establishing those provisions; and
 - 3.2.3 summarise our understanding of how the TeING UK03 service operates and, in light of this, our provisional view of whether the UK03 service constitutes revenue-sharing within the meaning of those regulatory requirements.

Applicable regulation

- 3.3 General Condition 17 sets out the requirements with regards to the allocation, adoption and use of telephone numbers. Of relevance to the present case, GC17.4 requires that:

"In providing an Electronic Communications Network or an Electronic Communications Service, the Communications Provider shall comply with:

- a) all applicable restrictions and requirements as are set out in the National Telephone Numbering Plan; and*
- b) any restrictions or requirements set out in a notification issued by Ofcom to that Communications Provider recording the Allocation of Specific Telephone Numbers to it."*

- 3.4 Part A of the NTNP sets out the numbers available for adoption in the UK, including public communications network numbers starting with the digits 030, 033, 034 and 037. Collectively, these are described as non-geographic numbers where:

"Calls charged at a geographic rate: calls charged at up to the same rate the customer would pay to call a UK Geographic Number, with calls to 03 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.”¹⁵

- 3.5 Part B of the NTNP sets out the restrictions and requirements in relation to the telephone numbers. Section B3.2 “Non-Geographic Numbers” states:

“03 numbers

B3.2.1 Those who Adopt or otherwise use Non-Geographic Numbers starting 03 shall not directly or indirectly share with any End-User or any Calling Party any revenue obtained from providing a service on those numbers...”¹⁶

- 3.6 In summary, therefore, a CP is in breach of GC17.4 if it adopts or otherwise uses 03 numbers, obtains revenue from providing a service on the 03 number and it shares that revenue with any end-user or calling party.

The concept of revenue-sharing

- 3.7 In the December 2014 Statement we confirmed that callers are end-users with respect to 03 calls and that CPs are therefore prohibited from sharing with callers any revenues they receive, directly or indirectly, from calls to 03 numbers allocated to or operated by them.

- 3.8 The purpose of the December 2014 Statement was to address the need to clarify the scope of the prohibition on revenue-sharing with end-users. This resulted in expressly referring to calling parties as well as end-users in the prohibition set out in the NTNP as “[w]e considered that this would make it clear that services funded through above-cost termination charges were not consistent with our regulations”.

- 3.9 The December 2014 Statement also expanded on what we mean by direct and indirect revenue-sharing:

“Direct revenue-sharing would include arrangements whereby a proportion of revenue received by a CP is paid out to the calling party or other end-user, either in the form of money or money’s worth, and where the value of such payment is proportionate to the duration of the call. Examples of direct revenue-sharing include where a CP pays money or provides a gift of money’s worth (such as vouchers or credits) to a calling party or end-user as a result of them making a call to an 03 number, where the value of the payment is proportionate to the duration of the call.

Indirect revenue-sharing would include arrangements whereby a CP provides a benefit-in-kind to the calling party or other end-user, where the benefit is not necessarily proportionate to the duration of the call. Examples of indirect revenue-sharing include where a CP provides a voucher or credit of a fixed value, which is not proportionate to the length of the call. It would also include the giving of a gift (or any item with an inherent value, such as a toy, an item of

¹⁵ National Telephone Numbering Plan – available at: http://stakeholders.ofcom.org.uk/binaries/telecoms/numbering/Numbering_Plan_July2015.pdf
Applicable tariff principles and maximum prices are set out in Part A – A1.

¹⁶ The restrictions on the adoption and use of 03 numbers are set out in paragraphs B3.2.1-B3.2.3 of the NTNP.

clothing or a product electronically downloaded) by the CP to a calling party or end-user as a result of them making a call to an 03 number.”¹⁷

- 3.10 The statement also listed at paragraphs 4.74 and 4.75, examples of direct and indirect revenue-sharing that are not permitted on 03 numbers, which covered payments of money, vouchers, credits, or products. TeING has argued that its service does not fit in with any of the examples listed.
- 3.11 We note, however, that the December 2014 Statement made it clear that the examples listed are not exhaustive, and are therefore not designed to capture every way in which a service could involve revenue-sharing.
- 3.12 Furthermore paragraph 4.37 of the December 2014 Statement specifically referred to revenue-sharing in the following terms: *“The funding of additional services through above-cost termination charges would be an example of revenue-sharing. In other words, additional services must be funded by other means”*.
- 3.13 In light of the above, should we consider that the service provided by TeING involves a service additional to the 03 call provided this may, to the extent the termination charge is used to fund this service, constitute revenue-sharing in contravention of the NTNP.

The UK03 service provided by TeING

- 3.14 The UK03 service is an international call forwarding service. TeING’s website describes the service as follows:

“UK03 provides you with UK 03 numbers which can be routed to many destinations, including numerous countries overseas. As calls to these numbers are often included in bundled minutes, this means that you can make overseas calls using your bundled minutes. These numbers can be used from 8 a.m. to 6 p.m., Monday-Friday.”¹⁸

- 3.15 We understand that the UK03 service operates as follows:
- 3.15.1 The caller signs up to the UK03 service and is allocated an 03 number by TeING.
- 3.15.2 The caller can choose to (a) link the 03 number directly to a specific international number (“**Scenario A**”), or (b) use the number as a means of making international calls in general (“**Scenario B**”).
- 3.15.3 When the caller dials their 03 number, depending on how they have chosen to use their 03 number, (a) in the case of Scenario A, TeING performs a database lookup for the international number that the 03 number is mapped to, establishes a call leg to that number and bridges the caller to it, or (b) in the case of Scenario B, the caller is prompted to enter the international number that they wish to call, TeING establishes a call leg to that number and bridges the caller to it.

¹⁷ December 2014 Statement, paragraphs 4.34 and 4.35.

¹⁸ <http://www.uk03.co.uk/>. TeING also offer 0845, 0870 and 0871/2 numbers that allow its customers to call more destinations and, depending on the number called, earn cashback for the minutes called.

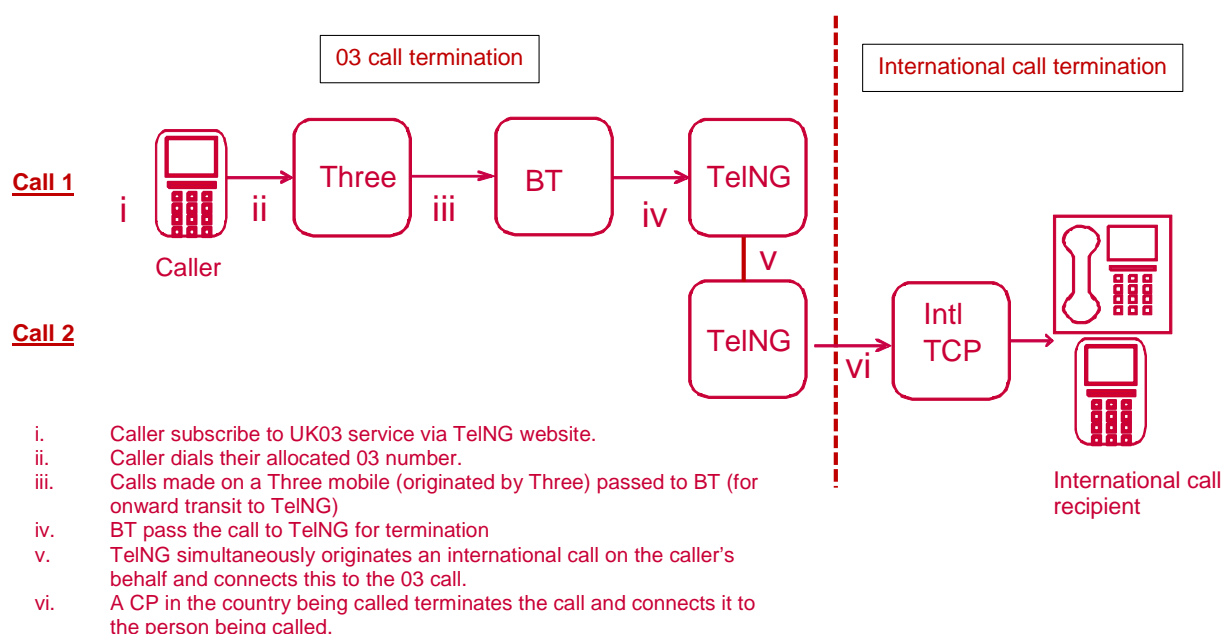
3.16 Three and TeiNG do not have a direct contractual relationship with each other. Both parties have a contractual relationship with BT under the SIA. TeiNG invoices BT for the termination of the 03 call, BT invoices the originator (in this case Three).

3.17 TeiNG informed us¹⁹ that the revenue flow involved in the service is as follows:

3.17.1 TeiNG bills BT at the appropriate termination rate for the 03 call that TeiNG terminates.

3.17.2 TeiNG pays an international wholesale provider for the international part of the call.

3.18 The diagram below sets out how the service operates.



3.19 As can be seen from the above, the UK03 service is effectively comprised of two calls. The first is made to the 03 number, which TeiNG terminates. The second is concurrently generated by TeiNG to the international destination number that the caller selects and is terminated by a CP in the country where the called party is.

3.20 TeiNG has confirmed that it does not charge customers anything for providing them with 03 numbers. Customers simply pay their telephone (fixed or mobile) provider the standard call rate for 03 numbers. This means that, to the extent that callers have remaining inclusive minutes in their fixed or mobile call packages, they can make calls to international destinations without incurring any additional charges using the UK03 service.

3.21 On the basis of information provided by TeiNG, we provisionally concluded that the second call to the international number, which comprises the service being provided to users, is funded solely from the revenue received from terminating the call to the

¹⁹ On 3 May 2016 we received a response to a section 191 information request issued to TeiNG relating to how the TeiNG's service operates.

03 number – TeiNG had confirmed that it has no other revenue streams from operating the service and it follows that the second call is funded from the termination charge for the first.

- 3.22 In light of our above assessment of how the second call involved in the UK03 service (to the international destination) is funded, we therefore proposed to conclude that the assessment of whether or not the way the service is provided is consistent with the requirements of the NTNP rests on whether or not it is an additional service to the 03 call.

Additional services

- 3.23 The NTNP places various restrictions on the allocation and use of numbers in different number ranges. These restrictions are considered appropriate by Ofcom in light of its duties, and have been arrived at following consultation on the underlying policy, including on the purpose of each number range. It is appropriate, therefore, to interpret the restrictions in light of the purpose of the respective number range set out in Ofcom’s published policy documents.
- 3.24 In 2006 Ofcom carried out a strategic review of how telephone numbers should be managed in the future. We identified that revenue-sharing on non-geographic numbers was eroding consumer trust in use of these numbers due to poor price transparency and took action to remedy this. One of these actions was to introduce the 03 number range.²⁰
- 3.25 Ofcom first opened up the 03 number range for use in February 2007. We stated at the time that:

“We therefore are creating a new type of number – starting with 03 – for those organisations who require a national presence, but who do not wish to make an additional charge to consumers for contacting them. We expect the new range to become trusted by consumers as covering clearly-understood services and price ranges.”²¹

“In the July document we confirmed that we would allocate a new non-geographic range of numbers, beginning with 03 (to be known as ‘UK-wide’ numbers), as an alternative option for consumers to call those public services and businesses who want a national presence and identity.”²²

“The 03 range was conceived to provide numbers that are like geographic number from consumers’ perspective, whilst providing numbers with a national presence (and without revenue-sharing) to meet SPs’ service requirements.”²³

²⁰ Raising confidence in telephone numbers. Including new ‘UK-wide’ 03 numbers and a consultation to amend General Condition 17, 13 February 2007 (the “February 2007 Statement”):

<http://stakeholders.ofcom.org.uk/binaries/consultations/numbering03/summary/03.pdf>.

²¹ February 2007 Statement, paragraph 1.13.

²² February 2007 Statement, paragraph 3.1.

²³ February 2007 Statement, paragraph 3.48.

- 3.26 In order to engender consumer trust in the 03 numbers, we imposed requirements on the charges that could be made for calls to 03 numbers and prohibited revenue-sharing on the 03 number range:

“• call tariffs would be required to be the same as if the consumer was calling a geographic (01 or 02) number from the same OCP, up to national rate. This would include treating 03 numbers the same in terms of being part of any inclusive minutes and being eligible for the same call discounts; and

• they would not involve end user revenue-sharing - the micro-payment mechanism whereby the SP being called can take a share of the charges paid by the caller.”²⁴

- 3.27 The NTNP was amended at the time to reflect the opening up of the 03 range, the pricing requirements and the restrictions on revenue-sharing.
- 3.28 Therefore, as set out above, the reason for opening up the 03 range was to provide organisations with a national presence and identity that could be called at geographic rates.
- 3.29 This is underpinned by the fact that calls to 03 numbers have a distinctive combination of charging features that are reflected in Part A of the NTNP, which sets out that calls to 03 numbers must be *“charged at up to the same rate the customer would pay to call a UK geographic Number, with calls to 03 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”* (emphasis added).²⁵
- 3.30 In its February 2007 Statement Ofcom recognised that calls to some geographic numbers (e.g. some calls to the Channel Islands) were not included in inclusive bundles. Ofcom therefore, in order to meet its aim to ensure that charges for 03 calls are the same as those for the generality of 01 and 02 calls, amended its 03 definition (as set out in Part A of the NTNP) to reflect this intention, by adding ‘UK’ before ‘Geographic Number’ in the NTNP definitions.²⁶ This was a reflection of Ofcom’s stated intention to ensure that the 03 number range is aligned with the geographic 01 and 02 number ranges and that its charges are related to UK-wide use.
- 3.31 It is clear, therefore, that 03 numbers are intended to be used to provide organisations with a national, UK, presence. Using the numbers to allow callers to make an international call, which although a useful service in and of itself as an alternative way to access cheap international calls, is clearly distinct from the stated intention of the 03 number range. TelNG’s UK03 service is therefore appropriately characterised as providing an additional service to its customers.

²⁴ February 2007 Statement, paragraph 3.1.

²⁵ National Telephone Numbering Plan – available at:

http://stakeholders.ofcom.org.uk/binaries/telecoms/numbering/Numbering_Plan_July2015.pdf

Applicable tariff principles and maximum prices are set out in Part A – A1.

²⁶ February 2007 Statement, paragraph 3.51.

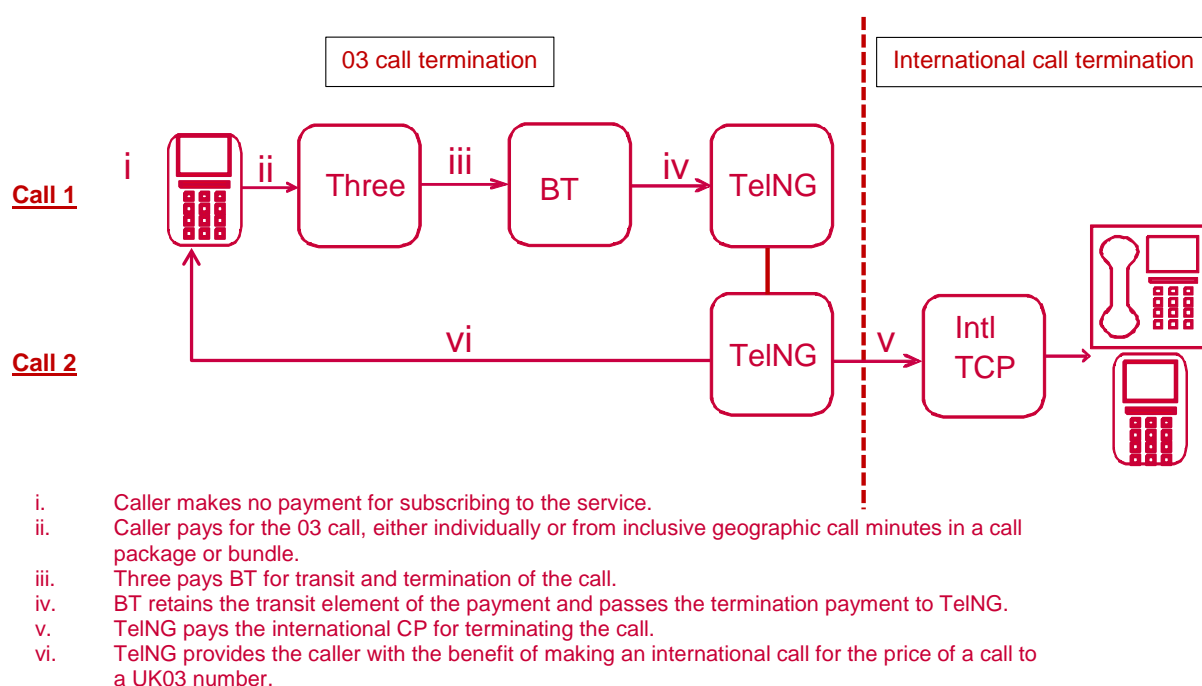
Provisional conclusions

3.32 In light of the above analysis we therefore provisionally concluded that the way in which TeING provides its UK03 service involves revenue-sharing. We were of the view that the service of connecting to an international number goes beyond the provision of a call to a UK national number and is therefore an additional service where the benefit to the caller is above the value a caller would normally expect when calling an 03 number to connect through to an organisation or service provider located in the UK.

3.33 In paragraph 4.37 of the December 2014 Statement we make it clear that “[t]he funding of additional services through above-cost termination charges would be an example of revenue-sharing. In other words, additional services must be funded by other means”.

3.34 TeING informed us that the only revenue it obtains for providing the international call through is the 03 termination charge. TeING receives no other revenue, for example, from callers or call recipients that could be used to fund the cost of the service. Consequently we provisionally concluded that TeING is using the termination charge to fund the international call made on the customer’s behalf.

3.35 The diagram below illustrates how the revenue is shared with the caller.



3.36 As set out in the diagram above, the revenue received by TeING from terminating the 03 call leg is instantly shared with the caller when TeING opens up the call to the international destination. The caller receives the benefit of this revenue share in that

they get the international call (directly commensurate to the amount of minutes on the call) at the price of a call to a UK non-geographic number.²⁷

- 3.37 The NTNP refers to revenue-sharing as being direct or indirect to confirm that the concept of revenue-sharing is not limited to the narrow case of payments of money or money's worth from a CP to an end-user in proportion with the length of the call. However, nothing hangs on the distinction between the two forms of revenue-sharing in that the prohibition is on revenue-sharing in the 03 range whether it is direct or indirect. It is therefore not necessary to determine whether the UK03 service constitutes direct revenue sharing on the one hand or indirect revenue sharing on the other. We noted, referring to the December 2014 Statement, that the UK03 service has features in common with the examples given of both direct revenue-sharing (in that the benefit is proportionate to call duration) and indirect (in that it is not a direct payment to the end-user).
- 3.38 Consequently our provisional conclusions were that:
- 3.38.1 TeING's UK03 service is providing an additional service, in the form of an international call;
 - 3.38.2 funding this through the revenue it receives for terminating the 03 call is revenue-sharing contrary to the requirements of the NTNP and GC17.4; and
 - 3.38.3 TeING should take immediate steps to ensure that it brings itself into compliance with the NTNP and GC17.

Proposed Resolution

- 3.39 In light of the provisional conclusions set out above we considered that it would be appropriate and proportionate for Ofcom to exercise its powers under section 190(2)(a) of the Act to make a declaration setting out the rights and obligations of the parties to the dispute.
- 3.40 We noted that in their dispute submission TeING had informed us that in the event Ofcom considered the UK03 service to involve an element of revenue-sharing they would cease to provide the service.
- 3.41 We therefore proposed to make a declaration to the effect that:
- 3.41.1 TeING is obliged to ensure that its UK03 service complies with the NTNP and GC17;
 - 3.41.2 the UK03 service in its current form does not comply with that obligation; and
 - 3.41.3 in light of our determination that the UK03 service as described in the Provisional Conclusions contravenes GC17, Three is not required to originate calls to this service.

²⁷ In the event of the customer having free minutes left within their call bundle, the customer then gets the international call without incurring any additional charges.

- 3.42 Our proposed declaration for resolving this dispute was set out in **Annex 3** of the Provisional Conclusions. We published the Provisional Conclusions on 1 June 2016 and invited interested parties to provide comments by 15 June 2016.

Section 4

Responses and our final conclusions

- 4.1 We received responses to the Provisional Conclusions from TelNG, Three and one interested third party ([REDACTED]). Non-confidential versions of the comments received are available on Ofcom's website.²⁸
- 4.2 We summarise below the key points made in these submissions using the same broad headings as in the Provisional Conclusions, set out our views on the points made and reach a final conclusion as to whether revenue sharing on the 03 number range takes place as part of TelNG's UK03 service.

Applicable regulation

Submissions from the parties

- 4.3 [REDACTED] noted in its response that, under General Condition 20 ("GC20"), Three has an obligation to ensure that its end users are able to access and use non geographic numbers. [REDACTED] went on to state that it assumed that Ofcom, in proposing to release Three from the obligation to originate calls to the 03 number (see the draft determination in Annex 3 of the Provisional Conclusions), had concluded that it is not "economically feasible" (in the language of GC20) to originate calls to the UK03 service.
- 4.4 [REDACTED] asked us to make explicitly clear the basis on which we make our determination, noting that we had not included reference to GC20 in the relevant section explaining the legal background. [REDACTED] also asked that, "*for the avoidance of any future doubt or any unintended precedent setting*" we should make it clear which power is being exercised to make a declaration setting out the right of Three to not originate calls.

Ofcom's response

- 4.5 As the dispute submission asked us to assess the compliance of TelNG's UK03 service with NTNP and GC17, we focussed in the Provisional Conclusions on setting out the applicable regulatory obligations relevant to TelNG's provision of the UK03 service. However, it is correct that CPs have an ongoing obligation to comply with all applicable regulation including GC20, which places obligations on CPs in relation to access to numbers and services. GC20.1 requires CPs to ensure, where technically and economically feasible, that end users are able to access non-geographic numbers.
- 4.6 The application of GC20 is not something we specifically addressed in the Provisional Conclusions and we do not consider it necessary to do so now. Our declaration that TelNG's continued use of 03 numbers in providing the UK03 service in the way described in the Provisional Conclusions would be a breach of GC17 is sufficient to determine the referred dispute; given we are declaring that it cannot be provided, we do not need to add that it need not be originated in order to give effect

²⁸ http://stakeholders.ofcom.org.uk/enforcement/competition-bulletins/closed-cases/all-closed-cases/cw_01177/

to our conclusions. We have made a minor amendment to our determination in Annex 1 to reflect this.

The concept of revenue sharing

Submissions from the parties

- 4.7 TelNG noted that services such as international call-through are mentioned in the December 2014 Statement, so Ofcom was aware of their existence. Whilst TelNG accepted that the examples listed in paragraph 4.74 and 4.75 of the December 2014 Statement are not intended to be exhaustive, it is relevant that while such services were referred to elsewhere in the document, the examples of prohibited services did not *“include services such as UK03 or any examples of services where the user is provided solely with a call, whether that be domestic, international, to a conference calling service or to a UK business with intelligent routing”*.
- 4.8 Consequently TelNG has essentially argued that the policy intention was to permit services such as international call-through to be accessed via 03 numbers, since the user is paying only for the call which is one of the key outcomes which Ofcom was looking to achieve (as set out in paragraph 1.7 of December 2014 Statement).

Ofcom’s response

- 4.9 As TelNG acknowledges, the examples of revenue-sharing set out in paragraphs 4.74 and 4.75 of the December 2014 Statement are not written to be and are not intended to be exhaustive. That was both because of the wide variety of services in existence, and because new services emerge over time. Therefore it does not follow that any given service that is not explicitly included within these examples is compliant with the NTNP requirements. As set out in the Provisional Conclusions, we have assessed the specifics of the service in question against the requirements set out within the NTNP.
- 4.10 We also note that the references to international calls in the December 2014 Statement to which TelNG alludes, themselves recognise that the clarification to the NTNP made at that time could impact on CP’s ability to offer such services.
- 4.11 For example, we noted (at paragraph 4.56 of the December 2014 Statement) that stakeholders, *“argued that higher costs associated with alternative methods of making international calls would leave customers liable to reduced choice and higher bills”*. In response, we made it clear (in paragraph 4.58) that we recognised *“some services currently operating on the 03 range, which involve revenue-sharing, may be withdrawn or moved to another number range in light of our regulatory clarification. We have a duty to consider the balance of impacts of any regulatory intervention and to take action where it is objectively justifiable. In this case, we consider that the potential detriment to consumers as a whole from allowing services such as those identified at paragraphs 4.4 and 4.5 to continue outweighs the benefit of greater choice for the limited current set of users of such services.”*
- 4.12 We therefore made clear that some forms of international call services would not be permitted on 03 numbers. Since there are different ways in which these services can be provided, they need to be assessed on a case-by-case basis in light of GC17 and the NTNP. We therefore do not consider it is reasonable to read the December 2014 Statement as meaning that our policy intention was to permit international call-through services on the 03 number range.

The TelNG UK03 service

Submissions from the parties

- 4.13 In its response to the Provisional Conclusions, TelNG stated that it also offers call-through on 084 and 087 numbers and argued that it is proper to view the service as a whole. It stated that:

“Even accepting (which we do not) that the international leg of a call represents an “additional service”, its funding can properly be viewed as coming out of the overall UK03 service revenue of which the 03 termination revenue is a very small part.”

- 4.14 TelNG argued that the 084 and 087 numbers provide around [X] of its overall international call-through revenue. TelNG argued that the reason for offering call-through on 03 is that it provides TelNG with a marketing database and that, although it does no active promotion of the 03 part of the service, it markets the 084 and 087 parts of the service to callers that use the 03 numbers.
- 4.15 TelNG added that the 03 service was not profitable and that were it not offering the 084 and 087 parts of its overall service, it would not continue to offer 03 international call-through.
- 4.16 TelNG concluded that “[t]aking the service with its various access methods as a whole, the international leg of the call is funded by other means”.

Ofcom’s response

- 4.17 We first considered whether it would be appropriate, as TelNG argues, to characterise the international leg of the 03 calls in question as being funded via its overall international call-through revenues (i.e. including those from its 084 and 087 services²⁹), rather than being “funded solely from the revenue received from terminating the call to the 03 number” as we put it in our Provisional Conclusions.
- 4.18 We note that this was a novel argument from TelNG in response to our Provisional Conclusions. When we asked TelNG, within the context of the 19 April 2016 section 191 information request whether it had alternative sources of revenues, other than termination revenue, to fund the UK03³⁰ service it responded that it did not have “any other direct streams of revenue associated with the UK03 service”.
- 4.19 However, we appreciate that TelNG may not have been aware of the full context of why we were asking about alternative revenues at that time. Therefore, on 23 June 2016 we issued TelNG with a second section 191 information notice, requesting it to provide any documents (predating the Provisional Conclusions) relating to the international call-through on 03 numbers that set out how the service was marketed, its business case (including funding), its relationship to international call through services offered on other numbers and/or the business plan for the UK03 service.

²⁹ In its response TelNG noted that they also offer international call through on 084 and 087 numbers. These can also be accessed via TelNG’s website - www.UK03.co.uk.

³⁰ In the section 191 we defined the UK03 service as “the service offered by TelNG that provides customers with UK 03 numbers which can be routed to international destinations”

- 4.20 In response TelNG said that as it is a small business it does not generally produce such documents, although it was able to provide us with some limited information relating to marketing messages sent to users of the 03 call-through service.
- 4.21 Having carefully considered all the available evidence, we do not agree with TelNG's characterisation of how the 03 service is funded. There are several reasons which led us to this conclusion, in particular:
- 4.21.1 The revenue from terminating the 03 call is intrinsically linked to the call made to the international number, in the sense that it is a direct source of revenue associated with the 03 call and there are no other direct sources of revenue associated with the 03 calls (e.g. subscription charges for access to the service) as TelNG has previously confirmed.³¹
- 4.21.2 The evidence suggests that the 03 service was set up to be self-funding. TelNG had previously stated that the cost of the service is approximately equal to revenue, and this was also evident from the cost and revenue data provided to us.³² TelNG has also put in place service restrictions to help achieve this. For example, international call-through from 03 numbers is only available to certain destinations (which vary over time as wholesale rates change³³) and there are time restrictions for when calls can be made (8am-6pm Monday to Friday) that reflect when TelNG earns the highest call termination rates on its 03 numbers. Whether the service was in fact self-funding in practice depends on matters such as take-up and is not determinative as to how it is appropriately characterised.³⁴
- 4.21.3 Calls to the 03 numbers are not contingent on the customer also making calls to the 084 and/or 087 numbers - customers can use the 03 numbers for their international call-through service without also using the 084 and 087 numbers (and vice versa).
- 4.21.4 The lack of evidence from TelNG to support its argument. We appreciate that smaller businesses like TelNG are less likely to have detailed business plans of the sort encompassed by our 23 June 2016 request. However, we note that the evidence TelNG was able to provide did not suggest that the reason for offering call-through on 03 is that it provides it with a marketing database to which it can sell the 084 and 087 service. In fact the actual messages sent to customers did not make reference to the 084 and 087 numbers and appear to be generic marketing messages relating to further service options available if registering on www.uk03.co.uk.

³¹ In its response to the response of 3 May 2016 to the section 191 information request dated 19 April 2016, TelNG stated that it did not have "*any other direct streams of revenue associated with the UK03 service*".

³² TelNG's response (of 3 May 2016) to the section 191 information request issued on 19 April 2016. This is also consistent with how TelNG had previously described how the service worked on its website – see paragraph 2.14 above.

³³ TelNG's response (of 3 May 2016) to the section 191 information request issued on 19 April 2016.

³⁴ TelNG sent us a supplementary e-mail on 11 July 2016 providing further information about recent changes to cost of terminating calls overseas and argued that it was clear that this showed that the international call is funded by alternative means. We note however that although the information provided changes some of TelNG's costs it does not change the assessment as to whether TelNG's funding arrangements for the 03 international call involves sharing 03 revenue with callers.

- 4.22 We therefore continue to consider that it is appropriate to characterise the international leg as being funded from the revenue received from terminating the call to the 03 number. Even if the revenue from terminating the 03 call is insufficient to fully fund the international call, it remains the case that at least some of the funding for the international call comes from the 03 termination revenue and that this is shared with callers.³⁵

The nature of the service as an additional service

Submissions from the parties

- 4.23 In its response to the Provisional Conclusions, TelNG set out its view that use of 033 numbers as access numbers to its international call-through service is consistent with the NTNP and Ofcom's February 2007 Statement. TelNG argued that the NTNP simply notes that 033 numbers are "Non-geographic numbers" and that for other numbers Ofcom have added further restrictions into the numbering plan (such as 030 which are restricted for use by public sector and not-for-profit bodies). TelNG pointed out that Ofcom had the option, both when the 033 range was made available, and as part of its 2014 revision to the numbering plan, to clarify that 033 numbers are to be used solely by UK businesses for intra-UK traffic, but that it did not do so.
- 4.24 TelNG went on to state that the service is available from anywhere in the UK, and is provided through servers located in different locations, including London, Manchester, Roubaix (France) and Falkenstein (Germany). It asserted that the service (and the organisation providing it) should be viewed as having "*a national presence and identity*" and "*a national UK presence*".
- 4.25 Finally TelNG questioned the relevance and weight placed by Ofcom on its February 2007 Statement in the Provisional Conclusions, stating: "*We are clearly obliged to comply with restrictions set out in the NTNP and in number allocation notices (3.4), but there is no similarly clear obligation to comply with what, is in this case, a particular interpretation of Ofcom's 2007 statement.*"

Ofcom's response

- 4.26 We disagree with TelNG's view that its use of 033 numbers is consistent with the NTNP and that it is inappropriate to have regard to the February 2007 Statement when considering the purpose of 03 numbers.
- 4.27 As we explained in the Provisional Conclusions, the NTNP places various restrictions on the allocation and use of numbers in different number ranges. These restrictions have been considered appropriate by Ofcom in light of its duties, and have been arrived at following consultation on the underlying policy, including on the purpose of each number range. It is appropriate, therefore to interpret the restrictions in the NTNP in light of the purposes of the respective number range set out in Ofcom's published policy documents. For example, were one possible interpretation of the words of a rule to be inconsistent with the published reason for its introduction, that would clearly militate against adopting that interpretation.

³⁵ TelNG recognised in its response to the Provisional Conclusions that the international leg's "*funding can properly be viewed as coming out of the overall UK03 service revenue of which the 03 termination revenue is a very small part*".

- 4.28 The February 2007 Statement sets out the context for, and the explanation of, the introduction of the 03 number range. It is therefore entirely appropriate for us to reference this statement as part of our assessment.
- 4.29 In the Provisional Conclusions we set out that the purpose behind the introduction of the 03 number range was to provide organisations with a national presence and identity that could be called at geographic rates and that using the 03 number range to provide international calls is clearly distinct from the stated intention of the 03 number range. We therefore provisionally concluded that the second call provided by TelNG as part of its international call-through service is an additional service and that, to the extent the termination charge for the 03 call is used to fund this additional service, this represents revenue share in contravention of the NTNP.
- 4.30 This does not mean that additional services (including international call-through services) cannot be offered on the 03 number range. It simply means that such services cannot be funded using the 03 termination revenue.
- 4.31 Finally we disagree with TelNG's view that the "*service (and the organisation providing it) should be viewed as having "a national presence and identity" and "a national UK presence"*". This comment misrepresents the purpose of the 03 number range. TelNG's service has been set up with the explicit intention to enable callers to contact specific individuals/companies who are physically located outside of the UK and is advertised as such (as an international call-through service). This is very different to the explicit intention behind the 03 number range which is to enable callers to contact companies and organisations with a UK presence (even if the physical destination of the call is ultimately outside of the UK). However to the extent that such a call is forwarded to an international number then this would represent an additional service which need to be funded by means other than the 03 termination charge.

Application of the Provisional Conclusions

Submissions from the parties

- 4.32 In footnote 26 in the Provisional Conclusions, we stated that "*[it] should be noted that these provisional conclusions are made with reference to TelNG's UK03 service and the specific circumstances under which this service is offered. Any other service offered on the 03 number range would need to be considered on its own merits on a case by case basis"*.
- 4.33 In its response to the Provisional Conclusions, Three asked that we add the following text to footnote 26: "*however to the extent another service involves funding of additional services through termination payments for 03 calls it is unlikely to be compliant with NTNP and GC 17"*.
- 4.34 [X] stated that "*[w]e consider that footnote 26 is a pivotal component of the Provisional Conclusions and must remain in any final determination. In fact, its criticality is such that it would be better if it were made explicitly clear in the executive summary"*.

Ofcom's response

- 4.35 In its response Three did not set out the reasoning for why it considered it necessary to add their proposed text to footnote 26.

- 4.36 Although our approach to analysing the compliance of other services with NTNP and GC17 may follow a similar pattern to the one followed in this dispute, this does not mean that the conclusions drawn with regards to any particular service would be the same. Each service would need to be assessed on its own merits within the context of the specific circumstances in which it is provided. We therefore do not think the suggested addition is necessary.
- 4.37 With regards to [X] comments, we agree that adding a sentence to the executive summary would aid clarity, and have done so. We have also amended the text of the footnote a little to make it even clearer that the decision relates to the specific circumstances under which 03 numbers are used as part of TelNG's service (see footnote 36) and that other services would need to be assessed on their merits.

Consistency with EC obligations and regulatory principles

Comments from the parties

- 4.38 TelNG raised a question as to whether our Provisional Conclusions are in accordance with our EC obligations. It argued that to allow a UK business to have an 03 number diverted to a local (to that business) geographic number at no cost but to deny the same to a German one (which would appear to be a logical consequence of the Provisional Conclusions) could be discriminatory.
- 4.39 TelNG also suggested that the Provisional Conclusions could be inconsistent with our regulatory principles in that:
- 4.39.1 we would be expanding the classes of services which are not permitted to be provided on 03 numbers;
 - 4.39.2 as the revenue flows associated are trivial, our proposed actions are disproportionate, and there is no evidence presented to suggest that there is any need for us to act; and
 - 4.39.3 there is no requirement for us to intervene in TelNG's provision of this service.
- 4.40 Finally TelNG questioned "*whether Ofcom has consulted widely with all relevant stakeholders before imposing additional regulation on this particular, small, market. Ofcom has yet to publish any form of impact assessment*".

Ofcom's response

- 4.41 We disagree with TelNG's view that the consequence of the Provisional Conclusions would be discriminatory against companies from elsewhere in Europe.
- 4.42 International calls carry different costs and are charged differently to calls to UK destinations. As set out in the the February 2007 Statement, the purpose of the 03 number range is to provide an alternative to 01 and 02 geographic numbers to enable organisations and companies to have a national presence.
- 4.43 Our Provisional Conclusions do not suggest that companies outside the UK should be prevented from allowing their UK customers from contacting them via an 03 number. This may or may not be to a physical location in the UK. However to the extent that such a call is forwarded to an international number (if that is what they

choose to do) then any additional costs involved in the international leg only would need to be funded by means other than the 03 termination charge.

- 4.44 We do not accept that our Provisional Conclusions are in any way inconsistent with our principles and our assessment of this was set out in paragraphs 3.44 and 3.45 of the Provisional Conclusions (and repeated in paragraphs 4.55 and 4.56 of this document).
- 4.45 When we imposed the restrictions set out within the NTNP we set out that certain uses of the 03 number range, including funding of additional services by using the termination rate, would represent prohibited revenue share. We consider that the way in which TelNG is funding its international call-through service on 03 numbers via the 03 termination revenue represents such a revenue share. In drawing this conclusion we are not adding any restrictions to those already in place.
- 4.46 We consulted widely when the 03 number range was introduced in 2007 and again when we clarified that revenue-sharing with callers is prohibited on the 03 number range in 2014. This enabled all relevant stakeholders to comment in advance of the regulations being put in place and impact assessments were carried out as part of this process.
- 4.47 In the context of a dispute such as this we are simply assessing whether any particular service complies with the existing regulations and not reopening discussions on policies nor introducing new regulatory requirements.
- 4.48 Finally, we are perplexed by TelNG's comment that there is no requirement for us to intervene in the provision of its UK03 service given it was TelNG that referred this dispute to us for resolution. However, even if that were not the case, we consider compliance with GC17 and the NTNP by CPs of all sizes is important in terms of securing appropriate use of telephone numbers.

Final conclusions

- 4.49 Having assessed the comments made in response to our Provisional Conclusions, for the reasons set out above we do not consider it appropriate to make any material revisions to our analysis or the conclusions that we derive from it.
- 4.50 In light of the analysis set out in the Provisional Conclusions, and having taking into account all comments received by the parties, we remain of the view that TelNG's UK03 service involves the provision of an additional service that is funded by the sharing of revenue from 03 calls and that it is therefore inconsistent with the requirements of the NTNP and GC17.³⁶
- 4.51 Consequently we conclude that:
- 4.51.1 TelNG's UK03 service is providing an additional service to the use of the 03 number, in the form of an international call;

³⁶ It should be noted that the analysis carried out in this dispute, and the conclusions drawn, relate to the specific circumstances under which 03 numbers are used as part of TelNG's UK03 service. Any other service offered, by TelNG or any other CP, on the 03 number range would need to be considered on its own merits on a case by case basis.

- 4.51.2 TeiNG is using the termination revenue from the 03 call to fund, in whole or in part, the international call and that this constitutes revenue-sharing, contrary to the requirements of the NTNP and GC17.4; and
- 4.51.3 TeiNG should take immediate steps to ensure that it brings itself into compliance with the NTNP and GC17.

Final determination

- 4.52 In light of the conclusions set out above we consider that it is appropriate and proportionate for us to exercise our powers under section 190(2)(a) of the Act to make a declaration setting out the rights and obligations of the parties to the dispute.
- 4.53 We note that in their dispute submission TeiNG informed us that in the event we were to consider the UK03 service to involve an element of revenue-sharing it would cease to provide the service.
- 4.54 Annex 1 contains our final determination to resolve this dispute. This sets out that:
 - 4.54.1 TeiNG is obliged to ensure that its UK03 service complies with the NTNP and GC17 in its use of numbers from the 03 range;
 - 4.54.2 the UK03 service in its current form does not comply with that obligation;
 - 4.54.3 In light of our determination that the UK03 service's use of 03 numbers contravenes GC17, continuation of the service using the 03 number range would be considered a breach of GC17.

Assessment of consistency of Ofcom's determination with our statutory duties and Community obligations

- 4.55 As we also set out in our Provisional Conclusions, we consider that our proposed resolution of this dispute is consistent with our duties and Community obligations under sections 3 and 4 of the Act. We consider that our decision helps further the interests of consumers and promotes competition, and specifically it:
 - 4.55.1 helps protect against risk to the ongoing viability of call allowances that we had identified in the December 2014 Statement, which could result in CPs reducing the size of call allowances or increasing the cost of their bundles;³⁷
 - 4.55.2 is consistent with the 03 number range as a national range for use to call public services, voluntary organisations and companies who want a national presence; and

³⁷ The risk of harm to consumers was one of our main reasons for prohibiting revenue-sharing on 03 numbers. We have previously identified how consumer harm might arise from revenue-sharing. See "*The 03 Number Range. Decision to clarify that revenue-sharing with callers is prohibited on the 03 number range*". 11 December 2014. TeiNG's UK03 service does provide benefits to some consumers as it enables them to make international calls at no additional cost (i.e. within bundled call allowances). However, the statement made it clear that the potential harm to consumers as a whole from allowing revenue-sharing on 03 outweighs the benefits that it provides for the limited set of users of such services.

- 4.55.3 is consistent with the charging principles for the 03 number range as a national number range that is charged up to geographic call charges set for 01 and 02 numbers.³⁸
- 4.56 In reaching our final determination we have kept in mind our duty to ensure that our regulatory activities are, among other things, transparent, accountable, proportionate and targeted only at cases where action is needed. This document sets out the parties' arguments and reasoning that we have considered as part of arriving at our determination. Through publishing our Provisional Conclusions, we enabled the parties, and interested third parties, to comment on our conclusions in advance of our final determination. These comments are reflected and our view on each has been made clear throughout this document.

³⁸ Raising confidence in telephone numbers. Including new 'UK-wide' 03 numbers and a consultation to amend General Condition 17', 13 February 2007. See: <http://stakeholders.ofcom.org.uk/binaries/consultations/numbering03/summary/03.pdf>

Annex 1

Determination to resolve a dispute between TeiNG and Three

Determination under sections 188 and 190 of the Communications Act 2003 (“the Act”) for resolving a dispute between TeiNG Limited (“TeiNG”) and Hutchison 3G UK Limited (“Three”) concerning the compliance of TeiNG’s UK03 service with the National Telephone Numbering Plan (“NTNP”) and General Condition 17 (“GC17”).

WHEREAS -

(A) Section 188(2) of the Act provides that, where a dispute has been referred to Ofcom in accordance with section 185 of the Act, and Ofcom has decided it is appropriate for it to handle the dispute pursuant to section 186(2) of the Act, Ofcom must consider the dispute and make a determination for resolving it. The determination that Ofcom is required to make must be notified to the parties in accordance with section 188(7) of the Act, together with a full statement of the reasons on which the determination is based, and Ofcom must publish so much of its determination as (having regard, in particular, to the need to preserve commercial confidentiality) they consider appropriate for bringing it to the attention of the members of the public. This includes consideration pursuant to section 393(2)(a) of the Act of the extent to which any such disclosure is made for the purpose of facilitating the carrying out by Ofcom of any of its functions.

(B) Section 190 of the Act sets out the scope of Ofcom’s powers in resolving a dispute which may, in accordance with section 190(2) of the Act, include—

- making a declaration setting out the rights and obligations of the parties to the dispute;
- giving a direction fixing the terms or conditions of transactions between the parties to the dispute;
- giving a direction imposing an obligation, enforceable by the parties to the dispute, to enter into a transaction between themselves on the terms and conditions fixed by Ofcom; and
- for the purpose of giving effect to a determination by Ofcom of the proper amount of a charge in respect of which amounts have been paid by one of the parties to the dispute to the other, giving a direction, enforceable by the party to whom sums are to be paid, requiring the payment of sums by way of adjustment of an underpayment or overpayment.

(C) On 20 February 2016, TeiNG submitted a dispute with Three to Ofcom for resolution in relation to TeiNG’s UK03 service, which is an international call forwarding service enabling customers to be connected to international numbers by calling a number in the 03 number range.

(D) On 1 April 2016, Ofcom decided that it was appropriate for it to handle the dispute, and informed the parties of this decision noting the scope of the dispute as being, ‘*whether TeiNG’s UK03 service is compliant with GC17 and the National Telephone Numbering Plan.*’

(E) On 4 April 2016, Ofcom published details of the dispute on its website and invited stakeholders with an interest in the outcome to contact them by 18 April 2016.

(F) On 1 June 2016 Ofcom issued a Provisional Determination to TelNG and Three and interested parties with a deadline for comments of 15 June 2016.

(G) In order to resolve this dispute, Ofcom has considered (among other things) the information provided by the parties and any comments received in response to its Provisional Conclusions. Ofcom has further acted in accordance with its general duties set out in section 3 and the Community requirements set out in section 4 of the Act.

(H) A fuller explanation of the background to the dispute and Ofcom's reasons for making this Determination is set out in the explanatory statement accompanying this Determination.

NOW, therefore, Ofcom makes, for the reasons set out in the accompanying explanatory statement, this Determination for resolving this dispute—

Declaration of rights and obligations, etc.

1. It is hereby declared that:
 - a. TelNG is obliged, in providing its UK03 service using numbers in the 03 number range, to comply with General Condition 17, including (pursuant to GC17.4) complying with all restrictions and requirements set out in the National Telephone Numbering Plan.
 - b. TelNG's use of 03 numbers in providing the UK03 service, as described in the explanatory statement accompanying this Determination, is not compliant with the National Telephone Numbering Plan, and consequently is not compliant with General Condition 17. Therefore, continuation of the service using the 03 number range may be considered as a breach of General Condition 17.

Binding nature and effective date

2. This Determination is binding on TelNG and Three in accordance with section 190(8) of the Act, and shall take effect on the day it is published.

Interpretation

3. For the purpose of interpreting this Determination—
 - (a) headings and titles shall be disregarded; and
 - (b) the Interpretation Act 1978 shall apply as if this Determination were an Act of Parliament.
4. In this Determination—
 - (a) "Act" means the Communications Act 2003 (c.21);
 - (b) "TelNG" means TelNG Limited whose registered company number is 05503631, and any of its subsidiaries or holding companies, or any subsidiary of such holding companies, all as defined by section 1159 of the Companies Act 2006;
 - (c) "Ofcom" means the Office of Communications; and

Determination to resolve a dispute between TeiNG and Three relating to compliance with GC17 and the NTNP

- (d) “Three” means Hutchison 3G UK Limited whose registered company number is 3885486, and any of its subsidiaries or holding companies, or any subsidiary of such holding companies, all as defined by section 1159 of the Companies Act 2006.

Brian Potterill
Competition Policy Director

A person duly authorised in accordance with paragraph 18 of the Schedule to the Office of Communications Act 2002

22 July 2016