

Cover sheet for response to an Ofcom consultation

BASIC DETAILS

Consultation title: **Review Of the Premium Rate Services Condition**

To (Ofcom contact): Kathryn Searle

Name of respondent: Alex Jennings

Representing (self or organisation/s): Caller Support Limited

Address (if not received by email):

CONFIDENTIALITY

What do you want Ofcom to keep confidential?

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

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

DECLARATION

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Name Alex Jennings

Signed (if hard copy)

Kathryn Searle
Office of Communications
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SE1 9HA

September 21st, 2018

Dear Kathryn

Reference: Review of the Premium Rate Services Condition (the “Consultation”)

Caller Support Limited appreciate the opportunity to respond to the Consultation and we hope that our comments will assist Ofcom in accomplishing an effective outcome for consumers. We would also like to note we recognise and wholly support the role of the PSA in overseeing these services, however, if this is the start of further new regulatory intervention, then our objections to the evidence and approach used by Ofcom become significantly more acute.

In our response we would like to take the opportunity to highlight to the Office of Communications (“Ofcom”) our broad preliminary support for the proposals as we understand them; fundamentally if the intent is to extend the current provisions of the Phone-paid Services Authority (“PSA”) Code of Conduct in relation to Information, Connection and Signposting Services (“ICSS”) to the 084 range, then there is no difficulty in compliance given we already explicitly comply with the PSA obligations.

We have a fundamental issue with the evidential basis for Ofcom’s approach. We are extremely concerned that the current ‘Service Charge’ and ‘Access Charge’ model is broken in so far as there is no cap imposed on the Access Charge element. Therefore, competition and transparency are not acting as a constraint as well as the evidence of anti-competitive behaviour by mobile network operators all reinforce our view that a review should be carried out into the Unbundled Tariff as a whole.

We have periodically engaged with the PSA regarding our concerns of the rising costs to consumers of Access Charges and we have been directed by the PSA to raise our concerns with Ofcom. We believe Ofcom should use this opportunity and that of the recent DQ consultation to review this issue.

[Company background](#)

Caller Support Limited, associated companies and brands have been providing ICSS in the UK for over five years. We primarily provide a call connection and contact information service where a 5-minute call will cost considerably less than the main DQ operators. We are dedicated to making the

customer journeys as easy and stress free as possible which is why we support this opportunity to engage with Ofcom regarding these services.

Objections

Lack of Appraisal of the Benefit of ICSS

Anecdotally we are aware that all ICSS services have seen a rise in call volume; this supports our position that consumers have a need for these services. The rise has coincided with the change in legislation; with respect to changes to Consumer Contracts Regulations 2013 (the “CCRs”) which were implemented around the same time as the Unbundled Tariff restricting calls to helplines and various customer services numbers to ranges whereby revenue share was no longer possible. We consider that the loss of a revenue stream for certain companies has reduced their incentive to advertise, or generally make easy to find numbers by which their customers can contact them.

We believe that these points about the benefit of ICSS as a competitive constraint to DQ services and in relation to reducing consumer’s search costs were made in responses to the recent DQ Consultation. Ofcom should consider responses made in that related area alongside those made to this Consultation as they are linked.

Magnitude of the Access Charge

The Service Charge, being the termination rate received by the Network Operator, to use the PSA terminology, is an insignificant part of the total bill. However, it cannot be ignored that Vodafone and EE are charging consumers an Access Charge of 55 pence per minute (“ppm”) for calls to non-geographic numbers, therefore on a 13 ppm Service Charge 087 number, that’s 80%¹ of any bill shock caused – not by the ICSS, but by the gross profit of the Originating Communications Provider. On a 1ppm 084 number that’s over 98%² of the harm caused. A pence per call only tariff where the Service Provider doesn’t charge based on the length of the call, still attracts the 55ppm Access Charge. Which means for each subsequent minute, the Originating Communications Provider is earning 55p and the Service Provider is earning 0p. After 5 minutes, that means EE has earned an additional £2.75, the Service Provider has incurred the additional cost associated with providing the service, earned an additional £0 and, seemingly, the ire of the regulator and consumer for the privilege.

¹ 13ppm Service Charge + 55ppm Access Charge = 68ppm for the call. 55 ppm Access Charge / 68 ppm Total for the Call = 80.88%

² 1ppm Service Charge + 55ppm Access Charge = 56ppm for the call. 55 ppm Access Charge / 56 ppm Total for the Call = 98.21%

This means that providers cannot differentiate effectively by innovating and taking the risk associated with call duration because the Originating Communications Provider wholly undermines that concept with the Access Charge and causes consumer harm.

How Ofcom can conclude that intervention is required merely at the terminating end when it is obviously clear that the majority of the bill shock, in most cases, is at the originating end, is very surprising to us.

We also note that the analysis conducted by Ofcom (especially in the recent DQ Consultation) doesn't seek to differentiate the Access Charge and the Service Charge. ICSS are being unfairly singled out when, often it is the Access Charge which represents the majority of the bill; certainly, when a call is made from a mobile

Ofcom has conflated, or at least allowed the conflation of, the Access Charge and Service Charge. For example, §A6.35, Ofcom summarise view of the Department of Work and Pensions (“DWP”). Specifically, Ofcom cite the DWP view that;

“[...] consumers who are likely to contact Job Centres are also less likely to be able to afford these *excessive call charges*”

[Emphasis Added]

We have already demonstrated that the majority of these “excessive call charges” are the Access Charge and not the Service Charge; at least 80% from an EE phone as illustrated in an example above.

With 25% of socio-economic group DE1 households being mobile only³, instead of providing evidence to justify a change to the Premium Rate Services Condition, the DWP has actually reinforced everything we believe regarding intervention being needed on the Access Charge. The Consumer Contract Regulations 2013 don't provide full protection either, with there being numerous exemptions from the basic rate requirement on services that such vulnerable people may need to access.

The evidence from the Driver and Vehicle Licencing Agency (“DVLA”) also has a similar conflation of Access Charge and Service Charge.

At paragraph §A6.43, the DVLA is quoted as saying:

³ Table on page 4 of Ofcom's “Access and Inclusion in 2016” published 15th March 2017

“When someone has used an ICSS number and realised that they have been charged excessively, they usually vent their frustration on social media sites, which has a reputational impact on us as we have no comeback.”

If an EE customer calls a 7ppm 084 number; 89%⁴ of that “excessive charge” is gross profit for EE; which means that 89% of the DVLA’s reputational impact has been caused by British Telecommunications plc, not an ICSS provider.

We note that comments from HM Revenue and Customs and the Home Office have been redacted but suspect that similar conflation of Access Charge and Service Charge has occurred.

Regulatory Duplication

In §A6.14-A6.17 of the Consultation, Ofcom cites a number of enforcement actions that have taken place or are taking place by the Advertising Standards Authority (“ASA”) into ICSS which pass off as being the company the calls are forwarded to, yet Ofcom has not laid out (other than a reference to the factual position of the ASA’s statutory powers in §2.24 of the Consultation) precisely why those powers are not sufficient.

Anti-Competitive Behaviour

In the April 2012⁵ Consultation, Ofcom predicted a single mobile Access Charge of 16.1ppm; in real terms this is 16.9ppm today, however EE and Vodafone’s Access Charge is now 325% higher than originally predicted in 2012 (EE⁶ and Vodafone’s⁷ Access Charge is 55 pence per minute)

Furthermore, Vodafone’s initial Access Charge was announced in the run-up to the July 2015 non-geographic calls services regime change and was immediately varied significantly upwards when EE announced a higher one than them.

The European Commission’s definition of joint dominance (or collective dominance) is;

A collective dominant position exists where, in view of actual characteristics of the relevant market, each member of the dominant oligopoly in question, as it becomes aware of common interests, considers it possible, economically rational, and hence preferable, to adopt – on a lasting basis – a common policy for their market conduct

⁴ 7ppm Service Charge + 55ppm Access Charge = 62ppm for the call. 55 ppm Access Charge / 62 ppm Total for the Call = 88.71%

⁵ <https://www.ofcom.org.uk/consultations-and-statements/category-1/simplifying-non-geographic-no>

⁶ <https://ee.co.uk/help/help-new/billing-usage-and-top-up/call-text-and-data-charges/charges-for-calling-non-geographic-numbers>

⁷ <https://www.vodafone.co.uk/help-and-information/costs-and-charges/call-and-text-charges>

with the aim of selling at above competitive prices, without having to enter into an agreement or resort to a concerted practice within the meaning of Article 101 of the Treaty and without any actual or potential competitors, customers or consumers, being able to react effectively.

The actions of Vodafone and EE would appear to be a clear case of such anti-competitive (anti-trust) behaviour and we are surprised that Ofcom has not sought to use either its retail price control powers (which have been used to intervene in the free to caller market, for example) or its Competition Act 1998 powers in respect of this.

Conclusion

We do not believe that consumers shop around for the best Access Charge, despite it potentially making a material difference to the cost of ownership of their contract and the single largest contributor to the harm identified in the Consultation. Whilst we do not disagree that transparency and competition should have been given a chance since 2015, we urge an urgent review given the growing evidence of an obvious failure of the market to live up to Ofcom's own expectations.

Such a review has to occur before other interventions in the value chain for non-geographic numbers risk adverse consequences being suffered by potentially innocent parties.

We see no issue with the PSA code, as it stands, applying to any tariff used for ICSS. BUT we believe that the issue of bill shock to the consumer needs to be considered in the round not just Service Charges which Ofcom has capped.

We hope that this response will assist Ofcom in its deliberations and are available if we can be of further assistance.

Yours sincerely,

Alex Jennings

On Behalf of Call Support Limited

