



Access condition for free-to-caller 080 and 116 numbers

Notification to the European Commission

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Section 1

Introduction

- 1.1 This draft statement sets out our decision (subject to EU consultation) to impose an access condition on communications providers ('CPs') that provide wholesale call termination to free-to-caller 080 and 116 numbers. The access condition will require terminating CPs ('TCPs') to purchase wholesale call origination for calls to 080 and 116 numbers on fair and reasonable terms (including charges).

Background and summary of wholesale concerns

- 1.2 080 numbers are currently designated in the National Telephone Numbering Plan ('the Numbering Plan') as 'Freephone', which is defined as a number that is reached free-of-charge to the customer except where a charge is notified at the start of the call. In other words, 080 numbers may be subject to a retail charge, provided that a pre-call announcement is provided to the caller. 116 numbers are considered on a case-by-case basis and designated as either Freephone or 'Free-to-caller', depending on the nature of the service being provided on a particular 116 number. Free-to-caller is defined as a number that is accessed at no charge to the customer and, in the case of a public payphone, without having to use coins and cards.
- 1.3 In April 2013 we published a policy position in which we said we were minded to make all 080 and 116 numbers free-to-caller for consumers ('the April 2013 policy position').¹ This followed on from a consultation we had conducted a year earlier in April 2012 ('the April 2012 consultation').²
- 1.4 We stated in the April 2013 policy position that our decision to make the 080 and 116 ranges free-to-caller was subject to final confirmation in light of some specific areas of further consultation. We intend to issue a statement with our final decision on the 080 and 116 ranges shortly, taking into account the responses to that consultation.
- 1.5 We consider that making these ranges free-to-caller will offer direct benefits to callers and organisations as well as being an important element in restoring trust in non-geographic numbers overall. However, making the 080 and 116 ranges free-to-caller will also prompt changes in wholesale arrangements between CPs, due to the removal of retail revenue for these calls and the need for origination costs to be recovered from the TCP (which the TCP may, in turn, recover from the service provider ('SP') using the particular number). We are concerned that if we proceed with a free-to-caller approach and do not intervene at the wholesale level, imbalances in negotiating power could lead to connectivity issues and undesirable outcomes for consumers. We set out these concerns in detail in the April 2013 policy position³ and have summarised them below.

¹ Ofcom, *Simplifying non-geographic numbers; policy position on the introduction of the unbundled tariff and changes to 080 and 118 ranges*, 15 April 2013, available at:

<http://stakeholders.ofcom.org.uk/consultations/simplifying-non-geo-no/>.

² Ofcom, *Simplifying non-geographic numbers; detailed proposals on the unbundled tariff and Freephone*, 4 April 2012 ('the April 2012 consultation'), available at:

<http://stakeholders.ofcom.org.uk/consultations/simplifying-non-geo-no/>

³ See paragraphs 14.6 to 14.32 in Part C of the April 2013 policy position.

1.6 In the absence of ex-ante wholesale regulation, originating CPs ('OCPs') and TCPs would enter into commercial negotiations about the level of origination payments that should apply on a free-to-caller number range. There would be inherent tensions in these negotiations, with OCPs preferring higher origination payments, and TCPs lower. Predicting their likely outcome is complicated by the fact that there are a large number of heterogeneous OCPs and TCPs who differ considerably in terms of their relative market shares and business models. Our analysis of the factors that influence their negotiating strength suggests that different OCPs and TCPs are likely to be in different commercial positions relative to one another. In other words, negotiations would depend upon the particular OCP and TCP involved, rather than one side consistently being in a strong position.⁴

1.7 Given this, we have concerns about three particular areas:

- **delays in interconnection and refusals of interconnection:** For example OCPs may refuse to interconnect where origination payments are too low. On the other hand TCPs may refuse to interconnect if origination payments demanded by OCPs are too high. CPs may also seek to employ other tactics in response to origination payments they consider to be unacceptable. For example TCPs might seek to block calls which originate from mobiles and OCPs may seek to block calls to particular number blocks. In the April 2013 policy position we set out evidence that TCPs/SPs may block calls where they cannot afford origination payments, as well as highlighting the history of interconnection problems on the 080 number range (demonstrated by lengthy and extensive disputes) and previous prolonged/unsuccessful negotiations in relation to mobile origination payments for 080 numbers that SPs were seeking to make free-to-caller.⁵ We also noted similar concerns about the 116 range;
- **uncertainty over likely level of origination payments:** even where there is not a breakdown in interconnection, we are nevertheless concerned that agreement over stable origination payments will not necessarily be reached in a timely manner, giving rise to the potential for a lengthy period of uncertainty. Such a period of uncertainty could have further adverse effects on investment and innovation, because if we proceed to make the 080 range free-to-caller, many SPs will need to make a decision about whether to remain on the range or migrate to a different range. Those SPs will need to make that decision as soon as possible in order to minimise their costs and their expectation of the level of origination payments will be essential to that decision making process. If SPs delay that decision, or make a decision on the basis of incorrect assumptions about levels of origination charges, it would increase their costs and potentially reduce service availability on the range. Similar concerns about periods of uncertainty also apply to SPs on the 116 range and, given that the type of SP operating on this range tends to be very sensitive to cost, any such uncertainty could have an adverse impact on the services they provide; and
- **the effect on the level of origination payments:** we cannot be confident that the origination payments that would ultimately arise in the absence of ex-ante regulation would lead to desirable outcomes for consumers. Whilst retail 080 and 116 prices would not be affected, the efficiency of wholesale prices (in particular the origination charges paid by SPs, the level of which is, as noted above,

⁴ See paragraphs A9.5 and A9.43 in the Part A Annexes of the April 2013 policy position.

⁵ See paragraphs 14.13 to 14.21 in Part C of the April 2013 policy position.

important in sending appropriate signals to SPs about whether or not to operate a service on the 080 range) and the efficiency of prices for other fixed and mobile services (via the tariff package effect⁶) could be affected. The potential for higher origination charges could have significant negative impacts on the availability of services on the 080 range and the socially important services on the 116 range.

We discussed these concerns in more detail in paragraphs 14.6 - 14.32 of the April 2013 policy position.

- 1.8 In order to address these concerns we have therefore decided that, if we proceed to make the 080/116 ranges free-to-caller, then we will also impose an access condition under sections 73(2) and 74(1) of the Communications Act 2003 ('the Act') (Article 5 of the Access Directive). The access condition would require TCPs to purchase wholesale call origination for free-to-caller 080 and 116 numbers on fair and reasonable terms.

Notification to the EC, BEREC and NRAs

- 1.9 Under Article 7 of the Framework Directive (as amended), National Regulatory Authorities ('NRAs') are required to notify their draft decisions to the European Commission ('EC'), the Body of European Regulators for Electronic Communications ('BEREC') and other NRAs upon completion of their own domestic consultation and having taken account of all stakeholder responses. The EC, BEREC and other NRAs may make comments within a month. The notifying NRA needs to take utmost account of any EC and BEREC opinions.
- 1.10 In the next section, we summarise the comments we have received from stakeholders in relation to the draft access condition and our responses to these comments (including where we have modified the condition in light of particular comments). Therefore, having taken account of consultation responses and having made modifications in the light of these comments, we are notifying our intended measures (see Annex 1) and an explanatory statement setting out the reasons for them to the EC, BEREC and the regulatory authorities in every other Member State under section 48B of the Act. This draft statement comprises that notification.

⁶ In particular a reduction or increase in the contribution of 080 calls to OCPs' fixed and common costs may lead to a reduction or increase in the retail price of other fixed and mobile services via this tariff package effect and the efficiency of such changes may depend on the extent to which they reflect consumer preferences.

Section 2

Stakeholder comments and our response

Introduction

2.1 In this section we summarise what we said in the April 2013 policy position about our proposed access condition, the stakeholder comments we received in response to that consultation and our response to those comments. In Section 3, we explain how the access condition meets the relevant legal tests.

Summary of April 2013 policy position

2.2 In our April 2013 policy position we set out our concerns that, if we proceeded to make the 080 and 116 ranges free-to-caller, then imbalances in negotiating power might give rise to interconnection delays or failures, the risk of an extended period of uncertainty, and origination payments that would not necessarily be in the interests of consumers. We considered that existing regulation would not adequately address these concerns. We were therefore of the view that (in line with our position in the April 2012 consultation), if we proceeded to make the ranges free-to-caller, then we should also intervene at the wholesale level by setting an access condition on TCPs (i.e. CPs that provide wholesale termination for calls to 080 or 116 numbers). We consulted on a draft access condition which required the TCP:

- 2.2.1 from the 'Effective Date'⁷ to purchase wholesale call origination for calls made by consumers to 080 and 116 numbers from any requesting OCP;
- 2.2.2 to do so on fair and reasonable terms (including charges); and
- 2.2.3 within one month of the access condition being set, to notify any OCP with whom it has an existing interconnection agreement of the (fair and reasonable) charges for wholesale origination which the TCP proposes to apply from the Effective Date.⁸

2.3 Alongside the April 2013 policy position we also issued draft guidance as to how we would approach any future dispute that may be referred to us under section 185 of the Act (Article 20 of the Framework Directive) about whether origination charges for calls to 080 and 116 numbers are fair and reasonable ('the 080/116 Dispute

⁷ The 'Effective Date' would be the date on which the 080 and 116 ranges are made free-to-caller, which would be 18 months after the date of our final statement. This 18 month implementation period is intended to allow sufficient time for commercial negotiations between OCPs and TCPs about origination charges, communications between TCPs and SPs on the 080 and 116 ranges about changes to their hosting charges, SPs to make decisions about whether to remain on these ranges or migrate to an alternative range and updates to pricing information and the communication of retail price changes to consumers (see paragraphs 15.10 to 15.16 in Part C of the April 2013 policy position).

⁸ See Part C, Section 14, as well as Annex 30, of the April 2013 policy position.

Guidance').⁹ This set out the three principles that we proposed to apply in resolving any such dispute.¹⁰

- 2.4 In the consultation document accompanying the draft 080/116 Dispute Guidance, we also set out an indicative range of fair and reasonable origination charges that we had derived by applying these principles to the evidence currently available to us (we referred to this as the “base case scenario range”). We considered that this range would provide TCPs and OCPs with a good starting point for their negotiations in relation to fair and reasonable origination charges. However, our guidance is intended to provide a framework for assessment, and an indication of the factors we would be likely to take into account, rather than providing a definitive answer to any individual set of circumstances. We therefore stated that we would determine any future dispute on its own facts and would have regard to all of the evidence available to us at the time of the dispute (including any new evidence adduced by the parties to the dispute).

Stakeholder comments and Ofcom’s response

- 2.5 We received a wide range of stakeholder comments on the draft access condition in response to the April 2013 policy position.¹¹ The comments related not just to the design and wording of the condition but also whether it was the optimal approach and the way in which it would operate in practice. In relation to the approach of using an access condition and its operation, stakeholders commented on:

- costs created by the approach;
- need for a wholesale market review;
- an alternative legal approach;
- the role of transit operators and how the bilateral negotiation model will work in practice;
- role of vertically integrated operators and BT’s Standard Interconnect Agreement (‘SIA’);
- the likelihood of a single origination charge;
- dispute resolution process and the impact on timescale for implementation; and
- the implications for wholesale charging for calls made by businesses.

⁹ The consultation on the draft 080/116 Dispute Guidance is available here: <http://stakeholders.ofcom.org.uk/consultations/080-116-ranges/>. We intend to issue a final version of the guidance in conjunction with our final statement on the access condition.

¹⁰ These were based on three principles that we have previously used when considering wholesale charges for calls to 080 numbers in other regulatory contexts, including in previous disputes. The use of these three principles has been accepted by the Competition Appeal Tribunal in a judgment on appeals against our previous dispute determination.

¹¹ All the non-confidential responses are published on our website here:

<http://stakeholders.ofcom.org.uk/consultations/simplifying-non-geo-no/?showResponses=true>

2.6 We set out and respond to these stakeholder comments on each of these issues in turn below and then address stakeholder comments on the design of the access condition (on which we consulted), specifically:

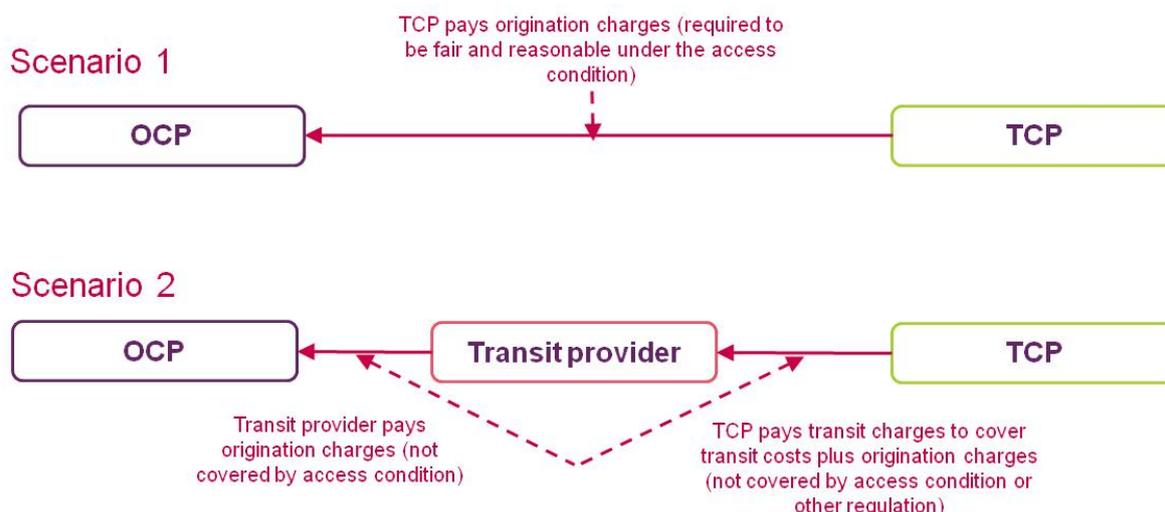
- the proposed notice to be given by TCPs to OCPs; and
- the wording/drafting of the condition.

2.7 However, before we summarise and respond to stakeholder comments, we consider it helpful to set out at a very high level how we consider the access condition is likely to work in practice.

High level summary of the operation of the access condition

2.8 Broadly speaking, there are two types of 080/116 traffic - that which is routed directly from the OCP to TCP and that which is routed indirectly (e.g. through a transit provider). These scenarios are illustrated below.

Figure 2.1: Scenarios for routing of 080/116 traffic



2.9 The access condition will apply to all directly routed 080/116 traffic. We expect all TCPs with a direct interconnect will notify their proposed origination charges to the relevant OCPs on or around the same date (as the access condition will require this to be done within one month of the condition being set). We expect these notified charges will be the starting point for commercial negotiation.

2.10 We consider OCPs are unlikely to want to agree different charges with different TCPs because of their desire to minimise billing costs (as expressed in stakeholder responses – see paragraphs 2.16 below). In practice, this means OCPs are likely to want certainty over the payment that will be made to them by BT before agreeing rates with other TCPs, given BT's relative position in the market. In the event a fixed or mobile OCP were able to reach a commercial agreement with BT, we consider it would be likely to act as an industry standard - both because of the desire on the part of both OCPs and TCPs to avoid incurring the additional costs and complexity associated with differentiated charges and because of BT's history as a price leader

in this market.¹² As a result, we consider commercially agreed charges, although in theory negotiated between individual pairs of OCPs and TCPs, would be likely to converge towards a number of small charges, if not a single charge, for each of fixed and mobile originated calls.

- 2.11 We consider it relatively likely agreement will be reached between fixed OCPs and TCPs, given the narrow base case scenario range for fixed origination payments.¹³ However, we recognise the wider range for mobile origination payments allows more scope for disagreement. We therefore recognise that the mobile OCPs may raise a dispute (under section 185 of the Act / Article 20 of the Framework Directive) over the level of mobile origination payment offered by TCPs, and that our determination of this dispute would then be likely to act as an industry standard. In the first instance, this is because we have seen similar determinations that were only legally binding on the parties be adopted throughout industry (e.g. the 03 determination).¹⁴ Moreover, whilst we cannot entirely exclude the possibility, once we have set a fair and reasonable mobile origination charge in one dispute, we are unlikely to set a different charge in a subsequent dispute between different parties (absent a change in circumstances – e.g. if the second dispute occurs several years later and there has been a change in costs or other evidence in the interim period). This would create a strong incentive for any OCP receiving below the determined rate or any TCP paying above this to seek to re-negotiation their origination charge to the level we have determined, or to threaten to raise a dispute of their own.
- 2.12 As a result, we consider it very likely that origination charges for each of fixed and mobile originated calls will converge towards a small number of charges, if not a single charge - whether agreed commercially or via a dispute determination (or a combination of the two). As noted above, we expect that BT's charge may act as an industry standard and we expect this origination charge to be transparent to industry as a result of BT's practice of publishing wholesale charges in its Carrier Price List ('CPL'), which, for reasons we set out in more detail in paragraph 2.68 below, we expect to continue under the new regime. Moreover, if the mobile origination payment is determined via dispute resolution, it will be publicly available in our final determination.
- 2.13 We recognise that the access condition does not apply to indirectly routed traffic and there is therefore no obligation on either the TCP or transit provider to purchase origination on a fair and reasonable basis. However, once the origination payment has been agreed or determined for directly routed traffic, we consider it likely that transit providers will notify OCPs of a revised origination payment for transited traffic equal to the rate payable for their own terminated traffic. At the same time, we expect transit providers will notify their TCP customers of an increase in their transit charge that exactly reflects this increase in origination payment. Whilst we recognise

¹² A recent example of this price leadership is BT's tiered termination rates for 080 calls, which were subsequently implemented by other TCPs either on an identical or very similar basis.

¹³ In the consultation document accompanying the draft 080/116 Dispute Guidance, we set out an indicative range of 0.3ppm to 0.6ppm for fair and reasonable fixed origination charges, which we derived by applying the principles in the draft guidance to the evidence currently available to us. However, one of the factors causing uncertainty in that range was the cost modelling resulting from the NMR review and our final NMR statement has now been published (<http://stakeholders.ofcom.org.uk/consultations/nmr-13/statement/>). We will therefore take this into account in the statement accompanying our final 080/116 Dispute Guidance.

¹⁴ http://stakeholders.ofcom.org.uk/enforcement/competition-bulletins/closed-cases/all-closed-cases/cw_01058/

the potential for differentiated charges, we consider these are unlikely to arise in practice because of a combination of the billing costs associated with such charges, the threat of OCPs switching between transit providers and the threat of TCPs raising a dispute. We discuss the reasons for this in more detail below.

2.14 We are nonetheless aware that an absence of regulation for indirectly routed calls has the potential to create problems and consider the scenarios under which these problems might arise in more detail in response to stakeholder concerns. In general though, we consider these scenarios, whilst possible, are unlikely to arise given our understanding of current industry practices, which we consider likely to continue under the new regime. However, should any of these concerns materialise, we consider there are regulatory backstops in place that would result in them being addressed in a timely manner - either through dispute resolution or by extending the access condition to transit providers. As explained in paragraph 2.65 we have decided not to apply the access condition in the transit scenario at present but we are open to revisiting this position if there is evidence that the concerns we have identified are materialising in practice.

2.15 We now turn to stakeholder comments.

Costs

Stakeholder comments

2.16 Some stakeholders commented on the likely increase in costs created by Ofcom's approach to the access condition. EE noted that if a large range of origination charges was to emerge, the wholesale billing and related staff time costs could be material.¹⁵ In addition Vodafone said that the prospect of supporting multiple bilateral commercial arrangements would result in higher transaction costs, as well as additional billing and settlement complexity in order to distinguish the identity of individual CPs and the category of caller.¹⁶

Ofcom's response

2.17 These comments relate primarily to the potential for additional costs arising from multiple origination charges, and from having differing charges for business callers. We have explained above why we consider that origination charges are likely to converge to a small range of charges, if not a single charge, for each of fixed and mobile originated calls (see also paragraphs 2.46 and 2.91 below). We also explained below our revised approach in relation to business calls (paragraphs 2.115 to 2.121). We think that this will result in these calls being treated by OCPs and TCPs in the same manner as consumer calls. On this basis, our view is that the increase in costs highlighted by these stakeholders will not emerge in practice.

Wholesale market review

Stakeholder comments

2.18 Three and EE reiterated their arguments (previously made in response to both the December 2010 and April 2012 consultations) that we should conduct a wholesale

¹⁵ EE, April 2013 policy position response, pp.23-24.

¹⁶ Vodafone, April 2013 policy position response, p.14.

review of the termination market for non-geographic calls (instead of imposing an access condition), which in their view would lead to a finding that all TCPs had a monopoly on call termination to 080 and 116 numbers on their networks.¹⁷

Ofcom's response

- 2.19 We already set out our reasons for not adopting this approach in the April 2013 policy position and in earlier consultations and we therefore do not deal with these points in detail again here.¹⁸
- 2.20 In summary, if we proceed to make the 080 and 116 ranges free-to-caller at the retail level, then we consider that the concerns that we have identified at the wholesale level can be addressed in a more appropriate, proportionate and timely manner by the imposition of an access condition than by a wholesale market review. This is because we consider that there are likely to be wide variations in the positions of OCPs and TCPs and we do not consider that one side (i.e. either OCPs or TCPs) would consistently be in a strong position in negotiations. Rather, the relative strength of bargaining power in any particular negotiation would depend upon the identity of the particular OCP and TCP involved. As such, we may not be able to impose SMP remedies on a consistent basis across the market.
- 2.21 We also recently explained in our statement on the Narrowband Market Review ('NMR') that the termination of calls to non-geographic numbers did not form part of the relevant fixed call termination market considered in that review (as the conditions of competition for the provision of call termination to non-geographic numbers are not sufficiently homogenous with those present in call termination to geographic numbers). We stated that it would be inappropriate to conduct a review of the market for call termination to non-geographic numbers at the present time because of the very significant changes to the market likely to result from our proposals for NGCs within the period of that review.¹⁹ However, we would consider whether any further review of the market for call termination to non-geographic numbers is necessary once the NGCS review is completed and any resulting proposals have been implemented.²⁰

¹⁷ See pp.15-17 of EE's April 2013 policy position response, and p.17 of Three's April 2013 policy position response. These comments were set out in paragraphs A30.6 and A29.5 of the April 2013 policy position.

¹⁸ For example, see paragraphs 14.54 to 14.58 and A30.9 of the April 2013 policy position and paragraph 16.44 in Part C of the April 2012 consultation.

¹⁹ In addition to our proposals for the 080/116 ranges, we also announced in the April 2013 policy position that we are minded (subject to some remaining points of consultation) to introduce a new unbundled tariff structure for calls to the 084, 087, 09 and 118 ranges. We have also separately consulted on our proposal to withdraw the 0500 range and we plan to consult separately on issues related to the 070/076 and 055/056 ranges.

²⁰ Ofcom, *Review of the fixed narrowband services markets*, 26 September 2013, <http://stakeholders.ofcom.org.uk/consultations/nmr-13/statement/> - see paragraphs 6.41 to 6.47. This analysis was notified to the EC, BEREC and other NRAs in accordance with Article 7 of the Framework Directive and this particular aspect of the analysis attracted no comment from those bodies.

Alternative legal approach

Stakeholder comments

- 2.22 Vodafone reiterated its view (previously made in response to the April 2012 consultation) that, if we proceed to make the 080 and 116 ranges free-to-caller, then we should mandate a single wholesale origination charge for each of mobile and fixed calls on an ex ante basis (instead of imposing a requirement that these charges be fair and reasonable).
- 2.23 Vodafone repeated its view that we could achieve this by setting the wholesale origination charge as a condition of TCPs' rights of use of an 080 or 116 number under section 58(1)(aa) of the Act / paragraph 1 of Part C of the Annex to the Authorisation Directive ('Annex C(1)'). Vodafone disagreed with our view (expressed in the April 2013 policy position) that this would only enable us to impose a maximum price, and not a fixed price. Vodafone considered that a fixed price is clearly compatible with the broad concept of a "tariff principle" that can attach to the use of the number range.²¹
- 2.24 Vodafone also submitted that there was an apparent inconsistency in Ofcom's position, given Ofcom's simultaneous reliance on Article 28 of the Universal Service Directive ('USD') to set OCPs' retail charges by virtue of a claimed 'right of use', but denial that it could set wholesale charges (except in the context of a dispute). Vodafone submitted that Article 28 USD enables Ofcom to regulate all stakeholders in the value chain whose involvement is necessary to enable the provision of services using non-geographic numbers to consumers.²² Vodafone stated that Article 28 USD should be read together with the Access Directive, given that its purpose is to enable NRAs to adopt a wide range of measures facilitating interconnection arrangements that enable the diffusion of services so as to benefit consumers. Vodafone therefore considered that Ofcom is empowered to set the level of the wholesale origination charge. Vodafone stated that Ofcom appears to acknowledge this through the proposed imposition of an access condition, but falls short of attaining the objective of the Community legislature by finding that it can only set the terms of interconnection through a dispute resolution process.²³ Vodafone submitted that its view was supported by BEREC, which contemplates the regulation of the wholesale rate at cost or at another reasonable level in situations where the caller pays no fee. Vodafone also noted that, according to BEREC's report, the regulation of wholesale interconnection arrangements has been proposed by other NRAs.²⁴ Vodafone stated that, in failing to mandate the level of the wholesale origination charge, Ofcom has failed to take account of all relevant facts and evidence and that, if it proceeds on the basis of its consultation, then this would give rise to a breach of sections 3 and 63 of the Act.²⁵

²¹ Vodafone, April 2013 policy position response, Annex 2, pp.9-10

²² Article 28 USD provides that NRAs must take "all necessary steps" to ensure that end-users are able to access and use services using non-geographic numbers.

²³ Vodafone, April 2013 policy position response, Annex 2, pp.10-11 and email from Vodafone to Ofcom, 14 October 2013

²⁴ Vodafone, April 2013 policy position response, Annex 2, p.11

²⁵ Vodafone, April 2013 policy position response, Annex 2, pp.12-13.

Ofcom's response

2.25 With respect to Annex C(1) of the Authorisation Directive, we set out our detailed reasons for not favouring this approach to regulating wholesale origination charges in the April 2013 policy position and we therefore do not deal with these points in detail again here. In summary, we noted in the April 2013 policy position that:

- section 58(1)(aa) of the Act / Annex C(1) of the Authorisation Directive provides a power to set “*tariff principles and maximum prices*”, but that TCPs in a relatively strong negotiating position might seek to set origination charges below any maximum level that we might specify.²⁶
- our wholesale concerns relate to breakdowns/delays in connectivity, a period of uncertainty for SPs and potential distortions of competition and we do not consider that a power to set a maximum charge would address these concerns to the same extent as our proposed access condition; and
- although these concerns would ultimately have detrimental effects on consumers, the nature of the concerns means that they are more appropriately addressed through an access condition (which is intended to secure end-to-end connectivity, resulting in sustainable competition, interoperability and consumer benefits), rather than our powers under the power under Annex C(1) of the Authorisation Directive (which are intended for consumer protection purposes).²⁷

2.26 Vodafone also suggested that we should use Article 28 of the USD as a guide to the interpretation of the extent of our powers to regulate wholesale charges under Article 5 of the Access Directive. With respect to wholesale charges, we continue to believe that it is inappropriate to mandate a single origination charge for each of fixed and mobile calls under our proposed access condition. In particular, obligations imposed under Article 5 must be “*necessary to secure end-to-end connectivity*” and we consider that connectivity between OCPs and TCPs can be secured by the imposition of a requirement for TCPs to purchase wholesale origination on fair and reasonable terms (backed up by the use of our dispute resolution powers under section 185 of the Act / Article 20 of the Framework Directive in the event that a dispute arises as to whether the terms offered by a particular TCP are fair and reasonable).²⁸ Similarly, the objective of Article 28 USD is that NRAs take “*all necessary steps*” to ensure that end-users are able to access non-geographic numbers, but we consider that General Condition 20²⁹ (in combination with our access condition at the wholesale level) is sufficient to ensure this objective is met. We also have a duty under section 3(3)(a) of the Act to have regard to the principle that regulatory action should be targeted only at cases in which action is needed. We consider it appropriate to give OCPs and TCPs an opportunity to reach a

²⁶ As noted above, Vodafone has submitted that this argument is irrelevant as we have the power to set a fixed price under the broad concept of a “tariff principle”. We disagree with this view and consider that the reference to “tariff principle” in Annex C(1) would not encompass the imposition of a fixed price. In particular, if Vodafone’s interpretation were correct, then the reference to “maximum prices” in that provision would be redundant.

²⁷ See paragraphs A13.87 – A13.88, Annex 13 of the April 2013 policy position.

²⁸ Vodafone characterised us as leaving the terms of interconnection to be regulated through a dispute resolution process. However, we are not relying solely on our ex post dispute resolution powers, but are regulating the terms of interconnection on an ex ante basis, by requiring that these terms (including charges) are fair and reasonable. See also paragraph 2.109.

²⁹ General Condition 20 implements the requirements of Article 28 USD.

commercially negotiated solution regarding the level of origination charges. However, we recognise that stakeholders continue to have concerns about the lack of a mandated wholesale origination charge across industry – we discuss this below at paragraphs 2.87-2.93.

2.27 We also do not consider there to be any inconsistency between this position and our approach at the retail level. We have previously stated that the requirements of Article 28 USD are consistent with our view that “rights of use” should be interpreted broadly.³⁰ However, we do not base our legal power to regulate retail prices upon Article 28 USD. Rather, we are relying on sections 56(1)(ba) and 58(1)(aa) of the Act / Annex C(1) of the Authorisation Directive to set a maximum price of zero for calls to 080/116 numbers. Bilateral negotiation model and the role of transit providers

Background

2.28 Before setting out the specific stakeholder comments we received, we first present some of the aspects of the market that are particularly relevant to the discussion below. These factors play a part in framing the market and interacting with the access condition we are imposing, therefore, they need to be factored into any consideration of how the access condition will work in practice.

2.29 Those factors are:

- **BT’s Standard Interconnect Agreement (‘SIA’) and Carrier Price List:** BT publishes various reference offers setting out the terms and conditions on which it provides certain services. The SIA is BT’s reference offer for telephony.³¹ It is a contractual agreement between BT and a CP, establishing the terms and conditions that enable providers of public electronic communication networks (‘PECNs’) to connect their network to BT’s, allowing calls to pass between the different networks.³² BT enters into a separate SIA with each CP wishing to interconnect its PECN with that of BT’s. However, in each case the terms and conditions in the SIA are identical. These include paragraphs 12 and 13, which set out the mechanisms by which the charges for BT’s and the CP’s wholesale interconnect services, respectively, may be amended. Those same paragraphs specify that the charges payable by BT to the CP (and vice versa) will be those set out in the CPL which is available on BT’s website. The CPL therefore provides a publicly available record of the interconnect charges in use by BT for calls originating, transiting, or terminating on the BT network; and³³
- **Narrowband market review (‘NMR’) and removal of single transit regulation:** we recently published a statement on the NMR in which we confirmed the

³⁰ See paragraph 5.57 in Part A of the April 2012 consultation and paragraphs A13.51 – A13.54 in Annex 13 to the April 2013 policy position.

³¹ Under SMP Condition 4 (see Annex 1, Schedule 1 of the NMR Statement) - BT is required to publish reference offers for call origination, call termination and interconnection circuits.

³² The full title of the SIA is ‘*Network Charge Change Control Standard Interconnect Agreement (NCC SIA)*’, available on BT Wholesale’s website:

https://www.btwholesale.com/pages/static/Library/Pricing_and_Contractual_Information/Telephony_Reference_Offer/index.htm.

³³ https://www.btwholesale.com/pages/static/Library/Pricing_and_Contractual_Information/carrier_price_list/index.htm

deregulation of single transit ('ST') services.³⁴ This means that BT is no longer subject to SMP conditions relating to its single transit services. A number of stakeholders indicated concerns about this approach as part of that review, particularly about the impact on non-geographic calls ('NGCs') (which we included in the category of 'thin' routes, i.e. routes which are less competitive) and the potential for BT to price discriminate between ST services for NGCs and other types of calls (or between different TCPs within the market for NGCs). We, however, noted the following in the NMR statement:

"The recent empirical evidence shows that BT does not have a strong incentive to increase the price of ST across all routes ... BT's incentives to seek to increase profits on 'thin' routes and in relation to NGCS traffic are low as BT would have a limited ability to make significant profits from raising the price of such routes where traffic volumes are small. BT currently publishes a list price for ST. Adopting an approach of price discrimination on the basis of competitive conditions would require a strategy of either targeted increases or targeted discounts, which would constitute an additional cost. If BT were no longer to price on a uniform basis for thick and thin routes, or for different termination service providers active in the non-geographic market, purchasers of ST will quickly become aware of such practices and, to the extent that such conduct is anti-competitive, are able to bring this to Ofcom's attention in a timely manner."

We therefore concluded in the NMR review that competition law was likely to be sufficient to address any potential competition concerns we had identified in the ST market.³⁵

Stakeholder comments

- 2.30 A number of stakeholders questioned how the access condition would work in practice. Vodafone, for example, said there were major practical questions about how a model of bilateral negotiation between each and every conceivable pair of TCPs and OCPs could work in practice.³⁶ EE noted similar concerns - it considered the process had been "*inadequately thought through*" and as a result was likely to be unduly duplicative, costly, slow, inefficient and susceptible to creating competitive distortions and outcomes which were not in the best interests of consumers.³⁷
- 2.31 Vodafone and EE raised concerns about how the access condition would work where OCPs and TCPs were not directly interconnected. EE noted that it was imperative that the access condition functioned effectively and efficiently in situations where the TCP and OCPs were only indirectly interconnected via a transit operator but, in its view, this did not appear to be the case.
- 2.32 EE said it appeared the draft access condition was not intended to apply to TCPs and OCPs when acting in their capacity as transit providers. On that basis, it said OCPs and TCPs who were not directly interconnected would have absolutely no

³⁴ See Section 7, paragraphs 7.19 to 7.79 of the NMR statement, available at: <http://stakeholders.ofcom.org.uk/consultations/nmr-13/statement>

³⁵ See paragraphs 7.70 and 7.71 of the NMR statement.

³⁶ Vodafone, April 2013 policy position response, p.13.

³⁷ EE, April 2013 policy position response, p.18.

legal certainty that the rates that they have negotiated with their transit provider in its capacity as an OCP or TCP would apply when their traffic was passed by the transit provider to other OCPs and TCPs. It highlighted the problems with that uncertainty for both OCPs (in considering whether it was economically viable to originate the traffic) and TCPs (in managing their relationships with SPs hosted on the range).³⁸

2.33 Vodafone, however, noted that Ofcom appeared to suggest that individual bilateral negotiations between all pairs of operators might not be necessary because smaller operators could rely on larger operators to negotiate on their behalf, but it considered there were major problems with that suggestion. It noted that Ofcom had not created any obligation for third party negotiation on behalf of others and, more worryingly, was actually proposing to relax the remaining regulatory safeguards on BT as a transit operator. Vodafone noted that a key aim of the NGCS policy review was to move away from a model of regulation where the world revolved around BT yet Ofcom was in danger of ushering in a new model where the same issue applied, but an essentially unregulated BT that was free to pursue its own commercial interests at the expense of its competitors.³⁹ It said even if the regulation on transit was retained Ofcom's model of the TCP negotiating was problematic because many OCPs did not have the capability to differentially charge for individual TCPs and TCPs typically did not have the ability to validate OCP bills without a reliable means of knowing where the call originated. It said Ofcom had to consider carefully a mechanism for ensuring that TCP negotiations could be conducted fairly.⁴⁰

2.34 Vodafone went on to say that the potential removal of a regulated single transit service was one of its key concerns about the wholesale arrangements. In particular it considered that deregulation increased the potential for problems, because Vodafone would be unable to separate what it was being charged for origination from what it was being charged for transit and it considered that BT would be able to leverage market power in transit to gain wider competitive advantage, particularly in the NGCS hosting market. In respect of 080, it noted that BT would have a unique place in negotiations for the mobile origination charge and would be able to act in a way which favoured its own hosting business - for example it said that if BT were to increase its price for transiting traffic to Vodafone's 080 ranges to a similar level as BT's price for transit portability (which Vodafone said was indicative of the pricing level BT adopted in an unregulated environment), then Vodafone would be faced with a cost of origination some 16% higher than that faced by BT's 080 hosting business and said it would be impossible to maintain a competitive service in such circumstances. It said other TCPs like Vodafone would never be in contention as the default transit provider⁴¹ and would be powerless to act as a significant proportion of its 080 costs would be set by its largest rival in termination. It noted that when 080 became genuinely free-to-caller it was expecting a significant increase in volumes and a fourfold increase in volumes could increase the number of transit minutes by [3<] making it a very significant issue in the overall workings of the market and a vital issue for TCPs trying to compete against BT in the 080 hosting market.⁴²

³⁸ EE, April 2013 policy position response, pp.19-20.

³⁹ Vodafone, April 2013 policy position response, p.13.

⁴⁰ Vodafone, April 2013 policy position response, p.13.

⁴¹ Because only BT has direct interconnects with all OCPs/TCPs and there are costs in managing multiple routing plans.

⁴² Vodafone, April 2013 policy position response, pp.21-22.

- 2.35 EE said, even if the access condition was amended so as to require TCPs to pay fair and reasonable origination charges for any 080 and 116 traffic terminated on their network whether received directly or via a transit operator, it considered it was unclear whether/how the transit operator would negotiate those origination charges for its transit customers. It said that a transit operator who only operated a fixed network could not, for example, be expected to have a full understanding of the costs of origination for its mobile transit customers, nor indeed for its fixed transit customers.⁴³
- 2.36 EE also noted similar concerns to Vodafone that all vertically integrated TCP transit providers would have an interest in increasing the costs of their rival TCPs by increasing the origination charges billed to them above the level which the vertically integrated operator pays on its own terminated traffic.⁴⁴ In addition it argued that TCP transit providers would have an interest in reducing the origination charges payable to OCPs for transited traffic below the level payable for their own traffic - presumably with a view to retaining the difference rather than passing it on. It disagreed with Ofcom's view that competition for transit business would address those concerns, because for example all of the current major transit providers had a substantial 080 hosting business and therefore it said they would have a common interest in pushing the charges payable for mobile origination down as low as possible, creating a substantial risk that mobile OCPs would be unable to create any significant transit competition.⁴⁵
- 2.37 Three also noted similar concerns, in particular highlighting BT's role in the process, as not only an OCP and TCP but also a provider of transit. Three said the very low starting point of Ofcom's wide range of mobile origination charges in its base case scenario, together with BT's power to introduce new charges under paragraph 12 of the SIA would likely result in BT proposing the lowest possible mobile origination charge it thought it could justify on the basis of the 080/116 Dispute Guidance.⁴⁶ Three said it was concerned that, given BT's position as both TCP and transit operator, that problem would extend to all charges for BT services covered by the SIA, including for transit traffic that would ultimately terminate on other TCPs' networks.⁴⁷
- 2.38 BT, on the other hand, requested that Ofcom make clear that the responsibility for negotiating origination charges lies with the TCP and the OCP, including where the traffic is carried by a transit operator. It said it should not be the responsibility of the transit operator to ensure that origination rates are fair and reasonable.⁴⁸

Ofcom's response

- 2.39 It is clear from stakeholder responses that there is significant concern about how the access condition will operate in practice and in particular a concern about how it will apply where a transit operator is involved in the chain. We have therefore below set

⁴³ EE, April 2013 policy position response, pp.19-20.

⁴⁴ EE noted Ofcom had acknowledged that risk at paragraph A30.90 of the April 2013 policy position.

⁴⁵ EE, April 2013 policy position response, pp.19-20.

⁴⁶ Three noted that it and the other mobile OCPs were in dispute with BT with regard to the way in which paragraph 12 of the SIA operated. Ofcom issued its final determination of this dispute on 15 August 2013 - see: http://stakeholders.ofcom.org.uk/enforcement/competition-bulletins/closed-cases/all-closed-cases/cw_01083/

⁴⁷ Three, April 2013 policy position response, p.18.

⁴⁸ BT, April 2013 policy position response, p.18.

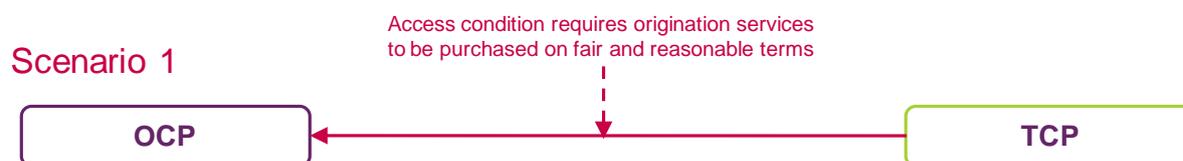
out in more detail how we consider the negotiation process will work, as well as addressing the comments about the incentives of different parties within that negotiation, including in particular the role of BT.

- 2.40 At a high level, we note that the access condition gives OCPs and TCPs an opportunity to reach a negotiated solution regarding the level of fixed and mobile origination charges. We recognise there are practical obstacles to reaching such a solution, including the potential difficulties highlighted by stakeholders in their responses.
- 2.41 However, we consider that the situation is likely to be simpler in practice and that the potential issues raised by stakeholders are unlikely to occur for the reasons set out in paragraphs 2.8 to 2.13. We also consider that, should these issues arise, there are regulatory backstops in place that would result in them being addressed in a timely manner for the reasons set out in 2.14.
- 2.42 We now discuss in more detail two scenarios: one in which an OCP and TCP are directly interconnected and one in which a transit operator (in particular BT) is involved.

Operation of the access condition in a direct interconnect scenario

- 2.43 The diagram below indicates how the condition operates in this scenario.

Figure 2.2: Access condition for direct interconnection scenario



- 2.44 From the Effective Date, a TCP must purchase origination services from an OCP (i.e. enter into a new direct interconnect relationship) upon reasonable request, as soon as reasonably practicable and on fair and reasonable terms.
- 2.45 With respect to existing direct interconnect relationships, the access condition requires TCPs to purchase origination services from OCPs on fair and reasonable terms from the Effective Date, and to provide advance notice to OCPs of their proposed (fair and reasonable) origination charges within one month after the access condition is set.
- 2.46 This will result in all TCPs with an existing direct interconnect being required to notify the relevant OCP of their proposed origination charges. We do not anticipate the notification process itself imposing significant costs on industry. In the first instance this is because, as we have previously noted, the majority of smaller TCPs will only need to notify BT of their revised origination charges (as smaller TCPs tend to directly interconnect only with BT).⁴⁹ Although larger OCPs and TCPs are likely to

⁴⁹ For example see paragraph A3.51 of the December 2010 consultation (available at: <http://stakeholders.ofcom.org.uk/consultations/simplifying-non-geo-numbers/>). Similarly, the majority

have more direct interconnect relationships, we still would not expect the notification process itself to constitute a significant burden because OCPs and TCPs with a direct interconnection in place are already likely to be in regular communication and so the burden of notification is likely to be small. We also note that our 080/116 Dispute Guidance will provide a detailed framework which all TCPs can use as the basis of their initial notification.

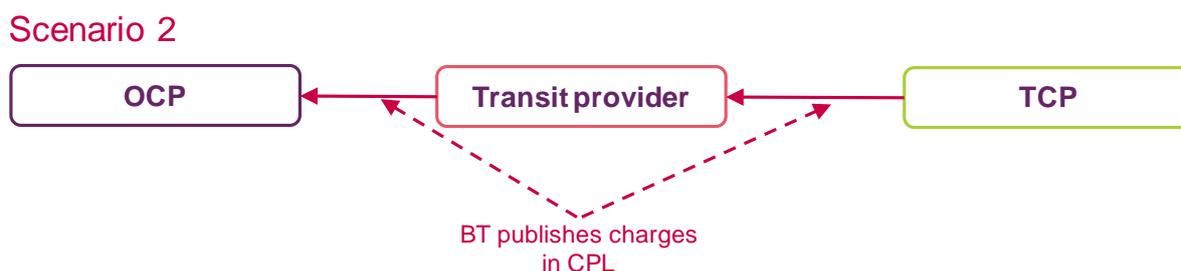
- 2.47 We recognise that there are likely to be some costs involved in any actual negotiations, although we consider these are likely to be relatively low given that we expect the publication of our 080/116 Dispute Guidance to narrow the terms of negotiation. As noted above, we consider it relatively likely that commercial agreement will be reached between fixed OCPs and TCPs. With respect to mobile origination charges, we consider it likely that a major mobile OCP will not begin negotiations with most TCPs in earnest until its negotiations with BT have either been concluded or have resulted in a dispute. This is because we are aware that the major mobile OCPs have expressed a strong desire to pay a single origination charge (rather than one which is differentiated by TCP) and we consider they are most likely to focus on the payment made to them by BT in the first instance, given BT's relative position in the market. We also consider that BT is likely to agree to pay the same origination charge to each of the major mobile OCPs, due to the obligation for the charge to be fair and reasonable and the threat of a dispute being brought if BT agrees a more favourable rate with one of the major mobile operators than with its competitors. Other players in the industry will be aware that the resulting payment by BT is likely to become the standard, and so will have little incentive to incur the costs of negotiation. As a result, whilst we recognise Vodafone's concern that the access condition might create a model of bilateral negotiation between a very large number of TCPs and OCPs, we do not consider this situation likely to arise in practice. For the same reason, we do not consider the process will be duplicative in practice, contrary to EE's concern, and therefore will not be unduly costly, slow and inefficient.
- 2.48 EE was also concerned that the operation of the access condition could result in outcomes which distorted competition or did not result in the best outcomes for consumers. Our draft 080/116 Dispute Guidance makes clear that we would only consider charges fair and reasonable if they provided benefits to consumers, taking into account the effect on competition. As a result, we consider that any outcome which was either distorting competition or not maximising benefits to consumers would be liable to being disputed by whichever party stood to gain from an appropriate revision of the charge.
- 2.49 Three raised a concern that the combination of the low starting point of Ofcom's base case scenario range and paragraph 12 of the SIA would likely result in BT proposing the lowest mobile origination charge it thinks it can justify. The access condition will require BT (as TCP) to purchase origination services from OCPs on fair and reasonable terms, including charges. We acknowledge that TCPs, including BT, may notify a proposed origination charge towards the lower end of the base case scenario range. However, it will be open to OCPs to refuse this initial offer if they do not consider it fair and reasonable on the basis of available evidence, and to raise a dispute if they cannot agree on an appropriate payment.

of smaller OCPs will only receive a notification from BT, as this will be their only direct interconnection relationship.

Operation of the access condition where a transit provider is involved

- 2.50 As noted above, OCPs and TCPs may not be directly interconnected. Several stakeholders have questioned, or raised concerns about, how the access condition will operate where a transit provider, specifically BT (as the main transit operator for NGCs) is involved in the chain, as illustrated in the figure below.
- 2.51 In this scenario, the rate which BT (as a transit provider) charges the TCP will cover both the origination and transit elements of the call. BT will, in turn, pay an origination charge to the OCP.

Figure 2.3: purchase of 080/116 origination where BT involved as transit provider



- 2.52 The access condition does not apply between the TCP and OCP because the TCP is not purchasing any service from the OCP in this scenario (as it is not directly interconnected with the OCP).⁵⁰ We also stated in the April 2013 policy position that the access condition would not apply as between the TCP and the transit provider.⁵¹ As a result, the access condition does not apply to indirectly routed calls. We recognise that indirectly routed calls account for a significant proportion of mobile originated calls to the 080 range and are therefore likely to account for a material proportion of 080 calls when it is made free-to-caller.
- 2.53 In the April 2013 policy position, we noted that TCPs could use the origination rate agreed between their transit provider and an OCP as the basis of their own negotiations with the transit provider.⁵² However, EE, Vodafone and Three have all raised concerns about the role of BT, as the largest transit provider, in negotiating wholesale charges for calls to 080/116 numbers and whether this will lead to competitive distortions. On the other hand, BT has explicitly asked for clarification that transit providers will not be obligated to negotiate on behalf of other TCPs. We begin by responding to concerns about the main ways identified by stakeholders that BT could exploit its position by outlining why we consider it likely that BT, along with other vertically integrated transit providers, will charge TCPs the same origination rate for transited traffic as it pays for its own terminated traffic. We then respond to comments in relation to negotiation by transit providers on behalf of smaller TCPs and the implications of removal of regulation of BT's single transit services. Finally,

⁵⁰ However, it would be open to the OCP to request that the TCP purchases origination services from it (i.e. enter into a new direct interconnect relationship) under paragraph 1.1 of the access condition.

⁵¹ See paragraph A30.88 in the Part C Annexes of the April 2013 policy position. EE considered that the drafting of the access condition was ambiguous in this respect. We have clarified the wording of the condition in response to this comment – see paragraph 2.145 below.

⁵² Paragraph A30.89 in the Part C Annexes of the April 2013 policy position.

we set out a summary of the operation of the access condition in direct interconnect and transit scenarios.

Likely charges for transited traffic

- 2.54 Stakeholders have expressed concern about three main ways in which BT, as a vertically integrated provider, could potentially exploit its position when acting as transit provider for calls to 080 and 116 numbers;
- i) BT could pay an origination charge below the fair and reasonable level to OCPs for transited traffic (and not pass this lower price onto TCPs, thereby increasing its profits as a transit provider) because there is no obligation to purchase origination for these calls on a fair and reasonable basis;
 - ii) BT could increase the origination charge for transited calls above the level agreed for its own traffic in order to raise rival TCPs' costs; and
 - iii) BT could increase charges for single transit services for these calls in order to increase its profits as a transit provider as a result of the removal of regulation in this market.
- 2.55 In each case, whilst we recognise the potential for these problems to arise, we do not think they are likely to do so in practice. This is because we consider it likely that BT (and other vertically integrated transit providers) will charge TCPs the same origination rate for its transited traffic as it pays for its own terminated traffic for the following reasons:
- there are costs associated with billing differentiated charges;
 - pricing transparency means TCPs will be able to raise a dispute in the event they are charged a higher amount than the rate paid on BT's own terminated traffic; and
 - OCPs can threaten to switch transit provider if they are offered a lower origination payment for transited traffic than the rate they receive for BT terminated traffic.
- 2.56 We now consider these reasons in more detail before summarising our overall position on likely charges for transited traffic.

Billing costs

- 2.57 All large transit providers are themselves TCPs, and as such will be required to notify OCPs of their revised origination charges for their own terminated traffic. Once these revised origination payments have either been agreed or determined via the process outlined above, we anticipate each transit provider will then notify its OCP and TCP customers of an increase in origination payments and transit charges.
- 2.58 In both cases, we consider the revised charges are likely to reflect the increase in origination payments the transit provider has agreed for its own terminated traffic. In the first instance, this is because we consider the costs associated with introducing additional billing complexity by paying/charging different origination charges for transited traffic are unlikely to be worthwhile. Differentiated origination charges could create billing complexity for BT because it would have to reconcile the different amounts for its transit and terminated traffic and would need to make that

reconciliation clear to OCPs (who would demand transparency and validation for the call traffic for which they were receiving a lower origination payment). This differentiated billing and reconciliation is likely to not only be more complex for BT, but also lead to additional transparency and validation costs. Those costs would need to be justified by the additional amount BT would be able to generate from such behaviour. In this respect, we consider it relevant that BT has, in its response, acknowledged the complexity of maintaining multiple origination rates and suggested that they would be unwieldy for OCPs, TCPs and SPs.⁵³

Threat of dispute from TCPs

- 2.59 Clearly, there comes a point at which the gains from differentiated pricing outweigh these billing costs. However, we consider there are additional factors which will constrain BT from pricing either above or below the rate paid for its own terminated traffic. In the first instance, we consider the threat of a dispute will constrain BT from charging TCPs above this rate. This is because we expect the origination charges agreed or determined for BT to pay for its own terminated traffic to be transparent across industry. We consider these charges are likely to be published in BT's CPL if agreed commercially and will be published in our final determination if resolved via a dispute. As a result of this transparency, TCPs using indirect routing will be able to look at the increase in the charges they pay to receive 080/116 calls and see whether this is equal to the increase in the origination charges that BT (or another TCP/transit provider) pays for its own terminated traffic.⁵⁴ If this is not the case, the TCP concerned will be able to raise a dispute with us over the level of charges.
- 2.60 Although we would not be required to resolve such a dispute as it would not relate to rights or obligations imposed under a condition (i.e. section 185(1A) or (2) of the Act), we would nonetheless have the discretion to resolve it as it is a dispute between CPs relating to the terms of network access (i.e. section 185(1) of the Act). We would be highly likely to consider that it is appropriate for us to handle such a dispute, given our awareness of the potential for problems to arise and our commitment to the successful implementation of our free-to-caller remedy. We consider it would be in TCPs' interests to monitor pricing information and raise a dispute with us if there are grounds to do so. Therefore, whilst we recognise EE's concern that TCPs will have no legal certainty they are being charged the "correct" origination payment, we consider they will be able to monitor whether they are and raise a dispute if they find evidence they are not.

Threat of switching by OCPs

- 2.61 We also consider OCPs are unlikely to accept any origination charge for transited traffic below that which BT pays to OCPs for its own terminated traffic because of the threat of switching to an alternative transit provider. We recognise that implementing different routing rules would have cost implications for OCPs (as highlighted in Vodafone's response), but these would be weighed against the revenues that the

⁵³ BT, April 2013 policy position response, p.6.

⁵⁴ For the reasons set out in paragraph 2.55, we consider the origination charges paid by other vertically integrated transit providers are likely to be very similar, if not exactly the same, as the origination charges paid by BT for its own terminated traffic. For this reason, we consider TCPs using other vertically integrated transit providers can compare the increase in their combined origination/transit charges to the increase in the origination charge paid by BT for its own terminated traffic.

OCP could achieve from higher origination charges. We recognise EE's concern that all transit providers would have an interest to agree lower origination charges to benefit their own hosting businesses, and that this could limit the potential for switching between transit providers. However, we consider this incentive applies only to transit providers' own traffic as agreeing lower origination charges for transited traffic would not benefit their own hosting businesses. As the access condition applies to transit providers' own traffic, they will be required to purchase this on a fair and reasonable basis from OCPs.

- 2.62 We consider BT would only have a commercial interest to offer OCPs lower charges if it did not pass these cost savings on to its TCP transit customers - passing lower charges on would directly reduce the costs of its rival TCPs in the market for 080/116 hosting, which would clearly be disadvantageous to BT. We consider that if BT were to pay a lower rate to OCPs for originating transited traffic than it was charging TCPs, its TCP customers would become aware of this. As noted above, it is our expectation that BT will continue to publish rates for its wholesale services in its CPL, including the rates it pays to other CPs for their services provided to BT. TCPs would be able to use this information to identify the fact that BT was charging them a different rate for origination than it was paying to OCPs, and would be able to raise a dispute in this scenario. Again, whilst we would not be required to resolve this dispute, we would have the discretion to do so and would be highly likely to, given our commitment to the successful implementation of making 080/116 free-to-caller. To the extent that there is a difference between the origination charge that a transit provider pays an OCP for transit traffic and the origination charge that the transit provider levies on its TCP customers (i.e. the transit provider adds a mark-up to the origination charge), then we would consider the difference to be a transit charge.

Conclusions on likely charges for transited traffic

- 2.63 We recognise there are further nuances to the scenarios outlined above. For example, there are different means by which BT could increase the cost of its rival TCPs including:
- adding a mark-up to the origination charge it has agreed with OCPs for its own traffic; and
 - agreeing a higher origination charge with OCPs for transited traffic.
- 2.64 However, we consider the same principles apply in each of these scenarios - namely that TCPs will have visibility of the relevant wholesale charges, and will be incentivised to raise a dispute should they believe there to be evidence of differential pricing.
- 2.65 On balance, we consider that the additional cost and complexity of differentiated origination charges along with the risk of commercial disputes is likely to constrain BT's (and other vertically integrated transit providers') behaviour. We have therefore decided not to apply the access condition in the transit scenario at present. However, we recognise the risk of market distortion exists and we will monitor market developments. If we consider that origination charges paid or levied by vertically integrated transit providers/TCPs are not fair and reasonable, then we will consider whether there is a need to extend the access condition to cover the transit scenario

(subject to statutory consultation requirements).⁵⁵ Alternatively we may consider whether BT's behaviour amounts to the exploitation of a position of market power in single transit which requires a competition based ex post intervention.

- 2.66 We consider the possibility of extending the access condition to transit providers, along with the other factors listed above, will reduce the likelihood of problems arising in the first place.

Negotiation by transit providers on behalf of smaller TCPs

- 2.67 In response to BT's comment, there will be no formal responsibility for the OCP and TCP to negotiate origination charges where calls are indirectly routed as the access condition will not apply to these calls. However, it will have to negotiate with OCPs over an appropriate origination charge for its own terminated traffic. We expect it will then charge transited traffic at the same rate for the reasons set out above. Accordingly, we recognise that our view of how the process is likely to work suggests that, in effect, TCP customers will benefit from transit providers', and in particular BT's, negotiation of origination charges. Although TCPs using BT's transit services will therefore benefit from BT's negotiations with OCPs over its own traffic, it will not impose any extra cost on BT as BT would need to conduct this negotiation anyway in its role as TCP. As a result, we are not unduly concerned about this outcome.
- 2.68 We acknowledge Vodafone's concerns about BT negotiating on behalf of others given the relaxation of regulatory safeguards on single transit and the difficulties for OCPs and TCPs in managing differentiated origination charges. However, as outlined above, we do not consider that BT will negotiate on behalf of others - rather it will negotiate for itself in the first instance (as it is required to under the access condition) and the various factors we have outlined above are then likely to lead to it applying the same rate to transited traffic. As a result, we do not consider the practical difficulties of managing differentiated origination charges are likely to arise.

Implications of removal of regulation of BT's single transit

- 2.69 We recognise that the arguments outlined above rely on TCPs (and other industry players) having visibility of the relevant wholesale charges, and that some stakeholders (notably Vodafone) were concerned that the removal of regulation of single transit will mean this is not the case. We consider that the deregulation of BT's single transit services is unlikely to lead to BT no longer publishing the wholesale charges for services it provides as a transit provider (and other services it provides to or purchases from other CPs). In order for BT to cease publishing these charges, it would need to amend its agreements with CPs (currently, the SIA) to remove the reference to charges being set out in the CPL and to otherwise incorporate the applicable charges into each agreement. This is likely to result in some degree of bespoke contracts / price lists with individual CPs, which would create significant additional costs for BT and would require CPs to agree to the contractual variations. We consider that the incentive for BT to cease publishing these charges is therefore low. We also note that BT has continued to publish charges for services that use inter-tandem conveyance/transit and local-tandem

⁵⁵ The concern we are seeking to address only arises where the TCP is also a transit provider, as a standalone transit provider would not be present in the TCP/hosting market and would therefore not be subject to the same incentive to increase the costs of TCPs.

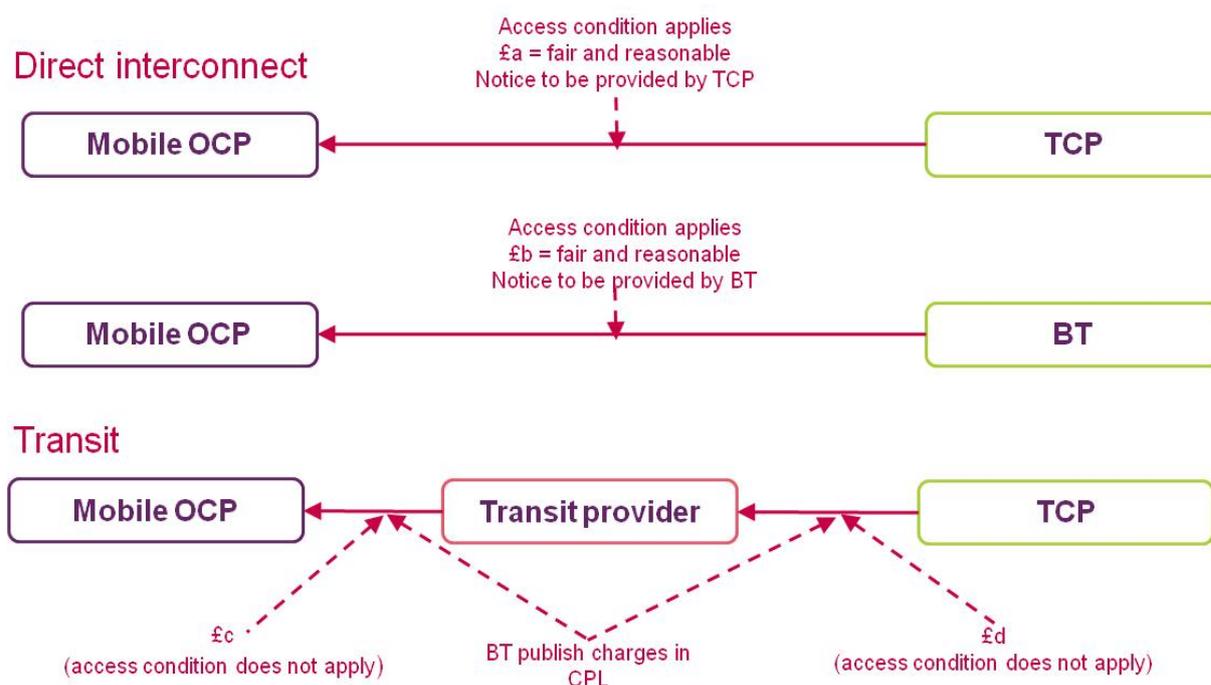
conveyance/transit despite these services being deregulated since 2005 and 2009 respectively.

- 2.70 Vodafone also raised concerns that the deregulation of single transit will mean BT is able to increase its single transit charge on smaller, thinner routes where there is less competition - including 080/116 calls. Vodafone argues that TCPs would have no visibility of how much of the charge they pay to BT is passed through to the OCP to pay for call origination, and how much is retained by BT and attributable to the transit element of the service. However, as noted above, BT currently publishes the rates for its wholesale services in the CPL, including the rates it pays to other CPs for their services provided to BT. As such, for transited calls to 080 and 116 numbers, BT currently publishes the amount that it pays OCPs for origination of the transited traffic and the amount that it charges TCPs for the transit leg.
- 2.71 These concerns regarding smaller, thinner routes were also raised in the context of the NMR and we responded to these comments in the NMR statement (see paragraph 2.29 above). We consider that CPs are likely to purchase transit services from BT for other services, for example to terminate geographic calls and/or calls to mobile numbers. CPs would therefore be able to take account of the transit rates they are charged for these other services in assessing the rate BT seeks to charge them for transited NGCs and this could form the basis of a CP approaching Ofcom if it considered BT was seeking to abuse its position in the ST market (as discussed in the NMR statement).
- 2.72 We consider that the constraints on BT in relation to its charges for single transit services will, in turn, restrict the commercial freedom of other transit providers competing with BT.

Summary of the operation of the access condition in direct interconnect and transit scenarios

- 2.73 In summary, the access condition will apply as set out in Figure 2.4. We have identified four charges, which we refer to as £a, £b, £c and £d. We have focussed on a mobile originated call as this is where stakeholders have identified most concerns. We have used BT's position as a TCP with direct interconnect to a mobile OCP and as a transit provider to illustrate the role we envisage it playing in this context.
- £a is the origination payment made by a TCP with a direct interconnect to a mobile OCP;
 - £b is the origination payment made by a vertically integrated transit provider to a mobile OCP for its own terminated traffic (using BT as an example in Figure 2.4);
 - £c is the origination payment made by a transit provider to a mobile OCP for transited traffic; and
 - £d is the charge the transit provider bills TCPs for transited mobile calls, which includes the transit cost and mobile origination payment. As noted in paragraph 2.62, we would consider the difference between £c and £d to be a transit charge.

Figure 2.4: charges for 080/116 origination in direct interconnect and transit scenarios



- 2.74 In practice, we consider it likely that £a and £b will be within a small range, if not the same rate. This is for the reasons set out in paragraphs 2.11 to 2.12, in summary because we expect the rate either agreed or determined between BT and the mobile OCPs will form a standard for the rest of industry.
- 2.75 We consider it likely that BT will pay the same rate for its transited traffic as it will for its own traffic, i.e. that £c will be equal to £b, because of the billing costs associated with differentiated charging and the potential for OCPs to switch transit provider in the event that £c is lower than this. We consider that £d is likely to be equal to £c, the rate BT pays on transited traffic, plus the single transit rate for geographic calls. This is because of the potential for TCPs to raise a dispute about £d if the amount they are charged for receiving 080/116 calls increases by more than the increase in £c. We expect similar considerations to apply when other vertically integrated transit providers are involved.

Role of vertically integrated operators

Stakeholder comments

- 2.76 Three was concerned that Ofcom's approach to the access condition meant that vertically integrated CPs (e.g. BT) would be conferred a significant ongoing advantage in setting future origination charges. In particular it noted that Ofcom would conclude a dispute by reference to an average SP payment that was contingent on a number of variable factors (such as the levels of fixed and mobile origination charges and the split of 080 traffic between network types). Three said that operators who were integrated across the whole market, as host, TCP, transit partner and OCP (such as BT) would have visibility of all the information needed to leverage the 080 origination wholesale environment to their benefit as they would be able to formulate a market level view of origination charges and hosting costs. It was

concerned that there were a number of risks which Ofcom needed to consider, in particular that that combination of information might enable vertically integrated operators to:

- a) draw upon unequalled market intelligence and use this in negotiations with OCPs (particularly smaller ones) to drive down mobile origination charges - presumably (although Three did not specify) by misrepresenting the variable factors determining the appropriate SP outpayment (e.g. over-stating the extent of fixed to mobile substitution);
- b) manipulate the average market origination charge for 080 such that it maximised the fixed origination charge while potentially artificially reducing the origination charge for mobile operators (although it did not clarify how a vertically integrated operator would do this); and
- c) persistently prevail in disputes against other operators because their access to superior market information would enable a far more robust assessment of the merits of any case they might bring.⁵⁶

2.77 EE similarly noted concern that Ofcom's anticipated closed bilateral negotiation process created significant scope for competitive distortion to be created by large vertically integrated OCP/TCPs, especially those who were also converged fixed and mobile operators such as Vodafone. For example it noted those operators could agree on a blended fixed and mobile origination charge which involved a relatively higher mobile origination charge and relatively lower fixed origination charge which would still keep average charges to Vodafone's customers at acceptable levels, but it could insist on a lower mobile origination charge in relation to third party originated traffic. EE did not consider that the proposed limitation (in the draft access condition) on the notification obligation to OCPs with whom a TCP is already directly interconnected would make any material difference to that situation, given the multiple OCP/TCP/transit provider roles performed by each of the largest TCPs.⁵⁷

2.78 EE suggested that one way to reduce these concerns would be to amend the draft access condition so that TCPs were obliged to notify Ofcom of their proposed origination charges, rather than the OCPs with whom they had an existing agreement to purchase origination services. It said that notification could include the TCPs' "reference" fixed and mobile origination charge proposals, as well as any proposals in respect of specific OCPs which differed from the "reference" proposals. EE said Ofcom could then publish that information on its website and then there could be an option for OCPs to simply notify Ofcom that they wished to sell their origination services to all 080/116 TCPs listed in Schedule 1 of the access condition (and those subsequently entering the market) and Ofcom could publish that notification and pass it on to TCPs. EE said it imagined this would be a popular option for OCPs albeit it noted that it would still be open to them to individually request purchases from a more limited sub-set of TCPs if they so chose. Following this EE said it would then be expected that OCPs would seek to enter into bilateral negotiation with a number of 'lead' TCPs and whilst any agreement would not necessarily bind other TCPs, it might be hoped that such agreements would at least set a compelling precedent.⁵⁸

⁵⁶ Three, April 2013 policy position response, pp.19-20.

⁵⁷ EE, April 2013 policy position response, pp.20-21.

⁵⁸ EE, April 2013 policy position response, pp.21-22.

Ofcom's response

- 2.79 We consider that many of the concerns underlying these stakeholder comments are covered by the points we have set out in paragraphs 2.39 to 2.75 above. Three, however, also raised a specific concern that BT in particular would be able to draw on "unequalled market intelligence" in negotiations and to prevail in disputes. Three is concerned that BT will have more information on the average SP outpayment than an OCP that is not also a TCP. However, we do not consider this is likely to be the case because, as already noted above, all CPs will have visibility of BT's charges through the CPL. We recognise that BT's hosting charges will not be published in the CPL, and that OCPs who are not vertically integrated will not have awareness of these charges. However, we do not consider this a concern because these are not relevant to the assessment of a fair and reasonable origination charge.⁵⁹ As a result, this information would not confer any advantage on BT.
- 2.80 In addition, in terms of the proportion of fixed/mobile calls made to 080 numbers, each OCP will be able to monitor their own call volumes and can use this information to establish whether there have been any significant changes which would impact the appropriate level of origination charges. We recognise that changes to the overall volume of calls and material changes in market shares would also be relevant, but we nonetheless consider that, for the larger OCPs at least, monitoring of their own call volumes should provide a useful guide to estimating the market as a whole.
- 2.81 Both EE and Three also comment on the potential for the manipulation of the fixed origination charge relative to the mobile origination charge and resulting competitive distortions. We noted in our draft 080/116 Dispute Guidance that, in determining a dispute about fair and reasonable origination charges, we will consider the extent to which a proposed origination charge may give rise to a distortion of competition between fixed and mobile operators.⁶⁰ Therefore, given that guidance, we consider that the risk of this kind of competitive distortion is limited, but CPs will be able to bring a dispute if they are concerned that this is occurring.
- 2.82 With respect to EE's proposal for charges to be notified to Ofcom in the first instance, we do not consider that this is appropriate. We consider that the 080/116 Dispute Guidance will be sufficient as a starting point for commercial negotiations. It is not appropriate for Ofcom to be in the middle of commercial negotiations, particularly in the event that the negotiations lead to a dispute being brought to Ofcom.

Role of the SIA

Stakeholder comments

- 2.83 Three said the mechanisms for introducing price changes under paragraphs 12 and 13 of the SIA had important commercial and legal implications for the way in which origination charges for 080 calls would be set under the access condition. It said further confusion was added by the fact that, under Ofcom's proposals, the origination charge to be proposed by BT (and the other TCPs) could also be categorised as a negative termination charge to be paid by operators to BT, similar to

⁵⁹ Our assessment of the appropriate average SP outpayment in the draft 080/116 Dispute Guidance related only to origination charges paid by SPs and excluded hosting charges.

⁶⁰ paragraph A1.53 of the draft 080/116 Dispute Guidance.

the charges that were previously set by BT under NCCN 911. It noted that the difficulties of accurately categorising such a charge were discussed in detail in Three's submission in a recent dispute relating to the terms of BT's SIA ('the SIA Dispute') and in the judgment of the Competition Appeal Tribunal ('CAT') in relation to appeals against Ofcom's dispute determinations in relation to calls to 080, 0845 and 0870 numbers ('the CAT's 08X Judgment').⁶¹ Three said determining whether the mobile origination charge was a 'BT service or facility' under paragraph 12 or an 'operator service or facility' under paragraph 13 was far from clear.⁶²

- 2.84 Three said it was particularly concerned that BT's power under paragraph 12 of the SIA to unilaterally introduce changes to charges for BT services even if such charges were not agreed by the counter-party CP would result in:
- a) BT introducing mobile origination charges that were not fair and reasonable;
 - b) deadlock between the parties; and
 - c) dispute referrals to Ofcom with the consequent uncertainty that such delay would bring.

Ofcom's response

- 2.85 We have already discussed above why we consider that the access condition and our dispute resolution powers, alongside other factors in the market, are likely to provide sufficient protection against the potential for BT to exploit any differences in bargaining power.
- 2.86 In relation to the definition of the origination charge under the SIA, we note that the CAT (and the Court of Appeal) commented on this confusion as part of their comments in the 08X Judgment.⁶³ However, we consider that the confusion was compounded by the nature of ladder charges (i.e. where the OCP could either receive a payment from the TCP or be required to make a payment to the TCP, depending on the level of the OCP's charge to its customers at the retail level) whereas under the new regime origination charges should generally be positive (unless an OCP chooses to waive the origination charge, for example for charity services). As stated in the April 2012 consultation and the April 2013 policy position, we consider that the relevant service provided is wholesale origination.⁶⁴

⁶¹ *British Telecommunications and Everything Everywhere Limited v Ofcom* [2011] CAT 24, at 68 and 69– <http://www.catribunal.org.uk/238-6086/1151-3-3-10-British-Telecommunications-Plc-Termination-Charges-080-calls.html>

⁶² Three's response to the April 2013 policy position, p.18.

⁶³ For example see paragraph 69 of the CAT 08X Judgment

⁶⁴ We discussed this issue in the April 2013 policy position (see footnote 580 at paragraph 14.41 and paragraph 14.65). We noted that, in the absence of ex ante regulation, the characterisation of the service may fall to be determined by the parties' existing contractual arrangements but we noted our view that the relevant service provided is wholesale origination and we therefore considered it appropriate to frame the access condition as an obligation to purchase wholesale call origination.

Likelihood of a single origination charge

Stakeholder comments

2.87 [X].⁶⁵

2.88 BT believed that the free-to-caller origination charge had to be agreed for the industry rather than differ for individual operators. It said it was possible to implement one origination charge for fixed and another for mobile CLIs but any attempt to make it more granular than that was doomed to fail from the outset. It noted this was because:

- TCPs would not know from which OCP the call originated (and so could not verify the amount they were being billed under differentiated charges);
- SPs needed confidence to estimate the cost of offering a free-to-caller service based on approximate call volumes rather than who their client took telephone services with; and
- the origination charge should not be unwieldy to implement and manage. It said that differentiated origination payments suggested those could easily be changed and no mechanism was in place to manage that.⁶⁶

2.89 EE considered that the tiered termination rates that many fixed TCPs had sought to implement in relation to 080 calls invalidated Ofcom's assumption that 'menu costs' were likely to limit the concern about differentiated pricing. It said the fact that costs were incurred when prices needed to be changed would reduce the frequency with which operators tended to change prices but it said it did not imply that operators and SPs would prefer a smaller number of overall prices. It said the initial costs of setting appropriate prices were significant regardless of the overall number of prices involved and therefore menu costs might drive less frequent changing of those prices rather than any reduction in the overall initial number of prices. EE said Ofcom had not provided any evidence or argument that a smaller number of prices would lead to a significant reduction in costs compared to the potential revenue gains which could be made by greater pricing differentiation.⁶⁷

2.90 [X], in its response to our draft 080/116 Dispute Guidance, said it hoped that Ofcom's expectations of the economic forces at work would produce a single origination charge quickly without substantial regulatory intervention. It underlined the importance, however, of the industry working groups in enabling industry to reach a consensus on what might be considered fair and reasonable in terms of the practicalities of interconnect billing as well as Ofcom's role in setting out in greater detail its position in this respect. It also added that it believed General Condition 2.3 could be interpreted as giving Ofcom power of direction in this context and it that Ofcom could also use its powers through General Condition 11 and the Metering and Billing Direction.⁶⁸

⁶⁵ [X]

⁶⁶ BT's response to the April 2013 policy position, p.6.

⁶⁷ EE, April 2013 consultation response, pp.19-20.

⁶⁸ [X]

Ofcom's response

- 2.91 We have explained at paragraphs 2.11 to 2.12 above why we consider that origination charges will converge towards a small number of charges (if not a single charge) for each of fixed and mobile originated calls.⁶⁹ We consider that the factors we outline there, relating to the characteristics of the market and the design of the access condition, will minimise the range of origination charges in the market.
- 2.92 There is clearly large scale support from industry for having a limited number of origination charges. Several stakeholders have highlighted the increased cost and complexity created by having multiple (i.e. more than two – one for fixed and one for mobile) origination charges in their responses to the April 2013 policy position.⁷⁰ This includes EE who note in their response that differentiated origination charges will give rise to material billing and associated staff time costs.⁷¹ Similarly Verizon and [X] made similar comments about the potential transaction and billing costs because of differentiated origination charges in response to the April 2012 consultation.⁷² BT's arguments set out above also all suggest that TCPs are likely to face incentives not to set differentiated payments.
- 2.93 In response to [X]'s comment, we do not consider it appropriate to make any direction under General Conditions 2 or 11 in relation to CPs' billing systems. In the April 2013 policy position, we stated that the access condition would be unlikely to result in a significant increase in billing complexity for most CPs or significant additional billing costs.⁷³

Dispute resolution process and impact on timescale

Stakeholder comments

- 2.94 A number of stakeholders raised concerns about the reliance on dispute resolution powers (in the absence of commercial agreement on wholesale origination charges) and how that would impact on the implementation timescale for making the 080 and 116 ranges free-to-caller. Vodafone said the prospects for spontaneous agreement about the terms of interconnection between parties with fundamentally divergent commercial objectives appeared remote yet Ofcom was continuing to leave open the opportunity for unproductive and time-consuming commercial negotiations.⁷⁴
- 2.95 Vodafone noted that any legal dispute resolution could only bind the parties to the dispute and whilst Ofcom might have an expectation that industry would follow any precedent, the ladder charging disputes had shown there was ample scope for individual operators to maintain positions outside of the dispute resolution based upon their unique situation. In order to avoid the potential for delay Vodafone suggested Ofcom should consider:
- framing and preparing for an industry-standard dispute now. It suggested Ofcom should confirm that all disputes it handled would be assessed and determined together to the same timeframe to avoid a multiplicity of outcomes over a

⁶⁹ See also paragraph A30.51 of the April 2013 policy position.

⁷⁰ For example Vodafone's response to the April 2013 policy position, p.14.

⁷¹ EE, April 2013 policy position response, p. 24.

⁷² See paragraph A30.49 of the April 2013 policy position.

⁷³ See paragraphs A10.51 – A10.62, Annex 10 of the April 2013 policy position.

⁷⁴ Vodafone, April 2013 policy position response, Annex 2 paragraph 4.7.

staggered timeframe. In addition, it said Ofcom should seek to resolve the dispute in a period shorter than four months given that much of the preparatory work should have already been undertaken;

- agreeing with the industry that the usual standard of exhaustive commercial negotiations between parties was not required to get to the point at which parties were able to agree that they were in dispute. In particular Vodafone suggested that Ofcom should indicate the circumstances in which it would consider a dispute to exist - it proposed that if a TCP and OCP were unable to agree within 8 weeks of Ofcom's final statement, the 'absence of an agreement' must be deemed to exist for the purposes of the dispute resolution procedure –; and
- convincing other parties to join a 'super-dispute' and agree that they would be bound by the outcome.⁷⁵

2.96 BT similarly suggested that it would simplify the implementation process if the benchmark rate, set as a result of any dispute on origination rates, could be used as the 'default rate' such that any CP wanting to charge a higher rate would have to prove its case, and the 'default rate' would be legally binding until a different rate were determined by Ofcom.⁷⁶

2.97 Vodafone also considered that the implementation timetable for making the 080 and 116 ranges free-to-caller meant that, in practice, once OCPs/TCPs had been through the negotiation and dispute process, the point at which CPs were in a position to convey to SPs accurate pricing information would leave only six months for SPs to decide on their commercial response. It noted that six months might be acceptable for an SP which decided to remain on the range but it was wholly inadequate for anyone deciding to leave the range. It said those SPs would also face an inflated cost of change because a truncated implementation period would force them to change marketing literature outside of their typical publication cycles which were normally much longer than six months.⁷⁷

2.98 Vodafone also noted that dispute resolution for 080 could not be concluded until Ofcom published its NMR statement and in particular that if Ofcom were to implement a glidepath on the introduction of pure-LRIC for geographic termination rates then the LRIC+ for fixed origination could evolve over time hence implying that the balancing mobile origination fee must similarly do so. It said the methodology Ofcom had set out to determine a fair and reasonable rate meant that a TCP could not determine the fair and reasonable mobile origination charge that satisfied the guidelines until the fixed origination charge was determined because there was a different result depending on where in the 0.3-0.6ppm range the charge lay. It said therefore, that the whole dispute timescale would have to move back until after the NMR statement and Ofcom revising its guidelines in light of the conclusion. It said Ofcom should look to conclude any dispute resolution as soon as possible after the publication of a final statement.⁷⁸

2.99 EE said Ofcom should give further thought to the timetable according to which the negotiation/dispute resolution process was expected to take place. It noted that the

⁷⁵ Vodafone, April 2013 policy position response, p.11 and Annex 2, paragraph 5.3.

⁷⁶ BT's response to the April 2013 policy position, p.18.

⁷⁷ Vodafone, April 2013 policy position response, pp.10-11.

⁷⁸ Vodafone, April 2013 policy position response, p.12.

experience with BT's 080 tiered termination rates had demonstrated that such matters can take an extensive amount of time and effort to resolve. It considered it would be helpful for Ofcom to supplement the access condition with some guidance as to the timetable according to which Ofcom would hope to see the negotiations / dispute resolution / notification to SPs unfold within the proposed 18 month implementation period (even if that timetable was not legally binding). EE also added that it would be helpful to have guidance on what Ofcom expected OCPs to do in the event that no legally binding decision was in place by the time the 18 month implementation period expired. It considered that the only fair and reasonable solution would be to allow OCPs to carry on charging its retail customers until the necessary origination charge was agreed/determined.⁷⁹

- 2.100 Three said Ofcom was being overly optimistic in assuming that TCPs and OCPs would reach agreement regarding the fair and reasonable origination charge to apply bilaterally between them. It feared that they were unlikely to reach agreement, not least because of the wide range of potentially fair and reasonable mobile origination charges Ofcom had set out in its draft 080/116 Dispute Guidance. It was concerned that in the longer term this approach would put Ofcom in the position whereby it would need to use dispute resolution to determine numerous OCP origination charges, all within the confines of the four month dispute resolution timetable.⁸⁰

Ofcom's response

- 2.101 We recognise stakeholders' concerns about potential difficulties in agreements being reached in relation to origination payments and the potential for protracted negotiations given the different positions and incentives of the parties involved. As we noted in the April 2013 policy position, we rejected the option of reliance on dispute resolution alone because we recognised there was a significant risk that, absent some form of ex-ante regulation, origination payments for calls to 080 numbers would not be agreed (or set by us in a dispute resolution) in a timely manner, leading to a risk of interconnection failures, call blocking and other outcomes not beneficial for consumers. In addition we noted the significant risk that TCPs would be unable to provide their 080 SP customers with certainty about the level of their origination charges at a sufficiently early point in the implementation process to allow them to make informed decisions about whether to remain on the number range.⁸¹ We considered that the access condition (and our 080/116 Dispute Guidance) would address these concerns by requiring origination charges to be fair and reasonable, because stakeholders could use our 080/116 Dispute Guidance as a starting point for their negotiations and SPs would be provided with appropriate signals as to whether to remain on the 080 range.⁸² In addition, to ensure that the negotiation process starts early we are requiring TCPs to notify OCPs of their proposed revisions to origination charges within one month after the access condition is set.⁸³

⁷⁹ EE, April 2013 policy position response, pp.21-22.

⁸⁰ Three, April 2013 policy position response, p.17.

⁸¹ See paragraph 14.42 of the April 2013 policy position.

⁸² See paragraphs 14.51 to 14.53 of the April 2013 policy position. Also see paragraph A30.15 where we set out the reasons we considered that the access condition offers greater certainty than reliance on dispute resolution alone.

⁸³ See paragraph 14.75 of the April 2013 policy position. We consider that this will prompt negotiations about origination charges to commence at an early stage of the 18 month implementation period. Without this obligation, TCPs and OCPs might defer this negotiation until the

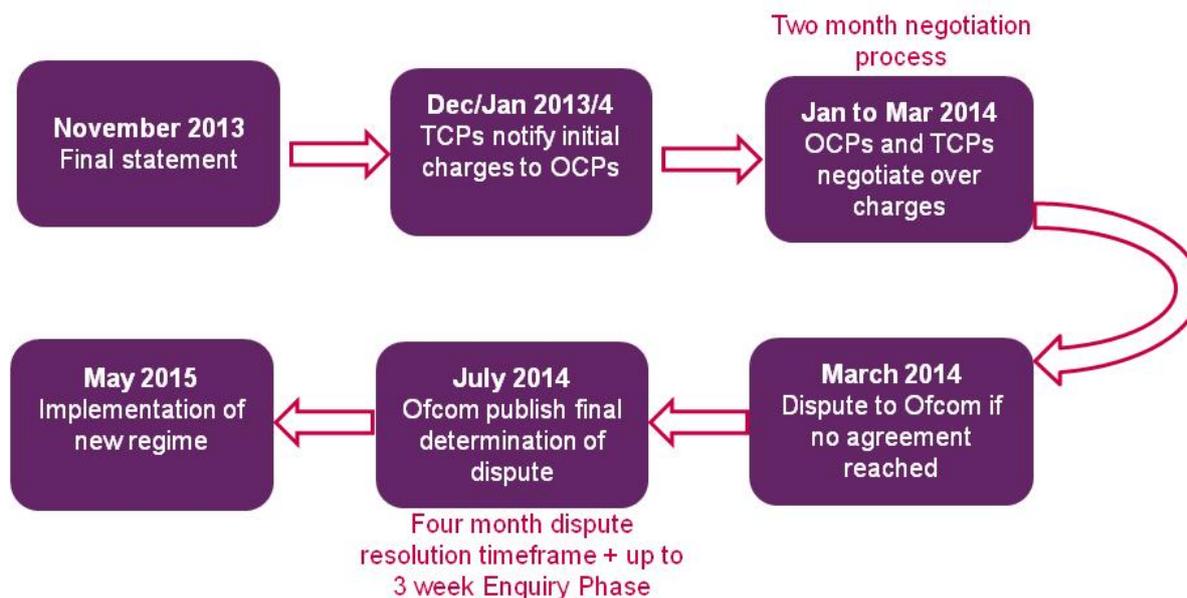
- 2.102 The comments from stakeholders above, however, indicate that concerns remain about how quickly negotiations will progress and the uncertainty that this could generate for SPs. Vodafone, for example, considers that SPs may only have six months to consider whether to remain on the 080 number range. In particular it has assumed in reaching this conclusion that negotiations between OCPs and TCPs will take three months before a dispute is brought to Ofcom (for example because the OCP counter offer will take 30 days after the initial notification is received). Vodafone also assumes that the translation of any dispute resolution into a commercial offering which is communicated to the SP will take a further three months after Ofcom publishes its final determination.⁸⁴
- 2.103 We agree that minimising uncertainty for SPs and allowing them sufficient time to make informed decisions is very important in ensuring effective implementation of the new regime, and for ensuring that consumers and SPs receive the full benefit of the changes (e.g. avoiding any unnecessary migration by SPs that are concerned about high costs which in practice turn out to be lower than their expectations). This was, as noted above, an important factor in our reasoning for imposing the access condition and for requiring early notification of charges. TCPs can provide guidance to SPs from the point at which they notify their initial charges to OCPs and SPs can start considering their options at that point.
- 2.104 In terms of the overall implementation timetable, we have set out below a high level indication of how we consider the process is likely to develop over the 18 month implementation period if parties are unable to reach commercial agreement on fair and reasonable origination charges (in accordance with the access condition) and a dispute is referred to us for resolution. First, in response to Vodafone's comment about the timing of the NMR, that statement has now been published⁸⁵ and we will be taking into account the changes to the fixed origination charge arising from that decision in our final 080/118 Dispute Guidance. As noted above this will therefore remove some of the uncertainty about the range of origination charges which we are likely to consider fair and reasonable in the event of a dispute about compliance with the access condition.

latter part of this 18 month negotiation period (we consider that typical contractual terms may mean that this negotiation could be deferred until 16 months or more into the 18 month period). An earlier start to negotiations will help to ensure that, if a TCP and OCP are unable to reach commercial agreement, the matter can be referred to us for dispute at an early stage (see paragraph A30.15 of the April 2013 policy position).

⁸⁴ See the diagram on p.10 of Vodafone's April 2013 policy position response.

⁸⁵ <http://stakeholders.ofcom.org.uk/consultations/nmr-13/statement/>

Figure 2.5: Timetable for implementation if access condition set and dispute resolution subsequently required



- 2.105 The diagram above therefore indicates that there should be a period of at least 10 months between the issuing of any dispute determination and the implementation of the requirement for 080 and 116 numbers to be charged at zero at the retail level. We note Vodafone has suggested that it would take three months for the findings of any dispute determination to be translated by TCPs into a commercial offering to SPs, and that if that is the case that would reduce the time SPs would have for considering migration away from the range to only 7 months. However, as noted above we consider that TCPs should be in a position to notify SPs of the likely changes in their origination charges from a much earlier stage using our 080/116 Dispute Guidance, and the analysis in our forthcoming final statement (and the April 2013 policy position).
- 2.106 In terms of the dispute resolution process, we note stakeholder requests for shortening the negotiation period leading up to the dispute. We resolve disputes under section 185 of the Act (Article 20 of the Framework Directive) according to the process set out in our published dispute resolution guidelines ('Dispute Resolution Guidelines').⁸⁶ As set out in those guidelines, in order to accept a dispute, Ofcom expects to see evidence that parties have made reasonable endeavours to enter into good faith negotiations in order to seek to resolve matters before referring the matter to Ofcom.⁸⁷ In this respect we would highlight that we expect any TCPs and OCPs to draw on our 080/116 Dispute Guidance in any negotiations on revised origination charges, and for that guidance to provide an indication to the parties of what is likely to be considered fair and reasonable.
- 2.107 Therefore the negotiation process is not necessarily likely to be as protracted as in normal circumstances where parties are operating without any guidance to assist the

⁸⁶ Dispute Resolution Guidelines: Ofcom's guidelines for the handling of regulatory disputes, 7 June 2011: <http://stakeholders.ofcom.org.uk/binaries/consultations/dispute-resolution-guidelines/statement/guidelines.pdf>

⁸⁷ Ibid, paragraph 4.6.

negotiations. In particular where a party is seeking to revise their origination charge to an amount which is outside the base case scenario range (which we have derived by applying the principles set out in our draft 080/116 Dispute Guidance to the evidence currently available to us) that party would need to be able to justify why its charge is nevertheless fair and reasonable. It should be clear relatively quickly to all parties whether there is scope for further negotiation or the matter would need to be raised with us. We will take account of this starting position when considering whether to accept a dispute in terms of whether sufficient effort has been made to negotiate.

- 2.108 In addition, in determining any dispute as to whether origination charges are fair and reasonable, we are likely to draw on existing evidence that we have gathered or work we have undertaken in other regulatory contexts (for example, the analysis set out in the April 2013 policy position and in our forthcoming final statement).
- 2.109 Vodafone, EE and BT all highlight that the outcome of any dispute is only binding on the parties to that dispute. BT and Vodafone in particular suggest Ofcom should impose some kind of requirement that ensures that the outcome of any dispute is binding across the industry. However, any determination of a dispute which Ofcom issues is based upon the specific facts and circumstances of that dispute and Ofcom cannot fetter its discretion as to any future dispute which might be brought. Nevertheless, as we highlight in our draft 080/116 Dispute Guidance⁸⁸ a subsequent dispute with similar facts is likely to result in a similar decision and we would expect dispute determinations to be read across and followed in situations where a third party is facing similar questions to those of the parties to the dispute that has been determined (see also paragraph 2.11 above) Similarly, where more than one dispute is brought by separate stakeholders who are unable to reach commercial agreement on fair and reasonable origination charges Ofcom can consider those disputes together (so long as they meet the criteria set out in our Dispute Resolution Guidelines) and therefore any determination would be binding on all parties to that dispute.⁸⁹
- 2.110 A number of stakeholders highlight the previous tiered termination rate disputes as evidence that similar ongoing, lengthy disputes are likely to occur in relation to origination charges for free-to-call 080/116 numbers. However, in the context of those disputes we had not set out specific guidance to provide a framework for commercial negotiations, nor had we set out the detailed analysis of origination charges which is discussed in the April 2013 policy position. In addition, there are other examples where a dispute determination in relation to wholesale charges on some number ranges has led to an adoption of that charging method as a standard across industry – for example, our determination of the 03 wholesale termination rate was adopted across the industry, despite it only involving two stakeholders.⁹⁰ We have also previously issued guidance on how we would resolve any dispute as to whether mobile termination charges by smaller mobile CPs (which were not subject

⁸⁸ paragraph 1.12 in the draft 080/116 Dispute Guidance.

⁸⁹ See paragraphs 5.7 to 5.17 of the Dispute Resolution Guidelines

⁹⁰ http://stakeholders.ofcom.org.uk/enforcement/competition-bulletins/closed-cases/all-closed-cases/cw_01058/

to a specific charge control) were fair and reasonable.⁹¹ We have not subsequently been brought any dispute about those charges.⁹²

2.111 Finally EE commented on its ability to continue charging customers at the retail level if no 'legally binding' decision on the origination charges is in place by the Effective Date. It is not clear what EE means by a "legally binding" decision. The access condition will be legally binding on TCPs with immediate effect from the publication of our final statement. As already discussed above, the requirement for the revised origination charges to be notified within one month will mean negotiations over the charges should start quickly and ensure that any disputes are triggered, and resolved, as soon as possible within the 18 month implementation period. Where commercial negotiations fail and a dispute is referred to us, then our determination would also constitute a legally binding decision in relation to origination charges for the parties to that dispute. As indicated in Figure 2.5, we anticipate that this will occur well before the Effective Date. Nevertheless, we acknowledge that there is a lot of work to be undertaken during the implementation period and therefore Ofcom will be closely engaged throughout that period and we will take a decision six months ahead of the Effective Date on whether the planned timetable for the implementation of the free-to-caller regime remains appropriate.⁹³

Business callers

Stakeholder comments

2.112 Several stakeholders raised concerns about the restriction of the scope of the draft access condition to 080/116 calls made by consumers. EE, for example, noted particular concern that the definition of "Origination Services" in the draft access condition was so narrow as to be essentially unworkable in practice as, in many cases, it would not be possible for either the OCP or TCP to know whether or not a call had been originated by a consumer. EE therefore considered it would be in violation of section 47 of the Act for Ofcom to set an access condition which would only legally apply on a call by call basis (depending on whether or not the caller was making the call for purposes which were outside of his or her trade, business or profession).⁹⁴ It said the access condition should not be limited to consumer calls for the following reasons:

- i) whether calls were made by businesses or consumers made no relevant difference to the need for the access condition or the interpretation of the obligations imposed by the access condition;
- ii) the working assumption behind Ofcom's free-to-caller proposals was that all types of 080/116 calls would, in practice, be made free-to-caller. It noted that currently a very material proportion of 080 calls were made by business customers ([<]). To the extent that Ofcom's working assumption of the voluntary extension of free-to-caller arrangements to those customers proved accurate, it said it would be equally important for Ofcom to minimise regulatory uncertainty,

⁹¹ <http://stakeholders.ofcom.org.uk/binaries/consultations/mtr/statement/guidance.pdf>

⁹² We recognise that those smaller mobile CPs are subject to SMP conditions. However, in relation to the 080/116 Dispute Guidance, TCPs would be subject to our proposed access condition.

⁹³ If we consider that implementation cannot proceed on the 'Effective Date' as planned, we would need to amend the relevant legal instruments (subject to statutory consultation procedures) to reflect any delay to the implementation timetable.

⁹⁴ EE, April 2013 policy position response, pp.17-18.

unnecessary blocking of calls and disputes by setting an access condition on all 080/116 calls;

- iii) there was no legal reason why Ofcom could not set the access condition on both calls made by businesses and consumers - it noted that unlike the maximum tariff principles that Ofcom was proposing to implement via amendments to the General Conditions and Numbering Plan, Ofcom's powers to set access conditions under section 73 of the Act were not limited to those designated for the protection of consumers;
- iv) without the extension of the access condition to calls by customers on business tariffs it considered there was a very high risk that difficulties in reaching agreement on origination charges for those calls would pose a barrier to the implementation of free-to-caller arrangement for those customers. EE did not consider that such an outcome would be consistent with Ofcom's statutory duties to maximise benefits for all citizens and consumers.⁹⁵

2.113 [X], in its response on the draft 080/116 Dispute Guidance, noted that the TCP would have no visibility of the type of customer calling a 080/116 number and without either voluntary agreement by the mobile OCPs in relation to business customers or a requirement on them to provide information about their customers, the result could be over-charging and a continuation of consumer harm on the range. It noted concern that this would inevitably lead to disputes.⁹⁶ FCS similarly noted that the difference between the regulation of consumer and business calls would make the negotiation of commercial terms within the supply chain more difficult as it would not be possible to determine whether the caller was a business or residential client.⁹⁷

2.114 Vodafone said experience had shown that any hint of a regulatory lacuna, such as in relation to business callers, might be exploited to impose wholly unjustified complex charging arrangements that could not be shown to promote competition or consumer interests. It said that given that one of the key drivers of the present reform was to break the cycle of litigation around novel NGCS charging structures, Ofcom needed to ensure that this objective was successfully achieved. Vodafone said it was concerned that if the scope of any dispute on origination charges was confined to wholesale calls that were within the scope of Ofcom's retail intervention, Ofcom could not guarantee the simple, uniform wholesale commercial model needed to support its retail transparency objective at a proportionate cost. Vodafone also specifically commented on the likely increase in billing costs created if there was a requirement to categorise call records by the type of caller (i.e. whether a consumer or business). It said this unneeded complexity risked undermining all previous cost estimates.⁹⁸

2.115 [X].

Ofcom's response

2.116 As we explained in the April 2013 policy position, the access condition is intended to secure end-to-end connectivity for end-users of 080 and 116 services, by avoiding delays and failures in interconnection which might otherwise arise as a result of the

⁹⁵ EE, April 2013 policy position response, pp.17-18.

⁹⁶ [X].

⁹⁷ FCS, April 2013 policy position response, p.2.

⁹⁸ Vodafone, April 2013 policy position response, pp.14-15.

080 and 116 number ranges being made free-to-caller and the consequential renegotiation of wholesale origination charges. In addition we noted that it will prevent call blocking by TCPs/SPs that might otherwise occur, ensuring that all OCPs can obtain connectivity to 080 and 116 numbers in a timely manner.⁹⁹ However, the draft access condition on which we consulted applied only in respect of consumer calls to 080/116 numbers. This was because we were only proposing to make consumer calls to 080/116 numbers free at the retail level. Calls made by business callers to 080/116 numbers would therefore be unregulated at both the retail and wholesale level. Nevertheless, as highlighted in EE's comments, we assumed for the purposes of our impact assessment that all types of calls to 080 and 116 numbers - both consumer and business calls - would in practice be made free-to-caller at the retail level (i.e. that OCPs would voluntarily zero-rate business calls to 080/116 numbers).¹⁰⁰

- 2.117 It is clear from stakeholder comments that there is significant concern about wholesale arrangements for business calls to 080/116 numbers where these have been voluntarily zero-rated by OCPs at the retail level. On reflection, we recognise that there is likely to be a substantial risk, as outlined by stakeholders, that the interconnection problems that we have already identified for consumer calls would materialise in respect of voluntarily zero-rated business calls to 080 and 116 numbers.¹⁰¹
- 2.118 In particular this includes the same potential for imbalances in negotiating power (in favour of either OCPs or TCPs) to lead to delays in interconnection or interconnect failures, due to OCPs or TCPs using their bargaining power to seek to drive origination payments for these calls to a particularly high or low level. Commercial agreement over these charges may also be delayed if there is no clear starting point for negotiations (because our 080/116 Dispute Guidance would not apply to those calls). The previous history of interconnection problems on the 080 range, evidenced by the lengthy and extensive disputes¹⁰², have been related to all call types (i.e. both residential and business calls) and therefore it seems likely that the potential for connectivity problems to occur is equally likely in relation to zero-rated business calls and consumer calls to the same 080/116 numbers.
- 2.119 In addition, and as highlighted by EE, we recognise there is also a risk of OCPs/TCPs employing tactics that fall short of refusals to interconnect in response to origination payments they find unacceptable (e.g. call blocking). For example OCPs might seek to block calls from customers on particular business tariffs to particular 080/116 number blocks if they consider the origination payment offered by the host TCP to be unacceptable.
- 2.120 Even if there is no breakdown in connectivity, the potential would remain for a period of prolonged uncertainty for SPs in relation to wholesale charges for zero-rated business calls to 080/116 numbers, which could in turn result in an extended period

⁹⁹ See paragraph 6.69 of the April 2013 policy position.

¹⁰⁰ See paragraph 12.115 of the April 2013 policy position. We based this assumption on the fact that calls from fixed OCPs to 080/116 numbers are already free to both consumers and business callers and, in the case of mobile, we expected that business contracts would generally provide more beneficial terms than residential contracts, particularly if business customers valued calls to 080 (which appeared consistent with the evidence we had received on call volumes).

¹⁰¹ See paragraphs 14.8 to 14.32 of the April 2013 policy position

¹⁰² See paragraph 14.16 of the April 2013 policy position.

of uncertainty in relation to SPs' overall outpayments to TCPs.¹⁰³ This could have an adverse affect on service availability, investment and innovation on these number ranges (regardless of the level of outpayments ultimately agreed) as SPs seek to make decisions about whether to remain on the 080/116 ranges or to migrate to another range as quickly as possible (and may therefore act on the basis of an overly pessimistic view of the likely level of origination payments they would incur for receiving zero-rated business calls).¹⁰⁴

- 2.121 As noted above, some OCPs and TCPs with a particularly strong negotiating position may seek to drive origination payments for zero-rated business calls to a particularly high or low level. In addition to the risk of delays and breakdowns in connectivity, the risk of charges being levied that are not fair and reasonable (at least initially) could harm service provision and innovation on the 080/116 ranges or prevent OCPs from recovering their efficiently incurred costs. We could not therefore be confident that SPs currently active on these number ranges would receive appropriate signals as to whether they should remain on the range or migrate once it is made free-to-caller (and the same would apply to SPs considering offering new services on these ranges once they are made free-to-caller).
- 2.122 Consequently, given the points stakeholders have raised, we have decided to amend the access condition so that it would apply to all 080/116 calls which are zero-rated at the retail level, whether as a result of our proposed regulation of consumer calls to these number ranges or because of a voluntary decision by the OCP to zero-rate business calls to these ranges. We consider that this will minimise the risk of interconnection problems and call blocking for zero-rated business calls to 080 and 116 numbers and avoid the risk that the origination payments agreed through commercial negotiation would not necessarily be fair and reasonable, at least initially.

Other comments

- 2.123 EE said, depending on the level of the origination charges recommended by Ofcom in its final 080/116 Dispute Guidance, it considered that the access condition could fall foul of the legal obligation requiring that an access condition did not unduly discriminate (section 47(2) of the Act). In particular it considered this would be the case if Ofcom maintained its current position that fixed OCPs would be able to recover their full LRIC+ costs but mobile OCPs would only permitted to recover a portion of those costs.¹⁰⁵

Ofcom's response

- 2.124 Our proposed access condition would require both mobile and fixed origination charges to be fair and reasonable. It therefore does not discriminate unduly between

¹⁰³ With differentiated wholesale origination payments for consumer and business calls, SPs' overall outpayments to TCPs would likely depend on the rate agreed for receiving 080/116 business calls, the rate for receiving consumer calls and the mix of those call types to their service (assuming that SPs receive both types of calls, which given the information on call volumes appears likely to be the case) – see footnotes 415 and 416 to paragraphs 12.114 and 12.115 in Section 12, Part C of the April 2013 policy position.

¹⁰⁴ This may be further complicated by a change in the current mix of consumer and business calls being received by the SP. It seems plausible that the proportion of consumer calls might increase once mobile calls to 080/116 are zero-rated at the retail level as individuals may currently be using their work phone to make 080/116 calls to avoid retail call charges from their mobile.

¹⁰⁵ EE's response to the April 2013 policy position, p.25.

fixed and mobile operators. EE has referred to our draft 080/116 Dispute Guidance. However, this does not form part of the access condition imposed under section 73(2) and 74(1) of the Act (Article 5 of the Access Directive). Rather, it constitutes guidance as to how we would exercise our powers under section 185 of the Act (Article 20 of the Framework Directive) to resolve any future dispute about whether a CP has complied with its legal obligations.

- 2.125 In any event, we stated in our draft 080/116 Dispute Guidance that differences between fixed and mobile origination charges should reflect differences in their LRIC costs. We said that the level of mobile origination payment that achieves this, which we referred to as the LRIC differential, ensures that mobile OCPs receive the same pence per minute contribution to their fixed and common costs as fixed OCPs.¹⁰⁶ We continue to consider the pence per minute (rather than percentage) contribution to fixed and common costs to be the relevant benchmark. This is because SPs are sent appropriate price signals when the absolute contribution to fixed and common costs is the same for fixed and mobile calls, and the difference in the cost of receiving a fixed or mobile call reflects the difference in their resource cost. We did not argue in the draft 080/116 Dispute Guidance that the mobile origination charge should be exactly equal to the LRIC differential because we considered other factors to be relevant to a fair and reasonable charge. However, as a result the draft 080/116 Dispute Guidance implied that the mobile origination charge was likely to be higher than the LRIC differential, and therefore the absolute contribution to mobile OCPs' fixed and common costs greater than the amount that fixed OCPs receive. As a result, we do not consider our draft 080/116 Dispute Guidance unduly discriminatory.

Design of the access condition

Notification of initial revision to charges

Approach in the April 2013 policy position

- 2.126 We invited consultation responses in relation to our proposal that TCPs provide a notification of their revised (fair and reasonable) origination charges. In the April 2012 consultation we proposed that TCPs be required to notify their SP customers of revisions to their origination charges within two months. However, after considering stakeholder comments, we recognised in the April 2013 policy position that it was likely to be impracticable for TCPs to provide initial notice to SPs at a time when they may not yet have concluded negotiations about their origination charges with OCPs. We therefore proposed that a requirement for TCPs to notify OCPs (instead of SPs) of their proposed origination charges would be more appropriate. We also considered that more advance notice for industry of any initial revision to origination charges could be helpful and we therefore proposed to reduce the notification period to one month from when the access condition is set (rather than the two months proposed in the April 2012 consultation).¹⁰⁷

- 2.127 We asked the following question regarding this proposed change:

Question 14.1: Do you agree that the notice to be given by TCPs of initial revisions to origination charges (as set out in the draft access condition): (i) should be given to

¹⁰⁶ See paragraph A1.49 of the draft 080/116 Dispute Guidance.

¹⁰⁷ See paragraphs 14.68 to 14.75 of the April 2013 policy position in particular.

OCPs and (ii) should be given within one month of the condition being set? If you do not agree, please explain why.

Stakeholder comments

- 2.128 Three and EE agreed that TCPs should give notice of their proposed origination charges to OCPs within one month of the access condition being set – Three noted that the earlier the notice was served the sooner any dispute processes could begin and this might reduce the likelihood of delays to Ofcom’s preferred implementation timetable.¹⁰⁸ Similarly, one SP [S<] believed that a one month time limit would result in a more efficient implementation and should result in SPs being made aware of the changes.¹⁰⁹
- 2.129 EE agreed with Ofcom’s approach of imposing the access condition on TCPs only and it also supported the decision to remove the obligation upon TCPs to notify SPs.¹¹⁰ BT also agreed that notice should be given to OCPs rather than to SPs. However, given the logistical problems often experienced in the past with contacting all CPs, it said it would prefer Ofcom to maintain the previous proposal for two months notice. It said that, whilst it recognised the need to notify, it did not consider that TCPs could take full responsibility for ensuring that notification reached the intended or appropriate parties. It said it was a shared responsibility to maintain accurate contact and distribution lists and the contacted party would hold all the information if those changed. It therefore believed that, in addition to notification, TCPs should also publish revisions so that the publication acted as a central information repository should any notification fail to reach the intended party.¹¹¹

Ofcom’s response

- 2.130 Respondents broadly agreed with our revised approach of requiring the TCP to notify the OCP of any initial revision to its origination charges. Based on the reasoning previously set out in the April 2013 policy position, we have therefore maintained this requirement in the access condition set out in Annex 1.
- 2.131 We do not consider it is necessary to impose a requirement for revised origination charges to be published, as BT suggests, to act as a central repository in the event of a failed notification. A TCP is only required to notify OCPs with whom it has an existing direct interconnect relationship. We expect in these circumstances that the two parties will be in contact with respect to billing and settlement for interconnect traffic and therefore consider it highly unlikely that they would need to resort to a central information repository in order to liaise with each other in relation to amendments to interconnect charges. However, we agree with BT that a TCP’s responsibility is to send a notice to the OCP in accordance with its contractual notice provisions (i.e. using the contact details provided in its interconnect agreement or subsequently updated under the notice provisions of that agreement) and it is the OCP’s responsibility to ensure that any change in its contact details is properly notified to its contractual counterparties. We will consider that the TCP has complied with its obligations under the access condition where it has provided notice to OCPs in this manner.

¹⁰⁸ Three, April 2013 policy position response, p.29. EE, April 2013 policy position response, p.18.

¹⁰⁹ [S<].

¹¹⁰ EE, April 2013 policy position response, p.18.

¹¹¹ BT, April 2013 policy position response, p.18.

- 2.132 In terms of the length of the notice period, we note that with the exception of BT, other respondents agreed that a one month notice period was preferable because it would reduce the scope for delays in the implementation period. As set out earlier, several stakeholders have raised concerns about ensuring that wholesale charges are agreed in a reasonable timescale in order to provide SPs with sufficient notice to make decisions about whether to stay on their number range. Given these concerns we consider it is important to ensure that the negotiation process is started as soon as possible in order to minimise the period of uncertainty for SPs. We recognise that this may involve a logistical task for larger TCPs such as BT, but we note that (as indicated in the April 2013 policy position) these TCPs can have started to consider what their potential wholesale origination charges might look like (as well as planning the logistical process of notifying OCPs) since the publication of our April 2013 policy position.
- 2.133 Therefore, whilst we recognise that a shorter notification period (i.e. one month rather than two) may concentrate the logistical task for some CPs into a shorter time period, we consider that the risks to the implementation timetable (as indicated in our discussion above – see paragraphs 2.101 to 2.110) of a longer notification period outweigh that potential logistical burden. In addition, we place greater weight on the importance of minimising the period of uncertainty for SPs and therefore we have decided to maintain the obligation for TCPs to notify initial revisions of origination charges to OCPs within one month of the access condition being set.

The wording of the access condition

Stakeholder comments

- 2.134 [redacted] noted that Ofcom had defined OCPs as PECNs in the draft access condition but it had not provided a list of those OCPs. It argued that this meant, in one sense, it was almost impossible to reasonably comply with that condition as the general authorisation regime did not require a licence anymore and only Ofcom knew all the OCPs that came under that category.¹¹²
- 2.135 [redacted] noted Ofcom had compiled a list of PECNs hosting 080 numbers (i.e. TCPs), however, it said it was unclear as to how it intended to ensure the condition applied to new PECNs that might emerge in the future.¹¹³ Similarly EE noted there was a risk that the list of TCPs to whom the access condition applied could become rapidly out of date, unless Ofcom kept it constantly updated with all new 080 and 116 TCPs, and deleted any TCPs that exited the market. It also noted that the current drafting meant that condition 1 was binding upon any subsidiary, holding company or subsidiary of a holding company of any of the companies listed as a TCP, even if the business of those companies had nothing to do with the telecoms industry or the UK. EE did not consider that such companies should be obliged to even receive and consider such requests. To address these concerns, EE said the definition of “Terminating Communications Provider” should be amended so that it read something like “*A communications Provider who conveys a call to a free-to-caller number from an assumed handover point to the point of termination*”. It said for clarity, the access condition could continue to list those providers that Ofcom considered to be TCPs as at the date on which the access condition takes effect but

¹¹² [redacted].

¹¹³ [redacted].

it would be the definition rather than the list that would be definitive in the event of any discrepancy.¹¹⁴

- 2.136 EE made a number of other comments in relation to the draft access condition on which we consulted.
- 2.137 First, it submitted that the drafting was highly ambiguous as to whether the access condition applied to TCPs and OCPs when acting in their capacity as transit providers.¹¹⁵
- 2.138 Second, it said that the draft access condition required each OCP to request in writing from each TCP (whether or not the OCP was directly interconnected with that TCP) the purchase of 080 and 116 origination services from the OCP before the TCP's obligation to purchase those services on fair and reasonable terms became effective. EE said this meant that each OCP would potentially have to separately write to some 120 TCPs listed in the access condition, plus continuously monitor whether any new such TCPs had come into the market and separately write to them as well. In turn it said each TCP would have to individually respond to each OCP from whom it received such a written request. EE considered that that process was unduly administratively burdensome and definitely not proportionate.¹¹⁶
- 2.139 Third, it also noted that the draft access condition only required TCPs to notify OCPs with which they were directly interconnected (which it noted only applied in a few cases). It said that meant that in the vast majority of cases OCPs would need to request access under the draft access condition without the benefit of having the notification from the TCP of their initial revision to charges. It also noted it created a risk that, depending on the TCP's individual circumstances, the obligation to purchase those services "as soon as reasonably practicable" might still mean that the information about the proposed charges was not provided for a considerably longer time period than the one month applicable where the parties had a pre-existing agreement. EE noted this created a great deal of commercial uncertainty for OCPs, significant market distortion and the potential for significant delays in reaching any final agreement on charges.¹¹⁷
- 2.140 Fourth, EE said it was unclear what would constitute a 'reasonable request' in writing under draft condition 1. In particular EE said it would like to understand when an OCP request might be considered unreasonable and said it would be helpful for Ofcom to at least give some elaboration on this otherwise there was a risk of TCPs abusing the wording to reject requests.¹¹⁸
- 2.141 Finally, EE said it was slightly unclear at what date the phrase "has an agreement" in paragraph 2.1 of the draft access condition is to be assessed. It noted that this was explained in footnote 475 in Annex 30 of the April 2013 policy position but it considered it would be better clarified in the wording of the access condition itself.¹¹⁹

¹¹⁴ EE, April 2013 policy position response, pp.24-25.

¹¹⁵ EE, April 2013 policy position response, p.19.

¹¹⁶ EE, April 2013 policy position response, pp.18-19.

¹¹⁷ EE, April 2013 policy position response, p.19.

¹¹⁸ EE, April 2013 policy position response, p.24.

¹¹⁹ EE, April 2013 policy position response, p.24.

Ofcom's response

- 2.142 In response to EE's first comment regarding OCPs acting in their capacity as transit providers, we have amended the definition of an "Originating Communications Provider" to clarify that this means a provider of a PECN insofar as it provides origination services (as defined in the condition). This definition will therefore not cover an OCP when acting in its capacity as transit provider.
- 2.143 In response to [§<]'s comment that we did not provide a list of OCPs, the access condition requires the TCP to purchase origination services from an OCP in response to a reasonable request in writing. Therefore if the TCP receives a request it will be up to the TCP to verify through its own means whether or not the requesting party is a provider of a PECN and originates calls to an 080 or 116 number, for example it might request certain information from the OCP to confirm its PECN status. We consider it unlikely that the absence of a list of all OCPs would create significant difficulties in complying with the terms of the access condition, particularly given the likelihood of existing relationships between OCPs and TCPs more generally and a TCP's experience (as a PECN provider itself) in entering into interconnection arrangements. Similarly worded obligations have been used for a number of years in SMP conditions applying to TCPs in the fixed and mobile markets¹²⁰ and we are not aware of any difficulties arising as a result of this.
- 2.144 With respect to the list of TCPs set out in Schedule 1 of the access condition, we are unable to adopt EE's suggestion of instead applying the access conditions to a category of persons, as defined in the condition. This is because an access condition (unlike a general condition) may only be applied to a particular person specified in the condition.¹²¹ We recognise the potential for the list of TCPs in Schedule 1 to the access condition to become out of date in future. It would be open to us to modify the list of TCPs in Schedule 1 from time to time, subject to statutory consultation requirements, if we consider it necessary to do so in order to address issues arising in the market. In addition, where a new 080 or 116 TCP enters the market and an OCP is having difficulties obtaining interconnection or agreeing terms, then the OCP may refer a dispute to us in the normal manner (regardless of whether the access condition applies). In considering any such dispute, we are likely to have regard to our 080/116 Dispute Guidance in considering origination charges for calls to these number ranges.
- 2.145 We have, however, amended the definition of a "Terminating Communications Provider" in response to EE's comments that the access condition could be binding on group companies which have no connection with the telecoms industry or the UK and that the previous drafting was ambiguous with respect to a TCP acting in its capacity as a transit provider. Our amendment clarifies that the conditions apply to

¹²⁰ All mobile communications providers that have been designated as having SMP are required to provide network access in response to a reasonable request in writing from a person operating a PECN (see Condition 1.1 in Schedule 2 of the Notification at Annex 1 of Ofcom's 2011 MCT Statement: <http://stakeholders.ofcom.org.uk/consultations/mtr/statement>). Similarly, all fixed communications providers that have been designated as having SMP are required to provide network access in response to a reasonable request in writing from a person who provides a PECN or a person who provides a public electronic communications service (see Condition 1.1 in Schedule 3 of the Notification at Annex 1 of the NMR statement: <http://stakeholders.ofcom.org.uk/consultations/nmr-13/statement>).

¹²¹ Section 46(3) of the Act.

each person listed in Schedule 1 (and its group companies) insofar as it terminates calls to a 080 or 116 number.

- 2.146 EE's second comment suggests that the requirement for fair and reasonable terms in paragraph 1.2(b) of the draft access condition was dependent on a request for the purchase of origination services first having been made under paragraph 1. This was not our intention and we have separated condition 1 of the draft access condition into two separate conditions in order to make this clearer. In summary, a request for the purchase of origination services under condition 1 (as amended) only needs to be made where an OCP is seeking to enter into a new direct interconnect relationship with a TCP for 080 or 116 calls. If an OCP has an existing interconnect agreement with a TCP in respect of these calls, then no request under condition 1 is necessary. Condition 2 (as amended) requires origination services to be purchased on fair and reasonable terms from the Effective Date and applies both to direct interconnect relationships that were already in existence prior to this date and new direct interconnect relationships entered into after this date. For pre-existing direct interconnect relationships, the obligation for fair and reasonable terms applies from the Effective Date under condition 2 and is therefore not dependent on a request for the purchase of origination services having first been made under condition 1.
- 2.147 With respect to EE's second and third comments, the access condition does not require an OCP to request the purchase of origination services from each TCP, resulting in 120+ requests. As noted in paragraphs 2.44 to 2.45 and 2.52 above, the access condition only applies where an OCP and TCP are directly interconnected, or where an OCP wishes to commence a new direct interconnect relationship with a particular TCP for 080/116 calls. As noted in paragraph 2.146 above, an OCP does not need to request the purchase of origination services from a TCP with whom it has an existing direct interconnection relationship. If an OCP is content with its existing routing arrangements for 080/116 calls, then it will not need to submit any requests under condition 1.
- 2.148 EE's third comment compares the one month notification period in condition 3.2 (as renumbered following the amendments referred to above) and the phrase "as soon as reasonably practicable" in condition 1.2. However, condition 3.2 stipulates a one month period within which advance notice of revised origination charges must be given by TCPs to OCPs in existing direct interconnect relationships. Condition 1.2 provides that, where an OCP requests a new direct interconnection relationship with a TCP in respect of 080/116 calls, then the TCP must establish that relationship (i.e. purchase "Origination Services") as soon as reasonably practicable. The two time periods therefore apply to different activities. We do not consider it appropriate to specify the precise time period within which a TCP must establish a new direct interconnection relationship in response to an OCP's reasonable request, as the speed within which this can be achieved may depend on technical matters such as network architecture and may differ depending on the TCP and OCP involved. In these circumstances, we consider that an obligation to provide connectivity "as soon as reasonably practicable" is more appropriate.
- 2.149 In EE's fourth comment, it requested clarification of what would constitute a 'reasonable request' for the purchase of origination services under condition 1. This wording is commonly used in SMP conditions relating to interconnection and access and is derived from Article 12 of the Access Directive (and, before that, from the ONP

Directive¹²²). The question as to whether a request to purchase origination services is ‘reasonable’ will be determined on the facts of each case. However, some guidance may be derived from Recital 19 to the Access Directive and Oftel’s guidelines in relation to access obligations.¹²³ In particular, Oftel’s guidelines set out the principles that are relevant in deciding whether a request is ‘reasonable’ such as technical feasibility, the need to maintain network integrity and whether the request would require the operator to provide something which is not within its power to provide.¹²⁴ Whilst the guidelines (and Recital 19 to the Access Directive) apply specifically to SMP conditions, rather than access conditions, we nevertheless consider that this should provide stakeholders with an indication of the type of principles we would have regard to when considering whether a request for origination is ‘reasonable’ under the access condition set out in Annex 1.¹²⁵

- 2.150 EE’s final comment was that it was slightly unclear at what date the phrase “has an agreement” in condition 3.1 (as renumbered) is to be assessed. We have amended condition 3.1 to clarify that this is to be assessed as at the date the condition enters into force.
- 2.151 As noted at paragraph 2.122 above, we have also decided to amend the access condition so that it applies to all zero-rated calls to 080/116 numbers, whether those calls are made by consumers or business callers. We have therefore amended the definition of “Origination Services” accordingly and have deleted the definition of a “Consumer”, as this is no longer required.

¹²² Directive 97/33/EC

¹²³ Oftel, *Imposing access obligations under the new EU Directives*, 13 September 2002:

http://www.ofcom.org.uk/static/archive/oftel/publications/ind_guidelines/acce0902.htm

¹²⁴ *Ibid.*, paragraphs 2.18 – 2.28.

¹²⁵ Oftel and Ofcom have also considered issues related to “reasonable requests” for access/interconnection in previous disputes - see, for example, *Direction in respect of two disputes relating to Vodafone’s credit vetting clause*, 17 July 2003:

<http://www.ofcom.org.uk/static/archive/oftel/publications/licensing/2003/credvet0703.htm>;

Determination to resolve a dispute between Energis and BT regarding the provision of short haul data services and dense wave division multiplexed services, 3 September 2004:

<http://stakeholders.ofcom.org.uk/binaries/consultations/752496/summary/statement.pdf>;

Draft Determination to resolve a Dispute between Cable & Wireless Access Limited and BT Group plc relating to BT’s charges for connecting new customers to fully unbundled local loops, 4 April 2007:

http://stakeholders.ofcom.org.uk/consultations/bt_determination/ (this dispute was withdrawn prior to a final determination being issued).

Section 3

Summary of decision on the access condition and legal tests

- 3.1 For the reasons outlined above, and in more detail in the April 2013 policy position, we have therefore decided that, if we proceed to make the 080/116 ranges free-to-caller, then we will also impose an access condition which will require TCPs to purchase origination from OCPs on a fair and reasonable basis. We consider that without this condition, there is a risk that, if 080 and 116 numbers are made free-to-caller, imbalances in negotiating power may give rise to interconnection delays or failures, the risk of an extended period of uncertainty, and origination payments that would not necessarily be in the interests of consumers.
- 3.2 The access condition requires TCPs providing wholesale termination for 080/116 numbers:
- to purchase wholesale origination services for all zero-rated calls to 080 or 116 numbers (other than calls from a public payphone) from any requesting OCP;
 - to do so on fair and reasonable terms and conditions (including charges); and
 - within one month of the access condition being set, to notify any OCP with whom it has an existing interconnection agreement of its proposed revision to the charges for wholesale origination.
- 3.3 In light of stakeholder comments, we have decided that the access condition will apply to all zero-rated calls to 080 or 116 numbers, rather than limiting its application to consumer calls only. We agree with the concerns raised by stakeholders that the same risks around interconnection delays or failures and the risk of an extended period of uncertainty could arise for business calls to voluntarily zero-rated 080 and 116 calls in the absence of the requirements of the access condition.
- 3.4 We have also made some minor amendments to the drafting of the access condition in order to clarify the scope of the obligations imposed.¹²⁶
- 3.5 Having considered stakeholder comments on the draft access condition and made such modifications as we consider appropriate, we are therefore now notifying the EC, BEREC and the NRAs in every other Member State of the proposed access condition set out in Annex 1.
- 3.6 Schedule 1 to the access condition lists the CPs that we understand provide wholesale call termination services for 080 and/or 116 numbers.¹²⁷

¹²⁶ In addition to the amendments made in response to stakeholder comments, we have also made some other minor, non-substantive modifications. In particular, we have added a definition of a 'Public Pay Telephone', which cross-refers to the definition that is used in the General Conditions.

¹²⁷ The list in Schedule 1 is based on information received in response to Ofcom's formal requests for information issued under s.135 of the Act to 295 CPs on dates between 25 February and 4 March 2013.

- 3.7 We consider that our proposed access condition falls within the scope of sections 73(2) and 74(1) of the Act. Section 73(2) empowers us to impose conditions relating to the provision of such network access and service interoperability as we consider appropriate for the purpose of securing efficiency, sustainable competition, efficient investment and innovation, and the greatest possible benefit for end-users of public electronic communications services. Section 74(1) states that this includes conditions which, for the purpose of securing end-to-end connectivity for the end-users of such services provided by means of a series of electronic communications networks, impose obligations on a person controlling network access to any of those networks, and require the interconnection of those networks.
- 3.8 We consider that the access condition will secure end-to-end connectivity for end-users of public electronic communications services as it will avoid delays and failures in interconnection which may otherwise arise as a result of the 080 and 116 ranges being made free to caller. It will also prevent call blocking by TCPs/SPs that might otherwise occur, ensuring that all OCPs can obtain connectivity to 080 and 116 numbers in a timely manner.
- 3.9 We also consider that the network access required by the condition is appropriate for the purpose of securing the following:
- 3.9.1 **efficiency**, in that the access condition requires fair and reasonable origination payments which we consider, in turn, are likely to send appropriate signals to SPs about whether to remain on the 080 range or migrate, and therefore to strike an efficient balance between service availability on these ranges and the price of other telecoms services. We also consider that fair and reasonable origination payments for 116 numbers are likely to send appropriate signals to SPs about investment in service quality and availability in future allocations on this number range, and as a result are likely to minimise the impact of making the range free-to-caller on service availability (see also **efficient investment and innovation**, below);
- 3.9.2 **sustainable competition**, in that the requirement for fair and reasonable charges will ensure that CPs with a poor negotiating position do not end up with relatively high or low 080 origination payments that may, in turn, adversely affect competition - either between TCPs in the hosting market (which may result from relatively high payments) or between OCPs in relation to the retail price of other services (which may result from relatively low payments);¹²⁸
- 3.9.3 **efficient investment and innovation**, in that the access condition is likely to avoid delays and failures of connectivity and facilitate a timely process for origination charges to be agreed (or determined by us as a result of a dispute), thereby reducing the risk of breakdowns in connectivity and/or an extended period of uncertainty that may have negative impacts on innovation and investment by SPs; and
- 3.9.4 **the greatest possible benefit for the end-users of public electronic communications services**, in that mobile and fixed OCPs will be in a position to provide end-users with connectivity to all free-to-caller 080 and

¹²⁸ We acknowledge that the impacts on competition may be mitigated in practice by the ability of OCPs and TCPs to benefit from the origination payments negotiated by their transit operator).

116 numbers (which might not otherwise occur) and because the requirement for fair and reasonable origination payments will ensure that benefits to end-users in terms of service availability and potential negative impacts on competition (which would ultimately be to the detriment of end-users) and the price of other telecoms services are duly taken into account.

Annex 1

Notification of proposed access-related conditions for EU consultation under section 48B(2) of the Communications Act 2003

Proposal to set access-related conditions in relation to each of the persons specified in Schedule 1 of the Annex to this Notification

WHEREAS

1. On 15 April 2013, Ofcom published for domestic consultation a notification (the “First Notification”) of their proposal to set access-related conditions in accordance with section 48A(3) of the Act.
2. Ofcom invited representations to be made to them about the proposal set out in the First Notification by 28 May 2013.
3. A copy of the First Notification was also sent to the Secretary of State in accordance with section 48C(1) of the Act.
4. Ofcom received 7 responses to the First Notification and have considered every representation made to them in respect of the proposed access-related conditions set out therein.
5. The Secretary of State has not notified Ofcom of any international obligation of the United Kingdom for the purpose of section 48A(6) of the Act.
6. The proposed access-related conditions set out in the First Notification were a proposal of EU significance within the meaning of section 150A of the Act.
7. Ofcom has made such modifications to the proposed access-related conditions set out in the First Notification as appear to them to be appropriate.

THEREFORE

8. Ofcom proposes to set the access-related conditions contained in the Annex to this Notification. The access-related conditions are to apply to the persons specified in Schedule 1 of that Annex.
9. Ofcom’s reasons for making this proposal, and the effect of the proposed conditions, are set out in the accompanying explanatory statement.
10. A copy of this Notification is being sent to the European Commission, BEREC and the regulatory authorities in every other member State for EU consultation in accordance with section 48B(2) of the Act.
11. Ofcom considers that the proposal complies with the requirements of sections 45 to 49C and sections 73 to 74 of the Act, insofar as they are applicable.

12. In making this proposal, Ofcom has considered and acted in accordance with their general duties under section 3 of the Act and the six Community requirements set out in section 4 of the Act.
13. If implemented, the access-related conditions shall enter into force on a date to be specified in Ofcom's final statement in relation to these proposals.
14. In this Notification:
 - a. "the Act" means the Communications Act 2003;
 - b. "Ofcom" means the Office of Communications.
15. Words or expressions shall have the meaning assigned to them in this Notification, and otherwise any word or expression shall have the same meaning as it has in the Act.
16. For the purposes of interpreting this Notification: (i) headings and titles shall be disregarded; and (ii) the Interpretation Act 1978 shall apply as if this Notification were an Act of Parliament.
17. The Annex to this Notification shall form part of this Notification.

Stuart McIntosh
Group Director, Competition

22 October 2013

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

ANNEX

Access-related conditions

Part 1: Definitions and interpretation

1. In this Annex:

“**Act**” means the Communications Act 2003;

“**Assumed Handover Point**” means the point of interconnection nearest to the origination of a call to a Free-to-caller Number at which the call may be handed over to the electronic communications network of another communications provider for conveyance. For these purposes, where the call is routed via a Transit Network, the Assumed Handover Point is deemed to be the nearest point of ingress from the electronic communications network on which the call originates to that Transit Network;

“**Effective Date**” means [*date to be inserted in final condition – 18 months after proposed modifications to GC17 are made*];

“**Free-to-caller Number**” means:

- (i) a Non-Geographic Number starting 080; or
- (ii) a Non-Geographic Number in the format 116XXX;

“**Originating Communications Provider**” means a provider of a public electronic communications network, insofar as it provides Origination Services;

“**Origination Services**” means the origination of calls for which a retail price of zero is charged to Free-to-caller Numbers (but excluding calls originated from a Public Pay Telephone) and the conveyance of those calls to the Assumed Handover Point;

“**Non-Geographic Number**” has the meaning ascribed to that term in the National Telephone Numbering Plan;

“**Public Pay Telephone**” has the meaning ascribed to that term in paragraph 1 (*Definitions*) of Part 1 of the Schedule to the Notification published by the Director General of Telecommunications on 22 July 2033 under section 48(1) of the Act and modified by Ofcom from time to time;

“**Terminating Communications Provider**” means each person specified in Schedule 1 (and, in respect of each person, 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) insofar as it terminates calls to a Free-to-caller Number; and

“**Transit Network**” means the electronic communications network of a communications provider used to convey a call from the electronic communications network of another communications provider to the electronic communications network of a third communications provider.

2. For the purpose of interpreting this Part and the conditions set out in Part 2:
 - (a) words or expressions shall have the meaning ascribed to them in this Part 1 and otherwise any word or expression shall have the same meaning as it has in the Act;
 - (b) the Interpretation Act 1978 shall apply as if each of the conditions were an Act of Parliament; and
 - (c) headings and titles shall be disregarded.

Part 2: The Conditions

Condition 1 – Requirement to purchase Origination Services

- 1.1 From (and including) the Effective Date, the Terminating Communications Provider shall purchase Origination Services from an Originating Communications Provider in response to a reasonable request in writing.
- 1.2 The purchase of Origination Services shall occur as soon as reasonably practicable.

Condition 2 – Requirement for fair and reasonable terms

From (and including) the Effective Date, the Terminating Communications Provider shall purchase Origination Services from an Originating Communications Provider on fair and reasonable terms (including charges).

Condition 3 – Requirement to notify revised charges for Origination Services

- 3.1 This condition applies if, as at the date of its entry into force, the Terminating Communications Provider has an agreement to purchase Origination Services from an Originating Communications Provider.
- 3.2 By [*date to be inserted in final condition – one month from date on which access condition is made*] the Terminating Communications Provider shall notify the Originating Communications Provider in writing of the charges for Origination Services which the Terminating Communications Provider proposes to apply to that Originating Communications Provider from (and including) the Effective Date in accordance with Condition 2.

SCHEDULE 1**List of Terminating Communications Providers**

Name of Communications Provider	Company Number
24 Seven Communications Ltd	04468566
4D Interactive Ltd	02676756
Admiral Telecom Ltd	05841130
Affiniti Integrated Solutions Ltd	02817039
Aggregated Telecom Ltd	03882936
Aloha Telecommunications Ltd	07210905
API Telecom Ltd	07945651
Bellingham Telecommunications Ltd	07038166
Bicom Systems Ltd	05529411
Bluecom (UK) Ltd	04483434
British Telecommunications Plc	01800000
Budget Numbers Ltd	05006466
Business Broadcast Communications Ltd	06949556
Buzz Networks Ltd	03260342
Cable & Wireless Worldwide	01541957
Callagenix Ltd	03963819
Cheers International Sales Ltd	06288825
Citrus Telecommunications Ltd	03517870
Cloud9 Communications Ltd	07153956
Colt Technology Services	02452736
Connect Telecom UK Ltd	04198443
Content Guru Ltd	05653869
Core Telecom Ltd	05332008
Eclipse Tel Ltd	06718575
Edge Telecom Ltd	03101247
Eircom UK Ltd	03478971
Elephant Talk Communications PRS UK Ltd	05890632
Equinet Technologies Ltd (trading as SwitchConnect)	06840452
Everything Everywhere Ltd	02382161
Firstsound Ltd	02845928
FleXtel Ltd	02772380
Floren Ltd	05602047
Gamma Telecom Holdings Ltd	04287779
Globecom International Ltd	003650V (Isle of Man)
iHub Ltd	SC213090
In Call Solutions Ltd	05799390
i-Net Communications Group Plc	04036526
Instant Communications Ltd	07435377

InTechnology Plc	03916586
Invoco Ltd	04465219
Invomo Ltd	06267056
Iovox Ltd	06057954
IPV6 Ltd	06711525
JT (Jersey) Ltd	83487 (Jersey)
Known Future Ltd (trading as Voxhub)	04555918
Lanonyx Telecom Ltd	07658086
Level 3 Communications Ltd	03514850
Level 3 Communications UK Ltd	02495998
Localphone Ltd	06085990
Magrathea Telecommunications Ltd	04260485
Manx Telecom	005629V (Isle of Man)
Marathon Telecom Ltd	93007 (Jersey)
MDNX Enterprise Services Ltd	04287100
Media Telecom Ltd	07126854
Mintaka Ltd	07064805
Nationwide Telephone Assistance Ltd	04315226
Net Solutions Europe Ltd	03203624
Nexbridge Communications Ltd	07179973
Nexus Telecommunications plc	03895766
Nodemax Ltd	06127089
Number Solutions Ltd	05053505
Numbergroup Network Ltd	07390438
Orange Business Holdings UK Ltd	03051335
Orbtalk Ltd	05382664
OVH Ltd	05519821
Phone Buddy Ltd	04171159
Planet Numbers Ltd	03823269
Premier Voicemail Ltd	03172426
Premium O Ltd	06762329
Proton Telecom Ltd	05570915
QiComm Ltd	05422551
QX Telecom Ltd	03820728
Rabco Telecommunications	n/a
Reality Network Services Ltd	04267969
Relax Telecom Plc	06777698
Resilient Networks Plc	01403177
Rhema Telecom Ltd	03795952
Simwood eSMS Ltd	03379831
Six Degrees Unified Comms Ltd	04335920
Skycom Ltd	04101655
Sky Telecom Ltd	06974505
Spitfire Network Services Ltd	02657590

Spoke (Interactive) Ltd	02372101
Stardex (UK) Ltd	SC192625
Storacall Technology Ltd (trading as X-ON)	02578478
Swiftnet Ltd	02469394
Syntec Ltd	03529985
TalkTalk Communications Ltd	03849133
Telappliant Ltd	04632756
Telecom2 Ltd	06926334
Teledesign Ltd	03254784
Telephone Box Ltd	07198723
Telephony Services Ltd	05134355
TeleWare Telecom Ltd	06458538
Telsis Systems Ltd	02312314
TelXL Ltd	04249562
TG Support Ltd	05370731
Titanium Ltd	06952284
Tuxtel Ltd	06774113
Verizon UK Ltd	02776038
Via-Vox Ltd	04646978
Virgin Media Ltd	02591237
Virgin Media Wholesale Ltd	02514287
Virtual Universe Ltd	03064568
Vodafone Business Solutions Ltd	02186565
Vodafone Ltd	01471587
VoIP-Un Ltd	05225497
Vortex Telecom Ltd	06107494
Voxbone SA	BE 0478.928.788 (Belgium)
Wavecrest (UK) Ltd	03042254
Wavenet UK Ltd	03919664
Wightfibre Ltd	05470659
Windsor Telecom Plc	03752620
Zamir Telecom Ltd	05286517
Zap Communications Ltd	07374634
Zimo Communications Ltd	05374218
Ziron (UK) Ltd	07597853