



Simplifying non-geographic numbers

Policy position on the introduction of the unbundled tariff and changes to 080 and 116 ranges

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Policy position and
consultation

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Part A - Section 1

Executive summary

- 1.1 Non-geographic calls are those made to 03, 05, 070/076, 080, 0845, 0870, 0843/4, 0871/2/3, 09, 116 and 118 numbers.¹ Consumers use these number ranges to call businesses, financial institutions, helplines and government agencies, to get information and to make payments for services.
- 1.2 While there are an increasing variety of ways to interact with organisations or obtain information (for example fixed or mobile internet browsing, social networking, smartphone apps), the option to call organisations directly continues to be valued by consumers. Micro-payments via telephone bills also remain a valuable revenue route for businesses and charities. For some groups of consumers, particularly vulnerable ones, voice calls are the only practical form of contact for some services. We estimate there were approximately 22 billion call minutes to non-geographic numbers in 2012.
- 1.3 Over the last three years we have undertaken a detailed review of the state of the market for these services and options for addressing concerns with respect to the consumer experience that we have observed. Our analysis has indicated that the market is not working well for consumers or for those being called.
- 1.4 Currently non-geographic calls are confusing; consumers generally do not know how much these calls cost. This causes them to both under and over use them; undermines innovation and service availability; and, in the worst cases, leads to vulnerable consumers being prevented from easily accessing socially important services.
- 1.5 The consumer confusion arises, in part, because each phone company chooses its own level and structure of prices (per call, per minute, in or out of bundle, and so on). Information about prices (that is complex to begin with) may be confusing, or hard to obtain. This complexity also means that it is very difficult for the organisation being called to let consumers know how much they will be charged for contacting them. These problems weaken competition and even, in the case of charges for Freephone numbers, the ability of organisations to provide free calls to their customers. While some organisations may benefit from the confusion by generating greater revenue, for the most part both consumers and those being called would benefit from a clearer, more transparent and predictable system.

April 2012 consultation²

- 1.6 In April 2012, we published our detailed proposals on changes to the regulations with respect to non-geographic numbers in the 03, 08, 09, 116 and 118 ranges (the key Freephone and revenue-sharing ranges and the range (03) whose charges are aligned with geographic numbers).
- 1.7 Our key proposals were:
 - **Maximum retail prices for:**

¹ The 07 number ranges used for mobile services are also classed as non-geographic ranges, but do not form part of this review.

² <http://stakeholders.ofcom.org.uk/consultations/simplifying-non-geographic-no/>

- 080 and 116 numbers to be free from all telephones, fixed and mobile; and
 - 03 to be the only non-geographic number range linked to the price of a call to a geographic number (i.e. the 01/02 number ranges).
- **A new tariff structure for other non-geographic calls:** which involved splitting (and making transparent to consumers) the money that is paid to their phone company and the money that is paid to cover the costs of routing and managing the non-geographic numbers, the cost of receiving the call service and, where this occurs, payment for the service the consumer is receiving.
- 1.8 This was to apply across the majority of non-geographic number ranges (in particular those that involve revenue-sharing) to ensure greater transparency for consumers and enhanced competition among communication providers and businesses that offer services on these numbers ('service providers').

Updated assessment

- 1.9 We have made some updates and revisions to our assessment as a result of stakeholder comments made in response to the April 2012 consultation, as well as carrying out some further analysis on the impact of our proposals. Some of these revisions involve amendments to our analytical approach or new evidence, though none of the changes have altered our overall view on the appropriate policy response. We have highlighted these changes and are offering stakeholders an opportunity to consider these in this next phase of consultation.

'Minded to' decision

- 1.10 We have nevertheless reached a view on the appropriate policy response to the consumer harms we have identified, subject to final confirmation in light of these specific areas of further consultation. Our view is that the changes we proposed to non-geographic numbers in the April 2012 consultation offer the most appropriate and proportionate means of addressing the consumer concerns we have identified. This document sets out the basis for our view.
- 1.11 We are therefore minded to implement the changes described in the following paragraphs, subject to the specific points of consultation outlined in Section 2 at paragraph 2.53.

080 and 116 ranges

- 1.12 We consider that making 080 and 116³ numbers free-to-caller from all telephones will offer direct benefits to callers and organisations as well as being an important element in restoring trust in non-geographic numbers overall. We consider that this change should apply to all calls made by consumers to 080 and 116 numbers.⁴ The change will enable service providers on these ranges to advertise a clear message to consumers that these numbers are always free. This will encourage demand for services and improve consumer understanding of the ranges, as well as ensuring vulnerable consumers are not deterred from accessing socially important services provided on the ranges. Also, given the high profile nature of the 080 number range,

³ 116 are the Harmonised European numbers for services of social value

⁴ In the April 2012 consultation, we did not differentiate between business and consumer callers. In light of stakeholder comments, we now consider that this change should apply to consumer calls only.

we expect this change to contribute significantly to our efforts to improve consumer confidence in non-geographic numbers in general.

- 1.13 We recognise that this change will not be without cost, particularly for the service providers using 080 numbers who will have to pay more to ensure calls from mobiles are free, but we consider that the benefits (to both consumers and service providers) outweigh these costs. However, we accept that it is likely that a minority of companies that currently use the 080 range will opt to move their services away from that range to another non-geographic or geographic range. We consider that there will be less impact on companies using the 116 number range, as all actively used 116 numbers are already free-to-caller - making the entire 116 range free-to-caller will therefore only affect 116 numbers being brought into use in future.
- 1.14 We recognise that making the 080 and 116 ranges free-to-caller may prompt changes in wholesale arrangements and we want to minimise any period of uncertainty and avoid any delays or breakdowns in connectivity. Accordingly, we consider that we should impose wholesale regulations which will ensure that the commercial terms for connecting such calls are fair and reasonable to all parties. We are also proposing further modifications to the proposals we set out in the April 2012 consultation, with the aim of ensuring that commercial terms are clarified well in advance of the introduction of the new regime.

Implications for 03

- 1.15 The 03 range is the logical choice as the only non-geographic number range to be linked to the price of a normal landline call; it is already set up to serve this purpose and no regulatory change is required. Whilst usage and consumer awareness of the range has up to now been relatively low (albeit usage has been increasing), we consider the package of changes that we are minded to introduce should stimulate greater awareness of the range and encourage usage.

0845 and 0870

- 1.16 Over time the traditional link of 0845 and 0870 to geographic call prices has been undermined, while the apparent similarity between these number ranges and the other 084 and 087 numbers which are priced quite differently gives rise to considerable consumer confusion. We therefore consider that it is preferable to treat all 084 and 087 number ranges in the same way. This should lead to a more intuitive numbering plan in the long term, clearly defining differences in number ranges and improving consumer awareness.

Unbundling the charges for 084, 087, 09 and 118

- 1.17 We are minded to introduce a new tariff structure (the 'unbundled tariff') that will introduce a consistent treatment of all the 'revenue-sharing' ranges by 'unbundling' the retail price for those calls. This would apply to all calls made by consumers to these number ranges.⁵
- 1.18 The unbundled tariff will ensure consumers can know, for the first time, how much of their money is paid to their phone company and how much is passed to others, such as the organisation or service being called. It will require that, instead of paying a single charge to their phone company, they will pay two separate charges:

⁵ In the April 2012 consultation, we did not differentiate between business and consumer callers. In light of stakeholder comments, we now consider that this change should apply to consumer calls only.

- i) **the Access Charge:** which will be paid to the phone company which originates the call; and
- ii) **the Service Charge:** which is paid to the phone company which terminates the call and may be shared with the service provider, i.e. the company providing a service using the number (a bank for example), to cover or contribute towards their costs.

1.19 There will be no change to the basic structure of payments; phone companies will continue to bill consumers for the full cost of all their calls to non-geographic numbers (as today) and organisations and services will continue to receive a share of retail revenue in those cases where it is lawful for them to do so (as today). But consumers will be able to see the division of this money.

1.20 In order to ensure these different charges are made transparent to consumers, we would set rules about the structure of the Access and Service Charges so that consumers can more readily understand and, where appropriate, remember them. These include:

- one Access Charge per tariff package, for calls to all unbundled non-geographic number ranges;
- the Access Charge to be set as a simple ‘pence per minute’ rate;
- each individual 084, 087, 09 or 118 number to have a single Service Charge that applies to calls to that number from all fixed and mobile phones;
- with the exception of 118, there will be caps on the maximum amount of the Service Charge, according to the unbundled non-geographic number range. For example, the cap on the Service Charge for numbers in the 084 ranges will be 7p (inc. VAT) and the cap for numbers in the 087 range will be 13p (inc. VAT);
- calls made by a consumer to the unbundled non-geographic number ranges to be charged at the amount of the consumer’s Access Charge plus the Service Charge, unless the call counts towards a bundle of inclusive call minutes which the consumer has bought;
- phone companies to publicise the amount of the Access Charge for each tariff package they offer consumers; and
- organisations and service providers to include their Service Charge whenever the number is presented (i.e. in advertising and marketing).

1.21 Currently call cost descriptions follow the format:

“this call will cost you X pence per minute on a BT line, other landline providers may vary and calls on mobiles may cost considerably more.”

1.22 Under the new structure we expect the announcement to follow the format of :

“This call will cost you X pence per minute plus your phone company’s access charge.”

- 1.23 The unbundled tariff will, we consider, provide significant benefits to consumers: clearer prices, better competition between phone companies and, perhaps, service providers, and reinvigorated consumer confidence in using these numbers.
- 1.24 As well as benefits for individual consumers, UK businesses stand to gain. Greater consumer confidence will in turn give UK businesses more confidence in using these services to be contacted by consumers and to provide new and innovative services to consumers.

The Service Charge cap for 09

- 1.25 We consulted in July 2012⁶ on proposals for capping the level of the Service Charge for the 09 and 118 number ranges at £3 per minute and £5 per call as part of the unbundled tariff structure.
- 1.26 We now consider that a cap on the level of the Service Charge for the 118 range is not appropriate, given the limited evidence of existing consumer protection concerns on this range and our view that the unbundled tariff is likely to offer a solution to our pricing transparency concerns on the range. We would, nevertheless, keep this issue under review and revisit this position should evidence of consumer protection concerns arise in the future.
- 1.27 We are minded to implement a Service Charge cap on the 09 range at the levels we consulted on in July 2012, because we consider they are necessary for the protection of consumers against scams and bill shock (which have previously caused problems on this number range). This view is, however, subject to consultation on the amendments required to the Numbering Plan to give effect to this change. In particular the £3 and £5 limits we are proposing in the Numbering Plan represent the amounts exclusive of VAT, when these prices are advertised to consumers inclusive of VAT the maximum Service Charge will be £3.60 and £6 respectively.

New rationalised numbering structure

- 1.28 Taken together, these changes will simplify the UK's numbering system and allow consumers to gain a better understanding of what different numbers mean, as well as their cost.
- 1.29 There are still some outstanding number ranges which we are considering within this structure, and which may require changes. In particular we are intending to consult in due course on options for the 070 and 076 ranges, as well as the 055 and 056 number ranges. We also issued a consultation on the 0500 range in October last year, where our favoured option was to withdraw the range.⁷ In the light of the responses we have received to the October 2012 consultation, we are continuing to reflect on the policy proposal to withdraw 0500 numbers (including options to moderate the impact of any withdrawal) and the powers available to us to give effect to such a proposal. It is likely that we will publish a further consultation on this issue later in the year.
- 1.30 The diagram below illustrates how the new rationalised structure could look in the future. This is only a provisional guide, and we will be working with stakeholders to refine this in advance of implementation of any changes.

⁶ <http://stakeholders.ofcom.org.uk/consultations/service-charge-caps/>

⁷ <http://stakeholders.ofcom.org.uk/consultations/0500-number-range/>

Figure 1.1: Proposed Numbering guide

		Free 080, 116
For these numbers, you only pay your phone company for the cost of the call.		
		UK numbers 01, 02 03 03 numbers are UK wide numbers that are charged in the same way as 01 and 02 numbers.
		Mobile 07
		International 00
For these numbers, the total cost is made up of an access charge that goes to your phone company PLUS a charge that goes to the organisation receiving the call.		
		08 Numbers The charge for these numbers will be no more than 7p per minute for 084 numbers and 13p per minute for 087 numbers PLUS your phone company's standard access charge.
		09 Premium Rate numbers The charge for these numbers will be no more than £3.60 per minute and £6 per call PLUS your phone company's access charge.
		Directory Enquiries 118

Implementing our proposals

- 1.31 Given the scope and significance of the changes we are proposing, we recognise that communications providers will need time to implement the changes as well as inform their customers.
- 1.32 In addition consumers need a fair opportunity to be informed about this new charging structure and service providers using the numbers need time to make any necessary changes to how numbers are advertised.
- 1.33 Accordingly, we consider that implementation of the free-to-caller and unbundled tariff regimes should take place 18 months after we publish the final legal instruments necessary to implement these changes. We anticipate publishing these instruments in summer 2013 as part of a final statement that concludes on the consultation questions that we are posing in this document. The new regime would then come into force 18 months from the publication of that statement.
- 1.34 There is, however, one change that we propose to make immediately upon publication of our final legal instruments. As noted above, all actively used 116 numbers are already free-to-caller. The 116006 number⁸ has not been allocated to a service provider or brought into use, but it has been designated as 'Freephone' (i.e. calls may be charged if the end-user is informed by way of a pre-call announcement). If we proceed with a free-to-caller approach on the 116 range, then we consider that we should change the designation of the 116006 number immediately from 'Freephone' to 'free-to-caller'. We wish to avoid a situation where a service provider may be allocated the number and bring it into use on the basis of one regulatory regime, only for it to be changed shortly thereafter.
- 1.35 There are, of course, a number of detailed implementation issues which require ongoing engagement with industry and monitoring of preparations. We would continue to encourage and facilitate discussions with industry through the implementation period. We would also engage with industry to ensure that the information about the changes are effectively communicated to consumers at the appropriate time.
- 1.36 We also set out in Section 5 our intention to carry out a review, after our proposed changes are implemented, in order to ensure that they have been effective in addressing our concerns and that communications providers are adhering to the requirements.

Legal instruments and other consultation issues

- 1.37 In order to implement our proposed changes, modifications are required to several of the existing General Conditions, the National Telephone Numbering Plan ('the Numbering Plan') and the Premium Rate Services ('PRS') Condition. We also propose to set an access condition on phone companies that terminate calls to 080 and 116 numbers, and to set a new condition in relation to telephone numbering that binds companies (other than phone companies) that have been allocated numbers in the 084, 087, 09 and 118 ranges. We are consulting on these draft legal instruments, which can be found at Annexes 14 to 18 of this document. They are explained in more detail in Section 6.

⁸ The 116006 number has been reserved by the European Commission, and designated in the UK, for the use of a helpline for victims of crime.

- 1.38 As noted above, we are also inviting comments on some other specific points of consultation, which are listed in Section 2.
- 1.39 The deadline for consultation responses in relation the remaining issues and our draft legal instruments is 28 May 2013.

Part A - Section 2

Introduction and Background

Introduction

- 2.1 This document sets out our provisional decision (subject to the issues on which we are consulting) to implement changes to the regulation of non-geographic numbers, specifically:
- to set a maximum price of zero for the 080 and 116 number ranges; and
 - to introduce a new tariff structure (the ‘unbundled tariff’) for calls to other non-geographic number ranges (specifically, the 084, 087, 09 and 118 ranges).
- 2.2 This is an outcome of the review of non-geographic numbers that we began in 2010,⁹ and follow the detailed proposals presented in our consultation published on 4 April 2012, entitled *Simplifying non-geographic numbers; detailed proposals on the unbundled tariff and Freephone* (‘the April 2012 consultation’).¹⁰ This decision, if implemented, will result in changes to the regulations we impose in relation to non-geographic numbers that will simplify the use of, and improve consumer confidence in, these numbers.
- 2.3 In order to implement these changes we need to consult on our proposed modifications to the relevant General Conditions and the National Telephone Numbering Plan (‘the Numbering Plan’), as well as our proposals to set or modify other relevant legal instruments.¹¹ We are consulting on these draft legal instruments, which can be found in Annexes 14 to 18.
- 2.4 We have made some revisions or amendments to the assessment we presented in the April 2012 consultation and we are also consulting on these revisions (they are highlighted in the relevant Sections and Annexes).
- 2.5 We will be concluding separately on proposals we published in October 2012 for the 0500 number range.¹² We also plan to consult separately on issues related to the 070/076 number ranges and the 055/056 ranges in due course.

Background to non-geographic numbers

- 2.6 Non-geographic numbers are telephone numbers used to access services provided by businesses and Government agencies, information and entertainment services, payment services, as well as numbers called to vote on TV shows. Unlike geographic numbers (those starting with 01 or 02), non-geographic numbers are not

⁹ We published a Call for Inputs (‘CFI’) in May 2010 (<http://stakeholders.ofcom.org.uk/consultations/ngnservices/>) followed by a consultation in December 2010: *Simplifying Non-Geographic Numbers; Improving consumer confidence in 03, 08, 09, 118 and other non-geographic numbers*, (‘the December 2010 consultation’), <http://stakeholders.ofcom.org.uk/consultations/simplifying-non-geo-numbers/>.

¹⁰ <http://stakeholders.ofcom.org.uk/consultations/simplifying-non-geographic-no/>.

¹¹ We are also proposing to modify the Premium Rate Services (‘PRS’) Condition and to set an access condition and a condition binding non-providers (see Section 6 for further details).

¹² *The 0500 Number Range* consultation, <http://stakeholders.ofcom.org.uk/consultations/0500-number-range/>

associated with a particular place and can be used nationwide without varying the dialling code.¹³

- 2.7 There are currently a variety of separate non-geographic number ranges in the Numbering Plan. The Numbering Plan is the document published by Ofcom which sets out all the telephone numbers that are available for allocation and use.
- 2.8 Our review of non-geographic call services ('NGCS') has covered all of the current non-geographic number ranges, except the 07 ranges which are used for mobile services. In the course of this review, we have considered, at least to some degree:
- **080 and 0500 numbers** are used principally to offer private and public sector voice services such as sales, enquiries and help lines. Calls are typically free from landlines but, with some exceptions, are charged from mobiles.
 - **03 numbers** have retail call charges which are the same as the price charged by communications providers ('CPs') for geographic calls, with matching discounts and inclusion in bundled minutes. Revenue-sharing is prohibited on this range (revenue-sharing involves the originating communications provider ('OCP') passing some of its call revenues to the service provider ('SP') operating the number). Part of this range (the 030 sub-range) is reserved for public sector bodies and not-for-profit organisations. Provisions have been made for services to migrate from certain numbers in the 08 ranges to identical numbers in the 03 range.
 - **0843, 0844 and 0845 numbers** are lower cost services including pre- and post-sales enquiry lines, public sector services, transaction services and information services, as well as legacy pay-as-you-go dial-up narrowband internet services (predominantly using 0845 numbers). Revenue-sharing takes place on this range.
 - **0870 numbers** are charged at geographic prices in the same way as calls to 03 numbers, unless call charges are published in accordance with regulatory requirements.¹⁴ Revenue sharing is allowed, but where calls to these numbers are retailed at geographic call prices, they are not supported by revenues generated. For this reason, 0870 numbers are typically used to provide access to low cost voice and data services such as sales, enquiries and helplines.
 - **0871/2/3 numbers** principally offer higher cost pre- and post-sales enquiry lines, some public sector services and services such as the international telephony services provided by resellers.
 - **09 numbers** are premium rate numbers used mainly to offer competitions, TV voting lines, scratch cards, adult entertainment, chat lines and some post-sales services such as technical support. Call prices vary widely. Calls can be charged by time duration, per call, or a combination of both. Prices are currently capped at £1.53 per minute or per call from most landlines.

¹³ 01 and 02 numbers are geographic numbers; for example, 0121 is the geographic dialling code for Birmingham.

¹⁴ Specifically, as part of General Condition 14 (Annex 2), CPs are required to give equal prominence in their published price lists and websites to charges for 0870 calls as charges for geographic calls, calls to mobiles and call packages. In addition, OCPs are required to publish the maximum prices of 0870 calls in their advertising and promotional material, and give equal prominence to these charges when a consumer is signing up for a service.

- **116 numbers** were introduced to harmonise European-wide access to services of social value.¹⁵ These include a hotline for missing children, a helpline for victims of crime and a number used to access non-emergency medical on-call services. These numbers are currently designated in the Numbering Plan as either ‘free to call’ or ‘Freephone’.¹⁶
- **118 numbers** offer competing Directory Enquiries (‘DQ’) services provided by CPs and SPs including BT and the Number UK (‘TNUK’). Directory services are also offered by specific social interest groups.
- **055 numbers** are corporate numbers introduced for firms (often larger firms) to have their own numbers rather than acquiring them from telecoms providers. This range has low volumes.
- **056 numbers** are used by providers of “Voice over Internet Protocol” (‘VoIP’) services so that users can make and receive VoIP calls without the use of the fixed telecoms network. Many VoIP operators prefer geographic numbers and the range has low volumes.
- **070 numbers** are ‘Personal Numbers’ providing follow-me services on a single number. Users can receive calls on fixed, mobile numbers and messaging services remaining in contact wherever they go.
- **076 numbers** have been designated for calls made to mobile radio-paging services.

2.9 Access codes (such as ‘111’ and ‘101’) are not within the scope of this review. Nor are International Freephone Numbers and mobile shortcodes, although we noted in the April 2012 consultation that we intended to keep the issue of mobile shortcodes under review, given the concerns that had been raised by some stakeholders.¹⁷

The NGCS market

2.10 The image below describes what happens when a consumer calls a non-geographic number. Specifically:

- a call is made by a caller on a fixed or mobile network operated by an OCP;
- the OCP then identifies this as a non-geographic call and conveys the call to the appropriate terminating communications provider (‘TCP’) either directly or by using a transit operator;
- the TCP then identifies the geographic number mapped to the non-geographic number (this operation is known as a ‘number translation service’, or ‘NTS’) and sends it to that location; and

¹⁵ See Ofcom’s page on numbering for a link to all documents relevant to the 116 range:

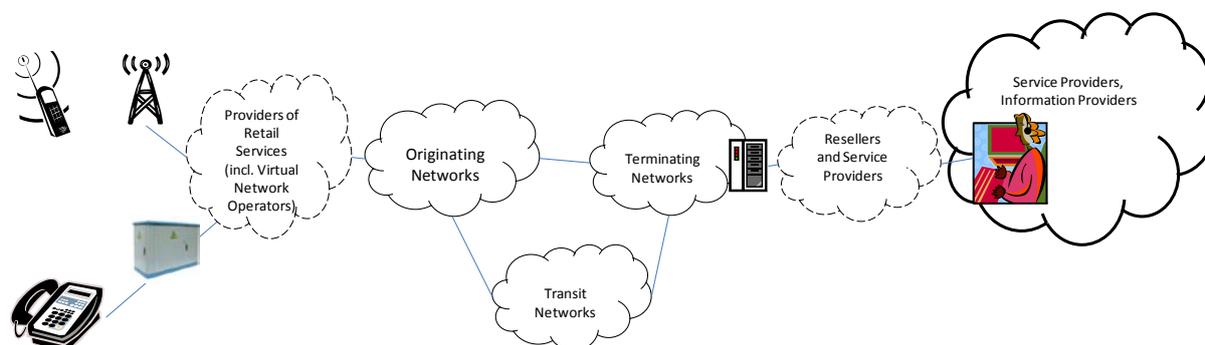
<http://stakeholders.ofcom.org.uk/telecoms/numbering/guidance-tele-no/116-euro-numbers> .

¹⁶ ‘Freephone’ means a number that is reached free of charge to the customer, except where a charge is notified to the end-user at the start of the call. In other words, a charge may be levied for calls to Freephone numbers, provided that the caller is notified through a pre-call announcement. ‘Free-to-caller’ is defined in the Numbering Plan as a number that is accessed at no charge to the customer and, in the case of a public pay telephone, without having to use coins and cards. Calls to a free-to-caller number are therefore always free.

¹⁷ April 2012 consultation, Part A, pp.40-42.

- the call is received by the SP (this may include going through an intermediary such as a reseller, which offers hosting services for non-geographic numbers).

Figure 2.1: Conveyance of a call to a non-geographic number



- 2.11 There can be many variations of this sequence, for example a single organisation such as BT can have many roles including as the OCP, transit provider and TCP. Alternatively many different organisations can be involved. We provided more details on the role of each of the parties in the chain in the April 2012 consultation.¹⁸
- 2.12 As part of the December 2010 consultation we presented the 2010 Flow of Funds study.¹⁹ This was a report commissioned by Ofcom and carried out by Analysys Mason, which aimed to establish the flow of funds for non-geographic numbers, i.e. to establish the revenue streams for calls to non-geographic numbers and how these move along the value chain, and how many calls are passed through various points of the supply chain for each non-geographic number range. This study therefore provided useful data on the size of the NGCS market. We have highlighted some of the key metrics below:
- there were approximately 30bn call minutes to non-geographic numbers in 2009 (both business and residential) with revenues of nearly £1.9bn (excluding VAT);²⁰
 - these calls accounted for approximately 12% of all voice call traffic and 10% of call revenue;²¹
 - most non-geographic calls are made from landlines (89% compared to 11% from mobiles in 2009). The number range with the lowest volume of calls from mobiles was 080 (only 5%);²²
 - the most called non-geographic number ranges were 080 (approximately 11bn minutes) and 0845 (approximately 9bn minutes), together these ranges made up 65% of all non-geographic call volumes;
 - in revenue terms, the highest earning number range in 2009 was 0845 (generating around £450m). 118 numbers also generated very high revenues (approximately £300m), despite their low call volumes.²³

¹⁸ See Part A, Section 3, paragraphs 3.7 to 3.18.

¹⁹ Analysys Mason, *The Flow of Funds in the market for non-geographic calls*, November 2010 ('2010 Flow of Funds'), <http://stakeholders.ofcom.org.uk/binaries/consultations/simplifying-non-geo-numbers/annexes/flow-funds.pdf>

²⁰ This figure includes 03, 070, 08, 09 and 118 numbers. 2010 Flow of Funds study, p.7.

²¹ 2010 Flow of Funds study, p.4.

²² 2010 Flow of Funds study, pp.26 & 36.

- 2.13 See Section 3 below where we discuss the continuing relevance of the 2010 Flow of Funds work as well as explaining the steps we have taken since the April 2012 consultation to update this analysis.

The retail and wholesale operation of non-geographic calls

- 2.14 In the April 2012 consultation we described the way in which the marketing and pricing of non-geographic calls operate at the retail level. We also described the operation at the wholesale level. We have provided a summary of that description below.

The marketing and pricing of non-geographic calls at the retail level

- 2.15 At the retail level consumers typically either:
- choose an OCP from whom they buy general voice services, a connection, a number that they can be called on and the ability to make geographic calls, non-geographic calls and international calls;²⁴ or
 - purchase their fixed or mobile voice services as only one component of a bundle of services – that could include telephony, broadband and pay TV. In 2012, 57% of UK households bought communications services in a bundle, i.e. more than one service from the same provider.²⁵
- 2.16 Non-geographic calls are likely to be a relatively small component of the services which the consumer acquires from its chosen OCP (given that, as noted above in 2009 they made up around 12% of all voice calls). This has therefore affected the way in which prices have developed.
- 2.17 OCPs, with the exception of BT, are relatively free (within the boundaries of regulatory conditions for the 03, 0500, 080, 116 and 0870 ranges) to set the retail prices of non-geographic calls for which they are responsible. BT, however, has previously been identified to have significant market power ('SMP') in the wholesale origination market, and is therefore subject to a number of regulatory conditions. These include a requirement to originate and retail calls to NTS numbers on behalf of other TCPs, which is known as the 'NTS Call Origination Condition'.
- 2.18 Under this Condition the amount that BT can retain from its retail charges for these calls is constrained. BT is only allowed to deduct its costs of originating and retailing the call (as well as some provision for bad debt costs) before passing the remainder to the relevant TCP.²⁶ As a result, BT's practice is to charge in line with the pricing guidance set out in the Numbering Plan, namely:
- For 0843/4 calls, no more than 4.26ppm or ppc (excluding VAT);

²³ 2010 Flow of Funds study, pp.38-39, and April 2012 consultation, Part A, pp.18-19.

²⁴ An exception to this situation, not directly relevant for this consultation, is one where the supplier of some or all calls, and the supplier of the connection, are different companies (i.e. buying a BT fixed line and international calls from another company).

²⁵ Ofcom, Communications Market Report ('CMR') 2012, p. 31

(http://stakeholders.ofcom.org.uk/binaries/research/cmr/cmr12/UK_1.pdf)

²⁶ The NTS Call Origination Condition applies to the 0500, 080, 082, 084, 0871/2/3 and 09 number ranges. See also Section 3, which describes the current regulatory requirements in relation to non-geographic numbers and the provision of NGCS.

- for 0845 calls, BT's Standard Local Call Retail Price (as for 0870 calls, BT charges these calls at the equivalent rate for a geographic call);
- for 0871/2/3 calls, no more than 8.51ppm or ppc (excluding VAT); and
- for 09 calls, no more than 127.66ppm or ppc (excluding VAT).

2.19 As a result of this regulatory patchwork, different consumers can therefore pay very different prices for calls to the same numbers when calling using different OCPs.²⁷ The tables below provide an updated overview of the different retail prices charged by different OCPs for non-geographic calls.

Table 2.2: Maximum retail prices for non-geographic ranges for customers of specific tariff for each fixed OCP, VAT included (February 2013)

Daytime (excluding any call set-up charges)	BT Unlimited Weekend Plan ²⁸	Talk alk UK Evening & Weekend ²⁹	Virgin Media "M" Package ³⁰	Sky Talk Freetime package ³¹
080	Free	Free	Free	Free
0844 / 3	up to 6.13ppm	Up to 8.28ppm	Up to 12.41ppm	Up to 8ppm
0845	Inclusive in package up to 60 mins per call then up to 2.04ppm thereafter	Inclusive in package up to 60 mins per call then 8.41ppm thereafter	10.22ppm	6.63ppm
0870	Inclusive in package up to 60 mins then up to 8.41ppm thereafter	Inclusive in package up to 60 mins then 8.41ppm thereafter	10.22ppm	Inclusive in package up to 60 mins then 8.41ppm thereafter
0871/2/ 3	Up to 10.21ppm	Up to 13.16p	Up to 14.26ppm	Up to 10.21ppm
09	Up to £1.53p	Up to £1.68p	Up to £1.53p	Up to £1.68p

Source: Respective company websites accessed February 2013

²⁷ We provided further details about the current regulation of retail pricing, the prices which consumers pay for non-geographic calls, including OCPs' pricing policies and the variation between OCPs and similar number ranges in Part A, Section 3 of the April 2012 consultation, see paragraphs 3.38 to 3.60.

²⁸ Most call charges (excluding 080) also incur an additional 13.87p set up fee http://www.productsandservices.bt.com/consumer/assets/downloads/BT_PhoneTariff_Residential.pdf (BT General Tariff guide, February 2013); http://www.productsandservices.bt.com/consumer/assets/downloads/BT_PhoneTariff_SpecialNos.pdf (BT Special number price list, November 2012)

²⁹ Most call charges (excluding 080) also incur an additional 13.87p set up fee: <https://sales.talktalk.co.uk/pricing/package/eveweekend> .

³⁰ Most call charges (excluding 080) also incur an additional 14.94p set up fee (11.24p for 0845 and 0870 numbers): <http://store.virginmedia.com/phone/phone-fibre-optic/about-virgin-media-fibre-optic/how-much-do-calls-cost.html>

³¹ Most call charges (excluding 080) also incur an additional 13.87p call set up fee: <http://www.sky.com/shop/terms-conditions/talk/code-of-practice/tariff-guide/>

Table 2.3: Range of retail prices for non-geographic ranges for customers of specific tariffs for each major mobile OCP, VAT included (February 2013)

	Vodafone ³²		Orange ³³		O2 ³⁴		T-Mobile ³⁵		Three ³⁶	
	PAYM	PAYG	PAYM	PAYG	PAYM	PAYG	PAYM	PAYG	PAYM	PAYG
080 ³⁷	14p	14p	35p	25/40p	20.4p	15p	Inc. in bundle, then 40p	20p	15.3p	10.2 /15.3p
0844	35p	25p	35p	40p	20.4p	25p	Inc. in bundle, then 40p	40p	20.4ppc +20.4ppm / 35ppc +35pm	35ppc + 35ppm
0845	14p	14p	35p	40p	20.4p	25p	Inc. in bundle, then 40p	40p	20.4p/ 35p	35p
0870	14p	14p	35p	40p	20.4p	25p	Inc. in bundle, then 40p	40p	20.4p/ 35p	35p
0871	35p	25p	35p	40p	35.8p	35p	Inc. in bundle, then 40p	40p	20.4ppc +20.4ppm / 35ppc +35pm	35ppc + 35ppm
090	60p- £2.10	60p- £2.10	£1.25p or £2.25p	£1.25p or £2.25p	up to £2	up to £2	Up to £2.55	not listed	Up to £2.25	Up to £2.25

Source: Respective company websites accessed February 2013

2.20 With respect to mobile pricing, we consider that current retail prices are not reflective of prices that would be set under normal market conditions due to ongoing litigation and disputes. We explain this in more detail in Section 3, as part of the description of our analytical framework.

The operation of the wholesale level

2.21 We generally describe an OCP conveying a non-geographic call to a TCP as the provision of 'call termination'. The payment made by the OCP to the TCP is referred to as the 'termination rate'.³⁸ The way in which termination rates for non-geographic calls are determined varies depending on BT's role in the process; the rates also vary

³² <http://www.vodafone.co.uk/personal/price-plans/pay-as-you-go/call-charges/index.htm> (pay as you go) and <http://www.vodafone.co.uk/shop/pay-monthly/call-charges/index.htm> (pay monthly)

³³ These represent the prices for new and upgrading customers (for pre-pay customers from 14 March 2013) http://studio.orange.co.uk/service_plans/paymonthly/services_price_guides.html (pay-monthly) and

http://studio.orange.co.uk/service_plans/payasyougo/services_price_guides_overview.html (pre-pay)

³⁴ <http://www.o2.co.uk/support/generalhelp/howdoi/specialnumbers>.

³⁵ <http://support.t-mobile.co.uk/help-and-support/index?page=home&cat=PRICEPLANS>

³⁶ <http://www.three.co.uk/ThreePortal/Satellite?blobcol=urldata&blobheader=application%2Fpdf&blobkey=id&blobnocache=false&blobtable=MungoBlobs&blobwhere=1223576376488&ssbinary=true>

³⁷ Excluding any 080 numbers which the mobile OCPs have agreed not to charge for, for example the DWP 080 helpline numbers or certain charity helplines.

³⁸ For 080 numbers (and other Freephone or free-to-caller numbers such as 116) the wholesale level works differently as payments pass in the opposite direction (from the TCP to the OCP). For these number ranges, we therefore refer to the provision of 'call origination' and the payment made by the TCP to the OCP as the 'origination rate'. However, this can also be thought of (and is sometimes referred to) as a negative termination rate. This is described in more detail in Part C of this document.

by number range, by time of day as well as also depending on the point at which the call is handed over to the terminating network. We provided more detail on how termination rates are determined in the April 2012 consultation.³⁹ The Table below summarises the current regulation of termination rates for different situations.

Table 2.4: Current regulation of termination rates

OCP	TCP	Regulation affecting termination rate		
		SMP Regulation	Access Regulation	Dispute Resolution
BT	Non-BT	NTS Call Origination Condition applies to 0500, 080, 082, 084, 0871/2/3 and 09 ranges. Termination rate is BT's retail price minus regulated margin	BT required to purchase termination services on reasonable terms and conditions	A failure to commercially agree a termination rate can be referred to Ofcom as a dispute. Disputes will be resolved with reference to statutory policy objectives.
Non-BT	BT	No regulation	No regulation relevant where BT acts as TCP	
Non-BT	Non-BT	No regulation	No regulation	

2.22 We also summarised recent developments at the wholesale level in the April 2012 consultation. In particular we noted that the wholesale level was in a state of flux because the historic approach to determining termination rates had begun to break down, with BT and other TCPs seeking to vary the termination rates that they charge in order to link them to the retail price charged by the OCP (referred to as 'ladder pricing' or 'tiered termination rates'). This has led to a number of disputes, some of which are ongoing (these disputes are summarised in more detail in Section 14).

2.23 In our dispute determinations of 5 February 2010 and 10 August 2010, we found that BT's ladder termination rates for calls to 080, 0845 and 0871 were not fair and reasonable because there was a significant risk that they would have adverse effects for consumers.⁴⁰ Those determinations were initially overturned by the Competition Appeal Tribunal ('CAT').⁴¹ However, they were subsequently reinstated by the Court of Appeal.⁴² BT was recently granted permission to appeal the Court of Appeal's judgment to the Supreme Court. We therefore remain of the view that the wholesale level is in a state of flux. We explain this in more detail in Section 3, as part of the description of our analytical framework.

³⁹ See paragraphs 3.67 to 3.79 of the April 2012 consultation.

⁴⁰ The 080 Dispute Determination -

http://stakeholders.ofcom.org.uk/binaries/consultations/draft_deter_bt_tmobile_vodafone/nonconf.pdf and the 0845/0870 Dispute Determination -

http://stakeholders.ofcom.org.uk/binaries/enforcement/competition-bulletins/closed-cases/all-closed-cases/761146/Final_Determination.pdf

⁴¹ The CAT 08x Judgment: *British Telecommunications Plc and Everything Everywhere Limited v Ofcom* [2011] CAT 24. http://www.catribunal.org.uk/files/1151_1168-1169_Judgment_010811.pdf

⁴² The Court of Appeal 08x Judgment: *Telefonica O2 UK Ltd and others v BT* [2012] EWCA Civ 1002. http://www.catribunal.org.uk/files/1151_1168-69_Judgment_of_the_Court_of_Appeal_250712.pdf

Ofcom's review of non-geographic numbers

The December 2010 consultation

2.24 We published our first consultation, entitled *Simplifying Non-Geographic Numbers; improving consumer confidence in 03, 08, 09, 118 and other non-geographic numbers*, in December 2010 ('the December 2010 consultation'). This reviewed the use and regulation of NGCS and explained why we considered that the market was not working well for consumers. We consulted on options for wide-ranging changes to the regulation of non-geographic numbers to address the consumer problems we identified.

The April 2012 consultation

2.25 In April 2012, we presented our revised, and more detailed, proposals for consultation. Our view on the consumer harm and failures in the NGCS market remained largely consistent with the view we presented in the December 2010 consultation. Specifically, we said consumer price awareness of non-geographic calls was poor and this was leading consumers to overestimate the cost of calls, making them generally suspicious of the numbers and reluctant to use them. We also identified other market failures, including SPs' lack of control over retail prices and a lack of incentives on all parties to take account of the effect of their actions on the perception of non-geographic numbers as a whole. We therefore said that these interrelated market failures required a systematic reformation across the whole set of non-geographic numbers.

2.26 We proposed the following:

- that 03 would be the only non-geographic number range linked to geographic call prices (i.e. 01 and 02). We noted that 03 was already set up to serve this purpose and therefore no regulatory change was needed;
- 080/116 numbers to be free from all telephones. We said this would address one of the key reasons for consumer mistrust of the non-geographic regime; and
- a single unbundled tariff structure for other non-geographic number ranges – specifically 084 (including 0845), 087 (including 0870), 09, 118 - which would require the retail price for calling these number ranges to be separated into the origination charge and the charge for terminating the call (we call these components the Access Charge ('AC') and the Service Charge ('SC')). This would allow competing services to be able to compete on price (by being able to present an accurate price for calls to their service) as well as brand/service.

2.27 We explained that, taken together, these changes would provide a simplified charging structure for non-geographic calls, which could be presented far more clearly and simply and would enable consumers to regain trust and confidence in non-geographic numbers.

2.28 We noted that there were other number ranges which also needed to be considered within this structure (in particular 070, 076 and the 05 number ranges). However, we said we would be consulting separately on those specific number ranges. See below for more details.

2.29 We proposed that if we were to decide to proceed with the proposed changes following our consultation, they should be implemented within 18 months of that

decision, although we also consulted on an option for the 080/116 proposals to be implemented within a shorter, 12 month timeframe. We noted that the proposed modifications to the legal instruments necessary to implement the changes would be subject to consultation at a later stage; although we did indicate what we envisaged would be covered by those modifications.⁴³

- 2.30 We also noted that there were a number of implementation issues which would need to be considered and that we intended to work with industry again through working groups to refine our proposals.
- 2.31 The consultation closed on 27 June 2012 and we received 46 responses.⁴⁴ We have considered those responses in coming to the views set out in this document.

Other consultations published since April 2012

- 2.32 The April 2012 consultation did not cover all the number ranges or issues which are within the scope of our NGCS review. As indicated earlier, there were some issues on which we proposed to, and have subsequently, consulted on separately. We have summarised these below.

Higher Rate / Premium Rate service charge caps

- 2.33 In July 2012 we consulted on proposals to impose a maximum SC for 09 and 118 numbers of £5 per call and £3 per minute (excluding VAT).⁴⁵
- 2.34 We also considered options for additional consumer protection measures on these number ranges, such as pre-call announcements ('PCAs'). We considered, however, that at the SC caps proposed, such additional measures were unlikely to be necessary.
- 2.35 That consultation closed on 19 September and we received 19 responses.⁴⁶ We have set out our response to the stakeholder comments and revised view on these SC caps in Annex 22 of this document.

The 0500 number range

- 2.36 In October 2012 we consulted on changes to the 0500 range (this is currently designated as 'Freephone' in the Numbering Plan).⁴⁷ In that consultation we considered a range of different options for the 0500 range. We proposed that:
- the 0500 number range be withdrawn from use; and
 - the withdrawal of the 0500 number range is implemented over a two year period starting from when the decision is announced.

⁴³ In particular see the April 2012 consultation paragraphs 13.74 to 13.77 for the unbundled tariff, and paragraphs 17.126 to 17.130 for the 080 and 116 ranges.

⁴⁴ All the non-confidential responses are published on our website:

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

⁴⁵ *Service Charge Caps for 09 and 118 Services:*

<http://stakeholders.ofcom.org.uk/consultations/service-charge-caps/>

⁴⁶ All the non-confidential responses are published on our website,

<http://stakeholders.ofcom.org.uk/consultations/service-charge-caps/?showResponses=true>

⁴⁷ *The 0500 Number Range:* <http://stakeholders.ofcom.org.uk/consultations/0500-number-range/>

- 2.37 We considered that, on balance, this approach offered the greatest net benefit to consumers - reducing consumer confusion, securing the best use of telephone numbers, and enhancing the clarity and simplicity of the new free-to-caller regime (080) for the benefit of consumers and businesses.
- 2.38 The 0500 consultation closed on 8 January and we received 16 responses.⁴⁸ In the light of the responses we received to that consultation we are continuing to reflect on the policy proposal to withdraw 0500 numbers (including options to moderate the impact of any withdrawal) and the powers available to us to give effect to such a proposal. It is likely that we will publish a further consultation on this issue later in the year.

Restructuring and tidying up of the Numbering Plan and GC17

- 2.39 In July 2012, we consulted on modifications to General Condition 17, the Numbering Plan and the numbering application forms.⁴⁹ Our proposed modifications were intended to ensure that these documents were clear, accurate and accessible, and that they reflected numbering policy in a consistent manner. The modifications were not intended to alter the scope of substantive regulation or to change numbering policy. We issued a final statement on 22 November 2012, which included formal notifications of the modifications to these documents.⁵⁰

Other NGC number ranges not yet consulted on

- 2.40 In the April 2012 consultation we said we would also publish further, separate consultations on the 055/056 and 070/076 number ranges. We noted that these ranges were subject to separate considerations because of the specific characteristics of those ranges but that both needed to be reviewed, particularly in the light of the likely changes to other non-geographic numbers.⁵¹ Our consideration of these specific ranges has been delayed, however we intend to issue these separate consultations in due course.

European context

- 2.41 During our strategic review of non-geographic numbering in the UK, we have engaged with European developments in the regulation of such services through the BEREC⁵² Special Rate Services ('SRS') working group.⁵³ BEREC published a report on SRS in May 2012, which noted that the market had a number of problems including poor price transparency and high prices.⁵⁴ The report assessed a number of different regulatory approaches to addressing these problems, including the separation of call charges.

⁴⁸ Responses are available at: <http://stakeholders.ofcom.org.uk/consultations/service-charge-caps/?showResponses=true>

⁴⁹ *Telephone Numbering, Proposed modifications to the National Telephone Numbering Plan, General Condition 17 and telephone number applications forms within existing numbering policy:* <http://stakeholders.ofcom.org.uk/consultations/telephone-numbering-modification/>

⁵⁰ This statement is available here: <http://stakeholders.ofcom.org.uk/binaries/consultations/telephone-numbering-modification/statement/statement.pdf>.

⁵¹ See paragraphs 6.31 to 6.37 of Part A of the April 2012 consultation.

⁵² Body of European Regulators for Electronic Communications

⁵³ 'SRS' is the term used in Europe to describe what in the UK are termed NGCS.

⁵⁴ BEREC, *Report on Special Rate Services*, 24 May 2012: http://berec.europa.eu/eng/document_register/subject_matter/berec/reports/338-berec-report-on-special-rate-services

- 2.42 The UK is therefore not alone in recognising that there are problems in this market and in considering options for addressing those problems. In France, the telecommunications regulator, ARCEP, recently decided to rationalise the retail price structure and implement a form of the unbundled tariff for SRS where the ‘access charge’ element of the call is linked to geographic rates. ARCEP has also decided to make its Freephone range free to all callers. The French changes will take effect on 1 January 2015.⁵⁵
- 2.43 In addition, we understand that Malta and the Netherlands are also changing their approach to regulating SRS, based on an unbundled tariff approach.

Structure of this document

2.44 This document sets out our view on the appropriate policy for non-geographic calls, subject to the final confirmation in light of the issues on which we are consulting (outlined in paragraph 2.53 below, as well as in the relevant Sections and Annexes of this document).

2.45 Given the scope and complexity of the issues involved, and in line with our approach in the April 2012 consultation, we have divided this document into three parts:

- **Part A: Context, concerns and overall approach:** this comprises six Sections, including this section, and 18 Annexes. It includes:
 - the legal and analytical framework (Section 3);
 - our conclusions as to why the market is not working well for consumers, including our response to stakeholder comments on this issue (Section 4 and Annexes 8 to 9);
 - a summary of the decisions that we are minded to take in order to address these concerns – introducing the unbundled tariff and making the 080 and 116 ranges free to caller (these are set out in detail in Parts B and C) - and an explanation of how we plan to implement these changes (Section 5);
 - an explanation of the legal powers we are minded to rely on to implement these changes (Section 6 and Annex 13), including our response to stakeholder comments in relation to the extent of our powers; and
 - an explanation of the modifications to the legal instruments we would make to implement these changes, and a draft of those instruments (Section 6 and Annexes 14 to 18).

Part A also includes an assessment of some of the costs and benefits of implementing the unbundled tariff and making the 080 and 116 ranges free to caller, including the impact on particular equality groups (Annexes 10 to 12). We include this in Part A as it is a combined assessment. However, we draw on the appropriate parts of this assessment in Parts B and C, respectively.

- **Part B: The unbundled tariff:** This comprises four Sections and seven Annexes. We set out in detail here the decision we are minded to take (subject to the issues on which we are consulting) for regulating prices through the unbundled

⁵⁵ http://www.arcep.fr/uploads/tx_gsavis/12-0856.pdf

tariff. We also set out our view on the SC caps for the 09 and 118 number ranges.

- **Part C: 080 and 116 ranges:** This comprises five Sections and six Annexes. We set out in detail here the decision we are minded to take (subject to the issues on which we are consulting) in relation to the 080 and 116 ranges, including the appropriate wholesale regulation of the origination charge for calls to these number ranges.

Consultation on draft legal instruments

- 2.46 In order to implement the regulatory changes outlined in Parts B and C of this document, modifications are required to several of the General Conditions, the PRS Condition and Numbering Plan.
- 2.47 In addition, we propose to set a condition binding non-providers in relation to transparency and publication requirements as part of the unbundled tariff regime.
- 2.48 We also propose to impose an access condition on TCPs requiring them to purchase origination services for calls to 080 and 116 numbers on fair and reasonable terms. We are separately publishing draft guidance for consultation as to how we would approach any potential dispute about whether proposed origination charges for calls to these numbers are fair and reasonable.⁵⁶
- 2.49 As explained above, Section 6 summarises our proposed modifications and conditions and explains how these meet the relevant legal tests and further our statutory duties. The notifications at Annexes 14 to 18 set out the proposed modifications and conditions in full.
- 2.50 We are also proposing modifications to the length of the notice period we previously consulted on, and the party that should receive that notice, as part of our proposed access condition for the 080 and 116 number ranges (see Section 14, paragraphs 14.62 to 14.75)
- 2.51 We also anticipate that modifications will be required to the numbering application forms prior to the date on which the regulatory changes (i.e. the introduction of the unbundled tariff and free calls to 080 and 116 numbers) take effect. However, in light of the 18 month implementation timeframe, we intend to separately consider the modifications that are required to the numbering application forms closer to the date on which the revised forms will need to be made available to CPs.

Consultation on revisions to our assessment

- 2.52 As well as the legal instruments there are also a small number of areas where we have made revisions to the assessment we presented in the April 2012 consultation. In particular, because some of these revisions involve amendments to our analytical approach or new evidence, we recognise that it is desirable for stakeholders to have a chance to comment specifically on these areas.
- 2.53 The specific areas on which we are consulting are:
- our assessment of the benefits of the unbundled tariff on the 09 range (see Annex 11, paragraphs A11.82 to A11.135);

⁵⁶ <http://stakeholders.ofcom.org.uk/consultations/080-116-ranges/>

- our assessment of the costs of implementing some of the changes (see Annex 10), in particular:
 - our analysis and estimates of the misdialling costs (including the consumer time costs) of making the 080 range free-to-caller (paragraphs A10.183 to A10.202);
 - revisions to our approach to assessing the billing costs of the unbundled tariff (paragraphs A10.30 to A10.47);
- new analysis and evidence which we rely on in reaching an assumption, for the purposes of our impact assessment, about the mobile origination charges that will apply under a free-to-caller approach (see Section 12, paragraphs 12.82 to 12.87, 12.99 to 12.109 and 12.144 to 12.154); and
- our assumption, for the purposes of our impact assessment, about the fixed origination charges that will apply under a free-to-caller approach (see Section 12, paragraphs 12.12 to 12.15).

2.54 The deadline for comments in relation to the draft legal instruments and the specific consultation issues outlined above is 28 May 2013.

Part A - Section 3

Legal & Analytical Framework

Introduction

3.1 In this Section, we set out the legal framework which governs our duties and powers in relation to telephone numbers. We also summarise the current regulatory requirements which apply in relation to non-geographic numbers and the provision of NGCS. We then summarise the analytical framework that we adopt in this document.

Legal framework

Ofcom's general duties and powers

3.2 Ofcom's powers in relation to the regulation of non-geographic numbers derive largely from the Communications Act 2003 ('the Act'), which implements the EU common regulatory framework for electronic communications ('the Common Regulatory Framework').⁵⁷

3.3 As set out in section 3(1) of the Act, Ofcom's principal duty in carrying out its functions is:

- to further the interests of citizens and consumers in relation to communications matters; and
- to further the interests of consumers in relevant markets, where appropriate by promoting competition.

3.4 In particular, Ofcom is required, by virtue of its duty under section 3(1), to secure, amongst other things, the availability throughout the UK of a wide range of electronic communications services.

3.5 In addition, Ofcom must have regard in all cases to:

- the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed; and
- any other principles appearing to Ofcom to represent the best regulatory practice.

3.6 In carrying out its principal duty, Ofcom must have regard to certain, specified objectives and considerations to the extent Ofcom considers they are relevant. These include:

- the desirability of promoting competition in relevant markets (s.3(4)(b));
- the desirability of encouraging investment and innovation in relevant markets (s.3(4)(d));

⁵⁷ The common regulatory framework for electronic communications consisting of the Framework Directive (2002/21/EC), the Authorisation Directive (2002/20/EC), the Access Directive (2002/19/EC), the Universal Service Directive (2002/22/EC) and the Privacy and Electronic Communications Directive (2002/58/EC) (as amended by Directives 2009/136/EC and 2009/140/EC).

- the vulnerability of those whose circumstances appear to Ofcom to put them in need of special protection (s.3(4)(h));
 - the needs of persons with disabilities, of the elderly and of those on low incomes (s.3(4)(i)); and
 - the opinions of consumers in relevant markets and of members of the public generally (s.3(4)(k)).
- 3.7 In performing its duty of furthering the interests of consumers, Ofcom must have regard, in particular, to the interests of those consumers in respect of choice, price, quality of service and value for money (s.3(5)).
- 3.8 In carrying out its functions under Chapter 1 of Part 2 to the Act (which include its duties in relation to numbers set out in the following paragraphs), Ofcom is required to act in accordance with the six Community requirements.⁵⁸ These include the requirements: to promote competition in the provision of electronic communications networks and services; to contribute to the development of the European internal market; to promote the interests of European Union citizens; to take account of the desirability of not favouring one form of electronic communications network or service over another; and to encourage the provision of network access for the purpose of securing efficiency, sustainable competition, efficient investment and innovation and the maximum benefit for the customers of communications providers.

Ofcom's duties and powers to set general conditions

- 3.9 Ofcom's power to set general conditions is set out in section 45(2)(a) of the Act. A general condition may be applied generally to every person providing an electronic communications network ('ECN') or electronic communications service ('ECS'), or to every person providing an ECN or ECS of a particular description specified in the condition. By virtue of section 45(10), Ofcom's power to set general conditions includes:
- a power to impose a requirement on the person(s) subject to the condition to comply with such directions as Ofcom may give;
 - a power for this purpose to confer a discretion exercisable by Ofcom; and
 - a power to revoke or modify conditions for the time being in force.
- 3.10 General conditions may include conditions making such provision as Ofcom consider appropriate for protecting the interests of the end-users of public electronic communications services (section 51(1)(a)). Ofcom has a power to set conditions for this purpose which, amongst other things, requires the provision, free of charge, or specified information, of information of a specified kind, to end-users (section 51(2)(d)).
- 3.11 Ofcom has a duty under section 52(1) of the Act to set such general conditions as it considers appropriate for securing that public communications providers (or certain categories of such providers) establish and maintain procedures, standards and policies with respect to a range of specified matters. These include:

⁵⁸ Section 4 of the Act.

- the handling of complaints made to these providers by any of their domestic and small business customers, where the complaint relates to contractual conditions or the performance of a contract for the supply of an ECN or an ECS (section 52(2)(a)); and
- any other matter appearing to Ofcom to be necessary for securing effective protection for the domestic and small business customers of such providers (section 52(2)(e)).

Ofcom's duties and powers in relation to telephone numbers

- 3.12 Ofcom has a number of duties and functions in relation to numbers in sections 56 – 63 of the Act, including its duty to publish the Numbering Plan and to keep it under review, its function of making general conditions imposing requirements in relation to numbers and its general duty in section 63 of the Act to ensure that the best use is made of numbers and to encourage efficiency and innovation for that purpose. Section 63(2) also requires Ofcom to secure that there is no undue discrimination by communications providers against other communications providers in relation to the use of telephone numbers.
- 3.13 Ofcom's duty to publish the Numbering Plan, and to keep it under review, is contained in section 56 of the Act. By virtue of this section, the Numbering Plan is to set out the numbers that Ofcom has determined to be available for allocation as telephone numbers; such restrictions as it considers appropriate on the adoption of those numbers and on the other uses to which those numbers may be put; and such requirements as it considers appropriate, for the purpose of protecting consumers, in relation to the tariff principles and maximum prices applicable to numbers adopted or available for allocation.
- 3.14 Ofcom's specific powers to make general conditions in relation to numbers are set out in sections 57 and 58 of the Act. The matters which may be the subject of a general condition under these provisions include:
- conditions to secure access to telephone numbers;⁵⁹ and
 - conditions about the allocation and adoption of telephone numbers.⁶⁰
- 3.15 In particular, these may include conditions which:
- impose tariff principles and maximum prices for the purpose of protecting consumers in relation to the provision of an ECS by means of telephone numbers adopted or available for use (section 58(1)(aa));
 - regulate the use by a CP, for the purpose of providing an ECN or ECS, of telephone numbers not allocated to that CP (section 58(1)(b)); and
 - impose requirements on a CP in connection with the adoption by him of telephone numbers (section 58(1)(d)).
- 3.16 Ofcom also has the power to make conditions applying to persons other than CPs ('non-providers') in relation to the allocation of numbers to those persons, the transfer

⁵⁹ Section 57 of the Act.

⁶⁰ Section 58 of the Act.

of allocations to and from those persons, and the use of telephone numbers by those persons.⁶¹

Ofcom's powers in relation to PRS

3.17 Premium rate services ('PRS') are services that are provided by means of an electronic communications service, for which a charge is made by the person providing the communications service. They are typically accessed by calling a non-geographic number and are paid for by the price of the call. Ofcom has power under section 120 of the Act to regulate the provision, content, promotion and marketing of PRS by setting conditions which may apply to PRS providers and communications providers which enable access to PRS by their electronic communication service or network.

Ofcom's power to set access conditions

3.18 Access conditions typically apply at the wholesale level, as they relate to facilitating interconnection between CPs, and are aimed at ensuring end-users can reach designated numbers/services. Ofcom has a power to impose requirements by way of a general condition under section 57 of the Act to secure that end-users are able to access telephone numbers (see above). Ofcom also has specific powers under section 73(2) of the Act to impose access-related conditions for the purpose of securing: efficiency; sustainable competition; efficient investment and innovation; and the greatest possible benefit for end-users.⁶² By virtue of section 74 of the Act, such conditions may impose obligations on a person controlling network access in order to secure end-to-end connectivity. BT is currently subject to an access-related condition of this nature.

Current regulatory requirements

3.19 There are a number of regulatory requirements in force at present that relate to non-geographic numbers and the provision of NGCS. These were summarised in the April 2012 consultation and are set out below.⁶³

General Conditions

- 3.20 General Condition 10 imposes transparency requirements on CPs, including an obligation to publish information in relation to its applicable prices and tariffs.
- 3.21 General Condition 12 requires CPs to provide its subscribers with a basic level of itemised billing (except where services are provided to the subscriber on a pre-paid basis and they have an alternative, free of charge, means of adequately monitoring their expenditure and usage). CPs are also obliged to ensure that calls which are made free of charge (e.g. calls to helplines) are not identified on the subscriber's itemised bill.
- 3.22 General Condition 14 requires CPs to maintain and comply with Codes of Practice for their domestic and small business customers in relation to various matters. These include Codes of Practice in relation to:
- the handling of customer enquiries and complaints about PRS; and

⁶¹ Section 59 of the Act.

⁶² Section 73(2) Communications Act 2003

⁶³ Paragraphs 5.23 – 5.29, Part A, April 2012 consultation.

- the publication of prices of calls to various non-geographic numbers ranges (including 080, 0843/4/5 and 0870/1/2/3).
- 3.23 General Condition 17 applies to all CPs and set out requirements in relation to the allocation, adoption and use of telephone numbers.
- 3.24 General Condition 20 obliges CPs to ensure, where technically and economically feasible, that end users can access non-geographic numbers and all telephone numbers provided in the EC. There is provision for a subscriber to limit access on a geographic basis. General Condition 20 transposes the requirement under Article 28 of the Universal Service Directive. As explained in the recitals to the Universal Service Directive, access by end-users to all numbering resources in the Community is regarded as a vital pre-condition for a single market.⁶⁴ General Condition 20 also requires CPs to ensure that any end-user can access a hotline for missing children by calling the number 116000.
- 3.25 General Conditions 23 and 24 relate to the sales and marketing of mobile and fixed telephony services, respectively. They include obligations to provide specified information to domestic and small business customers, including the key charges for the relevant service.

Other conditions

- 3.26 The NTS Call Origination Condition applies to BT by virtue of its significant market power ('SMP') in the market for wholesale fixed call origination. The condition applies in relation to calls to 0500, 080, 082, 0843, 0844, 0845, 0871, 0872, 0873, 090, 091 and 098 numbers. It regulates BT's wholesale charges for originating calls to these number ranges by restricting the revenue that BT can retain from the retail price for calls to BT's costs for originating and retailing the calls plus a regulated provision for bad debt.⁶⁵
- 3.27 Single Transit Conditions apply to BT by virtue of its SMP in the market for single transit services. These conditions require BT to provide a regulated single transit product, including for NTS and other non-geographic calls.⁶⁶
- 3.28 Ofcom is currently consulting on its next review of both the wholesale fixed call origination market and the single transit market (the 'Narrowband Market Review' or 'NMR').⁶⁷
- 3.29 The PRS Condition is set by Ofcom under section 120 of the Act.⁶⁸ It requires CPs and PRS providers falling within the scope of the Condition to comply with directions

⁶⁴ Recital 38, Universal Service Directive

⁶⁵ Condition AAA11 ("Requirement to provide NTS Call Origination"). The NTS Call Origination Condition does not apply to calls to 0844 04 and 0808 99 numbers, which are used for Surftime Internet access and fixed rate internet access call origination ("FRIACO") respectively. See the definition of "NTS Calls" set out in *Review of the fixed narrowband wholesale services markets*, 15 September 2009, Annex 7, Schedule 1 available at:

http://stakeholders.ofcom.org.uk/binaries/consultations/wnmr_statement_consultation/summary/main.pdf.

⁶⁶ Conditions AAA(ST)1 – 6. *Review of the fixed narrowband services wholesale markets, Further Statement*, 5 February 2010, Annex 1 available at

http://stakeholders.ofcom.org.uk/binaries/consultations/wnmr_statement_consultation/statement/state-ment.pdf

⁶⁷ *Review of the fixed narrowband services market*, 5 February 2013 ('2013 NMR consultation'): <http://stakeholders.ofcom.org.uk/consultations/nmr-13/>

given by PhonepayPlus ('PPP') in accordance with its Code of Practice and which are given for the purposes of enforcing the provisions of that Code (see below). The application of the PRS Condition is limited to 'Controlled PRS', so that only a specific subset of premium rate services are subject to Ofcom's enforcement powers for breach of the PRS Condition. The practical effect of the definition is that PPP regulates, through a range of instruments, calls to the following non-geographic number services: 09, 0871/2/3 and 118 (DQ).⁶⁹ PPP also regulates 070 and 076 calls where the service is operating as a Controlled PRS in contravention of the Numbering Plan (see below), and mobile shortcodes.

The Numbering Plan

- 3.30 The Numbering Plan is published by Ofcom under section 56 of the Act.⁷⁰ It sets out the numbers that Ofcom have determined to be available for allocation to CPs and the restrictions that apply in relation to the adoption and use of those numbers. The Numbering Plan also lists numbers which are not available for allocation (e.g. 999, 100, 1471), but which may be used by CPs in accordance with the designation for that number set out in the Plan.
- 3.31 General Condition 17 requires CPs to comply with all applicable restrictions and requirements as are set out in the Numbering Plan.⁷¹ A failure to comply with the Numbering Plan therefore constitutes a breach of General Condition 17.

PPP Code of Practice

- 3.32 The PPP Code of Practice⁷² is approved by Ofcom under section 121 of the Act and outlines wide-ranging rules to protect consumers as well as the processes that PPP applies when regulating the premium rate services industry.

Dispute resolution

- 3.33 Under sections 185 to 191 of the Act, we have a duty to resolve certain disputes that arise between CPs. This duty is derived from Article 20 of the Framework Directive, which requires NRAs to resolve disputes with the objective of achieving the policy objectives set out in Article 8 of the Directive (see also section 4 of the Act, described above). Dispute resolution occurs in relation to issues that arise between CPs and therefore often concerns issues at the wholesale level.
- 3.34 Ofcom has resolved a number of disputes in recent years in relation to the wholesale arrangements for calls to non-geographic number ranges. Some of these disputes are currently subject to appeal. These disputes are summarised in more detail in Part C, Section 14.
- 3.35 Although any dispute determination only binds the parties to that dispute, such determinations may provide guidance as to how Ofcom considers its duties in relation to various issues. It can, therefore, act to influence the behaviour of the wider market.

⁶⁸ *Review of Premium Rate Services*, 2 July 2012:

<http://stakeholders.ofcom.org.uk/binaries/consultations/review-prs/statement/statement.pdf>

⁶⁹ <http://www.phonepayplus.org.uk/output/about-phonepayplus.aspx>

⁷⁰ *National Telephone Numbering Plan*, published 20 December 2012, available at:

<http://stakeholders.ofcom.org.uk/binaries/telecoms/numbering/numbering-plan201212.pdf>

⁷¹ General Condition 17.4

⁷² *Approval of the PhonepayPlus Code of Practice (12th edition)*, Statement, 30 March 2011, available at: <http://stakeholders.ofcom.org.uk/consultations/ppp/>

Analytical Framework

3.36 In this document we have adopted the same analytical framework we used in the April 2012 consultation. Specifically:

- in Section 4 and Annexes 8 to 9 we set out our conclusions on the current operation of the retail and wholesale NGC markets and identify a number of market failures which are leading to consumer harm; and
- in Parts B and C, we set out the decision we are minded to take (subject to the issues on which we are consulting) on the remedies we consider are required to address those identified market failures. We have assessed these remedies against a benchmark of the status quo using the following assessment criteria:
 - consumer price awareness;
 - efficient prices;
 - service quality, variety and innovation;
 - access to socially important services; and
 - regulatory burden.

3.37 We asked for stakeholder views on the appropriateness of these criteria as part of the December 2010 consultation. We concluded in the April 2012 consultation, having considered stakeholder responses, that these assessment criteria were appropriate in light of our statutory duties and the objectives of the review.⁷³

3.38 We consider that the criteria of access to socially important services applies primarily to the 084, 080 and 116 number ranges, because we are not aware of many socially important services being provided on the other number ranges. In the April 2012 consultation, we also set out what we considered could be included in the definition of ‘socially important services’. This included:

- health services, such as GP’s surgeries;
- benefit payment services such as access to unemployment or invalidity services and state pensions;
- social care by the public and private sector – e.g. help lines such as those provided by The Samaritans; and
- utilities (gas, electricity and water supply).

3.39 We said that our main concern was about citizens’ interests and arose when vulnerable consumers were unable to gain access to socially important services. In particular vulnerable consumers may be deterred from accessing socially important services as a result of either the actual price of calls to these services or because they believe calls to these services to be expensive. We used the following definition of ‘vulnerable’ consumers:⁷⁴

⁷³ See paragraphs 5.86 to 5.95 in Part A, Section 5 of the April 2012 consultation.

⁷⁴ See paragraphs 5.100 to 5.104 in Part A, Section 5 of the April 2012 consultation.

- low income (i.e. less than £11,500 per year) or belong to low socio-economic groups – i.e. D and E;⁷⁵
- consumers in households that are involuntarily mobile-only. These are consumers that do not have a fixed line because they are unable to afford it; and
- elderly and/or disabled consumers that are dependent on telecoms, e.g. because they have mobility difficulties.⁷⁶

3.40 We have used the same definitions for ‘vulnerable consumers’ and ‘socially important services’ as part of our assessment in this document.

Flow of Funds study

3.41 As noted in Section 2 above, the 2010 Flow of Funds study which we presented as part of the December 2010 consultation has provided useful data on the NGCS market. In the April 2012 consultation we referred again to the data from the 2010 Flow of Funds study, although we noted we had gathered more recent data from CPs where it was directly relevant for the purposes of our assessment of different regulatory options.⁷⁷ This updated information confirmed that the overall trend of a decline in non-geographic call volumes was continuing and that the overall picture of the market was broadly unchanged.⁷⁸

3.42 Updating the 2010 Flow of Funds study would require a significant amount of additional work, in particular extensive cross-market evidence gathering from all CPs. In line with our approach in the April 2012 consultation, in order to avoid imposing an unnecessary evidence gathering burden on CPs (and Ofcom) we have instead gathered evidence about the volumes of non-geographic calls handled by the largest TCPs and have used this to make inferences about the latest trends in the market.⁷⁹ Whilst there are some limitations to this evidence, it does indicate that the trends that we identified in December 2010 and re-presented in April 2012 are likely to have continued.

3.43 In particular:

3.43.1 Volumes on most non-geographic number ranges are continuing to decline. In particular, between 2010 and 2011, volumes appear to have declined by approximately 10%.⁸⁰ The exception is 03 where volumes appear to be

⁷⁵ These are socioeconomic groups defined by the Market research Society.

⁷⁶ We recognise that the various categories in these bullet points are likely to overlap.

⁷⁷ See paragraph 3.20 of Part A of the April 2012 consultation.

⁷⁸ In Annex 16 of the April 2012 consultation we used a 10% annual decline in volumes as our base case when assessing the impact of our proposals. See paragraphs A16.51 to A16.52.

⁷⁹ Formal s135 information request sent to BT, CWW, TalkTalk, Virgin Media, Gamma and KCom in July 2012. These TCPs represent two-thirds of the market for terminating calls to non-geographic number ranges. The extent to which we can draw inferences from volume data obtained from these TCPs is therefore limited because we have made an assumption about the remaining third of the market.

⁸⁰ For example [03] non-geographic call volumes declined by 10% between 2010 and 2011. This is also supported by Ofcom’s telecommunications data update tables, where both fixed and mobile ‘other call’ volumes declined by 10% between 2010 and 2011. Note however, that the ‘other calls’ category may include other types of calls that are not non-geographic numbers (and the definition of ‘other calls’ appears to differ between mobile and fixed operators)

(<http://stakeholders.ofcom.org.uk/market-data-research/market-data/communications-market-reports/tables/?a=0>).

rising significantly.⁸¹ We estimate that the total number of non-geographic calls in 2012 was approximately 22bn.⁸²

- 3.43.2 080 remains the most called non-geographic number range, with nearly 40% of all non-geographic call volumes. 118 continues to be the lowest volume range, with less than 1% of all non-geographic call volumes.⁸³
- 3.43.3 The data we obtained did not provide a reliable basis for estimating the split between fixed and mobile originated calls, however, indicative assumptions based on that data suggest that mobile originated calls may have increased slightly (e.g. one TCP's data indicated that the proportion of mobile originated calls to NGCs was 16%).⁸⁴ Nevertheless, this is still significantly lower than the proportion of mobile origination for all calls (in 2011, 51.6% of all voice calls were mobile-originated).⁸⁵
- 3.44 For revenue estimates, the 2010 Flow of Funds remains our main source of data, although we expect that revenues are likely to have declined in line with volumes.⁸⁶ As set out in the April 2012 consultation, OCPs have changed their retail prices since 2009. In particular, the CAT 08x Judgment in relation to BT's tiered termination rates for 080, 0845 and 0870 numbers has led to changes in mobile prices for calls to these numbers.⁸⁷ However, we consider that current retail prices do not reflect the prices that would be set in normal market conditions. They have been affected by the specific incentives created by the litigation process, the potential outcome of a further appeal⁸⁸ and the impact of subsequent disputes.⁸⁹ For that reason, we consider that the 2010 Flow of Funds analysis, combined with the updated volume data obtained above, continues to provide a more appropriate basis for assessing mobile pricing for calls to these ranges, absent these external uncertainties.
- 3.45 We also consider that the ongoing appeals and disputes mean that the current operation of the wholesale level can be considered to be in flux. For much of our assessment of the wholesale level, we therefore refer to the situation that prevailed prior to the introduction of tiered termination rates. We make clear in each relevant part of our assessment where this is the case.

Impact assessment

- 3.46 This document incorporates an impact assessment of the decisions we are minded to take, as defined in section 7 of the Act. In particular:

⁸¹ Our s135 data from TCPs indicated that volumes on 03 numbers had increased by two thirds.

⁸² This is using the 2010 Flow of Funds volume data and is based on the assumption there has been a 10% decline in volumes each year.

⁸³ Formal s135 request to TCPs, July 2012.

⁸⁴ [8<]

⁸⁵ Ofcom, CMR 2012, http://stakeholders.ofcom.org.uk/binaries/research/cmr/cmr12/UK_5.pdf, p.295.

⁸⁶ This assumption is supported, at least for fixed revenues, by the revenue data for 'other calls' reported in Ofcom's Telecoms Data Updates (<http://stakeholders.ofcom.org.uk/market-data-research/market-data/communications-market-reports/tables/?a=0>), although it is likely that the 'other calls' category includes some calls that are not non-geographic numbers.

⁸⁷ April 2012 consultation, Part A, paragraphs 3.20 and 3.90 to 3.92.

⁸⁸ BT was recently granted permission to bring an appeal against the Court of Appeal 08x Judgment to the Supreme Court.

⁸⁹ Since the 080 Dispute Determination, further disputes have been referred to us in relation to the operation of the wholesale level for calls to non-geographic numbers. These disputes are summarised in Section 14.

- a) sections 7 to 10 (and especially Section 8) supported by Annexes 10 and 11, (as well as Annexes 19 to 25) represent an impact assessment of our provisional decision to impose the unbundled tariff on the 084, 087, 09 and 118 number ranges; and
 - b) Sections 11 to 15 (and especially Section 13) supported by Annexes 10 and 11 (as well as Annexes 26 to 31) represent an impact assessment of our provisional decision to make the 080 and 116 number ranges free-to-caller.
- 3.47 Impact assessments provide a valuable way of assessing different options for regulation and showing why the preferred option was chosen. They form part of best practice policy-making. This is reflected in section 7 of the Act, which means that generally we have to carry out impact assessments where our proposals would be likely to have a significant effect on businesses or the general public, or when there is a major change in Ofcom's activities. However, as a matter of policy Ofcom is committed to carrying out and publishing impact assessments in relation to the great majority of our policy decisions. For further information about our approach to impact assessments, see the guidelines, *Better policy-making: Ofcom's approach to impact assessment*, which are on our website.⁹⁰

Equality impact assessment

- 3.48 In the April 2012 consultation we also presented an equality impact assessment ('EIA') which considered whether our proposals raised specific equality issues. We asked for stakeholder comments on that assessment.⁹¹
- 3.49 We have responded to the stakeholder comments we received and revised our EIA in the light of those comments. This is set out in Annex 12. We consider the unbundled tariff and making 080/116 free-to-caller will overall have a positive impact on the equality groups we are required to consider.

⁹⁰ http://www.ofcom.org.uk/consult/policy_making/guidelines.pdf

⁹¹ See Annex 15 of the April 2012 consultation.

Part A - Section 4

Summary of concerns

Introduction

- 4.1 In this section we set out our concerns about the operation of the retail and wholesale non-geographic call ('NGC') markets. This takes into account comments we have received from stakeholders in response to our previous consultations and the full range of evidence we have gathered.⁹² Annexes 8 and 9 set out in greater detail the comments we received from stakeholders in response to the April 2012 consultation, as well as our response to each of the points raised.
- 4.2 This section is structured as follows:
- first we set out a summary of the three retail market failures we have identified on non-geographic number ranges as a whole;
 - next we summarise the four harmful outcomes of these retail market failures;
 - we then set out the specific evidence of these retail market failures and harmful outcomes for each distinct group of number ranges, specifically:
 - 080 and 116 numbers;
 - 084/087 numbers; and
 - 09 and 118 numbers;
 - finally, we summarise our position on the operation of the wholesale market.

The NGC market at the retail level

Market failures

- 4.3 There are three reasons why the retail market is failing and causing detriment to consumers:
- poor consumer price awareness;
 - the vertical externality; and
 - the horizontal externality.
- 4.4 We address each of these in turn below.

⁹² The full range of evidence is set out in our previous consultations and is not repeated in full in this document. We have summarised some of the evidence in this section but, for the most part, we have instead included cross-references to the relevant sections of the December 2010 consultation, the April 2012 consultation or to specific reports or surveys.

Poor consumer price awareness

- 4.5 Consumers' awareness of the price of making calls to non-geographic numbers is poor. The evidence we have seen suggests that the majority of consumers are not confident that they know the price of NGCs.
- 4.6 According to our consumer survey evidence, four fifths of consumers have never looked up pricing information to determine the cost of a call.⁹³ There are a number of reasons for this:
- some consumers do not place much importance on knowing the price of making NGCs (15% of consumers said they placed limited weight on these calls compared to other types of calls);
 - for a material number of consumers, however, it is because prices are often complex and not transparent (29% of consumers cited reasons relating to pricing complexity and lack of transparency);⁹⁴ and
 - even if callers choose to look up charges, it is not always easy to obtain the correct price of NGCs.⁹⁵
- 4.7 Our survey evidence also shows that a significant number of consumers would like better access to information about the price of NGCs, both at the point of call and at the point of subscription.⁹⁶ However, this is made difficult by the fact that, in many cases, there are a very large number of charges that callers need to navigate through and understand in order to make informed decisions and accurate comparisons.⁹⁷ This makes obtaining price information difficult and time consuming, both at the point of call and when choosing between providers. As a result of these difficulties in accessing price information, consumers' awareness of NGC prices is poor with only a relatively small proportion being confident that they know the price of calls to non-geographic numbers (see Tables 4.1 to 4.3 below).⁹⁸
- 4.8 As a result of this lack of confidence in prices, a significant number of consumers overestimate the price of NGCs.⁹⁹ For example, Tables 4.1 and 4.2 show that a large

⁹³ The 2009 Consumer survey, Q33. 82% of respondents said they had never looked up pricing information to determine the cost of a call. In addition in our 2011 Consumer survey, 77% of respondents who had considered making a call to a number which they were unsure of the cost of, had never looking up pricing information, QGL09B.

⁹⁴ 2009 Consumer survey, Q37

⁹⁵ Specifically, 15% said that search costs are high relative to the associated benefits and 14% said they were not aware of where to find the information, 2009 Consumer survey, Q37.

⁹⁶ The 2010 Consumer survey found that 25% of fixed callers and 24% of mobile callers who had switched or considering switching in the preceding 12 months would have liked to have received information about 08/09 calls but did not (Q14/15). See also paragraphs A8.40, A8.94 and A8.95 of the April 2012 consultation.

⁹⁷ For example, as set out in paragraphs A8.41 and A8.42 of the April 2012 consultation, consumers must often navigate through many pages of 'tariff guides' to obtain the correct price of the call.

⁹⁸ The 2011 Consumer survey, QGL01X/Y. Only 14% of fixed and 10% of mobile callers are confident that they know how much it costs to call a 0845 number. In addition, only 7% of fixed and mobile callers are confident that they know how much it costs to call a 0870 number. Consumer awareness of 080 prices is slightly better for fixed callers – 29% are confident they know the price of these calls. However, we consider that this is still low given the simplicity of the price point (fixed calls to 080 are typically free). In addition, consumer awareness of mobile 080 prices is low with only 13% of callers confident that they know the price of these calls.

⁹⁹ For an illustration of the scale of consumer overestimation of NGC prices, see Tables A8.9 and A8.10 of the April 2012 consultation.

percentage of consumers surveyed expect calls to 080, 0845 and 0870 numbers to be expensive. In some cases (see Table 4.3 below), the average price that a consumer expects to pay for an NGC is as much as six times the actual price.

Table 4.1: Consumers' beliefs about calls to non-geographic numbers from fixed lines

	Fixed 080	Fixed 0845	Fixed 0870
I have never heard of [those] numbers	9%	7%	17%
I know how much it costs per minute	29%	14%	7%
I do not know how much it costs per minute but think it's expensive	23%	39%	37%
I do not know how much it costs per minute but do not think it's expensive	15%	15%	7%
I do not know how much it costs per minute and don't know whether it's expensive	25%	24%	32%

Source: 2011 Consumer survey. QGL01X: "Which of the following statements best describes what you know about the cost of calling a number starting with xxx from your landline?" Base: all adults aged 16+ who use the landline phone for personal use to make calls.

Table 4.2: Consumers' beliefs about calls to non-geographic numbers from mobile lines

	Mobile 080	Mobile 0845	Mobile 0870
I have never heard of [those] numbers	6%	4%	11%
I know how much it costs per minute	13%	10%	7%
I do not know how much it costs per minute but think it's expensive	42%	51%	46%
I do not know how much it costs per minute but do not think it's expensive	11%	8%	5%
I do not know how much it costs per minute and don't know whether it's expensive	29%	27%	30%

Source: 2011 Consumer survey. QGL01Y: "Which of the following statements best describes what you know about the cost of calling a number starting with xxx from your mobile?" Base: all adults aged 16+ who use the mobile phone for personal use to make calls.

Table 4.3: Consumers' average expected prices for calls to non-geographic numbers, according to the 2009 Consumer survey, compared with actual prices

	080	0845	0870
Mean expected price from landlines, ppm [median expected price] (average actual residential price)	6 [0] (0)	30 [18] (5)	39 [38] (8)
Mean expected price from mobiles, ppm [median expected price] (average actual residential price)	29 [18] (20)	46 [38] (22)	51 [38] (20)

Source: Expected prices are from the 2009 Consumer survey. Q43/44: "How much do you think it costs to call the following types of telephone numbers from your landline/mobile phone at home during the daytime on a weekday?" [Base: all respondents with a landline/mobile phone].¹⁰⁰

The vertical externality

- 4.9 The vertical externality arises because OCPs are currently not incentivised to take the preferences of SPs into account when they set retail prices. OCPs and SPs are likely to have different preferences for the retail prices of NGCs because each has their own independent objectives to pursue, and these objectives may be conflicting because of features of the NGC market. In particular, given the lack of price transparency for NGCs in the current system, OCPs have incentives to set mark-ups on these calls at a relatively high level in order to charge lower prices for the more visible aspects of their retail offering. Many SPs, on the other hand, would like OCPs to reduce retail prices of NGCs in order to grow demand for their services and/or improve customer satisfaction for existing users.
- 4.10 This misalignment of incentives creates a vertical externality unless SPs are able to contract with OCPs to set a retail price that takes into account their objectives. However, evidence suggests that bilateral negotiations between OCPs and SPs often do not result in outcomes that reflect SPs' preferences. In some cases, OCPs appear to have been unwilling even to engage in negotiations. Annex 20 of the April 2012 consultation sets out details of reports we have received of protracted and failed negotiations between OCPs and SPs.
- 4.11 For example, we previously noted that the National Grid initially approached The Helplines Association ('THA')¹⁰¹ to discuss possible options for zero-rating calls to its Smell Gas 0800 number. However, because National Grid is not a charity, they may not have met the necessary criteria to become a THA member. In addition, National Grid was reluctant to change their existing 0800 number, which would have been required under any solution sought through THA. National Grid therefore decided to contact mobile OCPs directly and, in the autumn of 2009, wrote to the major mobile OCPs. However, although some mobile OCPs agreed to zero rate the number on a voluntary basis (i.e. without receiving any origination payment for the calls), the others refused or did not respond, and none offered National Grid the chance to pay

¹⁰⁰ Actual prices taken from 2010 Flow of Funds study with an estimated uplift to account for the fact that the Flow of Funds data includes business calls as well as residential calls (for further explanation of this, see Part B, Annex 16 of the April 2012 consultation). Actual prices are also adjusted to reflect VAT.

¹⁰¹ THA operate a scheme whereby its members can obtain a number on the 08088 sub-range which is free to caller from both fixed and mobile phones. See Section 11 for further details.

an increased origination charge in exchange for free mobile calls, despite its clear indicated preference for its calls to be zero-rated.¹⁰²

- 4.12 The vertical externality is exacerbated by poor consumer price awareness, which leads to less downward competitive pressure on NGC prices and allows OCPs to set higher retail prices for these calls without a strong consumer reaction.

The horizontal externality

- 4.13 The horizontal externality arises because consumers' perceptions of NGC prices are linked but individual OCPs and SPs do not have an incentive to take into account the impact their retail prices have on the reputation/brand perception of a particular number range or, on the non-geographic number system as a whole. We also consider that the horizontal externality is weakening competitive pressure on NGC prices.
- 4.14 There are specific ranges with clear intended brands related to price, such as 080 (free) and 0845 and 0870 (geographically-rated). OCPs have an incentive to raise prices above the level intended by the brand because, given the lack of consumer price awareness, some of the consequences of the higher prices are faced by other OCPs, not just themselves. Consumers have low awareness of specific NGC prices but are aware that prices are sometimes or often higher than the intended brand perception. They may respond to this by overestimating call prices charged by OCPs generally on the number range in question, not just the specific OCP with the higher price. An example of this type of horizontal externality (which we call type (i)) is the correlation between consumers' expectations of the price of mobile-originated and fixed-originated calls to the same number range. Furthermore, due to poor price awareness and an inability to distinguish between number ranges with similar prefixes, consumers may also overestimate prices not just on the NGC number range in question but also on other number ranges sharing similar prefixes (e.g. consumers may infer the price of an 0871 call from their experience of calling 0870 numbers). This is the second type (type (ii)) of horizontal externality.
- 4.15 For the April 2012 consultation, we conducted some statistical analysis of consumer survey responses that considered the relationship between consumer perceptions of the price of different types of call (fixed or mobile) to various different number ranges. We found evidence of a positive statistical correlation between consumers' price expectations for fixed and mobile calls to 080 numbers, and between consumers' price expectations for 080 calls and calls to other 084/087 number ranges. We also presented anecdotal evidence of consumer confusion between number ranges with similar prefixes, including comments from stakeholders that fraud is more prevalent on 070/076 number ranges due to consumer confusion with mobile numbers. We consider these results provide evidence that both the type (i) and type (ii) horizontal externalities exist.¹⁰³

¹⁰² See paragraphs A20.39 to A20.43 (in Part C, Annex 20) of the April 2012 consultation where we discussed the National Grid example.

¹⁰³ In paragraphs A8.197 to A8.215, we presented evidence for the type (i) and type (ii) horizontal externalities. In particular, in Tables A8.11, A8.12 and A8.13 we presented evidence of correlations between consumers' expected prices for fixed and mobile 080 calls (the type (i) horizontal externality) and between consumers' expected prices of calls to different number ranges (the type (ii) horizontal externality).

Harmful outcomes

- 4.16 We consider that the three market failures (i.e. lack of consumer price awareness, and vertical and horizontal externalities) have the following harmful impacts on callers:
- a) a reduction in demand for NGCs, particularly from mobile phones;
 - b) the relative prices of geographic and non-geographic calls do not reflect consumer preferences;
 - c) a loss of access to socially important services, particularly for vulnerable consumers; and
 - d) a loss of service diversity and innovation to consumers resulting from SPs' lack of incentives to invest in the market.

A reduction in demand for NGCs

- 4.17 There are several reasons why we consider demand for NGCs to be suppressed:
- first, the scale of consumers' overestimation of prices is large (see Table 4.3 above). We would expect a reduction in consumers' perceptions of prices to lead to an increase in demand, all else equal;
 - second, consumers lack confidence in NGC prices and are reluctant to call non-geographic numbers as a result. For example, a substantial proportion of consumers say that they do not know the price of NGCs.¹⁰⁴ Our survey evidence suggests that this is causing consumers to be deterred from making NGCs;¹⁰⁵ and
 - third, the lack of price transparency and resulting weaker competitive constraints on NGCs mean the actual price of NGCs is likely to be higher than it would be under a system with greater transparency (see reasoning below in relation to relative prices). Whilst the impact of this effect may be limited by consumers' lack of price awareness, we would nonetheless expect a reduction in actual price to lead to an increase in demand, all else equal.
- 4.18 We recognise there are a variety of number ranges and services provided via NGCs and that calls to some services are likely to be relatively price insensitive. However, there are also a large number of services provided over NGCs which are more discretionary, and where consumers have a choice of SP, that are therefore likely to

¹⁰⁴ For example (as set out in Tables 4.1 & 4.2 above), 24% of respondents said they didn't know the price of 0845 calls from a landline and didn't know whether they were expensive. The corresponding figures were 32% for fixed 0870 calls and 25% for fixed 080 calls; and 27% for mobile 0845 calls, 30% for mobile 0870 calls and 29% of mobile 080 calls.

¹⁰⁵ For example, the 2009 Consumer survey asked respondents how often they would make a call to a number that they know is not contained in their package and also that they don't know the cost of. Only 21% of respondents said that they would make the call 100% of the time, and of these respondents 29% said they would spend less time on the call. A further 21% said that they would never make the call, with the remaining respondents saying that they wouldn't make the call 25-75% of the time. As noted in the April 2012 consultation, we do not believe the responses to this question give a reliable indication of the scale of suppressed demand but they do give an indication of the direction of the effect, i.e. that some calls are likely to be deterred by a lack of price awareness or information.

be more sensitive to changes in prices (actual or perceived). For example, a survey for PPP in 2010 found that around 28% of non-users cited cost as a reason for not using premium rate services (i.e. those services using number ranges such as 09 and 118).¹⁰⁶ Furthermore, we do not consider the less discretionary services provided via NGCs to be completely insensitive to changes in price. Instead, we consider that even when calls are less discretionary and/or consumers have no choice of SP, there is likely to be scope for them to respond to changes in perceived price by altering the frequency and/or duration of calls.¹⁰⁷ We therefore consider that since perceived and actual prices are likely to be higher than they would be in the absence of the market failures we have identified, callers are likely to make fewer calls than they would in a better-functioning market, albeit to a varying degree depending on the nature of the service provided.

- 4.19 We note that consumer survey evidence generally supports our view that demand is suppressed. This is set out in further detail in the sub-sections below.

The relative prices of geographic and non-geographic calls do not reflect consumer preferences

- 4.20 There are several factors that influence the relative price levels of geographic and non-geographic calls. It is possible that average charges for NGCs are higher than geographic calls ('GCs') in part for reasons that can be considered to reflect efficiency and consumer preferences. However, there are reasons to believe that the difference in price levels of NGCs and GCs also reflect the concerns identified in our discussion of market failures. For example, consumers tend to have greater confidence and awareness of the price of GCs than they do of NGCs.¹⁰⁸ This relative difference in consumer price awareness is likely to lead to different levels of downward competitive pressure on the price of GCs and NGCs. To the extent that different price levels reflect these differences in the degree of price awareness, they do not reflect an efficient outcome.
- 4.21 If consumers were equally informed about all aspects of OCPs' retail offerings, we would expect competition between OCPs to bring about an economically efficient pricing structure. With efficient pricing, differences in mark-ups between GCs and NGCs would reflect differences in market-level elasticities which we recognise could lead to NGC prices being higher than GC prices.
- 4.22 However, given the lack of consumer price awareness of NGCs relative to other services, there are currently weaker constraints on NGCs than on other elements of the retail package. The resulting disparity in competitive conditions between different aspects of OCPs' retail offerings mean they do not have incentives to set an efficient structure of prices. Instead, their incentive is to set the price of NGCs at a relatively high level in order to reduce the price they charge for other, more visible services where competitive constraints are stronger. This results in a pricing structure that is not reflective of consumer preferences but rather is driven by the market failures we have identified, particularly the lack of consumer price awareness.

¹⁰⁶ Analysys Mason, *Current and emerging trends in the UK PRS Market 2010*, ('2010 PPP Report'). For a further discussion of this point, see paragraphs A8.250 to A8.257 of the April 2012 consultation.

¹⁰⁷ See paragraphs A8.259 to A8.264 of the April 2012 consultation for further discussion of this point.

¹⁰⁸ See paragraphs A8.77 to A8.91 of the April 2012 consultation.

Loss of access to socially important services, particularly for vulnerable consumers

4.23 We consider that vulnerable consumers¹⁰⁹ may be deterred from making calls to socially important services¹¹⁰ for two main reasons. First, the level of actual prices is too high (for the reasons set out above in relation to the structure of prices) and some consumers may not be able to afford to make the call as a result. Second, consumers overestimate the actual price of the call and may be deterred from making the call on the basis of their incorrect price expectations. In addition to these two main reasons, we consider that the current market failures create an environment in which these problems are more likely. For example, it is difficult for consumers to select an OCP that offers cheap NGCs because of the lack of price transparency and difficulties in obtaining accurate pricing information at the point of subscription. Also, poor price awareness means that SPs providing socially important services may face less pressure to select number ranges that are low cost to call. Overall we consider that this is having an impact on a small sub-set of consumers' demand for and access to socially important services.¹¹¹

Diminished service availability and innovation for consumers

4.24 We consider that the presence of the three market failures identified could prevent some SPs providing certain services. We consider there are two main channels through which this could occur.

4.25 First, consumers lack confidence in NGCs as a result of the market failures, which suppresses demand for NGCs for the reasons outlined above.¹¹² This may mean it is not possible for some SPs to offer services on non-geographic numbers because they would not be able to attain the minimum volume of calls under the current regime which they would need to make these services viable. In paragraph A11.7 of the April 2012 consultation, we set out that, according to a PPP report, addressing the lack of consumer trust linked to the lack of accurate pricing was the single most important change that would improve trust in phone-paid services (73.9% of the sample of SPs). One example of this was the City of Westminster council's decision to implement a "Pay by phone" system to replace parking meters. It had the opportunity to implement a phone-payment mechanism (using a non-geographic number) where the payment would be automatically deducted from the consumer's phone bill. However, it introduced a system which takes payment directly from credit/debit cards using a geographic number or mobile number instead.¹¹³ According to PPP, alternative payment methods such as credit cards might require physical infrastructure to be installed (for example to accommodate credit card payment for pay and display parking), or have high processing fees, making them more costly to operate than payment via a non-geographic number. Thus, while this is not a direct example of a new service failing to launch, it illustrates that SPs are reluctant to use payment mechanisms via non-geographic numbers, even when they represent the cheapest option or offer more flexibility to consumers who would not need to pre-register.

4.26 Second, the vertical externality could prevent SPs from providing some services because of their lack of control over retail prices. For example, as discussed in

¹⁰⁹ We define vulnerable consumers in paragraphs 3.39 in Section 3

¹¹⁰ We defined socially important services in paragraphs A8.395 to A8.397 of the April 2012 consultation and in paragraph 3.38 in Section 3 of this document.

¹¹¹ See paragraphs A8.398 to A8.400 of the April 2012 consultation for our evidence on this.

¹¹² See paragraph A8.451 of the April 2012 consultation.

¹¹³ <https://www.verrus.com/westminster/howitworks.aspx>

paragraph A11.21 of the April 2012 consultation, 118 SPs have been unable to provide certain free-to-caller services that are paid for by advertising revenues because they cannot guarantee that calls would be zero-rated.¹¹⁴

- 4.27 The better the incentives of SPs to invest and innovate, the more likely that the service range available via NGCs is attractive to citizens and consumers. As a result, addressing this effect would make it more likely consumers could either access more valuable services and/or consume more of these services, leading to a further increase in demand.
- 4.28 Finding direct evidence of innovation being stifled is inherently difficult. It can arise in unpredictable ways from the actions of entrepreneurs, and the nature of innovation may sometimes only become clear after the event.¹¹⁵ However, we discussed the extent to which we considered that innovation is currently being stifled in Annex 11 of the April 2012 consultation. Here we presented examples (in addition to those above) of services not currently provided that may have been adopted if consumers had more confidence in NGCs and if SPs had more control over retail pricing.¹¹⁶

Evidence specific to the 080 and 116 number ranges

Market failures

- 4.29 The 080 number range is the most widely recognised non-geographic number range. This is reflected by the fact that consumers' median expected price of 080 calls from both landlines and mobiles is correct or very close to the actual price (see Table 4.3 above).¹¹⁷ It is also the most popular non-geographic range in terms of the volume of calls made.¹¹⁸ In spite of this, the number of consumers who are confident that they know the price of 080 calls is surprisingly small, particularly given the clear price message associated with fixed line calls. For example, only 29% of fixed and 13% of mobile callers are confident that they know the price of calls to 080 numbers.¹¹⁹ We consider that these proportions are surprisingly low, particularly for fixed callers who face a simple price point (i.e. fixed 080 calls are free).¹²⁰ Further, a comparison of the mean expected price of 080 calls with the actual price indicates that there are some consumers who overestimate the price of these calls (see Table 4.3 above).¹²¹

¹¹⁴ See paragraph A8.452 of the April 2012 consultation.

¹¹⁵ See footnote 274 of Annex 8 to the April 2012 consultation.

¹¹⁶ See paragraphs A11.8 to A11.21 of the April 2012 consultation.

¹¹⁷ See Table A8.10 of the April 2012 consultation.

¹¹⁸ According to the 2010 Flow of Funds study, 080 calls accounted for 36% of the total number of NGCs in 2009 (see p.30).

¹¹⁹ 2011 Consumer survey, QGL01X/Y. See also Tables A8.5, A8.6, A8.7 and A8.8 of the April 2012 consultation.

¹²⁰ More recent consumer survey evidence carried out as part of our review of unexpectedly high bills has also indicated that this price confusion could be causing bill shock for contract mobile phone users - of those consumers who had received an unexpectedly high bill as a result of calling a number outside of their bundle allowance, 39% referred to 080 as being the cause of that bill shock (Q20) and 78% those users said they were unaware of how much 080 calls cost (Q23). See <http://stakeholders.ofcom.org.uk/consultations/unexpectedly-high-bills/update/>. (Note however these questions had a small base and therefore the results are only indicative).

¹²¹ See Table A8.10 of the April 2012 consultation.

- 4.30 As for the 116 range, this was introduced relatively recently and there are only three numbers in active use (with two further designated but not yet allocated). Consumer understanding and awareness of the range, as well as usage, is very low.¹²²
- 4.31 On the vertical externality, we have evidence which suggests that a significant proportion of SPs would like a free-to-caller range:
- 89% of SPs said that the fact that the callers from fixed lines do not have to pay for calls to their 080 was important, or very important, to their organisation, and 72% said that mobile callers not paying for calls was important or very important,¹²³
 - 87% said the message or brand associated with having an 080 number was important or very important¹²⁴; and
 - 45% of respondents said the one aspect of the 080 range that they would most like to change was the charges from a mobile and 47% said that the mobile charges were a disadvantage in terms of the number of calls they received.¹²⁵
- 4.32 Despite the fact there are a significant number of SPs who appear to be willing to pay for zero-rating, very few SPs have been able to negotiate successfully with OCPs to achieve this. We consider that negotiations to secure such an arrangement successfully are limited by several factors. First, there are significant transaction costs hindering negotiations. Even where negotiations are successful, they are protracted and, as in the case of the Department of Work and Pensions ('DWP') example¹²⁶, may require intervention from external parties (in that case, the Secretary of State). Furthermore, evidence suggests that some OCPs have refused to negotiate with SPs at all.¹²⁷
- 4.33 In addition, given the complexity of commercial negotiations and the imbalance of power, we understand that where negotiations are successful they often result in charges that are not well aligned with costs. This is likely to mean that such agreements are not viable for many of the SPs who would be willing to pay more than the costs of origination to secure zero-rating. For example, in Annex 20 of the April 2012 consultation we referred to the case of the DWP, which provides a socially important service, agreeing to pay an origination charge of [X] in exchange for the zero-rating of these calls. [X] our estimate of the 'maximum mobile price' ('MMP') of

¹²² A 2011 EC research report found that awareness of the range in the UK was only 5%, compared to 13% across the EU (Special Eurobarometer 367, *Harmonised numbers for services of social value*, October 2011, p.32: http://ec.europa.eu/public_opinion/archives/ebs/ebs_367_en.pdf).

¹²³ 2011 SP survey, Q11 "How important is it to your organisation that 080 numbers have the following features ...the fact that callers from fixed lines don't have to pay / callers from mobile phones don't have to pay".

¹²⁴ 2011 SP survey, Q11 "How important is it to your organisation that 080 numbers have the following features ... the message or brand associated with having a 080 number".

¹²⁵ 2011 SP survey, Q13 "If you could change only one of the following aspects of 080 numbers, which one would it be?" and Q14 "How do you feel about the impact of these mobile charges on the total number of calls that you receive"

¹²⁶ Since January 2010 the DWP's 080 helplines have been zero-rated from the major mobile OCPs, following the DWP negotiating individually with each of the OCPs to agree an origination charge in exchange for zero-rating those calls.

¹²⁷ See, in particular, paragraphs A20.39 to A20.43 of Annex 20 of the April 2012 consultation.

5.5ppm.¹²⁸ However, this estimate contains some costs that we consider should not be paid for by SPs, such as A&R costs. If these are excluded and instead we compare the DWP figure with the a figure of 3.3ppm which is the upper bound of the range of efficient costs that we consider relevant to recovery through mobile origination charges¹²⁹ (as explained in Section 12), we note that the origination charge paid by the DWP is in fact significantly above this level.

- 4.34 The 080 range is particularly affected by the horizontal externality. Clearly designated as a free-to-caller number range (apart from where there is a PCA) in the Numbering Plan, divergence from this price level appears to have caused confusion and uncertainty among consumers (reflected by consumers' relatively low confidence in their knowledge of 080 prices, as discussed above). Specifically, upon discovering that mobile 080 calls are not free, confusion appears to have spread to some consumers' awareness of the price of fixed 080 calls (type (i) horizontal externality). This is seen in the positive correlation between consumers' expectations of the price of fixed and mobile 080 calls (described above in relation to the horizontal externality). Similarly, this confusion over the price of fixed calls to 080 numbers appears to be linked to consumers' expectations about the price of calls to other number ranges, including the 0845 and 0870 number ranges.¹³⁰ Again, this is observed in the positive correlation between consumers' expectation of the price of 080 calls and calls to 0845 and 0870 numbers (again described above in relation to the horizontal externality).
- 4.35 The horizontal externality could also become a problem on the 116 range. As the 116 range becomes more widely used, the existing pricing framework (where the numbers are either designated as free-to-caller or Freephone) is likely to create the same issues around consumer confusion as are present on the 080 range. Given that consumers currently struggle to distinguish between similar looking numbers, this suggests that they are likely to find it difficult to recognise different subcategories of number within the 116 number range (i.e. that some are free-to-caller whereas others could be charged from a mobile) – this is the type (i) horizontal externality. It is also plausible that consumers could be affected by the type (ii) horizontal externality, i.e. there could be confusion between the 116 and 118 number ranges. Given the significant contrast between the price of calls to these number ranges, any consumer confusion could have a significant impact on consumers' propensity to call 116 numbers.

Harmful outcomes

- 4.36 There are a number of harmful outcomes of the three market failures on the 080 range. First, due to consumers' general lack of confidence in the price of 080 calls and the tendency for a small proportion to overestimate 080 prices, demand for 080 calls is suppressed. There are a number of reasons why we consider this to be the case.
- First, a large proportion of 080 SPs believe that overall demand would increase were 080 calls to be universally zero-rated. Our 2011 SP survey suggests that

¹²⁸ This figure of 5.5ppm represents our estimate of the LRIC+ of originating a mobile call to a 080 number, with all CARS costs (including A&R costs) included on an EPMU basis as set out in Annex 26).

¹²⁹ This figure of 3.3ppm represents our estimate of the LRIC+ of originating a mobile call to a 080 number, including an allowance for administration, customer care and "other CARS" costs, but with no allowance for A&R, billing or bad debt costs (see Annex 26).

¹³⁰ See paragraphs A8.197 to A.215 of the April 2012 consultation.

around half of SPs consider that charges for mobile calls to 080 numbers are harming their businesses. In addition, 47% of SPs stated that the charge for mobile phone calls to their 080 number was a disadvantage and, of those respondents, 88% stated that this is because they could lose important calls or because people hang-up rather than pay.¹³¹

- Second, survey evidence suggests that there is suppressed demand on 080 number ranges:¹³²
 - many consumers are unsure about 080 call prices and/or expect those prices to be higher than zero. For example, in the 2009 Consumer survey, 11% of respondents thought fixed 080 calls were charged for and a further 27% said they did not know the price. In the case of mobile calls, 42% thought these were charged for and 46% said they didn't know the price;¹³³
 - according to the 2011 Consumer survey, 23% of respondents did not know how much 080 calls cost from fixed lines but thought they were expensive. The corresponding figure in the case of mobiles was 42%;¹³⁴
 - survey evidence suggests there is a link between consumers' uncertainty about price and their willingness to call 080 numbers. For example, in the 2011 Consumer survey we asked respondents how many times in the last three months they had made, or considered making, a call to a 08 number that they did not know the cost of.¹³⁵ We then asked them to think about the last occasion this had happened and asked what type of service it was and what they did. Only 2% of respondents said they ultimately did not contact the 08 service and a further 1% used an alternative contact method (e.g. email). However, 33% of respondents said they kept the length of the call as short as possible.¹³⁶ This suggests that there may be scope for an increase in demand, particularly in terms of increased duration of calls. It is worth noting that the services in question were utilities (40%), retail banking (19%), public services related to health (13%), sales (9%) and public services related to an area other than health (9%) - i.e. services for which calls are often thought of as non-discretionary;¹³⁷ and
 - the CAB surveyed 3,850 of its clients (see Table 4.4 below). The results of the survey show that the majority of respondents have been deterred from calling helplines due to the high cost of mobile calls. Although we acknowledge that

¹³¹ 2011 SP Survey. Q14: "How do you feel about the impact of these mobile charges on the total number of calls that you receive? Would you say that to your organisation the charge for mobile phone calls to your Freephone number is...?" [Base: all 080 users] and Q15: "And why do you believe it is a disadvantage?" [Base: All 080 that stated 'disadvantage' at Q14].

<http://stakeholders.ofcom.org.uk/binaries/consultations/wmctr/annexes/transparency.pdf>

¹³² See paragraphs 16.90 and 16.91 of the April 2012 consultation.

¹³³ 2009 Consumer survey, Q43/4: "How much do you think it costs to call the following types of telephone numbers from your fixed line/mobile phone at home during the daytime on a weekday?"

¹³⁴ In addition, 12% of those who claimed to know fixed 080 call prices and 35% of those who claimed to know mobile 080 call prices said these calls were charged for. 2011 Consumer survey, questions GL02A and GL.

¹³⁵ 2011 Consumer Survey, question GL05.

¹³⁶ 2011 Consumer survey, question GL08. Note that only 21% of the respondents to the 2009 Consumer survey claimed that they would always make calls where there is a number not contained in their package that they don't know the cost of (the mean response implies that more than three fifths of calls in this category are not made). This 2009 figure seems like an implausibly large number of deterred calls. 2009 Consumer survey, Q39.

¹³⁷ 2011 Consumer survey, question GL07.

this survey is not representative of consumers as a whole, it nonetheless provides some evidence that there is scope for demand to grow if 080 calls were free.

Table 4.4: Deterrence caused by the high cost of mobile calls

	All respondents	Mobile only respondents
Have been deterred from calling government helpline due to high cost of mobile calls	61%	67%
Have been deterred from calling another helpline (e.g. bank, electricity company) due to high cost of mobile calls	64%	69%

Source: CAB survey, November-December 2010.

- Third, evidence from current services that operate via a free-to-caller number suggest there may be a degree of consumer price sensitivity and that some calls are therefore deterred or shortened as a result of consumers' inaccurate expectations about price. Due to volatility in the data, we are cautious about drawing firm conclusions from the examples we have seen. Nonetheless, evidence from the DWP and The Samaritans on call volumes with zero-rated numbers suggests demand may currently be suppressed.¹³⁸
- 4.37 Given consumers' low awareness and usage of the 116 number range, as well as the impact of the horizontal externality, we consider that there could also be a risk of suppressed demand for these calls as the number range develops.
- 4.38 We consider that the prices of 080 calls (specifically 080 mobile calls) are not set at efficient levels. Due to consumers' lack of confidence in the price of 080 calls, there are currently weaker constraints on 080 calls than on other elements of consumers' retail package (e.g. geographic calls). It is likely that this has led to a balance of prices which does not reflect consumer preferences, with the prices of mobile 080 calls in particular exceeding their efficient levels. This is supported by the evidence outlined above in relation to consumers' lack of confidence in the price of 080 calls, and in addition by the points set out below:
- the price of mobile 080 calls significantly exceeds any one of our reasonable estimates of the cost of originating a 080 call from a mobile. We estimated the average price of a mobile 080 call to be 14.1ppm in 2009, according to data in the 2010 Flow of Funds study.¹³⁹ Conversely, as discussed above, this is well above our estimate of the MMP (which includes LRIC+ and 100% A&R costs) of 5.5ppm;
 - the split of fixed and mobile 080 calls is heavily skewed towards fixed calls (95% fixed and 5% mobile in 2009)¹⁴⁰, which does not reflect the average split between total fixed and mobile calls.¹⁴¹ This suggests consumers would prefer to make

¹³⁸ See paragraph 16.92 of the April 2012 consultation.

¹³⁹ See footnote 18 in Section 11 for an explanation of this figure. Also see paragraphs 3.44 to 3.45 in Section 3 above as to why we are continuing to rely on the 2010 Flow of Funds study.

¹⁴⁰ 2010 Flow of Funds Study, p.6, Figure 5.1.

¹⁴¹ According to Figure 5.1 of the Ofcom 2012 Communications Market Report, there were 116 billion fixed voice call minutes and 124 billion mobile voice call minutes in 2011. As set out in Table 12.3 of

more 080 calls from their mobiles, but are currently deterred by the fact that mobile calls are significantly more expensive than fixed line calls; and

- responses from consumer groups such as the Citizens Advice Bureau, the Consumer Panel and Consumer Focus who represent the interests of consumers have been supportive of significantly lower prices of 080 calls from mobile (in particular, for our proposal that 080 calls should be free-to-caller from mobile as well as fixed lines). The Consumer Panel, for example, notes that “charges for 080 calls particularly affect people on low incomes, who are more likely to rely on a mobile at home and use it to call essential services”. Consumer Focus also considered that removing the charges from mobiles would have “clear economic benefit for consumers, especially consumers living in mobile-only households”.¹⁴²

4.39 As set out above, evidence suggests that a significant proportion of SPs would like a free-to-caller range. As SPs’ preferences are based on their callers’ preferences, this suggests there is a demand from consumers for significantly cheaper (free) 080 calls from mobile (although we recognise that SP demand is not necessarily informative about consumers’ preferences for relative prices i.e. 080 prices relative to the price of other mobile services).

4.40 Socially important services are concentrated on the 080, 0845 and 116 number ranges.¹⁴³ We consider that some vulnerable consumers are currently being deterred from making calls to socially important services hosted on 080 due to actual 080 prices being too high (as a direct result of the three market failures) and due to some consumers’ lack of confidence in these numbers and, in some cases, tendency to overestimate the price of 080 calls. The CAB supported this view in its consultation response, in particular noting that it continues to receive evidence from its bureaux of clients who are unable to afford to call essential services from their mobiles because of the cost.¹⁴⁴ We also consider that the same problem could exist for 116 numbers given that these numbers are designated for services of ‘social value’. In particular, we would be concerned if consumers’ lack of awareness of these numbers and any associated confusion brought about by the horizontal externality, lead to call deterrence.

4.41 Finally, we consider that the presence of the three market failures identified could prevent some SPs providing certain services on the 080 and 116 number ranges. This could be because consumer confidence is reduced by the presence of market failures reducing demand for the SPs’ services (as discussed above), or because the vertical externality prevents SPs from offering services which are guaranteed to be free-to-caller. As discussed above, demonstrating that innovation is being stifled is inherently difficult. Nonetheless, we are concerned about the impact of the current market failures on the level of service availability and innovation in the current market, particularly as consumers could be missing out on certain services that otherwise could be brought to market. For example, the provision of services on a free-to-caller basis which might otherwise be linked to revenue sharing ranges (with funding coming from other sources e.g. advertising).¹⁴⁵

Section 12, the share of all voice calls originated from a mobile in 2009 was 48% (52% fixed). Therefore the average split is more likely to be around 48% fixed, 52% mobile.

¹⁴² CAB, Consumer Panel, Consumer Focus, April 2012 consultation responses.

¹⁴³ See paragraph A8.396 of the April 2012 consultation.

¹⁴⁴ CAB, April 2012 consultation response, p.5.

¹⁴⁵ See paragraphs A11.19 to A11.21 of the April 2012 consultation.

Evidence specific to the 084/087 number ranges

Market failures

- 4.42 Consumers' general awareness of the price of calls to 084 and 087 numbers is poor. Only a small minority are confident that they know the price of fixed and mobile calls to these numbers (see Tables 4.1 and 4.2 above).¹⁴⁶ Furthermore, consumers overestimate the price of these calls with both mean and median expected prices exceeding actual prices by a significant margin (see Table 4.3 above).
- 4.43 This lack of consumer price awareness contributes to the vertical externality on the 084/087 number ranges by creating an incentive for OCPs to set retail prices above the level that many SPs would like. In contrast to 080, we are not aware of any attempts by SPs on the 084/087 number ranges to negotiate a particular retail price with OCPs. Nevertheless, evidence from the 2011 SP survey suggests that the vertical externality is still a material concern on these number ranges. For instance, we noted that of the two options for intervention that we asked about, 52% of 0845 SPs preferred all callers paying the same as for calls to a "normal landline" even though this option also involved a 1.5ppm increase in the cost of operating the number for the SP.¹⁴⁷ This suggests that a significant number of 0845 SPs would like to contract with OCPs to set a different price for their services but, due to the difficulties in reaching such agreements, they are unable to do so.
- 4.44 On the horizontal externality, from the designations of the 0843/4/5 and 0870/1/2/3 number ranges in the Numbering Plan, it might have been expected that these calls would be charged at relatively low levels. For example, the policy preference for 0870 numbers, which is reflected in its Numbering Plan designation, is that they are charged at geographic rates whilst 0845, 0843/4 and 0871/2/3 numbers were designated price caps (local geographic prices for 0845 and for 0843/4 and 0871/2/3, up to 5ppm and 10ppm respectively, although these only applied specifically to BT at the retail level). However, as with 080 numbers, divergence from these price levels has caused confusion and uncertainty among consumers.
- 4.45 We have not been able to assess statistical correlations between consumers' price perceptions within these number ranges due to insufficient sample size. Nonetheless we consider that the correlations we have seen between consumers' perceptions of the price of 080 calls and their perceptions of the price of calls to 0845 and 0870 numbers support the existence of the horizontal externality in the 084/087 number ranges (particularly as some of these number ranges are more closely related - for example 0845 and 0844). In addition, there is a range of evidence which shows that

¹⁴⁶ In addition, more recent consumer survey evidence carried out as part of our review of unexpectedly high bills has also indicated that this price confusion could be causing bill shock for contract mobile phone users - of those consumers who had received an unexpectedly high bill as a result of calling a number outside of their bundle allowance, 67% referred to 0845 and 33% to 0870 as being the cause of that bill shock (Q20). In addition, 80% those users said they were unaware of how much 0845 calls cost and 85% were unaware of how much 0870 calls cost (Q23). See <http://stakeholders.ofcom.org.uk/consultations/unexpectedly-high-bills/update/>. (Note however these questions had a small base and therefore the results are only indicative).

¹⁴⁷ The 2011 SP survey. Q.31 "So would you prefer the first option or the second option? Option 1...that the cost to you of operating an 0845 number will increase by 1.5 pence-per-minute, and the cost to callers (from fixed or mobile lines) of calling your 0845 number(s) will be the same as calls to a normal landline number. Option 2...that neither the cost to your organisation of operating your 0845 number nor the price paid by callers will change, but when you show your number, for example in advertising, it will state that the call charge is split, with 2 pence-per-minute going to you and the rest going to the phone company" Base: All 0845.

there is consumer confusion between number ranges which differ only at the third or fourth digit, such as the 084 and 087 ranges, as set out below.

- Evidence from the 2011 Consumer survey shows that consumers struggle to distinguish between closely aligned prefixes, i.e. between 0845 and 0844/43 and between 0870 and 0871/2/3. We asked respondents about the relative prices of 0844/0845 calls and 0870/0871 calls. The majority (60% or over) of consumers responded that they either did not know the relative price or were unaware of the existence of these number ranges. We cannot be sure whether those respondents that did express a view on the relative price of calling these number ranges were correct (since prices depend on which package a consumer subscribes to). That said, it seems likely the price of 0871 calls is generally, if not always, higher than the price of 0870 calls (since the latter does not include a revenue share with the SP). However only 11% of respondents selected this option. Furthermore, a significant proportion of respondents were not particularly confident about their answer - among those who were aware of 0871/0844 numbers, just under half claimed they were “fairly uncertain” or “very uncertain” of their answer.
- Anecdotal evidence from stakeholders also suggests that consumers struggle to distinguish between non-geographic numbers that are similar to each other. For example, in their responses to the December 2010 consultation, several stakeholders (including O2 and EE) alluded to the fact that callers mistake 070 and 076 numbers for mobile numbers.¹⁴⁸ Further, Vodafone said in its response to the 2010 Call for Inputs that “...consumers’ practical ability to distinguish subtle differences between NTS numbers at a 3 or 4 digit level (e.g. between 0845 and 0844/3/2 etc.) may be limited”.¹⁴⁹

4.46 As a result, we consider that uncertainty over consumers’ expectations about the price of calls to one number has caused confusion and uncertainty about the price of calls to that number range in general (the type (i) horizontal externality). It has also caused confusion and uncertainty about the price of calls to other number ranges (the type (ii) horizontal externality).¹⁵⁰ We consider that these two effects have contributed towards the general tendency of consumers to overestimate the price of calls to 084 and 087 numbers.

Harmful outcomes

4.47 We consider that the demand for 084 and 087 numbers is suppressed for a number of reasons. First, as shown in Table 4.3 above, the scale of consumers’ price overestimation and general lack of confidence is large on the 084 and 087 number ranges.

4.48 Second there are a variety of number ranges and services provided via non-geographic numbers and while calls to some services are likely to be relatively insensitive to price (0843/4/5), calls to other services are likely to be relatively more sensitive (e.g. 0871/2). However, even when consumers have no choice of SP, there

¹⁴⁸ O2, December 2010 consultation response, pp. 96 & 98; and EE, December 2010 consultation response, p.76, p.6.

¹⁴⁹ Vodafone 2010 Call for Inputs response, page 3, paragraph 14.

¹⁵⁰ The evidence for this was presented in paragraphs A8.197 to A.215 of the April 2012 consultation.

is likely to be scope for them to respond to changes in price by at least altering the frequency of calls and/or call duration.¹⁵¹

4.49 Finally, consumer survey evidence generally supports our view that demand for 084 and 087 calls is suppressed:

- evidence from the 2009 Consumer survey was that only 21% of respondents would always make the call if it was to a number that they know is not contained in their package and they also do not know the cost of.¹⁵² In contrast, 21% said that they would never make the call, with the remaining respondents saying that they would not make the call 25-75% of the time;¹⁵³ and
- according to the 2010 Consumer survey, 29% of landline users and 42% of mobile users who rarely/never call non-geographic numbers say the reason for this is because they are expensive.¹⁵⁴

4.50 As set out in paragraph 4.36 above, according to the 2011 Consumer survey, 33% of consumers who considered making a call to a 08 number said they kept the length of the call as short as possible.¹⁵⁵ We also consider that the price of calls to 084 and 087 numbers do not reflect consumer preferences. Due to consumers' lack of awareness of the price of these calls, as well as the vertical and horizontal externalities, there are currently weaker constraints on NGCs than on other elements of consumers' retail package. The resulting disparity in competitive conditions between different aspects of OCPs' retail offerings mean they do not have incentives to set an efficient structure of prices. Instead, their incentive is to set the price of 084 and 087 calls too high.

4.51 As discussed above, we consider that socially important services are concentrated on the 080 and 0845 number ranges. On 0845, our indicative evidence suggests that up to 30% of services on this range could fall within our definition of socially important (as discussed in paragraphs 5.108 to 5.111 of the April 2012 Consultation). Accordingly, we are concerned that some vulnerable consumers are currently deterred from making calls to socially important services due to actual 0845 prices being too high (as a direct result of the three market failures) and due to some consumers' tendency to overestimate the price of 0845 calls.

4.52 We consider that the presence of the three market failures identified could prevent some SPs providing certain services on the 084 and 087 number ranges. This could be because consumer confidence is reduced by the presence of market failures reducing demand for the SPs' services (particularly in light of the scale of price overestimation observed on these number ranges), or the current regulatory regime

¹⁵¹ See paragraphs A8.260 to A8.265 of the April 2012 consultation.

¹⁵² 2009 Consumer survey. Q39: "Let's say you are calling a number that you know is not contained in your package and you also don't know the cost (for example calling a number beginning 0845 or 0871), how often would you make the call?"

¹⁵³ As set out in paragraph A8.267, we find the level of call deterrence (over 60%) surprisingly high. We do not believe the response to this question gives a reliable indication of the scale of suppressed demand. However, it does give an indication of the direction of the effect, i.e. that some calls are likely to be deterred by a lack of price awareness or information at the point of call.

¹⁵⁴ 2010 Consumer survey. Q23/27: "Why do you not call these numbers more frequently than rarely or never from your landline/mobile phone? [Base: all respondents who use a mobile phone and rarely/never call any number mentioned at Q25]"

¹⁵⁵ 2011 Consumer survey. QGL08: "And looking at the options on this screen, which of the following did you do?" [Base: all adults 16+ who made or considered making a call to an 08 number]

which imposes strong constraints on the SPs' ability to offer some types of services.¹⁵⁶

Evidence specific to the 09 and 118 number ranges

Market failures

- 4.53 We consider that it is difficult to determine how aware consumers are of 09 call prices. While our consumer survey evidence suggests that consumers generally underestimate the price of 09 calls¹⁵⁷, it is unclear whether this is representative of those consumers that actually call 09 numbers. Relatively few consumers ever call 09 numbers so the price awareness of this minority is difficult to discern from consumer survey evidence. This is discussed in further detail in paragraphs A11.69 to A11.81 of Annex 11.
- 4.54 We consider that consumers' awareness of 118 prices is poor. This is due to the lack of price transparency, which is itself in part due to the wide range of tariffs and tariff structures for different services (see Table A7.5 of the December 2010 consultation) and the fact it is not currently possible for SPs to provide a clear pricing message because the price of their service can also vary markedly between OCPs.
- 4.55 We place limited weight on the horizontal externality in the context of 09 and 118 numbers because we accept that consumers are more likely to see 09 and 118 as distinct number ranges. We recognise that as a result, the correlation between expectations of 08 and 09/118 prices may therefore not be as strong as between the 08 number ranges¹⁵⁸ but we have not had sufficient data to test the strength of this relationship. Similarly, we have not had sufficient data to test the strength of the type (i) horizontal externality, i.e. the correlation between expectations of the price of calls between OCPs within either the 09 or the 118 number range. However, we note that we are not ruling out the existence of these relationships but simply placing less weight on them, compared to the other number ranges where the evidence is clearer.
- 4.56 In any case, the same problems in terms of the lack of SP control over retail prices exist for 09/118 numbers as exist for 084/087 numbers (the vertical externality). In particular, SPs are not able to advertise a clear price for these numbers but instead rely on the BT retail tariff which is not relevant for a large proportion of customers. A 2010 PPP report found that 74% of respondents said that accurate pricing information was the single most important factor that would help to improve trust in premium rate services.¹⁵⁹ The resulting lack of transparency also reduces the ability of SPs to compete on price, which in turn has a negative impact on their incentives to innovate and invest in new services. Unlike the 084/087 ranges, the types of services offered on the 09/118 ranges are not likely to be those which the consumer is 'locked-in' to calling. Instead services such as horoscopes, chatlines and directory enquiries are more likely to be able to compete directly on price with other similar services but the current structure makes it difficult for them to do so.

¹⁵⁶ We set our views on what innovation was being affected on revenue-sharing ranges in Annex 11 of the April 2012 consultation.

¹⁵⁷ According to the 2009 Consumer survey, respondents' mean expected prices were 70ppm for fixed and 71ppm for mobile 09 calls. Similarly, respondents' median expected price was 76ppm for fixed and mobile 09 calls. In comparison, according to the 2010 Flow of Funds study, the average actual price was 85ppm for fixed and 113ppm for mobile 09 calls.

¹⁵⁸ This is demonstrated, for example, by the fact that consumers expect the price of 09 calls to be on average, significantly above the price of other NGCs.

¹⁵⁹ Analysys Mason, *Current and emerging trends in the UK PRS Market 2010*, ('2010 PPP Report').

Harmful outcomes

- 4.57 Our principle concern regarding the 09 and 118 number ranges is, as a result of the vertical externality, SPs' service availability and innovation is diminished resulting in a loss for consumers.¹⁶⁰ We are also concerned that poor price transparency and a lack of trust may be deterring consumers from making calls to these numbers, and that prices may not reflect consumer preferences as a result of the poor price transparency.

The NGC market at the wholesale level

- 4.58 We received a number of comments from stakeholders regarding our analysis of the NGC market at the wholesale level. Most respondents did not appear to disagree with our high level position, i.e. that we are not confident that the termination rates that would arise commercially (absent regulation or involvement by Ofcom) are likely to lead to desirable outcomes for consumers. Instead, stakeholders challenged some of the detail of our analysis. These comments are set out in detail in Annex 9, together with our response.
- 4.59 As a broader point, EE and Virgin Media argued that wholesale concerns and imbalances in bargaining power should be taken into account in our design of remedies. We have responded to this argument in the context of the unbundled tariff in Annex 8, and the 080 range in Annex 13. In summary, we do not consider that intervention only at the wholesale level is a viable alternative to our proposed interventions. This is because regulating termination rates is unlikely to address our concerns relating to poor price awareness and the horizontal and vertical externalities (see Annex 8).
- 4.60 Overall, we have seen no reason to change our view about the wholesale level of the NGC market (we originally presented this view in the December 2010 consultation). In particular, we are not confident that the termination rates that would arise commercially (absent regulation or involvement by Ofcom) are likely to lead to desirable outcomes for consumers.
- 4.61 In summary, we consider that:
- in the absence of ex-ante regulation, wholesale OCPs ('WOCPs') and TCPs would negotiate over the level of termination rates.¹⁶¹ There are inherent tensions in the relationship between WOCPs and TCPs: WOCPs always prefer lower termination rates whereas TCPs generally prefer higher termination rates;
 - predicting the outcome of negotiations in these circumstances is complicated because there are a large number of WOCPs 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 WOCPs and TCPs are likely to be in different commercial positions relative to one another. In other words, negotiations depend upon the particular WOCP and TCP

¹⁶⁰ Annex 11 of the April 2012 consultation discusses what innovation on revenue share number ranges could currently be affected by the current market failures (in this case, just the vertical externality).

¹⁶¹ A WOCP supplies wholesale call origination to retail OCPs. The focus of our analysis of the wholesale level is the relationship between WOCPs and TCPs because TCPs supply termination of NGCs to WOCPs. See Figure A10.1 in Annex 10 of the April 2012 consultation which provides an overview of the supply chain.

involved, rather than one side consistently being in a strong position. As a result, commercial negotiations are likely to produce a range of termination rates that depend on the parties involved;

- there are a number of factors influencing negotiating strength, in particular:
 - WOCPs accounting for a high share of wholesale call origination would likely be in a stronger position than WOCPs accounting for a low share of call origination;
 - TCPs accounting for a high share of termination would, similarly, likely be in a stronger position than TCPs accounting for a low share of termination; and
 - vertically integrated firms would likely be in a stronger position than vertically separate firms of comparable size.
- BT is likely to be in a strong position, both in its role as a WOCP and its role as a TCP. We also consider that CWW, the second largest TCP, is likely to be in a strong position when negotiating with smaller WOCPs (albeit not when negotiating with BT). Similarly, TalkTalk and Virgin Media, the second and third largest WOCPs, are likely to be in a strong position when negotiating with smaller TCPs (albeit not when negotiating with BT). We recognise that mobile OCPs' currently account for a smaller share of non-geographic call origination, compared to calls more generally. Nonetheless we consider that EE, Vodafone and O2 may be in a strong position when dealing with the smaller TCPs.

4.62 In terms of the impact on consumers, we consider that in the absence of regulation or involvement by Ofcom:

- some WOCPs might be able to drive termination rates down to a particularly low level. In the long run this would result in detrimental effects for SPs, harming service provision and innovation, which would not be offset by significant benefits for callers;
- some TCPs may be able to set high termination rates that allow SPs to exploit features such as weak competitive constraints on the price of their service. This would result in higher retail prices for NGCs. If competition in hosting were effective, the proceeds would likely be passed through to SPs. This is the opposite of the outcome described in the preceding bullet point – it would result in the balance of prices between callers and SPs being tilted in the SPs' favour (although we recognise there may be some offsetting benefits to callers through SPs having improved incentives to enhance service availability, quality or innovation); and
- different TCPs are likely to negotiate different termination rates. Over the longer term, this asymmetry between TCPs is likely to lead to consolidation in hosting. We consider that this could potentially harm competition at that level, which would have detrimental impacts on both SPs and callers.

4.63 We consider that it is unclear whether or not TCPs are able to identify the network on which transited calls are ultimately originated. We cannot rule out the possibility that, in some circumstances, TCPs are unable to identify the network on which transited calls are ultimately originated. In these circumstances, we consider that smaller WOCPs might be able to secure comparable termination rates to those paid by the large transit providers. However we consider that this would not alter our view that

there are likely to be significant imbalances in wholesale negotiating positions. Nor does it alter our view that these imbalances could lead to detrimental effects for consumers.

- 4.64 Overall, we remain of the view that we are not confident that the termination rates that would arise commercially (absent regulation or involvement by Ofcom) are likely to lead to desirable outcomes for consumers.

Part A – Section 5

Summary of approach and implementation plan

Introduction

5.1 In this section we set out a summary of the decisions we are minded to take (which we present in detail in Parts B and C of this document) as well as our understanding, and where appropriate conclusions, about the actions that would be needed to implement these changes.

Summary of our provisional decisions in this document

5.2 In Parts B and C of this document, we set out our provisional decisions:

- to unbundle the tariff for the 084, 087, 09 and 118 number ranges in to an AC and a SC; and
- to set a maximum price of zero for calls to the 080 and 116 ranges.

5.3 For the unbundled tariff, the following tariff principles will apply to the AC:

- OCPs will be able to offer ACs that vary by tariff package;
- the AC will apply to all calls within the 084/087, 09 and 118 number ranges but OCPs can also include it within a bundle of inclusive minutes so long as that inclusion does not vary by number range;
- the AC can be charged at a ppm rate only but, for the purpose of calculating the AC element of the retail price, OCPs will be permitted to round up the call duration to the first minute. This would enable them to have a minimum call charge of up to one minute in respect of the AC (but note that different rounding rules apply in relation to the SC element of the retail price);
- the AC will not be permitted to vary by time or day of the call; and
- there will be no maximum price cap at the current time but we will monitor consumer understanding of the AC following implementation of the unbundled tariff and will review this position after implementation.

5.4 The following tariff principles will apply to the SC:

- bespoke SCs will be prohibited;
- the SC will not be permitted to vary by time or day of the call;
- the SC must be set at a ppm rate, a ppc rate, or a combination of the two (the last would allow a CP to have a call set up fee, for example, plus a ppm rate in relation to the SC element of the retail price);

- in calculating the SC element of the retail price for a call, the CP must round up the length of the call to the next nearest second if the SC comprises or includes a ppm rate;
 - there will be VAT exclusive SC maxima of:
 - 5.833 pence for the 084 range, applying to whichever charging structure is selected;
 - 10.83 pence for the 087 range, applying to whichever charging structure is selected; and
 - £5 per call (fixed fee) and £3 per minute for the 09 range.
- 5.5 In order to limit implementation costs without unduly constraining the available range of SC price points, OCPs' billing systems will be required to accommodate a minimum of 100 SC price points, with 80 being made available upon implementation and a further 20 twelve months later.
- 5.6 In addition, we intend to set conditions on SPs which require them to publish their SCs in their advertising and promotional material which features an unbundled non-geographic number. There will also be a number of transparency requirements on OCPs to ensure that their ACs are presented clearly to customers.
- 5.7 For the 080 and 116 ranges, in addition to setting a maximum retail price of zero, we also consider that intervention is warranted at the wholesale level. Our view is that, if we proceed to make the ranges free-to-caller, we should also impose an access condition on TCPs who terminate calls to these number ranges. This would require them to purchase origination services for calls to 080 and 116 numbers upon reasonable request and on fair and reasonable terms (including charges). We also intend to publish guidance, on which we are also consulting, as to how we would approach any future dispute about whether origination charges are fair and reasonable. The access condition would also require TCPs to notify OCPs (with whom they are directly interconnected) of their proposed revisions to mobile origination charges within one month of the access condition coming into effect.
- 5.8 These decisions are subject to final confirmation in light of some specific points of further consultation. These points are summarised in paragraph 2.53 above and set out in more detail in the relevant Sections and Annexes of this document.¹⁶²

Background to implementation

- 5.9 We have devoted considerable attention to the way in which the regulatory changes outlined above would be implemented. In the December 2010 consultation we identified the key (interrelated) considerations for implementing the unbundled tariff and free-to-caller regimes.
- 5.10 In the April 2012 consultation we set out the responses that industry had made to the December 2010 consultation proposals, our views and provided an updated approach to implementation. We have set out in Annex 25 (in relation to the unbundled tariff) and Annex 31 (in relation to making 080/116 free-to-caller) the comments we received from stakeholders on implementation in response to our proposals in the April 2012 consultation. We have also set out our views and, where

¹⁶² In particular see Annexes 10 and 11, as well as Sections 12 and 14.

appropriate, the decisions we are minded to take (subject to the issues on which we are consulting, outlined in Section 2).

- 5.11 The remainder of this section discusses how we would implement the unbundled tariff and free-to-caller regimes. For the purpose of this discussion, we presume that we will proceed to take these decisions, having concluded on the outstanding point of consultation.
- 5.12 Throughout our review of NGCs we have engaged with stakeholders through industry working groups, some of which have been facilitated by Ofcom, and bilateral meetings.¹⁶³ We have used these working groups and bilateral meetings to explore detailed technical aspects of our proposals including implementation considerations. Annex 14 of the April 2012 consultation provided a summary of the outputs of the working groups that Ofcom facilitated between June and September 2011. We held a further working group with industry on 25 July 2012, as well as continuing discussions on some specific topics as part of the industry's NGCS Focus Group.¹⁶⁴ We anticipate that bilateral and multilateral meetings with key stakeholders together with, where appropriate working groups, and stakeholder forums will play an expanded role in ensuring that the planning and changes needed to deliver a successful implementation take place in good time.

Developing a plan for implementation

- 5.13 Successful implementation of the unbundled tariff and free-to-caller regimes will require careful and detailed planning by OCPs, TCPs and SPs. Ofcom has an important role to play in ensuring that all stakeholders understand the changes that are needed so that they can be planned for and delivered in good time.

Timeline for implementation

- 5.14 In Annexes 25 and 31 we provide an assessment of the responses received to our proposals for an 18 month period for the implementation of the unbundled tariff and making the 080 and 116 ranges free-to-caller. After considering these responses we have decided that the implementation of the unbundled tariff and free-to-caller regimes should take place 18 months after the date on which we publish the final legal instruments necessary to implement those changes. We anticipate publishing these instruments in summer 2013 as part of a final statement that concludes on the consultation questions that we are posing in this document. The new regime would then come into force 18 months from the publication of that statement.
- 5.15 There is, however, one change relating to the 116 number range that we propose to make immediately upon publication of our final legal instruments. The 116006 number¹⁶⁵ has not been allocated to a SP or brought into use, but it has been designated as 'Freephone' in the Numbering Plan (i.e. calls may be charged if the end-user is informed by way of a pre-call announcement). If we proceed with a free-to-caller approach on the 116 range, then we consider that we should change the designation of the 116006 number immediately from 'Freephone' to 'free-to-caller'.

¹⁶³ Notes of NGCS Focus and Working Groups are published on Ofcom's website.

<http://stakeholders.ofcom.org.uk/telecoms/groups/nts-focus-group/notes-of-meetings/>

¹⁶⁴ The notes of these meetings are available at the link above. While no Communications Working Groups have been held since we published our April 2012 consultation we consider that they will be an important element of the implementation of our work going forwards.

¹⁶⁵ The 116006 number has been reserved by the European Commission, and designated in the UK, for the use of a helpline for victims of crime.

We wish to avoid a situation where a SP may be allocated the number and bring it into use on the basis of one regulatory regime, only for it to be changed shortly thereafter.

- 5.16 We set out the reasons for our view on the implementation period in more detail in Sections 10 (for the unbundled tariff) and 15 (for the 080 and 116 number ranges).

High level plan for implementation

- 5.17 Ensuring that all stakeholders have access to the high level framework within which they must plan is an important role that rightly falls to Ofcom. We set out below the high level framework within which we consider detailed planning needs to take place. We will work with stakeholders over the first few months after our final decision to refine and finalise this framework and identify the steps necessary to deliver the milestones that we have identified.

- 5.18 In addition to an ongoing stakeholder engagement programme that will continue throughout the implementation period we see three categories of work as necessary to secure successful implementation:

- communications – of which there are two elements. Firstly ensuring that consumers (and other stakeholders) are aware of the forthcoming changes and secondly ensuring that the ongoing requirements for the communication of the AC and SC are met;
- industry systems and processes – ensuring that the necessary arrangements including systems and contractual arrangements are in place in readiness for when the regulatory changes take effect. We include within this category the work that is needed to ensure that changes (such as the need for TCPs/hosting providers to notify SP customers of origination payments) are communicated through the value chain; and
- Ofcom systems and processes – ensuring that any changes to Ofcom’s systems and processes are in place in good time. We include within this category Ofcom’s engagement with bodies who will secure compliance with the advertising requirements on SPs.

- 5.19 In the following sub-sections, we consider each of these three categories of work in more detail.

- 5.20 There are also some additional aspects of implementation where there may be benefits in industry developing a coordinated approach. These include, for example, the process and timings for changes to SC prices and for opening up of number ranges (see Section 10). While these elements do not figure in our planning for implementation, we are happy to remain engaged with industry and to facilitate discussions should it be necessary.

Communication

- 5.21 The changes that our reform of the non-geographic numbering regime will introduce are significant. Communicating these changes clearly and in a way that instils confidence is in the best interests of all stakeholders. Consumers (and therefore, CPs and SPs) will only benefit from the changes if they understand the new regime well enough to have the confidence to use non-geographic numbers. Delivering the required confidence has two components:

- first, raising awareness and explaining the changes and choices that will need to be made by not only all consumers of non-geographic numbers but also CPs and SPs; and
- second, the ongoing requirement for SCs and ACs to be communicated to consumers. It is important that CPs and SPs are ready to communicate the AC and SC, respectively, from the date on which the regulatory changes enter into force.

Communicating the changes - raising awareness

- 5.22 The importance of a communications campaign that is capable of raising awareness about the forthcoming changes for non-geographic numbers is undisputed. We recognise the central role that Ofcom has to play in both communicating the new regime, and in co-ordinating the communication activities of stakeholders. Ensuring that a consistent and coherent message is provided to all consumers is crucial if the new regime is to be a success.
- 5.23 We also continue to believe that CPs and other stakeholders will play a vital role in communicating these changes. We intend to build on the lessons learned from the recent Bournemouth local dialling changes to ensure that consumers receive the information that they need.¹⁶⁶
- 5.24 In the April 2012 consultation we set out the type of activities that Ofcom, CPs and SPs might need to take to ensure that consumers are aware of the regulatory changes. For Ofcom's direct communication to consumers we explained that our actions were likely to include:
- press releases – targeting national, regional and trade press;
 - media interviews/appearances for key broadcasting outlets;
 - information on Ofcom and PPP websites – home page feature, consumer guide, consumer information;
 - information to Ofcom's call centre about the changes;
 - approaching consumer websites to include information;
 - social media engagement and other online information distribution channels; and
 - seed selected blogs, forums, etc.
- 5.25 We also explained in our April 2012 consultation that OCPs' activities could include the following:
- inserts/ leaflets included in paper bills – all customers from start date for a certain time period (e.g. six months);
 - additional information included in online billing;
 - text messages to customers – to all customers from start of new charging system;

¹⁶⁶ <http://consumers.ofcom.org.uk/dial-the-code/>

- information at point of sale – written, verbal information from sales teams, including AC in tariff package information (see the discussion of obligations on pricing information below);
 - information on OCPs' websites – from start of new system onwards including promotion of the new price website (for example via a specially designed graphic 'button', common to all CPs, that links to the site);
 - newsletters and information to staff; and
 - other online information channels.
- 5.26 In response to the April 2012 consultation, several stakeholders agreed that a comprehensive and large-scale campaign aimed at consumers was required. A number of them made suggestions about the messaging and media to be deployed.
- 5.27 A number of respondents also stressed what they saw as a central role for Ofcom in communicating the changes to consumers, especially with regard to coordinating a public information campaign and developing reference guides to be used by CPs and others. EE, however, said that Ofcom should not dictate how OCPs communicate with their customers or place any requirements on them to send printed communications.¹⁶⁷
- 5.28 A few respondents remarked that the cost of educating customers should be shared fairly by all those involved and the burden should not fall entirely on OCPs.
- 5.29 We have included estimates of the cost of these OCP communication activities as part of our impact assessment (see Annex 10). These take into account the additional materials OCPs are likely to need to produce as well as staff training and additional calls into call centres.
- 5.30 While we continue to believe that the activities that we set out in April 2012 represent good examples, we want to ensure that the viability of all possible communication channels are explored including the development of a standalone website at the centre of the campaign. We hope to continue to use the industry NGCS Focus Group and form an NGCS Communication Working Group to discuss and then agree the communication activities that will be necessary to ensure that consumers are aware of forthcoming changes. We want to be as inclusive as possible and will supplement these groups with stakeholders meetings (including CPs and SPs) to get as wide a view and buy-in as possible.
- 5.31 We also recognise the expertise and contacts that consumer groups, trade bodies and representative groups can bring. It is our intention, throughout the period leading up to implementation, to work with these groups to better understand the ways in which these changes can best be communicated to stakeholders. We will in particular, look to use the expertise of these stakeholders in raising awareness with those groups who may be harder to reach.
- 5.32 Our aim is to identify within the first three months of our final decision the key steps and milestones involved in this communications activity. In other words, when communication and awareness raising activities should take place, together with the content of these activities. We are keen to make good use of the expertise that CPs, SPs and other stakeholders will be able to bring to the marketing of the new regime

¹⁶⁷ EE, April 2012 consultation response, Q12.5, pp.32-33.

to consumers. We would expect that once confirmed these key steps and milestones will be published so that they can serve as a road map for all stakeholders to plan their work and check progress.

- 5.33 Part of this process will include finalising the illustrative numbering guide¹⁶⁸ that we set out in the April 2012 consultation (see Figure 5.1 below).

¹⁶⁸ Note that this guide is provisional and will require updating to reflect all the changes.

Figure 5.1: Proposed Numbering guide

		Free 080, 116
For these numbers, you only pay your phone company for the cost of the call.		
		UK numbers 01, 02 03 03 numbers are UK wide numbers that are charged in the same way as 01 and 02 numbers.
		Mobile 07
		International 00
For these numbers, the total cost is made up of an access charge that goes to your phone company PLUS a charge that goes to the organisation receiving the call.		
		08 Numbers The charge for these numbers will be no more than 7p per minute for 084 numbers and 13p per minute for 087 numbers PLUS your phone company's standard access charge.
		09 Premium Rate numbers The charge for these numbers will be no more than £3.60 per minute and £6 per call PLUS your phone company's access charge.
		Directory Enquiries 118

- 5.34 Some respondents made specific comments on Ofcom’s proposed Numbering Guide in response to the April 2012 consultation. Surgery Line expressed concern that grouping all 08 numbers together in the guide would lead consumers to incorrectly conclude that all 0844 numbers were more expensive than they actually were, and this could be exploited. BT presented alternative icons for the 08 and 09 ranges because it said the ones Ofcom proposed did not make clear the use of these ranges. It called on Ofcom to, similarly, develop distinct icons/symbols/pictograms for other ranges. BT also argued that 03 should not be included in the same section as 01 and 02 in the numbering guide as that would damage consumers’ trust in the 01 and 02 ranges.¹⁶⁹
- 5.35 We foresee the numbering guide being a key awareness raising tool and ongoing point of reference for consumers. We intend to finalise this guide during the implementation period so that it can be a tool to be used by Ofcom, CPs and other stakeholders when communicating the forthcoming changes.

Communicating the SC and AC

- 5.36 The ongoing requirement for the SC and AC to be communicated to consumers is central to the success of the unbundled tariff. Communication of the AC by the OCP and the SC by the SP will provide the conditions necessary for AC and SC competition while also providing the transparency that consumers need to make informed choices. In Section 10 we have set our view about the appropriate price publication obligations that will apply to OCPs and SPs.
- 5.37 We expect to work with PPP, the Committee of Advertising Practice (‘CAP’) and the Broadcast Committee of Advertising Practice (‘BCAP’)¹⁷⁰ to ensure that any changes to existing Codes and Guidance, together with any new guidance, is published as far as possible in advance of the date on which the regulatory changes take effect (and ideally six months in advance of that date). This will give SPs the time necessary to design, and have available, compliant marketing and advertising material.

Industry systems and processes

- 5.38 In the April 2012 consultation we provided a high level summary of the actions that would be necessary in-order to successfully implement the new regimes. Given that we have made only limited changes to our proposals in the April 2012 consultation we consider these steps should be largely the same as previously outlined.
- 5.39 For the unbundled tariff we consider the following will be necessary:
- 5.39.1 For a retail OCP:
- i) calculate and inform each of its customers of their relevant AC;
 - ii) update their website and promotional material to display the AC (and remove existing NGC pricing information that is no longer relevant);
 - iii) modify their billing platforms to accommodate the revised charging structure; and

¹⁶⁹ BT, April 2012 consultation response, pp.15-16.

¹⁷⁰ CAP and BCAP own, write and maintain the UK advertising codes, which are administered by the Advertising Standards Authority (‘ASA’).

- iv) modify their bill presentation format to allow their customers to identify the AC within the NGC charge.

5.39.2 For a WOCP:

- i) modify their billing platform to accommodate the revised charging structure and populate the platform with the revised wholesale charge information.

5.39.3 For a TCP:

- i) map existing number range allocations to SC tariff price points and notify the SCs to OCPs;
- ii) review and update contracts with SPs;
- iii) where appropriate arrange number range migration for an SP; and
- iv) inform SPs of their new SC and their obligations with respect to price information presentation.

5.39.4 For an SP:

- i) decide whether to remain on the number range or whether to migrate to an alternative number with the price point they prefer; and
- ii) update their advertising and promotional materials to display their new SC.

5.40 For free-to-caller we consider the following will be necessary:

- i) TCPs will be required to notify OCPs with whom they have a direct interconnection agreement of proposed revisions to origination payments (within one month after the access condition is set);
- ii) OCPs and TCPs to reach commercial agreement over origination payments;
- iii) TCPs/hosting providers to notify their SP customers of changes to their origination payments;
- iv) SPs to make a decision about whether to remain on their 080/116 number or to migrate to an alternative range;
- v) SPs that remain on the 080 and 116 ranges will need to update any pricing information provided to customers about their number;
- vi) SPs that choose to migrate to an alternative range will need to develop a plan for that migration which would include replacement of material such as stationery or advertising which displayed their old 080 and communicating with their customers to advise of the change;
- vii) mobile CPs will need to update their pricing information to consumers to confirm that all 080/116 numbers will be free of charge, including removing all PCAs and making some billing system amendments to ensure that these calls do not appear on consumers' bills; and

viii) Ofcom/consumer groups etc. will need to update pricing information and develop means of actively communicating with consumers the new message that 080 and 116 calls are now always free of charge.

5.41 We hope to continue to use the industry NGCS Focus Group and where appropriate, working groups to identify and confirm the key steps and milestones necessary for changes to business systems and processes to deliver successful implementation. Once again we hope to be as inclusive as possible and make good use of the expertise of CPs and SPs. Our aim is to identify within the first three months of our final decision the key steps and milestones that are necessary. We would expect that once confirmed key stakeholders will report progress towards achieving these milestones. It is worth drawing particular attention to the following items which will require changes to existing industry systems and processes.

Billing systems

5.42 We explained in our April 2012 consultation that putting in place billing systems that are capable of accommodating the unbundled tariff will be a key milestone on the road to successful implementation. We consider that the minimum number of SC price points that OCPs' billing systems must be able to accommodate is 100. We have set out the costs involved for updates to billing systems by OCPs as a result of the changes in Annex 10. We recognise that some OCPs, particularly those with legacy systems, are likely to bear higher cost. However, we have factored these costs into our impact assessment and therefore, for all OCPs we expect planning to get underway as soon as possible for putting in place the necessary changes to their billing systems to ensure that they are ready for the changes coming into effect.

Specifying SC price points

5.43 It will be important for SPs to be clear about what SC price points are available to them, because they will need to make decisions about whether a particular price point will meet their need. It is therefore important that the process by which SC price points are specified proceeds in a timely manner. There are a number of actions that are dependent on the outcome of this process:

- billing systems – OCPs will need to be able to incorporate not just the number of price points but their levels in billing systems in good time;
- SPs' decisions about the pricing of their services and migration between number ranges and TCP/ hosting intermediaries will be dependent on the availability and level of price points;
- contractual arrangements between TCPs and SPs will need to begin and conclude in good time in order to allow SPs to comply with requirements about how SCs are advertised. We expect that this and the preceding action may take up to 12 months; and
- Ofcom's records including those necessary for the National Numbering Scheme will need to be amended to record the applicable SC (see below). We would expect all TCPs to have notified Ofcom's numbering team of the SC price points that will apply to their allocated number ranges in good time before the regulatory changes take effect.

5.44 The above actions are dependent on the establishment of a common set of SC price points. The process of negotiation that will result in this common set of price points

(between each TCP (representing the needs of its SP clients) and each OCP) must therefore have concluded within around six months of our final concluding statement. We describe in more detail in Part B, Section 9 and Annex 21, the steps we anticipate in this process of negotiation.

- 5.45 We will continue to monitor OCPs' development of their SC price points during the implementation period and will keep under review the extent to which Ofcom can provide any guidance or assistance to facilitate this process.

Ofcom's systems and processes

- 5.46 Implementing the new regime will also require significant work by Ofcom. This will include the amendment of existing systems and processes such as those required for the National Numbering Scheme and amending the Broadcasting Code and its Guidance.

A point of reference for SCs

- 5.47 As set out in Part B, Section 9 (and Annex 25) we will be updating Ofcom's numbering scheme to include SCs. By including the SC for allocated number blocks, the National Numbering Scheme will provide the information necessary for industry to have a single point of reference. We are not presently proposing to provide access to a database with additional functionality.

Amendments to the Broadcasting Code

- 5.48 SPs include broadcasters, such as BBC, ITV and Sky, who use NGCs for a variety of purposes including premium rate numbers for voting on live shows. Section Nine of Ofcom's Broadcasting Code¹⁷¹ aims, among other things, to make sure that editorial content remains distinct from advertising on television services. Section Ten contains corresponding, though more liberal, provisions for radio.
- 5.49 Rules 9.26 to 9.30 cover the use of Premium Rate Telephony services by TV broadcasters. For example Rule 9.29 requires that any use of premium rate telephony numbers must comply with the Code of Practice issued by PPP. We also publish Guidance Notes about Broadcasting Code rules, including guidance about sections Nine and Ten.¹⁷² Rule 9.30 explains that the cost to viewers for using premium rate telephony services must be made clear to them and broadcast as appropriate. The Guidance Notes to Rule 9.30 refer to CAP's guidance notes about the duration and legibility of superimposed text and provide example text about the cost of PRS calls that should be shown on screen, highlighting in particular the possibility of higher charges to non-BT networks.
- 5.50 Rules 10.9 and 10.10 cover matters of PPP code adherence and clarity of non-geographic number charging for radio listeners. Guidance Notes to Section Ten elaborate on the application of these (and other) rules within the section.

¹⁷¹ The Ofcom Broadcasting Code. <http://stakeholders.ofcom.org.uk/broadcasting/broadcast-codes/broadcast-code/>

¹⁷² Guidance Notes, Section Nine: Commercial references in television programming. <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/section9.pdf>
Guidance Notes, Section Ten: Commercial Communications in Radio Programming <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/section10.pdf>

- 5.51 Cross-reference is made within the Guidance Notes to both Section Nine and Section Ten to Rules 2.13 to 2.16 which deal with broadcast votes and competitions. These forms of viewer interaction routinely use non-geographic numbers (usually PRS). Notes of Guidance to Section Two¹⁷³ say more about the use of PRS in broadcast votes and competitions.
- 5.52 In the current guidance to Section Nine, we advised broadcasters that Ofcom was in the process of considering the structure of non-geographic tariffs and that there may need to be changes to the Broadcasting Code rules and guidance to reflect the outcomes of our review. These may include:
- amending the Broadcasting Code. To ensure consistency and clarity we will consult on changing the Broadcasting Code to require that the SCs for all 084, 087, and 118 numbers, in addition to those for 09 premium rate numbers, are made clear where numbers in these ranges are used in the course of programming; and
 - amending the Guidance Notes. While we do not need to consult on these it is important that any changes that we propose, should changes be made to the Broadcasting Code, are brought to the attention of all interested stakeholders.
- 5.53 It is our aim therefore to have completed any formal and informal consultation and published our decisions on any necessary changes in good time before the unbundled tariff regime takes effect.

Evaluation after implementation

- 5.54 We recognise that there are several risks involved with implementing such a large scale change in the market. In particular there are risks that consumer transparency is not sufficiently improved by the changes to fully address the market failures identified and/or that the improvement in consumer transparency measures does not lead to the competitive constraints on charges we expect, particularly the AC. In addition, we need to be alive to the risk of new wholesale concerns arising from the changes to the retail regulations.
- 5.55 We are therefore committed to monitoring the impact of the changes and if there is evidence of concerns undertaking a review and evaluation of the efficacy and impact of these remedies after implementation has taken place. Clearly, it is difficult to be precise when or if such a review should take place but the key factors we will be monitoring are:
- AC levels and the direction of change in such charges;
 - demand volume for non-geographic numbers;
 - evidence of innovation in services provided over non-geographic numbers;
 - average call charges in specific ranges;
 - clarity of pricing information about calls to non-geographic numbers; and

¹⁷³ Guidance Notes, Section Two: Harm and Offence
<http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/section2.pdf>

- any evidence of continuing consumer harm or unintended consequences arising from the changes.

5.56 There are a number of areas we consider warrant particular attention and which we are likely to focus on as part of a review. In particular these include (but are not limited to):

- whether a cap on the AC is warranted;
- the maximum SC caps, in particular whether such a cap is warranted for the 118 range;
- the role of PPP in regulating the 0871/2/3 range;
- the effectiveness of the price publication requirements for the AC and SC; and
- SC price point availability.

Part A - Section 6

Legal powers and consultation on legal instruments

Introduction

- 6.1 In Section 5, we state that we are minded:
- 6.1.1 to introduce the unbundled tariff (as described in detail in Part B of this document); and
 - 6.1.2 to impose a maximum retail price of zero for calls to the 080 and 116 number ranges (as described in detail in Part C of this document).
- 6.2 In this section, we provide a short summary of the legal powers that we would exercise to introduce these changes. We then explain in detail the legal instruments that we are proposing to make in order give effect to these regulatory changes, including an explanation of why we consider these legal instruments are consistent with our statutory powers and duties and other relevant legal tests.

Legal powers to introduce unbundled tariff and free-to-caller

- 6.3 In order to implement the unbundled tariff and to make 080/116 numbers free-to-caller, we would be relying on a wide range of powers to set or modify conditions and other legal instruments. These are explained in detail below.¹⁷⁴ In essence, the powers we are minded to rely on enable us:
- 6.3.1 to require that the retail price of calls to non-geographic number ranges comprises the consumer's AC and the applicable SC for the number called, to set tariff principles in relation to the structure of the AC and SC and to set a maximum cap on the SC which may be set for a particular non-geographic number range; and
 - 6.3.2 to require that the maximum retail price of calls to the 080 and 116 number ranges is set at zero.
- 6.4 In Annex 13 we set out in detail what we said about these powers in the April 2012 consultation, stakeholder comments in response to our analysis and our response to these comments.
- 6.5 In summary, having carefully considered the comments from stakeholders, we remain of the view that we set out in the April 2012 consultation that sections 56(1)(ba) and 58(1)(aa) of the Act empower us to make the regulatory changes required to implement the unbundled tariff and to make the 080 and 116 ranges free-to-caller.
- 6.6 Section 58(1)(aa) provides that general conditions may:

¹⁷⁴ Section 3 also sets out, at a high level, our general powers and duties under the Act and our powers and duties in relation to telephone numbering.

“impose tariff principles and maximum prices for the purpose of protecting consumers in relation to the provision of an electronic communications service by means of telephone numbers adopted or available for use”.

- 6.7 Similarly, section 56(1)(ba) of the Act provides that the Numbering Plan should set out:

“such requirements as [Ofcom] consider appropriate, for the purpose of protecting consumers, in relation to the tariff principles and maximum prices applicable to numbers so adopted or available for allocation”.

- 6.8 These sections implement an amendment to Part C of the Annex to the Authorisation Directive. Paragraph 1 of Part C of the Annex (‘Annex C(1)’), as amended, provides that the following may be attached to rights of use for numbers:

“Designation of service for which the number shall be used, including any requirements linked to the provision of that service and, for the avoidance of doubt, tariff principles and maximum prices that can apply in the specific number range for the purposes of ensuring consumer protection in accordance with Article 8(4)(b) of Directive 2002/21/EC (Framework Directive).”¹⁷⁵

- 6.9 Vodafone and Three contend that it is the TCP (and not the OCP) which has a “right of use” in relation to non-geographic numbers. Since Part C of the Annex to the Authorisation Directive only provides for the imposition of conditions attached to “rights of use”, these stakeholders argued that Part C (and section 58(1)(aa)) could not form the basis of conditions regulating retail prices set by the OCP.

- 6.10 For the detailed reasons set out in Annex 13, we do not agree with the arguments made by these stakeholders in relation to the scope of our powers under section 58(1)(aa). As noted above, section 58(1)(aa) of the Act empowers us to impose tariff principles and maximum prices for the purpose of protecting consumers in relation to the provision of an ECS by means of the relevant number range. We consider that the power applies to any ECS provided by means of the number range, whether that ECS is provided by the OCP or the TCP. There is nothing in the drafting of section 58(1)(aa) (or other provisions of the General Conditions or the Act) which would cause us to construe the power more narrowly. We also consider that this interpretation is consistent with Article 6(1) and Annex C(1) of the Authorisation Directive, and with other provisions of the Common Regulatory Framework. In fact, we consider that Vodafone’s and Three’s approach would be inconsistent with a purposive interpretation of Annex C(1). We are therefore satisfied that we have the power to regulate retail tariffs insofar as necessary to introduce the unbundled tariff and free-to-caller regimes for the purposes of protecting consumers.¹⁷⁶

- 6.11 We also remain of the view that our power to set general conditions under section 58(1)(aa) is legally and conceptually distinct from our power to impose SMP conditions. As such, our power under section 58(1)(aa) is not constrained by other

¹⁷⁵ Article 8(4) of the Framework Directive provides that one of the regulatory principles of the framework is the promotion of interests of EU citizens by: *“inter alia.... (b) ensuring a high level of protection for consumers in their dealings with suppliers....”*

¹⁷⁶ In Annex 13 we also consider an alternative regulatory proposal put forward by Vodafone and Three for achieving our policy objective of zero-rating 080 calls.

provisions of the Common Regulatory Framework, so that it may only be exercised in relation to CPs that have SMP and in circumstances where wholesale regulation has proved ineffective.

- 6.12 Having considered comments from EE and [S<], we acknowledge that the power to impose conditions under Annex C(1) of the Authorisation Directive is to be exercised for “*the purposes of ensuring consumer protection in accordance with Article 8(4)(b) of [the Framework Directive]*”, and that the definition of “consumer” in the Framework Directive is narrower than the definition in section 405(5) of the Act. The definition in the Framework Directive is confined to “*any natural person who uses or requests a publicly available electronic communications service for purposes which are outside of his or her trade, business or profession*”.¹⁷⁷ Accordingly, the modifications we are proposing to make to the General Conditions and Numbering Plan in order to make the 080/116 ranges free-to-caller and to implement the unbundled tariff will only apply to calls made by consumers. We propose to define “consumers” in accordance with the definition of that term in the Framework Directive.
- 6.13 Some of the mobile CPs asked us to recognise the exceptional nature of the power in section 58(1)(aa) and to draw a dividing line between this power and our power to regulate undertakings with SMP. Our power under section 58(1)(aa) derives from a legislative amendment that was introduced for the specific purpose of consumer protection. We fully acknowledge that retail price regulation is intrusive and that it should only be imposed where strictly necessary. We are unable to fetter our discretion as to how we would exercise our power under section 58(1)(aa) in future but, in principle, we would only expect to use it in limited circumstances and where clearly necessary to protect consumers.¹⁷⁸ In addition, the exercise of this power is subject to several safeguards. These include, in particular, a requirement for proportionality and targeting intervention only at cases where action is needed (sections 3(3) and 47(2) of the Act). Our approach to section 58(1)(aa) has been to consider whether intervention is required in each particular circumstance in light of the evidence of harm that we have gathered (for example, we are proposing that there should not be a price cap on the AC element of the retail price for calls to unbundled tariff numbers nor on the SC for calls to the 118 number range, as we consider that this would be disproportionate in light of the evidence of harm currently available to us). To the extent that we consider the exercise of section 58(1)(aa) in future, then this would also be evidence-based, targeted and proportionate in each individual case, and it would also be open to challenge on that basis by way of an appeal to the CAT.
- 6.14 As noted above, reference should be made to Annex 13 for a more detailed consideration of these points and other comments made by stakeholders in relation to our legal powers and duties.

Consultation on legal instruments

- 6.15 We are consulting today on the legal instruments that we would use to implement the unbundled tariff and to make calls to 080 and 116 numbers free-to-caller.
- 6.16 Specifically, we propose to modify the General Conditions, the PRS Condition and the Numbering Plan. We also propose to set an access condition on CPs that

¹⁷⁷ Article 2(i), Framework Directive

¹⁷⁸ We explain in Annex 13 (at paragraph A13.103) why we consider that section 58(1)(aa) cannot be used as an alternative approach where an undertaking has been identified as having SMP on a relevant market.

terminate calls to 080 and 116 numbers, and to set a new condition in relation to telephone numbering which binds non-providers. The proposed modifications, the proposed access condition and the proposed condition binding non-providers are set out in full in the Notifications at Annexes 14 to 18 of this document.¹⁷⁹

0500 consultation

6.17 In October 2012, we consulted on our proposal to withdraw the 0500 number range ('the 0500 consultation').¹⁸⁰ In that consultation, we said that we would consult on the legal instruments that would be necessary to implement a withdrawal of 0500 numbers at the same time as this consultation. However, in the light of the responses we have received to the 0500 consultation, we are continuing to reflect on the policy proposal to withdraw 0500 numbers (including options to moderate the impact of any withdrawal) and the powers available to us to give effect to such a proposal. It is likely that we will be issuing a further consultation on this issue later in the year. Accordingly, this consultation does not include any proposed modification of General Condition 17 ('GC17') in relation to the proposals we have made for the 0500 range.

General Conditions

- 6.18 Annex 14 sets out our proposed modifications to General Conditions 12, 14, 17, 23 and 24. In proposing these modifications, we rely on the general power in section 45(10) of the Act to revoke or modify a condition for the time being in force.
- 6.19 Some of the modifications we are proposing will impose obligations on CPs with immediate effect. Other modifications will only take effect from a date to be specified - the 'Effective Date'. This date will be inserted into the final modifications (as a defined term in GC17). It is intended to be the date which falls 18 months after the date on which the final modifications are made.

General Condition 12 ('GC12')

- 6.20 Paragraph 1 of GC12 requires CPs to provide a basic level of itemised billing to its subscribers. We propose to insert a new paragraph 12.2 to make clear that, from the Effective Date, the itemised bill provided to a consumer must include the consumer's AC, which is the rate that the consumer is charged by its CP for calling an "Unbundled Tariff Number". This defined term is included in our modifications to each of GC12, GC14, GC17, GC23 and GC24 and in the new numbering condition we are proposing for non-providers and means a non-geographic number starting 084/7, 09 or 118.
- 6.21 We also propose to modify paragraph 12.6¹⁸¹ in order to introduce new definitions (which all either cross-refer to, or reflect, the definitions in GC17) for the terms used in paragraph 12.2: "Subscriber's Access Charge"; "Consumer" and "Effective Date".

¹⁷⁹ We also anticipate that modifications will be required to the numbering application forms prior to the date on which the regulatory changes (i.e. the introduction of the unbundled tariff and free calls to 080 and 116 numbers) take effect. However, in light of the 18 month implementation timeframe, we intend to separately consider the modifications that are required to the numbering application forms closer to the date on which the revised forms will need to be made available to CPs.

¹⁸⁰ Ofcom, *The 0500 Number Range*, 23 October 2012:

<http://stakeholders.ofcom.org.uk/binaries/consultations/1036586/summary/condoc.pdf>

¹⁸¹ This reference uses the paragraph numbering that would apply if our modifications are made. Likewise, all other references to provisions of the General Conditions in this Section use the numbering which would apply if our proposed modifications are made.

The definition of “Consumer” (which is also used in our proposed modifications to GC14, GC17, GC23 and GC24) is “*any natural person who uses or requests a Public Electronic Communications Service for purposes which are outside his trade, business or profession*”, in line with the definition of that term in the Framework Directive.

- 6.22 This modification falls within our powers under sections 51(1)(a) and 51(2)(d) of the Act. Section 51(1)(a) provides that we may set general conditions making such provision as we consider appropriate for protecting the interests of the end-users of public electronic communications services. This power includes the power under section 51(2)(d) to set conditions requiring the provision free of charge of specified information, or information of a specified kind, to end users. Since the AC will only apply to calls to Unbundled Tariff Numbers which are billed to consumers, the modification only applies to itemised bills provided to the CP’s customers who are consumers, as defined.

General Condition 14 ('GC14')

- 6.23 We propose to modify GC14 to introduce the new transparency requirements that CPs will have to meet in relation to their retail charges to consumers for calls to Unbundled Tariff Numbers (referred to below as ‘the new transparency requirements’). We propose to modify the title of GC14 by inserting the word “Transparency” to make the subject matter of the condition clearer.
- 6.24 Currently, GC14 requires CPs to publish and comply with various Codes of Practice in relation to the provision of information to domestic and small business customers. These Codes must conform to the applicable guidelines at Annexes 1 – 4 of GC14. One of the Codes of Practice which CPs must publish is one relating to the publication of usage charges for NTS calls, calls to 0870 numbers and personal numbers, which must comply with the guidelines at Annex 2 to GC14.
- 6.25 We have taken a different approach to the modifications we are proposing in order to implement the new transparency requirements. Rather than requiring CPs to produce a Code of Practice which must comply with specified guidelines, we have proposed specific obligations in the modifications at paragraphs 14.8 – 14.14. This approach is intended to enhance clarity by avoiding a proliferation of guidelines with which a CP must comply. We discuss each of the modifications at paragraphs 14.8 – 14.14 first and then set out how these provisions will interact with the existing transparency obligations, in particular those imposed by paragraph 14.2(b) and Annex 2 in relation to NTS calls and calls to 0870.
- 6.26 Each of the following proposed modifications to GC14 will take effect from the Effective Date:
- 6.26.1 **paragraph 14.8** – this requires the CP to publish every AC it makes available to consumers within a given tariff package in its published price lists and on its website. In doing so it must give the ACs the same prominence as it gives to charges for calls to geographic numbers and to mobiles and to call packages;
- 6.26.2 **paragraph 14.9** – this requires the CP to give prominence to specific information, namely: the AC which is payable in respect of each tariff package which it offers consumers; and whether inclusive call bundles for consumers include calls to Unbundled Tariff Numbers. Where calls are included in such bundles, the CP must specify the number of call minutes

to these numbers which are included in the bundle, whether those call minutes are only included at certain times or on certain days (for example, after 6pm or at weekends only) and whether any special offers, discounts or bundling arrangements apply in relation to the SCs which are payable in respect of call minutes to Unbundled Tariff Numbers which are included in the bundle. The information which the CP provides in fulfilment of this obligation should enable the consumer to understand if the price of a call to an Unbundled Tariff Number is wholly within the price of the inclusive call bundle which the consumer purchases, whether there will be an additional charge in relation to the SC associated with the number called and what the AC is for calls made outside the bundle;

- 6.26.3 **paragraph 14.10** – this requires the CP to ensure that in any of its advertising or promotions which refer to call pricing, there is a clear reference to the location of the AC information in its price lists and on its website;
- 6.26.4 **paragraph 14.11** – this requires that the CP also provides to a new customer a reference to the location of the AC information in its price lists and on its website, unless GC23 and GC24 apply. Consumers within the scope of paragraph 14.11 include those signing up for pre-paid mobile telephony service and a SIM only contract (as those terms are defined in GC23);
- 6.26.5 **paragraphs 14.12 - 13** – this obligation applies where a CP advertises a particular Unbundled Tariff Number (or Numbers) which is available to consumers to use in relation to the electronic communications services which the CP provides (for example, a customer helpline number or a sales enquiry line). In such circumstances, the CP must ensure that the applicable SC is displayed in a prominent position and close to the Unbundled Tariff Number in question in the advertising and promotional material;¹⁸²
- 6.26.6 **paragraph 14.14** – this requires CPs to put in place procedures to enable their enquiry and help desk staff to answer consumer complaints and questions about ACs and calls to Unbundled Tariff Numbers. They must also have procedures in place to monitor compliance with the modifications to GC14 implementing the new transparency requirements;
- 6.26.7 **paragraph 14.15** – the modifications to this provision set out the definitions of the new terms used in GC14, notably “Access Charge” and “Service Charge”, both of which are defined by reference to GC17. We discuss these definitions at paragraph 6.43 below.
- 6.27 We also propose to modify the definition of “NTS Calls” to reflect a proposed modification to the Numbering Plan on the Effective Date, changing the designation of 08 numbers from “Special Services” to “Non-Geographic Numbers (see paragraph 6.78 below). We also propose to modify the definition of a “Personal Number” to cross-refer to the definition in the Numbering Plan. This will enable us to delete the

¹⁸² We are proposing to make a numbering condition binding non-providers, which will mirror these provisions and apply them to SPs which use Unbundled Tariff Numbers (see paragraph 6.56 below). We are also proposing to modify GC17 to require that CPs take all reasonably practicable steps to ensure that their SP customers using Unbundled Tariff Numbers comply that that numbering condition (see paragraph 6.41 below).

defined terms “Mobile Number”, and “Personal Numbering Service”. These modifications are intended to simplify the drafting, and not to have any substantive effect.

- 6.28 We have also proposed modifications to paragraph 14.2 and a modification introducing a new paragraph 14.7. We have deleted the introductory words to paragraph 14.2 since these are now superfluous. The other modifications are intended to deal with the overlap between the new obligations under paragraph 14.8 – 14.14 and the existing requirements under paragraph 14.2(b) and Annex 2. This is explained in more detail at paragraphs 6.33 et seq below).
- 6.29 In addition to these substantive modifications, we are also proposing a minor drafting correction to modify the reference in paragraph 14.6(a) from Annex 4 to Annex 3 to reflect the correct numbering of the annex in question.

Interaction with existing transparency requirements

- 6.30 The proposed modifications listed in paragraph 6.26 apply to Unbundled Tariff Numbers. As such, there is some overlap with the existing transparency requirements in relation to PRS calls (09, 0871/2/3 and 118) in paragraph 14.2(a) and Annex 1 and in relation to NTS Calls (08 ranges other than 0844 04, 0808 99 and 0870) and calls to 0870 in paragraph 14.2(b) and Annex 2.
- 6.31 In relation to the existing transparency requirements for PRS calls, the overlap is confined to the requirement in paragraph 3.3(ii) of Annex 1, which requires an Originating Communications Provider (as defined in paragraph 14.15) to provide to their customers “*information about the tariffs that apply on their network for calls to any PRS number range*”. However, for the reasons set out in paragraph 6.32 we consider that there is no conflict with our proposed modifications to GC14 and therefore do not consider that a modification to paragraph 14.2(a) or Annex 1 is required.
- 6.32 The modifications we propose in paragraphs 14.8 – 14.14 are intended to provide consumers with information about ACs for calls to Unbundled Tariff Numbers and the extent to which such calls are included in bundles. In addition to this information, we would expect a CP to provide its customers with information about the maximum SC that may be charged on a PRS range in order to fulfil its obligation under paragraph 3.3(ii) of Annex 1. Furthermore, if a CP opts to adopt a different approach to charges for PRS calls for their small business customers (i.e. customers who are not consumers but fall within the definition of “Domestic and Small Business Customers” in paragraph 14.15),¹⁸³ the CP will also have to provide separate tariff information for those customers.
- 6.33 The overlap between our proposed modifications in paragraphs 14.8 – 14.14 and the transparency requirements in paragraph 14.2(b) and Annex 2 is more extensive. Aside from the non-substantive changes to paragraph 14.2 and the definition of NTS Calls,¹⁸⁴ we are not currently proposing to modify the drafting of the existing requirements in paragraph 14.2(b) and Annex 2. However, in recognition of the fact that the proposed modifications in paragraphs 14.8 – 14.14 impose different requirements in relation to consumer calls to Unbundled Tariff Numbers from those in Annex 2 to GC14, we have proposed a specific modification in paragraph 14.7 that

¹⁸³ Namely, a customer in relation to an undertaking for which 10 or fewer individuals work and which is not itself a CP

¹⁸⁴ See paragraphs 6.27 and 6.28 above.

makes it clear that, from the Effective Date, the modifications in paragraphs 14.8 – 14.14 replace the requirements in paragraph 14.2(b) and Annex 2 to the extent of that the overlap in relation to the provision of information to consumers about charges for calls to Unbundled Tariff Numbers.

- 6.34 Thus, from the Effective Date, the CP will be required to meet the obligations in paragraphs 14.8 – 14.14 for the purpose of ensuring that its consumer customers have accessible information about ACs for calls to Unbundled Tariff Numbers and the extent to which they are included in bundles. Further transparency measures under Annex 2 should not be necessary in relation to these calls by these customers. Furthermore, if the CP opts to charge calls made by its small business customers to Unbundled Tariff Numbers on the same basis as calls made by consumers (i.e. in accordance with the requirements of GC17), then we would regard compliance with the requirements of paragraphs 14.8 – 14.14 as fulfilling the key objective of Annex 2 in relation to these calls. In these circumstances, we would not expect there to be a need for the CP to take additional transparency measures under the guidance in Annex 2 in relation to these calls by small business customers.
- 6.35 However calls to Personal Numbers (070 numbers) and calls to 080 and 0500 numbers are outside the scope of the modifications proposed in paragraphs 14.8 – 14.14, whether they are made by consumers or small business customers. Therefore, the transparency requirements of Annex 2 in relation to these calls will continue to apply, even after the modifications we are proposing to GC14 come into effect. Similarly, if a CP chooses to maintain a different charging structure for calls to Unbundled Tariff Numbers for its small business customers, then the requirements under Annex 2 will remain applicable and the CP will have to meet these in order to secure price transparency for its small business customers as well as those in the modifications proposed in paragraphs 14.8 – 14.14 for its consumer customers.
- 6.36 In proposing these modifications to GC14, we have sought to ensure that the regulatory burden for CPs is minimised. We recognise that CPs, which opt to have a different charging structure for calls to Unbundled Tariff Numbers for its small business customers to that which will be required for equivalent calls by consumers, will have to comply with a number of different rules in order to secure price transparency for both sets of customers. On the information currently available to us, it has not been possible to propose a modification to dispense with some of these rules for small business customers, for example the different transparency requirements that apply to 0870 calls under Annex 2. However, we will be keeping this matter under review and, to the extent that material emerges to justify a further rationalisation of the requirements of GC14, we would anticipate doing so.
- 6.37 We consider that the proposed modifications set out in paragraphs 14.8 –14.11 (and the consequential modifications in paragraph 14.7 and to the definitions in paragraph 14.15) fall within the scope of section 51(1)(a) of the Act, which empowers us to set general conditions making such provision as we consider appropriate for protecting the interests of the end-users of public electronic communications services. As with the proposed modification to GC12, we also rely on the more specific power under section 51(2)(d) to set conditions requiring the provisions free of charge of specified information, or information of a specified kind, to end users. We consider that these modifications are necessary to secure that consumers have access to transparent price information about the ACs which a CP offers and the extent to which calls to Unbundled Tariff Numbers are included in inclusive call bundles.
- 6.38 In relation to the modifications at paragraphs 14.12 - 13, in addition to sections 51(1)(a) and 51(2)(d), we also rely on section 58(1)(d), which empowers us to

impose requirements in relation to the adoption by a CP of telephone numbers. In this case, the requirement to publicise the SC applies in relation to the CP's use of an Unbundled Tariff Number to provide consumer services connected to the electronic communications services it provides. We consider this modification is necessary to secure price transparency for consumers in relation to the SC for a given Unbundled Tariff Number used by a CP.

- 6.39 In relation to the modification at paragraph 14.14, we rely on the duties at sections 52(1) and 52(2)(a) and (e), which require us to set conditions which we consider appropriate to secure that a CP establishes procedures, standards and policies for the handling of complaints by domestic and small business customers and any other matter which we consider appropriate for securing the effective protection for such customers. The modification largely mirrors the existing requirement for such procedures in paragraph 5.1 of Annex 2, and is intended to ensure that the CP is able to respond effectively to consumer complaints and queries about Access Charges and calls to Unbundled Tariff Numbers, when the different regulatory structure for charges for these calls takes effect.

General Condition 17 (GC17)

- 6.40 We propose to modify GC17 to introduce the tariff principles and other requirements applicable to the implementation of the unbundled tariff. These proposed modifications are described in more detail below.

The unbundled tariff

- 6.41 We propose to modify paragraph 17.7 to introduce a new requirement for a CP to take all reasonably practicable steps, where applicable, to secure that its customers comply with the numbering condition binding non-providers that we are proposing to make (see paragraph 6.56 below). We anticipate that this requirement (which will only apply from the Effective Date) will only be relevant to the SP customers to which the CP has assigned an Unbundled Tariff Number. This obligation is intended to augment the transparency obligations in relation to the SC that we are imposing on CPs and on SPs that use Unbundled Tariff Numbers (under GC14 and the numbering condition, respectively). Since most SPs obtain the non-geographic number they use from a TCP, not a direct allocation from Ofcom, we consider further measures are required to ensure that any such transfer or allocation of an Unbundled Tariff Number by a TCP to an SP is subject to the requirements of the numbering condition.
- 6.42 We propose to introduce paragraphs 17.22 to 17.30, which relate to the tariff principles required for implementation of the unbundled tariff:
- 6.42.1 **paragraph 17.22** requires CPs, when providing an ECS by means of an Unbundled Tariff Number, to comply with the tariff principles set out in the subsequent paragraphs of GC17 and any applicable maximum price specified in the Numbering Plan (see below in relation to the Numbering Plan). CPs would be required to comply with these requirements from the Effective Date. As noted above, the Effective Date will be defined in paragraph 17.33 as the date which falls 18 months after the date on which the final modifications are made;
- 6.42.2 **paragraph 17.23** states that this requirement does not apply to calls made from public payphones nor to calls originating outside of the UK;

- 6.42.3 **paragraphs 17.24 to 17.30** set out the tariff principles that apply to the determination of the retail price for consumers for calls to Unbundled Tariff Numbers and the setting of the AC and the SC from the Effective Date;
- 6.42.4 **paragraph 17.24** states that the retail price for the call is to be the sum of the “Access Charge Element” and, subject to the proviso in paragraph 17.24(b), the “Service Charge Element”. These are defined terms which are introduced by modifications to paragraph 17.33. We discuss how they are intended to apply at paragraphs 6.42.7 – 6.42.10 below. The proviso in paragraph 17.24(b) means that if the consumer has the benefit of a discount, special offer or bundling arrangement in relation to the Service Charge Element of calls to Unbundled Tariff Numbers (whether specific numbers or in general), these are taken into account in the calculation of the retail price;
- 6.42.5 **paragraph 17.25** sets out the tariff principles which apply to the setting of the AC, namely that it does not vary within a consumer’s tariff package by reference to the Unbundled Tariff Number called or the time or day of the call and is set at a pence per minute rate. This means that a consumer must have a single, pence per minute AC for calls to Unbundled Tariff Numbers under the terms of its retail contract with its CP. However, the CP may set a different AC for each different tariff package that it offers consumers;
- 6.42.6 **paragraph 17.26** sets out the tariff principles which apply to the SC: it must be the same, regardless of the CP originating the call; it must not vary by the time or day of the call; it may be set at a pence per minute or pence per call rate or a combination of the two (for example a fixed call set up fee plus a pence per minute rate depending on the length of the call); and it must not exceed any applicable maximum price in the Numbering Plan. In addition, the SC must not require another CP to have systems capable of accommodating more price points for the purpose of billing the SC to its retail customers than are required under paragraph 17.31, without that CP’s consent. This principle reflects the OCP’s obligation under paragraph 17.31 to have billing systems ultimately able to accommodate at least 100 SC price points. We set out in detail in Section 9 and Annex 21 how we expect CPs to set SCs through negotiations with OCPs, in accordance with this tariff principle;
- 6.42.7 **paragraph 17.27** sets out the tariff principles which apply to the calculation of the Access Charge Element of a retail price for a call to an Unbundled Tariff Number. The Access Charge Element is defined in paragraph 17.33 as the amount which results from multiplying a consumer’s Access Charge by the length of the call to an Unbundled Tariff Number billed to that consumer. Paragraph 17.27 provides that for these purposes the CP may round up to one minute a call lasting less than a minute but otherwise must round the length of the call in accordance with the approach it would take to rounding a geographic call for billing purposes;
- 6.42.8 **paragraph 17.28** sets out the tariff principles which apply to the calculation of the Service Charge Element of a retail price for a call to an Unbundled Tariff Number. The Service Charge Element is defined in paragraph 17.33 to mean, in relation to a call to an Unbundled Tariff Number:

- (i) the amount which results from multiplying the Service Charge for that number by the length of the call, where the Service Charge is set on a pence per minute basis;
 - (ii) the amount equal to the applicable Service Charge if it is set on a pence per call basis; or
 - (iii) the amount which results from adding the amounts calculated under (i) and (ii) if the Service Charge comprises a pence per minute rate and a pence per call rate;
- 6.42.9 In calculating the Service Charge Element for a Service Charge which comprises or includes a pence per minute rate, paragraph 17.28 requires that the CP rounds the length of a call to the next nearest second if the duration of the call is less than a whole number of seconds;
- 6.42.10 **paragraphs 17.29 and 17.30** set out the tariff principles that apply in relation to the treatment of calls to Unbundled Tariff Numbers within a bundle of inclusive minutes. The principles are intended to ensure that calls to all Unbundled Tariff Numbers count towards the bundle of inclusive minutes for the purpose of determining whether or not the AC is payable but the calculation of the Service Charge will depend on the terms of the consumer's bundle and/or tariff package. As set out in paragraph 6.42.4, it is open to the CP to bundle, or otherwise discount, the Service Charge Element of specific Unbundled Tariff Numbers. Thus, these paragraphs provide that provided calls to all Unbundled Tariff Numbers are included in the bundle, the Access Charge Element of such a call made within remaining minutes in the bundle is deemed to be zero. No provision is made in these paragraphs for the calculation of the Service Charge Element for a call made within a bundle – it will be calculated in accordance with paragraph 17.24(b) (see paragraph 6.42.4 above).
- 6.43 For the purposes of the tariff principles set out in the modifications proposed at paragraphs 17.24 – 17.30, the definitions we propose to introduce to paragraph 17.33 are relevant. These include definitions in relation to “Access Charge”, “Service Charge” and “Assumed Handover Point” (paragraphs 17.33(a), (t) and (e) respectively). We would welcome comments from stakeholders on our proposed drafting of these definitions, which provide as follows:
 - 6.43.1 “Access Charge” is defined as the rate set by a CP in respect of retailing and originating a call to an Unbundled Tariff Number and conveying it to the Assumed Handover Point, for the purpose of calculating the amount payable by a Consumer for making such a call;
 - 6.43.2 “Service Charge” is defined as the rate set by a CP for conveying a call from the Assumed Handover Point to the point of termination and enabling a Consumer to use an Unbundled Tariff Number to access a service provided by means of that number;
 - 6.43.3 “Assumed Handover Point” means the nearest point of interconnection to the origination of a call to an Unbundled Tariff Number at which the call may be handed over to the network of another CP. For these purposes, where such a call is routed via a transit network, the Assumed Handover Point is deemed to be the nearest point of ingress from the originating network to the transit network.

- 6.44 The application of these definitions and related terms in the proposed modification of paragraph 17.33 are discussed in more detail in Section 9 and Annex 23.
- 6.45 The tariff principles and maximum prices applicable to calls to unbundled tariff numbers only apply to calls made by consumers. As noted above, we are therefore proposing to introduce a definition of “Consumer”, to paragraph 17.33 which reflects that used in the Framework Directive.¹⁸⁵
- 6.46 In addition to these modifications to GC17, we propose two further modifications which we consider are necessary to ensure effective implementation:
- 6.46.1 **paragraphs 17.31 – 17.32** require CPs to ensure that, for the purpose of calculating and billing the Service Charge Element of the retail price for calls to Unbundled Tariff Numbers, their billing systems are able to accommodate up to 80 different price points for the first year of implementation from the Effective Date, and thereafter up to 100 different price points. These price points must reflect on a fair and reasonable basis the SC price points proposed by TCPs and SPs, taking into account the volume and range of SC proposals that the CP receives. In addition, the SC price points selected must be in increments of at least one pence. This requirement is discussed in more detail in Section 9;
- 6.46.2 **paragraph 17.20** requires CPs to take all steps it considers necessary, and as Ofcom may direct, prior to the Effective Date, in preparation for the fulfilment of its obligations under paragraphs 17.22 to 17.32 from the Effective Date. It is proposed that this modification will have immediate effect once it is made.
- 6.47 Finally, we also propose to modify the current paragraph 17.21, which requires OCPs to comply with the designations in the Numbering Plan for 03, 116 and 0870 numbers. We propose that this obligation should cease on the Effective Date, as it will no longer be necessary as a result of the combined effect of: (i) paragraph 17.4, which requires CPs to comply with all applicable restrictions and requirements as are set out in the Numbering Plan; and (ii) our proposed modifications to the Numbering Plan (described below), which will take effect on the Effective Date and will explicitly set out the restrictions and requirements that are applicable to CPs in relation to these number ranges.
- 6.48 We consider that our proposed modifications to GC17 fall within sections 58(1) of the Act. In particular, as discussed above, section 58(1)(aa) empowers us to impose tariff principles and maximum prices for the purpose of protecting consumers in relation to the provision of an ECS by means of telephone numbers adopted or available for use. We are relying on this provision to introduce the tariff principles and maximum prices required for implementation of the unbundled tariff, which are detailed in paragraph 6.42 above.
- 6.49 We are also empowered by section 58(1)(b) to regulate the use by a CP of telephone numbers not allocated to him and by section 58(1)(d) to impose requirements on a CP in connection with the adoption by him of telephone numbers. Note that the applicable definition of “adoption” in the Act includes allocating or transferring a number to a particular customer.¹⁸⁶ We consider that our other proposed modifications fall within the scope of these sections. For the purposes of the

¹⁸⁵ Framework Directive, Article 2(i)

¹⁸⁶ Section 56(6)(a) of the Act

modification proposed at paragraph 17.20, we also rely on the general powers at sections 45(10)(a) and (c) of the Act to require a person subject to a condition to comply with directions with respect to matters to which the condition relates which Ofcom may give from time to time.

General Condition 23 ('GC23')

- 6.50 Paragraph 23.5(c) of GC23 sets out the information that a mobile service provider must use reasonable endeavours to provide to a domestic and small business customer before they enter into or amend a contract for mobile telephone services. This includes the key charges for the mobile telephony service. We propose to modify paragraph 23.5(c)(ii) to make clear that, from the Effective Date and if the customer is a consumer, the AC will be considered a key charge for this purpose.
- 6.51 We also propose to modify paragraph 23.11 in order to introduce the required new definitions (which either cross-refer to, or reflect, the definitions in GC17).
- 6.52 We consider that these proposed modifications fall within sections 51(1)(a) and 51(2)(d) of the Act, which empowers us to set general conditions making such provision as we consider appropriate for protecting the interests of the end-users of public electronic communications services, specifically conditions requiring the provisions free of charge of specified information, or information of a specified kind, to end users.

General Condition 24 ('GC24')

- 6.53 Where a domestic or small business customer is transferring a fixed line telecommunications service between CPs, paragraph 24.6(c) of GC24 sets out the information that the gaining CP must take all reasonable steps to provide to the customer before entering into a contract. This includes the key charges for the service. We propose to modify paragraph 24.6(c)(ii) to make clear that, from the Effective Date and if the customer is a consumer, the AC will be considered a key charge for this purpose.
- 6.54 We also propose to modify paragraph 24.19 in order to introduce the required new definitions (which either cross-refer to, or reflect, the definitions in GC17).
- 6.55 We consider that these proposed modifications fall within sections 51(1)(a) and 51(2)(d) of the Act, which empowers us to set general conditions making such provision as we consider appropriate for protecting the interests of the end-users of public electronic communications services, specifically conditions requiring the provisions free of charge of specified information, or information of a specified kind, to end users.

Numbering condition binding non-providers

- 6.56 Annex 18 sets out the condition in relation to telephone numbering that we propose to apply to non-providers (i.e. persons other than CPs) that have been allocated Unbundled Tariff Numbers. This corresponds to the modification we are proposing to make at paragraph 14.12 of GC14, which is applicable to CPs which make use of an Unbundled Tariff Number in connection with the communications services they provide (see paragraph 6.26.5 above). The proposed condition, which will take effect on the Effective Date, requires a "Service Provider" making use of an Unbundled Tariff Number for the provision of a service to include in any advertising or promotion of that number the applicable Service Charge for the number in question. The

Service Charge must be displayed prominently and in close proximity to the Unbundled Tariff Number which is advertised. A “Service Provider” is defined as a person, other than a CP, who makes use of an Unbundled Tariff Number to provide a “Relevant Service”. The definition of “Relevant Service” adopts the definition of service set out in section 120(8) of the Act (and used in that context for the identification of premium rate services potentially subject to the PRS Condition made under that provision).

- 6.57 We consider that this proposed condition falls within the scope of section 59. Section 59(1) empowers us to set conditions that apply to persons other than CPs and relate to the allocation, transfer and use of telephone numbers by that person. Section 59(2) states that this may include conditions imposing obligations corresponding to any of the obligations that may be imposed by CPs by general conditions making provision for, or in connection with, the allocation, transfer or use of telephone numbers.

PRS Condition

- 6.58 Annex 16 sets out our proposed modifications to the PRS Condition.
- 6.59 We propose to modify the definition of a “Controlled Premium Rate Service” in paragraph 2 of the PRS Condition. Our proposed modifications have three objectives:
- 6.59.1 to amend the language used in the condition, from the Effective Date, in order to reflect the terminology that we now propose to use in the Numbering Plan from that date. For example, our proposals for modifying the Numbering Plan would remove the terms ‘Special Services basic rate’, ‘Special Services higher rate’ and ‘Special Services at a Premium Rate’ from the Effective Date, so the reference to ‘Special Services Number’ in the PRS Condition would no longer have any effect. We are instead proposing to use the new term “PRS Number” from the Effective Date, which is defined to include the number ranges covered by the existing definition of “Special Services Number” and 0870 and 118;
 - 6.59.2 to reflect the new unbundled tariff structure from the Effective Date (for example, by replacing references to the charge or rate for a call with a reference to the Service Charge); and
 - 6.59.3 to modify the pence per minute threshold in paragraph 2(e)(i) of the PRS Condition from the Effective Date.
- 6.60 The effect of our definition of “PRS Number” – which covers the 087, 090, 091 and 118 ranges - is that, contrary to the current position, calls to 0870 numbers will fall within the scope of PPP regulation if the applicable SC is set above the threshold of 5.833 pence (ex VAT). Given that our changes will remove the regulatory link between 0870 and geographic call prices, and make the range subject to the same cap as the other 087 ranges, we see no reason why the range should be treated differently to the other 087 ranges in relation to the potential application of the PRS Condition. In selecting an SC for a 0870 number, TCPs and SPs will need to take into account the regulatory obligations they will face if they choose a price point above the 5.833 pence threshold.
- 6.61 Services on the 118 range will also be brought within PPP regulation if they are charged above that threshold by virtue of our definition of “PRS Number”. Currently,

the threshold for regulation is 10ppm (inc VAT) – since they fall within the second limb of the current definition of a Controlled Premium Rate Service. We are not aware of any existing services on the 118 range which would be affected by this change.

- 6.62 We are also proposing to make some other consequential modifications to the definitions.
- 6.63 We consider that our proposed modifications fall within the scope of section 120 of the Act, which empowers us to set conditions for the purpose of regulating the provision, content, promotion and marketing of premium rate services.

Access Condition

- 6.64 Annex 17 sets out the access condition that we propose to impose on CPs that terminate calls to 080 or 116 numbers.
- 6.65 Schedule 1 of the Annex lists the CPs that we understand provide wholesale call termination services for 080 and/or 116 numbers.¹⁸⁷ This list contains some companies which are established outside the UK. They are included on the list (and the access condition applies) only to the extent that they terminate calls made by UK consumers to 080/116 numbers.
- 6.66 Condition 1 would require these TCPs, from the Effective Date, to purchase origination services from an OCP upon reasonable request, as soon as reasonably practicable and on fair and reasonable terms and conditions (including charges). Origination services are defined to mean the origination of calls made by consumers to 080 and 116 numbers and the conveyance of those calls to the 'Assumed Handover Point'.¹⁸⁸ The definition of a consumer is identical to that included in our proposed modifications to GC17 (see above), and reflects the definition set out in the Framework Directive. The Effective Date will be inserted into the final version of the condition and will match the definition of the Effective Date in GC17.
- 6.67 Condition 2 applies to TCPs that have an existing agreement to purchase origination services from an OCP in respect of 080 or 116 calls. Those TCPs would be required to give notice to the OCP of the fair and reasonable origination charge that they propose to apply from the Effective Date. This notice must be given within one month of the date on which the access condition being made. This is a change from the notice provision that we proposed in the April 2012 consultation and we would welcome stakeholder comments on our revised proposal. This is discussed in more detail in Section 14 and Annex 30.
- 6.68 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

¹⁸⁷ The list in Schedule 1 of the Notification 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.

¹⁸⁸ The definition of 'Assumed Handover Point' reflects that set out in our proposed modifications to GC17 and is included so that the requirements of Condition 1 do not apply to the transit leg of a call to a 080 or 116 number.

services provided by means of a series of ECNs, impose obligations on a person controlling network access to any of those networks, and require the interconnection of those networks.

- 6.69 As set out in Section 14, we consider that our proposed 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.
- 6.70 We also consider that the network access required by the condition is appropriate for the purpose of securing the following:
- 6.70.1 **efficiency**, in that the proposed 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 our proposal on service availability (see also **efficient investment and innovation**, below);
- 6.70.2 **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);¹⁸⁹
- 6.70.3 **efficient investment and innovation**, in that our proposed 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
- 6.70.4 **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 consumers with connectivity to all free-to-caller 080 and 116 numbers (which might not otherwise occur) and because the requirement for fair and reasonable origination payments will ensure that benefits to consumers in terms of service availability and potential negative impacts on competition (which would ultimately be to the detriment of consumers) and the price of other telecoms services are duly taken into account.
- 6.71 These considerations are also discussed in more detail in Section 14.

¹⁸⁹ 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).

Numbering Plan

- 6.72 Annex 15 sets out our proposed modifications to the Numbering Plan.
- 6.73 We are proposing two modifications that would take effect immediately, which are set out in Schedule 1 to the Notification at Annex 15:
- 6.73.1 A change to the designation of the number 116006 from ‘Freephone’ to ‘Free to caller’. As discussed in Section 5, the 116006 number¹⁹⁰ has not yet been allocated to a SP or brought into use, but it has been designated as ‘Freephone’ in the Numbering Plan (i.e. calls may be charged if the end-user is informed by way of a pre-call announcement). If we decide to proceed with a free-to-caller approach on the 116 range, then we consider that we should change the designation of the 116006 number immediately from ‘Freephone’ to ‘Free-to-caller’. We wish to avoid a situation where a SP may be allocated the number and bring it into use on the basis of one regulatory regime, only for it to be changed shortly thereafter.
- 6.73.2 A change to the definition of a ‘Sexual Entertainment Service’ in order to delete the reference to mobile shortcodes. As discussed in Section 2, we consulted in July 2012 on various modifications to the Numbering Plan.¹⁹¹ In response to that consultation, BT stated that we should define the term ‘mobile shortcode’, which is used in the definition of ‘Sexual Entertainment Services’. In concluding on the July 2012 consultation, we did not implement any modification in response to BT’s comment, but said that we would take it into account when generating our proposed amendments to the Numbering Plan to implement our wider proposals for non-geographic numbers.¹⁹² Having now considered the definition of ‘Sexual Entertainment Services’, we consider that the reference to mobile shortcodes is unnecessary and potentially confusing. We therefore propose to delete this reference.
- 6.74 We are proposing that the modifications in Schedule 2 to the Notification (described in the following paragraphs) would take effect on the Effective Date. To be clear, if we proceed with the modifications set out below, there will be two versions of the Numbering Plan in existence, which we are required to publish by virtue of our duty under section 56 of the Act. The first will contain the restrictions and requirements which apply in the current version of the Plan, modified as proposed in paragraph 6.73 above. The second version will contain the modifications necessary to reflect the restrictions, requirements, tariff principles and maximum prices that we are introducing to implement the unbundled tariff and to make the 080 and 116 ranges free to caller. These modifications will have been made but will not come into force until the Effective Date. This second version of the Numbering Plan is the one at Schedule 2 of the Notification at Annex 15.

¹⁹⁰ The 116006 number has been reserved by the European Commission, and designated in the UK, for the use of a helpline for victims of crime.

¹⁹¹ *Telephone Numbering, Proposed modifications to the National Telephone Numbering Plan, General Condition 17 and telephone number applications forms within existing numbering policy, Consultation*, 22 July 2012:

<http://stakeholders.ofcom.org.uk/consultations/telephone-numbering-modification/>

¹⁹² *Telephone Numbering, Proposed modifications to the National Telephone Numbering Plan, General Condition 17 and telephone number applications forms within existing numbering policy, Statement*, 22 November 2012, at paragraph 4.33.1:

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

- 6.75 The modifications we are proposing in the second version of the Numbering Plan include a modification to the introduction, in accordance with section 56(1)(ba) of the Act, to specify that the Numbering Plan will contain such requirements as we consider appropriate, for the purposes of protecting consumers, in relation to the tariff principles and maximum prices applicable to numbers adopted or available for allocation.
- 6.76 We propose to modify Parts A1 and C5, and to introduce new provisions at Parts B4 and C6 in order to specify these requirements. In particular, Parts A1 and C5 (the tables which list public communications network numbers and their designations) are redesigned with an additional column that sets out the tariff principles and maximum prices (if any) applicable to CPs in respect of calls made by consumers to non-geographic numbers. Parts B4 and C6 require CPs to comply with these tariff principles and maximum prices:
- 6.76.1 for Unbundled Tariff Numbers, the retail charge for a consumer call must be calculated by reference to the Access Charge and Service Charge, and in accordance with our proposed modifications to GC17. Caps on the Service Charge (if any) are also included here and are expressed in amounts which are exclusive of VAT (as discussed at paragraphs 9.76 to 9.80 of Section 9). Parts B4.2 and C6.2 make clear that the tariff principles and maximum prices for calls to Unbundled Tariff Numbers do not apply to payphone service providers;
 - 6.76.2 for 080 and 116 numbers, consumer calls must be ‘Free to caller’. With respect to a non-geographic number, this is defined as one that can be accessed by a consumer at a retail price of zero and, in the case of a payphone, without having to use coins and cards;
 - 6.76.3 for 03 and 0500 numbers, we propose to retain the existing language in relation to charging principles but to move it from the ‘designation’ column to the new ‘applicable tariff principles and maximum prices’ column.
- 6.77 These provisions should be read in conjunction with paragraphs 17.4 of GC17, which requires CPs to comply with all applicable restrictions and requirements as are set out in the Numbering Plan.
- 6.78 We also propose to make various amendments to the definitions in the Numbering Plan, and to make some other small and non-substantive amendments. In particular, we are proposing to include new definitions of ‘Access Charge’, ‘Consumer’, ‘Service Charge’ and ‘Unbundled Tariff Number’ which reflect the definitions used in GC17,¹⁹³ and a definition of ‘Payphone Service Provider’. We are proposing to delete definitions which are no longer required. We are also proposing to delete all references to ‘Special Services’ as we do not consider this to be a helpful description for number ranges, and we have previously said that we were keen to move away from the use of this term.
- 6.79 We consider that our proposed modifications fall within the scope of section 56(1) of the Act, which requires us to publish the Numbering Plan which, amongst other things, sets out such restrictions as we consider appropriate on the adoption of numbers and on the other uses to which numbers may be put, and such

¹⁹³ For the purposes of simplicity, we have not included a reference to the ‘Assumed Handover Point’ in our proposed definitions of ‘Access Charge’ and ‘Service Charge’ in the Numbering Plan.

requirements as we consider appropriate in relation to the tariff principles and maximum prices applicable to numbers, for the purpose of consumer protection.

Legal tests and statutory duties

- 6.80 We may not set or modify (as the case may be) the legal instruments described above unless we are satisfied that the condition or modification is objectively justifiable, not unduly discriminatory, proportionate and transparent.¹⁹⁴ We are satisfied that our proposed modifications and conditions meet these requirements.
- 6.81 In particular, in relation to the conditions and modifications relevant to the unbundled tariff, we consider them to be:
- 6.81.1 **objectively justifiable**, in that they seek to address the retail market failures and resulting harmful impacts that we describe in Section 4 in relation to 084, 087, 09 and 118 numbers;
 - 6.81.2 **not unduly discriminatory**, in that they apply equally to all OCPs, TCPs or SPs (as relevant) that originate or terminate calls to these numbers or supply services using these numbers;
 - 6.81.3 **proportionate**, in that the modifications are the minimum necessary to achieve the objective outlined above. We have explained in Section 8 and Annex 19 why we consider that alternative regulatory approaches (including setting maximum retail prices and SMP regulation) would fail to address our concerns. We also explain in Annex 13 that we consider an alternative regulatory approach put forward by Vodafone to be inappropriate and disproportionate. Our modifications apply only to calls made by consumers to these numbers, as we consider that mandating the same approach for calls made by business customers would be disproportionate; and
 - 6.81.4 **transparent**, in that the modifications are set out in full in Annexes 14, 15, 16 and 18 and are explained in detail in this document. Furthermore, the modifications themselves seek to increase transparency for consumers in relation to the charges for calling these numbers and receiving services provided by means of those numbers.
- 6.82 In relation to the conditions and modifications required to make the 080 and 116 ranges free-to-caller (including the proposed access condition), we consider them to be:
- 6.82.1 **objectively justifiable**, in that they seek to address the retail market failures and resulting harmful impacts that we describe in Section 4 in relation to the 080 and 116 ranges, and (in respect of the access condition) the concerns that we describe in Section 14 in relation to the wholesale layer, if we proceed with a free-to-caller approach;
 - 6.82.2 **not unduly discriminatory**, in that they apply equally to all OCPs and TCPs (as relevant) that originate or terminate calls to 080 or 116 numbers;

¹⁹⁴ See section 47(2) of the Act in relation to the General Conditions and the access condition; section 59(4) in relation to the condition binding non-providers; section 120(5) in relation to the PRS Condition; and section 60(2) in relation to the Numbering Plan. However, we are not required to satisfy ourselves that the setting of a general condition is objectively justifiable (see section 47(3)).

- 6.82.3 **proportionate**, in that the modifications are the minimum necessary to achieve the objective outlined above. We have explained in Sections 13 and 14 why we consider that alternative regulatory approaches (including a MMP approach and SMP regulation) would fail to address our concerns. We also explain in Annex 13 that we consider an alternative regulatory approach put forward by Vodafone and Three to be inappropriate and disproportionate. Our modifications apply only to calls made by consumers to 080 and 116 numbers, as we consider that mandating the same approach for calls made by business customers would be disproportionate; and
- 6.82.4 **transparent**, in that the modifications are set out in full in Annexes 14, 15 and 17 and are explained in detail in this document, and the modifications themselves are also intended to promote consumer confidence in relation to the price of calls to 080 and 116 numbers, and thereby to increase transparency in the market.
- 6.83 We consider that we are fulfilling our general duty in relation to our telephone numbering functions, as set out in section 63 of the Act, by:
- 6.83.1 **securing the best use of telephone numbers**, in that our proposals are likely to ensure that consumer demand for access to NGCS is not distorted by a lack of pricing transparency or other market failures, and that SPs are able to select a number range whose charge is much more reflective of their desired outcome with respect to the cost of a call; and
- 6.83.2 **encouraging efficiency and innovation**, in that our proposals are likely to ensure, as a result of improved price transparency, that consumers are able to make purchasing decisions commensurate with their own individual consumption preferences and CPs are therefore incentivised to set prices that better reflect consumers' relative demand preferences. We also consider that our proposals will result in improvements in pricing efficiency (in particular, by addressing the horizontal and vertical externalities) and improvements in SPs' incentives to innovate and invest in the NGC market and to promote their services.
- 6.84 We also consider that our proposals are consistent with our principal duty under section 3 of the Act, and the Community requirements set out in section 4 of the Act. In particular:
- 6.84.1 we consider that our proposals will result in significant benefits to **consumers and citizens** (sections 3(1), 3(5) and 4(5)) by addressing consumers' poor awareness and confidence in the pricing of NGCS, improving vulnerable consumers' access to socially important services and encouraging SPs to improve the quality, variety and innovative nature of their services;
- 6.84.2 we consider that the unbundled tariff regime will also **promote competition** (sections 3(1)(b), 3(4)(b) and 4(3)) between CPs, and potentially SPs, in relation to their charges for calls to non-geographic numbers;
- 6.84.3 as explained above, we consider that our proposals will result in improvements in **efficiency, investment and innovation** (sections 3(4)(d));

- 6.84.4 in carrying out our review, we have had regard to the needs of **vulnerable consumers** (section 3(4)(h) and (i)), in particular through our Equality Impact Assessment (see Annex 12) and by the explicit consideration of the extent to which our proposals would impact on vulnerable consumers' access to socially important services;
- 6.84.5 we have had regard to the **opinions of consumers and members of the public generally** (section 3(4)(k)), through consumer surveys, extensive consultation and engagement with various bodies representing consumer interests; and
- 6.84.6 we have also had regard to the principle that regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed, and to other principles of **best regulatory practice** (section 3(3)). In particular, we have explained in detail in this document (and in the April 2012 consultation) why we consider that regulatory intervention is required, and we explain above why we consider that our proposals are proportionate and transparent.

Consultation

- 6.85 We welcome comments from stakeholders on the Notifications in Annexes 14 to 18 and on the draft modifications set out therein.
- 6.86 Any comments should be submitted to us by 5pm on 28 May 2013.

Q6.1: Do you have any comments on the notifications in Annexes 14 to 18 and the draft modifications set out within them? Where you disagree with any of the proposed modifications, please explain why.