

Part C – Freephone and 116 ranges

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Part C - Section 14

Background to the Freephone and 116 ranges

Introduction

- 14.1 In this section we set out the background to the 080, 0500 and 116 ranges, including the history of the ranges and how they are used currently. We also outline the structure of the discussion in the remaining sections of this part of the consultation.
- 14.2 Firstly, however, we have set out what number ranges are included within the scope of this part of the consultation, and what we mean by ‘Freephone’.

Definition and ranges within scope

- 14.3 In this and the following sections we use two key terms; “Freephone” and “Free to caller”. We have used a definition of Freephone that is consistent with the definition in the National Telephone Numbering Plan (‘the Numbering Plan’), which is:

‘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.’¹

- 14.4 We have also used a definition of ‘Free to caller’ that is consistent with the Numbering Plan:

“a number that is accessed at no charge to the customer and, in the case of a pay telephone, without having to use coins and cards”.

- 14.5 The number ranges which we consider fall within the scope of this section are 080 (including the 0800 and 0808 ranges²), 0500 and 116 numbers. Under the current Numbering Plan, 080 is defined as a Freephone range. We acknowledge, as highlighted by Everything Everywhere (‘EE’) in its response to the December 2010 Consultation³, that in the Numbering Plan the 080 range is specifically designated as “Special Services – No Charge to Customer (except where charges shall be notified to callers at the start of the call)”.⁴ However, this definition, despite the reference to ‘Special Services’⁵ is essentially the same as the definition of Freephone set out above. There is clearly an intention that the service should be free of charge to the customer unless otherwise advertised.

¹ Page 4 of the Numbering Plan,

<http://stakeholders.ofcom.org.uk/binaries/telecoms/numbering/numplan201210.pdf>

² This includes the 0800 (plus 6 digit) range which is currently closed to new allocations (and is only listed in the Annex to GC17) but also has the same designation as the other 080 ranges.

³ EE December 2010 Consultation Response, p.59, paragraph 2.

⁴ This same definition applies to the 0800 (plus 6 digits) range, which is defined in the Annex to General Condition 17, because it is closed to new allocations (but there are still some active numbers in use).

⁵ Which is defined in the Numbering Plan as “a service paid for through the telephone bill of a Subscriber, and charged for BT customers (before the application of calling packages and discounts”, see page 9.

- 14.6 The 0500 range, because it is closed to new allocations, does not appear in the Numbering Plan but is listed in the Annex to General Condition 17 ('GC17'), where it is also defined as "Special Services – No charge to caller (except where charges shall be notified to callers at the start of the call)". In other words, 0500 also falls within the definition of Freephone set out above. 116 numbers, however, are considered on a case by case basis and designated as either Freephone or Free to caller, depending on the nature of the service provided (see paragraph 14.25 below).
- 14.7 In this document we have therefore used the term "Freephone ranges" to refer to 080 and 0500 collectively.⁶ Each of these ranges therefore has different characteristics and we consider that it is appropriate to examine them separately in our assessment in the following Sections. Nonetheless, there is a common thread between them all in that a defining part of their designation is that they should, in some circumstances, be free of charge to the caller.

History of the regulation of the Freephone ranges

080 and 0500 ranges

- 14.8 Before the introduction of competition in the UK telecommunications market, BT was the sole provider of free to caller services and also administered the UK Numbering Scheme. BT allocated itself the 0800 range in the 1980s, although the existence of a free to caller range dated back to the 1960s when it was introduced by the Post Office for business users.⁷
- 14.9 After the ending of the BT monopoly in 1982, the 0500 range was granted to C&W (then Mercury Communications) to provide an alternative to 0800. Following Oftel taking over the administration of the Numbering Scheme from BT in 1994, numbers in the 080 range were made available to all operators and the 0500 range was closed to new allocations.⁸
- 14.10 When mobile telephones were first introduced 080 calls from mobiles were treated in the same manner as the treatment on fixed lines i.e. free to caller. However, from the mid 1990s as mobile phone usage became more common, the question of charging for mobile calls to 080 was raised.
- 14.11 In a published determination in March 1996 Oftel stated that "in principle, [it] believes that 0800 should be paid for entirely and should be completely free to caller".⁹ However, it noted that its determination did not "prevent ONOs (originating network operators) from imposing a charge for 0800 calls on their customers". A later paragraph acknowledged the higher mobile operator costs for originating these calls

⁶ We acknowledge that this definition excludes 116 006 which is also a Freephone number, however, we consider that it is clearer to discuss all 116 numbers together. It is also worth highlighting that we adopted a different approach to this terminology in the December 2010 Consultation, where 'Freephone' was used to refer to 080, 0500 and 116 numbers.

⁷ <http://www.btplc.com/Thegroup/BTsHistory/1984onwards/1985.htm>

⁸ See the introductory chapter of:

http://www.ofcom.org.uk/static/archive/oftel/publications/1995_98/numbering/free798.htm

⁹ Oftel, *Interim Charges for BT's Initial Standard Services for Year Ending 31 March 1996; Determination and Explanatory Document*, January 1996,

http://stakeholders.ofcom.org.uk/binaries/enforcement/competition-bulletins/closed-cases/all-closed-cases/749342/BTs_Interim_charges.pdf, p. 48.

and suggested that BT should make an allowance for these in its contracts with SPs.¹⁰

- 14.12 However, in a further determination in November 1996¹¹, Oftel concluded that making allowance for the higher mobile origination charge in SP contracts could involve complex and expensive systems development and therefore noted that the options for mobile operators were to charge the originating customer more, to bar such calls or to absorb the costs. It noted that barring such calls was expensive, produced no income and created consumer confusion. However, it noted that if the mobile operators were to charge the customer more, they should use a recorded warning message. Nevertheless, Oftel noted that BT making an allowance for such costs in its contracts with SPs would "... in principle be the ideal solution since Service Providers would be given the choice of whether or not to receive free to caller calls from mobile operators and would pay accordingly".¹²
- 14.13 In February 2001 this requirement for a pre-call announcement for 0800 calls was introduced in the Numbering Scheme.¹³ Here Oftel noted in its review of the Numbering Conventions that where it was "commercially unavoidable" to levy charges on the consumer, that should be notified at the start of the call.
- 14.14 In September 2001, Oftel issued a determination of a dispute between Orange and BT, over a request by Orange to review the charging arrangements for calls made by Orange customers to 0800 numbers.¹⁴ In this dispute, Orange argued that the 0800 origination charge was set with fixed operators in mind and did not reflect the higher network routing costs of mobile operators. Orange argued that, as a consequence, it did not sufficiently recover its costs for originating those calls. In seeking to review the interconnect rate it received from BT, Orange pointed to the precedent set by the Payphone Access Charge ('PAC'), where terminating operators paid BT a higher pence per minute ('ppm') rate for termination of calls to 0800 services where the call originated from a payphone. Orange therefore requested consideration of a similar arrangement for its mobile originated 0800 calls.
- 14.15 In its consideration of the dispute, Oftel noted that, at that time, consumers (in most instances) had access to a fixed line phone (either private residential line or via a public payphone) that offered a satisfactory substitute to using a mobile. It suggested that the option was therefore available to the consumer either to make a 080 call free from a fixed line phone, or be charged for the extra convenience of using a mobile. Oftel suggested that, arguably, therefore, the service provider should not be liable to pay for the additional cost if the consumer chose to make their call by the more expensive mobile route.¹⁵
- 14.16 Oftel considered the alternative, i.e. that service providers might be willing to pay increased call origination costs to attract calls to 0800 numbers from mobile phone users. It noted an example could be marketing of 0800 numbers for services that

¹⁰ Ibid, pp.49-50.

¹¹ Oftel, *Interim charges for BT's Standard Services for year ending 31 March 1997; Determination and Explanatory Document*, November 1996, http://stakeholders.ofcom.org.uk/binaries/enforcement/competition-bulletins/closed-cases/all-closed-cases/749342/Interim_charges.pdf.

¹² Ibid, p.42.

¹³ <http://www.ofcom.org.uk/static/archive/oftel/publications/numbering/ncon0201.htm>

¹⁴ Oftel, *Orange/BT Interconnection disputes: Freephone origination and mobile number portability*, 21 September 2011, <http://www.ofcom.org.uk/static/archive/oftel/publications/mobile/oran0901.pdf> ('2001 Oftel 080 Determination')

¹⁵ Ibid, paragraph 3.7.

were directed at consumer groups with little or no access to fixed line phones at the point of exposure, such as commuters and other travelling consumers. Oftel noted, however, that no evidence of that had been provided.¹⁶ It therefore rejected the dispute from Orange concluding that “in the absence of evidence that service providers are actively interested in attracting and paying for calls from mobiles, the principles of cost causation, cost minimisation and the distribution of benefits principles weigh heavily towards the current practice”.¹⁷

- 14.17 In 2003, Oftel published the first National Telephone Numbering Plan. In that publication the definition of 080 numbers was confirmed, following consultation, as “free of charge to the customer except where a charge is notified to the End-User at the start of the call”.¹⁸ It has maintained this definition in the Numbering Plan since then. Similarly the 0500 range is designated as “Special Services – No charge to caller (except where charges shall be notified to callers at the start of the call)” in the Annex to GC17.
- 14.18 In 2006, Ofcom conducted a major policy review of all 08 numbers and as part of that review we decided to leave the 080 Freephone numbers unchanged, noting that this was one number range that was reasonably well recognised and trusted by consumers, and the same number was used for Freephone services internationally, which might have contributed to high consumer awareness.¹⁹ We concluded that the ‘strong existing brand’ of ‘Freephone’ services on the 080 number ranges should be protected.²⁰

Ofcom’s historic policy preference for the 080 range

- 14.19 As highlighted above (paragraph 14.11), despite charges for calls to the 080 range being permitted by the rules in the Numbering Plan, Ofcom (and Oftel before it) has always had a policy preference that these numbers ought to be free, or as close to free as possible. This was first articulated by Oftel in its 1996 Determination, and has been reiterated several times since then. Most recently, as part of a determination on a dispute between BT and several mobile Originating Communications Providers (‘OCPs’) about BT’s termination charges for 080 calls in August 2010 (‘the 080 Dispute Determination’), we restated that policy preference, noting that it was not changed by the fact that mobile OCPs charge for some 080 calls.²¹
- 14.20 We set out in the 080 Dispute Determination why we considered that this preference was consistent with our general duties under section 3 of the Act (to further the interests of citizens and consumers) and the six Community requirements set out in section 4 of the Act (see Section 5 for a full description of these). We noted that this preference also reflected:

¹⁶ Ibid, paragraph 3.8.

¹⁷ Ibid, paragraph, 1.3.

¹⁸ Oftel, *A Statement issued by the Director General of Telecommunications following a consultation on proposals to publish a National Telephone Numbering Plan*, 9 July 2003, <http://www.ofcom.org.uk/static/archive/oftel/publications/numbering/2003/ntnp0703.htm>, see paragraph 3.18.

¹⁹ *Telephone Numbering: Safeguarding the future of numbers*, July 2006 <http://www.ofcom.org.uk/consult/condocs/numberingreview/statement/statement.pdf>, paragraph 1.34, p.10.

²⁰ Ibid., paragraph 1.6, p.4.

²¹ Ofcom, *Determination to Resolve a dispute between BT and each of T-Mobile, Vodafone, O2 and Orange about BT’s termination charges for 080 calls*, August 2010, http://stakeholders.ofcom.org.uk/binaries/consultations/draft_deter_bt_tmobile_vodafone/nonconf.pdf, pp. 13-14, paragraphs 2.32 to 2.35.

- the benefits of free calls to 080 to consumers in terms of price transparency;
- consumer research regarding the connection between 080 numbers and ‘Freephone’, which suggested that the interests of citizens and consumers were furthered where they could rely on their expectation that calls to 080 numbers will be free (or if they are not free, they are as close to free as possible); and
- the benefits, in terms of access to services and cost savings, of consumers facing no retail charge for calls to 080 numbers (or a very small retail charge only).²²

14.21 The legitimacy of this policy preference was recognised by the Competition Appeals Tribunal (‘CAT’) as part of its recent judgment on termination rates for 080, 0845 and 0870 numbers (‘the 08X CAT Judgment’). It noted that a policy which “forsook cost reflectivity in favour of a tariff structure that sought to cause the prices charged by mobile network operators for 080/045/0870 numbers to move closer to their description in the national telephone numbering plan to be an entirely reasonable and proper one to adopt in the circumstances of this case”.²³

14.22 The CAT also acknowledged that this policy preference was consistent with the original objective for this range, noting that “it was evident from the National Telephone Numbering Plan ... that the intention was for 080 calls to involve no charge to the caller” and “the intention is that the call recipient pays for the call, which is then free to the caller”.²⁴ It also noted that the current arrangements did not achieve that policy objective.²⁵

EU Framework

14.23 A need for a ‘Freephone’ range is also reinforced by references to such a service in the EU Framework Directives. The Universal Service Directive (‘USD’), notes that “A single market implies that end-users are able to access all numbers included in the national numbering plans of other Member States and to access services using non-geographic numbers within the Community, including, among others, **freephone...**” (emphasis added).²⁶

14.24 It should be noted that although referred to, Freephone, is not defined as a concept by the EU Framework Directives, and therefore, although Member States all offer some form of service that is nominally free (usually on the 0800 range), the exact description of the range, and restrictions on when such calls are not free to caller, varies between countries. See Table 16.5 in Section 16 for further information on the Freephone ranges available in other countries.

116 Harmonised Numbers for European Services

14.25 The other range which is also captured by this review are the 116XXX numbers for services of social value. The Commission Decision reserving the 116 range for this use stated that the numbers “should be freephone numbers without this meaning that

²² 080 Dispute Determination, pp. 13-14.

²³ 08x Judgment, <http://www.catribunal.org.uk/238-6086/1151-3-3-10-British-Telecommunications-Plc-Termination-Charges-080-calls.html>, p.96, paragraph 232.

²⁴ 08x Judgment, p. 22, paragraphs 63 and 64.

²⁵ Ibid, paragraphs 67, 68 and 71.

²⁶ Directive 2002/22/EC, Recital 36, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2002:108:0051:0051:EN:PDF>. See also recital 46 of the amending Directive 2009/136/EC, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:337:0011:0036:EN:PDF>.

operators would be obliged to carry calls to 116 numbers at their own cost”.²⁷ Although ‘freephone’ was not otherwise defined, the Decision did require that a specific condition that there should be no payment or payment commitment as a prerequisite to use the service, should be attached to the right of use of the numbers.²⁸ Numbers are designated for particular purposes by the European Commission (e.g. 116 123 for ‘Emotional Support Helplines’) but allocated to the appropriate organisation to offer this service in each member state by each national regulator (in the case of the UK for this number, the Samaritans is the allocated service provider). We have set out the background of the 116 numbers in more detail in Annex 27.

14.26 Currently only one of the four 116 numbers that have been allocated for these services has been designated by Ofcom as “Freephone”; the others have been given a ‘free-to-caller’ designation. Annex 27 separately discusses in more detail the potential effects of the different options we are considering on these ranges, because of the specific regulatory nature of the range.

Current Freephone market

Usage

080 range

14.27 In paragraphs A7.27 to A7.32 of the December 2010 Consultation we provided an overview of calls to 080, which we have summarised and (where relevant) updated below.

14.28 The 080 range remains the largest non-geographic range by active numbers, as well as the most popular range in terms of volumes of calls. According to the 2010 Flow of Funds study, of the 30.8 billion minutes generated for all the non-geographic numbers in 2009, 11.2 billion (36%) minutes were generated by calls to 080 numbers.²⁹ These calls are overwhelmingly originated from a fixed line; mobile OCPs only accounted for 5% of total originated 080 traffic in 2009.³⁰

14.29 080 numbers are used for a variety of services, which are provided by both private and public organisations. Typical services can include non-profit and charity helplines, some government and social services, customer sales enquiry lines, and customer support lines for commercial services.

14.30 We asked the major OCPs for the forty most popular 080 numbers dialled by their customers, and also asked several TCPs for their 20 largest 080 SPs by call volumes.³¹ Some of the most popular services on the 080 range were:

- DWP Helplines (e.g. Job Centre plus – these services are free to caller from a mobile because the DWP has negotiated directly with some mobile OCPs – see below, and Annex 20 for further discussion of this);
- calling cards;

²⁷ Commission Decision on 116 numbers (2007/116/EC) issued 15 February 2007, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:049:0030:0033:EN:PDF>, Recital 3

²⁸ Article 4(d)

²⁹ 2010 Flow of Funds study, Figure 5.7 on page 30.

³⁰ This represents 529 million minutes (out of the total 11.2bn). 2010 Flow of Funds study, page 36, Figure 5.15, page 37.

³¹ As part of an information request to industry under Section 135 of the Act.

- conference call services;
- reverse charge services (e.g. 08000MumDad or 0800Reverse – these services have also negotiated with some of the mobile OCPs to become free to caller from a mobile);
- utilities (e.g. gas, electricity and water companies, as well as phone providers); and
- breakdown services (e.g. RAC and AA).

0500 range

- 14.31 We noted in the December 2010 Consultation that as of August 2007, approximately 45,000 0500 numbers were live, of which 6,000 were actively used.³² Recent evidence from C&W indicates that there are only around [§<] active service providers on the range.³³ Call volumes are therefore very low, we previously estimated volumes at around 70m call minutes but more recent evidence suggests that in 2010 there were less than [§<] call minutes.³⁴
- 14.32 Active SPs on the 0500 range include Missing People, Crimewatch, BBC Five Live and Barclay's Bank.

Wholesale arrangements

- 14.33 In the December 2010 Consultation we also discussed the flow of funds for Freephone calls. Unlike other non-geographic ranges SPs pay for Freephone services, ultimately funding the small origination payment which fixed OCPs receive from TCPs.³⁵ According to the 2010 Flow of Funds study, SPs paid an estimated total of £120 million in 2009 to receive 080 calls, of which £61m was paid to OCPs.³⁶
- 14.34 We noted, however, that the situation for mobile OCPs varied and some TCPs had, at that time, recently sought to introduce variable (or tiered) termination rates for 080 calls to link the termination rate to the OCPs' retail price (which would lead mobile OCPs to make a termination payment to the TCP unless they changed their retail prices).³⁷
- 14.35 Ofcom originally ruled against the introduction of BT's tiered rates in two related disputes over charges in relation to the 080/0845/0870 ranges. However, these determinations were appealed to the CAT and in a judgment on 1 August 2011 ('the 08x CAT Judgment') the CAT determined that, in relation to the specific tiered rates under appeal, BT had the right to introduce these rates (see Annex 17 for the full background to the disputes and appeals on tiered termination rates). C&W and

³² See paragraph A7.109, page 363 of the December 2010 Consultation.

³³ [§<].

³⁴ [§<].

³⁵ This origination payment can be thought of as a negative termination rate.

³⁶ 2010 Flow of Funds study, Figure 5.23 on page 45.

³⁷ With effect from 1 July 2009 BT introduced a system of variable termination rates for 080 calls (in NCCN 956). In the 080 Dispute Determination we determined that the parties should revert to the trading conditions that applied before NCCN 956 came into effect (paragraph 1.26). On 1 August 2011, the CAT overturned our determination (<http://www.catribunal.org.uk/238-7221/Judgment.html>) finding that the notices by which BT sought to vary its termination charges were fair and reasonable and that BT had the right to introduce them.

some other operators have also introduced similar pricing for their 080 numbers. The 08x CAT Judgment is, however, currently subject to further appeal.

14.36 Annex 21 provides further details of the wholesale arrangements associated with 080 and 0500 calls.

Prices

14.37 In the December 2010 Consultation we noted that Freephone calls fell into two categories:

- those where no PCA is made and the caller is not charged regardless of what type of phone the call is made from (i.e. both landline and mobile phones), which are a small sub-set of the total set of 080 numbers;³⁸ or
- those that are free from some phones (usually fixed line) but are chargeable from others (usually mobile) and a PCA is provided to notify callers at the start of a call that a charge will be made. The PCA offered by mobile companies does not, however, normally give a statement of the specific charge that will be levied.

14.38 Fixed line providers do not therefore normally charge for calls to the Freephone ranges. However, most mobile providers charge for Freephone calls.³⁹ There are only a few services where some mobile OCPs do not levy a charge for Freephone calls (where the service providers ('SPs') have negotiated, directly or indirectly, to have those charges zero-rated).⁴⁰ These include:

- the Department for Work and Pensions ('DWP'). The DWP negotiated with some mobile OCPs directly in order to ensure that calls to its 080 helplines would be zero rated;⁴¹
- charities and not-for-profit organisations that are members of The Helplines Association's ('THA') special Freephone tariff scheme. THA negotiated with most mobile OCPs to set up this scheme and it operates as a central body for charities and non-for-profit services to obtain a Freephone number that is not charged from a mobile (see Annex 20 for further discussion of this scheme).
- other individual charities that are not necessarily part of THA but which some mobile OCPs have agreed to zero-rate, e.g. Childline, 0800 1111 and Crimestoppers, 0800 500 111.
- reverse charge Services (0800MUMDAD and 0800Reverse). [§<]

14.39 Table 14.1 shows the proportion of 080 call minutes that are free to the caller for the largest mobile OCPs.⁴²

³⁸ We are not aware of any 0500 numbers which are free to caller.

³⁹ There are some exceptions, for example the MVNO Giff Gaff does not charge for any 080 calls.

⁴⁰ For example, Lycamobile and Lebara charge for all 080 calls. Responses to our section 135 information request dated 21 October 2011 from Lebara (11 November 2011) and Lycamobile (15 November 2011).

⁴¹ <http://www.dwp.gov.uk/previous-administration-news/press-releases/2010/january-2010/dwp007-150110.shtml>

⁴² Responses to question 8(ii) of our information request dated 21 October 2011 from EE (16 November 2011), Three (11 November 2011), O2 (11 November 2011), and Vodafone (11 November

Table 14.1: Proportion of mobile 080 calls that are free

	O2	Orange	Three	T-Mobile	Virgin	Vodafone
Free call minutes	[X]	[X]	[X]	[X]	[X]	[X]

14.40 There are also some exceptions to the pattern that mobile OCPs charge for 080 calls. Giffgaff (a virtual mobile OCP) does not charge for 080 calls.⁴³ Vodafone offers a 'bolt on' that allows consumers to incorporate 080 calls within their bundle of inclusive minutes.

14.41 In terms of 0500 calls, we understand that these are free from fixed lines but are typically charged from mobiles. In the December 2010 Consultation, we noted that these may be charged at a different rate to mobile 080 calls.⁴⁴ However, based on a small sample of mobile tariffs examined by Ofcom in December 2011, mobile OCPs appear to generally price 0500 calls at the same rate as 080 calls.⁴⁵

14.42 We noted in the December 2010 Consultation that compared to prices for geographic calls, prices for Freephone calls from some mobiles could be very high (up to 40ppm at the time) and that these calls were not generally included in bundles of inclusive minutes.⁴⁶ Data from the 2010 Flow of Funds study suggests that callers paid a total of £86 million to make 080 calls in 2009 (including VAT).⁴⁷

14.43 Table 14.2 repeats Table A2.5 from the December 2010 Consultation and shows the prices charged to residential 080 callers by the largest mobile OCPs in August 2010.⁴⁸ Data from the 2010 Flow of Funds study suggests that the average retail price of a mobile 080 call in 2009 was 14.1ppm (excluding VAT) or 16.2ppm (including VAT at 15%).

2011). Response dated 9 December 2011 from Virgin Media to question 17(ii) of our information request dated 21 October 2011.

⁴³ Giff Gaff does not charge for 0500 calls either. In late 2011 Giff Gaff had [X] active subscribers and was thus a relatively small mobile OCP. O2 response dated 11 November 2011 to questions 12(i) and 12(iii) of our information request dated 21 October 2011.

⁴⁴ December 2010 Consultation, paragraph A7.110.

⁴⁵ We examined post-pay tariffs on O2, Orange, T-Mobile and Vodafone.

⁴⁶ See Table 6.1 of the December 2010 Consultation for a list of the prices charged by the major Mobile OCPs at that time.

⁴⁷ Data from the Flow of Funds study indicates that mobile OCPs earned £75m (excluding VAT at 15%) from 080 calls in 2009. This is slightly different from the £77m figure given in 2010 Flow of Funds study, Figure 5.23 on page 45. This is because the underlying data (erroneously in our view) implies one fixed OCP charged for 080 calls.

⁴⁸ This data was originally obtained in August 2010 from the websites of the respective companies.

Table 14.2: Residential mobile 080 call prices (August 2010)

O2		Orange		T-Mobile		Virgin Mobile*		Vodafone	
Post-pay	Pre-pay	Post-pay	Pre-pay	Post-pay	Pre-pay	Post-pay	Pre-pay	Post-pay	Pre-pay
0-20 ppm	0-20 ppm	0-15 ppm	0-25 ppm	0-40 ppm	0-40 ppm	Up to 15ppm	Up to 15ppm	0-20 ppm	0-25 ppm

* Excludes any tariff available when bundled with TV and/or broadband

14.44 As noted in Section 5, as a result of the 08x CAT Judgment, some mobile OCPs, temporarily in some cases, reduced their retail prices for 080 calls. For example, Vodafone reduced the price of 080 calls to 7p (from 35p) with effect from 11 October until 4 January 2012. Prices then increased again to 14p.⁴⁹ Similarly T-Mobile reduced its prices for the Freephone ranges to 7.4p in August 2011.⁵⁰ Orange also reduced its 080 prices to 7.4 ppm for post-pay customers and 7ppm for pre-pay customers on 25 August 2011, but then raised the prices for new post-pay customers to 20ppm the following week (on 6 September 2011, prices remained at 7.4ppm for existing post-pay customers however). The directions in the 08x CAT Judgment meant that there was a specific incentive for the mobile OCPs to reduce their prices, as the level of prices set (at a particular date) determined the level of retrospective payments due under BT's tiered termination rates.⁵¹

14.45 The Table below compares the current typical prices for 080 calls (which are not zero-rated). For context we have also provided the current prices of geographic (out of bundle) calls.

⁴⁹ <http://www.vodafone.co.uk/personal/price-plans/pay-monthly/call-charges/>

⁵⁰ For example: http://www1.orange.co.uk/service_plans/payasyougo/payg_dolphin_costs.html.

However, the charges for post-pay seem to range between 7.4 and 15.3, see:

http://www1.orange.co.uk/service_plans/downloads/PAYM-PG-20111129.pdf

⁵¹ <http://www.catribunal.org.uk/238-7221/Judgment.html>. See page 175.

Table 14.3 Typical current prices for 080 calls and geographic calls, major mobile OCPs, ppm

Provider	O2 ⁵²		Orange ⁵³		T-Mobile ⁵⁴		Vodafone ⁵⁵	
Calls to:	Post-pay	Pre-pay	Post-pay	Pre-pay	Post-pay	Pre-pay	Post-pay	Pre-pay
Geographic numbers	35	25	35	5-25	35	12-25	30.6	20-25
080, 0500	20.4	15	20	7	7.4	7	14	14

Source: Mobile OCPs websites, current prices as February 2012. These represent prices for new customers, there may be differences for customers on existing price plans. Exceptions apply in some cases (as noted in paragraph 14.44 above).

14.46 As noted in Section 3, we consider that the current prices for 080 numbers from mobile OCPs are not a good guide to what future prices might be without further regulatory intervention. The prices are in a state of flux as a result of the 08x CAT Judgment and therefore we consider it more appropriate to rely on the previous prices for much of our assessment. Nevertheless, we consider that our analysis is not especially sensitive to whether we use the current retail prices or previous prices, given that one of our main concerns is consumer price awareness, (as set out in more detail in the next Section). We have, however, highlighted in the summary of our assessment at the end of Section 16 where the analysis may be sensitive to the level of retail prices.

Structure of this part of the document

14.47 The next three Sections (Sections 15 to 17) focus on the Freephone ranges and are structured as follows:

- Section 15 looks at the consumer concerns which are particular to the 080 range (drawing on our assessment in Annex 8 in particular). This is also supported by Annex 20 which looks in more detail at SP bilateral deals including that agreed by the DWP;
- Section 16 sets out the different options for the Freephone ranges, as well as our preferred option for a given range. A key part of these options is the Freephone

⁵² <http://www.o2.co.uk/mobilestariffs/tariffs/specialnumbers>

⁵³ The Orange price lists show two different prices, for both pre-pay and post-pay contracts, and lists the lower prices (7p and 7.4p) as applying from 25 August 2011, however, we understand that the lower prices only applied for the week following the 25 August, after which the higher prices apply.

⁵⁴ http://support.t-mobile.co.uk/resources/sites/TMOBILE/content/live/DOCUMENTS/0/DO273/en_GB/36018546_Non_Standard_Except_OP2_v2.pdf and http://support.t-mobile.co.uk/resources/sites/TMOBILE/content/live/DOCUMENTS/0/DO275/en_GB/36018547_Non_Standard_Mix_It_OP2_v2.pdf. However, T-Mobile's number checker service suggests that some 080 numbers may be charged up to 33p.

⁵⁵ Before 11 October 2011 the 080 price was 35p, Vodafone then reduced the price to 7p from 11 October to 4 January 2012. 14p represents the current price.

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

origination charge and what, if any, maximum price would apply to these ranges. Annexes 21 to 26 go into more detail on the origination charge and maximum price as well as discussing the impact of different options for these charges in more detail.

- Section 17 sets out how our preferred options could be implemented and how we consider our preferred options meet the required legal tests.

14.48 As set out in Section 2, in this Part of the document, although the options we discuss were originally presented in the December 2010 Consultation, we have considerably refined them in the light of stakeholder comments and additional analysis. Therefore, whilst we have indicated our preferred option, we are also consulting on alternative options for the Freephone and 116 ranges.

Section 15

Summary of consumer detriment on the Freephone ranges

Introduction

- 15.1 In this section we set out what we see as the particular consumer issues with the Freephone ranges (080 and 0500), including a summary of what we said in the December 2010 Consultation, stakeholders' comments in response to the consultation and our further analysis of the consumer detriment which specifically relates to the Freephone ranges.
- 15.2 In Part A of this consultation we set out our view on the consumer detriment as it exists across all non-geographic call ranges under review. This Section specifically considers the position in relation to the Freephone ranges (we consider the 116 range separately in Annex 27). Whilst these ranges have particular features that set them apart from the revenue sharing ranges, there is considerable overlap in terms of the consumer detriment that we consider can be attributed to the Freephone ranges. Therefore, the issues highlighted here are covered in more detail in both Section 4 and, in particular, at Annex 8, which looks at the retail experience overall.

Our analysis of the issues in the December 2010 Consultation

- 15.3 We noted in the December 2010 Consultation that in redesigning the NGC structure we wanted to build on the aspects of the current system that consumers understood with a reasonable degree of confidence. We noted there was a substantial degree of consumer confusion about the cost of calls to 080 numbers but that it, nonetheless, remained the most recognised and understood of the ranges and we wanted to build on that understanding and reinforce it as a key element of the new structure.⁵⁶
- 15.4 We noted that the message that Freephone calls are free to caller, was clearly a message that consumers should readily understand and although charges from a mobile phone had seriously dented that concept, it had not removed it, as 080 was the most commonly used NGC and the number range that performed least badly in terms of consumer awareness.⁵⁷
- 15.5 In paragraphs A7.35 to A7.36 of the December 2010 Consultation we outlined our specific concerns about the 080 number range. We identified four particular areas of concern:
- low consumer price awareness: while we noted that consumer price awareness was better for fixed 080 calls than for other non-geographic number ranges, we still considered that it was low given the simplicity of actual fixed 080 prices.⁵⁸ In the case of mobile 080 calls, however, we considered that consumer price

⁵⁶ The December 2010 Consultation, p.89, paragraphs 6.107 to 6.108.

⁵⁷ Ibid, p. 91, paragraphs 6.112-6.113.

⁵⁸ For example, in the 2010 Consumer survey, 46% of respondents said that they were confident they knew the price of 0800 calls from a fixed line (10% were neutral). Similarly, in the 2009 Consumer survey, 62% of respondents thought that a fixed 0800 call from a fixed line was free. 10% thought they were charged for these calls (including 8% who thought the price was higher than 11ppm) and 27% responded "don't know".

awareness was poor. We noted that while consumers received a PCA informing them that they will be charged, this did not let them know the actual price of a call.⁵⁹ We also highlighted that there was some evidence that consumers overestimated the price of 080 calls from mobiles.⁶⁰ We therefore considered it plausible that high mobile retail charges might affect the reputation of 080 calls from fixed OCPs (an example of the horizontal externality).

- prices from mobile OCPs: although we did not have concerns with the current level of 080 call prices from fixed OCPs (since these calls are always free), we noted that, in contrast, only in a small minority of cases 080 numbers were free from mobiles. We noted that contributing factors to high mobile 080 call prices were likely to be consumers' lack of price awareness, which weakened competitive constraints on pricing, and the vertical and horizontal externalities.
- service quality, variety and innovation: we considered that the uncertainty created by the lack of consumer price awareness was likely to reduce the demand for 080 calls, which in turn was likely to reduce service availability and innovation; and
- access to socially important services: we considered that low income mobile-only callers were disproportionately impacted by the prices of 080 calls. We were potentially concerned about the ability of these households to access some of the socially important services available on 080 numbers.

15.6 We noted in relation to all ranges that SPs had no control over retail prices, and the same applied to Freephone calls. We noted the existence of some bilateral deals where an SP had reached an agreement with the mobile operators to zero-rate their numbers, the primary example of which was the DWP. However, we considered that these bilateral deals did not address the issue, because of the high transaction costs and level of payments demanded by OCPs.

15.7 We observed that most of the issues concerning 080 were also common to the 0500 and 116 ranges and we therefore set out in full our analysis and evidence for the 080 range and built on this for the 0500 and 116 ranges. We asked for stakeholders to provide evidence on which arguments for 080 did not also apply to 0500 and 116 because of the limited evidence we had for those ranges (as highlighted above, in this consultation we have dealt with 116 separately in Annex 27).

Stakeholders' comments on our analysis in the December 2010 Consultation

15.8 We have set out stakeholders' comments on Ofcom's analysis of the retail experience and the consumer harm that arises from the market failures we have identified in Annex 8.

15.9 The vast majority of stakeholders agreed with our assessment of the consumer issues in relation to the Freephone ranges. Several respondents noted that given the increased use of mobile phones, especially in low income, mobile-only households,

⁵⁹ This lack of price awareness is reflected in our survey results. For example, in the 2010 Consumer survey, only 25% of respondents said that they were confident they knew the price of 0800 calls from a mobile (12% were neutral). 2010 Consumer survey, question 36.

⁶⁰ The mean expected price for mobile calls in 2009 was 29ppm. 2009 Consumer survey, question 44. The data underlying the 2010 Flow of Funds study suggests that the actual average price of 080 calls in 2009 was approximately 16.2ppm (including VAT at 15%). See the 2010 Flow of Funds study for a full discussion of the caveats surrounding that analysis.

the fact that Freephone numbers were charged from a mobile was causing detriment to consumers. For example the CAB noted that at present calls to Freephone numbers from mobile phones were very high and were not usually included in any bundled packages and the detriment that those costs can cause, especially for those low income, mobile only households, was very high.⁶¹ Verizon also noted that the analysis from the 080 determinations suggested that the mobile OCPs set relatively high retail prices for 080 calls, prices that were significantly above their costs of origination.⁶² The vast majority of individual respondents also questioned why 'Freephone' did not mean 'free' and suggested that this was an area which required immediate intervention.

- 15.10 Ofgem and a number of gas companies, including National Grid noted that gas suppliers were obliged to provide a free to call number for reporting gas emergencies, which they did using a 080 Freephone number. They noted they were potentially in breach of their licenses, because the calls are chargeable from mobiles. Given the potential safety risk to consumers, they noted they did not want to discourage potential callers from phoning due to uncertainty around the cost of the call.
- 15.11 There were, however, some specific challenges raised (from the mobile OCPs in particular) in terms of the consumer detriment issues specific to Freephone. In summary, the primary points raised were that:
- i) we had overestimated the lack of consumer price awareness on the 080 range given the existence of the PCA (EE)⁶³;
 - ii) we had not given sufficient weight to the ability of SPs to bilaterally negotiate 'zero-rating' of Freephone numbers with mobile OCPs, and the fact that these bilateral negotiations had not been more widely pursued was a reflection of the lack of demand from SPs (all mobile OCPs);
 - iii) that we had provided very little substantive evidence of mobile charges for 080 services reducing service quality, variety and innovation (EE); and
 - iv) services of real social value were already free to caller (Vodafone, O2, EE).
- 15.12 Below we present our updated analysis of the retail experience and the impact this has on consumers, specifically regarding the 080 number range, taking into account and responding to stakeholders' challenges as appropriate.

Updated analysis of consumer harm and response to stakeholder comments

- 15.13 We have structured this section by summarising the Freephone specific evidence on each of the market failures we have identified in Annex 8:
- **lack of consumer price awareness;**
 - **the vertical externality:** by this we mean that OCPs are not sufficiently motivated by the preferences of SPs on Freephone numbers and therefore do not

⁶¹ CAB, December 2010 Consultation response, p.12.

⁶² Verizon, December 2010 Consultation response, Q6.6.

⁶³ EE, December 2010 Consultation Response, pp.19, 62.

take into account the impact of their call pricing decisions on these SPs when setting their retail prices; and

- **the horizontal externality:** by this we mean that individual OCPs and SPs do not have an incentive to take into account the impact of their Freephone pricing on the reputation/brand of this number range, or on non-geographic numbers as a whole. For 080, a particular example is that mobile OCPs are unlikely to take into account the impact their behaviour has on fixed callers.

15.14 We have then summarised the evidence relating to the five outcomes of these market failures which have a harmful impact on consumers. Four of these are relevant to the Freephone ranges (the fifth is fraud, which we do not consider to be an issue for the Freephone ranges):

- i) a reduction in demand for calls to Freephone numbers, particularly from mobile phones;
- ii) Freephone mobile prices not reflecting consumer preferences;
- iii) loss of access to socially important services on Freephone ranges for vulnerable callers;
- iv) consumers' loss of service diversity and innovation and SPs' lack of incentives to invest in the Freephone market.

15.15 In this section, we summarise our position on each of the above market failures, and the outcomes of those market failures, with specific reference to the Freephone ranges. We set out our full analysis, including a more detailed response to specific stakeholder comments in Annex 8.

Three market failures on the Freephone ranges

Low consumer price awareness

15.16 We set out the responses to the 2009 Consumer survey and the 2010 Consumer survey in the December 2010 Consultation (and summarised them above). These indicate that, while price awareness was better for fixed 080 calls than for other non-geographic calls, it was still low.

15.17 Although the wording in our most recent consumer research was different to previous surveys, it still indicates that callers' understanding of Freephone numbers is poor. 29% of callers said they knew how much 080 numbers cost from a fixed line and of those 29%, only 72% recognised that these numbers were free.⁶⁴ This implies that only 21% of respondents were confident that 080 calls were free from a landline. Moreover, 25% of callers did not know whether 080 calls were expensive, and 23% of callers thought these calls were expensive from a fixed line.⁶⁵ Given that these calls are always free from a fixed line, and always have been, we consider this to be a particularly concerning statistic. There is also evidence that awareness of 080 call

⁶⁴ 2011 Consumer Survey, Question GL01: "Which of the following statements best describes what you know about the cost of calling a number starting with XXX from your fixed line/mobile" Respondents that said "I know how much it costs per minute" were then asked Question GL02: "How much per minute do you think it costs to call a number starting with 080, during peak hours, in the daytime on a weekday, from your fixed line/from your mobile?".

⁶⁵ 2011 Consumer Survey, Question GL01.

prices from a mobile is particularly poor: 29% of consumers said they did not know how much these calls cost, and a further 42% said they did not know but thought they were expensive.⁶⁶

- 15.18 Given the simplicity of the price point of 080 calls from a fixed line, we would expect consumers to be more confident of the price. We are therefore concerned that consumer awareness is so poor, in particular because it leads to consumers overestimating the price of these calls and, as a consequence, reducing their consumption (see paragraphs A8.232 – A8.311 in Annex 8).
- 15.19 On the 080 range there has also been substantial substitution of calls from mobiles to fixed lines. In 2009, only 5% of calls were made from mobiles. This is far lower than the share of mobiles of all calls where 49% of all call minutes are generated from mobiles.⁶⁷ In addition, as we discuss in the next Section, evidence from the DWP's zero-rated 080 numbers shows that the proportion of mobile calls rose to over 40% once the calls were free to call from a mobile as well as a fixed line, with payphone originated calls also reducing considerably.⁶⁸
- 15.20 In response to EE's comment about PCAs, whilst we recognise that the PCA present on the 080 range may give consumers a warning that they will be charged for the call (as we noted in the December 2010 Consultation) it does not tell them how much they will be charged.⁶⁹
- 15.21 In terms of 0500, we do not have any specific evidence on price awareness, but given the low utilisation of this range it is reasonable to assume that recognition and pricing awareness are worse than for 080.

The vertical externality

- 15.22 The absence of a completely free to caller number range is a central example of the vertical externality problem; SPs that want to offer a completely free to caller number to their customers do not currently have a specific number range which offers this, because OCPs may not have the incentive to fully account for the preferences of these SPs.
- 15.23 In response to the December 2010 Consultation, the mobile OCPs pointed to the existence of bilateral deals between mobile OCPs and some SPs on the Freephone ranges as evidence that if the vertical externality did exist, it could be internalised - i.e. where SPs wanted to offer a free to caller number, they could negotiate with the mobile OCPs in order to achieve that. The most obvious example of this is the DWP, which was able to zero rate its 080 helplines in January 2010.
- 15.24 We respond to this comment in detail in Annex 20 (where we also set out in more detail some of the other examples of these bilateral deals). In summary, whilst we acknowledge that these demonstrate that such negotiations are possible, the evidence we have suggests that these deals are not always successful. In particular, the transaction costs (i.e. the costs involved in setting up negotiations with each mobile OCP) can be very high (a point previously acknowledged by some of the

⁶⁶ 2011 Consumer Survey, Question GL01.

⁶⁷ Ofcom, Communication Market Report ('CMR'), August 2011, Figure 5.36 on page 281.

⁶⁸ See paragraphs 16.85-16.87 for further discussion of this evidence.

⁶⁹ It is of note that in its 08x Judgement, the CAT indicated that it considered the wording in the Numbering Plan required a disclosure of the actual charge being made, rather than just disclosure of the fact that there is a charge, although this is not an issue that we directly address in this review. <http://www.catribunal.org.uk/238-7221/Judgment.html>, p.55, paragraph 142.

mobile OCPs⁷⁰) and it is not therefore a route open to all. Moreover, where agreement is reached it is likely to involve comparatively high payments from SPs to OCPs.

15.25 We therefore do not consider that the existence of these deals demonstrates that SPs are able to easily achieve a retail price of zero for their Freephone calls, or that the fact that more SPs have not attempted this is a reflection of a lack of demand. As set out below, the evidence from our 2011 SPs survey demonstrates that there is a significant proportion of SPs that would value their 080 lines being free to callers from a mobile, and a number of SPs are willing to pay more in order to achieve that outcome.

15.26 Our 2011 SP Survey found that:

- 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;⁷¹
- 87% said the message or brand associated with having an 080 number was important or very important⁷²; 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.⁷³

15.27 Further, 47% of SPs said that mobile call charges were a disadvantage in terms of the number of calls received.⁷⁴ That 47% breaks down as follows:

- 36% of them (which equates to 17% of all SPs) gave a ppm figure for how much they would be willing to increase the cost of operating an 080 number in return for free mobile calls; and
- 29% of them (which equates to 14% of all SPs) did not know how much more they would be willing to pay in return for free mobile calls to their 080 number.⁷⁵

15.28 A free to caller range therefore meets the demand of those organisations which do not wish to charge callers for calling them, for example sales enquiry lines. The 2010

⁷⁰ In the 080 Dispute Determination, T-Mobile, Three and O2 all acknowledged that the transaction costs involved in these negotiations were likely to be high (see paragraphs A4.60 to A4.65), http://stakeholders.ofcom.org.uk/binaries/consultations/draft_deter_bt_tmobile_vodafone/nonconf.pdf

⁷¹ 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”.

⁷² 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”.

⁷³ 2011 SP Survey, Q13 “If you could change only one of the following aspects of 080 numbers, which one would it be?”

⁷⁴ 2011 SPs survey, Q14: “How do you feel about the impact of ... mobile [call] charges on the total number of calls that you receive?”

⁷⁵ 2011 SPs survey, Q16: “By how much would you be willing to increase the pence-per-minute amount that you pay to receive calls on your freephone number(s) in return for the charge to mobile callers being reduced to zero?” This question was only asked to the 47% of SPs that said they were disadvantaged by mobile call charges. Note that 35% of respondents (which equates to 17% of all SPs) were unwilling to pay more.

SPs Survey also indicated that the primary usage of 080 numbers was for sales enquiries.⁷⁶

- 15.29 There can also be specific legislative requirements for providing a free to call number, for example, as highlighted in the comments from Ofgem and National Grid above (see paragraph 15.10), the gas distribution networks have an obligation as part of their licences to provide a telephone service for reporting gas emergencies which is “without charge by the licensee to the user at the point of use”.⁷⁷ The current Freephone structure does not therefore provide a number range on which they can provide this.
- 15.30 We consider that there is therefore a clear demand for a free to caller range. However, the effect of the vertical externality means that even if SPs want to provide free access to their services, OCPs have limited incentives to take SPs’ preferences into account.

The horizontal externality

- 15.31 On the 080 number range, the horizontal externality causes a number of specific problems for consumers. Firstly, as set out in Annex 8, consumers’ expectations of the price of calls to non-geographic number ranges are correlated. In particular, consumers’ expectations of the price of calls to 080 numbers from a fixed line are likely to be influenced by the price of calls to certain other number ranges (e.g. 0845, 0870, as well as mobile calls to 080 numbers), even though these calls are always free. This has the effect of confusing what should be a clear pricing message and consequently leads to fewer calls being made. Secondly, OCPs setting the price of calls to other number ranges (e.g. 0845, 0870) do not consider the impact of their actions on consumers’ expectations of the price of calls to 080 numbers. Thus, because consumers’ price expectations between number ranges are linked, high prices of calls to 0845 and 0870 numbers can increase consumers’ expectations of 080 prices, even when these prices may be relatively low. Again, this contributes to price-overestimation and thus fewer 080 calls being made.

Consequences of those market failures

Reduction in demand for Freephone

- 15.32 As outlined above, we are concerned that the three market failures are leading to an overall reduction in demand for Freephone services i.e. lower total call volumes. We analyse this effect in detail in Annex 8.
- 15.33 There are several pieces of evidence specific to the 080 range that reinforce this position. For example, in response to the 2011 SPs survey, 47% of respondents considered that the charges from a mobile were a disadvantage, and 88% of those stated that this is because they could lose important calls or because people hang up rather than pay.⁷⁸ Annex 8 sets out evidence on the extent to which callers tend to overestimate 080 call prices and/or lack confidence that they know call prices. Both these factors are likely to lead to them making fewer 080 calls. In addition, as set out

⁷⁶ 2010 SPs Survey, p.14.

⁷⁷ Ofgem, December 2010 Consultation response.

⁷⁸ 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]

in Annex 8, evidence from a CAB survey indicates that a substantial number of their clients have been put off from calling 08 numbers because of the potential costs.⁷⁹

- 15.34 As well as the impact on total 080 call volumes, the market failures set out above are also likely to affect the proportion of 080 calls that are originated from mobiles rather than fixed lines. In 2009, only 5% of 080 call minutes were originated from mobiles compared to 49% for all call minutes.⁸⁰

Freephone prices not reflecting consumer preferences

- 15.35 This concern relates to the prices for mobile originated calls to Freephone numbers, because fixed line calls are free. We noted in the December 2010 Consultation that the prices for mobile calls to Freephone numbers were generally significantly above the costs of mobile origination, and this point was also emphasised in several responses by stakeholders (for example see the comment from Verizon in paragraph 15.9 above). As explained above, the 2010 Flow of Funds study shows that mobile 080 calls generated £75m (excluding VAT) of revenue from consumers in 2009 and mobile operators received revenue of around 14.1p per minute on average for 080 call origination.⁸¹
- 15.36 Some of the mobile OCPs argued that the prices do reflect consumer preferences; we have responded in detail to those arguments in Annex 8. In summary, we recognise that prices can vary to reflect consumer preferences. However, we consider that prices of 080 calls from mobiles are affected by the market failures we have identified, i.e. the lack of price awareness and the distorting effects of the vertical and horizontal externalities. If those market failures did not exist, and charges for these numbers remained high, there would be a clearer argument to suggest that those reflected consumer preferences.

Loss of access to socially important services

- 15.37 We consider that uncertainty about call prices for Freephone numbers, overestimation of the prices, and the relatively high prices from some mobile OCPs are all likely to deter some consumers from calling socially important services. For example, low-income households are more likely to rely on a mobile phone and it is more expensive to call Freephone numbers from a mobile phone compared to a fixed line.⁸² In addition, low income households are less likely to have access to alternatives such as contacting the SP via the internet.⁸³ It is therefore more difficult for these households to access socially important services on Freephone numbers. There is also evidence from the CAB which demonstrates how some consumers are deterred from accessing socially important services because of the higher charges from a mobile – this evidence is discussed in more detail in Annex 8.
- 15.38 We recognise and accept that not all services on the Freephone ranges can be defined as ‘socially important’. We estimate that around 20-30% of services on the 080 range are likely to fall within what we consider constitutes this type of service

⁷⁹ CAB Hung Up Survey, June 2009, <http://www.leedscab.org.uk/forms/hungupreport.pdf>

⁸⁰ 2010 Flow of Funds study, page 6. Ofcom, CMR, 2011, Figure 5.1 on page 245.

⁸¹ Excluding VAT, 2010 Flow of Funds study, p.44.

⁸² 15% of households are mobile-only, but 25% of households within the lower income socio economic group DE are mobile-only. CMR, August 2011, Figure 5.70, p. 304.

⁸³ Only 56% of members of this group have access to the internet at home (compared to 76% for consumers as a whole), CMR, August 2011, Figure 4.17 on page 209.

(see Section 5 for how we have defined ‘socially important services’).⁸⁴ Particular examples of this are the DWP helplines (such as Jobcentre Plus new claims and crisis loans), a number of charities and several utility companies.

- 15.39 We acknowledge that, as argued in some stakeholder responses (Vodafone, O2, EE), because of particular bilateral deals, or decisions by the mobile OCPs to zero-rate some calls, a number of these ‘socially important’ services on the 080 range are already free to caller. However, as we set out in more detail in Annex 20, the only examples of this are the DWP, charities which fall within the THA Special Freephone Tariff service, and a handful of other individual charities. There are therefore still other socially important services which incur charges. This includes examples in Annex 20 of providers of such services who were unable to reach an agreement with the mobile OCPs to zero-rate their calls, for example the National Grid’s 0800 national gas emergency number.
- 15.40 In any event, even where certain services are provided free to caller, there remains a concern that as a result of the lack of consumer price awareness, consumers are deterred from making calls to services on the Freephone ranges which are important for their social welfare. We accept that this may not be a large problem, but note that it could be disproportionately affecting a small sub-set of vulnerable consumers.

Diminished service availability and SP innovation

- 15.41 Because of the poor price awareness, and in particular the effects of the vertical externality, we consider that the incentives to offer new or innovative services on the Freephone ranges are weakened. We have set our position and response to stakeholder comments in relation to this point in more detail in Annex 8. Annex 11 also sets out some of the examples where innovation has been affected across the non-geographic ranges.
- 15.42 In terms of the specific effect on Freephone ranges, we contacted a number of resellers and SPs as part of our evidence gathering and there was a strong response that the prices charged for Freephone calls from a mobile were affecting service availability. There were a number of examples which illustrated the general concerns expressed:
- several resellers noted that that they were seeing less and less take-up of 080 numbers and they considered that this was primarily because of the mobile charges;⁸⁵
 - one reseller noted that advertisers were disincentivised from using Freephone services because such a high proportion of callers would call from a mobile phone and the SPs did not want to pay a levy for the caller to reach them if the caller was still paying for the call;⁸⁶ and
 - the same reseller noted that it no longer recommended the Freephone ranges to its SP customers, because of the charges from a mobile, and that one of its

⁸⁴ Based on data gathered from all OCPs in response to a section 135 request, where we asked for their 40 the most dialled 080 numbers.

⁸⁵ For example, Performance Telecom, email to Ofcom 26 October 2011, [3<], and NSL Telecom, email to Ofcom 8 November 2011.

⁸⁶ Performance Telecom, December 2010 Consultation response.

largest SP customers had recently stopped using 080 numbers for that very reason.⁸⁷

15.43 In addition, the evidence from our 2011 SPs survey reinforces our view that a significant proportion of SPs are unhappy with the current arrangements and believe they are having a negative effect on calls to their services. For example

- 47% of respondents considered that the charges from a mobile were a disadvantage in terms of their effect on the number of calls they received;⁸⁸
- 45% of respondents said the one aspect of the 080 range that they would most like to change was the charges from a mobile;⁸⁹ and
- 72% said that mobile callers not paying for calls to 080 would be important to their organisation.⁹⁰

15.44 It is also worth noting that the views expressed by SPs in part reflect a historical understanding of the Freephone 'brand'. As we have noted above, consumer confidence in Freephone is lower than it should be. It is likely that this, in turn, will influence SP decisions as to whether to use Freephone numbers. Being able to provide calls that were free to callers from a fixed line was seen as important by 89% of SPs in our survey.⁹¹ However, if a large proportion of consumers are not aware that these calls are free from a fixed line then the value for SPs in paying for a 080 number is significantly reduced.

15.45 In terms of SP innovation, we recognise that it is difficult to precisely identify innovative services that are being impeded by the current operation of the non-geographic calls sector. By their very nature, such services are difficult to foresee. However, we consider that there is clear evidence that the current market conditions do not create an environment that is conducive to the emergence of new, innovative services. Also, as discussed above, we have identified the fact that demand for 080 calls is suppressed.

15.46 There seems to be scope for new and innovative business opportunities for SPs that are able to guarantee free calls to their numbers. One such service that is already in operation is 0800MumDad, which allows mobile callers that no longer have credit on their mobile phone to reverse charges so that the called party pays. [3<]. This indicates that services that rely on free mobile calls face material additional barriers to entry. It is likely that this level of effort has deterred and will deter past and future attempts to launch new and innovative services.

Summary

15.47 Based on the above, we remain of the view that there is significant evidence of consumer detriment in relation to the Freephone ranges which warrants our

⁸⁷ Performance Telecom, email to Ofcom 26 October 2011.

⁸⁸ 2011 SPs Survey, Q14 "How do you feel about the impact of these mobile charges on the total number of calls that you receive".

⁸⁹ 2011 SPs Survey, Q13 "If you could change only one of the following aspects of 080 numbers, which one would it be?".

⁹⁰ 2011 SPs Survey, Q11 "How important is it to your organisation that 080 numbers have the following features ... callers from a mobile don't have to pay for the call".

⁹¹ Research among Service Providers, Q11. See Figure 4 in the SP survey report, p.6.

intervention. We consider that the three interrelated market failures we have identified have a specific impact on the Freephone ranges.

- 15.48 Consumer price awareness is poor, which is of particular concern given the simplicity of the pricing message for fixed line calls. Mobile charges for Freephone calls can be relatively high and may be affecting the way consumers perceive calls from fixed OCPs (the horizontal externality). Charges for other fixed calls (particularly to 0845 numbers) may also be affecting perceptions about fixed 080 calls prices (another example of the horizontal externality). There are also particular concerns about OCPs not fully taking into account SPs' preferences on this range, with mobile OCPs charging for 080 calls despite some SPs having a strong preference that these calls be free (and a willingness to pay to achieve that). The vertical externality also contributes to the lack of price awareness, by making it difficult for SPs to communicate call prices. Finally, vulnerable consumers are disproportionately affected by some of these issues, which may deter them from accessing socially important services.
- 15.49 We therefore need to consider our regulatory approach in protecting consumers from the detriment we have identified on the Freephone ranges. We have set out the options for achieving this in the next Section.

Section 16

Analysis of Options for Freephone

Introduction

- 16.1 This Section looks at the different options for the Freephone ranges in order to address the consumer detriment identified in the preceding Section. We also set out our preferred option.
- 16.2 This Section is structured as follows:
- we have first provided a high level summary of our analysis and provisional options for the Freephone ranges in the December 2010 Consultation;
 - we then provide a high level summary of stakeholder responses to that consultation, including comments that we should consider additional options;
 - we set out our response to stakeholder comments and propose our refined options for the Freephone ranges;
 - we then set out a detailed analysis of the benefits and costs of those options (again including responses to specific stakeholder comments on these options) using the assessment criteria set out in Part A.
- 16.3 This Section (alongside Sections 15 and 17) therefore represents an impact assessment of our proposals on the Freephone ranges for the purposes of the Act. We have not conducted a quantified analysis of the benefits of the proposals in the same way as for our proposals for the unbundled tariff (see Section 13) for the reasons outlined in paragraph 16.259. Nevertheless, we have provided a detailed, qualitative analysis of both the benefits and the costs and the likely impact on different stakeholder groups.

Ofcom's policy objective

- 16.4 As outlined in Section 15 above, we remain of the view that there is significant evidence of consumer detriment on the Freephone ranges which requires intervention in order to ensure consumers are protected.
- 16.5 We also identified our historical policy preference for calls on Freephone ranges to be free, or as close to free as possible, in Section 14 above. We have previously explained why we considered this policy was appropriate given our statutory duties (for example in the 080 Dispute Determination) and this position was supported by the CAT in its 08X Judgment. As part of the assessment below, we have considered whether this policy preference remains valid.

Analysis of options for Freephone in the December 2010 Consultation

- 16.6 In the December 2010 Consultation we considered three specific options. We noted that we considered that the unbundled tariff was not appropriate for the 080 range.⁹² The options were:
- set a maximum price to callers of zero that applies to all OCPs;
 - set a maximum price above zero, at least for some 080 calls, such as calls from mobiles (but the maximum price would be below the current level of prices); or
 - maintain the status quo where calls are largely free to callers from fixed OCPs, while they are charged for most numbers from mobile OCPs.
- 16.7 We then assessed the performance of those options against the deregulated scenario using our assessment criteria.⁹³ Since it formed the base case for our assessment, we briefly discussed what a deregulated scenario might look like for 080 calls (see paragraph A7.43 of the December 2010 Consultation).
- 16.8 Our preliminary view was that maintaining the *status quo* was unlikely to further the interest of citizens and consumers in relation to calls to 080 numbers. That option would do little to address our existing concerns.
- 16.9 We thus considered whether it was appropriate to set a maximum retail price of zero for 080 calls from fixed OCPs but a slightly higher maximum price for 080 calls from mobile OCPs. We acknowledged that this option had some attractive features. However, our preliminary view was that this option risked failing to create a clear identity and pricing message for 080 calls.
- 16.10 We set out our view that there were strong arguments for having at least one “free to caller” number range. Setting a maximum price of zero from all OCPs was likely to address the externalities that we had identified and was likely to further improve consumer price awareness. Our initial consideration in the December 2010 Consultation was that those benefits were likely to outweigh the other consequences of this approach, namely potential increases in the price of other telephony services and/or higher costs for SPs. We recognised, however, that the level of payments for originating calls to mobiles could affect the attractiveness of that option.
- 16.11 In terms of the 0500 range, we consulted on three different options:
- maintain the status quo;
 - the same policy approach as for 080 calls; or
 - closing down the number range.
- 16.12 We considered that the status quo would not meet our policy objectives but that the option of closing the 0500 number range could improve consumer price awareness by simplifying number ranges, however, we noted that it would require existing services to migrate to another number range and therefore the cost of migration

⁹² See paragraph A7.41 of the December 2010 Consultation.

⁹³ Set out in Annex 1 of the December 2010 Consultation. The assessment criteria we have used in this consultation (which are largely the same) are set out in Section 5.

would need to be weighed against the limited evidence of consumer detriment associated with 0500 calls.

16.13 We therefore provisionally concluded that the remedies proposed for the 080 range would deliver a better outcome to consumers than the status quo, and was a more attractive option than closing down the range because of the likely migration costs. We proposed to treat 0500 in the same way as 080 and noted that would also enable us to maintain consistency in relation for the two Freephone ranges. We also noted that our preferred approach for the 116 range was to apply the same policy as for 080.

16.14 We asked the following question about our analysis:

Q6.6: Do you agree with our assessment of the impact of different options relating to calls to Freephone numbers summarised in this Section and set out in full in Annex 7? In particular, do you agree with our preference for 080 to be “free to caller”?

Stakeholder responses to the December 2010 Consultation

16.15 The vast majority of respondents supported our preferred option of making Freephone genuinely free to caller. Consumer groups, individual respondents and fixed CPs demonstrated particularly strong support for this option. Respondents noted that this would be a clear and simple message that consumers would be able to understand – free means free – and this would greatly assist consumer confidence and positively contribute to Ofcom’s overall review of non-geographic numbers.

16.16 However, a number of concerns were raised, particularly by the mobile OCPs and Virgin Media, over the proposal for imposing a maximum price of zero on the 080 range. In summary those challenges were that:

- this would be a significant regulatory intervention and we had not yet demonstrated that it was proportionate;⁹⁴
- it could have a negative effect on the availability of services of social value which might not be able to pay an increased mobile origination charge⁹⁵;
- we had not provided sufficient evidence to demonstrate that SPs were willing to pay an increased mobile origination charge; and
- it could lead to a rebalancing of mobile prices which consumers did not support, and which might have a negative overall impact on low-income mobile only households.

16.17 For example, EE argued that there was no strong evidence of consumer benefits being likely to flow from mandating free 080 calls, and to the extent that there were benefits, they were highly unlikely to outweigh the detriment for OCPs and SPs.⁹⁶ Similarly Virgin Media considered that the negative consequences of the proposal were, in its view, of sufficient magnitude to render it inappropriate to mandate an

⁹⁴ In particular O2, EE and Virgin Media. O2 December 2010 consultation response, p.41, §165. EE, December 2010 Consultation response, p.61, §19. Virgin Media, December 2010 Consultation response, pp.23-24.

⁹⁵ O2, Vodafone, THA, EE.

⁹⁶ EE, December 2010 Consultation Response, paragraph 20 (e) on pages 61 to 62.

absolute prohibition on charging for calls to 080 numbers in the absence of safeguards.

16.18 Following these responses, and as set out in Section 2, we have undertaken a wide range of additional work, including research into SP preferences and the likely impacts on different stakeholder groups. We have set out our response to these challenges from stakeholders, and the relevant additional evidence we have gathered, in our detailed assessment below of the ‘free to caller’ option.

Alternative options suggested by stakeholders for the Freephone ranges

16.19 Before setting out our specific options for the Freephone ranges (080 and 0500), a number of stakeholders in their response to the December 2010 Consultation suggested some alternative options which we had not presented as part of the consultation. We have set out these comments, and our response, to each of the following options below:

- an enhanced transparency / price awareness campaign;
- splitting the existing 080 range to create both Freephone numbers and Free to caller numbers within the range;
- encourage / extend direct arrangements between OCPs and SPs for zero rated 080 calls (‘the DWP approach’);
- applying the unbundled tariff;
- creating a separate range where the unbundled tariff applies but OCPs only charge the Access Charge element, and consumers do not pay a Service Charge (an ‘access charge only range’);
- market review in relation to wholesale markets.

Enhanced transparency / price awareness campaign

Stakeholder comments

16.20 EE noted that if Ofcom’s main objective was to increase price awareness for the Freephone ranges then it should simply run an awareness campaign regarding the current charging regime. It noted that Ofcom had not tested whether much simpler transparency measures, such as fixed OCP price awareness campaigns advertising that their 080 calls are free, would be able to restore customer awareness of the prices charged for 080 calls by those fixed OCPs. It argued that it was a significant deficiency in Ofcom’s analysis that enhanced transparency measures were not considered as one of Ofcom’s options for the 080 range.⁹⁷

Ofcom response

16.21 In Section 6 and Annex 4 of the December 2010 Consultation, we did consider the option of price information remedies more generally as an approach to address the

⁹⁷ EE December 2010 Consultation response, Q6.6, paragraphs 20(e) and 22 on pages 62-63.

consumer harm we had identified in relation to NGCs.⁹⁸ We noted that, up to that point, many of Ofcom's previous initiatives had focussed particularly on price transparency but that there was clear evidence that that approach had not been sufficiently effective. We have set out our updated conclusions on the option of information remedies more generally in Section 9. We note there that we remain of the view that these remedies would not address the extent of the concerns we have identified.

16.22 We have significant doubts about the ability of an advertising campaign to address the underlying market failures that we have identified:

- a general advertising campaign would have little or no effect on the vertical externality, since there is unlikely to be a significant change in the incentives facing an individual OCP when setting prices;
- we acknowledge that an advertising campaign might mitigate the horizontal externality by reducing the confusion between fixed and mobile prices, as well as confusion between 080 and other 08 ranges;
- however, the varied pattern of prices from mobile calls would remain along with their associated transparency concerns. Ultimately in this respect there would be little benefit in a campaign to communicate prices because the message would still be complicated. The most that could be said would be "the call will be free unless you receive a PCA and in order to find out how much you will be charged you need to look up the price". We thus have serious doubts about the ability of an advertising campaign to improve price awareness, given the current environment at the retail level.

16.23 Since we consider that an advertising campaign is likely to have limited effect in tackling the underlying market failures, it is also likely to have a limited effect on the negative consequences that flow from those market failures.

Splitting the existing 080 range to preserve the current charging model

Stakeholder comments

16.24 Three suggested that the 080 number ranges could be split into: (i) those services that are free to caller from both fixed and mobile and (ii) those that are free to caller from fixed but not from mobile. It noted this approach would allow those SPs that are unable to afford mobile origination payments to migrate away from 'free from mobile' to 'chargeable from mobile' number ranges. It considered that while some 080 numbers should be free to caller, those which did not belong to the THA charity scheme list (or an equivalent list of essential services) should attract a payment from SPs to OCPs.⁹⁹

Ofcom response

16.25 We understand Three's proposal to involve some sub-ranges within 080 being free to caller and others maintaining the status quo. For example, calls to numbers prefixed 0800 XYZ would not be charged from mobiles while calls to numbers prefixed 0800 ABC would be.

⁹⁸ December 2010 Consultation, pp.77-78 and pp.256-261.

⁹⁹ Three December 2010 Consultation Response, p.26.

- 16.26 We acknowledge Three's underlying concern that a 'free to caller' model will not meet the needs of all SPs (because some will either be unwilling, or unable, to pay any increased origination charge), and this is a point which we have discussed in some detail when assessing the free to caller option below. We recognise that offering both free to caller and Freephone options could offer an alternative for those SPs who are not able or willing to pay an increased origination charge for mobile calls. Additionally, such an approach would allow those SPs on the free to caller sub-ranges to advertise an accurate call price (free). It is thus likely to lead to some improvement in price awareness relative to the status quo.
- 16.27 However, we have a number of concerns with Three's approach. Firstly, we do not consider that it would fully address the concerns about price awareness that we have identified. For those numbers that mobile calls are charged for, the current problems would persist. Whether or not a particular number is free to caller would depend on the fourth or later dialled digit. This means that it is very unlikely that callers would be able to recall whether or not a particular number was free to caller based on the prefix.¹⁰⁰ This would also mean that the horizontal externality problem between other 08 numbers, between fixed and mobile 080 calls and between different mobile OCPs prices would remain. It would also involve migration by SPs that were on a sub-range that did not accord with their preferences.
- 16.28 However, we do consider the issue of operating both a free to caller range, with a distinct number allocation, alongside a Freephone range, is one that is worth further consideration in relation to the future of the 0500 range. We propose to consult separately on the specific options for the 0500 range, including re-opening it for allocations as a Freephone range alongside a free to caller 080 range, and discuss this in more detail at paragraph 16.273 below.

Extending the DWP approach

Stakeholder comments

- 16.29 Virgin Media argued that significant benefits could be achieved, and many of the issues addressed, by expanding the approach taken by the DWP, whereby SPs that have a particular need/desire for their service to be 'free to caller' enter into a commercial arrangement with mobile OCPs under which a level and structure of payments is agreed, in return for the mobile OCPs not levying a charge at the retail level. It argued that such an approach could be adapted and extended under the direction of Ofcom to incorporate services of social importance and value.

Ofcom response

- 16.30 We did consider, as part of the December 2010 Consultation, whether the horizontal and vertical externalities identified would be addressed by direct negotiation between SPs and OCPs. We summarise our position in paragraph 16.62 below. As with Three's proposed approach above, this proposal would not fully address the concerns we have identified about price awareness. We recognise that, provided all mobile OCPs participated in such a scheme, it would allow SPs to advertise that their service is free to all callers. However, it would remain the case that callers would be unable to infer from the number prefix (080 or 0500) whether or not a particular call would be free.

¹⁰⁰ This is consistent with the difficulties that callers experience in distinguishing between 084 and 087 numbers based on the fourth dialled digit. See Part B, Section 11 in particular.

- 16.31 It is also unclear how such a scheme would work in practice. Ofcom would need to oversee a list of preapproved services which would not be charged from a mobile and determining a set of criteria for these services is likely to be very difficult, and subject to some dispute, in particular in getting all mobile OCPs to agree. In addition, there would be likely to be challenges in working out how to determine an appropriate level of payments from the SP to mobile OCPs. We discuss in Annex 20 that one of the barriers to these bilateral deals currently is the ability of OCPs to demand high origination payments.¹⁰¹
- 16.32 A further point, as is discussed further on in Section 17 is that there would also likely to be technical issues in OCPs identifying which services should be charged and which should not. For example THA numbers sit on a specific sub-range within 080 (0808 80) which OCPs can identify and separate out. The services which are likely to sit on any preapproved list are unlikely to all sit within a specific sub-range – rather they are likely to be intermingled with numbers that mobile OCPs charge for calling. Therefore OCPs would need to have an up to date list of these in order to separate them out individually from calling records, which is likely to complicate billing by the mobile OCP.
- 16.33 Therefore, considering the problems of establishing an agreed criteria list for these services, and the technical implementation problems, our view is that this option is less attractive and practical than the options we consider below and we have not considered it further. As highlighted above, we have, however, given consideration to whether the 0500 range could offer an alternative for those SPs that cannot afford an increased mobile origination payment and having a separate number range for these services would not lead to the same practical issues highlighted above.

The unbundled tariff

Stakeholder comments

- 16.34 EE argued that the fact that there was an origination charge rather than a termination charge for Freephone did not negate the utility of using an unbundled tariff for these calls. It noted that Ofcom would need to give consideration to the level of the origination charge (equivalent to the service charge under the unbundling regime) under a free to caller model anyway so it believed it was worth giving further consideration to the implementation of unbundling on the 080 range. It noted that unbundling could make the wholesale charging position very simple, either the OCP agreed with the 080 SP that the SP would cover the cost of the AC or the OCP charged the AC to the calling customer upon giving a PCA as currently.¹⁰²
- 16.35 EE argued that with greater recognition of the level of the AC, implementation of unbundling could also be likely to enhance callers' awareness of the amount that they would be charged when they made chargeable 080 calls, compared with the position today. Accordingly the current PCAs could be likely to have an even greater impact on consumer price awareness than they do at the moment. EE therefore considered that unbundling had the greatest potential to result in some benefit on the 080 range and there was no reason why the appropriate AC could not be extended to cover 080 numbers as well. Then if an SP wanted calls to its 080 number to be free

¹⁰¹ [3<]

¹⁰² EE, December 2010 Consultation response, p.70.

to caller, it would be a very simple matter for it to agree with OCPs to cover their AC for these calls. It noted that Ireland seemed to have a similar system.¹⁰³

Ofcom response

- 16.36 In the December 2010 Consultation, we only considered the unbundled tariff approach very briefly for the Freephone range.¹⁰⁴ This was primarily on the basis that wholesale payments flow in an opposite direction compared to other non-geographic ranges so the SC was likely to be negative.
- 16.37 We have given further consideration to the unbundled tariff approach in the light of EE's comments, but still consider that it would not be an appropriate solution for the 080 range. We separately consider the use of a stand alone "access charge only range" below.
- 16.38 EE's suggestion implies that the AC set for other non-geographic number ranges could apply to the 080 range, and that the SC would be the origination payment made by the SP. The suggestion that the SC could either be equal to the cost of the AC (thus making the call free to the caller), or set at some other, lesser level (making the call chargeable) raises a number of difficulties:
- 16.38.1 The AC will vary between OCPs.¹⁰⁵ Therefore if a SP wanted to ensure all calls to its number were free it would have to agree different origination payments for each OCP (and where an OCP's AC varied between different tariff packages, different origination payments to that OCP). This would be very complex at the wholesale level.¹⁰⁶
- 16.38.2 Different SPs are likely to reach different decisions about whether or not to cover the AC. Therefore, within a particular block of 10,000 numbers, there would potentially be a mixture of free calls and those that are charged for. Thus, similar to the proposal of extending the DWP approach discussed above, OCPs would need to have an up to date list of those SPs that were funding the AC in order to separate them out individually from calling records. This is a further source of complexity under EE's proposal.
- 16.38.3 Calls from fixed lines would not necessarily remain free.¹⁰⁷ Assuming there was not a separate AC for the 080 number range, calls from fixed lines would now be subject to the AC applied across NGCs and whether a call was free would depend on whether the SP decided to cover the AC. SPs may be unwilling to do this as given that the AC for a fixed provider could be in the order of 1.7ppm (excluding VAT)¹⁰⁸, this would imply a significant increase over the current level of origination charges (0.5ppm).

¹⁰³ EE, December 2010 Consultation response, Q6.6, paragraphs 44-47 on pages 69-70.

¹⁰⁴ December 2010 Consultation, paragraph A7.41, p.347.

¹⁰⁵ See our discussion of the Access Charge under unbundled tariff approach in Section 10

¹⁰⁶ Several stakeholders have highlighted the difficulties around having a range of different origination payments which we address in Section 17 below.

¹⁰⁷ Being able to offer free fixed calls was seen as the most important characteristic of 080 numbers in our 2011 SP survey - 89% of respondents said being able to offer free calls to fixed callers was important or very important (Q11).

¹⁰⁸ The data underlying the 2010 Flow of Funds study indicates that fixed OCPs' average retention across all 08, 09 and 118 calls in 2009 was 1.7ppm (excluding VAT).

Separate ‘access charge only’ range

Stakeholder comments

16.39 BT suggested that Ofcom could address the concern that some providers would bar access to Freephone services if they were made free to caller by introducing an ‘access charge only’ arrangement, for example behind 081, where the originator could levy an access charge but where there would be no service charge made by the terminator.

Ofcom response

16.40 We have considered the issue of providers barring access to Freephone services in more detail in our assessment of the free to caller option below. In our proposals for the unbundled tariff, we have recognised that there may be some SPs that do not want to charge an SC and are proposing to structure the regime to allow that approach (see Section 10 and in particular the discussion of price points for the SC). Therefore the option of setting a SC of zero will be available to SPs on other ranges if they decide to migrate away from the Freephone ranges as a result of our proposals. Therefore, we do not consider it would be appropriate to create a new number range (081) to offer an “access charge only” provision.

16.41 We acknowledge that having a specific ‘access charge only’ range may be more transparent than, for example a 0845 range where consumers are charged an AC for some calls, and are charged an AC plus an SC for other calls. However, as we have highlighted in Section 3, we consider that there are risks around creating new number ranges, and in this case we consider they outweigh any benefit that this option may provide. We have specific concerns about increasing the complexity in the numbering regime by the introduction of new ranges especially where those ranges are similar, but not quite the same, as existing ranges and in this case we consider that a new “081” range could potentially dilute the free to caller message on the 080 range.

Wholesale intervention alone

Stakeholder comments

16.42 EE suggested that retail competition would naturally force a change in OCPs’ retail charges if wholesale origination charges were set at an appropriate level (i.e. so as to make mobile call origination to 080 numbers on a free to caller basis profitable). EE noted it was instructive in that regard that fixed OCPs currently generally did recover their wholesale costs of origination for calls to 080 numbers under current commercial interconnection arrangements and at the same time had generally chosen not to charge for these calls at the retail level.

16.43 EE noted that Ofcom’s preferred approach would in any event require a consideration as to the appropriate level of 080 call charges. It therefore argued that the correct, proportionate and legally justifiable regulatory approach for Ofcom to take would be to address the issue at the wholesale level, following completion of a wholesale market review and only then to consider, after the elapse of an appropriate period of time, whether any further intervention at the retail level was actually necessary.¹⁰⁹

¹⁰⁹ EE December 2010 Consultation response, p.67.

Ofcom response

16.44 We have responded to stakeholder comments about the option for wholesale intervention alone in this market in Annex 17. The arguments we have set out there apply equally to EE's suggestion above. In particular, we consider that even if origination charges were set at an appropriate level there is no evidence to indicate that that would address the concerns we have identified at the retail level, in particular the issues with consumer price awareness. OCPs would still be free to charge whatever retail price they could commercially sustain and SPs would continue to have little control over the retail price of calls to their service. The lack of a common pattern of mobile call prices would also continue to prevent SPs communicating accurate prices to callers. We therefore do not consider that addressing the wholesale charges alone would be sufficient to address the concerns we have identified.

Primary options for the Freephone ranges

16.45 In light of the consultation responses received and having considered the alternative options suggested by stakeholders, we consider that the three broad options identified in the December 2010 Consultation remain appropriate, namely:

- set a maximum price to callers of zero that applies to all OCPs ("Free to caller");
- set a maximum price above zero, at least for some 080 calls, such as calls from mobiles (a "Maximum Mobile Price range"); or
- maintain the status quo where calls are largely free to callers from fixed OCPs, while they are charged for most numbers from mobile OCPs.¹¹⁰

16.46 Additionally, given that there are currently two Freephone ranges and the 116 range, we need to consider whether different approaches should be taken on different ranges, for example, Free to caller on one current Freephone range (080) and a Maximum Mobile Price on the other (0500).

16.47 In Part A, Annex 8 we also considered the option of deregulation, but, for the reasons set out in that Annex, we conclude that deregulation would not address the concerns we have identified and may make the situation worse.

16.48 In terms of the status quo option, in this case, that would mean retaining the existing designations in the Numbering Plan and the Annex to GC17 as "No charge to the customer (except where charges shall be notified to callers at the start of the call)". Under this option we would expect calls to Freephone ranges to remain largely free from fixed OCPs, but charged for most numbers from the majority of mobile OCPs. Given the areas of consumer harm we have identified in Section 15 above (and in more detail in Annex 8), in particular the issues with consumer price awareness and other market failures, we consider that the other two options identified above have the potential to deliver incremental benefits over and above the current arrangements. We therefore consider that the maintaining the status quo is not an appropriate option for the Freephone ranges.

¹¹⁰ We have previously stated that "When identifying the possible options, we will generally start by considering the option of not changing the regulatory framework..." Better Policy Making, 21 July 2005, paragraph 5.13. Available at: http://stakeholders.ofcom.org.uk/binaries/consultations/better-policy-making/Better_Policy_Making.pdf

16.49 The status quo, will, however, form the base case for our assessment of the options below, i.e. it will act as the counterfactual against which the costs and benefits of the two options we have proposed are assessed.

16.50 Therefore, the central options remaining, and which the discussion in this Section focuses on, are:

- **Option 1:** Free to caller; or
- **Option 2:** setting a maximum retail price for mobile calls that is above zero (a “Maximum Mobile Price range”).

Design of the options

16.51 In order to assess the implications of both the options set out above it is necessary to specify in further detail precisely what they entail. For example, the benefits of making a number range free to caller depend on the level of origination payments (from TCPs to OCPs). Similarly the benefits of a Maximum Mobile Price depends on the level at which the maximum price of mobile calls to Freephone numbers is set.

16.52 Additionally, each option could be applied across all of the ranges under consideration in this Part of the consultation, or it may be that a different approach on individual ranges would be preferable.¹¹¹ In deciding our approach we consider that it is appropriate to consider the 116 range separately from the Freephone ranges, as it has particular designation for numbers for services of social value.

16.53 In Annexes 21 to 25 we consider in detail how the options for intervention on these number ranges should be specified. In particular, what assumptions should we make about the level of origination payments and the level of maximum prices, taking account of the available evidence. Further, if we were to designate one range as free to caller and another as a Maximum Mobile Price range then which form of regulation would be applied to the different number ranges.

16.54 In Annex 21 we discuss the different options for the type of regulation, Free to caller (Option 1) or Maximum Mobile Price (Option 2) being applied between the two Freephone ranges and how they would interact together. In that Annex we identify three possible options:

- both ranges designated as free to caller (i.e. Option 1 for both 080 and 0500);
- both ranges designated as Maximum Mobile Price ranges (i.e. Option 2 for both 080 and 0500); or
- designating 080 as free to caller and 0500 as a Maximum Mobile Price range (i.e. Option 1 for 080 and Option 2 for 0500).

16.55 In the rest of this Section we consider which of the Options 1 and 2 (Free to caller or a Maximum Mobile Price) better addresses the identified consumer harm. We have approached our analysis by looking at the ranges individually. We consider that it is

¹¹¹ Treating 080 differently to 0500 was an approach suggested by EE in its December 2010 Consultation response (see paragraph 16.266 below). We have set out a detailed analysis in Annex 25 of why, if we were to adopt this approach of treating the ranges differently, we would prefer to make 0500 the MMP range rather than the free to caller range (which is the opposite way round to EE’s comment).

appropriate to assess what the best option for the 080 range is first, then assess the appropriate approach for 0500.

- 16.56 Whilst we could have considered each option sequentially, we believe that reviewing the 080 range as a preliminary step is more appropriate, as it reflects the methodology of the December 2010 Consultation and reflects the fact that 080 is the larger range and the range on which we have gathered most data. We have also taken account of references to Freephone services within the European Regulatory Framework (acknowledging although not mandating their existence or defining their scope) and that the majority of Member States have implemented some form of free range on the 800 / 1-800 / 0800 number ranges (see Table 16.5 below). We therefore consider that irrespective of its final designation, the 080 range should continue in some form.

Approach to assessment of the options for 080

- 16.57 In assessing the options for 080, we have considered them against each of the criteria set out in Part A of this document, specifically:

- consumer price awareness;
- efficient prices;
- service quality, variety and innovation;
- access to socially important services; and
- regulatory burden.

- 16.58 Our assessment also takes into account specific stakeholder comments received in response to the December 2010 Consultation. Finally, we have considered the impacts on different stakeholder groups.

Approach to assessment of Option 1: make 080 free to caller

- 16.59 Before we set out the specific design and assumptions associated with this option, we have provided a summary of our analysis of the ‘free to caller’ option in the December 2010 Consultation.

Assessment in the December 2010 Consultation

- 16.60 We assessed this option in some detail in the December 2010 Consultation (paragraphs A7.60 to A7.94). In particular we considered the appropriateness of a ‘free to caller’ number range, evaluated the option against our assessment criteria and considered how the various parties could be affected. We have summarised that analysis below.
- 16.61 We considered that there were strong arguments for having at least one “free to caller” number range, noting that it would meet the demand of those organisations that did not want to charge callers for calling them and that a significant number of SPs appeared willing to pay an appropriate amount in order to support free calls. However, we considered that a non-geographic number range which was “free to caller” from all OCPs was unlikely to arise absent regulatory intervention. We noted this was a consequence of the (inter-related) market failures that we had identified (the horizontal and vertical externalities, exacerbated by poor price awareness).

16.62 We considered whether those externalities were addressed by the potential for SPs to directly negotiate with OCPs to secure free calls to their service, perhaps in return for an additional payment to the OCP.¹¹² We considered, however, that because of the transaction costs involved in reaching such agreements and the fact that OCPs might be in a position to demand an above-cost and high origination payment from SPs¹¹³, the potential for such agreements did not change our view that a non-geographic number range which was “free to caller” from all OCPs was unlikely to arise absent regulatory intervention.

16.63 We then evaluated the option of creating a free to caller range by setting a maximum retail price of zero against our assessment criteria, summarised below:

- Consumer price awareness: We considered that this option would simplify the pricing of 080 calls, leading to greater pricing awareness and confidence among consumers. SPs would also be able to provide and market their services as true “free-to-caller” in their advertising, brochures etc.
- Efficient prices: We noted that setting a retail price of zero addressed the horizontal and vertical externalities whereas absent regulatory intervention not all OCPs were likely to offer 080 calls free of charge. We noted that mobile OCPs’ current pricing could be significantly reducing demand for mobile 080 calls and that setting a maximum retail price of zero for 080 calls might increase the price of other telephony services (the tariff package effect).
- Access to socially important services: We considered that mobile-only vulnerable households that wished to access socially important services could benefit from this option as all calls to 080 become “free-to-caller”. We believed that the potential increase in other telephony charges, as a result of the tariff package effect, would not be material for these consumers. However, we also noted that these households could be negatively affected if higher origination payments to OCPs lead to some SPs migrating to other (charged for) number ranges or ceasing provision altogether.
- Impact on regulatory burden: We considered that mandating “free-to-caller” pricing for all 080 numbers was unlikely to impose any significant additional direct regulatory costs on OCPs in terms of compliance.

16.64 We noted that all three main stakeholders – OCPs, SPs and callers – might be affected by setting a maximum price of zero for 080 calls:¹¹⁴

- **Consumers:**
 - **Callers**, we noted would benefit from free mobile calls to 080 numbers, which could result in an increase in calls to 080 from mobile OCPs. We also highlighted that OCPs were likely to at least partially recover the lost retail profits on 080 calls from other charges (via the tariff package effect). We

¹¹² For example, in January 2010 the Department of Work and Pensions (DWP) reached agreement with O2, Orange, Tesco Mobile, T-Mobile, Virgin Mobile and Vodafone to end charges to their customers for mobile calls to around seventy of its 080 numbers:

<http://webarchive.nationalarchives.gov.uk/http://www.dwp.gov.uk/newsroom/press-releases/2010/january-2010/dwp007-150110.shtml>

¹¹³ The exception might be SPs such as charities, where OCPs may choose to accept a lower (or no) origination payment. For example, some OCPs attributed their zero rating of 080 calls to THA helplines to a desire for corporate social responsibility. 080 Dispute Determination, paragraph A4.81.

¹¹⁴ See pages 359 to 360 of the December 2010 Consultation.

highlighted that depending on the level of origination payments, some SPs, might exit or choose not to be accessible from mobile OCPs, which could harm both fixed and mobile consumers. Other SPs might migrate to other number ranges which would not be free at the point of call.

- **SPs** which continued to remain in the range we noted were likely to receive more calls from consumers. However, we noted SPs might pay more for each mobile originated call and there was the possibility that at least some SPs would seek to migrate away from 080. We considered it was possible that some migration was not necessarily an adverse outcome.
- **OCPs:**
 - **Mobile OCPs**, we noted would be forced to reduce their retail charges to zero and would lose the retail revenues associated with 080 calls (some £75m in 2009).¹¹⁵ We noted they were likely to be able to recover some of this foregone revenue through higher origination payments from SPs, higher charges for other retail services or both. As we had argued that the tariff package effect was likely to be incomplete, mobile OCPs might face a profit and revenue reduction overall. However, insofar as the reputation of the 080 number range as a whole improved, this is likely to benefit mobile OCPs (through increased call volumes, if the origination payment at least exceeds their incremental origination cost).
 - **Fixed OCPs**, we noted might be worse off because some of their traffic might be diverted to being originated by mobile OCPs. However we also noted they may benefit insofar as the reputation of the 080 number range as a whole improved and the total volume of 080 calls grew.

Assumptions and description of Option 1

- 16.65 Under this option, 080 would be designated in the Numbering Plan as “free to caller” from all networks by setting a maximum price of zero. All OCPs would therefore be prohibited from charging for these calls.
- 16.66 As explained above, OCPs generally receive an origination payment from TCPs (and ultimately from SPs) on 080 calls, and this is reflected in the charges the SP pays to the TCP for hosting its service (as well as various other hosting costs).¹¹⁶ This raises the question, however, about what the origination payment for these calls would be if OCPs, in particular mobile OCPs, are not able to charge at the retail level. In order to complete a full assessment of this option we therefore need to consider what the origination charge is likely to be under this option. We have summarised our approach to this issue below but our full analysis is set out in Annexes 21 to 25.

Current position on origination payments

- 16.67 Currently, apart from calls originated by BT, we do not directly regulate the origination payment for 080 calls (this payment can also be thought of as a negative termination rate). As outlined in Annex 21, the level of that origination payment,

¹¹⁵ Data underlying 2010 Flow of Funds study.

¹¹⁶ As explained above, under the termination rates schedules introduced by BT and other TCPs, mobile OCPs that charge 080 callers do not receive an origination payment and may even be charged for the termination of 080 calls.

which is paid by the TCP to the OCP is typically around 0.5ppm for calls made from a fixed line.

- 16.68 Historically, some TCPs have paid the same origination payment for both fixed and mobile originated calls (0.5ppm). In some cases mobile OCPs have not required any origination payment (for example calls to members of THA).
- 16.69 More recently, BT and other TCPs have introduced “ladder pricing” to link termination rates for 080 calls to the retail price charged by the OCP (see paragraph 3.86 in Section 3 for more detail). As a result, the level of termination payments varies depending on the average retail prices charged by OCPs. For example, termination charges set by BT are 1.13ppm for retail prices above 8.5ppm and below 10.5ppm, and 11.06ppm for prices between 20.5 and 22.5ppm.

Analysis of origination payments in the December 2010 Consultation

- 16.70 We presented our initial assessment of ranges for the origination payment under a free to caller approach in the December 2010 Consultation.
- 16.71 We noted that, in assessing what an appropriate origination payment for a free to caller range might be, there was a trade-off between:
- lower origination payments to mobile OCPs, which might impose costs on consumers in terms of higher prices for other telephony services (the tariff package effect,¹¹⁷ and
 - higher origination payments, which impose greater costs on SPs and so might lead to reduced quality, variety and innovation in the services available on 080 numbers, to the detriment of consumers.
- 16.72 We carried out a number of calculations in order to give an indication of the potential order of magnitude of these effects. Our analysis using the data underlying the 2010 Flow of Funds study was set out in Table A7.2 of the December 2010 Consultation.¹¹⁸
- 16.73 We noted that a cost-based origination payment for mobile OCPs was likely to be higher than for fixed networks, because of the larger traffic-sensitive costs of mobile networks. We discussed three leading candidates for setting the 080 origination payment for mobile OCPs:
- i) the same as fixed (0.5ppm);
 - ii) incremental cost (which we estimated at 0.7ppm); and
 - iii) 2ppm (which included a contribution towards mobile OCPs network common costs).
- 16.74 We noted that the choice between those options involved trading off higher costs for SPs (which ultimately affects consumers through service quality, variety and innovation) against higher prices for other telephony services (via the tariff package effect). In addition, we highlighted that the lower the origination payment, the more

¹¹⁷ In addition, we noted there was a risk that OCPs might have an incentive to dissuade their customers from making 080 calls, for example by refusing to originate calls to these numbers.

¹¹⁸ The December 2010 Consultation, p.355.

likely it was that mobile OCPs have an incentive to dissuade their customers from making 080 calls.

- 16.75 We considered that in order to determine the appropriate level of origination payments, we would need consider the magnitude of the difference between the three “leading candidates” set out above and weigh up the impact on callers and SPs. We noted that we had not yet formed a clear preference between those options and we invited comments from respondents.
- 16.76 A number of stakeholders commented on this assessment in the December 2010 Consultation. We have detailed these comments and our response to them in Annex 23.

Proposed approach to the mobile origination charge

- 16.77 We still consider that, in the presence of a retail zero maximum price, a higher origination payment will be required for mobile OCPs than for fixed OCPs. We have set out our approach to the regulation of the origination charge in more detail when we discuss implementation in the next Section (as well as responding to stakeholder comments on this issue).
- 16.78 For the purposes of our impact assessment, as set out in the analysis in Annex 23, we have made what we consider to be a reasonable set of assumptions to derive a range of origination payments in order that we can test the impact of our proposed option on all parties in the value chain; we have referred to this as our ‘Impact Assessment Range’.
- 16.79 The Impact Assessment Range that we are proposing to use for mobile origination payments is **2.5ppm to 3ppm**. Although this is higher than the “leading candidates” discussed in our December 2010 Consultation, we describe in detail in Annexes 21 to 23 how we have reached this figure. In particular, we have taken into account stakeholder responses to the December 2010 Consultation, our assessment of the efficient costs of originating calls, the willingness to pay of SPs, the benefits to consumers (taking into account indirect and direct tariff package effects) and the impact on competition.
- 16.80 We have assumed fixed origination payments will remain at 0.5ppm (the current level).
- 16.81 In the remaining discussion of the free to caller option, we assume that the origination charge is within the Impact Assessment Range.

Impact on demand

- 16.82 Another key factor in our assessment below is how the changes we are proposing will impact on demand for Freephone services. It is useful to distinguish between two separate issues, which we discuss in turn below:
- **fixed to mobile substitution:** i.e. a call that would be made using a fixed line under the status quo is instead made using a mobile under Option 1. This results in an increase in the proportion of 080 calls made from mobile phones (currently only 5% of calls to 080 numbers are originated from a mobile). Such substitution is likely to bring some convenience benefits for callers (a caller presumably uses their mobile rather than a fixed line to make a call because it is more convenient). However SPs are unlikely to benefit since they are likely to be indifferent about

the device used to originate a call and would face higher mobile origination payments. Substitution also benefits mobile OCPs at the expense of fixed OCPs; and

- **an increase in demand for 080 services overall:** increased overall demand is likely to benefit callers, SPs, OCPs and TCPs.

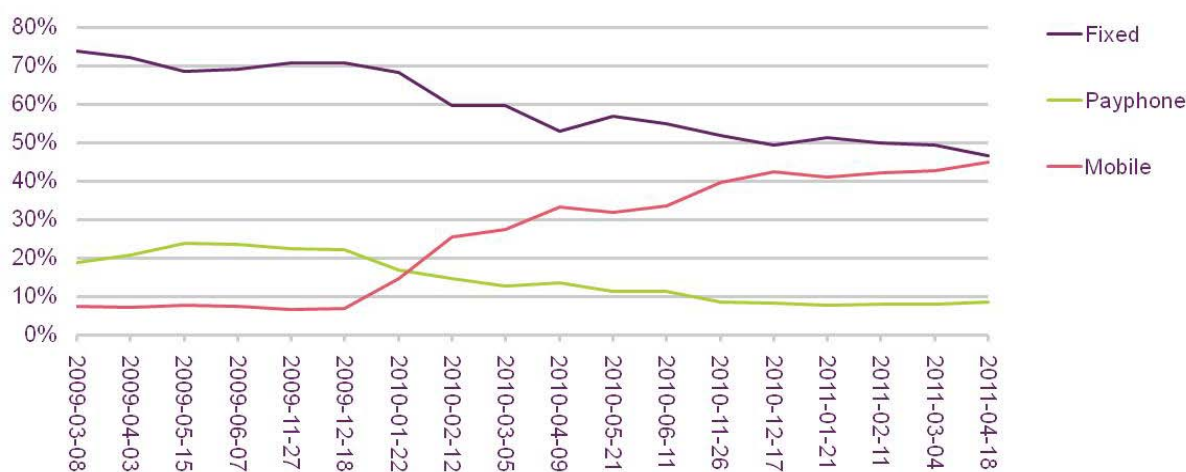
16.83 We argued in the December 2010 Consultation that it was likely that making Freephone free to caller might result in an overall increase in demand for Freephone calls (e.g. reflecting increased consumer price awareness and confidence due to an improved reputation of the 080 number range, and lower actual mobile 080 prices and lower expected fixed and mobile 080 call prices).¹¹⁹

Impact of Option 1 on the proportion of calls from mobiles

16.84 In Annex 23 (specifically paragraphs A23.51 to A23.56) we explain why, in the medium term, it is reasonable to assume that between 40% and 50% of 080 call minutes would be originated from mobiles if 080 were made free to caller.

16.85 This view is supported by a number of pieces of evidence, including the change in the proportion of calls to DWP's helplines after they were zero rated from the major mobile OCPs in January 2010. This is set out in the Figure below.

Figure 16.1: Changes in origination of calls to DWP helplines



Source: DWP call volume data

16.86 This evidence shows that prior to the zero-rating of the helpline numbers, the proportion of calls from mobiles was relatively stable at approximately 7% (with around 70% from fixed lines and just over 20% from payphones). Within a few months after the calls were zero-rated (in January 2010), the proportion of calls from mobiles rose to 30%, and after 12 months this had stabilised at between 40-45%.

Impact of Option 1 on overall demand for 080 calls

16.87 Overall demand for 080 calls may increase under Option 1 for two reasons. First, due to improved price awareness, including less overestimation of call prices and greater certainty about call prices. Second, lower actual calls prices from mobiles.

¹¹⁹ The December 2010 Consultation, p.360.

16.88 Below we set out evidence on the extent to which overall demand is likely to increase under Option 1.

16.89 First, a large proportion of 080 SPs believe that overall demand would increase. Our 2011 SPs Survey suggests that around half of SPs consider that charges for mobile calls to 080 numbers are harming their businesses. 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.¹²⁰ In addition, as noted in Section 15 above, we have received feedback from a number of resellers noting that demand from SPs has decreased substantially for Freephone numbers as a result of the charges from mobiles.

16.90 Second, many consumers are currently unsure about 080 call prices and/or expect those prices to be higher than zero i.e. higher than the level that prevail under Option 1.

- 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.¹²¹ In the case of mobile calls, 42% thought these were charged for and 46% said they didn't know the price. The mean expected price of a mobile 080 call was just under 29ppm.¹²² Since these calls would be free under Option 1 (and – as set out below – given that price awareness is likely to improve), there seems scope for a material fall in the expected price of 080 calls which, in turn, is likely to increase demand.
- Similarly, Table 16.2 summarises responses to the 2011 Consumer survey. In particular, 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%.¹²³

¹²⁰ 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>

¹²¹ 2009 Consumer survey, Q43: “How much do you think it costs to call the following types of telephone numbers from your fixed line phone at home during the daytime on a weekday?”

¹²² 2009 Consumer survey, Q44: “How much do you think it costs to call the following types of telephone numbers from your mobile phone at home during the daytime on a weekday?”

¹²³ 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, <http://stakeholders.ofcom.org.uk/binaries/research/telecoms-research/omnibus-survey.pdf>

Table 16.2: Consumers' beliefs about calls to 080 numbers from fixed and mobile lines

	Fixed 080	Mobile 080
I have never heard of [080] numbers	9%	6%
I know how much it costs per minute	29%	13%
I do not know how much it costs per minute but think it's expensive	23%	42%
I do not know how much it costs per minute but do not think it's expensive	15%	11%
I do not know how much it costs per minute and don't know whether it's expensive	25%	29%

Source: 2011 Consumer survey. QGL01X/Y: "Which of the following statements best describes what you know about the cost of calling a number starting with 080 from your landline/mobile?" Base: all adults aged 16+ who use the landline phone for personal use to make calls.

16.91 Third, other survey results suggest that there is a degree of suppressed demand at present, which may be addressed under Option 1:

- 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.¹²⁴ 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). In addition, 33% of respondents said they kept the length of the call as short as possible.¹²⁵ This suggests that there may scope for a (fairly small) increase in demand. 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%).¹²⁶ Taken together, these results suggest that even where there may be few alternatives to making a non-geographic call, there may nonetheless be scope for a small increase in demand.
- Further evidence that 080 calls being free would stimulate an increase in overall demand can be drawn from the CAB's response to the December 2010 Consultation. The CAB surveyed 3,850 of its clients (see Table 16.3 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 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 (i.e. under Option 1).

¹²⁴ 2011 Consumer Survey, question GL05.

¹²⁵ 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.

¹²⁶ 2011 Consumer Survey, question GL07.

Table 16.3: 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.

16.92 Fourth, there are a few examples of free to caller services operating at present:

- **DWP:** volatility in the call volume data for the DWP helplines makes it difficult to discern if there was an impact in the overall number of call minutes after these numbers were made free to caller. That said, the services being offered on these lines included crisis loans, Jobcentre Plus new claims, and applying for pension credits. As a result, overall demand for calling these services may be particularly inelastic.
- **The Samaritans 116 number:** the Samaritans recently introduced a free to caller 116 number alongside their pre-existing 0845 number. The Samaritans told us that they have not actively publicised their 116 number, other than telling reverse charge callers of the number.¹²⁷ There is some evidence that the introduction of the free to caller 116 service has increased overall call volumes (i.e. callers have not simply replaced a 0845 call with a 116 call).¹²⁸ Figure 16.4 below shows the growth in calls to the Samaritans' 116 123 number and that overall call numbers (to 0845 plus 116) increased over this period. Consistent with this interpretation the Samaritans stated that "The issue of costs has been raised in feedback consistently. Most recently, the Nottingham evaluation¹²⁹ found that the cost of calling emerged as a significant access issue for callers, with some discouraged from using the service because of this factor. Some callers expressed that they found the cost of calling too high, saying that this prevented them from accessing the service".¹³⁰ We remain somewhat cautious that other factors may be affecting the data on the number of calls (specifically general volatility and users calling 116 rather than being called back by the Samaritans). This data nonetheless suggests that some callers are sensitive to prices even for services such as emotional support.
- One mobile OCP, Giff Gaff (a wholly owned subsidiary of O2), offers its callers free 080 calls. We obtained volume data from Giff Gaff on the number of calls its subscribers made to 080 calls. In August 2011, [redacted] of Giff Gaff's non-geographic

¹²⁷ Samaritans submission to Ofcom, October 2011, page 7. As of February 2012, the Samaritans' 0845 number was listed on the front page of their website but their 116 number was not.

¹²⁸ Samaritans submission to Ofcom, October 2011, page 7.

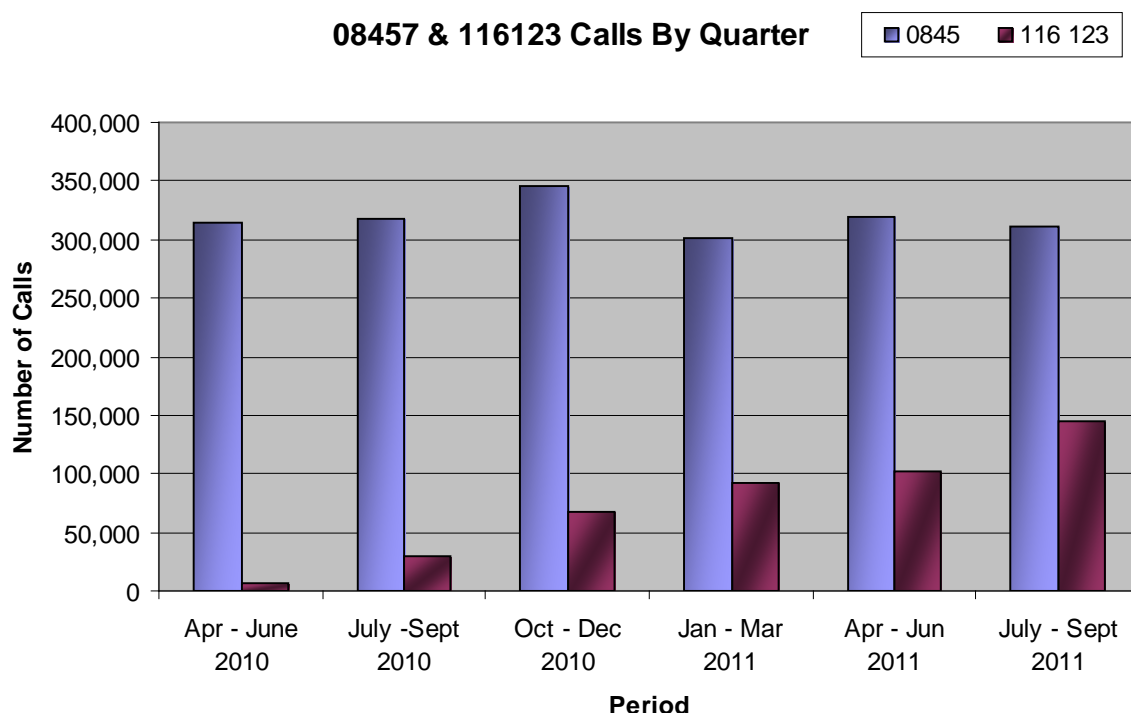
¹²⁹ Pollock, K., Armstrong, S., Coveney, C. and Moore, J. (2010) An Evaluation of Samaritans Telephone and Email Emotional Support Service

<http://www.samaritans.org/PDF/EvaluationSamaritansEmotionalServices2007-2010.pdf>

¹³⁰ Samaritans submission to Ofcom, October 2011, pages 5-6.

call minutes were to 080 numbers.¹³¹ In 2009, 080 call minutes accounted for [redacted] of O2's non-geographic call minutes.¹³² [redacted].

Figure 16.4: Number of calls to the Samaritans



16.93 Overall, we note that it is very difficult to discern the true scale of suppressed demand. However, the evidence suggests that Option 1 is likely at the least to stimulate a relatively small but significant number of additional calls.

Updated assessment of Option 1 using the Impact Assessment Range for the origination charge

16.94 In the following analysis we have summarised stakeholder comments on each assessment criteria before setting out our updated assessment.

Consumer price awareness

Stakeholder comments in response to the December 2010 assessment

16.95 The majority of stakeholders agreed that a free to caller approach would improve price awareness on the 080 range. BT noted that pricing consistency was essential, and making Freephone free to caller would be a simple and clear message for consumers.¹³³ One reseller of non-geographic numbers considered that our proposal would greatly increase end user confidence in communicated pricing information and would assist in the other initiatives in consolidating the 08 range.¹³⁴

¹³¹ O2 response dated 11 November 2011 to question 12(iv) of Ofcom's formal information request dated 21 October 2011.

¹³² Data underlying 2010 Flow of Funds study.

¹³³ BT, December 2010 Consultation response, p.29.

¹³⁴ [redacted]

- 16.96 EE, however, noted that the amendments to the Universal Service Directive already encouraged greater cross-border usage of Freephone numbers including on a charged basis where appropriate.¹³⁵ It noted that Directive 2009/136/EC advised in Recital 46 that “Users should be fully informed in advance and in a clear manner of any charges applicable to Freephone numbers”. EE therefore considered that this requirement in the USD was sufficient and it did not believe that mandating free to caller arrangements for 080 numbers when dialled from within the UK would necessarily result in any materially greater awareness of 080 call costs on the part of UK customers than is the case today.
- 16.97 The CMA noted that Ofcom’s own research showed that consumers no longer made the association with 080 and free and, given the increase in ‘bundled packages’, consumers were likely to perceive these numbers as part of their packages rather than genuinely ‘free’.

Ofcom response and revised assessment

- 16.98 We remain of the view, which is supported by the majority of respondents, that the free to caller option would offer the most direct solution to the issues of consumer price awareness on the 080 number range. ‘Free’ is the simplest price point for consumers to remember, and consistent pricing by OCPs would allow SPs to communicate accurate price messages to their callers.
- 16.99 Although evidence from our consumer survey shows that price awareness of the 080 range, particularly from a mobile, is very low, 080 is still the most recognised of the NGCS number ranges and the most widely used. We consider that, without intervention, this poor consumer understanding of the 080 range will continue, despite the demand from SPs and consumers for a free to caller range.
- 16.100 In considering this issue it is important to draw a distinction between callers who:
- i) have the number in front of them and are told the price of the call by the SP; and
 - ii) have to remember or infer the price from the number range they are dialling.
- 16.101 In terms of (i), as noted above, Option 1 means that, unlike in the current regime, SPs will be able to easily communicate to callers that these calls will be free, and they will be incentivised to do so (particularly given that 080 numbers are often used as a method of generating sales – offering a free number will be part of the encouragement to consumers to call the number).¹³⁶ The 2011 Consumer survey found that 65% of callers obtained the telephone number for the last company or public organisation they called from at least one of the following sources: the internet; a letter, bill or leaflet from the company being called; a written advert; or an advert on the TV or radio.¹³⁷ Each of these sources is likely to allow the SP to indicate alongside its number that calls are free. In other words, up to 65% of callers could have the exact price in front of them at the point of call under Option 1. The 2011

¹³⁵ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:337:0011:0036:En:PDF>

¹³⁶ For example, evidence from the 2010 SPs survey suggested that the primary focus of the 080 range was for sales enquiries (see page 14).

¹³⁷ 2011 Consumer survey, question GL14: “Thinking about the last time you made a call to a company, shop or public organisation which of the following did you use to get the telephone number?”

Experimental Research found that providing the exact price at the point of call led to the best call decisions.¹³⁸

16.102 In terms of (ii), where callers have to remember or infer the price from the number range they are dialling, there is some evidence that suggests any increase in price awareness may not be large. If consumers are not told the price at the time of making the call then they experience difficulties in learning the price of that call. Only 9% of consumers said they felt more confident about the prices of 08/09 calls they made regularly.¹³⁹ More generally, consumers felt they did not call 0800 numbers regularly, which suggests that it might be difficult for them to learn the price of those calls. Specifically, only 11% of respondents called 0800 numbers “regularly (every week)” from their fixed lines and 24% did so “sometimes (every month)”. For mobile 080 calls the corresponding figures were 1% and 6%.¹⁴⁰ In addition, and as highlighted in the CMA comments above, consumer awareness of current 080 call prices is poor, even from a fixed line, therefore many consumers are not necessarily making the association between 080 and ‘free’ anymore. Therefore, in terms of callers being able to infer from the 080 range that the call will be free under this option, there is likely to still be scope for errors given that the majority of consumers will have to change their existing perceptions of this range (particularly given that most consumers believe that mobile 0800 calls are more expensive than fixed line 0800 calls).¹⁴¹

16.103 However, we nonetheless believe that Option 1 will somewhat improve price awareness for callers in position (ii). This is for five reasons.

16.104 First, ‘free’ is intuitively the easiest price point for consumers to learn and remember.

16.105 Second, Option 1 creates an environment that supports callers learning that 080 calls are free. In particular, the horizontal externality is likely to assist consumers in learning this price:

- because 080 will be consistently free across both fixed and mobile OCPs; and
- because of greater advertising by SPs as highlighted in relation to point (i) above. In other words, since references to 080 numbers (in general) are more likely to be accompanied by a message that these calls are free, callers to a particular number are more likely to infer that that number is also free to caller.

16.106 This point was highlighted by O2 in its response to the December 2010 Consultation where it noted that if there was a consistent message that all numbers with the same prefix were priced the same then that price consistency was more likely to be retained. It noted that this might be one reason why recognition of the 080 number price point was more successful than that of other ranges.¹⁴² We agree with this comment and consider that the consistency of the message that 080 will always be free assists it being retained by consumers.

¹³⁸ Specifically “Treatment 2” in that research (where there was no unbundling and subjects were told the price at the point of call) led to the highest percentage of correct call decisions. 2011 Experimental Research, Table 9 on page 13.

¹³⁹ 51% of respondents said they don’t call 08/09 numbers regularly. 2010 Consumer survey, Q37.

¹⁴⁰ 2010 Consumer survey, Q21/25.

¹⁴¹ 2010 Consumer survey, Q33.

¹⁴² O2, December 2010 Consultation response, paragraph 149, page 38.

16.107 Third, it will be in the interest of mobile OCPs to publicise that 080 calls are now free to their callers, because this will encourage the increase in volumes of mobile 080 calls.

16.108 Fourth, a free to caller number associated with the 080 prefix is consistent with the practice in many other countries (see examples in the Table below).¹⁴³ The 2011 International Survey suggests that regimes which have a genuinely free to caller range tend to be correlated with high consumer understanding of the system.¹⁴⁴

¹⁴³ We are also aware that the 800 (or 1800) range is commonly used outside of Europe as well, for example Australia, the USA and New Zealand, although these ranges are not necessarily always free to call from a mobile. In October 2011, the Australian telecoms regulator, ACMA, published a consultation document which proposed that Freephone numbers should be made free to caller from a mobile in order to ‘better reflect consumer preferences’:

http://www.acma.gov.au/webwr/assets/main/lib410119/ifc37-2011_numbering-freephone_and_local_rate.pdf

¹⁴⁴ 2011 International Study, p.23.

Table 6.5: EU experience with Freephone

Country	Number range	Calls made from fixed lines	Calls made from mobiles
Austria	0800	Free	Free*
Croatia	0800 and 0801	Free	Free*
Denmark	801-809	Free	Free
France	080	Free	08088 Free, other 080 ranges chargeable ¹⁴⁵
Germany	0800	Free	Free
Hungary	80	Free	Free
Iceland	800	Free	Chargeable
Ireland	1800	Free	Free
Italy	800 or 803	Free	Free
Lithuania	8XX	Free	Free
Malta	8000	Free	Free
Netherlands	0800	Free	Free
Norway	800	Free	Chargeable
Poland	0800	Chargeable	Chargeable
Portugal	800	Free	Free*
Slovakia	0800	Free	Free
Spain	800 & 900	Free	Free
Sweden	020	Free	Free
Switzerland	0800	Free	Free (excluding pre-pay)

* These countries reported experiencing some blocking of mobile calls by SPs

Source: NRA responses to BEREC Special Rate Services questionnaire June 2011 and the 2011 International Survey.

¹⁴⁵ ARCEP issued a consultation in September 2011 which proposed that all Freephone numbers should be free from a mobile:

[http://www.arcep.fr/index.php?id=8571&L=1&tx_gsactualite_pi1\[uid\]=1424&tx_gsactualite_pi1\[backID\]=1&cHash=8de513d0a6](http://www.arcep.fr/index.php?id=8571&L=1&tx_gsactualite_pi1[uid]=1424&tx_gsactualite_pi1[backID]=1&cHash=8de513d0a6)

16.109 Fifth, we expect that the positive message that 080 now means ‘free’ would form a central part of our communications campaign (see Section 6 for further discussion of this communications campaign) which will also help to ensure that consumers are made aware of the association between the 080 number range and ‘free’.

16.110 We therefore consider that, in terms of overall price awareness, the benefits of this option should be considered in tandem with the other changes we are proposing for the restructuring of the number ranges, and the communications campaign that will sit alongside these changes.

16.111 For all the reasons set out above, we therefore disagree with the comments from EE and the CMA that our proposed charges will not lead to any materially greater awareness of 080 calls being free. We consider that this option will offer the greatest benefits in terms of consumer price awareness, and we therefore have given particular weight to this benefit in assessing this option.

Efficient prices

16.112 For this assessment criterion, there are a number of factors that are relevant to our analysis, and which stakeholders provided specific comments on. We have therefore structured the discussion below according to these different factors, which are:

- addressing the vertical and horizontal externalities;
- the tariff package effect (‘TPE’); and
- the impact on the price signals for callers when selecting which device to use.

Addressing the vertical and horizontal externalities

16.113 We discussed the vertical and horizontal externalities in more detail in Annex 8 and Section 15 above. For Freephone, one example of how these concerns are manifested is that even if SPs want calls to be free, OCPs have limited incentives to take SPs’ preferences into account. This is exacerbated by poor price awareness, which weakens the competitive constraints on the price of non-geographic calls.

16.114 These externalities are one reason why prices are currently inefficient (firms do not take them into account). Option 1 would help address both these externalities. As a result, Option 1 is likely to lead to more efficient pricing than at present.

16.115 In terms of the vertical externality, Option 1 will enable SPs who want to offer a zero-rated 080 number the ability to obtain one, and to advertise that clearly to their customers. The evidence from our SP survey shows that there is a significant proportion of SPs that are willing to pay for a free to caller number – see paragraph 15.26 in Section 15 above. Option 1 therefore improves the efficiency of retail prices by providing SPs with the ability to obtain a free to caller number. It is a failure of the current system that, despite that demand, SPs have not been able to easily provide that service to their customers.

16.116 We recognise, nonetheless, that there are some 080 SPs who do not value being able to offer a free to caller number in the same way.¹⁴⁶ Nevertheless, even for these SPs, Option 1 may help reduce the magnitude of the vertical externality to some

¹⁴⁶ For example, 28% of 080 SPs considered that mobile callers not having to pay to call their 080 number was ‘not very important’ or ‘not at all important’. 2011 SPs survey, Q11.

extent. In particular, it will reduce the pence per minute amount that mobile OCPs are retaining on 080 calls i.e. it will reduce the mark-up earned by mobile OCPs. In 2009, mobile OCPs retained an average of 14.7ppm on 080 calls.¹⁴⁷ The Impact Assessment Range we are using for mobile origination payments implies mobile OCPs would retain 2.5-3.0ppm under Option 1.¹⁴⁸ That said, this reduced mobile mark-up does not change the fact that the SPs who do not value being able to offer a free to caller number will still have to either pay an increased origination charge or migrate to a different number range to avoid such payments.

16.117 This option will also address the horizontal externalities by creating a single pricing message for the 080 number range that will apply across OCPs, and fixed and mobile calls and SPs will be able to advertise that price.

The TPE

16.118 Below we discuss the TPE. This discussion is broken into four parts:

- stakeholders' responses on the TPE;
- the reliability of the 2010 Consumer survey question on the TPE;
- estimates of the size of the TPE; and
- a summary of our current view on the TPE.

Stakeholder comments on the TPE

16.119 Vodafone, Virgin Media, EE and O2 considered that evidence from the 2010 Consumer survey showed that there was little enthusiasm among mobile consumers for a forced rebalancing in prices.¹⁴⁹ EE noted that this question triggered a sense among consumers that they were being overcharged and paying for a service they did not use often. Vodafone argued there was therefore a clear risk that instead of better reflecting consumer preferences, regulatory intervention in retail price setting would result in a distortion by driving prices away from the "competitive equilibrium". O2 noted that it would be difficult for Ofcom to ignore this evidence if we were to comply with our statutory duties.

16.120 O2 also argued that we were underestimating the extent to which a rebalancing of prices might be required. Its initial estimates indicated that either one of Ofcom's proposals could result in a considerable loss of income for the mobile arm of its business. It noted that it suspected that if it was to rebalance its mobile tariffs to increase prices on services to which customers are more price sensitive (and for services which are, ultimately, more valued) there would be a disproportionately high

¹⁴⁷ Data underlying 2010 Flow of Funds study. Note that this figure excludes VAT and includes the origination payments that mobile OCPs' received from TCPs in 2009.

¹⁴⁸ In terms of whether the lower levels of mobile margin under Option 1 are efficient, as explored in Annex 23, we consider our Impact Assessment Range for the origination charge reflects an attractive trade off between factors such as the TPE and service availability. We have also discussed the TPE in more detail below.

¹⁴⁹ Vodafone, December 2010 Consultation Response, p.10. Everything Everywhere, December 2010 Consultation Response, p. 25. O2 December 2010 Consultation Response, p. 40. Virgin Media December 2010 Consultation Response, p.10.

reduction in demand from those customers with a resulting loss in welfare. It argued that Ofcom had not considered this loss of welfare at all.¹⁵⁰

16.121 EE submitted further evidence of the extent of the impact on its revenues if Ofcom mandated 080 as free to caller. [§<].

16.122 The Consumer Forum for Communications ('CFC') also highlighted the risk that mobile OCPs would raise the prices of prepaid packages and noted that it would be wrong if low-income consumers who relied on mobiles ended up having to pay more because of these changes. The CMA also highlighted this risk, noting that it would make sense to build in some protection for the low-income mobile only group.

16.123 CAB, however, recognised that the proposed change might lead to a change in the structure of prices but considered that this would actually represent a better deal for consumers in general. It noted that people who call non-geographic numbers from a mobile phone, who were more likely to be on low incomes, were paying over the odds for such calls, and in so doing it seemed they were cross-subsidising other elements of the mobile phone market (handsets, other parts of call packages etc). The CAB noted this was clearly not in the best interests of low income consumers, nor did it lead to transparency or effective competition. It considered this situation bore striking similarities to the way that unauthorised overdraft charges operated in personal current accounts, where the Office of Fair Trading's ('OFT') market study found that unauthorised overdraft charges disproportionately affected people with low incomes or savings. In effect the charges paid by vulnerable low income people were subsidising the 'free' banking enjoyed by many more affluent customers.¹⁵¹

16.124 Magrathea considered that 080 should be made free to caller even if this resulted in a switch of 080 calls from fixed to mobile, rather than an overall increase in the volume of calls. It considered that the overriding imperative should be the availability of a free-to-caller service for consumers.¹⁵²

Ofcom response on TPE consumer survey evidence

16.125 In our 2010 Consumer survey on rebalancing of 080 prices, we asked the following question (Q39):

“If all calls to 0800 numbers were free from mobiles, there would be a cost to the operator. If your total bill stayed the same, would you like to have 0800 numbers free from your mobiles, even if your other calls (or line rental) became more expensive?”

16.126 In response to that question, only 16% agreed that they would like free 080 calls from mobiles. A further 15% replied “maybe” while 59% said “no”. 10% of respondents said “don't know”. As part of the qualitative phase of this research we received a number of comments in response to this question.¹⁵³

¹⁵⁰ O2 December 2010 Consultation response, paragraph 12.

¹⁵¹ CAB December 2010 Consultation response, p.12. “Personal current accounts in the UK – an OFT market study”, July 2008, p.12.

¹⁵² Magrathea, December 2010 Consultation response, p.12

¹⁵³ 2010 Consumer survey, page 24. Also see comments on page 25 in response to Q40 and Q42 (which are somewhat similar to Q39).

16.127 In the December 2010 Consultation, we expressed concerns about the reliability of this particular survey result.¹⁵⁴ In the light of stakeholders' responses we have considered this survey question in further detail.

16.128 In terms of the rebalancing of mobile call prices (i.e. if the price of 080 calls from a mobile were zero but the price of other mobile services increased), we consider it is important to distinguish between two effects of this change:

- **the overall price effect:** this is a change in the total amount a consumer pays each month. The direction of this effect depends on how many 080 calls the subscriber makes, which other mobile services the consumer purchases, and the size of the price rises for those other services. For example, heavy 080 users are more likely to enjoy a lower overall price and vice versa; and
- **the price structure effect:** even if the total amount that a particular consumer pays each month is unchanged, they may have preferences over the structure of mobile prices (e.g. easier to remember 080 prices if they are free, changes to relative prices affect the frequency with which different types of mobile call are made).

16.129 Q39 in the 2010 Consumer survey was intended to ask about the price structure effect (it asked respondents to imagine that “your total bill [stays] the same”).

16.130 We consider that the results of this particular survey question do not provide a reliable guide to respondents' preferences about free mobile 080 calls in relation to the price structure effect. The particular question is structured in a way that makes the results less reliable, because it is densely worded and refers to conflicting price changes (i.e. free mobile 080 calls and higher prices for other services) which means respondents would have had to hold several things in their mind at once. We consider that this means the risk of unreliable results is high.¹⁵⁵ This concern also becomes apparent when thinking about what might have driven the response to this question:

- the question asks about the pros and cons of the price structure effect, however, it does not spell out what those are. Instead respondents have to make a quick judgement and there is a risk that respondents did not properly consider these pros and cons and instead gave a kneejerk reaction or presume there were no benefits¹⁵⁶; and
- even though the question specifies that their “total bill will [stay] the same” respondents were likely to have been suspicious that any price changes were being used to camouflage an increase in the total amount they pay. This suspicion means that, even if a respondent is indifferent about the price structure effect, they may nonetheless reply “no” to Q39 because they are concerned about a detrimental overall price effect.

¹⁵⁴ See December 2010 Consultation, paragraph A7.75 and footnote 598 (to paragraph A6.40).

¹⁵⁵ One of the qualitative comments on this question supports this view: “How can my bills be the same if I don't call 0800 very often – it doesn't make sense” (fixed, PAYG mobile) (Q39).

¹⁵⁶ One qualitative comment was: “Surely if they want to offset the cost of 0800 calls on to other calls or line rental, then it only makes sense for us if I'm calling these numbers quite a lot.”(contract mobile-only). This suggests that some respondents may not have had the price structure effect in mind and – despite the explicit wording of Q39 – instead tried to gauge the impact of the overall price effect.

16.131 In summary, we consider that the phrasing of this particular question made it difficult for respondents to think about the pros and cons of the price structure effect. Given uncertain benefits plus the suspicion that the overall price may rise (i.e. a detrimental overall price effect) the fact that the majority of responses were negative does not seem to provide reliable evidence on consumers' attitudes to the price structure effect.

16.132 In any event, there is the separate issue of to what extent the price of other mobile telecoms services call prices would increase under Option 1 i.e. how large is the TPE. We discuss this in the next subsection.

Additional analysis of the TPE for mobile OCPs

16.133 Using our Impact Assessment Range for the origination charge (2.5ppm to 3ppm), and our assumptions on the increase in the proportion of calls to 080 from mobiles, we have provided updated estimates of the likely impact on mobile OCPs' profits from 080 calls for this option. This helps indicate the magnitude of the tariff package effect. These impacts are calculated relative to the status quo. Annex 26 sets out in more detail how this calculation was carried out (see paragraphs A26.17 to A26.23). In particular, for simplicity this Table was calculated assuming that total 080 call volumes remain unchanged if it is made free to caller, which may not be the case as discussed further below.

Table 16.6: Estimated impact on mobile 080 profits of Option 1 (relative to status quo and assuming no change in overall 080 call volumes)

Mobile origination payment		40% of 080 calls originated from mobiles	50% of 080 calls originated from mobiles
2.5ppm	Change in mobile OCPs' 080 profits	+£5m	+£24m
3.0ppm	Change in mobile OCPs' 080 profits	+£27m	+£52m

Note: based on 2010 Flow of Funds data.

16.134 Based on this assessment we consider that the impact on mobile OCPs' profits could potentially be positive. As a comparison, in 2010, mobile retail revenues were over £15bn and EBITDA for the four large mobile OCPs was £4.2bn.¹⁵⁷ In 2009 total mobile revenue from non-geographic calls (excluding VAT) was £640m.¹⁵⁸ We therefore consider that there is unlikely to be a rebalancing effect. Indeed, given that the effect of Option 1 on mobile OCP's profits from 080 calls may even be positive, other mobile telecoms prices could fall (via the tariff package effect).

16.135 In Table 16.6 we assume that total 080 call volumes remain unchanged. In practice, improved consumer price awareness and confidence may place upward pressure on 080 call volumes while some 080 SPs may change how they use non-geographic numbers (e.g. migrating to another range or closing their 080 service) which will

¹⁵⁷ Revenues taken from *Communications Market Report 2011*, Figure 5.1 on page 245. EBITDA (earnings before tax, depreciation and amortisation) figures taken from published accounts of O2, Vodafone, EE and Three.

¹⁵⁸ 2010 Flow of Funds Study, p.4.

place downward pressure on 080 call volumes. In Annex 26 we set out some further calculations to explore these effects on mobile OCPs, in particular we note that:

- small increases in overall 080 demand are only likely to have a moderate impact on the scale of the tariff package effect for mobile OCPs; and
- where SPs either cease providing a service or block calls from mobiles then this will tend to depress mobile OCPs' profits relative to the status quo. As a result, other mobile prices are more likely to rise. However where SPs migrate to another number range, the effect depends on whether calls to that new number range are more or less (incrementally) profitable than calls to 080 under the status quo. The calculations in Annex 26 suggest that, even once the change in SPs' behaviour is taken into account, the impact of Option 1 on mobile OCPs is still likely to be positive.

16.136 EE provided us with the results of a similar calculation that it had carried out.¹⁵⁹ [X].

16.137 We have re-run EE's figures assuming that 40% of all calls come from mobiles (i.e. a seven-fold rise on top of the current 5% figure) and using an origination payment of 2.5ppm and 3.0ppm. [X].

16.138 [X].

16.139 In the light of our calculations showing that the impact of Option 1 on mobile OCPs' profits from 080 calls is more likely to be positive, this implies that the price of other mobile services are unlikely to rise significantly and may even fall. Thus, contrary to the CFC and CMA's concerns, we consider that there is unlikely to be a particular impact on pre-pay customers as a result of the TPE.¹⁶⁰

Additional analysis of the TPE for fixed OCPs

16.140 Making 080 free to caller is, over the medium term, likely to lead to a large increase in the proportion of 080 calls from mobile networks. This is likely to lead to a significant fall in fixed 080 call volumes. The origination payment received by fixed OCPs is likely to exceed their incremental costs of originating 080 calls and thus lower fixed 080 call volumes will reduce fixed OCPs' incremental profits on 080 calls. This, in turn, is likely to result in higher prices for other fixed telecoms services (the tariff package effect). Table 16.7 sets out an indication of the size of this effect compared to the status quo. Annex 26 sets out in more detail how this calculation was carried out.

¹⁵⁹ Email from EE dated 7 December 2011.

¹⁶⁰ To reiterate, our concern about vulnerable consumers relates to them being unable to access socially important services via non-geographic numbers. We recognise that changes in the pattern of retail prices can also lead to transfers between different caller groups (for example from those that call 080 infrequently to those that often call 080). However such transfers are necessarily not a sign of inefficiency (particular as the current pattern of prices is inefficient, for the reasons set out in Annex 8).

Table 16.7: Estimated impact on fixed 080 profits of Option 1 (relative to status quo)

Change in overall 080 call volumes	40% of 080 calls originated from mobiles	50% of 080 calls originated from mobiles
0%	-£16m	-£20m
1%	-£16m	-£20m
5%	-£14m	-£19m

16.141 Thus the impact of Option 1 on fixed OCPs' profits from 080 calls appears likely to be negative due to extensive fixed to mobile substitution. Indeed any negative effect on profits from 080 calls may be somewhat larger for fixed OCPs than for mobile OCPs. We note that respondents to the December 2010 Consultation, (for example see Magrathea's comment at paragraph 16.124 above) did not indicate concern about this effect.

Summary of our current view of the TPE

16.142 As explained above, in our view Q39 from the 2010 Consumer survey does not give a reliable guide to consumers' preferences for a pure change in the structure of prices (i.e. the price structure effect). In our assessment the existence of a TPE is not necessarily undesirable. Indeed since the current pattern of prices is likely to be inefficient (as explained in part A, Annex 8), at least some rebalancing of prices is likely to be beneficial.

16.143 We consider it would not be reasonable to draw conclusions about the efficiency of prices based simply on whether the TPE is large or small (relative to the status quo). Nonetheless, our calculations suggest that the impact of Option 1 on mobile OCPs is likely to be positive. Whereas consumers of fixed telecoms services are likely to experience a negative TPE as a result of fixed to mobile substitution for 080 calls.

The efficiency of mobile to fixed substitution

16.144 EE agreed with Ofcom that the implementation of our proposals was likely to result in greater fixed to mobile substitution. However, it was concerned that this substitution would in fact be inefficient, as the costs to originate 080 calls from mobiles are higher than the fixed origination costs, but the pricing signals sent to calling customers would not reflect that.¹⁶¹ EE noted that this was one of Ofcom's concerns when the initial decision was taken to have mobile OCPs recover the additional costs of mobile origination for calls to 080 numbers from the calling customer.¹⁶²

16.145 Under a free to caller model the price signals being sent to callers do not reflect the higher (marginal) origination cost of mobile calls. Callers may thus use their mobile phones too frequently, rather than their fixed line.

¹⁶¹ EE, December 2010 Consultation Response, Annex 1, paragraph 25.

¹⁶² Ofcom, *Orange/BT Interconnection disputes: Freephone origination and mobile number portability*, 21 September 2011, <http://www.ofcom.org.uk/static/archive/oftel/publications/mobile/oran0901.pdf>, §3.18 and §3.27

16.146 In 2009, there was a total of 11,188m minutes of 080 calls.¹⁶³ If the proportion of mobile calls rose from 5% to either 40% or 50% then (assuming total call volumes remained unchanged from 2009) there would be an extra 3,916m to 5,035m minutes of mobile calls. In Annex 22 we estimate that the incremental cost of a fixed 080 call is around 0.1ppm and a mobile 080 call is 0.7-0.8ppm. This implies that the extra resource cost due to fixed to mobile substitution could be of the order of £23m to £35m per annum.¹⁶⁴ We suspect that this range is likely to be on the high side for a number of reasons:

- as a result of higher mobile origination payments, some SPs will cease operating a 080 number (for example because they migrate elsewhere). As explained below, our Impact Assessment Range for mobile origination payments suggests 11% to 19% of SPs might cease operating their 080 numbers; and
- 080 call volumes are likely to have fallen since 2009. As explained in Part A, Section 3, there is evidence that non-geographic call volumes are falling.¹⁶⁵

16.147 Moreover not all of this substitution is likely to be inefficient. Assuming that the incremental cost of originating a mobile 080 call is 0.6-0.7ppm higher than for originating a fixed call then fixed to mobile substitution is only inefficient if a consumer values the added convenience of using a mobile at less than 0.6-0.7ppm. In the 2009 Consumer survey, the mean expected price of fixed 080 calls was 6ppm compared to just less than 29ppm for mobile 080 calls.¹⁶⁶ In other words, the expected difference between fixed and mobile call prices is currently far greater than the difference in incremental resource costs, namely around 0.7ppm or less. This is likely to mean that too low a proportion of 080 calls are currently originated from mobiles.

16.148 In summary, one of the drawbacks associated with Option 1 is that callers do not receive a price signal that reflects the additional resources costs associated with mobile calls. As a result, there is a risk of moving from the current situation where too low a proportion of 080 calls are made from mobiles to a situation where too high a proportion of calls is made from mobiles.

16.149 Thus, focusing solely on the issue of prices signals for which device (fixed line or mobile) is used to originate a 080 call, there is a range of circumstances in which there is likely to be an improvement in efficiency compared to the status quo.

Summary of assessment of efficient prices for Option 1

16.150 We cannot be sure that making 080 free to caller leads to the *most* efficient pattern of prices. However, we consider the current pattern of prices to be inefficient (as set out in paragraphs 15.36 to 15.37 above). By addressing the vertical and horizontal externalities, Option 1 is likely to improve the efficiency of prices relative to the status quo. We consider that the evidence on the TPE does not assist us in assessing the efficiency of prices under Option 1. We recognise that a drawback of Option 1 is that callers do not receive price signals that reflect the additional costs associated with using a mobile phone to originate these calls. But the current gap between fixed and

¹⁶³ 2010 Flow of Funds study, Figure 5.7 on page 30.

¹⁶⁴ This range was calculated as follows. 3,916m minutes with an additional resource cost of 0.6ppm equates to £23m. 5,035m minutes with an additional resource cost of 0.7ppm equates to £35m.

¹⁶⁵ Nevertheless, there will be an upward factor on these costs if the overall number of 080 call minutes increases. We discuss the extent of this above.

¹⁶⁶ 2009 Consumer survey, Q43 and Q44.

mobile prices is much larger than these additional costs. In terms of these price signals it is unclear whether or not Option 1 represents an improvement on the status quo.

Service quality, variety and innovation

16.151 One issue under Option 1 is whether SPs are willing to pay an increased origination charge, and what the impact would be on the availability of the services they provide as result. There is also, however, a consideration of the impact of current mobile prices on their ability to provide services and the benefits that could result as a consequence of removing those retail charges. There are therefore two conflicting factors to consider:

- higher mobile origination payments are likely to lead to lower service availability and innovation; and
- improved price awareness, lower mobile call prices (addressing the vertical externality effect) are likely to encourage service availability and innovation.

16.152 We have therefore referred to both impacts in the assessment below.

Stakeholder comments in response to the December 2010 Consultation on SP willingness to pay

16.153 A number of SPs responded to the December 2010 Consultation, and the majority supported our proposal to make 080 free to caller. The DWP noted Ofcom's proposals would support its strategy of providing free access to their most critical services and prevent the need for continuing DWP-specific negotiations with individual mobile providers. Lexgreen, as an SP, noted it would welcome the availability of a free to caller number range even if it meant it would need to pay up to 2p per minute to receive a call. The DMA said that the introduction of free calls would drive growth of the call centre industry.

16.154 C&W said it supported making Freephone calls free to caller in all cases providing that the price of origination was controlled in such a manner that it remained affordable for SPs with a genuine desire to use Freephone numbers to continue to do so.¹⁶⁷

16.155 The CMA, however, said it could not accept Ofcom's proposal to classify calls from mobiles as Freephone if the terminating business had to pick up the difference. It argued it could not be right that businesses should pick up the cost of the mobile OCPs having to support 080. It considered that the potential increase in business generated by the reduction in charges to mobile callers was a specious argument because the range and type of SPs varied enormously, according to business sector. It considered that at best there would be a shift in call profile but it would not expect any significant increase in calls just because they were free. Therefore it considered that SPs would be forced to pay more but would see little or no benefit.

16.156 [redacted].¹⁶⁸

16.157 O2 considered that with the proposed remedy for 080 numbers Ofcom was, at once, increasing the financial burden of those 080 SPs who did not currently incur any

¹⁶⁷ C&W December 2010 Consultation response, p.49.

¹⁶⁸ [redacted]

origination costs and increasing the risk that service providers may choose to minimise their costs by barring calls that originate on a mobile.¹⁶⁹

16.158 Vodafone noted that in the past, Ofcom judged that service providers were not willing to fund zero rating from mobiles and relied on this to reject mandating a differential outpayment, noting instead that mobile OCPs were free to charge callers (subject to a pre-call announcement).¹⁷⁰ Vodafone acknowledged that the picture may have changed since then and that the 2010 SPs survey suggested that at least some SPs might be prepared to pay something. It noted that the critical question, however, remained how many SPs were indeed prepared to contribute, how much, and whether that was enough to make it commercially worthwhile for mobile OCPs to substitute retail revenue with wholesale revenue. Vodafone noted that the 2010 SPs survey suggested that different SPs had different preferences, which immediately caused problems for a one-size-fits-all regulatory intervention.

16.159 EE noted that the sample in the 2010 SPs survey was extremely small and thus not very statistically robust, and in any case did not demonstrate an overwhelming degree of support for our proposals. It noted that only three of the nine SPs interviewed supported a proposal for SPs to pay more than they did currently to secure free to caller mobile calls to 080 numbers, with two SPs completely against the proposals and the remaining four having mixed opinions. It also argued that it would not suit the business models of all SPs to cover the retail prices currently paid by consumers to make calls to the SPs 080 numbers from mobiles. For that reason, it believed that the current designation of 080 best met the needs of both consumers and SPs by allowing 080 calls to be provided on a charged for rather than a free to caller basis where SP did not wish to bear those costs itself. EE also noted that allowing OCPs to levy retail charges for 080 calls was consistent with Ofcom's approach in relation to mobile call termination, in which Ofcom had placed emphasis on recovery of costs from retail charges. It also noted this underlined the EC Recommendation¹⁷¹ on the regulatory treatment of fixed and mobile termination rates in the EU.¹⁷²

16.160 THA noted concerns that non-profit helplines using 080 numbers were likely to experience higher telephony costs because of an increased proportion of calls made from mobiles and an increase in total call minutes as callers using mobiles were likely to stay on the phone longer since they would no longer be paying for the call.¹⁷³ THA also noted that the increased call costs were not predicably at this point. If helplines using 080 numbers were to pay the full cost of a call (i.e. the current retail charge), this might vary according to the proportion of calls received from mobiles, and the network the caller was using. It noted that this would make the charges difficult to predict. It highlighted that Ireland already had that system and the costs helplines paid to receive mobile calls varied from 16 to 60 eurocents per minute, depending on the network and the time of day. THA therefore was concerned that its members would not be able to cope if they had to pay an increased charge for receiving calls from mobiles. It considered that more research should be done to gauge the likely

¹⁶⁹ O2 December 2010 Consultation response, p. 28

¹⁷⁰ 2001 Ofcom 080 Determination, paragraph 3.15,
<http://www.ofcom.org.uk/static/archive/oftel/publications/mobile/oran0901.pdf>.

¹⁷¹ EC Recommendation 2009/396/EC <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:124:0067:0074:EN:PDF>

¹⁷² EE, December 2010 Consultation response, p.68.

¹⁷³ It notes that one THA member estimates of the potential increases in their annual telephony costs were as follows (Current costs, £4,800, at 10p/min £24,024, at full call cost (i.e. the retail price charged by mobile OCPs) £96,000).

charging structure and whether helplines would seek increased funding, switch to a different tariff, block incoming calls from mobiles, or close altogether.

Ofcom response and additional analysis undertaken since the December 2010 Consultation

16.161 We acknowledge that this option is likely to lead to significantly increased costs to SPs. We have set out our estimates of these increased costs in the Table below (using our Impact Assessment Range). This shows an estimate of the absolute and percentage increase in 080 SPs' costs. Annex 23 explains how this table was calculated. In particular, it is based on 2009 data from the 2010 Flow of Funds study and assumes that there is no change in the number of SPs on 080. In practice, some SPs are likely to cease operating a 080 number in order to avoid incurring these costs.

Table 16.8: Option 1 impact on SP costs (using Impact Assessment Range for the origination charge)

Mobile origination payment		40% of 080 calls originated from mobiles	50% of 080 calls originated from mobiles
2.5ppm	Change in SP costs	+£87m (+73%)	+£109m (+91%)
3ppm	Change in SP costs	+£110m (+92%)	+£137m (+115%)

16.162 The higher origination payments for mobile calls will impose greater costs on SPs and so might lead to reduced quality, variety and innovation in the services available on 080 numbers, which would be to the detriment of consumers. This extra cost of operating a 080 number will increase if there is a large amount of substitution from fixed to mobile 080 (as we predict –see paragraph 16.84above), and the SP will not necessarily benefit from that substitution despite the higher costs it faces.

16.163 There are therefore a number of points relevant to our assessment under this criterion (service quality, variety and innovation), which have been raised by stakeholders as highlighted above:

- i) SP willingness to pay a higher origination charge;
- ii) impact of higher origination charge on service availability on the 080 range in general (we have discussed the specific impact on socially important services in the next assessment criteria);
- iii) service availability on the 080 range for mobile callers (i.e. potential effects of call blocking); and
- iv) impact of improved price awareness and free mobile call prices on service innovation, variety and availability.

16.164 We have addressed each of these points in our assessment below.

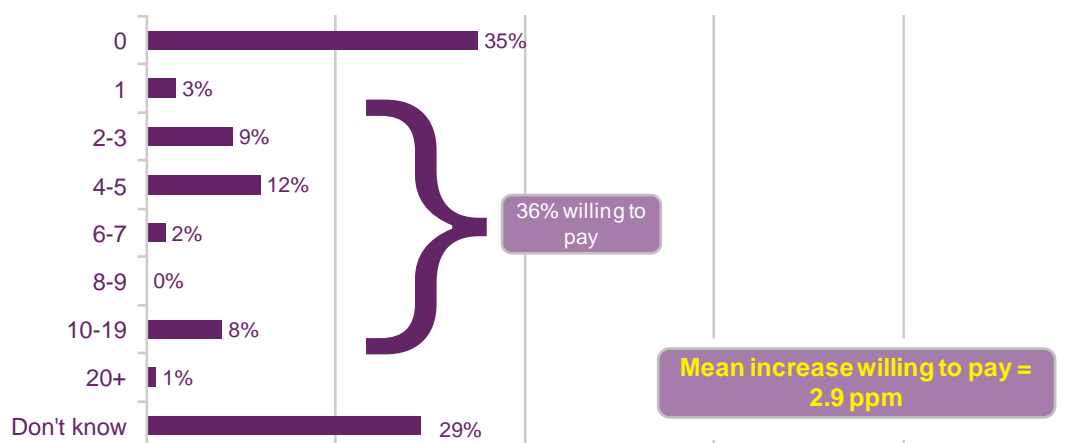
SP willingness to pay

16.165 We agree that the evidence from the 2010 SPs survey did not provide a clear view on what SPs’ preferences were likely to be with regards to the 080 range, and in particular whether SPs were willing to pay an increased origination charge. We therefore undertook a more detailed survey of SPs, the results of which were published in December 2011.¹⁷⁴

16.166 That survey of SPs provides more robust evidence of SPs’ preferences on the 080 range. We now therefore have a clearer picture of how much SPs are willing to pay in exchange for their callers not being charged for mobile calls, and what their likely reaction would be to an increase in their origination charge for mobile calls. As with the 2010 SPs survey, this research shows there is a range of different views among the SP community.

16.167 Just under half of respondents (47%) were concerned that charges to mobile callers were a disadvantage to their business in terms of reducing the number of calls they received. Just over a third (36%) of these respondents expressed a willingness to pay more to ensure Freephone was free-to-caller on mobiles (equating to 17% of all 080 SPs) with the average price that SPs were willing to pay being 2.9ppm. The diagram below demonstrates the spread of willingness to pay.

Figure 16.9: How much organisations who say they are disadvantaged are willing to increase the pence per minute (ppm) amount they pay in return for mobile callers paying zero



Source: Q.16 By how much would you be willing to increase the pence-per-minute amount that you pay to receive calls
 Base: All 080 that stated "disadvantage" at Q.14 (145)

16.168 Annex 23 explains what the price points highlighted above mean in practice in terms of what the mobile origination charge SPs would actually pay. Essentially, because the proportion of calls from a mobile has to be taken into account, a 1ppm increase in the overall amount SPs pay is equal in practice to an increase in the mobile origination charge of between 2ppm and 2.5ppm (depending on whether 50% or 40% of calls come from mobiles).

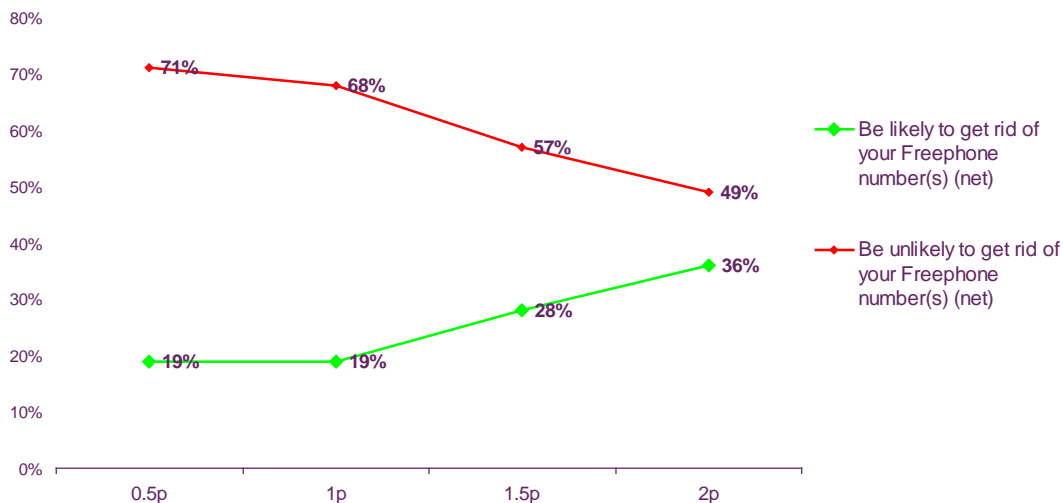
16.169 This survey therefore finds that there is a certain proportion of SPs that would actively be willing to pay for calls from mobiles to be free to their callers. As well as

¹⁷⁴ <http://stakeholders.ofcom.org.uk/binaries/research/telecoms-research/Non-geographic-numbers.pdf>

the 16% of all 080 SPs highlighted in the chart above that are actively willing to pay (that is 36% of the 47% that said they were disadvantaged), there was a further 14% that said they “didn’t know” how much they would be willing to pay. However, when we asked SPs about their likely reaction if the origination charge was increased, 60% said they would remain on the range, which suggests that there is also a significant proportion of SPs that would be willing to accept an increased origination charge in exchange for their callers not being charged from a mobile, even if they did not state an active willingness to pay.

16.170 The chart below demonstrates that up until an increase in the cost of operating a 080 number of 1ppm (equivalent to a mobile origination charge of 2.5-3ppm) 19% of SPs would be likely to get rid of their Freephone number. After 1ppm this increases significantly.

Figure 16.10: Likelihood of SPs getting rid of their Freephone number if the cost per minute increases



Source: Q.17 If your freephone number(s) were made completely free to all callers and the amount you currently pay per minute for those calls was increased, how likely would you be to get rid of your freephone number(s) at each price increase?
Base: All 080 asked about this price (304)

16.171 We therefore consider that this SP survey, supported by some of the responses to our December 2010 Consultation, demonstrates that there is evidence of SPs being willing to pay an increased origination charge (which falls within our Impact Assessment Range) in exchange for callers not being charged for mobile calls to their 080 services. Indeed we have taken account of SP preferences in deriving our Impact Assessment Range for the origination charge (see paragraphs A23.58 to A23.65 in Annex 23).

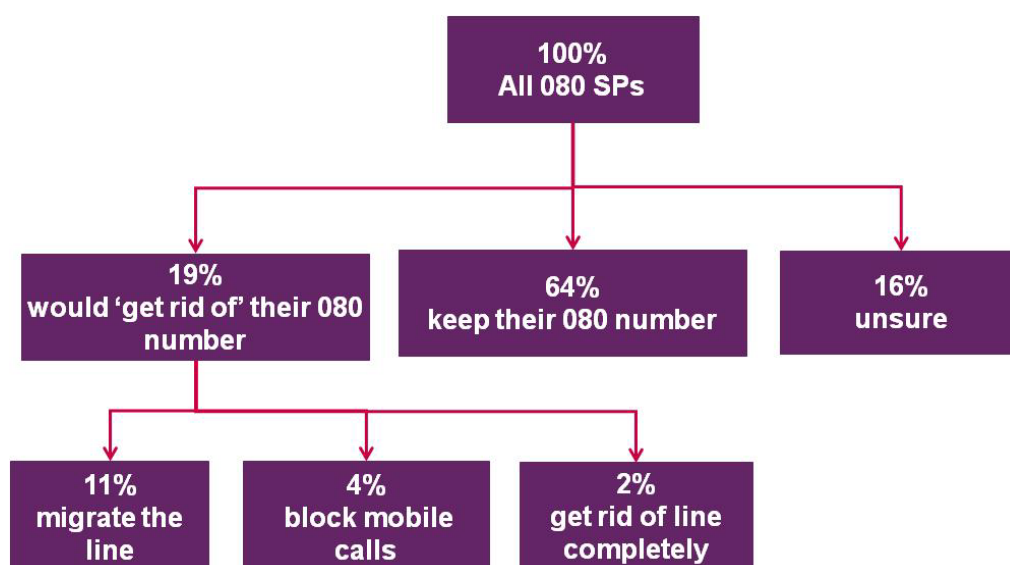
Impact on service availability – general

16.172 Whilst we consider that we now have sufficient evidence of SP willingness to pay an increased origination charge to justify considering intervention, we acknowledge that this evidence does not demonstrate that all SPs are willing to pay. As Vodafone noted, there are different preferences among different SPs and therefore we need to take into account that Option 1 will not meet the preferences of all SPs, in particular those that are not willing, or not able, to pay the increased mobile origination charge and this may have a negative effect on service availability, quality, innovation and variety. We have therefore looked below at the various potential impacts.

16.173 As demonstrated in Figure 16.11 below, we expect that up to 19% of SPs would ‘get rid of’ their 080 number if the mobile origination charge was increased to 2.5-3ppm (i.e. within our Impact Assessment Range). In fact 11% said they would be “very likely” to get rid of their 080 number and 8% said they would be ‘fairly likely’. This suggests that a reasonable range for the percentage of 080 SPs that would “get rid” of their 080 number is 11 to 19%.

16.174 We asked those SPs that said they would ‘get rid of their Freephone number’, what exactly they were likely to do. The base for this follow-up question was relatively low and thus the results should be treated as indicative rather than precise. The results, set out in the chart below, indicate that the majority of these SPs (60% of the 19%) would migrate their 080 number to an alternative range.

Figure 16.11: Chart of SP reactions to making 080 free to caller (using our Impact Assessment Range)



Note: Split between SPs that would “get rid” of their 080 number is indicative because of a small base. Source: 2011 SPs survey, Q17 and Q18.

16.175 As discussed in Annex 22, getting rid of a 080 service completely means that the SP ceases to receive the benefit of being called. It thus seems plausible that the 2% of non-geographic services that are discontinued are likely to attract relatively low volumes of calls or have alternatives (e.g. the internet) that are readily accessible for a large proportion of consumers.

16.176 In terms of service migration (the 11% of SPs), the question of how this impacts consumers depends to an extent on what number those services migrate to, and how many SPs choose to migrate.

16.177 Migration to a number range which is not free to caller will result in increased call prices for consumers. We would expect that for some SPs, migrating to the 03 range would be a natural choice (particularly in the light of the measures set out in Part B to improve the profile of this number range). OCPs are required to treat 03 in the same way as geographic numbers, and therefore it is included in bundles where the consumer has a tariff package with bundled calls. Therefore, for some consumers, 03 numbers will offer many of the same benefits as calling a Freephone number, because there will be no incremental cost to them (beyond using up their inclusive minutes as part of their bundle). However, not all consumers are on bundled

packages, and those consumers, particularly those calling from a fixed line (who would have previously been able to access the service for free), will be worse off. Alternatively, SPs may choose to migrate to a 084X range with a low SC. This would mean that all callers would be charged and would be worse off, compared to the status quo.

- 16.178 In terms of which services are likely to migrate, the results from our 2011 SP survey did not indicate any difference in terms of the type of service being offered; “socially significant” services were equally as willing to pay as other commercial services.¹⁷⁵ We set out in Section 14, the most popular types of services on the 080 range (in terms of the largest volume of calls). The helplines provided by the DWP (e.g. benefit claims, Job Centre Plus etc) are some of the most common services, and given they have already demonstrated a willingness to pay (through their arrangement with the mobile OCPs) we would expect they would be likely to remain on the 080 range.
- 16.179 The 2011 SPs survey also did not indicate differences in the willingness to pay of different sized companies (measured by number of employees).¹⁷⁶ Consequently, it is difficult to be definitive about which services are likely to remain on the 080 ranges.
- 16.180 We accept that some SPs, and some not-for-profit services in particular, may not be able to afford the increased mobile origination payment. We recognise that the costs and potential negative impacts on these SPs (on an individual basis) could be significant. However, a relatively small proportion of SPs have indicated they would migrate. Many of these SPs may migrate to the 03 range¹⁷⁷ - this has the potential to offer a number of the same benefits as the 080 range.

Service availability – call blocking

- 16.181 If origination charges fall within our Impact Assessment Range, we do not think that mobile OCPs would have any reason to block calls to 080 numbers as the origination charge would cover the incremental cost of originating the calls. If there is evidence of particular providers refusing access to specific number ranges, we would consider whether there is a need for regulatory intervention. It is significant, in this regard, that we have previously stated a policy preference for end to end connectivity.¹⁷⁸ We also note that, all CPs have an obligation under General Condition 20 (‘GC20’) to ensure, where technically and economically feasible, that end users are able to access and use numbers that the CP has adopted.¹⁷⁹
- 16.182 There is a question about whether SPs could choose to block mobile-originated calls (we have discussed the technical process for achieving this, in Annex 23, see paragraph A23.67). CPs are obliged to ensure that any end user (including callers from mobiles) is able to access and use non-geographic numbers adopted by that CP under the provisions of GC20. This obligation does not apply to SPs (as they are not CPs for the purposes of the condition), but it could in theory require TCPs not to

¹⁷⁵ “Socially significant” is not the same as the definition “socially important” which is used throughout this document, and defined in Section 5 above. “Socially significant” is defined in Annex 1 of the 2011 SPs survey.

¹⁷⁶ Simply because a company is large (in terms of employees) does not indicate whether or not it receives a high volume of 080 calls.

¹⁷⁷ Particularly if consumer awareness of the 03 range is increased as a result of any communications campaign – see Section 6

¹⁷⁸ http://stakeholders.ofcom.org.uk/binaries/consultations/end_to_end/statement/statement.pdf

¹⁷⁹ as defined by s56(6) of the Act, which includes use of the number, and therefore includes OCPs and TCPs as having adopted the number.

agree hosting contracts that would require them to breach that condition. However, we consider that this is likely to be an unduly restrictive interpretation of the obligation in GC20. In particular, we note that the obligation is limited to cases where connection is technically and economically feasible. If an SP considered that it could not afford to incur higher origination costs for calls from mobiles, then its hosting provider would have some evidence of access being economically unfeasible.

16.183 We note that call blocking occurs in some EU countries, and as GC20 derives from a Framework obligation¹⁸⁰, this also suggests that the obligation is not intended to apply to this situation. The evidence from the 2011 International Survey shows that blocking by SPs can occur in some other countries, for example in Germany and the Netherlands. In Spain, however, blocking by SPs is prohibited by law.

16.184 The results from our 2011 SP survey suggest that the proportion of SPs that would seek to block calls is relatively low (perhaps 4% of all 080 SPs, although this figure is indicative). We would nevertheless welcome further evidence from SPs on whether they would, in practice, be likely to block mobile originated calls, given that it would limit the options for their customers to be able to contact them.

Impact of improved price awareness and free mobile call prices on service innovation, variety and availability

16.185 As an alternative to call blocking or migration, some SPs might seek to reduce other elements of their cost, such as investment in the quality of their service or to become less innovative. And these reactions by SPs to higher origination payments would reduce the benefits from 080 calls obtained by consumers,

16.186 There are, nevertheless, also a number of reasons why Option 1 may have a positive effect on the availability of 080 services and the delivery of innovative services via 080 numbers:

- improved price awareness and lower actual mobile 080 call prices are likely to increase demand. This is likely to increase the attractiveness of operating an 080 number, which is likely to have a positive effect on availability;
- similarly an increase in consumers' confidence in using 080 numbers (because they are aware that they will not be charged) is likely to improve the reputation of this number range. If 080 numbers are better regarded by callers then this makes it more attractive for SPs to use them; and
- certain services may be dependent on callers not being charged (e.g. the reverse-charge services discussed above). A free to caller range may widen the potential for SPs to adopt innovative business models.

16.187 It is inherently difficult to identify precisely what services would be available under a counterfactual where mobile OCPs did not charge for 080 numbers. However, we have set out some of the issues surrounding innovation under the current regime in Annex 11. As set out in paragraphs 16.87 to 16.93 there is some evidence that overall call volumes would increase to some extent (for those SPs that remain on 080). See also the discussion of the evidence that the current regime is diminishing service availability and innovation (paragraphs 15.42 to 15.47 above). For example, a number of reseller SPs have commented that they have seen demand for 080

¹⁸⁰ GC20 transposes the obligation set out in Article 28 of the Universal Service Directive (2002/22/EC, as amended)

numbers drop away which they attribute to the charges from mobiles. In addition, some of those resellers stated that they no longer offered 080 numbers because the charges from mobiles reduced the effectiveness of those numbers.

Our current view on service variety, availability and innovation

16.188 In summary, under Option 1 there are potentially both positive and negative effects on service availability.

16.189 In terms of negative effects, some SPs would migrate away from 080 to other number ranges. This reduces service availability on 080, although these services will remain available via other non-geographic numbers (although consumers may have to pay for calling them). A small number of SPs might block calls from mobiles which will reduce service availability for mobile callers (mobile calls make up 5% of current 080 calls). Finally a small number of SPs may discontinue their service entirely, although they are likely to attract only a small number of calls and/or have ready alternatives to offering services via a non-geographic number.

16.190 In terms of positive effects, by improving price awareness and offering a certain price point for both callers and SPs, Option 1 encourages both service availability and innovation.

16.191 On balance our view is that by removing mobile call charges we are offering an opportunity for a reinvigoration of the 080 range. Whilst we recognise that SPs will have to absorb the additional costs, the evidence suggests that many SPs would prefer this outcome, reflecting the benefits of being able to provide a clear pricing message, combined with the potential for increased demand for the service.

16.192 We therefore consider that the overall outcome under this option would be better for consumers than the situation today.

Access to socially important services

Stakeholder comments in response to the December 2010 Consultation

16.193 O2 noted it was imperative that Ofcom gave full consideration to the fact that its proposals might be worse for consumers and providers of the socially important services operated by members of THA. It noted this was particularly important if the proposals resulted in a disproportionate and unjustifiable benefit to those service providers who operate 080 numbers in order to simply drive profits.¹⁸¹ O2 noted that members of THA currently incurred no origination costs at all and this arrangement was agreed in order to ensure that all mobile customers did indeed have access to socially important services.¹⁸² O2 said it expected Ofcom to make a more thorough assessment of the likelihood of this happening and the degree to which SPs could reasonably absorb an origination payment that more adequately reflected all relevant costs, which it believed to be considerably more than 2ppm.

16.194 The CFC suggested that research should be undertaken to determine how the proposal might affect services of social value, in particular whether such services now being offered on 080 would cease to be offered or whether those services may refuse to accept calls from mobiles, which would result in detriment to consumers.

¹⁸¹ O2, December 2010 Consultation response, p.42.

¹⁸² O2, December 2010 Consultation response, p.28.

16.195 BT agreed that making the range free to caller would address Ofcom's concerns regarding low income mobile only customers, because it would give those customers access to essential services such as helplines and government departments.¹⁸³

Ofcom response and additional analysis

16.196 Taking into account the comments from stakeholders above, it is clear there are two interrelated aspects to this criterion which need to be considered:

- how accessible socially important services on the 080 range are to mobile-only households and in particular vulnerable consumers; and
- what the impact of a higher mobile origination charge will be on providers of socially important services.

16.197 We have assessed each of these aspects below.

Impact on vulnerable consumers

16.198 Under Option 1, consumers' access to socially important services which continue to be provided on (or move to) the 080 range would be improved because they would no longer be charged for accessing these services when calling from a mobile. This would therefore be a particular benefit to those vulnerable consumers that only have access to a mobile phone. In 2010, approximately 4% of households did not have access to a fixed line for involuntary factors, mainly affordability (a further 7% of households voluntarily do not have access to a fixed line).¹⁸⁴ Vulnerable consumers would also be more likely to call socially important services if their tendency to overestimate call prices was reduced as a result of improved price awareness created by the single 'free' price point.

Impact on SPs providing socially important services

16.199 The other potential negative effect, which the mobile OCPs, the CFC and the THA raised concerns about, is the ability of socially important services, and charities in particular, to pay an increased mobile origination charge. The benefits of this option to vulnerable consumers may be reduced if SPs do not continue to offer socially important services on this range (because they may no longer be able to access these services for free from a fixed line). We recognise that if our proposed option led to the majority of these services having to migrate to an alternative number range, or worse, cease providing the service altogether, it could lead to an overall negative impact on access to socially important services by vulnerable consumers.

16.200 It is important to remember that 'socially important' services include a wide range of different SPs (see Section 5 for how we have defined 'socially important services' in our assessment). Some, for example Government departments and some utility providers (e.g. gas, electricity and telephony providers) are likely to have a greater ability to pay the origination charge compared to charities and not for profit services. The DWP, for example, has already demonstrated its willingness to pay an increased origination charge by negotiating directly with the mobile OCPs in order to zero-rate its 080 helplines. It is therefore reasonable to assume that these services will continue to be available on the 080 range even if they have to pay an increased mobile origination charge.

¹⁸³ BT, December 2010 Consultation response, p. 29.

¹⁸⁴ The 2011 Consumer Experience Report, Figure 81 on page 56 and Figure 80 on page 55.

16.201 In terms of charities and not for profit services which are currently zero-rated through THA's scheme (where the mobile OCPs do not take any origination payments), as set out in Annex 20 we agree that this scheme is beneficial and we support its intentions. We also note that in the 080 Dispute Determination the mobile OCPs stated that they supported THA's scheme as part of their commitment to corporate social responsibility.¹⁸⁵ Making 080 free to caller would not prevent mobile OCPs from continuing that approach, should they choose to do so – a choice which we would welcome. We have set out above that our estimate of the impact of Option 1 on mobile OCPs' profits from 080 calls will be small. In our view Option 1 does not change the considerations that lead mobile OCPs currently to zero-rate these 080 calls and therefore there should be no reason for the mobile OCPs to change the current arrangements.

16.202 We also agree with C&W's comment, that the 03 range offers a viable alternative for some of these providers, having been specially carved out for these particular services. As noted in paragraph above, because 03 calls are required to be treated in the same way as geographic calls, where a consumer has a bundle as part of their tariff, calling a 03 number will involve no incremental charges for them.

16.203 Therefore we recognise that this option has the potential for some costs and negative impacts (created by some of these services migrating away from the 080 range, in particular charities and not for profit services who will have less ability to pay the increased origination charge). But we consider that the evidence suggests that the majority of socially important services would continue to be provided on the 080 range. There would therefore be significant benefits in ensuring that mobile-only households are not prevented from accessing these services. On the available evidence, we consider that the costs and negative impacts of those services that are forced to migrate are likely to be outweighed by these significant benefits.

Regulatory burden

16.204 As we noted in the December 2010 Consultation, this option is unlikely to create any direct regulatory costs on OCPs in terms of compliance. There are some potential cost savings because mobile OCPs will no longer be required to publish specific prices for 080 calls and the PCAs for these calls can be removed. The maximum price of zero will be fixed and is unlikely to require any further regulatory review.

16.205 However, as discussed above, this option will impose potential significant costs on SPs, either in terms of remaining on the range and paying the increased mobile origination charge, or in terms of migration costs. We have set out the extent of the increased mobile origination costs in Table 16.8 above. In terms of migration costs:

- Annex 12 sets out in full our estimates of migration costs per firm. We use a range of £1,000-£2,500 per firm.
- Assuming mobile origination payments lie within our Impact Assessment Range (2.5-3.0ppm) then 11% of respondents to the 2011 SPs survey said they were "very likely" to "get rid" of their 080 number. 19% of respondents said they were

¹⁸⁵ 080 Dispute Determination, paragraph 5.31, http://stakeholders.ofcom.org.uk/binaries/consultations/draft_deter_bt_tmobile_vodafone/nonconf.pdf, For example, T-Mobile in its response to that dispute, noted that: "So far as charities are concerned, we subsidise calls to these numbers because as a socially responsible company, we believe it is the right thing to do".

“very likely” or “fairly likely” to do so.¹⁸⁶ This gives us a high and a low estimate for the proportion of SPs that would “get rid” of their 080 number. Of these, 60% said they would migrate their 080 service to another number range.¹⁸⁷

- we have used an industry estimate of that there are a total of 40,000 SPs operating on the 080 number range.¹⁸⁸
- By multiplying the high and low estimates for the number of SPs that would migrate by the cost per firm, we have provided an estimate in the Table below of the likely migration costs of Option 1.

Table 16.12: Estimate of migration costs

Proportion of SPs migrating	Estimate of migration costs
High	£4.6m to £11.4m
Low	£2.6m to £6.6m

16.206 Thus, in our view, the costs for those SPs that migrate away from 080 as a result of higher origination payments are unlikely to be especially large for individual SPs. In particular, these are one-off costs and need to be weighed against the large number of 080 call minutes.

16.207 Another potential area of costs which we have not yet discussed is the impact on payphones. This was highlighted in the response from Spectrum Interactive, a public payphone operator, who noted that if 080 numbers were made free to caller it could drastically reduce the use of payphones for such numbers. BT noted that one in three payphones “fails to recover day-on-day operating costs” and that use of numbers from payphones will reduce further if reforms were implemented (it referred to the DWP data).¹⁸⁹ This effect was also highlighted by one individual respondent, however, they also noted that this was a factor to be considered in relation to the future of payphones, not in relation to the requirement for 080 calls to be genuinely free to caller.¹⁹⁰

16.208 The evidence from the zero-rating of the DWP helplines clearly suggests that payphones are often used as a substitute for calling 080 numbers instead of mobile phones. Figure 16.1 above shows how the use of payphones fell substantially once DWP’s helplines were made free from mobiles. However, we consider that it is not in the consumer’s interest to be forced to use a payphone, at potentially significant inconvenience to them, where they already have access to a mobile phone. It is reasonable to assume that those choosing to use a payphone are likely to be those without access to their own fixed line and these are the consumers we have identified above as potentially vulnerable. Therefore, we do not consider that this potential impact on payphones is a material drawback of Option 1. As noted by the individual

¹⁸⁶ 2011 SPs survey, question 17. A 2.5-3.0ppm mobile origination charge equates to a 1ppm increase in SPs’ current costs of operating a 080 number.

¹⁸⁷ 2011 SPs survey, question 19. There is some uncertainty around this 60% estimate given the small sample size (65).

¹⁸⁸ [3<]

¹⁸⁹ BT, December 2010 Consultation response, p.18, paragraph 5.6.

¹⁹⁰ D Hickson, December 2010 Consultation response, p. 3.

respondent, it is an issue that needs to be considered with reference to the future of payphones rather than as a factor relevant to any decision on whether to make 080 free to caller.

16.209 A further risk attached to this option is that the actual future mobile origination payments if Option 1 is implemented do not fall within our assumed Impact Assessment Range. However, we consider our approach to wholesale regulation should reduce or mitigate this risk. We have set out in more detail in Section 17 below that we are proposing the imposition of an access condition on all TCPs hosting 080 and 116 numbers requiring them to purchase wholesale origination services on fair and reasonable terms, and requiring them to provide advance notice, to their hosted SP customers, of any change to those origination charges. We are also proposing to issue guidance to make it clear what would be considered fair and reasonable.

Assessment of Option 2: Maximum Mobile Price

16.210 A 'Maximum Mobile Price' (or 'MMP') number range is one where a maximum price of zero is specified for fixed calls and a maximum price above zero for mobile calls. This means that SPs do not need to pay a higher origination payment to mobile OCPs, since any additional costs of mobile call origination can be recouped from mobile 080 callers via the retail price of 080 calls.

Assessment in the December 2010 Consultation

16.211 We noted in the December 2010 Consultation that there were likely to be differences between mobile OCPs' efficient costs of originating and retailing 080 calls (including relevant fixed and common costs) and fixed OCPs' costs and that this was potentially a legitimate reason for setting different retail price maxima. We therefore considered whether it might be appropriate to set a maximum retail price of zero for 080 calls from fixed OCPs but a slightly higher maximum price for 080 calls from mobile OCPs, reflecting their higher costs.¹⁹¹ A summary of our assessment of this option is set out below:

- Consumer price awareness: We noted this option was likely to improve price awareness relative to the *status quo* (and deregulation). It would allow SPs to provide a clearer indication of the likely price in advertising or promotional material. We recognised, however, the pricing message and the identity of the number range would not be as clear and distinct as if all 080 calls were free.
- Efficient prices: we noted that prices for 080 calls from mobiles would fall significantly and the horizontal and vertical externalities would likely be addressed. It would also encourage consumers to take into account the difference in the cost of fixed and mobile calls when choosing how to call a 080 number. We also noted, however, that this option would not eliminate the tariff package effect.
- Service quality, variety and innovation: We considered that SPs were likely to receive more calls from consumers under this option which would make them

¹⁹¹ In the December 2010 Consultation, we presented "indicative figures" that suggested that the difference between fixed and mobile OCPs' costs may be 1-2ppm, if network common cost contributions were included. Accordingly we suggested that the maximum price of mobile 080 calls could be of the order of 1-2ppm. December 2010 Consultation, paragraph A7.95 and footnote 654. Note that these figures have been superseded by our analysis in Annex 24.

better off relative to the status quo. We also noted that because origination payments would not need to increase, this option potentially had less of an impact on service availability compared to making 080 free to caller.

- Access to socially important services: We noted that the maximum price of mobile 080 calls was likely to be a few pence per minute and we considered that this level of prices would likely address the concerns about the high price of calls to socially important service for vulnerable households.
- Regulatory burden: We noted that the regulatory process involved with determining the appropriate maximum price for mobile calls (and periodically reviewing that maximum) was likely to impose costs on us and stakeholders.

Stakeholder comments in response to the December 2010 Consultation

16.212 No stakeholders commented directly on this option. As set out above, the majority of stakeholders supported the free to caller option (Option 1). Those that objected to that option proposed alternative approaches (see paragraphs 16.19 to 16.44 above).

Description and assumptions

16.213 As indicated in Annex 22, there are differences between mobile OCPs' efficient costs of originating and retailing 080 calls (including relevant fixed and common costs) and fixed OCPs' costs. This is therefore potentially a legitimate reason for setting a different retail price maximum for mobile calls to 080.

16.214 Under this option, we would therefore set a non-zero maximum price on the retail charges for mobile calls. We have set out in Annex 24 a detailed assessment on how we have established what this maximum might be.

16.215 We are proposing two separate approaches to this maximum price, and therefore this option is divided into two sub-options:

- a fixed ceiling set at either 4.2ppm (including VAT) or 5ppm (including VAT); or
- a variable ceiling set at the same level as the AC that applies to calls to unbundled ranges.

16.216 We have included, within Option 2a, two figures of 4.2ppm and 5ppm. We explain in Annex 24 how we derive the figure of 4.2ppm. However, we consider that if a maximum price was imposed, it may be appropriate, in the interests of transparency, to set this at a round number. Therefore, in assessing this fixed ceiling option we consider both the exact price point of 4.2ppm and the rounded (upward) figure of 5ppm.

16.217 In terms of the origination payment from the TCP to the OCP, we would not expect the fixed origination payment to change. Rather fixed OCPs would continue to receive an origination payment of approximately 0.5ppm.¹⁹²

¹⁹² BT's current NCCN broadly pays an origination charge to OCPs who do not make a retail charge for 080 calls, but either makes no payment, or requires a payment from an OCP where a retail charge is made. A number of other TCPs set similar 'ladder' or variable termination rate schedules. Since fixed OCPs set a retail price of zero for 080 calls they receive an origination payment from the TCP.

16.218 For the purposes of assessing Option 2, we have made different assumptions about the mobile origination payment under this option, depending on which of the sub-options for the retail price were applied. The Table below illustrates these differences.

Table 16.13: Design of Option 2

	Option 2(a)	Option 2(b)
Price of fixed calls	Free	Free
Assumed origination payments for fixed calls	0.5ppm	0.5ppm
Maximum price of mobile calls (incl VAT)	4.2ppm or 5ppm	Access Charge
Assumed origination payments for mobile calls	0.5ppm	0ppm

Impact on demand

16.219 We now discuss the impact of Option 2 on the demand for calls to 080 numbers. As with Option 1 it is useful to distinguish between:

- fixed to mobile substitution i.e. a call that would be made using a fixed line under the status quo is instead made using a mobile under Option 2; and
- increases in overall demand for 080 calls.

Impact of Option 2 on the proportion of calls from mobiles

16.220 Option 2 may lead to fixed to mobile substitution for two interrelated reasons. First, the actual price of mobile 080 calls may fall. Second, the perceived difference between fixed and mobile call prices may fall.¹⁹³ Both these factors may be stronger under Option 2(a), since it seems plausible that for most mobile subscribers the AC will be higher than 4.2ppm or 5ppm.

16.221 However since mobile 080 calls will remain more expensive than fixed 080 calls under Option 2, we would expect the extent of fixed to mobile substitution to be smaller than under Option 1 (free to caller). In other words, the proportion of mobile calls under Option 2 will be lower than the 40% to 50% proportion that we think is likely in the medium term under Option 1.

16.222 The evidence we have available does not allow us to accurately estimate the proportion of 080 calls that would be originated from mobiles under Option 2, particularly as it will depend on the level at which the maximum mobile 080 call price is set. For the purposes of our estimates of the tariff package effect in Annex 26 we have used four figures: 5% (no change), 10%, 20% and 30%. Since mobile 080 call prices are generally likely to be higher under Option 2(b) than Option 2(a), we would

¹⁹³ In the 2009 Consumer survey, the mean expected price of fixed 080 calls was 6ppm compared to just less than 29ppm for mobile 080 calls. 2009 Consumer survey, Q43 and Q44.

expect the proportion of mobile calls to be lower under Option 2(b) than under Option 2(a).

Impact of Option 2 on overall demand for 080 calls

16.223 Option 2 (as was the case with Option 1) may lead to an increase in overall demand for 080 calls due to improved price awareness, including less overestimation and greater certainty about call prices, and lower actual call prices from mobiles.

16.224 We set out evidence indicating the potential increase in overall 080 demand under Option 1 in paragraphs 16.87 to 16.93 above. We consider that this evidence is also relevant to the impact of Option 2. We have considered whether the impact of Option 2 on overall 080 call demand is likely to be greater than the impact of Option 1:

- For those SPs that remain on 080, it seems plausible that they would experience a smaller increase in overall call volumes under Option 2 than under Option 1. As discussed below, the improvement in price awareness may be somewhat smaller under Option 2. Moreover mobile call prices would be higher under Option 2 than Option 1 which might also affect overall call volumes.
- Under Option 2, SPs are unlikely to face a significant increase in the costs of operating a 080 number. As a result, SPs are unlikely to migrate elsewhere, block calls from mobiles or discontinue their service:
 - Obviously for these SPs, 080 call volumes will be higher under Option 2 than under Option 1.
 - Where an SP would migrate to another number range under Option 1, there is the question of whether the amount of calls that SP receives would be higher under Option 2 (where it remains on 080). This is interlinked with the discussion in paragraph 16.177 about how SP migration affects call prices. Some fixed calls to a migrated SP are likely to be more expensive than under Option 2 (where such calls are free). For mobile calls to a migrated SP the effect on prices is ambiguous – it depends on which number range the SP migrates to, what package the caller subscribes to and whether Option 2(a) or Option 2(b) is under consideration.

16.225 In summary, total 080 call volumes may increase under Option 2. It is not clear whether non-geographic call volumes are likely to be higher under Option 1 or Option 2, once the impact of factors such as migration away from 080 under Option 1 is taken into account.

Assessment against criteria

16.226 We now evaluate Option 2 against our assessment criteria, namely:

- consumer price awareness;
- efficient prices;
- service quality, variety and innovation;
- access to socially important services; and

- regulatory burden.

Consumer price awareness

16.227 As with Option 1, we draw a distinction here between callers that:

- have the number in front of them and are told the price of the call by the SP; and
- those that have to remember or infer the price from the number range they are dialling.

16.228 In terms of (i), we consider Options 2(a) and 2(b) both have the potential to improve consumer price awareness relative to the status quo because SPs would be able to specify that calls to 080 from a mobile would cost no more than 4.2ppm, 5ppm or the AC in their advertising. In addition, that price could be communicated to consumers in the PCA.

16.229 However, in terms of (ii), a pricing message such as ‘free from fixed, 5ppm from a mobile’ is a slightly complex one, which may make it difficult for consumers to learn and remember the message associated with the 080 range. Even with an exact PCA, consumers would still need to initiate a mobile 080 call in order to receive that message. While the majority of consumers currently expect 080 calls to cost more than fixed 080 calls, to make informed decisions under Option 2 they would still need to understand the magnitude of this price difference.¹⁹⁴ In other words, consumers’ existing preconception about the difference between fixed and mobile 080 prices would need to change.¹⁹⁵ The concern about the horizontal externality effect, in terms of consumers’ expectations about the price of mobile 080 calls affecting their expectations of the price of fixed 08 calls, would also not be addressed, although lower mobile 080 call prices may mitigate it somewhat (see Annex 8 for a discussion of the evidence on this point).

16.230 Nonetheless, in situation (ii), Options 2(a) and 2(b) still likely to be an improvement on the status quo. Standardising mobile OCPs’ pricing practices for 080 calls is likely to improve consumer price awareness. Moreover, repetition of the price message whenever 080 calls are advertised should help consumers infer the price of calls to a 080 number.

16.231 We consider that Option 2(b) (where the maximum mobile charge is the same as the AC for other calls) may also offer further benefits over Option 2(a) in that it could strengthen the overall understanding of the AC (particularly given that 080 is the most commonly called non-geographic number range). However, unlike the other unbundled ranges (e.g. 084x etc) the AC would only apply on calls from a mobile under this option, and we consider that this different treatment of fixed and mobile calls is likely to cause confusion (the horizontal externality concern highlighted above).

¹⁹⁴ 78% of respondents to the 2010 Consumer survey thought that mobile 080 calls were more expensive than fixed 080 calls. Only 8% thought they were the same price and 12% responded “don’t know”. 2010 Consumer survey, Q33.

¹⁹⁵ To illustrate, the mean price expected for fixed 080 call prices in the 2009 Consumer survey was approximately 6ppm compared to over 28ppm for mobile 080 calls (2009 Consumer survey, Q43 and Q44). Under Option 2(a), the average gap between fixed and mobile 080 call prices will be much less than 22ppm. Under Option 2(b), it is plausible that the gap will also be smaller than 22ppm.

Efficient prices

16.232 As highlighted for Option 1, we cannot be sure what the most efficient price structure is for 080, although we consider that the status quo does not represent an efficient pattern of prices.

16.233 The efficiency of prices is likely to be improved if decision makers face prices that reflect the resource costs of choices they make and where externalities are internalised:

- This option would have the advantage of sending price signals to consumers by encouraging them to take into account the difference in the cost of fixed and mobile calls when choosing how to make a 080 call (i.e. whether to call from a fixed line or a mobile).
- As noted above, this option would reduce the horizontal externality effect between OCPs of the same type (e.g. mobile). Option 2 may also mitigate the horizontal externality between fixed and mobile 080 price expectations. However fixed and mobile prices would still be different and this aspect of the horizontal externality would not be removed.
- In terms of the vertical externality, Option 2(a) would enable 080 SPs to advertise the exact price of calls to their number. However Option 2(b) would only enable them to advertise that the callers' access charge would apply. In terms of whether Option 2 best reflects the preferences of 080 SPs about retail prices, as discussed below different SPs have rather different preferences about mobile call prices. We return to this issue below in the context of the impact on service availability, quality and innovation.

16.234 This option also has the potential to lead to a rebalancing of both fixed and mobile prices. This is not necessarily a negative effect, because it is a complex question what the efficient pattern of prices is. In addition, the TPE for this option is particularly uncertain because we have less evidence about how the proportion of fixed and mobile calls might change. We have, nevertheless, set out an estimate below of the potential impact on fixed and mobile OCPs' profits from 080 calls. This provides an indication of the potential magnitude of the tariff package effect for fixed and mobile callers. Annex 26 sets out in more detail the assumptions underlying these calculations.

Table 16.14: Option 2 – impact on mobile OCPs' profits from 080 calls (compared to the status quo)

Maximum price of mobile calls (incl. VAT)	Percentage of 080 calls originated from mobiles			
	5%	10%	20%	30%
4.2ppm	-£55m	-£37m	-£1m	+£35m
5ppm	-£52m	-£30m	+£14m	+£58m
AC of 10ppm	-£31m	+£11m	+£96m	Omitted
AC of 16.1ppm	-£3m	+£68m	Omitted	Omitted

Table 16.15: Option 2 – impact on fixed OCPs’ profits from 080 calls (compared to status quo)

Proportion of 080 calls from mobiles	5%	10%	20%	30%
Impact on fixed OCPs’ 080 profits	£0m	-£2m	-£7m	-£11m

16.235 These calculations suggest that the tariff package effect may be small or even positive for mobile OCPs but is sensitive to the proportion of calls that are originated from mobiles. Even with a low maximum mobile price, if the proportion of mobile calls rises to 20% or more then this more than offsets the effects of lower call prices. If mobile call volumes do not significantly increase then there may be a reasonably sized negative tariff package effect.

16.236 The impact on fixed OCPs’ profits of making 080 into a Maximum Mobile Price range are likely to be smaller than making it into a free to caller range. As a result, the increase in the price of other fixed telecoms services (via the tariff package effect) is likely to be smaller. Note also that if the maximum mobile price is relatively high (for example equal to the AC) then the proportion of mobile calls to 080 is likely to be lower. As a result the impact on fixed OCPs will tend to be smaller.

Service quality, variety and innovation

16.237 We would expect this option to offer an improvement relative to the status quo in terms of this assessment criterion, in particular because SPs would now be able to advertise an exact price and the price of mobile calls would be reduced. To assist the comparison with Option 1, below we discuss three ways in which Option 2 may affect service quality, variety and innovation:

- extent to which SPs’ preferences are met;
- impact on SPs’ costs; and
- impact on the demand for calls to 080 SPs.

16.238 Where retail prices accord with the preferences on SPs then this is likely to support service quality, variety and innovation. A fall in the price of mobile calls (absent any other changes) is unlikely to harm SPs so Option 2 (particularly Option 2(a)) is likely to represent an improvement on the status quo. However we have also considered whether Option 1 or Option 2 best meets SPs’ preferences.

16.239 In the 2011 SPs Survey, when we asked 080 SPs about the importance of various features. 72% said that it was important that mobile callers were not charged (a feature where Option 1 performed better) and 79% said that the amount the SP has to pay to receive the call was important (a feature where Option 2 performed better).¹⁹⁶ We asked questions aimed at understanding how 080 SPs would trade off these features against each other:

- We asked 080 SPs which aspect of 080 calls they would most like to change. 45% said “The price that callers from mobile phones pay for the call” and 39%

¹⁹⁶ Proportion of respondents saying that this feature was either “very important” or “fairly important”. 2011 SPs survey, question 11.

said “How much your organisation has to pay to receive the call” (the difference between these responses is not statistically significant).¹⁹⁷

- We asked 080 SPs whether they preferred 080 to be a Maximum Mobile Price number range with a maximum mobile price of 7ppm or to be free to caller but with higher charges for the SP.¹⁹⁸ The responses associated with a mobile origination payment to the free to caller number range of 2.5-3.0ppm (i.e. our Impact Assessment Range for Option 1) are summarised in Table 16.16 below.

Table 16.16: 080 SPs’ preferences between free to caller and Maximum Mobile Price number ranges

Prefer free to caller range	Prefer Maximum Mobile Price range	Indifferent	Don’t know
47%	33%	16%	5%

16.240 This evidence suggests that 080 SPs are split, with some preferring Option 1 and some preferring Option 2. The results in Table 16.16 suggest that slightly more prefer 080 to be free to caller. For these SPs, Option 2 (particularly Option 2(b)) would appear to be less suitable than Option 1. However, 33% indicated that they would prefer the maximum mobile price model and Option 2 (particularly Option 2(a)) would be likely to meet the needs of those SPs.

16.241 Origination payments are unlikely to significantly increase under Option 2. Thus compared to Option 1, we would therefore expect to see less migration away from the 080 range as a result of this option, and therefore a limited impact on service availability, as well as fewer commercial restrictions on SPs’ ability to invest in their services because of the costs of providing a 080 number. Similarly, we would not expect any issues with call blocking by SPs, because they would not be subject to significantly increased costs for receiving calls from mobiles.

16.242 If 080 SPs receive higher call volumes then this increases the attractiveness of operating a 080 number and of investing in the services available via existing 080 numbers. As explained in paragraph 16.225 above, for those SPs that remain on 080, it seems plausible that they would experience a smaller increase in overall call volumes under Option 2 than under Option 1.¹⁹⁹

16.243 In summary, Option 2 is likely to improve service quality, variety and innovation relative to the status quo. In comparison to Option 1, it implies fewer costs for SPs but implies higher mobile call prices. 080 SPs have diverse preferences, however a slightly higher proportion of 080 SPs appear to prefer Option 1. For these SPs, Option 2 is not as attractive as Option 1 – these SPs who want to offer a genuinely free service would still face significant difficulties in being able to do so, thereby indirectly affecting their ability to innovate and offer new services on the 080 range.

¹⁹⁷ 11% stated “Being able to advertise the exact cost of the call to customers”. 2011 SPs survey, question 13.

¹⁹⁸ 2011 SPs survey, question 20.

¹⁹⁹ This was because the improvement in price awareness may be somewhat smaller under Option 2 and mobile call prices would be higher under Option 2 than Option 1.

Access to socially important services

- 16.244 In terms of the retail price which mobile callers would pay for calls to 080 numbers under this option, Option 2(a) would imply lower prices than the status quo given that retail prices can range from 7ppm to 40ppm.²⁰⁰ In addition, 4.2ppm or 5ppm is less generally than mobile callers pay today for most other calls (e.g. some mobile packages can charge 20 to 35ppm as standard for calls to mobile and geographic numbers on pre-pay packages or outside of call allowances – see Table 14.2 in Section 14). In terms of Option 2(b), it is less clear what the AC would be in practice for mobile packages. However, it may be lower than current 080 call prices given that the AC is likely to be subject to stronger competitive constraints than is currently the case for non-geographic calls (as it would be a single charge per package and mobile OCPs would be required to publish it).
- 16.245 We consider that Options 2(a) and (b) would represent an improvement on the status quo in terms of vulnerable consumers' access to socially important services, because vulnerable consumers (and in particular involuntarily mobile-only households) would be able to access these services for a lower price than they currently pay. In addition, the improved price awareness created by enabling SPs to advertise a single price for these calls, might reduce the price overestimation that deters these callers currently.
- 16.246 This option would not lead to the same levels of migration as under Option 1 and therefore we would expect most socially important services to remain on the 080 range. In addition, as with Option 1, we would expect the current THA arrangements to be unaffected by the changes we are proposing.

Regulatory burden

- 16.247 Option 2(a) has the potential for some direct regulatory costs, because setting the maximum price (4.2ppm or 5ppm) in the Numbering Plan, and potentially having to review that price in future involves an additional regulatory process. These costs would be avoided under Option 2(b) where the price would be linked to the AC, which we are not proposing to cap (see discussion on the level of the AC in Part B, Section 10).
- 16.248 In terms of other potential costs, we have noted above that the costs to SPs are likely to be less compared to Option 1, because we have assumed that the origination payments will not increase and thus we would not expect any significant migration away from the 080 range.
- 16.249 As with Option 1, there would also be a risk that in practice origination payments may not reflect those we have used in our assumptions for this option.

080 should be designated as free to caller

- 16.250 Having considered both Option 1 and 2 above, whilst there are arguments on both sides, we propose that, for the 080 range, Option 1 best addresses the consumer detriment identified in relation to 080 calls. We set out our reasons below, comparing

²⁰⁰ This assessment is sensitive to the current level of retail prices. We noted in Section 14 that current 080 prices were in a state of flux and therefore may be lower than might normally be the case – if the current prices were to remain, however, then the increment benefits of this option are lower, because some mobile OCPs are only charging 7ppm currently (which is only marginally more than our proposed Maximum Mobile price range under option 2(a)).

the two Options, and considering their impact on stakeholders, before explaining our provisional conclusion.

Summary of assessment of Options 1 and 2 against criteria

16.251 The Table below summarises the assessment against the criteria we have set out above.

Table 16.16: Summary of assessment of Options 1 and 2

Criteria	Option 1	Option 2
Consumer price awareness	<ul style="list-style-type: none"> • Simplest price point. • Easiest for SPs to communicate • Consistent message across fixed and mobile 	<ul style="list-style-type: none"> • Relatively simple price point (but less than Option 1) • SPs can communicate price
Efficient prices	<ul style="list-style-type: none"> • Reduces magnitude of vertical externality • Addresses horizontal externality between 080 calls • Callers do not receive a price signal reflecting the costs of mobile calls • For mobile OCPs, tariff package effect is generally positive (e.g. +£5m to +£52m) • For fixed OCPs, tariff package effect is likely negative (e.g. -£14m to -£20m) 	<ul style="list-style-type: none"> • Reduces magnitude of vertical externality • Addresses horizontal externality between OCPs of the same type but not between fixed and mobile calls • For mobile OCPs, tariff package effect depends on price level and substitution (wide range e.g. -£51m to +£88m) • For fixed OCPs, tariff package effect may be negative (e.g. £0m to -£11m)
Service quality, variety and innovation	<ul style="list-style-type: none"> • High costs for SPs may affect service availability • Lower mobile call prices and greater price awareness likely to have a positive effect on service quality, variety and innovation for SPs that remain on 080 • SPs have diverse preferences but slightly more prefer Option 1 • Increased costs for SPs that remain on 080 (e.g. rise of 73% to 115%) 	<ul style="list-style-type: none"> • Very little cost for SPs so unlikely to create significant migration from 080 range or call blocking • Lower mobile call prices and greater price awareness likely to have a positive effect on service quality, variety and innovation for SPs
Access to socially important services	<ul style="list-style-type: none"> • Free calls and better price awareness likely to improve for mobile-only consumers' access to these services • Some services may migrate to other ranges or block mobile calls 	<ul style="list-style-type: none"> • Reduced prices and better price awareness likely to improve for mobile-only consumers' access to these services
Regulatory burden	<ul style="list-style-type: none"> • Uncertainty about origination payment that will actually arise • No direct regulatory costs in terms of compliance • However highest costs for SPs – likely to result in migration costs (estimated range: £2.6m to £11.4m) 	<ul style="list-style-type: none"> • Uncertainty about origination payment that will actually arise • Some regulatory costs in setting (and reviewing) a specific maximum price (e.g. Option (a)) • Unlikely to cause migration

Summary of impacts on stakeholder groups

16.252 As part of the assessment above we have discussed the potential impacts of the two options on different stakeholder groups. However, we have summarised the key points relating to each group (consumers, SPs, mobile OCPs and fixed OCPs²⁰¹) below for each option.

Option 1 (relative to the status quo)

16.253 We consider the impact on consumers/callers will overall be positive relative to the status quo, particularly in terms of price awareness, but there is some potential for negative effects as well. We consider that the benefits outweigh these potential negative effects. In summary:

- Callers will benefit from improved price awareness and free mobile calls to 080 numbers, which will improve their confidence in using the range. This will be of particular benefit to mobile-only callers and callers in general accessing socially important services, because the mobile charges for 080 numbers will no longer act as a disincentive for those customers. Callers may also benefit from increased service variation and innovation, particularly given that current mobile charges may be suppressing these developments;
- the effect of rebalancing of retail prices (the tariff package effect) on callers is ambiguous (in particular it may be negative for fixed prices but positive for mobile prices); and
- Callers may suffer from reduced service availability on the 080 range, in particular some services which were previously free to call from a fixed line may incur a charge if SPs migrate those services to alternative number ranges. There may also be a negative impact if some services cease to be offered altogether or if it leads to a negative effect on service quality. In addition, some SPs may choose to block calls from mobiles which would negatively impact mobile-only callers in particular.

16.254 In terms of SPs:

- Option 1 will meet the preferences of those SPs that are willing to pay an increased origination charge in exchange for being able to offer a free service to their callers;
- SPs will, however, face significantly increased costs as a result of the mobile origination charge, particularly given that the proportion of 080 calls from mobiles can be expected to increase substantially (perhaps to between 40% and 50% over the medium term). Some SPs will therefore seek to migrate to alternative ranges, which will also lead to costs, some may seek to block calls from mobiles and some may cease to offer services altogether; and
- for those SPs that remain on 080, improved consumer price awareness and lower call prices are likely to improve the attractiveness of their 080 services relative to the status quo.

²⁰¹ We have not highlighted the impact on TCPs. Given the hosting market is likely to be broadly competitive, a significant proportion of any costs or benefits present for TCPs are likely to be passed on to SPs.

16.255 In terms of mobile OCPs, they would suffer a loss of retail revenues. In 2009, mobile OCPs earned retail revenues of £75m from 080 calls.²⁰² Our assessment indicates that the majority (if not all) of this revenue could be made up through the origination charge and the increase in the proportion of calls made to 080 numbers from a mobile. Indeed mobile OCPs profits on 080 calls may increase under Option 1. In any event, regardless of the direction of the effect on mobile OCPs' profits from 080 calls, the impact on their overall profits will be smaller once the change in other mobile telecoms prices (the tariff package effect) is taken into account.

16.256 In terms of the impact on fixed OCPs, their profits from 080 calls are likely to fall because a significant proportion of their 080 traffic will substitute to being originated by mobile calls. This effect is unlikely to be outweighed by any increases in overall demand for 080 calls. In any event, the impact on fixed OCPs' overall profits will be smaller once the change in other fixed telecoms prices (the tariff package effect) is taken into account.

Option 2 (relative to the status quo)

16.257 Option 2 has different impacts on the stakeholder groups relative to the status quo:

- Callers would be better off because the charges for mobile calls to 080 numbers would be reduced from current levels, and would be more standardised, thereby offering some improvement in terms of pricing transparency and consumer understanding of these calls. The effect of rebalancing retail prices (the tariff package effect) on callers is unclear.
- Service providers would not be faced with a significant increase in costs and therefore the impact on service availability is likely to be limited. Improved consumer price awareness and lower call prices are likely to improve the attractiveness of their 080 services relative to the status quo.
- Mobile OCPs: would see a reduction in their revenues from the retail element of the charge but this might be recovered to some extent by an increase in the number of calls originated to 080 numbers. The impact on mobile OCPs' profits from 080 calls is ambiguous and, regardless of its direction, would be reduced by the tariff package effect.
- Fixed OCPs: may see a reduction in the number of calls originated to 080 numbers as a result of callers substituting to mobile calls. The impact on fixed OCPs' profits from 080 calls is ambiguous and, regardless of its direction, would be reduced by the tariff package effect.

Provisional conclusion on the 080 range

16.258 On the basis of the assessment above, our preferred option for the 080 range is Option 1, making it free to caller. However, we recognise that this option will result in significant additional costs for SPs and is likely to result in a certain level of migration away from the 080 range. Nevertheless, we consider that this is outweighed by simplicity benefits of making 080 free to caller: Option 1 is likely to have the greatest impact on price awareness. We recognise that 080 SPs have diverse preferences (although slightly more appear to prefer Option 1 to Option 2). We will take these factors into account in our assessment of the appropriate approach to the 0500

²⁰² Data underlying 2010 Flow of Funds study.

range, and in particular, whether that range should be offered as an alternative for those SPs that cannot afford an increased mobile origination charge.

16.259 The analysis presented in this Section represents our impact assessment of the proposal for making 080 a free to caller range. Unlike for our proposals for the unbundled tariff (see Section 13) we have not conducted a quantified assessment of the benefits against the potential costs of these options. There are a number of reasons for this:

- the types of costs involved in implementing the changes to 080 are different, for example, there are no significant billing and system costs (unlike for the unbundled tariff). The increased mobile origination cost for SPs represents a rebalancing of payments, i.e. it changes who pays for the cost of originating 080 calls from mobiles rather than creating an additional cost. Therefore, the primary additional costs created by our 080 proposal are the migration costs; and
- the way we have quantified the benefits for our unbundled proposal can not be easily replicated for our 080 proposal. In particular, for 080 calls, SPs largely benefit from calls they receive. We have not been able to model this effect because we do not have the necessary data. Whilst this does not have a significant effect for the 08X ranges, it is a central aspect of the 080 range and without being able to quantify that effect it is difficult to provide an appropriate quantification of the overall benefits of our proposals.

16.260 We have, nevertheless, conducted a qualitative assessment of the benefits, as set out in this Section. We have discussed the benefits in detail, setting out the impact on different stakeholder groups, as well as providing estimates of the costs. We consider this is sufficient to enable stakeholders to assess the likely impact of our proposals.

16.261 Our provisional conclusion implies a change to our historic policy preference in relation to 080 calls. Previously our preference was that these calls ought to be free, or as close to free as possible. Our provisional view is that these calls ought to always be free. This is nevertheless, in line with the original intention of the range, as highlighted in the comments from Oftel in 1996 (see Section 14) and as highlighted in the CAT's comments in its 08X Judgment.

16.262 Our provisional conclusion also represents a change from the position previously adopted by Oftel. In particular Oftel previously stated that:

“Higher mobile origination costs for Freephone calls are currently covered by mobile operators in either policies of charging customers for dialling Freephone numbers, recovery of aggregated call use in line rental charges, or by accepting losses on such calls. Lacking evidence that consumers are disadvantaged by charges levied on mobile Freephone calls, or that service providers are willing to pay higher charges to cover the cost of mobile originated calls, there is little justification for the Director to make a decision to shift the cost burden onto BT, thereafter to be recovered from other TNOs and ultimately service providers” (emphasis added).²⁰³

²⁰³ *Orange/BT Interconnection disputes: freephone origination and mobile number portability*, Oftel, 21 September 2001, paragraph 3.15.

16.263 However, we adopt a different view to Of tel for a number of reasons. As highlighted in the Table below, there have been a number of changes in market conditions since 2001, which were relevant to Of tel’s reasoning at the time, in particular with respect to the usage of mobile.

Figure 16.17: Comparison of mobile usage in 2001 and 2010

	2001	2010
Total mobile subscriptions ²⁰⁴	45m	81m
% of consumers that state mobile is their main method for making/receiving calls ²⁰⁵	16%	46%
Proportion of mobile call minutes ²⁰⁶	22%	49%
Proportion of mobile only households ²⁰⁷	6%	15% (26% for DE households)

16.264 There is also now clear evidence that consumers are being disadvantaged by their poor awareness of the price of 080 calls (see Section 15). In addition, a central aspect of Of tel’s determination was that there was no evidence to demonstrate that SPs were willing to pay increased call origination costs to attract calls from Freephone numbers from mobile phone users. The 2011 SPs survey indicates that most (albeit not all) 080 SPs would continue operating their 080 services even if mobile origination payments rose to the 2.5-3.0ppm level of our Impact Assessment Range. The assessment we are making now is thus in a very different environment to that when Of tel issued its determination, and we have evidence that some SPs are willing to pay to make 080 free to caller.

0500 range

16.265 Having provisionally concluded that the 080 range should be designated as free to caller we also need to consider how our analysis of the 0500 range should be taken forward. We have set out our proposed approach below but first we highlight stakeholder comments on this range.

Stakeholder responses to the December 2010 Consultation

16.266 EE considered that the same factors as to why intervention on the 0500 range was not justifiable (closed to new allocations, very limited numbers of active users and traffic) did warrant further investigation by Ofcom as to whether this range could be a prime candidate for reinvigoration as the designated ‘free to caller from all OCPs’

²⁰⁴ Ofcom, CMR, 2005, Figure 3.12 <http://www.ofcom.org.uk/research/cm/cm05> and Ofcom, CMR, 2011, Figure 5.16,

http://stakeholders.ofcom.org.uk/binaries/research/cm/cm11/UK_Doc_Section_5.pdf

²⁰⁵ Of tel, *Residential survey*,

<http://www.ofcom.org.uk/static/archive/oftel/publications/research/2001/q6mobr1101.htm>, paragraph 2.3 and Ofcom, CMR, 2011, Figure 1.59 p. 71.

²⁰⁶ Ofcom, CMR, 2004, <http://stakeholders.ofcom.org.uk/binaries/research/cm/telecoms.pdf>, Figure 57, page 64 and Ofcom, CMR, 2011, Figure 5.1 on page 245.

²⁰⁷ Ofcom, CMR, 2005, Figure 3.44 <http://www.ofcom.org.uk/research/cm/cm05> and Ofcom, CMR, 2011, Figure 5.70, p. 304 and Figure 5.90, p.319.

range in the UK. It noted that in particular, the limited usage of this range would mean that there would only be a small number of SPs who would need to change ranges if the higher origination charges associated with the free to caller model did not suit their business plans, plus the current limited recognition of the range by consumers would provide a clean base for establishing the 'brand' of the range as 'free to caller' from all OCPs. EE noted that this option would avoid the costs associated with forcing migration upon 080 SPs whose business model did not support the higher origination charges associated with having calls free from all OCPs.

16.267 [3<] said it did not see any merit in continuing to maintain the 0500 Freephone breakout in the Numbering Plan and it believed the growth of VOIP services (056) and the existence of corporate numbers (055) could lead to consumer confusion around the '5' digit. Specifically it said it was concerned about a replication of the issues around 076/070 and it therefore suggested the migration of these numbers to 0800/0808 or a new 0805 range.

16.268 C&W (to whom the 0500 range is allocated, although it is closed to new allocations) supported making 0500 free to caller alongside 080 and 116. No other respondents commented specifically on the 0500 range, although some respondents who supported the 'free to caller' option indicated that this should apply across 080, 0500 and 116.

Proposed approach for the 0500 range

16.269 We are aware that the majority of our evidence relates to the 080 range, so we need to ensure that the particular features of the 0500 range are appropriately taken into account. Given our assessment of 080, there are a number of options for 0500 that derive from the same two basic options of making the range free to caller or imposing a Maximum Mobile Price.

16.270 If we were to propose that the free to caller solution was appropriate, then the two ranges would be subject to identical regulation and a further question of the need for a separate 0500 range should be considered; in those circumstances it might be appropriate to consider closing the range to lessen consumer confusion.

16.271 If we were to propose MMP as the appropriate solution, this would acknowledge a need for a range with a different need and objective from 080 (as highlighted in EE's comment – Annex 25 sets out, however, why we would treat the 0500 range as the MMP range rather than 080 as EE suggests). This would require the re-opening of the 0500 range to new allocations and consideration of which "variant" of Option 2 would be appropriate.

16.272 We are aware that we have limited information on the costs of closing 0500 which makes it difficult to assess a closure option.²⁰⁸ We consider that we are more likely to elicit responses from SPs operating on 0500 if we specifically consult on options for this range.

²⁰⁸ We set out an analysis of migration costs in Annex 12. That analysis highlights the difficulties that we have faced in gathering reliable information on these costs. Moreover an important part of our reasoning in that annex is that SPs which face high migration costs are unlikely to voluntarily choose to migrate. Accordingly the migration cost estimates set out in that Annex are unlikely to provide a good guide for the costs if all 0500 SPs are required to migrate to another number range.

16.273 We therefore intend to issue a further, separate, consultation on the specific options for the 0500 range.

Impact on our 080 assessment

16.274 It is important to highlight that our decision on 0500 will have an impact on the above assessment for the 080 range. In particular, if we decide to offer the 0500 as an alternative Maximum Mobile Price range (i.e. where calls are free from fixed lines but have a non-zero maximum price from a mobile) this may affect the attractiveness of making 080 free to caller in two ways:

- 0500 would act as an alternative for those SPs that cannot, or are not willing to, pay an increased 080 mobile origination charge. Offering 0500 as this alternative range may better reflect the diversity in SPs' preferences, although the extent to which SPs see it as an alternative will depend on the attractiveness of the 0500 range; and
- in principle, there may be the risk of caller confusion between the 0500 and 080 calls. For example, a caller might presume that mobile 080 calls are charged for, based on their experience on 0500. This would be an example of the horizontal externality.

16.275 As explained above we have not yet decided what our preferred approach is for 0500 and will consult on this in the near future. However, for the purposes of assessing Option 1 for 080, we have considered whether making 0500 into a Maximum Mobile Price range would lead us to alter our preference for Option 1:

- having different regimes for 0500 and 080 may better reflect the diversity in SPs' preferences and may thus be more likely to address the vertical externality. Accordingly, making 0500 into a Maximum Mobile Price range may strengthen the argument that making 080 free to caller leads to an efficient pattern of retail prices. In other words, it would reinforce our preference for Option 1; and
- if there was a material risk of consumer confusion between 080 and 0500 then, if 0500 became a Maximum Mobile Price range, it would weaken the case for adopting Option 1 on 080. However we do not think that this risk is high. Where a 080 SP informs consumers at the point of call that they will not be charged (e.g. in any advertising material or letter setting out the 080 number) then the risk of consumer confusion seems very low. Even where callers must recall the price of 080 calls from memory, the risk of confusion with 0500 seems moderate given that the numbers differ at the second digit level.

16.276 Our current view is that thus that making 0500 into a Maximum Mobile Price range would tend to reinforce any preference for Option 1 on 080.

16.277 If instead we were to make 0500 into a free to caller range or to close it then we consider this would not strongly affect the attractiveness of making 080 free to caller.

116 range

16.278 In Annex 27 we have set out a more detailed analysis of the 116XXX range, and stakeholder comments in response to the December 2010 Consultation and an updated analysis of the options we are considering for this range. In summary, we propose to treat these ranges in the same way as 080 calls.

- 16.279 We acknowledge that there is a risk of reduced service availability under our proposed approach. However, we consider that adopting a single ‘free to caller’ approach will offer clear benefits for consumers in terms of promoting a clear and simple pricing message for consumers. Avoiding different regulatory regimes within the 116 number range, based on the particular number that is being called, is consistent with our approach to the 080 range and our overarching strategy of simplifying the non-geographic numbering system. Option 1 will thus help minimise the risk that this range does develop the same issues with consumer confusion which are currently present on the 080 range. Option 1 is also most likely to facilitate access to these services by vulnerable households.
- 16.280 We note also that services on this range are clear examples of services of ‘social value’ having been through a thorough vetting process.²⁰⁹ We therefore consider that the assumptions that we have made to derive our Impact Assessment Range we have quoted above for the 080 range may not apply or be different when considering the 116 range. In particular, there may be increased value attached to the services and they are likely to be offered by not for profit organisations which may have a reduced ability to pay an increased origination charge. Some mobile OCPs have voluntarily chosen not to charge for calls to similar services offered on 080 numbers (e.g. Childline) and have historically not required any origination payments from these SPs. We would therefore expect the origination payment to be closer to the incremental cost of originating mobile calls, which, in Annex 22, we estimated at between 0.7ppm to 0.8ppm, and we have used this as our Impact Assessment Range when assessing the free to caller option for the 116XXX numbers.

Summary of overall proposed approach

- 16.281 Based on the analysis above, we are therefore proposing that 080 and 116 should be designated as free to caller in the Numbering Plan. We will separately consult on the options for the 0500 range.
- 16.282 In the next Section we set out the implementation issues connected with this option, including the timeframe for implementation and the wholesale regulation of the origination charge.

Q16.1: Do you agree with our assessment of the options for the 080 range? In particular, do you agree with our preferred option of making 080 genuinely free to caller? If not, please explain why.

Q16.2: Do you have any comments on the analysis used to develop the Impact Assessment Range for the mobile origination charge and the Mobile Maximum Price range for 080 calls as set out in Annexes 21 to 25? Please provide evidence to support your comments.

Q16.3: Do you agree with our estimates of the level of migration and misdialling costs for service providers who may migrate as a result of our proposal to make the 080 range free to caller (taking into account the evidence and analysis in Annex 12)? If not please explain why and provide evidence.

Q16.4: Do you agree with our proposal to treat the 116 ranges in the same way as the 080 range (i.e. designate all as free to caller) as set out in detail in Annex 27? If not please explain why.

²⁰⁹ The ‘Comparative Selection Process’ for 116 numbers is set out here: <http://stakeholders.ofcom.org.uk/telecoms/numbering/guidance-tele-no/116-euro-numbers>

Section 17

Implementation of our preferred option for Freephone and 116

Introduction

- 17.1 This Section looks in detail at the implementation issues for our preferred option for the 080 and 116 ranges, i.e. making them free to caller.
- 17.2 We first summarise our high level implementation proposals from the December 2010 Consultation and stakeholder responses to those proposals. We then set out how we propose to implement our preferred option looking specifically at timing and wholesale regulation, as well as more specific implementation issues such as call blocking and dial-through services.

Summary of our preferred option and the implementation issues

- 17.3 As set out in the previous Section, we are proposing to make 080 and 116 numbers genuinely free to caller.
- 17.4 There are risks attached to this option, including risks to consumers, and therefore in deciding how to implement this approach, we want to ensure that these risks are minimised and mitigated where possible. In particular those risks are around:
- wholesale arrangements; in particular whether origination charges can be commercially agreed, and whether they will in practice fall within our Impact Assessment Range;
 - SP migration and call blocking; we have set out in the previous Section we expect a certain level of SP migration away from the 080 range as a result of our proposed approach, and we therefore need to take this into account in considering the implementation timescales in particular; and
 - communication to consumers; in order for the benefits to consumers of making Freephone free to caller to be fully realised, we need to make sure that they are made fully aware of the changes to the 080 range.
- 17.5 We have set out our approach to these issues below, taking into account stakeholder comments in response to the December 2010 Consultation.

Position in the December 2010 Consultation

- 17.6 We noted that the key implementation considerations for these ranges would be the revision of commercial arrangements between mobile OCPs, TCPs and SPs and the transition time for those SPs unwilling and/or unable to cover the consequential increased costs of 080 and 116 provision.²¹⁰
- 17.7 We noted that the commercial change would require agreement of the appropriate origination payment to mobiles and its translations into contracts. We considered

²¹⁰ The December 2010 Consultation, p.112-113, paragraphs 7.54 to 7.57.

that contractual changes alone would be likely to take a minimum of three months so we would expect 3-6 months for implementation. We also noted that if commercial negotiations fail, more disputes may be brought to Ofcom.

- 17.8 We also noted that transition for SPs not willing or able to afford the increased cost of operating a 080 or 116 line could take one of two forms: transition to a new range or seeking a technical solution to block calls from mobiles. We noted we would therefore need to consider the time that was appropriate to allow SPs who wanted to exit the 080 or 116 ranges to do so.
- 17.9 We set out our estimates of the potential migration costs in Annex 8 of the December 2010 Consultation. We considered that the costs associated with the potential transition to a new number range would be minimised after three years, because it would allow many of those costs to be incorporated into the normal renewal cycle for stationary and advertising.
- 17.10 We asked the following question on our analysis:

Q7.3: What are your views on the implementation period of up to 6 months for the change to Freephone charges? What are your views of the challenges to the implementation of the new regime and how could implementation be managed to overcome these challenges and minimise any costs? What are your views on the communications challenges for introducing this potential new structure and how they should be addressed?

Stakeholder responses on Freephone implementation issues

Timing and Wholesale regulation

Stakeholder comments

- 17.11 A number of respondents considered that six months was unlikely to be realistic as an implementation period. [3], for example, believed that the required changes to back-end operational systems would take longer than six months to implement. It suggested that it would take at least two years for all operators and providers to update their billing and rating systems. The British Security Industry Association also considered that six months was too short a time scale for industry needs. It suggested that a period of 18 months was more appropriate, because that would give all suppliers time to inform customers.
- 17.12 Vodafone considered that six months looked optimistic as it would not leave sufficient opportunity for SP migration to/from existing numbers. It also noted that SPs were unlikely to want to make that decision without prior certainty on the applicable commercial terms. Vodafone noted that realistically, if implementation was to be achieved in six months as Ofcom had proposed, and to avoid becoming overwhelmed by the need to determine individual disputes case by case, Ofcom would probably have to mandate an appropriate differential mobile outpayment at the wholesale level.²¹¹

²¹¹ Vodafone December 2010 Consultation response, p.17.

- 17.13 C&W also highlighted that it would be important to provide plenty of notice of the change and a signal of the likely level of origination payments to enable TCPs and SPs to manage the change within their business plans.²¹²
- 17.14 The FCS noted that once a solution for the origination payment had been identified, it was very likely that that would be subject to a dispute to be determined by Ofcom and potentially, a consequent appeal. It was concerned that this would create revenue uncertainty for the industry in the meantime.²¹³ BT also noted that wholesale charging arrangements needed to be clear at the outset otherwise there was a risk that this simple solution would lead to disputes.²¹⁴
- 17.15 THA noted that its helplines would need a long lead time to cope with changes in telephony costs, the cost of changing numbers, or seeking increased funding. It noted that because charity funding could be fixed for up to three years in advance, six months to implement was not long enough. Any changes would need a long lead time to enable helplines to build increased telephony costs into their future funding bids. It also considered that all changes to the numbering ranges should happen at the same time so that the communications campaign could look at the changes as a whole.
- 17.16 BT noted that if 080 was made free to caller and it had to bill SPs (for example to cover a different origination payment) then it would entail billing development. It considered that this could take in excess of six months, dependent on the details of the change. It also noted it would need to communicate the change to all its SPs in the form of a contract variation and the time taken to do that should not be underestimated because it has many tens of thousands of SP customers.²¹⁵
- 17.17 Other respondents suggested, however, that it was too early to speculate about the implementation period until Ofcom had conducted a full impact assessment and cost benefit analysis. EE noted that it was not possible to work out what the exact timing and manner for implementation should be as it would depend significantly on the outcome of the consultation on the origination charges and ultimate decisions as to which (if any) ranges were to be made free to caller.²¹⁶
- 17.18 On the other hand, a number of providers supported an implementation period of six months. Individual consumer respondents and a number of consumer groups supported a quick implementation time because of the benefits to consumers.
- 17.19 [X] considered that it could implement the changes to 080 and 116 in a much shorter timeframe than six months. Magrathea also considered that an implementation period of up to six months was reasonable. It considered that the implementation challenges were not likely to be significant, although it agreed that disputes running concurrent with the introduction of the new regime were likely.²¹⁷ In addition, [X] noted that, subject to seeing a detailed statement on the wholesale regulatory regime and origination payments, free-to-caller could be implemented within six months. Similarly, Three agreed that subject to Ofcom mandating that

²¹² C&W, December 2010 Consultation response, p.53.

²¹³ FCS, December 2010 Consultation response, p.20.

²¹⁴ BT, December 2010 Consultation response, p.29.

²¹⁵ BT, December 2010 Consultation response, pp.31-32.

²¹⁶ EE, December 2010 Consultation Response, p.84.

²¹⁷ Magrathea, December 2010 Consultation response, p.18.

appropriate commercial agreements be put in place between SPs and OCPs, it would be able to support the implementation period of six months.²¹⁸

Ofcom response

17.20 Broadly, the comments received identify any changes to the origination payment as a key input into the implementation time. It is appropriate in considering how we may implement a free to caller approach, we should balance the benefits to consumers of a faster implementation against the needs of the industry, in particular SPs, who are likely to need to pay significantly more to offer their services on these number ranges and TCPs, who will need to revisit contracts with their SP customers. We therefore set out our response in two parts; firstly we consider the position in relation to regulation of wholesale origination charges, and then we consider the appropriate timeframe for implementation.

Wholesale regulation

17.21 There are a number of aspects to how the wholesale level will function in the presence of a maximum retail price of zero. We need to consider:

- the commercial effects of retail zero maximum price absent Ofcom's involvement at the wholesale level;
- the need for certainty over any origination payment; and
- potential regulatory options for intervention, namely no *ex ante* regulation (reliance on dispute resolution), *ex ante* access regulation and a formal wholesale market review.

17.22 We now address each of these in turn.

Commercial effects of retail zero maximum price absent Ofcom's involvement at the wholesale level

17.23 In terms of the regulation of the origination payment and the potential for disputes, in the December 2010 Consultation we highlighted that there was an issue around what level of origination payments would actually arise if we were to specify a maximum retail price of zero for 080 calls. We noted that in practice, absent further regulation, these origination payments were likely to be determined by commercial negotiations between OCPs and TCPs.²¹⁹ In the light of the analysis set out in Annex 3 of the December 2010 Consultation we considered it was not clear whether commercial negotiations would result in an appropriate level of origination payments.²²⁰ We noted that if we were to set maximum prices for 080 calls and concerns about the level of origination payments did subsequently materialise, then it might be necessary at that point to consider what (if any) further regulatory intervention was appropriate in the circumstances.²²¹

17.24 We have, at Annex 10 updated our analysis of how the wholesale level would operate absent Ofcom's involvement. Whilst we draw the same broad conclusion that

²¹⁸ Three, December 2010 Consultation response, p.30.

²¹⁹ With the exception of calls originated on BT's network, to which the NTS Call Origination Condition applies.

²²⁰ A7.78 December 2010 Consultation.

²²¹ A7.79 December 2010 Consultation.

we would not be confident that commercially negotiated termination rates would be likely to lead to desirable outcomes for consumers, we are mindful that our analysis applies to non-geographic number ranges in general. Moreover that analysis assumed that OCPs were free to vary retail prices. Therefore, in proposing a zero maximum retail price for the 080 range we need to further consider whether there are any particular issues that arise in those regulated circumstances.

- 17.25 If we were to mandate a zero maximum retail price then this would have a substantial effect on current pricing for 080 calls. Although fixed OCPs would be largely unaffected, as they offer free 080 calls in any event, mobile OCPs would have to reduce their retail prices to zero.
- 17.26 We consider that the wholesale position, absent Ofcom's involvement at that level, where retail prices were set at zero, has some additional considerations than for other non-geographic number ranges.
- 17.27 First, in the case of 080 the focus is on the origination payment received by mobile OCPs. As explained above, mobile OCPs would no longer earn retail revenue from these calls and current origination payments are likely to be insufficient to allow mobile OCPs to recover their incremental costs of originating 080 calls (as well as being lower than our Impact Assessment Range).²²² In contrast, arrangements for fixed OCPs need not change.
- 17.28 Second, in Annex 10 we discussed how termination rates might feed into retail call prices. In contrast to the revenue sharing ranges discussed in Annex 10, if 080 is made free to caller then clearly higher or lower origination payments do not affect 080 call prices. Rather they affect the price of other telecoms services, via the tariff package effect, as well as access to services and service availability. Thus the potential for adverse effects on consumers would not be removed by mobile OCPs' inability to charge a retail price other than zero.
- 17.29 Third, we have considered whether OCPs' and TCPs' shares of supply are different in relation to 080 calls compared to other non-geographic number ranges.
- In terms of TCPs, BT and C&W account for a similar proportion of termination of 080 call minutes to their share of termination of non-geographic call minutes in general.²²³ While there are some slight differences for medium sized TCPs, the broad picture is similar to that for non-geographic numbers in general.²²⁴
 - In terms of OCPs, mobile OCPs currently account for a smaller share of 080 call origination (under 5%) than for other number ranges.²²⁵ On the other hand, we expect that the proportion of 080 calls originated from mobiles would rise substantially if 080 were made free to caller. Therefore, although there is some ambiguity over the negotiating power of mobile OCPs on the 080 range, in light of TCPs diverse shares of 080 call termination, we consider that the broad picture will remain similar to that for non-geographic numbers in general.
- 17.30 In summary, in Annex 10 we stated that we are not confident that the termination rates that would arise commercially (absent involvement by Ofcom) are likely to lead

²²² See Annex 23 for further details.

²²³ Calculated using data for 2009 from the 2010 Flow of Funds study. The results for all number ranges were set out in Table A3.8 of the December 2010 Consultation.

²²⁴ Virgin Media's share of 080 call termination minutes is a little higher than for non-geographic numbers in general. Talk Talk's share is a little lower.

²²⁵ 2010 Flow of Funds study, Figure 5.15 on page 37.

to desirable outcomes for consumers. We consider that this concern also applies in relation to mobile 080 calls, in the event that 080 is made free to caller.

Certainty of Origination Payment

- 17.31 Stakeholders have identified a number of concerns regarding a change to the regulatory regime. As discussed above, a mandated zero retail price would affect the level of wholesale origination payments made between OCPs and TCPs, and therefore the cost of hosting provision payable by SPs.
- 17.32 TCPs need certainty to ensure that they can pass on any hosting charge changes to their SP customers, given that contractual arrangements are likely to fix when and how such changes may be made.
- 17.33 SPs also need to ensure that they have sufficient notice of any increased charges to ensure that they can either plan to accommodate any increased cost (such as securing additional charity funding) or decide to migrate to another range that better suits their business model. This is particularly important given the magnitude of the likely effect on SPs. Our calculations in Annex 26 suggest that, given our Impact Assessment Range, making 080 free to caller could increase costs for those SPs that remain on 080 by between 73% and 115%.²²⁶ If the actual level of origination payments is higher or lower than our Impact Assessment range then this may have a significant effect on SPs.
- 17.34 We consider that the concerns over certainty are legitimate, and uncertainty would be likely to lead to detrimental outcomes for consumers. However, we are mindful that we should not regulate unnecessarily, and whilst regulation can create certainty, it should only be imposed if it is appropriate. We therefore need to consider what intervention would be required to address the concerns around the difference in negotiating power between different stakeholders and creating an acceptable degree of certainty in any appropriate regulatory intervention.

Potential regulatory options for intervention

- 17.35 In summary, our concerns are as follows: first, the absence of a market mechanism that is likely to lead to origination payments being set at reasonable levels. As explained above, we are not confident that the termination rates that would arise commercially (absent involvement by Ofcom) are likely to lead to desirable outcomes for consumers. Further, in Annex 23, we set out the factors that support our Impact Assessment Range. OCPs and TCPs may not have a commercial incentive to take all these factors into account when negotiating over origination payments. For example, OCPs may place limited weight on the impact of origination payments on 080 service availability.²²⁷
- 17.36 Second, the absence of a market mechanism that is likely to deliver stable origination payments in a timely fashion. For example, OCPs are unlikely to be motivated by a desire to avoid uncertainty and disruption for SPs (SPs are not OCPs' customers). As explained above, this creates uncertainty for SPs and makes it difficult for them to plan whether to retain their non-geographic number or migrate elsewhere.

²²⁶ See Table A26.1 in Annex 26.

²²⁷ For example, if an SP decides to migrate to a different number range then this affects the price of calling that SP from all OCPs, regardless of the particular origination payment that an individual OCP managed to secure.

- 17.37 We have also identified that absent regulation, the theoretical fall back position, albeit an unattractive one, would be a decision not to interconnect. In practice, given the presence of dispute resolution, some form of agreement is likely to be reached, however, we consider that if the balance of negotiating power is heavily in favour of either OCPs or TCPs then there may be consumer harm.
- 17.38 Therefore, we consider that the problem that exists at the wholesale level can be characterised as one of access, and in particular the terms and conditions upon which access is agreed.
- 17.39 We have considered whether there is any existing *ex ante* regulation on CPs that could address this problem.
- 17.40 We discuss the obligation on CPs under GC20 in the context of call blocking in Section 16. However, the obligation would not address the issue over the terms upon which interconnection occurs, including the level of origination payments.
- 17.41 BT is also subject to SMP regulation in the wholesale call origination market. BT is required by virtue of the NTS Call Origination Condition²²⁸ to make no charge for wholesale call origination services other than regulated charges for call origination, the NTS retail uplift and bad debt. These three components effectively make up the origination payment required by BT for 080 calls origination through its network. Although the NTS Call Origination Condition does mean that origination charges for calls originated through BT as a wholesale OCP are already regulated, this constraint does not necessarily flow through the wider market, and in particular it does not act as a benchmark for mobile originated calls where costs will be different.
- 17.42 Therefore, we do not consider that the existing *ex ante* regulatory obligations on CPs address the identified concern discussed at paragraphs 17.23 to 17.30 above.
- 17.43 Below we discuss the following options:
- no *ex ante* regulation (reliance on our dispute resolution powers);
 - *ex ante* access regulation; and
 - a formal wholesale market review
- 17.44 We then set out our provisional conclusions on which we are inviting views as part of this consultation.

No ex ante regulation

- 17.45 The imposition of any *ex ante* regulation, particularly one that imposes a restriction on the pricing freedom of commercial parties, needs to be appropriate and proportionate. If there is a less intrusive way of achieving a solution this should be preferred.
- 17.46 Therefore, it is appropriate to first consider whether the imposition of no additional regulation would be appropriate. Irrespective of the presence of *ex ante* regulation, parties would still have recourse to the dispute resolution process in relation to the provision of network access.

²²⁸ SMP Condition AAA11, imposed under the 2009 wholesale narrowband market review.

- 17.47 Article 4 of the Access Directive requires undertakings to negotiate interconnection with each other. This obligation is reflected in the UK regulatory regime through General Condition 1.
- 17.48 As highlighted by stakeholder comments, there may be a need to intervene to resolve disputes between undertakings and impose a solution on the parties. Where negotiation fails, a party can have recourse to dispute resolution procedures as set out under section 185 of the Act. Dispute resolution is a form of regulation in its own right, and in some circumstances can be a more appropriate way of imposing regulation than the imposition of *ex ante* obligations. Although disputes are not formally binding on non-parties, given that any dispute is determined with regard to our statutory duties and powers, determinations can provide guidance to industry on how Ofcom may view certain matters. In discharging our function of resolving disputes, we are required to act in a manner that is consistent with our duties under sections 3 and 4 of the Act.
- 17.49 Stakeholders (FCS and BT) suggested that a dispute over origination payments would generate uncertainty and create problems for a new regulatory regime. We have discussed the need for certainty in order that all stakeholders in the free to caller value chain can make informed decisions as a result of regulatory changes.
- 17.50 We consider that, having used our dispute resolution powers in the context of origination payments for calls to BT hosted 080 numbers (namely the 080 Dispute Determination), we have already established a framework to consider whether charges are fair and reasonable given our statutory duties. This framework was approved in the appeal of our determination to the CAT, and although their judgement is under further appeal, there is no specific ground of appeal that seeks to challenge the analytical framework.
- 17.51 We have already considered that analytical framework in the context of this review. In Annex 23, we set out our Impact Assessment Range to determine the potential impact of a range of origination charges on various stakeholders in the 080 value chain. The purpose of the Impact Assessment Range is to consider the impact on key 080 stakeholders and not to determine the approach that we would take in determining a dispute on origination charges. In addition, any dispute would be determined on a case by case basis. However, we consider that the analytical framework from which the Impact Assessment Range is derived is potentially applicable to disputes on origination charges in the context of a zero maximum retail price.
- 17.52 We therefore consider that there is already some guidance to industry on how we may approach a dispute on origination charges if we adopt our preferred approach of requiring a zero maximum retail price. However, we recognise that disputes, as an *ex post* solution, are reactive to matters being brought to Ofcom and as they are decided on a case by case basis, there is a limit to what guidance can be provided in advance. Therefore, there is a risk that dispute resolution, at least initially, may not be sufficient to address the identified concern discussed at paragraphs 17.23 to 17.30 above.
- 17.53 We recognise that a key issue for stakeholders is minimising the period of any uncertainty about changes to TCPs hosting charges. Dispute resolution may not adequately address this issue, as a dispute would not arise in advance of the proposal for a new (higher) wholesale origination charge.

17.54 The key affected parties in the determination of the origination charge are the SPs, who in the end are responsible for paying the fee. The proposed change to the regime for 080 would introduce a major change to the business case for operating these numbers. Due to the link between migration costs and implementation time, SPs will wish to make decisions over migration as early as possible. An extended period of uncertainty would either lead to decisions on migration being inappropriately delayed, or made on the basis of potentially imperfect information. Therefore we have considered whether it would be appropriate to intervene on an *ex ante* basis.

Ex Ante Access Regulation

17.55 Section 73 of the Act allows the imposition of conditions for the purpose of securing efficiency; sustainable competition, efficient investment and innovation and the greatest possible benefit to end users. There is one current access condition in force, which applies to BT only and requires it to purchase call termination on reasonable terms and conditions in order to help ensure end to end connectivity.²²⁹

17.56 Section 73 derives from the Access Directive. Recital 6 to the Directive recognises that there needs to be an ability to intervene in markets where there are large differences in negotiating power between undertakings in order to ensure adequate access and interconnection and interoperability of services in the interests of end users. The access regime, as permitted under Article 5, is also distinct and “without prejudice” to measures that may be taken through the setting of SMP conditions.

17.57 Article 5(1)(a) permits conditions to be imposed to ensure end to end connectivity. Article 5(1)(a) has been transposed by section 73 and 74 of the Act. As explained in paragraphs 17.23 to 17.30 above, we consider that the identified problem at the wholesale level relates to access. Therefore, in order to address this identified problem, it may be appropriate to impose an access condition under section 73.

17.58 Any condition set under section 73 must be for the purpose of securing efficiency, sustainable competition, efficient investment and innovation and the greatest possible benefit to end users.²³⁰

17.59 In setting any condition we would be required to ensure that it was proportionate. In particular the European Commission noted that the provision to set access conditions should be used cautiously.²³¹ Therefore, we consider that we would be required to limit the condition’s operation to the proposed free to caller ranges (where we have identified a specific issue in light of wholesale negotiation positions and retail regulation).²³²

17.60 We have identified an issue that relates to the differences in negotiating power between different OCPs and TCPs, and that a lack of certainty may inhibit SPs’ decision making in relation to whether to continue on a free to caller number range.

²²⁹ End to end connectivity statement 13 September 2006

http://stakeholders.ofcom.org.uk/binaries/consultations/end_to_end/statement/statement.pdf

²³⁰ We consider these legal tests in relation to our proposed approach at paragraphs 17.128 to 17.131.

²³¹ Paragraph 3.13, End to End Connectivity Statement 13 September 2006

²³² In contrast, as explained in Section 9, the unbundled tariff is likely to reduce the level of disputes over termination rates because the AC and SC elements of the call will be clearly defined and separated. This offers greater revenue certainty to all players in the value chain.

- 17.61 In order to address these identified issues, we consider that it may be appropriate, if Ofcom decides following this consultation to require a zero maximum retail price, to put in place an obligation that ensures that wholesale origination services to free to caller ranges can be purchased at an appropriate level, and an obligation that any changes to wholesale origination payments by TCPs are notified to their SP customers in advance of them taking effect.
- 17.62 Although the issue relates to both OCPs and TCPs, we note that the service provided is for wholesale origination, and this is reflected in current commercial arrangements where a payment is made by a TCP to an OCP. Therefore, we consider that it may be appropriate to require all TCPs to purchase wholesale origination services for free to caller number ranges on fair and reasonable terms and conditions including charges.
- 17.63 We consider that, although the obligation would formally lie with the TCP, it would, in effect, bind the OCP given the need to purchase on fair and reasonable terms including charges. We have already discussed the commercial incentive for OCPs to interconnect, and consider that an additional explicit obligation on OCPs is not required, and would not be proportionate. The proposed obligation is also consistent with the approach taken when imposing the access condition imposed on BT to ensure end to end connectivity.
- 17.64 We consider an obligation to require the purchase of wholesale origination on fair and reasonable terms would be proportionate as it would allow some degree of flexibility for stakeholders, but would restrict the ability to impose unreasonable terms on CPs with a relatively poor negotiating position. In light of the specific concerns regarding certainty to all stakeholders (including SPs), we do consider that there is a need to provide sufficient guidance as to what we consider would be fair and reasonable in the circumstances in order to ensure that there is sufficient certainty for TCPs and SPs in relation to hosting charges. As noted above, dispute resolution would still be an option should parties not be able to agree a reasonable level of charge. However, in the presence of guidance, we would expect that stakeholders would be better placed to be able to agree charges, and in the event of a dispute, the dispute would potentially have a clear focus.
- 17.65 As discussed above in relation to dispute resolution, we have described our analytical framework devised in the 080 Dispute Determination, and applied in determining the Impact Assessment Range in Annex 23. Given the purpose of the Impact Assessment Range is to assess the impact of a potential origination payment on stakeholders, any assessment of what was fair and reasonable under an *ex ante* access condition would be required to be considered separately, and we intend to provide guidance on what would be considered to be fair and reasonable when we consult on the draft *ex ante* access condition.
- 17.66 Stakeholders suggested that advance notice of any change to hosting charges following the introduction of a zero maximum retail price would be needed in order to ensure that SPs could make key decisions, in relation to migration between hosting TCPs and remaining on the free to caller number range. We recognise that the introduction of new retail regulation will be likely to lead to material changes in origination payments and therefore hosting charges.
- 17.67 Current practise is for TCPs to notify OCPs of any changes to the level of origination payments to be made. If we decide, following this consultation, to adopt our preferred approach for free to caller ranges, we consider that it would be appropriate to require TCPs to notify SPs of the initial revision (if any) of their wholesale

origination payment within two months of the imposition of the zero maximum price retail obligation. We are seeking views on this provisional conclusion as part of this consultation.

- 17.68 We consider that it would be appropriate to place a notification requirement on TCPs, as they have the contractual relationship with their SP customers. Notifying the change in origination payments will allow SPs to consider how they may be affected. This notification requirement would have the effect of giving TCPs two months to consider the level of revised wholesale origination payments, and should provide early notice to industry including SPs. The implementation period, before the zero maximum price came into effect, would then provide a sufficient period in which OCPs could consider the proposed level of payments and SPs could make an initial assessment as to whether they should migrate or not. Once a level of payment had been agreed between OCPs and TCPs, SPs would then be able to finalise any decision.
- 17.69 It was not suggested by stakeholders that there was a similar issue with subsequent changes to hosting charges, so we do not consider that an ongoing obligation to provide advance notification of changes to charges would be proportionate.

Formal wholesale market review

- 17.70 Although an access condition appears to offer an appropriate way to regulate wholesale origination charges we have also considered whether EE's suggestion that a market review be conducted would be more appropriate.
- 17.71 EE has suggested that a market review would be appropriate to address wholesale concerns in relation to origination payments and more generally. We respond to EE's suggestion more generally at Annex 17. In relation to whether a market review would address the specific identified concern in relation to the wholesale position for mandated free to caller ranges, we would have to consider whether such an approach would result in an appropriate solution to the identified problem and whether it would be proportionate method of intervention. In Annex 10 we explain that although we have not undertaken a formal market review we have assessed, at a high level, the relative negotiating positions of stakeholders. We consider that there is a wide variation in the positions of OCPs and TCPs which would make any formal analysis under market review procedures inherently complex and time-consuming. In light of the availability of a suitable remedy in the proposed access condition discussed above, and the fact that the consumer detriment we have identified is current and ongoing, we do not consider it would be proportionate or appropriate to conduct a market review to address this identified issue.

Provisional Conclusion

- 17.72 Our provisional view, subject to this consultation, is that it would be appropriate to impose an access condition on all TCPs requiring them to:
- purchase wholesale origination services for calls terminating on designated free to caller ranges from any requesting OCP
 - to do so on fair and reasonable terms and conditions (including charges); and
 - notify their SP customers of any initial revision to the charges for wholesale origination services within two months of Ofcom imposing the requirement for zero maximum prices.

- 17.73 The exact wording of the proposed condition and any accompanying guidance will be consulted on shortly.

Q17.1: Do you agree with our provisional view that it is appropriate for an access condition to be imposed on all TCPs hosting designated Free to caller numbers requiring them to:

- (i) purchase wholesale origination services for calls terminating on designated free to caller ranges from any requesting OCP;*
- (ii) to do so on fair and reasonable terms and conditions (including charges); and*
- (iii) notify their SP customers of any initial revision to the charges for wholesale origination services within two months of Ofcom imposing the requirement for zero maximum prices.*

If not do you consider any ex ante intervention is required? Please give your reasons for or against such intervention and your preferred approach.

Q17.2: Do you agree that the access condition does not need to be extended to OCPs, but is effectively binding on both parties? If not please give your reasons.

Timing

- 17.74 We need now to consider what the appropriate implementation period should be, taking into account our proposal on wholesale regulation.
- 17.75 Whilst some stakeholders agreed that a six month implementation period might be feasible, this was dependent in some cases on Ofcom mandating the precise mobile origination payment. The majority of industry respondents did not consider six months would be appropriate.
- 17.76 As set out above, we are proposing that TCPs should notify their SPs of an initial revision to charges for wholesale origination payments within two months which will offer some advanced notice of the potential changes SPs are likely to see in their hosting charges. However, SPs will still need a sufficient period of time to make decisions about whether to migrate or stay on the range and time will also be required for wholesale negotiations on the level of the origination charge. We therefore agree with stakeholders that six months is unlikely to be sufficient and consider that 12 months is likely to be sufficient. However, we have discussed this issue in further detail below, taking into account the link with the other proposals we set out in Part B, where we also set out that will are are consulting on either a 12 or 18 month implementation period.
- 17.77 We discuss the NTS Call Origination Condition as being relevant to the implementation of the unbundled tariff (Part B, Section 12). However, as part of the unbundled tariff changes in the AC or SC will directly feed into changes in retail prices, while changes in the origination payment do not affect retail 080 prices at all. Therefore we do not consider it to be relevant here. We will, nevertheless, be considering the appropriateness of the NTS Call Origination Condition in full in the next Narrowband Market review.

Wholesale Billing

Stakeholder comments

- 17.78 BT and C&W noted that it was important that the origination payment for mobile OCPs needed to be the same for all mobile OCPs.²³³ BT noted that to have varying payments would introduce a complex billing development which would be both lengthy and expensive and would severely delay any implementation timescales, maybe into a number of years.²³⁴ Vodafone noted that SPs would have to agree with transit operators how they could verify model originated traffic volumes, but noted that assuming a uniform outpayment to all mobile OCPs, visibility of inbound mobile CLI ('caller line identification') might be sufficient to enable random audit checks.²³⁵
- 17.79 [S<] also noted that if there were no differential payments based on the point of origination then there would be no technical implementation issues. If there was a differential, it considered that conceptually that would be no different to a Payphone Access Charge which is handled today and would have a minimal impact on its billing.

Ofcom response

- 17.80 We discussed the issue of differential origination payments in Annex 23. For the purposes of our Impact Assessment Range, given the technical implementation issues, we consider it would be unlikely to be practical to have many different 080 and 0500 origination payments. Our preferred free to caller option is therefore based on the assumption that there will be a single origination charge for mobile originated 080 calls and this will not vary between mobile OCPs.
- 17.81 There is nevertheless a risk, as highlighted in our assessment of Option 1, that actual origination charges may not be set at an appropriate level, although we have discussed our approach to wholesale regulation above.
- 17.82 The issue highlighted by Vodafone of how to identify mobile originated calls in order to differentiate the origination payment was also discussed as part of the industry technical working groups which we held (see Annex 14). It was noted there that the mobile CLI could be used as an indicator of when the (higher) mobile origination charge should be paid. Some concerns were raised about the mobile CLI not always being present for all calls, however, it was noted in that discussion that it would be in the mobile OCPs' interest to ensure that the mobile CLI was presented in order to make sure that they received the appropriate origination charge.²³⁶
- 17.83 We agree with Vodafone's comments that a TCP could identify the OCP type based on the telephone number of the calling party using CLI. Calling party number information can be based through the call routing path using the signalling information associated in setting up a call. As part of General Condition 16, CPs are required to provide CLI facilities, and therefore the CLI should normally be included in the information passed further along the call routing path. Numbers allocated to mobile OCPs, under the Numbering Plan, are identified using the unique '07X' prefix, where 'X' is in the range 1-5 or 7-9. Mobile OCPs who expect a higher origination

²³³ C&W, December 2010 Consultation response, p.53.

²³⁴ BT, December 2010 Consultation response, p.32.

²³⁵ Vodafone, December 2010 Consultation response, pp.17-18.

²³⁶ Technical Working Group, 8 September 2011:

<http://stakeholders.ofcom.org.uk/telecoms/groups/nts-focus-group/notes-of-meetings/ngcs-080911>

payment will have to pass the caller number that identifies the call as a mobile-originated call. If a transit provider is present in the call routing path, it would be reasonable for the mobile OCP to expect a mobile origination payment and therefore the transit provider should pass the calling party information further along the chain to receive the mobile origination payment from the terminating provider. Therefore it will be up to the mobile OCP to ensure that the CLI information is presented if they want to receive a higher mobile origination payment for Freephone calls.

Call-blocking

Stakeholder comments

17.84 C&W noted that the proposal will only be successful if originators continued to carry calls to these numbers. It noted that there was the option to enhance the end-to-end connectivity obligations to ensure all numbers are reachable by all consumers. It noted, however, that this would only be proportionate if originators were not prevented from recovering their reasonably incurred costs. It noted this was particularly true because Freephone numbers were sometimes used by bypass operators, offering cheap international calls or other low cost services.²³⁷ Magrathea, however, noted that, even if an end to end access obligation were placed on all originators, it would not stop service providers blocking calls which originated from mobile operators because of high outpayments.²³⁸

17.85 DMA considered that there needed to be a mechanism whereby the costs passed to the SP could be controlled, otherwise it would create issues with SPs refusing to accept calls from certain OCPs because of excessive costs. It noted this happened in Germany, Spain and Italy.

Ofcom response

17.86 We discussed the potential for call blocking in Section 16, in particular in paragraphs 16.181 to 16.184. We noted there that under our Impact Assessment Range for the origination charge, the mobile OCPs' incremental costs would be covered and therefore we generally did not expect them to have an incentive to block Freephone calls. A possible exception might be calling card or dial through services. Since these potentially undermine other revenues sources for mobile OCPs, the opportunity costs (to a mobile OCP) of providing access to such services may be higher than the resource costs associated with the calls.

17.87 In terms of SPs blocking calls from mobiles, we again have discussed this as part of our assessment of the free to caller option. In Section 16 we noted that we did not expect a significant proportion of SPs to block mobile calls. but we welcome feedback from SPs on whether this is likely to be an option which they would consider if the increased mobile origination charge were to fall within our Impact Assessment Range (2.5ppm to 3ppm).

17.88 Stakeholders also suggest extending the current end-to-end connectivity obligations (which formally only apply to BT currently).²³⁹ We consider that our proposal to impose an access condition (discussed above) will address the concerns stakeholders raise about the potential for players in the value chain to 'opt out' of the number range. We have however, discussed the issue of the end-to-end connectivity

²³⁷ C&W, December 2010 Consultation response, p.51.

²³⁸ Magrathea, December 2010 Consultation response, p.13.

²³⁹ http://stakeholders.ofcom.org.uk/binaries/consultations/end_to_end/statement/statement.pdf

obligations more broadly in relation to the unbundled tariff in Part B, Section 12 (see paragraphs 12.72 to 12.75) where we seek stakeholder comments and note that we intend to keep this issue under review.

Calling card/dial-through services

Stakeholder comments

- 17.89 A number of CPs, particularly mobile providers, noted concern that Ofcom did not seem to have taken account of the effects on mobile OCPs of the likely increase in indirect access or reseller/dial-through type services. EE, for example, noted a concern that there might be significant inappropriate revenue erosion or arbitrage from mobile OCPs for international calls.²⁴⁰ Virgin Media noted that this potentially considerable loss of revenue/margin could lead to material detrimental consequences for consumers as a result of an effective extension and exacerbation of the tariff package effect. It claimed that this would be contrary to consumer preferences.²⁴¹
- 17.90 Vodafone also highlighted this risk that the price distortions from low wholesale outpayments would open up significant arbitrage opportunities, noting it could become a magnet for SPs offering call-back or indirect access services with the 080 number as a front-end gateway.²⁴² Virgin Media also indicated concern about a risk of exploitative practices or even arbitrage as ‘free’ calling from mobile networks could, for example, be co-ordinated with SP activities to drive artificially inflated traffic.²⁴³
- 17.91 EE therefore suggested that Ofcom should either have an exception to the requirement where the 080 number was used to access a service for which the SP charged the customer, which it said was done in New Zealand; or at a minimum to allow mobile OCPs to commercially negotiate appropriate origination charges for these calls with calling card operators and to block access if those charges cannot be agreed.²⁴⁴ Virgin Media also suggested there should be a prohibition on providing such services via mobile originated 080 calls and/or the ring fencing of certain 080 ranges for which the charging prohibition did not apply and on which indirect access/reseller/dial through type services were permitted.²⁴⁵
- 17.92 C&W, however, considered that such services were quite legitimate but noted they should cover the costs they cause and the origination costs should not have to be subsidised by the profit from other call types.²⁴⁶
- 17.93 [S<] considered that this concern about the proliferation of dial-through services was potentially an anti-competitive stance being taken by some of the mobile OCPs.

Ofcom response

- 17.94 We note that international calling cards and other dial-through type services are already quite common on the 080 range.²⁴⁷ We agree with C&W that such services

²⁴⁰ EE, December 2010 Consultation response, pp.60-61.

²⁴¹ Virgin Media, December 2010 Consultation response, p.23.

²⁴² Vodafone, December 2010 Consultation response, p.14.

²⁴³ Virgin Media, December 2010 Consultation response, p.23.

²⁴⁴ EE, December 2010 Consultation response, pp.61-2.

²⁴⁵ Virgin Media, December 2010 Consultation Response, pp. 23-24.

²⁴⁶ C&W, December 2010 Consultation response, p.51.

are largely legitimate but that they should cover any costs they cause.²⁴⁸ Our Impact Assessment Range for the origination payment means we have assumed that SPs (including calling card services) would be making a reasonable contribution to the costs of mobile origination.

- 17.95 In any event, our preliminary view is that such services increase retail competition and are therefore likely to support a pattern of retail prices that better reflect consumers' preferences (provided that they make an appropriate contribution to resource costs).
- 17.96 In addition, as well as undesirable, we consider that it would be complex in practice to make these services subject to different regulations. Having a different retail charges for these services would create consumer confusion and would not provide the simplified numbering structure we are aiming for. In terms of differing origination payments, as discussed earlier in relation to having a lower origination payment for charity services, there would be significant practical and technical difficulties in making different services subject to different regulations.
- 17.97 We recognise, however, that there would be a potential for arbitrage where the costs of originating the call were not covered by the origination charge. We consider our proposed approach to regulating at the wholesale level should ensure origination charges are fair and reasonable, and cover the cost of efficiently originating the call. However, we welcome stakeholder comments and any further details on what the potential arbitrage opportunities might be even where the origination charge does cover the costs involved.

Proposed approach to implementation

- 17.98 We consider that the following steps will be involved in implementing our proposed approach:
- TCPs to commercially agree with mobile OCPs the origination payment for mobile originated calls;
 - TCPs/hosting providers would need to notify their SP customers of the potential changes to their origination payments (within two months of the proposed free to caller requirement coming into force – as set out in paragraphs 17.66 to 17.68 above);
 - SPs would need to make a decision about whether to remain on their 080/116 number or to migrate to an alternative range;
 - SPs that remained on the 080 and 116 ranges would need to update any pricing information provided to customers about their number;
 - SPs that choose to migrate to an alternative range would need to develop a plan for that migration which would include replacement of material such as stationery

²⁴⁷ International calling cards in particular are among the most called 080 numbers, based on data we received from several OCPs on their top 40 called 080 numbers by volume as part of a formal information request in October 2011.

²⁴⁸ This is supported by a recent decision in Spain where the CMT allowed these services to use mobile numbers, despite opposition from the mobile OCPs: <http://www.cullen-international.com/report/3429/c45044>

or advertising which displayed their old 080 and 116 number and communicating with their customers to advise of the change;

- mobile CPs would need to update their pricing information to customers to confirm that all 080 and 116 calls would be free of charge, including removing all PCAs and making some billing system amendments to ensure that these calls did not appear on customers' bills²⁴⁹; and
- Ofcom/consumer groups etc would need to update pricing information and develop means of actively communicating with consumers the new message that 080 and 116 calls were now always free of charge.

17.99 There are therefore several key elements involved in implementation, including the wholesale arrangements, necessary billing changes and communication to consumers. All of these will have an impact on the time required to implement the proposed changes.

17.100 We have set out our proposed approach to the wholesale arrangements and billing changes in detail above in response to stakeholder comments. We now consider the issue of timing and consumer communication in more detail.

Timescales

17.101 Given the stakeholder comments about an implementation period of six months, and taking into account the different steps that will be involved in implementation, we are consulting on two different options for the implementation of a free to caller approach for Freephone:

- 12 months (i.e. ahead of the wider proposed changes for the other non-geographic ranges); or
- 18 months (in line with other proposed changes).

17.102 We consider that a period of 12 months would be sufficient to complete all the actions outlined in paragraph 17.97 above.

17.103 We consider that communicating this change to consumers will be much more straightforward than some of the other changes we are proposing, and it can easily be presented as a stand alone message, i.e. 080 and 116 now means free, separately from the changes to the other number ranges. Given the current consumer detriments we have identified on these ranges there would also be advantages to bringing this change in as quickly as possible. These arguments would therefore suggest favouring option (a), implementation in 12 months.

17.104 However, we recognise that there would also be benefits in communicating all the changes at the same time to consumers, so we can present a simplified numbering plan as a single message, rather than promoting one message (080 and 116 is now free) followed by further changes to other number ranges. This staggering of changes may have the potential to confuse consumers, especially given the extent of the other changes we are proposing.

17.105 In addition, some of the costs of the changes would be further reduced by a longer implementation period, in particular the migration costs for SPs who decide to move

²⁴⁹ This is a requirement under General Condition 12.

away from the Freephone ranges. For those SPs, it would be easier to plan their migration to an alternative number range if the changes to all number ranges were occurring at the same time. For these reasons, it may therefore be preferable to implement all changes at the same time, i.e. option (b) an implementation period of 18 months.

17.106 We consider there are pros and cons of both options and we would therefore welcome stakeholder comments on both.

*Q17.3: Do you support an implementation period of either:
(i) 12 months; or
(ii) 18 months (in line with the implementation of the proposed unbundled tariff)?
Please explain your reasoning as well as providing any evidence to support your view.*

Communication to consumers

17.107 A key part in addressing the issues on these numbering ranges will be restoring consumer awareness of the range and ensuring consumers are confident they know what Freephone actually means. Therefore the changes to 080 and 116 numbers will form part of the wider communications campaign which we are planning (see Section 6 for more details) and this combined with more specific communications activities (for example through Ofcom's website, or other consumer groups) is one way in which we will help to ensure that the message that Freephone calls are always free, is reinforced in consumers' minds.

17.108 However, providing information to consumers at the point of call may be more important to significantly improve price awareness. We have discussed in Section 12 the possible regulations on SPs in relation to promotion of the SC element of revenue-sharing non-geographic numbers. We therefore need to consider whether similar requirements are necessary for the 080 and 116 ranges.

17.109 On the one hand, we consider that for the majority of SPs, who will want to encourage consumers to contact them, being able to clearly advertise that their 080 number is free from all lines will be beneficial and they therefore are likely to take advantage of that opportunity. In addition, it will also be in OCPs' interests to promote 080 and 116 as genuinely free to caller. Moreover, as highlighted in our assessment of price awareness, given the simplicity of the pricing message, and the consistency of that message across all 080 numbers, we consider it will be an easy price point for consumers to learn and remember. This suggests that a regulatory requirement may not be necessary.

17.110 On the other hand, we have set out evidence in Annex 8 regarding the problems consumers can face learning the cost of calls from the prefix of that number range, especially when these are calls which they do not make frequently. Therefore we consider that, particularly in the short term following the establishment of the changes, there may be benefits in imposing some kind of requirement on SPs to advertise that these calls are free. We discuss below potential options for requirements to ensure that SPs publish that 080 and 116 calls are free as part of their advertising/wherever they promote or display the number.

17.111 In Section 12 one of the options we propose for a similar requirement on the other 08X, 09 and 118 ranges is including these numbers within the PRS Condition so that the advertising will be regulated by the PhonepayPlus Code of Practice. This is not

an option for the Freephone and 116 ranges, because these calls do not involve any element of revenue sharing or charge to the consumer.

17.112 We also propose an option for imposing a requirement on SPs to advertise their service charges (for the number ranges which will have an unbundled tariff) wherever they promote the number. We note that the enforcement of this requirement could be through the Advertising Standards Authority ('ASA') and/or industry agreed Code of Practice.

17.113 Our provisional view is that such a requirement on 080 SPs is unlikely to be necessary or proportionate, for the reasons outlined in paragraph 17.111 above. Nevertheless, there may be benefits in incorporating a requirement on SPs to advertise that 080 calls are free in any agreed industry Code of Practice on the advertising of non-geographic calls by SPs. We would welcome stakeholder comments on what might be a suitable method of encouraging SPs to advertise that the calls were free.

Q17.4: Do you have any other comments on our proposed implementation approach for making Freephone free to caller? For example, do you consider it necessary for a requirement on SPs to publicise that 080 calls are free to be part of any agreed industry Code of Practice on the advertising of non-geographic calls and do you have any other suggestions for how SPs could be encourage to publish that at the point of call? Are there any other implementation issues which need to be taken into account?

Provisional conclusion on the implementation of a maximum price of zero for 080 and 116 calls

17.114 As outlined above, we are proposing an implementation period of either 12 or 18 months for our preferred option of making 080 and 116 free to caller. Additionally, we are proposing the imposition of an access condition on all TCPs hosting 080 and 116 numbers requiring them to purchase wholesale origination services on fair and reasonable terms, and requiring them to provide advance notice, to their hosted SP customers, of any change to those origination charges. Below we set out how we consider our proposed approach meets the necessary legal tests and complies with our relevant duties. We also provide an outline of the potential modifications required to the General Conditions and Numbering Plan in order to implement the changes.

Legal tests

17.115 We discuss the legal framework and our powers in relation to imposing retail level obligations on CPs at Part A, Section 5.

General Conditions and the Numbering Plan

17.116 In proposing to make or modify amend a General Condition, we can only do so if that amendment imposes an obligation that we are authorised to impose under sections 51, 52, 57, 58 or 64 of the Act. We are proposing to require that OCPs zero-rate all calls to 080 and 116 numbers. We are relying upon section 51(1)(a) and more particularly section 58(1)(aa).

17.117 Section 51(1)(a) permits the setting of conditions that Ofcom considers appropriate for protecting the interests of the end users of public electronic communications networks ('PECNs'). Section 58(1)(aa) allows the imposition of General Conditions

that impose tariff principles and maximum prices for the purpose of protecting consumers.

17.118 We consider that the current use of Freephone and 116 numbers gives rise to consumer harm, as identified in Section 14 and Annex 8. For the reasons set out in Section 16, we have proposed that the best way to protect consumers from the harm identified on the 080 and 116 ranges is to impose a zero maximum retail price. This will entail the modification of General Conditions under section 58(1)(aa) to impose a maximum price in relation to the provision of electronic communications services provided by means of non-geographic numbers, and to ensure that definitions relating to Freephone and Free to caller are updated.

17.119 Additionally, the implementation of the a zero maximum retail price will also necessitate amendments to the Numbering Plan to reflect the restrictions and requirements that apply in relation to the use the 080 and 116 number ranges. The modifications we propose to make to the Numbering Plan will also form part of our separate consultation on the draft conditions and modifications to the General Conditions required to implement the our proposals (see Section 6).

17.120 When modifying the Numbering Plan or making or modifying a General Condition, or a condition set under section 59, Ofcom must be satisfied that the condition or modification complies with the legal tests set out in sections 60(2) and sections 47(2) of the Act, namely that the proposed conditions and modifications are objectively justifiable,²⁵⁰ not unduly discriminatory, proportionate and transparent. The reasoning in this consultation document, notably Part C, will form the basis of our assessment as to whether the conditions and modifications we will propose satisfy these tests. The assessment will be carried out in the separate consultation on the draft conditions and modifications to the General Conditions and the Numbering Plan.

Access Condition

17.121 In proposing to set an access condition under section 73 of the Act we have to ensure that any condition is appropriate for securing:

- efficiency;
- sustainable competition;
- efficient investment and innovation; and
- the greatest possible benefit for end users.

17.122 We are proposing to impose a condition on TCPs who host SPs on 080 and 116 numbers in order to address a specific identified access concern, as described at paragraphs 17.55 to 17.73 above. We consider that in the absence of such a condition, wholesale arrangements may cause consumer detriment. Additionally, we identify in Annex 10 that wholesale arrangements in the absence of intervention could result in wholesale OCPs choosing to route calls in a way that conceals their identity (paragraph A10.97), which may lead to inefficiency of routing; a consolidation of TCPs leading to a reduction in competition (paragraph A10.126). We consider that the proposed condition will help to address these issues, and also encourage greater investment and innovation by SPs as confidence in the range grows.

²⁵⁰ This test does not apply to the setting or modification of General Conditions

17.123 In addition, Ofcom must be satisfied that the proposed condition complies with the legal tests set out in section 47(2) of the Act, namely that it is objectively justifiable, not unduly discriminatory, proportionate and transparent. The reasoning in this consultation document, notably Part C, will form the basis of our assessment as to whether the condition we will propose satisfy these tests. The assessment will be carried out in the separate consultation on the draft conditions and modifications to the General Conditions and the Numbering Plan.

Ofcom’s statutory duties

17.124 We have identified making the 080 and 116XXX ranges free to caller as our preferred option under the assessment criteria that we have derived from our statutory duties for the purposes of this review. We are satisfied that our preferred option is consistent with our general duties in carrying out our functions as set out in sections 3 and 4 of the Act. In particular, we consider that imposing a maximum price of zero for 080 and 116 calls will ensure that consumers are protected against the market failures we have identified in Section 14 and Annex 8, ensuring restored consumer confidence in the number range while taking into account the impact on SPs. This, combined with the other proposed changes to non-geographic number ranges, will mean that the changes will further the interests of citizens in relation to communications matters and further the interests of consumers in relevant markets.

17.125 We also consider that our proposal will contribute to the fulfilment of our general duty in carrying out our telephone numbering functions under sections 56 to 62 of the Act to:

- **secure the best use of appropriate numbers:** in that the modifications ensure that 080 and 116XXX numbers are genuinely free to callers and SPs are able to obtain a number that is free across all networks for their customers. We consider that the creation of transparent free to call number ranges will be addressing the market failures and resulting consumer harm identified in this review. Therefore we expect consumer confidence in these ranges to improve so that call volumes should increase. In addition for the 116XXX numbers it ensures that this number range is implemented in a way which provides the most benefits for consumers as citizens will be able to call socially valuable services for free from all networks.
- **encourage efficiency and innovation:** in that the modifications ensure that SPs are able to provide a genuinely free number to their customers, encouraging innovation in service provision.

Outline of draft conditions and modifications required to implement the zero maximum retail price proposal

17.126 As highlighted in Section 6, we have not included draft legal instruments as part of this consultation, but will be issuing a separate consultation shortly covering all the necessary changes to the General Conditions and Numbering Plan required for both the changes discussed in this part of the document and the unbundled approach.

17.127 We anticipate that implementation of a zero maximum retail price on the 080 and 116 ranges will entail the modification of the General Conditions to which CPs are subject. Those General Conditions will need to have the following effect:

- amend any reference to Freephone and Free to caller to ensure that they align with the proposed definitions for relevant ranges; and

- amend GC17.15 to ensure that all CPs are required to comply with the designation in the Numbering Plan in relation to the 080 and 116 ranges.

17.128 We also anticipate amending the Numbering to update Freephone and Free to caller definitions and to amend the designation of the 080 and 116 ranges to ensure that they provide for a free to caller range.

17.129 We are also proposing to impose an access obligation on TCPs who host SPs on the 080 and 116 ranges to:

- purchase wholesale origination services for calls terminating on designated free to caller ranges from any requesting OCP;
- That any such purchase be on fair and reasonable terms and conditions (including charges); and
- That any revision to the charges for wholesale origination services following the introduction of a zero retail maximum price be notified within 2 months of the statement including the legal instruments requiring zero maximum prices.

17.130 We can confirm that the changes we are proposing will not apply to Universal International Freephone Numbers.²⁵¹ These numbers are not part of the Numbering Plan.

²⁵¹ These numbers are specifically referenced in General Condition 20.