



Response to Ofcom Consultation on Simplifying Non-geographic Numbers

on behalf of The Number UK Ltd (118 118)

27 June 2012



Introduction

The Number UK (TNUK) continues to support Ofcom's ongoing review and simplification of non-geographic numbers. We believe that it is demonstrably the case that the current system is failing consumers and thereby leading to higher prices, less choice and reduced innovation. Reform is long overdue.

However, whilst we understand that DQ only constitutes a very small part of the total NGC market and therefore Ofcom might see it as a relatively minor part of this review, we are concerned that Ofcom may not be giving sufficient attention to the particularities of the sector.

In practice, DQ has nothing really in common with 08 number ranges, which often only provide a means for consumers to contact organisations providing services unrelated to the call itself e.g. banks or utility companies. Whilst DQ may be more similar to 09 PRS (in the sense that the service is provided via the call itself) there are still stark differences, most notably that DQ relies upon providing a fast and efficient response, whereas PRS providers generally maximise call length as much as possible.

These differences matter greatly when evaluating the impact of Ofcom's proposals on the DQ sector and we would urge Ofcom not to overlook them, particularly when considering the imposition of possible price caps and pre-call announcements. The DQ sector is facing some fairly acute challenges leading to a considerable volume decline, which we hope unbundling will be effective in addressing. But at the same time, a significant number of consumers continue to use and value the service, which Ofcom should be mindful to preserve, not least because of its universal service status. Now is clearly not the time for Ofcom to impose new intrusive regulation on a sector in difficulty, but still endeavouring to provide a valuable service to consumers.

Nevertheless, TNUK would also like to take this opportunity to commend Ofcom for the significant amount of work which it has undertaken to date in the course of this review. Whilst we may not agree with all of its proposals, we believe that the length and detail of the current consultation is testament to the time and effort which Ofcom has dedicated to trying to resolve some very difficult issues.



Summary

Price Caps and Pre-Call Announcements on Directory Services

- In advance of the PRS Maximum Charge Review, TNUK would like to comment on Ofcom's apparent proposals for DQ SC caps and pre-call announcements (PCAs).
- Although Ofcom believes that a pre-determined list of fixed price points is a necessary part of unbundling, TNUK does not think there can be any argument for actively seeking to constrain DQ prices.
- Even if a price cap does not actively restrict prices, we believe that a PCA obligation will have the same effect because it would be damaging to the nature of a DQ business, that SPs will be determined to avoid it and so it will become a de-facto cap.
- Ofcom's own arguments and reasoning as to why it has chosen to not to introduce either total maximum retail caps or even just a cap on the AC, provide equivalent reasoning as to why it should not cap the DQ SC (or by implication impose a PCA which would act as a cap).
- By Ofcom's own analysis, such a cap would be difficult to set, as well as unnecessary and potentially harmful to the interests of DQ consumers (not to mention SPs).
- Ofcom's evidence provides even stronger reasoning not to cap the DQ SC than it does not to impose those other caps, not least because Ofcom states that the competition in relation to DQ is likely to be greater than in other areas and will increase as a result of unbundling.

Market Failures

- TNUK broadly agrees with Ofcom's assessment of the market. We strongly agree with the existence of the vertical externality and that it leads to NGC prices being higher than they should be and that this in turn leads to falling call volumes, which is having a real and tangible impact on investment and innovation.
- TNUK agrees that unbundling should be applied to all of the revenue-sharing NGC number ranges, which would help address the vertical externality and increase quality, variety and innovation, although the impact will be limited by the fact that the AC will be uncapped.
- But TNUK believes that unbundling may still prove to be very harmful as regards DQ services if it leads to active price caps and PCAs.

The Access Charge

Design of the Access Charge

- TNUK would still strongly advocates that the AC not be allowed to vary between tariff packages, which we continue to believe would materially improve pricing transparency and therefore the overall level of welfare for consumers.
- TNUK is even more concerned about whether OCPs should be allowed to set different ACs for different number ranges and we strongly agree with Ofcom that they should not.
- This is to avoid the likelihood of OCPs setting a premium rate AC (to apply only to 09 and 118) calls which clearly cannot be justified either by arguments in relation to bad debt or consumer preferences



and would in reality be used to exploit consumers' poor price awareness and/or expectation that certain calls would be more expensive.

Structure of the Access Charge

- The structure of the AC should be limited to a pence per minute charge in order to maximise transparency and some degree of memorability.
- We accept that there may be some justification for a minimum call charge, although we believe that 5 or 10 seconds would be more appropriate than one minute.
- We also agree that the AC should not be allowed to vary by time of day, which would clearly be a retrograde step.
- We agree that if the AC is to be included as part of call bundles, the inclusion must not be allowed to differentiate by number range, which would simply be a way of allowing OCPs to avoid the obligation set a single access charge across all number ranges.
- We regret that Ofcom has not given serious consideration to requiring the AC be included in call bundles, as BEREC recently recommended and ARCEP adopted

Capping the Access Charge

- TNUK continues to favour a cap on the AC, although in this response we focus our comments on highlighting why we believe that Ofcom's evidence for not capping the AC is if anything, potentially weaker than any evidence for capping the SC.
- Critically, the fact that NGCs currently form such a small part of total call volumes means that competitive constraints on the AC are likely to be weak, which is in stark contrast to an isolated decision to call a particular SP.

The Service Charge

Structure of the Service Charge

- TNUK accepts that bespoke SCs should be prohibited, ✕
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- TNUK would inherently support the service flexibility offered by time of day variation, but in practice we would be concerned about the impact it would have on the number of available price points, which we regard as a much more important consideration.
- We would also be concerned about the difficulty of reaching industry agreement on time of day charging and such difficulties would not be justified by the marginal benefits.
- TNUK welcomes the broad support for the continuation of per minute and per call charging structures for the SC, which are a core element of DQ service provision, although we would want to ensure that Ofcom also maintains a sufficient number of price points to guarantee that it is not compromised

Capping & Restricting the Service Charge

- Ofcom's approach to SC caps on the 118 number range remains somewhat confused. Ofcom accepts that there is no need for a cap to protect the identity of the number range, which only leaves



'addressing weak competition' as a possible ground for a cap, although Ofcom makes clear that a cap would be an ineffective response to that problem.

- TNUK notes Ofcom's view that unbundling requires there to be a list of pre-determined SC price points, but this is a problem which should be managed as far as possible.
- The addition of a relatively small number of additional price points would only have a marginal impact on OCPs, but a lack of sufficient price points could have a major impact on SPs and their ability to offer a variety of services.
- This issue is critical because one of the fundamental objectives of unbundling is to address the vertical externality and thereby give SPs a greater control over retail pricing.
- Ofcom should therefore adopt a cautious approach of requiring 100-150 price points, although TNUK believes that Ofcom's own proposals for increasing the £1.53 PRS cap may mean that at least 80 additional price points are required for 118/09 services to reach a new higher cap.

Setting the Service Charge

- TNUK has significant concerns in relation to Ofcom's proposed approach of allowing industry to set the SC price points, which we believe risks perpetuating the vertical externality, albeit in a slightly different form, because OCPs will have no incentive to take account of the preferences of SPs.
- TCPs can also not be relied upon to represent effectively the (sometimes competing) views of SPs.
- Although OCPs and TCPs should be involved the price setting discussions, it should be DQ SPs (rather than the CPs) which set the 118 price points, subject to Ofcom's overall approval.
- There is no reason why CPs should have any greater input into SPs' retail prices than vice versa and indeed separating CPs from SPs is inherent to the principle of unbundling.
- The three most important criteria for setting the SC price points should be granularity, regularity and choice.

Implementation

Bill Presentation

- The charges on the bill should be disaggregated on a call by call basis.
- We do not believe that simply including the AC on the bill is sufficient. At the very least, it must be accompanied by a short explanation of what the AC and SC actually refer to and therefore how unbundling really works in practice, which must be included in a sizeable font on the front of the bill.

Technical Implementation

- TNUK agrees that the establishment of a central SC database would be a sensible/necessary development, although we assume that it would largely be a matter for the operators and primarily the TCPs.
- Ofcom should not underestimate the difficulties of persuading different parts of industry to agree on the design, procurement and cost of the database or believe that it can simply step away from the process and leave industry to get on with it.



- TNUK agrees that the process for number range building and tariff change notification would benefit from reform and the main issue of interest to us would be the timescales/notice periods for notifying tariff changes and how often changes can be made.
- SPs need to be able to control their prices and so this must not be left to OCPs and TCPs to decide themselves and for their own benefit, but rather Ofcom should establish the parameters of one month notice periods and monthly or quarterly tariff changes.

Access Regulation

- TNUK believes that additional regulatory intervention is necessary in relation to access to non-geographic numbers, although the problem is not an absence of regulation, but rather its enforcement.
- This is because BT currently does not allow its Home Hub voice customers to call any non-BT DQ service, but no regulatory action has been taken. Ofcom should set the bounds of economic and technical feasibility exceptions and be prepared to enforce them.

Communication & Price Publication

Communicating with Consumers

- TNUK welcomes Ofcom's uncontroversial proposals but believes that much more will have to be done to raise general awareness amongst the public and thinks that OCPs should take on an enhanced role because they have the principal retail relationship with consumers.
- Ofcom should do much more than simply ensure that consumers are made aware of their ACs, which would only imply existing charges.
- If unbundling is to lead to enhanced competition (particularly in view of Ofcom's decision not to cap the AC), it is vital that the AC forms part of consumers' purchasing decisions and therefore has sufficient publicity and prominence, rather than being hidden in the small print of price guides or websites.
- It is of the most fundamental and critical importance to the effective operation of unbundling and desired increase in competition. This means that unbundling has to be properly understood and communicated by OCP staff in contact centres and retail stores.
- The PhonepayPlus Code of Practice has been effective in ensuring transparency of SP charges and that this should be allowed to continue, with minor changes to reflect the shift to an unbundling structure.
- TNUK accepts that the SC should not vary for calls originated within or outside the UK and would welcome clarification from Ofcom as to why this should not also apply to the AC (other than in respect of international roaming services).

Business to Business Exemptions

- TNUK agrees that it would be sensible to grant certain exemptions for business to business contracts from the strict requirements of unbundling.
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PRS Maximum Charge Review

At several points in the document (primarily at paras 6.38 to 6.44), Ofcom refers to its intention to issue a further consultation described as the '*PRS maximum charge review*'. The need for this further consultation appears to have been prompted primarily by Ofcom's perceived need to increase the current £1.53 cap for calls to 09 services, which is a move with which we do not disagree. It is entirely unclear, however, why Ofcom is considering imposing a cap on 118 services (combined with a possible pre-call announcement), as part of a quite separate process to raise the cap on 09 services.

As we have alluded to in the introduction, TNUK believes that Ofcom could not have chosen a worse time to be considering imposing this additional intrusive regulation on the DQ industry. For a variety of reasons call volumes are declining which is placing the viability of DQ providers at risk, particularly those such as TNUK for whom DQ is the core business.

And yet at the same time, there are consumers who value and in some cases rely on a voice DQ service, where they have no access to smartphones or even broadband. Those consumers are often the elderly or on low incomes. If proof were needed, the fact that all communications providers have a universal service obligation to provide access to a DQ service demonstrates the importance which is attached to it.

We explain further in this response why we believe that the imposition of price caps (which actively restrict prices) or pre-call announcements are potentially so damaging to the DQ sector. If such measures are imposed on an industry which is already facing the prospect of continuing decline, the ultimate adverse impact has the potential to be very serious.

Indeed, Ofcom may be unaware that ARCEP in France also very recently considered the imposition of price caps on DQ services, but ultimately decided not to do so, despite an earlier proposal to that effect. ARCEP determined that heavy handed regulation is not ultimately in the interests of French DQ consumers and nor in our view is it in the interests of UK DQ consumers

Although the current consultation does not appear to be seeking comments on the issues which will be contained within the PRS maximum charge review, Ofcom will understand that they are of significant interest and concern to TNUK. Therefore, we would like to take this opportunity to outline our views at a high level, although we of course look forward to responding in much greater detail when we see Ofcom's full proposals in the next consultation.

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As we discuss further in response to Q10.7, TNUK notes Ofcom's view that unbundling requires that there will be a pre-defined list of price points. If that is the case, by definition the highest of those pre-defined price points must be a de facto cap of some sort. As a result, two questions necessarily arise. Firstly, whether the cap will bite (in the sense that it will actively restrict prices) and secondly whether it will be reviewed (and if so, how often and by what process).

Whilst we assume that these issues will be included within the PRS maximum charge review consultation, TNUK believes that currently there can be no possible justification for actively restricting DQ SCs. At the most simple level, we believe that to do so would amount to a highly intrusive form of regulation which cannot in any way be justified at this time.

Ofcom itself highlights that additional regulation should not be required to address any problems of bill shock, where higher charges may be incurred as a result of longer calls being made, because such regulation already exists. At para 9.241 Ofcom says:-

"As regards bill shock for the onward call connect charges for DQ services, there is a specific regulatory measure in place already to address this – these charges are subject to their own pricing requirements under the PPP Code of Practice, in particular providers are required to advise the caller of the costs before they onward connect the call."

Indeed, many of the arguments in support of TNUK's broader position are in fact contained in Ofcom's own analysis in this consultation, as we describe below. However, before doing so, we will first explain why we believe that the related proposal to impose pre-call announcements on 118 services might in practice have equivalent effects to a price cap.

Pre-call announcements (PCAs)

Ofcom does not explicitly state in the consultation that it is considering imposing PCAs for 118 services. However, at para 6.39 and 9.31, it states it that is considering imposing PCAs for some higher rate PRS and at para 6.43 it makes clear that the 118 number range will be considered generally within the PRS maximum charge review. Therefore, for the purposes of this response, TNUK assumes that a PCA may be required for calls to 118 services where the SC is set at a certain level.

As we shall explain, our opposition to PCAs falls into two quite separate (albeit related) categories. Firstly, we believe that it creates a very poor consumer experience which significantly undermines the value of a DQ service to consumers. Secondly we believe that there are sound economic reasons as to why PCAs will have negative impact on the market more generally, which will in turn have a negative impact on consumers above and beyond the poor customer experience. Separately, we believe that both provide good reason as to why Ofcom should not impose PCAs on DQ calls, but taken together we think the evidence is overwhelming.

There are a great number of complex issues connected with the possible imposition of a PCA which we expect Ofcom would have to address in detail in the upcoming consultation before it could determine that PCAs would be appropriate. For example these would include:



- The impact of a PCA on the quick and efficient nature of a DQ service and whether the value of the service to the consumer may therefore be fundamentally undermined
- Evidence of a real demand amongst consumers for PCAs, particularly taking into account the obvious annoyance factor of identical repeated automated messages
- Evidence that PCAs would in fact be the best and most desirable means of informing consumers of call costs, compared with any alternative methods of price transparency, which may be less expensive to implement
- The industry-wide costs of implementing the PCAs, how these should be borne and what impact they would have on consumer prices
- Whether a PCA should apply to business and consumer customers, in view of the fact that most business callers will not be responsible for call charges, but SPs will be unable to distinguish between business and consumer callers
- The technical implementation of the PCA (between SP, TCP and OCP), particularly in view of whether the PCA will be chargeable
- The benefits to consumers and whether a rigorous cost benefit analysis would demonstrate that those benefits justified the costs (compared with potentially lower costs of alternative options)

On that final point, we note that Ofcom comments at para 9.30:-

“...there are clear implementation issues connected with PCAs, potentially leading to high costs. We think it is unlikely that these costs would be outweighed by the transparency benefits of PCAs.”

Perversely, Ofcom then comments that “we nevertheless remain of the view that PCAs might be an effective complementary measure to the other retail remedies we are considering.” This makes no sense as clearly the costs will be no lower and the benefits will be no greater if PCAs are introduced together with other measures, but for some reason Ofcom seems to believe that they would then be justified.

Although we look forward to responding in detail to those points, for the purposes of this section we are limiting our comments to the detrimental impact which we believe the imposition of a PCA could have on DQ SPs pricing decisions in one particular and important respect.

As we have highlighted elsewhere in this section, one of Ofcom’s principal concerns with the imposition of any form of price cap (particularly one which is imposed for the purposes of consumer protection) is that it acts as a focal point for what Ofcom believes is an ‘acceptable’ charge. As a result prices tend to converge at that level and although that may mean some prices reducing, it’s very likely to mean that others (quite possibly the majority) will certainly rise.

Moreover, it significantly undermines competition because providers settle on the fact that the level of the cap represents the ‘right’ charge, thereby creating very limited incentive for any competition beneath the cap. This is certainly an effect which has been witnessed most starkly in relation to the EU mobile roaming regulations. Although prices may not have risen in that example, there is clearly a lack of competition beneath the cap, compared with what NRAs expected to happen, so retail charges have effectively stagnated at the level chosen (somewhat arbitrarily) by the policy makers.



Although the imposition of a PCA might not be a price cap per se, TNUK believes that the effects may be very similar. Critically, DQ SPs are likely to view it as an effective cap and therefore make their pricing decisions accordingly in order to avoid, it for reasons we will now explain.

TNUK is strongly opposed to the imposition of a PCA on the 118 number range. We will provide much greater detail of the reasons for our opposition in response to the PRS maximum charge review, but essentially it is because we think that it fundamentally undermines the nature of a good DQ service. That is a service which provides consumers (who are often on the move or in a hurry) with information quickly and efficiently without obstruction or delay.

A large number of consumers call DQ services for convenience and accuracy and therefore choose to use the service even where they have access to web-based alternatives. According to TNUK's own research¹, 42% of consumers who call 118 118 do so because they were in a hurry and it was the quickest way to obtain the information they needed. Speed of call completion also has the highest correlation with overall customer satisfaction of all factors measured including accuracy, knowledge, politeness and clarity. Moreover, 82% of callers had other sources of information available to them at the time of the call (eg smartphone, internet or printed directory) and yet still chose to call 118 118. This clearly demonstrates that they see a real value in the service we offer.

Indeed, we understand that Ofcom has previously conducted its own consumer research in relation to PCAs² which reached the same conclusion, although unfortunately it does not appear that the research has been published in full. Nevertheless, Ofcom has previously stated:-

"Ofcom also has anecdotal evidence that regular users of directory enquiry services find the tariff announcements provided by service providers prior to connecting calls to destination numbers annoying³."

And also:-

"...other research suggests that a large proportion of consumers (42 per cent) would find routine pre-call announcements annoying⁴"

As a result, we believe that consumers will be significantly annoyed by first having to listen to an automated announcement, which will therefore have a detrimental impact on the entire DQ consumer experience and potentially their propensity to call in the future. Indeed, we would question whether a price announcement is even needed to inform consumers of the cost of a call, because our research again indicates that they are already able to predict this fairly accurately. DQ callers correctly predicted that the cost of an average call is in the region of £2.60 to £2.90. Aside from any broader economic arguments, we therefore believe

¹ Source: Polling research conducted by 2CV on behalf of TNUK – November 2011

² This was part of both its NTS Review which began in 2004 and its safeguarding/raising confidence in telephone numbers review which began in 2006

³ http://stakeholders.ofcom.org.uk/binaries/consultations/nts_forward/summary/nts_way_forward.pdf

⁴ <http://stakeholders.ofcom.org.uk/binaries/consultations/numbering03/summary/03.pdf>



that consumers would be opposed to (or at least see no value in) PCAs which applied every time they called a DQ service.

Consequently, TNUK would go to considerable lengths to avoid having to implement a PCA in order to preserve the integrity and value of its service, so we are likely to want to keep our charges beneath the PCA level. We would expect other DQ SPs to do likewise. As a result, we think it highly likely that the charge level at which the PCA is set will become a focal point for 118 SCs in the sense that SPs will want to remain just below it. This is precisely the effect which Ofcom sees as so damaging and is determined to avoid in relation to price caps.

This is exactly what has occurred in Germany. In 2006, the regulator introduced an obligation on DQ providers to play a PCA for any call which cost €2/min (or higher). As a result, the two leading DQ providers in Germany (Deutsche Telekom and Telegate) both increased their charges in order to set them at exactly €1.99/min. TNUK is not aware of any DQ provider in Germany who charges in excess of that level. We have also been told informally that it is most unlikely that either Deutsche Telekom or Telegate will increase prices for the foreseeable future, due to the PCA.

Evidence from Germany clearly demonstrates that a PCA is likely to have exactly the same impact on 118 SC levels as would a price cap and it therefore becomes a cap in all but name, with all of the negative consequences of acting as a focal point and reducing levels of competition which flow from it. It follows therefore, that all of Ofcom's reasoning as to why price caps are harmful and should not be introduced, applies equally to the imposition of PCAs.

For the remainder of this section we will focus on the economic arguments and for that reason, we now proceed to highlight Ofcom's analysis within the consultation in which it makes clear why it is opposed to price caps, both in respect of the overall maximum retail prices option as well as capping the AC within an unbundling regime. In both cases, we explain why we believe those same arguments should apply equally to any proposal to cap the SC, but we would ask Ofcom also to consider our view that they should likewise apply to the imposition of PCAs.

Maximum Retail Prices

Ofcom analyses the evidence in relation to the possibility of imposing maximum retail price caps before ultimately concluding that unbundling is its preferred alternative option. However, TNUK believes that a SC cap (or PCA obligation) imposed on an SP (who cannot migrate number range to avoid it) under unbundling, is in many ways identical to a maximum retail cap imposed on an OCP. Although SC caps may not have the complication of underlying wholesale charges, both caps have the effect of restricting the retail charges that can be levied on consumers and thereby restricting revenue that can be generated as a result.

TNUK understands that Ofcom may seek to distinguish its proposals for capping the 118 SC, by describing it as a consumer protection measure, which it views as less interventionist than a 'price cap'. As discussed further in response to Q10.5, TNUK rejects that distinction, at least until we understand more clearly at



what level the caps will be set and whether they will actively restrict prices. Whatever Ofcom's underlying motives may be, the fact remains that a cap is a cap and (depending on the level) the adverse consequences are the same. We do not accept that describing the cap as a 'consumer protection measure' of itself makes it a less interventionist form of regulation.

It follows that much of Ofcom's analysis leading to the conclusion that maximum retail caps should not be imposed, equally supports the argument that SC caps should also not be imposed. In fact, Ofcom's analysis is even stronger in relation to 118 than some other number ranges. There are very many examples of this analysis in Section 9, but we include below a just a few by way of illustration.

At para 9.51, Ofcom refers to its December 2010 consultation where it recognised that retail price caps:-

"would be a highly interventionist approach which could potentially have a negative impact on competition, harming consumers' interests in the long term."

Ofcom considers that use of current retail prices or limits in the Numbering Plan are the two primary means by which price caps could be set. But Ofcom believes that retail prices "*would be an inappropriate basis for setting maximum prices*" and that the Numbering Plan is also unsuitable, particularly as regards 118. At para 9.86 Ofcom states:-

"We agree that pricing flexibility is particularly important in the 118 range, and it is currently unclear how a maximum price could be set for this range which still allowed for some pricing flexibility"

Again, referring to its analysis in the December 2010 consultation, Ofcom states at para 9.126 that:-

"We noted it would be a highly interventionist approach, and there was a very real likelihood that the maximum prices would become the focal points for actual prices to be set (which would mean that actual prices were set by the regulator rather than by competition)"

In its updated assessment at para 9.147 Ofcom says:-

"In principle, where consumers are aware of prices and absent externalities, competition is likely to result in an efficient pattern of prices.⁵ In contrast, under the system of maximum prices that we are considering, the actual pattern of retail prices is largely determined by the regulator. Whilst in principle regulation could also lead to an efficient pattern of prices, in practice there is a significant risk of regulatory failure....there is a risk that regulated prices are not set at the correct level and regulation may also be less agile in responding to changing circumstances."

At para 9.150 Ofcom even acknowledges that such a move could even be in breach of its principal duty:-

⁵ Whilst we acknowledge that Ofcom states that this analysis does not hold in the case of current charging methods for NGCs, it clearly should hold as regards the SC, in line with Ofcom's broader analysis of the competitive effects of unbundling



“However, Ofcom’s principal duty in carrying out its functions includes the promotion of competition, where appropriate, and therefore we need to give very careful consideration to any option that could negatively impact competition. We remain of the view that there is a material risk that in setting maximum retail prices for these number ranges we will choose prices that will not benefit consumers in the long term, so as to compensate for the reduced scope for competition.”

At para 9.163, Ofcom concludes that the impact on the 118 number range would be even greater than on other number ranges:-

“Nevertheless, we recognise the concerns raised by stakeholders that there is a risk that future innovation and new services would be negatively impacted, because of the limits on pricing....We consider that this is particularly the case with the 118 range, where there is a risk that limits on the retail price points that are available may restrict any future innovative pricing techniques.”

Even after the price points have been set, Ofcom concedes at para 9.178 that the difficulties continue:-

“...as well as setting the initial retail price points, Ofcom would need to regularly review them to ensure they remained appropriate. This increases the regulatory burden of the option and compounds the scope for error”

TNUK believes that Ofcom’s own analysis provides cogent evidence as to why it should not impose price caps on the 118 SC, which actively restrict prices. Furthermore, even most of the benefits of maximum retail price caps which Ofcom identifies i.e. price awareness as well as service availability, innovation and quality would not (according to Ofcom’s own broader analysis) actually even apply to the SC in an unbundled scenario because unbundling itself will achieve those benefits. As a 118 SC cap would have many of the disadvantages and none of the advantages of the maximum retail price which Ofcom has rejected, we believe that Ofcom should not introduce this measure.

Access Charge Cap

Having chosen unbundling as a more appropriate intervention than maximum retail prices, Ofcom assesses whether or not it should impose a cap on the AC. As with maximum retail prices, TNUK believes that the imposition of an AC cap has many characteristics in common with the imposition of a SC cap (or PCA obligation). Once again, both caps have the effect of restricting the retail charges that can be levied on consumers and thereby restricting revenue that can be generated as a result. Indeed, the fact that the AC and the SC are two concurrent parts of the same charge means that from the consumer’s perspective, there is really no difference between them.

To be clear, although TNUK maintains its principled support for the imposition of a cap on the AC, the purpose of this section is not to address the merits of that issue, but rather to highlight why Ofcom’s analysis in relation to the AC cap supports TNUK’s opposition to a SC cap. Ofcom should bear in mind that although Ofcom has made the arguments in relation an AC cap that it is not the basis upon which TNUK is discussing them in this context.



On one level (as we highlight in some of the extracts below) there is a simple argument in favour of consistency. Ofcom's preference seems to be to impose a cap on SC (perhaps only at a consumer protection level) but not to impose a cap on the AC (even if only at a consumer protection level). That is a fundamentally inconsistent (and therefore discriminatory) approach which has no objective justification. TNUK sees nothing in Ofcom's analysis which would support such a divergence and we genuinely do not understand why Ofcom has chosen these two fundamentally different options.

However, it is equally important to move beyond the simple argument about the need for consistency and non-discrimination. When studying Ofcom's detailed analysis and reasoning as why it has chosen not to impose an AC cap, one finds that exactly the same analysis and reasoning should apply to the SC and therefore lead to the conclusion that a SC cap should also not be imposed. TNUK's objection is not merely that the outcome is inconsistent, but also that the underlying analysis differs for no apparent reason.

As a result, TNUK believes that much of Ofcom's analysis leading to the conclusion that maximum retail caps should not be imposed, equally supports the argument that SC caps should also not be imposed. Indeed, because Ofcom considers (and rejects) even the possibility of imposing a consumer safeguard cap on the AC, the similarities to the question of whether to impose a SC cap are even stronger. Again, there are many examples of this analysis in section 10 and we set out a few of them below by way illustration:-

In discussing efficient prices at para 10.164 Ofcom says:-

"If there are sufficient competitive pressures on the AC then this should encourage the presentation of a range of ACs in different tariff packages designed to meet individual preferences in the composition of charges. Such a competitively derived range should ensure price efficiency for the benefit of consumers. In such a case the presence of an AC cap may either have no effect (as the cap will be above the competitive charges) or may distort the retail prices inefficiently"

At para 10.180, Ofcom says that it would only be possible to impose an AC cap based on geographic rates *"if there was evidence that the introduction of a separate AC would not be sufficient to provide an adequate level of consumer protection"*. In fact it concludes:-

"At present [we] consider that there is evidence that consumers will be able to understand and utilise the AC in a way that should allow competition to constrain charges."

TNUK believes that there is nothing in Ofcom's overarching analysis to suggest that the introduction of a separate SC would be any less sufficient in providing an adequate level of consumer protection.

Moreover, even when explicitly considering the possibility of imposing an AC cap for the purposes of consumer protection, Ofcom is resolute that it is unnecessary and potentially damaging by stating at para 10.182:

"The introduction of new charging structures can give rise to consumer confusion that companies can exploit. However, setting a charge cap in the short term to address this may itself encourage



inefficient price setting by signalling a price level that is 'acceptable'. As highlighted in the December 2010 Consultation, the risk is that such a maximum operates as a "focal point". By specifying a maximum permissible AC, there could be a risk that OCPs all choose to price at or close to that maximum. As a result, this option may actually increase the level of the AC. The magnitude of this risk depends on the strength of competition between OCPs when supplying NGCs which (as explained above) may not be strong."

It is TNUK's view that by Ofcom's own analysis, precisely the same considerations must apply to the imposition of a SC cap, even only as a consumer protection measure. Ofcom continues at paras 10.183-10.184 to consider whether unbundling will in fact introduce sufficient competitive pressures to constrain the charge and it concludes that it will:-

"As we discuss in Part A (Section 6), the new unbundled tariff will be accompanied by a significant programme of consumer awareness activity and OCPs will have an incentive to position themselves competitively in the new regime. Further, given the highly competitive nature of the retail market at any given time, OCPs will need to be present in an attractive tariff package to consumers comparing offerings. We anticipate that this should temper the behaviour of market participants.

"We accept the risk that without such a cap, OCPs may exploit a period of uncertainty to introduce high ACs. However, as noted, equally there are risks that such a cap will provide a focal point for OCPs and lead to higher prices overall than today. Our preference would be not to set a cap but to monitor the AC levels and the returns they generate for the OCPs to consider whether further intervention, if any, may be required."

Once again, TNUK sees no reason why the same considerations would not apply in relation to the DQ SC. Specifically, SPs will have exactly the same "*incentive to position themselves competitively in the new regime*" and so there is no reason why Ofcom's preference in relation to the SC should not be to "*monitor the [SC] levels and the returns they generate for the [SPs] to consider whether further intervention, if any, may be required.*"

Beyond the lack of need for a cap and the harmful effects which it could have, Ofcom also says that setting a cap (either cost based or consumer protection) would be a difficult process in itself and "*carries with it significant costs to Ofcom and the OCPs and more importantly, substantial risk of regulatory failure*". At para 10.189, Ofcom explains that regulatory failure could result from an AC cap in three ways:-

- *"Too low caps (leading to OCPs losses or more likely substantial and inappropriate tariff rebalancing):*
- *Too high caps (offering no benefit to consumers and potentially tempting higher than appropriate AC charges); and*
- *Misalignment of charges with consumer preferences as the AC is distorted by the caps"*

Finally, Ofcom summarises its decision at paras 10.192-10.193:-



“However, given the regulatory costs and risk, we are reluctant to set a cap on the AC in the absence of clear evidence of a need to do so. We are therefore proposing that the AC should not be capped in the first instance.

Successful competition around the AC will ensure the most efficient price setting for consumers. Early intervention in setting caps risks distorting price signals and encouraging prices at the cap even where this is not efficient.”

As with maximum retail prices, TNUK believes that Ofcom’s own analysis provides cogent evidence as to why it should not impose price caps on the 118 SC, which actively restrict prices. Its apparent desire to do so is without any objective justification.

Competition on the 118 Service Charge

Having highlighted the parts of Ofcom’s analysis which demonstrate the harm which a SC cap (or PCA obligation) would cause, we would now briefly like to draw attention to those sections in which Ofcom makes clear its expectation that competition on the SC will develop, at least as regards the 118 number range. Naturally, this provides further evidence of the lack of need for a SC cap, which actively restricts prices. At this stage, we do not intend to develop further our own wider arguments about competition on the DQ SC (which we will do in response to the PRS maximum charge review consultation), so for the time being we will rely on Ofcom’s own evidence.

Ofcom’s analysis is contained primarily in para 9.284 to 9.287. Having stated that competition may not be great on 08 calls to public services, banks and customer support lines, Ofcom says at para 9.285:-

“Nevertheless, for 09 and the 118 ranges in particular, there is likely to be scope for competition. Where SPs compete against each other, the unbundled tariff is likely to increase competition relative to the status quo, particularly given that it enables the SP to advertise the SC for the call, and consumers can compare the SC directly with other SPs offering the same service....Indeed consumers may be fairly price sensitive given the duration of such calls. The same would apply for DQ providers, where, as highlighted below, the price of the call is same as the price of the service itself, thereby encouraging direct competition on the SC element of the call”

At para 9.287, Ofcom reiterates its view that competition is likely to be strongest on the 118 SC:-

“Therefore, the extent of competitive constraints on the SC is likely to vary substantially depending on the service in question.... We also consider that there are a significant proportion of calls where competition could develop, in particular on the 09 and 118 ranges. For these services competition is likely to increase relative to the status quo.”

This analysis is unsurprising. The introduction of effective competition on the SC is one of Ofcom’s basic objectives in introducing unbundling, so it would be perverse if it did not believe that it would result. What is strange, however, is that Ofcom appears to be proposing price regulation (and equivalent price regulation in the form of a PCA) at precisely the point in the regulatory cycle at which it believes competition will begin



develop. That is perverse regulatory practice, for which Ofcom has so far failed to provide any evidence or justification.



Response to Questions

Q4.1 Do you agree that the analysis set out in Section 4 and the supporting annexes which draws on our initial assessment in the December 2010 review, stakeholder comments and the further research undertaken in 2011, appropriately characterises the market, the market failures and the effects on consumers? If not please set out your alternative views.

TNUK broadly agrees with Ofcom's assessment.

In particular, we strongly agree with the existence of the vertical externality, as there can surely be no doubt that OCPs and SPs have diverging (and sometimes contrary) preferences in relation to retail prices. Nowhere is this more evident than in relation to the DQ market where OCPs retail prices (or more specifically their retail margins) are significantly above the level which SPs would want.

We note the mobile OCPs reference to the DWP arrangement, but would agree with Ofcom that this simply underlines how rare such arrangements are. In particular, TNUK has tried and failed on multiple occasions over several years to negotiate any mutually agreeable terms with the mobile OCPs. The fact that some OCPs also provide their own DQ service at a significantly lower retail rate than is offered to competitors, provides conclusive evidence of how the vertical externality is leading to a clear market failure, allowing OCPs to profit at the expense of consumers. Ofcom will be aware that this point has also been acknowledged by BEREC in its own recent Report on Special Rate Services⁶. It states at para 32:-

“Vertical integration

Another problem could appear when the OO offers SRS itself in competition with other SPs. OOs typically offer SRS themselves. In this situation, the OO would have incentives for charging high rates for the calls to competitors' services. This would damage the competing SP and benefit the OO's own SP affiliate. One example could be directory inquiry services; some OOs offer this information service directly through their own numbers. In the latter case they have an incentive to set higher rates for calls from their network to directory inquiry services provided by other operators or SPs.⁸ Another example is that some OOs block calls to competitors' services.”

We agree with Ofcom that the vertical externality results in NGC prices being higher than they should be. Indeed, it is significant understatement to say that the DQ retail prices which result from mobile OCPs margins do not “truly reflect consumers' preferences”. There can be no doubt that “customers' lower awareness of NGC prices compared with other aspects of OCPs' retail offering creates incentives for OCPs to set higher NGC prices in order to offer lower prices on more visible components.” Likewise Ofcom is clearly correct that “the extent to which mobile prices are higher than prices from fixed networks substantially exceeds the cost differential”.

TNUK further agrees that this in turn leads to falling call volumes. We do not contend that the decline in DQ call volumes is solely a result of mobile OCPs retail margins. Other factors, including the availability of free online alternatives (and particularly the increased use of smartphones) are clearly relevant. But we

⁶ http://erg.eu.int/doc/consult/bor_12_55_report_on_srs_final.pdf



believe that the retail prices generated by the mobile OCPs' margins are a very significant factor in the decline.

Ofcom is also correct that that this is having a real and tangible impact on investment in the range and quality of SP services. The fact that many OCPs charge all (or most) DQ services at the same retail rate, totally undermines TNUK's ability to use price to differentiate services and makes an innovative low-cost or free DQ service impossible to provide. This in turn leads to suppressed demand and is a clear deterrent on investment and innovation.

In our response to the December 2010 consultation, we provided two particular examples of investments in innovations which had to be abandoned due to the current structure of NGC charges and in particular, TNUK's inability to control charges levied by mobile OCPs. It is worth briefly restating them because they remain highly relevant.

TNUK wanted to move to a broadly fixed price per call to provide certainty to consumers, with a nominal charge of 9ppm for onward connection of calls to all number ranges from October 2010. This proposition made commercial sense and would have enabled consumers to benefit from a set of innovations as much as they liked without significant fear of open-ended costs. However, TNUK could not make an equivalent offer for calls from mobiles and therefore feared that consumers could acquire a habit of making longer calls based on landline prices, and then gain increased bill shock from the unexpectedly higher mobile charges for time-based elements (up to £2 / minute on mobile versus 9p per minute on landline). TNUK withdrew plans to introduce this pricing.

TNUK spent considerable sums on its 'restaurant service', creating the largest restaurant database in the UK, including searchable menus for more than thirty thousand restaurants, enabling customers to choose restaurants and make reservations. However, the service increased call duration considerably and was launched at the time O2 moved to a significantly higher retail charge. TNUK did not think it reasonable to expect consumers to pay high mobile charges for longer calls to such a service (and O2 was the largest customer base on any network in the UK). The result was that TNUK had no option but to withdraw the service, despite the considerable time and expense of its development. The total wasted investment by TNUK in this service development was £4.5m.

Q9.1: Do you have any comments on our assessment, and in particular the additional evidence (gathered since the December 2010 Consultation) which we have used to support our assessment, on our provisional conclusion that the unbundled tariff should be applied to the revenue-sharing NGC number ranges?

As Ofcom would expect, TNUK's direct interest is only in relation to the 118 number range. Largely for the reasons which Ofcom outlines in Section 10 (and which we explain in greater detail throughout this response) in principle we are strongly in favour of the implementation of unbundling on the 118 number range, although this is subject to a number of caveats mentioned below. (These caveats primarily relate to the possibility of maximum and pre-defined SCs as well as pre-call announcements on DQ calls.)



Specifically, we agree that unbundling would increase the efficiency of prices, by partially (but only partially) addressing the vertical externality. Whilst TNUK would be able to choose its SC (albeit from a limited pre-defined list), the impact on the OCPs retail margin (in the form of the AC) is far from certain. We remain to be convinced of Ofcom's view that increased competition on the AC will materially develop in any way which will lead to prices that better reflect consumer preferences, particularly in view of the limited obligations on OCPs to publicise the AC (as discussed further in response to Q12.6)

The greater impact on transparency and competition as regards the SC is more likely, largely because the SC will be the price of the SP's core service which must be advertised in all promotion and marketing material (in contrast with AC, which will always be peripheral to the OCP's service, with no associated advertising obligations). We agree that increased consumer price awareness (and thereby competition) on the SC is another benefit of unbundling.

TNUK further agrees that unbundling will (to some extent) increase service quality, variety and innovation, although once again, there will be significant constraints as a result of the existence of an unrestricted access charge and the fact that SCs will be limited to a pre-defined list of price points. On the one hand, TNUK will be able to differentiate services on price, which will lead to some increased investment and innovation. But on the other hand, the existence of the AC will always create an effective minimum call charge (meaning for example that free/ad funded services will continue not to be possible) and the limitation of the pre-defined list of price points will inevitably restrict pricing freedom and therefore the types of innovative service which can be offered.

However, TNUK is less convinced of Ofcom's arguments in relation to regulatory burden. Specifically, we do not necessarily believe that unbundling is less interventionist than maximum prices, depending on (i) the level at which any maximum SC limit is set (ii) the level at which any pre-call announcement obligation is set (iii) the restrictions imposed by a pre-defined list of price points. Unfortunately, the combination of a price cap, a pre-call announcement obligation and restricted price points could well lead to unbundling turning out to be a very harmful approach, as regards DQ services. As regards implementation costs, we do agree that they could be significant for TNUK, as a result of the pre-call announcements which Ofcom envisages may be required for DQ services.

Finally, whilst TNUK's direct interest in unbundling is in relation to the 118 number range, we do have an indirect interest in unbundling being applied to all the revenue-sharing NGC number ranges largely because of considerations of 'critical mass'. That is, in order for unbundling to be understood by consumers (and particularly for them to have some level of awareness of the cost of their access charge) it is important that it has wide application. As DQ calls only amount to 1% of total NGCs, it would clearly be ineffective for unbundling to be so narrowly utilised.

In addition (as explained in much greater detail in response to Q10.1 below), we continue to have some considerable concerns about the level at which the AC would be set, which is why the imposition of a single AC to apply to all number ranges is an essential minimum requirement. Specifically, TNUK supports Ofcom's analysis that if OCPs were allowed to set a separate AC for 118/09 calls it would be significantly higher than an AC which applied to all NGC ranges. Consequently, it follows that in order to disincentivise



OCPs from setting a high 118/09 AC, it is necessary that the unbundling also be applied to all NGC number ranges.

Q10.1: Do you agree with our proposal that the AC should be allowed to vary between tariff packages but that OCPs should be subject to a tariff principle permitting only one AC for non-geographic calls? If not please explain why.

Access Charge varying by tariff

TNUK strongly believes that the AC should not be allowed to vary between tariff packages. We believe that this would materially improve pricing transparency and therefore the overall level of welfare for consumers.

Whilst we accept that the fact that different OCPs setting different ACs will mean that there would not be total transparency of the AC in any case, we do not feel that this undermines the argument that transparency would still be materially improved by requiring each OCP to set a single AC. If an OCP is allowed to set a different AC for each of its multiple tariffs, in reality the level of the charge will become almost entirely opaque and therefore will not feature as part of the consumer's purchasing decision. If the AC were to have equal prominence with the headline monthly tariff price, we would be far less concerned because transparency would be significantly enhanced. But this is not what Ofcom is proposing, preferring instead to allow OCPs only to include details of the AC in their price guides.

Full price guides (where they actually exist), are long and complex documents (particularly for mobile OCPs) containing a myriad of varying charges. Consumers (and indeed sales representatives advising them on a purchase) will only ever take notice of the headline charges. In this respect, TNUK believes that Ofcom misses the point when it states at para 10.14 that "*... we consider that consumers are familiar with charges varying by tariff package, since this is how telephone services are typically marketed to them.*" We agree that consumers are familiar with charges varying by tariff package, but the point is that they are used to comparing the highlighted headline charges between tariff packages, not the smaller incremental charges such as this. Indeed, it is precisely the problem that consumers do not currently compare NGC prices, which Ofcom is trying to address by introducing unbundling.

A single AC across all of an OCP's tariffs could become such a headline charge, easy to promote as part of an OCP's total offering and easy to compare with other OCPs and thereby subject to increased levels of competition. By contrast, multiple ACs across multiple tariffs will simply feature in the small print of a lengthy price guide, will not be remembered by anyone and will certainly not be promoted or form part of the purchasing decision in any competitive way.

TNUK had understood that a large part of Ofcom's intention in introducing unbundling is that the access charge would be made memorable and subject to competition as part of the purchasing process, in a way in which NGC prices have not been up until now. It is therefore regrettable that Ofcom appears to have decided not to adopt a simple and straightforward measure which would have supported that intention.



Access Charge varying number range

However, an issue of far greater concern to TNUK is the question of whether OCPs should be allowed to set different ACs for different number ranges. In particular, it seems that several mobile OCPs were pressing to be allowed to set a higher or premium rate AC which would apply only to 09 and 118 calls. On this issue, we strongly agree with Ofcom's view that OCPs must be required to set a single AC which applies to all number ranges.

Ofcom identifies that bad debt and consumers' preferences are the only points of any substance advanced by the OCPs in support of being able to impose a premium rate AC. In summary, TNUK entirely agrees with Ofcom's analysis on both issues, which we will briefly address in turn.

However, before doing so, we would like to highlight what appears to be the most fundamental issue mentioned several times by Ofcom, which cuts across all arguments in relation to a higher rate AC. That is whether or not any such AC would in fact be set on a legitimate basis i.e. to reflect true levels of bad debt, consumer preference (or something else) or whether in reality it would be set at a level which exploited consumers' poor price awareness and/or expectation that certain calls would be more expensive.

TNUK strongly believes that it would be the latter. Evidence to date clearly demonstrates that the level of retail margin applied by mobile OCPs is at times nothing short of abusive. For example, T-Mobile has just increased its charges for a one minute call to 118 118 to £3.98, which is 102% higher than the cost which TNUK has set for calls from a BT landline. As Ofcom will be aware, mobile OCPs often set the same price for calls to all or most DQ SPs. Owing to the fact that both DQ SP charges and mobile OCP charges for DQ services are in a state of fairly constant flux, the retail margin applied by each mobile OCP to each DQ service, changes fairly regularly. Nevertheless, Ofcom will be aware from evidence previously provided by TNUK that average margins are high and have increased in recent years.

Indeed, in a recent report⁷ PhonepayPlus calculates that in 2009, of total DQ call revenue of £500 million, only £220.5 million was actually received by the DQ operators, which meant that over 50% of the total revenue was retained by the OCPs. Its analysis led to a clear belief that "*There is no doubt that significant additional revenues are being generated through operator surcharges on directory enquiries*".

If OCPs (particularly mobile OCPs) were allowed to set a higher rate AC which applied to 118 calls, TNUK sees no reason why this situation would not be perpetuated under the unbundling regime. In fact, there is a risk that it may even worsen as OCPs try to exploit consumer unfamiliarity with a new charging regime to maximise profits, at least until the new regime settles down, but perhaps indefinitely.

We outline in response to Q10.3 our concerns about whether or not even a single AC would in reality be subject to competitive forces. However, for the purposes of this question, we would simply highlight that historical evidence provides a very strong reason to believe that if a higher rate AC were to be permitted, it is very likely to be set at a level without any economic regulatory justification, but rather to exploit consumers and the service providers which they wish to access.

⁷ Current and Future Market for PRS 2011 – section 5.2



Turning now to the two specific reasons highlighted by Ofcom as (at least theoretically) justifying the allowance of a higher rate AC.

As regards bad debt, TNUK notes the OCPs' primary contention that the level of bad debt is higher on premium rate calls and this justifies setting a higher AC. The existence of the PRS Bad Debt Surcharge contained with the NTS Retail Uplift Statement may provide some support for this argument. TNUK commends Ofcom's detailed analysis in relation to these bad arguments, with which we entirely agree. However, there are a couple of additional points, which we would like to make.

Firstly, Ofcom highlights at para 10.51 that in the NTS Retail Uplift Statement it identifies three factors which might contribute to the higher incidence of bad debt on PRS calls, namely (i) the average charge being higher (ii) calls more likely to have been made without the bill payer's consent (iii) a higher likelihood of undetected fraud. Although the first of these factors might apply to 118 calls, TNUK is not aware of any evidence to support the fact that the second and third factors are any more likely to apply to 118 calls than 08 calls. Indeed, it is a statement of the obvious (but nonetheless worth highlighting) that nothing in the NTS Retail Uplift Statement or PRS Bad Debt Surcharge is in anyway relevant or ever considers the issue of 118 calls. Yet, OCPs appear to assume (without any justification) that it provides a basis for including 118 calls in any premium rate AC.

Secondly, Ofcom only mentions briefly in para 10.61 and in footnote 339 that the 5.2% or 5.8ppm is likely to be an overestimate of the level of bad debt on mobile 09/118 calls (let alone only 118 calls for reasons just mentioned). TNUK believes that this significantly understates the point. According to Ofcom's most recent data for Q4 2011, pre-pay accounts for over 50% of all mobile voice subscriptions and therefore must be entirely discounted from any consideration of bad debt. Indeed, the far more rigorous credit checking employed by mobile OCPs of itself means that consumers with any credit risk are much more likely to be pre-pay customers in any case. This means not merely that over 50% of mobile OCPs customers cannot generate any bad debt, but that those customers who are most likely to generate bad debt, fall within that category, thereby reducing the risk even further. When this is combined with the lack of any universal obligation and the other restrictions only contained in the NTS Call Origination Condition, the risk becomes even less significant.

In the absence of any other figure, Ofcom chooses to use 5.2% as the basis for its calculation that bad debt might account for 30% of the difference between a 08 and 09/118 AC. For reasons just explained, TNUK believes that the 30% figure is clearly inaccurate, would not withstand any serious scrutiny and therefore provides no assistance in this context and should not form any part of Ofcom's analysis.

Finally (and perhaps most significantly) in relation to bad debt, it appears that none of the mobile OCPs (who have asserted that bad provides a justification for a higher level of AC) have provided any evidence (even confidentially to Ofcom) to support that assertion. Specifically, they have not done what would appear to be obvious i.e. provide evidence of their level of bad debt on 09 and 118 calls, compare it with evidence of the level of bad debt on 08 calls and thereby demonstrate that it justifies the likely level of differential AC which Ofcom has identified, or indeed some other level. In the absence of this simple



evidence, there cannot possibly be any credible argument in favour of allowing the AC to vary on the basis of bad debt.

As regards differences in consumer preferences, it appears that only O2 is advancing the proposition that it should be permitted to set a lower AC to reflect a consumer preference for cheaper 084/7 calls. TNUK fully agrees with Ofcom's analysis that lack of consumer transparency i.e. consumers' inability to make informed decisions about the access charge element of the cost of a call, fundamentally undermines any argument that it is more efficient for a lower price to be charged for calls which consumers make more often (because they will not know what price is being charged for calls made less often).

However, TNUK believes that there is a further distortion in O2's argument, as regards calls to 118. O2's position rests on the fact that a greater volume of calls is made to 0845 and 0870 ranges, than 0871, 09 and 118 ranges. Whilst that may be true at a basic level, simply comparing volumes by number range takes no account of the services which sit behind each number range and the relative importance to consumers of those services.

Specifically, the 118 range only offers DQ services, whereas the 0845 and 0870 ranges provide access to an infinitely greater number of service providers. Setting aside the number range for a moment, it is highly likely that DQ services generate a higher volume of calls than many of the sub-categories that may be identified as sitting behind the 0845 or 0870 ranges e.g. carpenters. Although 118 may be less 'popular' than 0845 as a number range, DQ is certainly not less popular than carpenters as a service. Therefore, if Ofcom were to permit OCPs to set higher ACs for less popular number ranges, it would be discriminating against DQ services (and providers), purely because they have their own dedicated number range, which has no bearing whatsoever on consumers' actual demand for the service which sits behind it.

As a result, TNUK does not believe that an argument for consumer preferences based purely on the (necessarily somewhat arbitrary) divisions in the Numbering Plan, can provide a fair and reasonable basis for allowing access to some services to be subject to a higher AC than some other services. Moreover, all OCPs have a universal service regulatory obligation to provide access to a DQ service, which is a clear indication of its relative level of importance. O2's argument that a higher AC on DQ services is justified by it being less 'popular' than 0845 and 0870 is undermined by the universal service status which it has been granted.

Q10.2: Do you agree with our proposed structure for the AC, in particular that:

- (i) that the AC should be a pence per minute charge only, but can be subject to a minimum one minute call charge;**

TNUK supports Ofcom's position that the AC should be limited to a pence per minute charge. Largely for the reasons which Ofcom has outlined, we do not believe that the arguments to the contrary advanced by OCPs are either practical or sensible. We will briefly address the main points.

Self-evidently a straightforward pence per minute AC is the most effective way of ensuring the transparency (and some degree of memorability) which Ofcom is seeking. A greater level of transparency



should hopefully allow customers more easily to understand the cost of a call and thereby give them greater confidence to choose to make the call.

The argument that a pence per minute AC is at odds with a more flexible approach to SC charges is fundamentally flawed. As discussed further in response to Q10.4 and Q10.7, the reason why flexibility is required in setting the SC is simply because the services themselves are so varied. Different charging mechanisms are required to reflect the different ways in which these services are provided, costs are incurred and/or revenue may be generated. By contrast, the provision of access is simply that and it does not vary according to the service to which access is being provided. Indeed, the OCP will not even know the nature of the service.

Furthermore, as Ofcom correctly states, the advertising and promotion requirements relating to the SC and AC will be fundamentally different. Whilst the SC will have to be advertised wherever the number is mentioned, the AC will only ever be found in the small print of OCP price guides and bills. As the AC will therefore be largely invisible (particularly at the point of call), it is even more important that it is as simple and standardised as possible, in order to promote some degree of memorability.

In addition, as Ofcom has identified, the argument that the structure of the AC must or should be allowed to mirror that of the SC is nonsensical. Such an approach would necessarily lead to a multitude of ACs, thereby fundamentally undermining Ofcom's primary objective of simplicity and transparency. Even on a call by call basis, it would be less transparent for consumers by requiring them to add two call set up charges (as well as two pence per minute charges) in order to calculate the total cost of the call. It would also presumably lead to a far greater level of complexity in the OCPs' billing engines which is clearly unnecessary and not in anyone's best interests. Finally, under an unbundled regime, there's no rational or efficiency reason why an AC should require a call set-up charge simply because a particular SC does so. The charges will be completely separate and the one has nothing to do with the other, so there's no basis for mirroring.

TNUK notes the point made by Three and C&W about the commercial risk of a small pence per call cost not being recoverable on very short calls. Although such a theoretical risk may exist, TNUK does not believe that it of itself justifies the imposition of a one minute minimum call charge. It would seem that a 5 or 10 second minimum call charge would easily suffice. The effect of Ofcom's position is likely to be that every AC will now be subject to a one minute minimum call charge, although only a tiny fraction of all NGC will be subject to this theoretical risk.

(ii) that the AC should not vary by time of day; and

TNUK agrees with Ofcom that the many disadvantages of allowing time of day variation on the AC would massively outweigh any theoretical advantages and notes that even the mobile OCPs do not appear to contest this point.

Although once common, time of day variations are becoming an increasingly outmoded method of charging and this trend seems likely to continue. Consumers clearly value the simplicity of all day charges and would not welcome the retrograde step of allowing such variation on the AC.



The disadvantages are obvious. The impact on simplicity and transparency would probably be greater than any other form of AC variation which Ofcom has considered and would go a very long way to undermining fundamentally Ofcom's core objectives. Meanwhile, the overall low volume of NGC calls mean that network efficiency arguments are not sustainable. Finally, for reasons which Ofcom states and TNUK has outlined in response to Q 10.2(i) above, arguments in terms of consistency with the SC are misconceived and without foundation.

**(iii) that the AC can be included as part of call bundles/inclusive call minutes provided that inclusion does not differentiate by number range?
If not please explain why.**

TNUK notes that the question refers to whether the AC can be included in call bundles, rather than whether it must be included in bundles. We acknowledge that an obligation would be the equivalent of a geographic cap, which Ofcom assesses (albeit briefly) at paras 10.173-10.180, before dismissing it, apparently on the basis of the tariff package effect.

Such an approach is defined in the BEREC Report on Special Rate Services as the 'C+S' model, which states at para 63:-

"In BEREC's view the C+S model is a relatively light touch regulatory approach because it is limited to setting a structure of prices and does not directly set prices (or price caps). It allows OOs to earn the same revenue on SRS as they earn on standard calls."

TNUK also notes that ARCEP has recently adopted the C+S model in France in its decision "*relative à la réorganisation des tranches de nombreux commençant par 08 et des numéros courts*". It is therefore very disappointing that Ofcom does not even appear to have given the model any serious consideration, having devoted less than a page to analysing it.

Nevertheless, TNUK agrees that the AC should be permitted to be included within call bundles/inclusive minutes. Indeed, we would strongly welcome the possibility that this could happen although we are very doubtful that OCPs would choose this option in practice. **This is primarily because of the related requirement not to differentiate any inclusive AC by number range.** We suspect that a desire to include the AC for calls to some numbers, but not others, in bundle may in fact be behind any support which OCPs appear to express for this option.

For the avoidance of doubt, TNUK strongly supports the prohibition of varying the inclusion by number range. We believe that it is a fundamental requirement of allowing the OCPs to include the AC in bundle. Without such a requirement, it would clearly create a means by which OCPs could get around the obligation to have set a single AC for all number ranges which will prevent them from setting a higher rate AC which would apply only to 09/118 calls.

Indeed, as Ofcom implies, the situation may actually be even worse from a consumer transparency perspective in this instance. In the case of separate ACs, consumers would only have to try to remember what they were. But in the case where some numbers (on the more common number ranges) effectively had a zero AC, consumers would most likely simply become accustomed to that and assume that the same



rule applied to all NGC number ranges. The fact that for some number ranges the AC was actually chargeable would certainly cause confusion and in some cases, potential bill shock.

Therefore, for all of the reasons which we outlined in response to Q10.1, we strongly support an obligation on OCPs to include calls to all NGC number ranges in call bundles/inclusive minutes, if it wanted to include calls to any NGC number ranges in call bundles/inclusive minutes.

Q10.3: Do you agree with our proposal not to impose a cap on the AC in the first instance? If not please explain why.

TNUK notes and has considered in some detail Ofcom's analysis and reasoning for proposing not to impose a cap on the AC. In particular, we have considered the evidence relating to whether or not the AC will in reality be constrained by competition.

In the opening section to this response, entitled 'PRS Maximum Charge Review' we highlighted those parts of Ofcom's analysis which have led it to propose not to cap the AC. In doing so, our intention was not to comment on the merits of the analysis, but simply to make clear that it should apply equally to any consideration as to whether to cap the SC. In other words, TNUK strongly believes that according to Ofcom's own evidence, it should not be proposing to cap the SC and it is this question which is of greatest interest and concern to TNUK.

For the purposes of this section, we will therefore focus our comments on highlighting why we believe that the evidence (upon which Ofcom relies) for not capping the AC is if anything, potentially weaker than available evidence for capping the SC. If Ofcom were to impose a cap on either, it should be the AC and not the SC. Indeed, it appears to TNUK that Ofcom itself may be unconvinced that the AC will be effectively constrained by competition. Certainly it appears that many respondees to the consultation (aside perhaps from the mobile OCPs) expressed the view that competition on the AC would not be sufficient to control prices.

TNUK notes Ofcom's argument (at para 9.271) that the fact that its consumer evidence survey indicates that the majority of consumers do not currently consider the cost of 08/09 calls is important when selecting their OCP, does not of itself demonstrate that cost would not be a relevant factor if it were more transparent. TNUK does not entirely accept that argument, but in any case, it is not the critical issue at stake when considering the likely level of competition on the AC.

As Ofcom is very well aware, the key factor which is likely to constrain competition is the fact that NGCs currently form such a small part of total call volumes. This will not alter (other than very marginally) as a result of prices being more transparent. Ofcom data (derived from the Flow of Funds Study and Communications Market Reports) indicates that calls to 084, 087, 09 and 118 number ranges account for 12% of voice call minutes. Most tellingly, they account for just 2% of mobile voice call minutes. Table 9.1 (which summarises evidence from Ofcom's 2010 Consumer survey) broadly confirms these figures. This provides clear evidence that competitive effects are likely to be weak.



It follows that under the unbundling regime, a rational mobile consumer has no reason to take account of the level of the AC in choosing a tariff. He would quite rightly make his purchasing decision on the basis of a range of other factors likely to affect the price he pays or the product/service he receives and dismiss the largely irrelevant AC. At para 9.272, Ofcom comments “*We therefore recognise that the competitive constraints on the AC may not be strong*” and at para 9.276:-

“...we recognise that there is a risk of relying on competitive constraints on the AC at the point of subscription. Many consumers may have limited regard to this element of their tariff package particularly given the infrequency with which NGCs are made.”

This is in stark contrast to the situation when a consumer is considering which SP to call. In this case, he is not having to purchase a tariff (or bundle) of services of which the cost of NGCs are just a tiny part. Rather, he is making an isolated decision to make a single call. The cost of the SC therefore takes on a relatively much greater level of importance and is thereby subject to a much greater level of competition.

Ofcom may seek to argue that a greater level of competition applies in respect of the AC at point of call than it does at point of purchase, but TNUK does not accept that this would occur in reality. Even if some consumers may choose to make a landline rather than a mobile call (because the AC is cheaper) the potential resulting lost volumes to the mobile OCP are likely to be outweighed by the revenue gains from maintaining a higher AC paid by those consumers who do not switch. At worst, any potential overall revenue loss is likely to be so marginal (as a proportion of overall revenues) that no real competitive effects will be felt.

Clear evidence for this can be found from existing NGC call volumes and charges. As indicated above, mobile NGC call volumes are proportionately lower than fixed NGC call volumes (most obviously when compared with geographic call volumes). Even today, price transparency is sufficient to persuade a significant proportion of consumers to choose to make NGCs from their landline rather than their mobile, presumably because of the higher costs of a mobile NGC. Yet, despite the loss of call volume, mobile OCPs still choose to maintain significantly higher NGC prices, presumably calculating that the revenue gain from higher NGC charges outweighs the revenue loss from reduced call volumes. This clearly indicates that competition is not effective in restraining those prices and there is no reason to believe that this situation of weak competitive effects will not continue to apply to the AC at point of call in an unbundled scenario.

The issue of consumer price awareness is also relevant when considering the relative levels of competition on the AC and SC, such as may or may not justify a cap on either. By Ofcom’s own analysis, consumers will not know their AC, but “*it is plausible that they will be able to recall its broad magnitude*”. By contrast, Ofcom’s view of the SC is that consumers will have ready access to it as a result of it being contained in all relevant marketing, promotional or other written material. Again, Ofcom’s own evidence indicates that competition will be weaker (and therefore need for a cap greater) on the AC compared with the SC.

Finally, at para 10.165, Ofcom once again clearly seems to acknowledge the broad risk that the AC will not be effectively constrained by competition:-



“...if the AC is not subject to effective competition because an insufficient proportion of consumers understand and react to the charges, then the charge may not be set at an efficient level. In this case there is an argument for capping the charge to protect consumers from over-charging.”

Taking all of this into account, it may appear as if one of the reasons why Ofcom did not propose to cap the AC is not because it genuinely believes that it will be subject to effective competition, but rather because it finds that none of its three options appear to be very easy to implement. At the risk of simplifying somewhat, Ofcom seems to conclude that: a cost based cap would be too difficult to calculate and open to legal challenge; a geographic rate cap would lead to a substantial, but unknown, tariff package effect and might still be subject to legal challenge; and that a safeguard cap might act as a focal point and thereby increase charges. TNUK is unconvinced that these conclusions justify a decision not to cap the AC and certainly does not feel that they justify a more interventionist decision to cap SC.

Nevertheless, if Ofcom maintains its position of not capping the AC, TNUK believes that simply monitoring the charges is inadequate. Ofcom’s very final statement on the issue is at para 10.193 where it states simply:-

“However, we would remain open to revisiting the need for a cap if evidence of consumer confusion in relation to the AC was to emerge.”

TNUK believes that such a response is wholly inadequate on several grounds. Evidence of consumer confusion (important though it might be) must not be the only grounds for prompting further Ofcom intervention. Most obviously, if competition is seen to be ineffective, allowing the AC to be set too high, Ofcom must intervene to cap it. The fact that consumers may not be confused about the AC, but are nevertheless paying a high charge, is clearly sufficient grounds for intervention.

Moreover, TNUK is also most concerned about Ofcom’s very imprecise and non-committal statement that it would *“remain open to revisiting the need for a cap”*, without any further detail or substance to it. This is a recipe for inaction, which will give OCPs every confidence that they will face no serious risk that a cap will ever be imposed and certainly not in any reasonable timescale. This of itself, may well encourage them to set a high AC.

TNUK believes that Ofcom must be much more detailed and precise in its response and in particular should commit itself to a clear timetable. Specifically, it should:-

- state when it will assess the level of the AC i.e. on day one or else after some other (reasonably short period of time)
- specify what criteria it will use to assess whether competition in relation to the AC is effective and therefore whether the AC has been set at a competitive rate
- establish in advance a clear process and roadmap to imposing an AC cap if it subsequently proves necessary

If Ofcom is to adopt a ‘wait and see’ approach to capping the AC, that must not mean that it simply does nothing in the interim. In view of the time taken from the start of this review to the final implementation of



unbundling, Ofcom cannot afford not even to begin work before evidence of a problem arises. This is likely to mean a further delay of 18-24 months before a cap could actually be imposed, which in real terms would probably mean sometime around 2016-2017, allowing a prolonged period of time for consumer harm to continue.

Q10.4: Do you agree with our proposed approach for the structure of the SC? In particular that:

(i) bespoke SCs should be prohibited;

In response to the December 2010 consultation, TNUK stated that the arguments concerning bespoke SCs are carefully balanced. On the one hand, they would allow more efficient pricing and commercial flexibility which could allow SPs to offer discounted services which might not otherwise be possible. On the other hand, large OCPs could exercise buyer power, the commercial flexibility could be limited by the requirement for a single AC to be applied across all number ranges and it could also adversely impact consumer transparency. On balance, we thought that these arguments prevailed and so we accepted that bespoke SCs should be prohibited.

TNUK maintains that view, although with one important caveat, which we believe could improve price efficiency and commercial flexibility, without falling foul of the single AC requirement or adversely impacting consumer transparency.

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- (ii) that no further restrictions on the SC structure should be required (e.g. allowing ppm and ppc SCs, no restriction of ToD charging subject to ability of billing systems to pass through the charges)**

If not, please explain why and provide evidence if possible.

TNUK believes that considerations in relation to time of day variation and unitisation are quite different and so we will address each in turn.

Time of Day Variation

Inherently, TNUK would support the service flexibility offered by time of day variation on the SC. Although it is not something which we currently utilise, this is in part due to the restrictions of the existing pricing structure i.e. TNUK cannot control the retail prices paid by consumers and so does not develop service offerings based on different methods of charging.

However, from a practical perspective, TNUK has concerns about the wider consequences of the introduction of time of day variations. Primarily, we are concerned about the impact which it will have on the number of available price points, particularly for DQ services. Ofcom is now proposing that there will be only 60-100 price points covering all NGC services, of which about 15 will be designed for DQ. If time of day variation was permitted, logically that might in effect leave just 5 DQ price points. That is clearly far too low, restrictive and not something which TNUK could possibly support. We address the issue of the number of price points (and how they are determined) in greater detail in response to Q10.7. However, as a basic point of principle, TNUK is much more concerned about maintaining a wider range of price points, than we are about being able to introduce time of day variation.

In addition, TNUK is also concerned about the complexity of reaching industry agreement on the introduction of time of day charging, together with the actual implementation. Specifically, TNUK would not want industry discussion about agreeing consistent timings and related issues to become an onerous and time-consuming distraction from agreeing more core issues, which we believe might easily happen. Similarly, we would not want to impose an added complexity on OCP billing systems which would unduly delay and complicate the overall implementation process. Again, TNUK considers this to be a very real risk. As above, we do not believe that such difficulties and delay would be justified by the comparatively marginal benefits of permitting time of day variation.

However, it is clear that Ofcom wishes to absolve itself from responsibility for whether or not time of day variation actually occurs in practice, by declaring that it is “*a matter for industry*”. Such a statement is not hugely helpful in circumstances where Ofcom knows that industry will have very different views and that (as ever) any operator can exercise an effective veto simply by not agreeing to make the changes necessary on its billing platform. As history indicates that ‘industry’ invariably fails to ‘agree’ to do anything without a positive obligation, it seems clear that time of day charging will not be introduced.



Unitisation

TNUK welcomes the fact that there does not appear to be any serious opposition to the continuation of both pence per minute and pence per call charging structures (and combinations thereof). Ofcom will of course be aware that varied charging structures are a core element of DQ service provision and to remove this flexibility would seriously impact service offerings resulting in less choice (and quite possibly higher prices) for consumers. TNUK itself employs different charging structures on its different codes, with pence per call being particularly suitable for more basic, lower cost offerings. We would have every intention of continuing to offer such a variety of differently priced services in the future.

As an aside, TNUK disagrees with Ofcom that issues of consumer price transparency are the same for unitisation as for time of day variation because we believe that unitisation creates even less cause for concern. Self-evidently, this is simply because time of day variation means that the same number/service is charged at different rates (depending on time of day) whereas only one charge is set for the number/service whatever type of unitisation is employed. Even if a service has a combination of pence per call and pence per minute, it is easier to advertise and remember, than one where the cost varies according to time of day.

The only point which TNUK would again wish to highlight is the impact of unitisation on the number of available price points. As is discussed further in response to Q10.7, the availability of a wide range of price points suitable for DQ services is of the most critical importance to TNUK. Whilst, we would in no way wish to undermine the importance of maintaining flexibility in unitisation charging, it is equally important that the overall number of price points should not be restricted as a consequence of unitisation. When deciding on the number of price points (particularly for DQ, which has always made great use of different pricing models), Ofcom must keep in mind the commitment it has demonstrated here to allowing for a variety of unitisation and ensure that it allows for enough price points to make that commitment real.

Q10.5: Do you agree with our proposals to impose maximum SC caps for the purposes of protecting the identity of the number ranges? Do you agree that the caps should apply to the 084, 087 and 09 ranges and that they should be set exclusive of VAT in the Numbering Plan? If not please explain why and provide evidence to support your position if possible.

TNUK believes that Ofcom's approach to SC caps in relation to the 118 range remains somewhat confused, although we note that this will shortly be subject to further consultation, which we hope will clarify Ofcom's position and importantly, its underlying reasoning.

At para 10.265, (with reference to the December 2010 consultation) Ofcom outlines the two concerns which might justify a cap being placed on the SC. In simple terms, these are to address weak competition and protect the integrity of the number range.

At para 10.291, Ofcom now clarifies that it is not "proposing to set a maximum SC for the 118 range for the purposes of protecting the identity of the number range". TNUK welcomes the decision, which is clearly an acknowledgement that there is no need for regulatory intervention to protect the identity of the 118 range. Indeed, the 118 range is probably the most well recognised and understood of any ranges, which is very



largely a result of the significant level of marketing and advertising activity undertaken by TNUK over the past decade.

In contrast, TNUK notes Ofcom's proposal to set caps for the 084, 087 and 09 ranges which we understand is in order to protect their identity or in Ofcom's words "*to enable consumers (and SPs) to gain an intuition as to the price of calling services on a given non-geographic number range.*" Although we have no direct interest in these number ranges, TNUK agrees that this is a sensible and logical approach.

The decision not to cap the SC in order to protect the identity of the 118 number range, seems only to leave 'addressing weak competition' as a possible ground.

However, in making the decision about its reasons for setting caps on 084, 087 and 09, Ofcom makes clear a number of times that it would be an ineffective means of addressing the effects of weak competition. It gives several reasons for this view including the questionable legal grounds, the difficulties of actually setting the level of the cap and the fact that competition should improve anyway, as a consequence of the introduction of unbundling.

The question which therefore most concerns TNUK is why Ofcom is nonetheless considering setting caps on the 118 number range if it does not believe that it is necessary to protect the identity of the number range or be effective at addressing weak competition. At a basic level, Ofcom tries to make a distinction by saying that any cap on 118 would be for the purposes of 'consumer protection' which it appears to imply is something different from 'addressing weak competition'.

TNUK disagrees that the distinction exists at all, or certainly that it is as stark or clearly defined as Ofcom appears to imply. At para 10.265 Ofcom explains the possible rationale for capping the SC in order to address weak competition. It says:-

"the risk that competition between (some) SPs was weak, and therefore in the absence of any constraint on the SC, charges for at least some services would be high. We noted it could be argued that maximum prices should be set for the SC with the intention of forcing down the SC of those services where competition was weak"

The critical wording is surely that weak competition without caps leads to the risk that "charges for at least some services would be high". What possible motive could Ofcom have for forcing down high prices other than one of consumer protection?

As Ofcom is obviously aware, competition is not an end in itself, but rather it is simply a means of generating other tangible benefits to consumers, most obviously lower prices (as well as choice, innovation, quality etc). In this instance, Ofcom quite rightly views competition as a way of controlling price. But yet, it says that weak competition cannot be addressed by imposing price caps on the SC.

It seems clear therefore, that addressing weak competition, (in this context at least) is simply a means a providing consumer protection. Yet, if Ofcom has concluded that SC price caps are not an appropriate means of addressing weak competition, it logically follows that they are an equally inappropriate means of



providing consumer protection. Or, to put it another way, consumer protection will be ensured by strengthening competition and competition can be strengthened more effectively by means other than imposing price caps.

Finally in relation to VAT, TNUK agrees with Ofcom's analysis of the benefits and disadvantages of setting VAT inclusive or VAT exclusive SC caps. Although the consultation only seeks views in relation to the proposed caps for 084, 087 and 09, we assume that the same considerations are likely to apply in relation to any 118 caps. TNUK agrees that whilst setting VAT exclusive caps, may not be ideal, it is clearly preferable to setting VAT inclusive caps for all of the reasons which Ofcom has outlined.

Q10.7: Do you agree that the number of SC price points should be restricted? Do you agree that that restriction should be somewhere between 60 and 100, and where within that range do you consider would be optimal? Do you have any comments in relation to how Ofcom should decide where in that 60 to 100 range the maximum number of SC price points available should be set?

TNUK notes Ofcom's view that the nature of unbundling means that there has to be a list of pre-determined SC price points in order to allow OCPs accurately to charge their customers and that by definition a pre-determined list means that there must be some limitation on the number of price points. However, we regard that as an unfortunate consequence of the introduction of unbundling, which should be managed as far as possible in order to minimise the impact on consumers and service providers.

TNUK acknowledges that a greater number of price points will add a degree of complexity to OCPs billing engines, which in turn will have consequences in terms of cost and implementation timescales. However, we believe the impact is fairly marginal. For example, although a ten-fold increase in Ofcom's proposed number of price points from 100 to 1000 may have a significant impact, we do not believe that the addition of extra 40 or 50 price points would make much difference, although we would be happy to see any substantive evidence to the contrary.

This is not a minor or peripheral issue. Ofcom should bear in mind that one of its fundamental objectives of unbundling is to address the vertical externality and thereby give SPs a greater control over retail pricing. This in turn will drive innovation, investment and wider benefits in the NGC market for consumers. But that objective cannot be realised if SPs are materially constrained in the pricing that they can offer.

The issue is not per se whether 118 or 084 objectively require a particular number of price points. But rather it is whether there is a sufficient number (and variety) to be certain of meeting the aspirations of all SPs wishing to offer a wide range of services. In particular, it is important to bear in mind that those SPs will be competing and may therefore have very different ideas about what types of charging structure they want to employ, so one cannot view DQ SPs as a single entity who will simply agree to a particular narrowly defined ladder or granularity of charging. For example, TNUK made a commercial decision last year to change the nature of its charges from a low per minute and higher call set-up charge to a low set-up and higher per minute charge. Such changes in commercial strategy need to be allowed for in determining the number of available price points.



As a result, TNUK cannot say definitively whether 60-100 is an appropriate range of price points, because we do not know the commercial strategies and objectives of all other NGC SPs who will share those price points. But, as Ofcom implies, there will probably not be any great difficulties in setting the price points for the 08 ranges, purely because the caps which Ofcom is proposing to set will only allow for a limited number.

However, there are likely to be far greater difficulties in respect of the 118 (and 09) number ranges, because of the higher charges inherent in providing those kinds of service and therefore the much greater variety of charging which will be possible. Consequently, TNUK does not believe that 15 price points is an appropriate number for DQ, because it will be far too limited (even acknowledging Ofcom's point that DQ SPs will be to use all available price points, including those intended for 09).

In its analysis in section 9, Ofcom seems to accept the point, so we are surprised that Ofcom is now proposing such a relatively limited number of price points on the 118 number range. When referring to its position in the December 2010 consultation, Ofcom says at paras 9.107 to 9.108:-

"While greater granularity means increased complexity for consumers we considered this drawback to be relatively small. We said that consumers were unlikely to remember the price of calls to a particular non-geographic number, even if the structure of retail prices were to be relatively simple...."

"Therefore, we consulted on the view that a considerable amount of granularity would be appropriate on number ranges such as 09 and 118, where competition between SPs was particularly important and where different SPs were likely to want to set very different prices."

The important point is that TNUK believes that Ofcom should be cognisant of the very real risks of having too few price points and therefore do everything reasonable to avoid the risk materialising and impacting on service provision and innovation. This is simply because no-one can predict at this stage what services may be developed in the future and what charging structures they may require.

TNUK notes that Ofcom is proposing "for planning purposes" that 15 additional price points for DQ services may be appropriate, although is not clear on what this is based. We note from Table 10.8 that Ofcom envisages that 20 price points may be required for 09 services (above those required for 087) up to the level of the current £1.53 cap (although the proposed increments of those price points seem somewhat arbitrary and inappropriate). But we are also mindful that Ofcom is proposing to increase the cap.

Obviously, the level of that increase will ultimately determine the number of price points which may be required and without that information, it is impossible to say what that number should be. Ofcom provides no indication in the consultation, although in informal discussions has suggested that the increase may be fairly considerable, at least as regards the per call element.

Setting aside any distinction between 09 and 118 charges for a moment, if Ofcom were to allow 15 price points at 20p increments (per call and per minute) above £1.50, it would only take the limit to £3.10, which is somewhat below the level which we understand Ofcom may be contemplating. Self-evidently, a



significantly greater number of DQ (and 09) price points will be required in order to meet Ofcom's intentions for higher charged services. In reality, although 20p increments may be appropriate for per minute charges, we believe that they may be too wide for per call set-up charges and therefore a greater granularity of perhaps 10p may be required.

Crucially, Ofcom gives no indication over what period of time it expects these price points will apply and how or in what way they may be reviewed. For example, although 60-100 price points may be sufficient for the next 2-3 years, it is likely to be insufficient over the next 10-15 years. TNUK understands from informal discussions with Ofcom that it envisages some form of natural inflationary churn, whereby lower price points will fall away over time to be replaced by higher price points. But without any further detail how this will work and over what period of time, TNUK cannot state precisely how many price points are required. Such a principle would be critical to the interests of SPs and so TNUK believes that it should be established on the face of the regulations, rather than left to chance or the will of the TCPs/OCPs.

As we mentioned earlier, Ofcom highlighted the burden of regularly reviewing prices as one of the barriers to introducing maximum retail caps. The same difficulties would apply to the setting of SC price points, as Ofcom highlighted in that context at para 9.178:-

"...as well as setting the initial retail price points, Ofcom would need to regularly review them to ensure they remained appropriate. This increases the regulatory burden of the option and compounds the scope for error"

TNUK believes that Ofcom should adopt a cautious approach which would certainly point to the adoption of 100 price points rather than 60, or quite possibly 150 because we do not believe that the increase will have a material impact on the OCPs. Critically, if Ofcom was to maintain 20p increments for charges above £1.50 (as TNUK feels is necessary as a minimum), we would conservatively estimate that somewhere in the region of 80 additional price points would be required for DQ (and 09) covering per call and per minute in order to reach anywhere near the limits which Ofcom may be contemplating. Although this may seem a large number, we believe it is the logical conclusion of Ofcom's own proposals, but we would welcome any clarification if our analysis is incorrect.

Adopting the format of Ofcom's Table 10.8, it is evident that an additional 30 price points would not permit charges above £4.50 per minute or per call:-

| | | | | | | | | | | | | | | | |
|-------------------|----------|----------|----------|----------|----------|----------|----------|----------|----------|-----------|-----------|-----------|-----------|-----------|-----------|
| | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 | 14 | 15 |
| 118/09 ppm | 170 | 190 | 210 | 230 | 250 | 270 | 290 | 310 | 330 | 350 | 370 | 390 | 410 | 430 | 450 |

| | | | | | | | | | | | | | | | |
|-------------------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|
| | 16 | 17 | 18 | 19 | 20 | 21 | 22 | 23 | 24 | 25 | 26 | 27 | 28 | 29 | 30 |
| 118/09 ppc | 170 | 190 | 210 | 230 | 250 | 270 | 290 | 310 | 330 | 350 | 370 | 390 | 410 | 430 | 450 |

Our view is that the adverse impact on competition and consumers of restricting service provision by having too few price points is far greater than the negligible impact on OCPs of having to add a few more



price points to their billing engines. Consequently, Ofcom's decision on the number of price points should be based primarily on protecting the current and future needs of consumers, rather than minimising marginal costs of OCPs.

Q10.8: Do you agree with Ofcom's proposed approach to agree the relevant SC price points with industry rather than specifying them as part of the Numbering Plan? Do you have a particular preference for which SC price points are necessary within the different number ranges? What criteria would you propose for the selection of price points?

Industry setting price points

TNUK has very significant concerns in relation to Ofcom's proposed approach of allowing industry (by which we assume it means OCPs and TCPs) to 'agree' the price points. To be clear, TNUK is less concerned about the mechanism of implementation i.e. whether or not the price points are included within the Numbering Plan (although we actually think that inclusion in the Numbering Plan might add a useful element of certainty, regardless of how the price points are initially set). But TNUK is very concerned about the process by which the price points will be determined.

In essence, TNUK believes that Ofcom's proposal to delegate the task to OCPs and TCPs risks undermining one of Ofcom's fundamental objectives of unbundling i.e. addressing the vertical externality. Ofcom defines the vertical externality at para 4.6 as "*arising from the fact that OCPs are not sufficiently motivated by the preferences of SPs of NGC services and thus generally do not take the impact of their call pricing decision on SPs into account...*"

Although the context may be slightly different, TNUK believes that exactly the same statement might be made of the OCPs in any industry discussion about setting the price points. That is, that in whatever position the OCPs adopt, they will have no motivation to take account of the preferences of SPs or the impact on them. Such an approach would simply perpetuate the vertical externality (albeit in a slightly different form) which Ofcom is trying to remove.

TNUK is also concerned by the implication that TCPs can necessarily be relied upon to represent the best interests of SPs in these discussions. Ofcom's statement at para 10.367 is very revealing where it says "*we recognise that stakeholders are likely to be better placed to identify the price points for which there is substantial demand from SPs*". Stakeholders in this context can only refer to TCPs because if Ofcom had meant SPs it would have said so explicitly.

The difficulty of TCPs representing the interests of SPs should not be overlooked. Not only are they separate (and occasionally competing) commercial entities, but TCPs will have a very wide range of SP customers, some of whom will be directly competing with each other or at the very least will have divergent commercial views. Therefore, even with the best intentions, TCPs cannot be expected or relied upon to represent diverging views of SPs.

It is a hallmark of Ofcom processes generally that industry involvement and representation is almost exclusively by OCPs and TCPs and rarely, if ever, includes SPs. In many instances this is sensible



because the issues being discussed do not directly impact SPs. However, this review of non-geographic numbering is clearly very different because it will have the most profound impact on SPs, who are central to the changes being brought about as a consequence of unbundling.

But to date, SPs have been largely absent and excluded from the process in terms of the industry meetings which have taken place. Indeed, TNUK was the only SP involved in the Commercial, Technical and Communications Working Group meetings which took place last year. This was particularly striking in the Communications Working Group meetings in which a collection of OCPs and TCPs were discussing proposed requirements for advertising the SC which would have no impact on them and would only apply to SPs who played no part in the discussions.

This situation cannot be allowed to continue when the working groups are re-formed and particularly when they are considering the SC price points which have the most profound commercial impact on SPs, but only a process or implementation impact on OCPs and TCPs.

After careful consideration, it is not TNUK's view that industry should not be involved in discussions on the setting of the price points, even accepting that it will be largely OCPs and TCPs who are involved. But we believe that Ofcom should stay very closely involved throughout the discussions, direct them where necessary, whilst setting clear parameters and objectives. However, we see no reason why OCPs and TCPs should be in a position to determine DQ price points which have no impact on them, but have the most fundamental impact on DQ SPs.

As we have discussed in response to Q10.7, Ofcom will determine the total number of available price points with specific reference to particular number ranges and the highest available price for each range. We believe that DQ SPs should then be permitted to set actual DQ price points below that overall limit, subject to the ultimate approval of Ofcom. This is no different to any other provider being granted control over its own prices.

Although OCPs and TCPs may object, we see no logical reason why they should have any greater input into SPs' retail prices, than SPs would ever expect to have into OCPs retail prices. We believe that passing the decision to SPs is the only way to avoid the inevitability of 'industry' discussions being dominated by OCPs and TCPs who would outvote/overrule the 'minority' interests of SPs on every occasion. Indeed, unbundling is designed to create exactly that separation by breaking the link between the CPs and the SPs. It would be perverse for CPs to have any input into SCs within an unbundled scenario.

Criteria for setting price points

In terms of the criteria for setting the price points, TNUK believes that Ofcom should focus on granularity, regularity and choice and we will briefly explain each.

Granularity of course means that Ofcom should ensure that the price points are in as small increments as reasonably possible. Whilst that does not mean that 1p increments are required for DQ services, it also



does not mean that 50p increments would be suitable either. Clearly, smaller increments are in the best interests of consumers because they mean that if prices do have to be increased, they can be increased by a relatively smaller amount rather than requiring a bigger jump. But obviously, smaller price increase arising from greater granularity requires a larger number of price points, which Ofcom must bear in mind. On balance, TNUK believes that granularity of 20p is likely to be appropriate for the 118 (and possibly the 09) price range.

Regularity means that whatever increments are chosen must be spaced equally apart, again in order to avoid large jumps in price, but also any perverse incentives to increase prices (or not), which could have the adverse consequence of setting prices at an artificial level and thereby distorting the market. This may be self-evident, but TNUK is aware of at least one other country where this has not occurred and Ofcom should be mindful of avoid this situation in the UK.

For example, in Austria DQ providers are only able to set retail charges according to the following pre-determined list: € 1.08; € 1.35; € 1.55; € 1,81; € 2.17; € 3.50. Clearly, the gap from €2.17 to €3.50 is very significant, which has had the effect of keeping retail charges artificially low for a number of years. However, when DQ providers eventually move to the higher price point, it will create an unnecessarily sharp price increase for consumers with resulting problems of bill shock and possible adverse impact on call volumes. This could easily have been avoided if the price points had greater granularity and more equal spacing.

Choice means that whatever price points are chosen, Ofcom must ensure that there is a sufficient variety and mix (particularly per minute, per call and a combination) to ensure that service providers are able to find a price point which matches whatever service they wish to offer. We have already addressed this point above.

Q11.1: Do you agree with Ofcom's assessment that an unbundled tariff should also apply to the 0845 and 0870 ranges? If not please explain why.

TNUK believes that this is essentially the same question as Q9.1, in which Ofcom asked for views on its provisional conclusion that unbundling should be applied to the NGC revenue sharing number ranges.

As stated in response to Q9.1, although TNUK's only direct interest is in relation to the 118 number range, we do have an indirect interest in unbundling being applied widely across all number ranges. This is partly in order to help develop customer understanding of the concept of unbundling and partly to disincentivise OCPs from setting a higher AC, if that AC only applied to 118/09 numbers. In simple terms, TNUK believes (in line with the evidence which Ofcom has set out in table 10.2 and elsewhere) that a single AC which includes the 0845 and 0870 number ranges (as well as 118 and 09) will be set at a significantly lower level than an AC which only applies to the 118 and 09 number ranges.

It is therefore critical that all NGC number ranges should be subject both to unbundling and to a single AC.



Q12.1: Do you agree with our proposal not to mandate the presentation of disaggregated AC and SC charges on customers' bills? Do you agree with our view that it should be up to OCPs to decide the best way to present these charges to their customers on bills OCPs but that we require that at a minimum, the OCPs should include the customer's AC on the bill they receive?

TNUK's preference would be for charges on the bill to be disaggregated on a call by call basis. This is largely for the reasons which Ofcom outlines, particularly at para 12.32 where it says that the proposal for disaggregation "*was to reinforce consumer understanding of the unbundled tariff and ensure that there is clarity about what they have been charged for a particular NGC*".

TNUK's view is that consumers assume that the charges they pay for calls to 118 118 are set entirely by TNUK and that the money therefore passes entirely to TNUK. Our brand is so well known that we believe that consumers would only associate a call to 118 118 with TNUK and not with their OCP, which they would assume acts as a 'mere conduit'. Whilst this is largely true for calls made from BT landlines, it is obviously not true for other OCPs, particularly mobile OCPs.

TNUK therefore sees great value in consumers properly understanding how in reality the price is actually set and the revenue is divided. This will increase awareness that a significant element of the call charge is in fact retained by the OCP. In theory this might increase competitive pressure on the AC, but even if it did not (and TNUK has its doubts) it would least clarify to consumers that TNUK is not in fact profiting from their calls to the extent that they might otherwise have assumed.

Furthermore, as Ofcom states, call by call disaggregation is likely to be the most effective means of developing consumers understanding of what unbundling actually means. Although they may become used to the new form of SP SC advertising price announcements and perhaps (although most likely not) see reference to the AC in OCPs' price guides, this may not be sufficient for some consumers properly to understand the new pricing structure. Seeing the charges split out on a call by call basis is likely to be the most effective means of achieving that objective.

However, despite our clear preference (and noting the views expressed by many other stakeholders), TNUK is willing to adopt a pragmatic position by accepting that call by call disaggregation may be unduly costly and onerous. As a result, it could adversely impact on Ofcom's cost benefit analysis and/or delay or cause unnecessary distraction or complication in the implementation process.

Naturally, TNUK would certainly agree that as a minimum the OCPs should be required to present the AC on the bill, but we believe that the obligations should go considerably further. A simple statement that "*the access charge for your tariff is Xppm*" is unlikely to provide any substantive assistance to the vast majority of consumers and therefore in all probability will simply be ignored. We believe that a statement such as "*Your access charge is x. All calls in this section have had that charge applied to them by us above the advertised service charges*" is more appropriate.

Furthermore, we believe that OCPs should be required to provide a short one or two line explanation of what the access charge and service charge actually refer to and therefore how unbundling really works in practice. It is vital that consumers clearly understand that OCPs levy an AC over and above the advertised



service charge (with which they may be more familiar), rather than assuming that all money goes to the SP. We believe that this is a minimum requirement in order for any reference to the AC on the bill to be meaningful. Furthermore, we believe that such an explanation must be in a sizeable font and placed prominently on the front of the bill (rather than included in small print on the back) in order that there is a chance for consumers actually to see it.

Q12.2: Do you agree with the requirement for a central SC database. If so what would be your preferred approach – public sector or private sector provision? If you do not agree with the need for the database what approach for the dissemination and verification of SC would you prefer and why. Are there any other issues with respect to the database you would wish to raise?

TNUK agrees that the establishment of a central SC database would be a sensible (and quite possibly necessary) development in order to ensure the smooth operation of unbundling. Although SPs would obviously set the SCs that make up the database, we assume that the design, functioning and operation of the database would be a matter for the operators. Primarily, this would be the TCPs who would have the task of updating and maintaining it, but obviously the OCPs would need reliable and up to date access in order to ensure accurate charging to their customers.

As a result, TNUK has no fundamental preference between public sector and private sector provision of the database, although we are not surprised that Ofcom prefers the latter. However, whilst noting Ofcom's query as to whether Ofcom's powers extend to the provision of the database, we believe that Ofcom's view that this can all be agreed commercially between the operators is likely to be unduly optimistic.

The establishment (or rather lack of establishment) of a centralised database for mobile number portability should serve as a stark warning to Ofcom of the difficulties for industry in undertaking such a task. In that case, despite the fact that there was a deadline to establish the database supported by a regulatory obligation, the process proved to be extremely cumbersome and mired in problems. In fact, if the regulatory obligation had not been overturned by the CAT, there is no way of knowing when or how the industry would ever have agreed to establish the database.

As with mobile number portability, the central SC database will be fundamental to the implementation of unbundling i.e. implementation will not be possible, unless and until the database is designed and operational. That means it will provide the perfect vehicle for any operator opposed to unbundling (of which there appear to be several) to delay, frustrate or complicate the implementation of the regulation, which is exactly what occurred with mobile number portability.

Even without any operator deliberately obstructing the process, Ofcom should not underestimate the difficulties of persuading an array of large and small TCPs and OCPs to agree on the design, procurement and especially the cost of such a database.

TNUK believes that the process of establishing the database clearly has the potential to derail the entire implementation of unbundling. It is vital that Ofcom is mindful of this right from that start. Therefore, even if Ofcom feels overall that the best option is private sector provision, it should not assume for a moment that it can simply step away from the process and leave industry to get on with it. It must stay in touch and



involved at every stage in order to ensure progress is made. Whilst it will not be necessary for Ofcom to interfere in the mechanics, it will unquestionably be necessary for it to do so in relation to the process.

Q12.3: Do you agree with the need for reformation of the existing processes for number range building and tariff change notification? If so, what do you consider to be the key characteristic of a revised set of processes? Do you consider that there is a need for regulatory intervention in their establishment, if so why and on what basis should Ofcom intervene.

As a SP, TNUK is not directly involved in the process for number range building and tariff change notification, but we are obviously impacted by it. Although to date, TNUK has not itself experienced any difficulties as a result of the current ad hoc process, it is clearly far from ideal and would benefit from reform.

The main issue of interest to TNUK (and we suspect all SPs) would be the timescales/notice periods for notifying tariff changes (and opening up numbers) and whether or not there may be any restrictions as to when or how often during the year, such changes may be made. Clearly, such issues have a profound commercial impact on the business of SPs. As with any commercial organisation, SPs need to be able to control their prices and if there are any limitations on their ability to do so, it could have a real and substantial impact on their business. This would apply both to developing and the pricing of new products, but particularly in relation to being able to respond quickly to the actions of competitors in respect of existing products.

TNUK is less concerned about the mechanics of the actual process for notifications between TCPs and OCPs and believes that they can be left to design and resolve that for themselves without Ofcom intervention.

However, in view of the acute commercial importance of the issue of timescales/notice periods to SPs, TNUK feels that this is not something which Ofcom should allow the OCPs and TCPs to decide themselves and for their own benefit (which may well be to limit tariff changes or lengthen timescales). TNUK believes that Ofcom should establish these parameters. We would suggest that one month notice periods would be appropriate and that tariff changes can be made once a month or once a quarter at the very least. Whilst it may seem to be slight overkill to have to specify this in regulation, TNUK does not think that Ofcom should accept any process which does not protect the interests of SPs in this way.

Q12.4: Do you consider that there is a need for additional regulatory intervention in the area of end-users' access to non-geographic numbers, in addition to General Condition 20? If so why and what form should such an obligation take?

TNUK considers that there is a need for additional regulatory intervention in respect of access to non-geographic numbers, although we believe that the problem is not an absence of regulation but rather its enforcement. This is because there is currently at least one example of a clear breach of General Condition 20 in respect of consumers being unable to access TNUK's 118 118 DQ service.



Specifically, BT only allows its Home Hub customers to access its own DQ services, rather than the DQ service of TNUK or any other competitor. It justifies the denial of access on the grounds of the exceptions in the chapeau to Article 28 of the Universal Services Directive related to technical and economic feasibility.

TNUK believes that Ofcom should set the parameters of the bounds of economic and technical feasibility and the tests that should be applied. Ofcom should clarify that lack of feasibility requires that when considering the Home Hub offering as a whole, the provision of the non-BT DQ services becomes an economic burden. This is quite different to whether the provision of non-BT DQ services are profit making for BT in their own right.

BT has yet to acknowledge its overarching obligation to provide access whatever technology is being utilised and that feasibility must be examined regardless of the service offering rather than on a standalone basis. Technological advance should increase choice (as is legislated by Article 28) rather than leading to a prolonged absence of choice. Exceptions relating to uneconomic situations and technical infeasibility should be tested and made subject to objective, clearly defined and transparent criteria.

In addition, Ofcom is under a duty pursuant to Article 5 of the Access Directive (2002/19/EC), where appropriate to ensure adequate access and interconnection and the interoperability of services. In particular, (in justified cases and to the extent that it is necessary) it needs to be able to impose these obligations on undertakings that control access to end-users to make the best services interoperable.

Ofcom should set specific access related conditions concerning DQ pursuant to Section 73 of the Communications Act 2003 pursuant to Section 74(1A) of that Act. Given the provisions of the Universal Services Directive, Ofcom should have little hesitation in using its access related condition setting powers to remedy the problem that currently exists in respect of access to DQ via the home hub operated by BT.

Furthermore, TNUK also has concerns regarding the effective and correct implementation of Article 25(3) of the Universal Service Directive. Whilst we acknowledge that this is a matter for the Government rather than Ofcom, it is worth noting in this context because it impacts Ofcom's powers. The Citizens Rights Directive introduced a specific new provision into Article 25 which stated:-

“National regulatory authorities shall be able to impose obligations and conditions on undertakings that control access of end-users for the provision of directory enquiry services in accordance with the provisions of Article 5 of [the Access Directive]”

Unfortunately, this additional power has not been implemented anywhere in UK legislation or regulation. Whilst it may be argued that the Access Directive applies to a wide range of services and therefore there is no requirement for DQ services to be explicitly mentioned, TNUK believes that this may not be the case. The relevant definitions suggest that in order to be included, DQ would have to be defined as an 'information society service', but the definition of information society services explicitly excludes 'voice telephony services' which would obviously apply to DQ. If TNUK is correct in its interpretation, it means that Ofcom may not have the power which it should have to impose obligations and conditions in respect of access to DQ services.



Q12.5: What steps / actions do you consider need to be undertaken to ensure changes to the structure and operations of non-geographic numbers are successfully communicated to consumers?

TNUK notes Ofcom's proposals for direct communications to consumers, which are uncontroversial. We welcome them as far as they go, but suspect that Ofcom is well aware that much more will have to be done in order to raise general awareness amongst the public as to the introduction of unbundling and what it will mean in practice. We note that Ofcom is "*considering more specific advertising campaigns and targeted messages*" and we look forward to hearing more details as to what that may involve.

Short of a full scale broadcast or outdoor advertising campaign, Ofcom will always be limited in what it can achieve in terms of direct communications to consumers. In reality, we suspect that the amended pricing messages included in high profile television voting programmes may prove to be the principal means by which many consumers find out about unbundling and begin to understand the new charging structure. But it would not be reasonable to expect broadcasters to adopt a wider public information role.

However, TNUK does believe that the OCPs should take on that role to some extent and also that it would be in their interests to do so. They have the principal retail relationship with consumers and their contact centres are likely to receive the majority of queries and complaints to the extent that consumers do not understand the new structure. We address this issue in slightly greater detail in response to Q12.6.

Q12.6. Do you agree with our proposal that existing price publication obligations (with some modifications) are sufficient to ensure that consumers are made aware of their ACs? Do you agree that we would need to specify the AC as a key charge?

TNUK disagrees that the existing price publication obligations are sufficient and much will depend on what modifications Ofcom proposes.

TNUK believes that the language used in this question as regards the need "*to ensure that consumers are made aware of their ACs*" significantly understates the importance of these price publication requirements to the overall principle of unbundling. Referring to awareness of 'their' ACs suggests that Ofcom is considering this issue primarily in relation to ensuring that consumers are able to understand their existing charges. That is a necessary, but completely insufficient, requirement. It is not clear whether this is an oversight of the importance of the issue of increasing competition at point of purchase or whether it is a change in Ofcom's previously stated position. We hope it is the former, but would welcome Ofcom's clarification.

At the very heart of Ofcom's decision to introduce unbundling (and its equally important decision not to cap the AC) is a fundamental belief that the AC can and will be subject to effective competition. If Ofcom is wrong in that belief, unbundling will fail to achieve some of its core objectives and the decision not to cap the AC will certainly be shown to be incorrect.

The only way in which there can be any chance that the AC will in fact be subject to competition is if consumers making purchasing decisions (and to a lesser extent calling decisions) are fully aware of it and



able to take it into account as part of their decision making process. It is of the most fundamental and critical importance to the effective operation of unbundling and desired increase in competition. That requires much more than the AC being hidden in the small print of bills, price guides or websites. It requires prominence equivalent to the overall monthly cost of the tariff, and the quantity of inclusive minutes, data etc.

TNUK acknowledges that there are currently multiple price transparency obligations which apply to OCPs, which could benefit from some clarification and simplification. However, we do not believe that (as currently drafted) any of them adequately address the need to publish the AC as we have just described and therefore they will certainly require some modification.

We explained in response to Q12.1 our concerns about the limitations of including the AC on OCPs' bills and why we consider a simple obligation to publish the AC would be ineffective. In addition, as Ofcom states, over 50% of mobile consumers are on pre-pay tariffs and so do not receive bills and of the remainder who do, it is likely that many of them do not check them in anything more than a cursory manner. Therefore, the obligations on OCPs clearly need to go further. We note Ofcom's suggestions in para 12.98 of what "OCP activities could include", but it does not appear as if Ofcom is considering mandating them.

In addition to what we have said about the need for consumers to be properly informed at the point of purchase, TNUK believes that by far the most effective means of ensuring consumers' understanding is first to ensure understanding of OCP staff in contact centres, but also in retail stores. Whilst we acknowledge that this is not a straightforward process, it is these people who will be on the front line of explaining the charges to consumers initially at the point of sale and subsequently if they have any questions or concerns about them. It is vital that staff are properly trained to perform that role. As EE acknowledged in its response, its contact centres are likely to receive queries resulting from the introduction of unbundling and so it is in the OCPs' own interests to invest properly in ensuring that its staff are able to address these concerns.

The second most important source of information for consumers is OCPs websites, but they should not be permitted to hide the information in lengthy pdf price guides which few consumers will ever read. OCPs must provide details of the AC on their principal online pricing pages and particularly in the short summaries of what is included within each tariff. We certainly agree with Ofcom that the AC should be included as a 'key charge'. If a single AC across all number ranges is to be meaningful and if consumers are to have any chance of remembering it, this must be a basic requirement.

All of this, we believe, would support Ofcom's view that a new (or at least amended General Condition) would be required to include the obligations which Ofcom has proposed, as well as those to which we refer above.

Q12.7: Do you agree with our provisional view that the requirement for SPs to advertise their SCs could be implemented through a condition on SPs that is enforced through an industry Code of Practice and the ASA? Are there any other options (beyond the two outlined) which Ofcom should



be considering? What do you consider is the best approach for securing industry commitment and developing a Code of Practice?

Most of the discussion in this section relates to how Ofcom can enforce price publication obligations on SPs operating in the 084 and 0870 number ranges. In para 12.149, Ofcom refers to the fact that “*the 09, 118 and 0871 ranges are already covered by PPP’s Code of Practice*” and its expectation that “*under an unbundled tariff, this will mean that SPs will be required to advertise their SCs in accordance with the requirements of the Code of Practice*”.

Although Ofcom does not say so explicitly, TNUK therefore assumes that Ofcom is not contemplating any additional advertising obligations in respect of 118 SCs beyond those that would already been contained in an amended PPP Code of Practice. We certainly agree with that position. The PPP Code has proved to be a very effective means of ensuring that any advertising reference to DQ number (whether in broadcast or print media or online) is always accompanied by pricing information. TNUK would be happy to continue with those obligations under the unbundling regime, but does not feel that there is a need for them to be extended (although it is hard to see how they could be in any case).

Although this question does not specifically reference the 084 and 0870 number ranges (and exclude 118) we assume that is Ofcom’s intention. If this is incorrect, we would certainly welcome clarification and details of what other obligations Ofcom may be contemplating in respect of the 118 number range.

Q12.8: Do you agree internationally originated calls should be charged at the same SC as an equivalent domestic call? If not, please set out your reasons. Do you agree that originators should be able to set a separate AC level for roaming calls in a given country, though the other characteristics of the AC should still apply?

TNUK accepts that it should charge the same SC whether calls are originated within or outside the UK.

The question of whether or not the AC should be allowed to vary in these circumstances is slightly less clear. Although the point is likely to be of only marginal importance (in view of the very small volume of NGC calls which will be originated internationally), TNUK would nonetheless welcome clarification of Ofcom’s decision and its underlying reasons.

We accept, of course, that if the OCP is outside of Ofcom’s jurisdiction it has no control over the AC. If the OCP in question is a mobile OCP, whose customer is roaming abroad when they originate the NGC call, we similarly accept that a higher AC will be charged (than the OCPs domestic AC) to reflect the higher wholesale costs of international roaming. As an aside, we regret the fact that ‘value added services’ are excluded from the roaming regulation and the mobile OCPs are therefore entirely unrestricted in the level of charges which they can set.

However, Ofcom states in para 12.189 that “*we also accept that the additional costs incurred by a domestic OCP when originating a NGC for a caller overseas are such that it would not be appropriate to require calls to be charged the same AC as for domestic callers*”. This description does not obviously appear to relate



to the roaming situation described above. If that is the case, TNUK would welcome clarification from Ofcom as to what situation is envisaged here and why it justifies a higher AC being charged.

Q12.10: Do you consider there is a need to exempt business to business telephony contracts from some of the constraints of the unbundling regime? Is so what exemptions do you consider appropriate and why are they necessary (please give examples of the conflicts you would identify if exemptions are not provided). To which contracts should the exemptions apply and why?

TNUK agrees that it may be sensible to grant certain exemptions for business to business contracts from the strict requirements of unbundling. Unfortunately, at this stage we are unable to provide a significant level of detail because our involvement in the business to business market to date has been limited.

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All queries in relation to this response should be to Simon Grossman, Director of Government & Business Affairs, The Number, Whitfield Court, 30-32 Whitfield Street, London W1T 2RG – simon.grossman@118118.com – 020 3205 0800