



NON-CONFIDENTIAL VERSION

Directory Enquiries (118) Review

BT's response to Ofcom's Consultation: A review of the cost of calling
Directory Enquiries (118)

Date: 24 August 2018

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1. Key Points

Consumer Harm

- 1.1. We agree that the consumer harm which has arisen in the 118 market over the recent years justifies Ofcom's further intervention. We are providing below a summary of our comments on Ofcom's proposal with the view to help Ofcom remedy the consumer harm identified. These are developed in this response.

Price Cap

- 1.2. BT agrees with Ofcom's proposal that a price cap is required on prices to 118 services. However, our view is that the cap should be set at the same level as the price cap applying to 09 services for a number of reasons set out below.
- 1.3. In the consultation document, Ofcom has chosen BT's current price for 118 500 as the level for the price cap in particular because it can be implemented quickly (e.g., no action is required in the case of BT's 118 500 service), and because it is in line with consumer expectations of price when they dial a 118 service¹.
- 1.4. We are concerned that some services [X] are uneconomic at this price level and will have to be withdrawn, depriving customers of a service that they value. We also have concerns about the impact on competition and how future proof the proposed cap is.
- 1.5. We suggest that a pragmatic approach would be for Ofcom to reconsider setting the price cap at £3.00 (excl. VAT) per minute which is consistent with the current price cap for 09 services and will have a number of benefits:
- a) There is a greater choice of price points with an additional eleven prices available between BT's 118 500 price and the cap for 09 services. This will allow room for a more competitive 118 market to develop;
 - b) This cap addresses the very high price points that are the main cause of consumer harm in the 118 market;
 - c) Some niche services [X] can continue to be supplied;
 - d) This allows for an element of future-proofing of the remedy as there is room to accommodate the impact of cost inflation and declining call volumes on the cost of providing 118 services.
 - e) As other providers currently use prices between Ofcom's proposed cap and the caps for 09 services, it may be possible to implement the 09 price cap more quickly than Ofcom's proposal as it reduces the number of 118 services that would need to migrate to a lower price.

[X]

Other Remedies

- 1.7. We suggest Ofcom impose two additional remedies to help mitigate consumer harm:
- A maximum call cost of £40 similar to the cap introduced by the PSA;

¹ Paragraphs 4.25-4.33 of the Consultation document.

- A price publication requirement that whenever a dialable 118 number is used for promotion, marketing or sponsorship activity, call prices are displayed prominently.
- 1.8. These remedies have the advantage of tackling directly the cause of consumer harm and, in combination with a price cap, will ensure more effective protection.

Implementation

- 1.9. We agree that the remedies should be implemented as soon as possible after Ofcom publishes its final statement. We think that Ofcom's proposed timeframe is practicable for most but for not all of our services given requirements under the Standard Interconnect Agreement and our current contracts.

2. Responses to Ofcom's Questions

Question 1: Do you agree with our assessment of harm?

We agree that the prices of some 118 services are too high and should be reduced. However we also note many customers value the convenience of 118 services.

- 2.1.1. We agree with Ofcom that the price of many of the Service Charge price points used for 118 services is too high. The five most expensive of these, costing between £8.98 and £15.98 for the first minute of the call, were implemented in July 2016 when the eighty Service Charges introduced in July 2015 were increased to one hundred.
- 2.1.2. 118 customers have different profiles, with some more vulnerable than others. To our knowledge, people more likely to use a directory service are people who:
- value the convenience of a number with onward connection (takeaways, taxi firms, breakdown recovery, etc.);
 - have been unable to find the number they want searching online;
 - don't have online access at the time that they need to make their call; and,
 - have no access to the internet in their home or at work.
- 2.1.3. Ofcom's consumer research found that 2% of UK adults used DQ services in the 12 months prior to the research, rising to 4% of people aged 65 and over. The small percentage of users supports our understanding that 118 services are used either for convenience when this is important to the caller, or because the caller has no alternative mechanism for obtaining the telephone number at that precise moment. If convenience, rather than urgency, is the underlying factor driving their call, the customer could arguable wait and delay calling until an alternative mechanism for obtaining the number becomes available (access to the internet, to a phone book, to a personal contacts list etc.), but they chose not to. We should therefore be cautious about assuming that the 42% of customers choosing to call a 118 service are vulnerable. Whilst this may be true of some (because they do not have an alternative way of getting the number) it will not be true for all.

Consumer harm may arise where customers have a strong recall of 118 numbers with no idea of the price they will pay. This is particularly prevalent for those services that are indirectly promoted.

- 2.1.4. We acknowledge Ofcom's findings that direct advertising of 118 services in general is very limited. We also accept that customers calling 118 services may be unaware of the price of the calls, and of the increasing cost of some 118 services over time.
- 2.1.5. BT has used television, radio and press advertising in the past and has always included information on price. More recently we have promoted 118 500 in the Phone Book. The Phone Book is updated annually so the price of BT's 118 500 service is regularly notified to callers
- 2.1.6. We consider that the potential for harm arises where customers do not know the cost of calling the 118 number they recall most easily. Consumers then call the number they remember rather than one that may be cheaper or better suited to their needs and end up being charged more than they might have expected.
- 2.1.7. 118 services are unique from other Premium Rate calls because their marketed brand name may also be their dialable 118 telephone number. This gives providers the ability to use high profile, public domain sponsorships. This keeps the number in customers' minds whilst they

have no idea of the price or how it has increased over time. Brand sponsorship is effective at encouraging calls because it directly promotes the 118 number itself. Crucially where these communications include no information on price, customers cannot make an informed decision on whether to use the service.

- 2.1.8. BT's view is that the lack of price disclosure in indirect promotion of 118 services contributes to the lack of price awareness identified by Ofcom as a potential cause of consumer harm. Ofcom should address this directly by requiring price information to be disclosed whenever a diallable 118 number is used for marketing, promotion or sponsorship purposes.

Question 2: Do you agree with our view that the proposed cap on the service charge for a call to a 118 number of £2.58 (ex VAT) per 90 seconds of the call is an effective and proportionate to remedy the harms identified?

BT agrees that it is appropriate to impose a cap on the price of 118 services but considers the level may be too low

- 2.2.1. We agree with Ofcom's proposal to impose a cap on the price of 118 Directory Services calls to protect customers from the harm of unanticipated high prices and bill shock. Even if this has only affected a small percentage of all 118 customers, the damage on those individuals can be very high.
- 2.2.2. BT reduced the cost of calls to 118 500² in June 2018. Ofcom has chosen BT's price point as the level of the proposed cap for all services. Whilst this will largely affect other providers, some of our other BT services will also be affected.

We are concerned that Ofcom has not used an assessment of willingness to pay in determining the level of the proposed cap

- 2.2.3. To decide on the level of the price cap Ofcom has used research that asked customers to estimate the call cost having already assessed that price awareness was low across the entire subject group. These price expectations have then been used to justify the level of the proposed price cap.
- 2.2.4. In our view, a better approach would have been to use willingness to pay research as the basis for the cap. This would apply demographic data and ability to pay using socio-economic data in addition to other factors such as research on a variety of potential price options to assess an appropriate level for a cap. These factors could have then been used to assess if other potential price points were appropriate for the service being provided.
- 2.2.5. Customers with little or no knowledge of the actual cost of a 118 call may tend to assume a price they would like to pay as opposed to one they might consider reasonable where they offered that as the price. Given that actual prices for products are typically below an individual's willingness to pay (unless there is perfect price discrimination) customers' expectations of prices are usually lower than their willingness to pay. Hence we are concerned that using expectations of prices rather than willingness to pay will understate the true value of the service.

We are concerned that Ofcom's price cap may adversely affect niche services and may adversely impact on competition

² 118 500 cost 77 pence per call and £1.55 per minute plus the telephone provider's access charge. All charges apply from the start of the call and a one minute call costs £2.32 plus the access charge.

- 2.2.6. Ofcom argues that the proposed cap does not undermine cost recovery and therefore raises no proportionality concerns. This may not be the case when considering the long tail of 118 services.
- 2.2.7. During the course of its 118 call cost review, Ofcom has focused its information gathering on the six largest 118 services accounting for most of the 118 calls. There are over four-hundred 118 numbers active in BT's Carrier Price List, with some providing niche services that attract only small numbers of calls and have higher overheads as a result. Ofcom has already found that calls are infrequent to 118 numbers in general, so calls to more niche services will be far fewer – but this does not mean they are not useful and valued by customers.
- 2.2.8. Given the higher costs of providing these less frequently used services, it is likely that some may need to be withdrawn immediately if the cap does not allow providers sufficient room to make a reasonable margin above the provision costs. As Total Labour Costs (TLC), accommodation and other overheads increase while calls continue to decline over time, providers may withdraw more 118 services from the market, reducing competition and customer choice.
- 2.2.9. [X]

Advantages of implementing a different cap

- 2.2.10. To prevent the withdrawal of smaller providers and niche services, Ofcom could amend the remedy to align it with the cap for 09 Premium Rate Services numbers of £3 per minute and £5 per call (excluding VAT).
- 2.2.11. This would still address the harm caused by the very high prices charged by some 118 providers and will reduce the risk of misuse and fraud that these tariffs have encouraged.
- 2.2.12. A higher price cap will also allow 118 providers more opportunity for price and service differentiation and offer flexibility for managing inflation and workplace pay changes. It will provide some headroom within available tariffs and reduce the need for a further review of the cap at a later stage. [X]
- 2.2.13. An additional benefit is that there are already Service Charges in use within the existing 09 cap that 118 providers could also utilise. This will allow eleven price points at prices above the level of Ofcom's proposed cap but within the 09 price cap.

Consumer harm from the strong recall of certain 118 numbers without knowledge of the cost of calling these numbers can be tackled directly

- 2.2.14. As explained in the answer to question 1, we agree with Ofcom³ that consumer harm arises from the lack of customer awareness of price and the high prices for some 118 services that are a main cause of bill shock and unwanted debt, especially where customers have a strong recall of certain 118 numbers but do not know the price of these calls.
- 2.2.15. Ofcom should reconsider its idea to require price information for any publication of a diallable directory enquiries number for promotion, sponsorship or marketing purposes⁴.

³ Paragraph 3.34 of the consultation document.

⁴ "4.59 b) whether we might amend GC14.10 and GC14.11 (C2.8 of the new General Conditions) and the corresponding obligation under the telephone numbering condition. The amendment we considered would require DQ providers to advertise the price of their services whenever they refer to a DQ number in marketing, whether or not they are directly marketing their DQ telephone service. Such a requirement would have no impact on the majority of DQ providers, while those within scope might adjust their marketing strategies and thereby reduce any potential effectiveness. Further, it may lead to confusion among consumers if call costs are being explained within adverts that are primarily concerned with promoting non-related

- 2.2.16. We understand Ofcom’s concern that this may confuse some customers. However, this would likely be an effective remedy to address the risk of harm resulting from the lack of price awareness.
- 2.2.17. A requirement to publish price information wherever the 118 number or 118 brand is used in the public domain would protect customers from this lack of price awareness. To be fully effective, this would need to include any use of a dialable 6-digit 118 number in the public domain, whether it is appearing as a brand or logo, or as part of an associated partner brand, or when suffixed by “.com”. Although we accept there will be some instances where providing the price is impractical for the sponsorship used, such as on football shirts, it should be possible to include price information in television segments and print sponsorships and where the number is used online.

Introducing a maximum call cost will further protect customers from debt and bill shock. We suggest this should be set at £40 per call, consistent with call caps introduced by the PSA

- 2.2.18. Where 118 consumer debt and bill shock occur, it is usually caused by customers who are onward connected at a high pence per minute rate without fully understanding the price. The Phone Paid Services Authority (PSA) has consulted to propose onward connection costs are clearer for customers⁵ and we consider this will help.⁶
- 2.2.19. But some customers will continue to choose the convenience of onward connection. When they do, they may lose track of the time they are on the phone, particularly if connected to Customer Service call centres with call steering or queuing systems. Even at reduced rates, longer duration calls could still lead to bill shock and unwanted debt.
- 2.2.20. Use and promotion of 118 numbers on Interactive Voice Response platforms in more recent years with the intention of misleading consumers into calling unnecessarily is likely to continue under Ofcom’s proposals. Although the Phone-paid Services Authority (PSA) is consulting to place additional conditions on this activity this will not be sufficient to fully protect consumers and repair the damage to the industry overall. We consider additional consumer protection measures are necessary.
- 2.2.21. We would encourage Ofcom to reconsider the idea of capping the total call price a customer can pay⁷.
- 2.2.22. Setting a cap on the maximum call price in addition to a pence per minute cap will benefit consumers and the market overall as consumer confidence in these services increases. Ofcom is aware that BT already imposes a £20 cap for the calls that its retail customers make to 118 500.
- 2.2.23. Maximum call charges limit the risk of debt and the associated customer distress. We suggest that the £40 call cap PSA will impose from 1st October 2018 for chatlines, professional advice services and sexual and live entertainment services⁸ is proportionate and justifiable

services such as financial products etc. We therefore decided that this remedy would be ineffective at addressing the harms we have identified, either on its own or in conjunction with other remedies.”

⁵ <https://psauthority.org.uk/-/media/Files/PSA/For-Businesses/Our-role-in-the-industry/Public-consultations/2018/Consultation-on-new-Special-Conditions-for-Directory-Enquiry-Services-13-June-2018.ashx?la=en&hash=1466FF0DB921177CDD6C3B30BAF7D4981AEADB90>

⁶ BT ensures its customers are fully aware of the price before they choose to onward connect by using a clear announcement of the price. We also advise callers that free-to-caller numbers are only free if they dial them themselves.

⁷ “4.59 c) a backstop cap on the total amount of the service charge that could be charged for an individual call. We discounted this on the basis that it would be ineffective at addressing the harm from shorter calls, which form the vast majority of calls made to DQ services. On this we note that, based on a sample of calls made between 18 September to 1st October 2017, 4% of calls incurred a service charge of over £20 and 7.5% of calls incurred a service charge of over £15.”

⁸ https://psauthority.org.uk/news-and-events/news/2018/august/notice-of-specified-charges?utm_campaign=Notice+of+specified+charges&utm_source=emailCampaign&utm_content=&utm_medium=email

as this also aligns with the voice communications per transaction cap set by the Payment Services Regulations⁹.

VAT issues

- 2.2.24. Ofcom's maximum price caps for Service Charges are published in the National Telephone Numbering Plan exclusive of VAT. The proposed amendment for 118 will implement a service charge cap of £2.57849 per 90 seconds.
- 2.2.25. As currently drafted, any change to VAT will not affect Ofcom's cap but may make Service Charges invalid for use:
- by breaching the cap if VAT is reduced (a 5% variant either way for VAT has a +/-£0.10 impact to the Service Charge); or
 - because they no longer exist in whole pennies under a new VAT level.
- 2.2.26. For Service Charges to remain compliant following a VAT change it would be helpful if Ofcom was to amend the cap(s) for Non Geographic Call Services, including 118 numbers, so that they are also inclusive of VAT. Given the unbundled tariff Access Charge/Service Charge mechanism does not apply to business-to-business calls where VAT exclusive prices might be preferred, this would also benefit consumers by providing a simple, transparent and consistent approach to the prices they will pay.

Question 3: Do you agree with our view that an overall implementation period of four months following Statement will be a sufficient time for providers to introduce the proposed cap?

We require a two stage implementation period so that sufficient time is allowed for price notification under the Standard Interconnect Agreement

- 2.3.1. We agree that the remedies should be implemented as soon as possible after Ofcom publishes its final statement. It is important to address the consumer harm Ofcom has identified without delay.
- 2.3.2. To implement Ofcom's proposed price cap, BT will need to action other 118 providers' price changes, for example for all those services currently priced above the proposed cap. The Standard Interconnect Agreement requires BT to be given 56 days' notice of any price changes in writing in order to implement the necessary changes.
- 2.3.3. To meet Ofcom's proposed four month implementation period, 118 service providers will have to notify BT and CPs of their proposed prices within two months of Ofcom's final statement. Ofcom should therefore set out a two-stage implementation period, whereby 118 providers are given two months to notify prices to CPs so that the necessary notice period can be given under the SIA. This will also allow sufficient time to notify end customers and implement any price changes within billing systems.

Eleven Service Charge price points will become redundant following the implementation of Ofcom's proposals. If new price points need to be introduced this will put a four month implementation period in jeopardy

- 2.3.4. A four month implementation period is only tenable if there is no requirement to introduce new Service Charges.

⁹ <https://www.fca.org.uk/publications/policy-statements/ps17-19-implementation-revised-payment-services-directive>

- 2.3.5. There are currently one hundred price points available for use with NGCS numbers. Applying Ofcom's proposed cap to 118 calls will render the eleven Service Charge price points priced above the 09 call caps unusable for any service.
- 2.3.6. While it may be possible in theory for industry to withdraw and reset these at new rates below the caps, there is no current process to do this. Additionally, given that any revised Service Charges could also be used for 09 premium rate services, the setting of these revised eleven prices would need to be open to all Service Providers using 09 numbers as well as providers of DQ services making the process more complex.
- 2.3.7. It is highly unlikely that this could be resolved, and the revised prices built by all Communications Providers, within a four month implementation period.
- 2.3.8. We also note that many Originating Call Providers do not have their own 118 services and where they do, Ofcom's research shows that they already comply with the proposed cap so additional Service Charges may have limited benefit to them. However it is Originating Call Providers who will incur the cost of implementing new Service Charges into their price lists and billing systems. This would be additional to already having to make the price changes necessary for all 118 numbers currently priced above the cap to migrate to a compliant Service Charge.
- 2.3.9. The regulation states that Communications Providers should have billing systems in place *capable of* accommodating up to one hundred price points, not that there must be one hundred prices available for use. It would be helpful if Ofcom could confirm in the statement that they do not expect the industry to replace the eleven price points that become unusable and that our interpretation of the regulatory requirements is correct.

[X]

Question 4: Do you have any comments on the notifications at Annex 10 and the draft modification set out within them? Where you disagree with the proposed modification, please explain why.

- 2.4.1. Ofcom's amendment(s) include the proposal to mandate the maximum call cap of 257.849 pence per 90 seconds, exclusive of VAT within regulation before 1st October 2018 and then on or after 1st October 2018.
- 2.4.2. Changes are needed to the modifications to the General Conditions set out at Annex 10 of the consultation because the industry cannot comply as these are currently drafted.
- 2.4.3. Ofcom has consulted until 22 August and proposed a four month implementation window from the statement, but the revised General Conditions replace those currently in place on 1 October 2018. This does not allow sufficient time for any change to the current Conditions making the proposed amendment within Schedule 1 unnecessary. It should therefore be withdrawn.
- 2.4.4. Ofcom has two options to ensure compliance with the amendment in Schedule 2:
 - a. making a transitional amendment that can be modified once the date for implementation is known; or,
 - b. setting a date for compliance that acknowledges the four month (or longer) implementation timeframe such as 1 April 2019.

3. Annex 1

Ensuring compliance within Ofcom's four month implementation timeframe

- 3.1. Ofcom has allocated more than four hundred 118 numbers for the provision of directory services. While some may not be in active use, at least half are at prices currently above Ofcom's proposed cap. If all of these services choose to change their price on the same date, there is a risk that managing the changes to customer billing systems may overwhelm some smaller Communications Providers.
- 3.2. This risk can be reduced without impacting the four month timeframe, by Ofcom setting out a graduated transition within the implementation window. A staggered migration would prevent all changes being requested for a single date, but without delaying the lower prices benefit to customers.
- 3.3. Additionally, for industry to ensure Service Charges are priced consistently regardless of where or with whom the call originates, we need to understand how to manage 118 services that do not request a compliant price point. Ofcom should therefore set out a single rule for implementation to ensure all Communications Providers treat non-compliant 118 prices in the same way as required by General Condition 17.26¹⁰.
- 3.4. We believe there may be many possible options for achieving this, of which these are three:
 - a. Non-compliant 118 numbers are migrated to Service Charge SC001¹¹ so that any 118 number remaining above the cap carries no consumer cost for the service called but Originating Communications Providers can still recover their costs via their Access Charge billed to their customer. This remedy also ensures that the caller will never pay more for dialling the 118 number than any price published in the public domain (regardless of how out of date that price publication may be); or
 - b. Non-compliant 118 numbers are temporarily ceased at day-1 when the cap comes into effect until such time as the Service Provider notifies the compliant Service Charge for their number(s); or,
 - c. Non-compliant 118 numbers are migrated to a specific compliant Service Charge price point (such as £2/minute) becoming active at day-1 of the implementation.
- 3.5. Ofcom should set out within the statement what CPs must do with regards to non-compliant 118 numbers. This will help BT and industry achieve Ofcom's implementation timeline. [X]

¹⁰ "17.26 The Service Charge—

- (a) must not vary according to the Communications Provider that retails or originates the call;
- (b) must not vary by the time or day of the call;
- (c) must be no greater than any applicable maximum price specified in the National Telephone Numbering Plan;
- (d) may be set at a pence per minute, a pence per call rate, or a rate which combines a pence per minute rate and a pence per call rate;
- (e) must not require another Communications Provider to have systems able to accommodate more Price Points than are required under paragraph 17.31, unless that Communications Provider agrees otherwise."

¹¹ SC001 has a Service Charge of zero pence per minute.

END OF RESPONSE

NOTES ON CALL PRICING

Calls to 118 707 cost £1.45 per call. One enquiry per call and no onward connection.

Calls to 118500 / 118404 cost £0.77 per call plus £1.55 per minute (a minimum 60 second charge applies) inc VAT, plus your telephone service provider's Access Charge (excludes BT payphones).

[X]