



Service Charge Caps for 09 and 118 Services

Consultation on maximum Service Charges for PRS
and Directory Enquiries services in the unbundled tariff
regime

Consultation

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Contents

Section		Page
1	Summary	3
2	Introduction	7
3	Legal framework	13
4	Service Charges for 09 and 118 numbers	16
5	Consumer Protection Measures	48
6	Options, implementation and next steps	61
Annex		Page
1	Responding to this consultation	67
2	Ofcom's consultation principles	70
3	Consultation response cover sheet	71
4	Consultation question	73
5	International Comparisons	75
6	Equality Impact Assessment	79
7	Overview of forthcoming publications in relation to NGCS	81
8	Glossary	83

Section 1

Summary

Introduction

- 1.1 In April 2012 we consulted on a set of proposals designed to address identified market failures in the provision of non-geographic calls¹.
- 1.2 In that consultation we provisionally concluded that substantial restructuring of the existing regulatory controls on the use of non-geographic numbers was required in order to address these market failures and to ensure its future as a vehicle for the delivery of services to consumers.
- 1.3 Our key proposals were to set:
 - **Maximum retail prices for:**
 - Freephone (080 and 116 numbers) to be free from all telephones, fixed and mobile; and
 - 03 to become the only non-geographic number range linked to the price of a call to a geographic number (i.e. the 01/02 number ranges);
 - **A new tariff structure for other non-geographic calls:** which involves splitting (and making transparent to consumers) the money that is paid to their phone company (the Access Charge (“AC”)) and the money that is paid to cover the costs of routing and managing the non-geographic numbers, the cost of the receiving the call service and, where this occurs, payment for the service the consumer is receiving (the Service Charge (“SC”)). This will apply across the majority of non-geographic number ranges (in particular those that involve revenue-sharing) to ensure greater transparency for consumers and enhanced competition among communication and service providers.
- 1.4 In the April 2012 Consultation we considered that it was appropriate to set price caps on the SCs for 084 and 087 numbers for the purposes of differentiating the number ranges in the interests of consumer price transparency. For the same reason, we said that there should be a price cap on the SC for 09 numbers but that the level at which such a cap should be set required more detailed consideration in a subsequent consultation. We said that we would also look at the case for a cap on the SC for 118 numbers in our subsequent consultation – this is that consultation.

Current regulation

- 1.5 The 09 number range provides access to premium rate services (“PRS”) such as entertainment, chat and adult entertainment services. It can also provide a payment mechanism for other inexpensive services (such as TV voting).

¹ The “April 2012 Consultation” available at <http://stakeholders.ofcom.org.uk/consultations/simplifying-non-geographic-no/>

- 1.6 Ofcom does not currently impose retail caps on the price of calls to these numbers. However, BT is subject to a Significant Market Power condition – the NTS Call Origination Condition - which restricts the amount of revenue that it can retain from the price it charges for calls to 09 numbers. The effect of this obligation is that it abides by the designation in the Numbering Plan that it should charge consumers no more than £1.53 (including VAT) per minute for any call to an 09 number from a BT landline. While calls from a mobile to PRS numbers generally cost significantly more, other fixed communication providers have generally followed BT's prices.
- 1.7 However, while the BT restrictions do not apply to other communication providers, the controls on BT's revenue retention have led to a de facto constraint on outpayments to the organisations providing these services, so that they receive no more than £1.45 per minute for calls. It is this restriction on the outpayments which constrains the range of services provided over PRS calls.
- 1.8 The 118 number range was introduced in September 2001 to allow for competition and innovation in the provision of directory enquires ("DQ") services. Ofcom does not apply retail caps to the price of calls to 118 numbers, nor are they within the scope of BT's NTS Call Origination Condition. The prices for these calls can therefore vary significantly between both fixed and mobile providers, and can be substantially higher than those on the 09 range.
- 1.9 Calls to both 09 and 118 are subject to regulation by PhonePayPlus ("PPP") via the PPP Code of Practice². This imposes a number of consumer protection measures, including:
- a mandatory industry Registration Scheme which requires all organisations in the premium rate industry to register their businesses and services on the Scheme;
 - a prior permissions regime where certain defined PRS³ are required to obtain PPP's written permission before operating the service (the prior permissions regime); and
 - a requirement on the Terminating Communications Provider ("TCP") to withhold service outpayments to service providers for 30 days after the call was made.

Proposals

- 1.10 While there are some characteristics of the market that may naturally constrain the level of charges likely on the 09 range, on balance we consider that it is in the interests of both consumers and service providers ("SPs") that we impose a price cap on the SC.

² <http://stakeholders.ofcom.org.uk/consultations/ppp/>

³ Including for providers who use the higher rate tariffs, and caps on the total price of calls to certain PRS numbers, and on those which are charged at higher tariffs (classified as above 85ppm).

- 1.11 We consider that such a cap will have a positive impact on confidence in the market, reduce the potential for fraud and bill shocks for consumers and help Originating Communications Providers (“OCPs”) to minimise their risk of bad debt.
- 1.12 This consultation sets out a range of cap structures and levels. In light of the substantial changes proposed for the non-geographic calls regime, we consider it is appropriate to be conservative in setting such limits.
- 1.13 Accordingly, we have proposed a cap of £5 per call and £3 per min for 09 calls. It is worth noting that these new limits do not lead to the automatic increase in revenue for existing PRS services on 09 numbers. The expectation is that they will be utilised by companies and charities seeking to offer services not currently possible under the current limits and to enhance current services.
- 1.14 In relation to 118 numbers, our assessment is that the advantages of caps at the same levels as for 09 also apply. We are therefore proposing that we set equivalent maximum prices for the SC for these calls. Although in a small minority of cases the retail prices and the amount of revenue that is passed through to the TCP for 118 calls are currently higher than the caps we are proposing, we consider that the benefits of a cap in terms of reducing the incidence of bill shock and fraud outweigh the potential impact on service availability and innovation.
- 1.15 Finally, we have also considered options for additional consumer protection measures, such as pre-call announcements, for calls to these numbers. While we would welcome stakeholder views, our analysis suggests that at the SC levels proposed no additional consumer protection measures (above that imposed by PPP) are required.
- 1.16 Our impact assessment of the proposals we are making is contained in the analysis in Sections 4 and 5 of this consultation.

Implementation

- 1.17 While there is some demand from SPs for changes to existing limits (applying to BT) as soon as possible, we do not consider that in the light of existing market failure concerns such a change would be appropriate. The cap on the SC is inextricably linked to our proposals to unbundle the AC and SC, and we consider there could be significant consumer protection concerns (particularly in relation to transparency) if the cap were partially increased in isolation. Any decision for a cap on the 09 and 118 number ranges will therefore be implemented alongside the unbundling proposals (currently expected to be 18 months after publication of the Statement on unbundling).
- 1.18 We are currently intending to set out our decision with respect to the proposals contained in this consultation within the Statement on our unbundling proposals. Should we consider, as a result of responses to this consultation, that it would be appropriate to implement additional consumer protection measures on the 09 and/or 118 ranges, we would anticipate that we would consult on the detail of any such proposal during the course of implementation period following the publication of our Statement.

- 1.19 Details of how to respond to this consultation are set out in Annex 1. The deadline for responses is 19 September 2012.

Section 2

Introduction

- 2.1 The 09 and 118 number ranges are both non-geographic number ranges used to provide services to consumers and paid for by the cost of the call. The ranges are used for, respectively, premium rate services (such as chatlines, quizzes and other entertainment services) and directory enquiry services. Due to those micropayments which pay for the cost of the services provided,⁴ calls to both ranges are typically charged at higher rates than calls to other non-geographic numbers.
- 2.2 Earlier this year, we set out our proposals to unbundle the charges for calls to both these and other non-geographic number ranges. This would mean separating the charge paid for making the call (the access charge) and the charge paid for accessing the service in question (the service charge). Callers would pay these two charges, instead of a single charge today. Following these proposals, this consultation considers whether there should be a cap on the service charge for calls to the 09 and 118 number ranges.

Background to our proposals

- 2.3 In December 2010 we highlighted concerns about market failures in the supply of non-geographic call services.⁵ In April 2012, having gathered further evidence and considered stakeholders' responses to our original consultation, we reiterated these concerns and published detailed proposals to address them by simplifying the pricing structures for non-geographic call services to make them more transparent for consumers.⁶
- 2.4 A important market failure that we identified in our April 2012 Consultation was a lack of consumer awareness of charges for non-geographic calls. We said that this, combined with other factors, meant that callers tend to overestimate the costs of calling non-geographic numbers, making them suspicious about these numbers and reluctant to use them. In turn, this reduces demand for these services, particularly from mobile phones. We said that the effect of this reduced demand was that fewer and less innovative services are offered on non-geographic numbers.
- 2.5 Our proposals set out in the April 2012 Consultation were to introduce a new tariff structure for non-geographic calls:

⁴ Micropayments are financial transactions covering very small levels of expenditure. The problem of micropayments generally is that the cost of the transaction is often a significant proportion of the total payment. Including micropayments in telephone charges somewhat overcomes this problem as they add only a very small cost premium to existing billing systems.

⁵ The December 2010 consultation can be found on the Ofcom website here:

<http://stakeholders.ofcom.org.uk/binaries/consultations/simplifying-non-geo-numbers/summary/non-geo.pdf>

⁶ The April 2012 consultation can be found on the Ofcom website here:

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

- freephone numbers – 080 and 116 numbers to be free from all fixed and mobile telephones;
 - 03 to be charged in line with charges for geographic calls; and
 - 08 (other than 080), 09 and 118 calls to be charged in line with the unbundled tariff structure as explained below.⁷
- 2.6 Our ‘unbundled tariff’ proposal for calls to 08, 09 and 118 is that, rather than pay a single charge for a call to a number on one of these ranges, consumers will pay two separate charges comprising:
- 2.6.1 the **Access Charge (“AC”)** set by the phone company offering fixed or mobile telephone services (the originating communications provider (“OCP”)) to cover its costs and revenues in relation to making the call;
- 2.6.2 the **Service Charge (“SC”)** set by the phone company receiving the call (the terminating communications provider (“TCP”)) to cover its costs and revenues and to contribute to (or cover) the costs of the service provider (“SP”) offering the service being called.
- 2.7 We proposed that for each tariff package offered by phone companies, there should be one AC charged as a simple ‘pence per minute rate’ for calls to all unbundled non-geographic number ranges. In relation to the SC, we proposed:
- each individual 08, 09 or 118 number on which a service is provided should have the same SC applying to calls from both fixed and mobile phones;
 - that a maximum SC should be set for each number range;
 - a reduction in the total number of SC price points available across all the number ranges; and
 - that organisations and SPs must tell consumers the SC whenever the number is advertised.
- 2.8 As we explained in the April 2012 Consultation, we did not propose any change to the way that consumers pay for these calls. They will continue to be billed the total amount of the access charge and the service charge by the phone company providing the fixed line or mobile service which they use to make the call. However, the separate charges will appear on any advertising material and their provider will only be able to retain the AC. The SC will be passed to the TCP.

The scope of this consultation

- 2.9 The April 2012 Consultation for the unbundled tariff proposals has now closed. This consultation focuses on the application of one aspect of those proposals – the SC – to the 09 and 118 ranges.

⁷ See the April 2012 consultation for full details of all the proposed remedies, and in particular the unbundled tariff structure relevant to this consultation.

- 2.10 In the April 2012 Consultation, we said that a price cap for the SC on the 09 range would enhance consumer understanding of prices for these calls.⁸ This consultation considers the level at which any such cap should be set, how it should be structured and whether any additional consumer protection measures, such as a pre-call announcement of the amount that will be charged for the call, are required.
- 2.11 In the April 2012 Consultation we took no position on whether a cap on the SC for 118 numbers was required to secure improved consumer awareness about the prices for calls to these numbers. However, we said that there might be other consumer protection reasons for imposing such a cap, such as controlling the risk of fraud on these numbers and helping consumers to control their expenditure.⁹ In this consultation, we consider whether a cap should be imposed on the SC for these numbers, the level and structure of any such a cap and whether additional consumer protection measures are required.

The 09 and 118 ranges

- 2.12 The **09 number range** is designed for the provision of premium rate services (“PRS”) such as entertainment, chat and adult services, funded through micropayments included in the charge for the call. As the name suggests, the charges that consumers currently face for making calls to the 09 number range are significantly higher than calls to other non-geographic number ranges. In 2009, the average price for a call to an 09 number from a fixed line was 85.1ppm and 113ppm from a mobile. This compares to average prices in 2009 of 11.8 ppm for a fixed line call and 27.7ppm for a mobile call to numbers in the 0871/2 range, the next most expensive range (other than 118) of the non-geographic numbers subject to the proposals in the April 2012 Consultation.¹⁰
- 2.13 As set out in more detail in Section 3 of this document, services on the 09 range are subject to the PRS Condition, which requires them to be regulated by PhonepayPlus (“PPP”) under its Code of Practice. The PPP Code of Practice¹¹ and permissions to provide services which are granted under the Code, include certain controls on call charges, as set out in Section 3 below.
- 2.14 Outside of the PPP Code of Practice, and with the exception of BT, the price for calls to 09 numbers is not regulated. BT’s charges for these calls are currently constrained by the application of the NTS Call Origination Condition, which restricts the amount of revenue it can retain from the retail price it charges for such calls. As a result, BT adheres to the retail charge limits set out in the National Telephone Numbering Plan (“Numbering Plan”) and, accordingly, it does not charge more than £1.53 ppm for calls to 09 numbers. Although not regulated, other fixed line OCPs have generally chosen not to retail 09 calls at prices higher than those charged by BT. Charges for calls to 09 numbers from mobiles can be materially higher than those charged by fixed providers but that has not been matched by higher termination rates – mobile OCPs typically pay the TCP no

⁸ See paragraphs 10.275 – 10.283 of Part B of the April 2012 consultation.

⁹ See paragraphs 10.290 – 10.291 of Part B of the April 2012 consultation

¹⁰ See Table 3.6 at pg 21 of Part A, April 2012 consultation.

¹¹ <http://stakeholders.ofcom.org.uk/consultations/ppp/>

more than the maximum amount paid over by BT under the NTS Call Origination Condition.¹²

- 2.15 The **118 number range** is used for directory enquiry (“DQ”) services. Like 09, charges for calls to these numbers are significantly higher than calls to other non-geographic number ranges. In 2009, the average price for a call to a 118 number from a fixed line was 87ppm and 104.1ppm from a mobile¹³ although prices can be much higher than this.¹⁴ Services on 118 are also subject to regulation under the PRS Condition and the PPP Code of Practice. Outside of the Code of Practice, charges for these calls are not regulated.

Stakeholder views

- 2.16 In the course of our review of non-geographic call services, we received comments from 20 respondents in relation to a cap on charges for 09 calls and other consumer protection measures. As summarised in the April 2012 Consultation,¹⁵ a number argued in favour of a cap applying to fixed and mobile providers, but they considered it should allow higher levels of revenue for SP than possible under the current retail prices charged by BT for 09 calls.
- 2.17 There were differing views on the extent to which it should be increased. Some respondents felt that, as a minimum, it was appropriate to set the cap at a level that took account of inflation since the introduction of the NTS Call Origination condition in 1997. Others argued in favour of higher caps, but noted the increased potential for fraud. For example, COLT considered that the cap should be no higher than £3 per minute:

“because of the high fraud risk that higher amounts attract”¹⁶.

- 2.18 The Premium Rate Association (“PRA”), on the other hand, suggested we should consider three caps at £3, £5 and £10 as per minute or per call charges stating:

“we do not agree that these higher charges would necessarily warrant the imposition of 60 day withholds. The understanding is that the 30 days should be adequate time for PPP to get wind of a problematic service and impose an emergency procedure – it will not take any longer just because the charges have changed”¹⁷.

¹² The termination rates that MNOs pay for calls to 09 is currently the subject to a dispute before Ofcom – see: http://stakeholders.ofcom.org.uk/enforcement/competition-bulletins/open-cases/all-open-cases/cw_01088/

¹³ See Table 3.6 at pg 21 of Part A, April 2012 consultation.

¹⁴ See discussion in section 4 below, and in particular Table 4.3.

¹⁵ See paragraphs 6.38 – 6.44 of Part A of the April 2012 consultation.

¹⁶ See page 11 of COLT’s response to our consultation:

<http://stakeholders.ofcom.org.uk/binaries/consultations/simplifying-non-geo-numbers/responses/Colt.pdf>

¹⁷ See page 3 of PRA’s response:

http://stakeholders.ofcom.org.uk/binaries/consultations/simplifying-non-geo-numbers/responses/Premium_Rate_Association.pdf

- 2.19 In relation to other consumer protection measures, some stakeholders suggested pre-call announcements could be used, with one respondent suggesting that this should be limited to calls with a total cost of £5 or more.
- 2.20 There was also support from some respondents to the introduction of a maximum charge for 118 calls. For example, Magrathea believed that a maximum price should be applied to 118 and 09 numbers.¹⁸ Everything Everywhere (“EE”) considered that the main problem with directory enquiry services was that the wholesale rates set by SPs had soared in recent years as providers sought to recoup falling revenues due to increased competition from substitute services such as the use of internet on smartphones. EE argued that the risk of bill shock would still remain if consumers were not clearly informed of call costs by the SPs.¹⁹
- 2.21 Others, notably BT and The Number (UK) (“TNUK”) opposed the proposal. BT opposed establishing a maximum SC on 118 on the grounds that Ofcom had noted that this was a competitive market,²⁰ and argued that SPs on 118 needed to be able to differentiate their services and price accordingly. TNUK said that a cap on the SC would be a highly intrusive and unwarranted intervention that would distort the market, reduce consumer choice and severely limit service innovation²¹.

The structure of this document

- 2.22 To inform the proposals set out in this consultation:
- we have reviewed relevant analysis and responses to our December 2010 Consultation as set above;
 - we have set out in Section 3 the legal framework within which our proposals are made;
 - in Section 4 we have outlined the issues in relation to a cap for charges for calling 09 and 118 numbers, identified 3 options for the level of such a cap and considered each against our assessment criteria;
 - in Section 5 we have identified five different additional measures that might be appropriate for enhancing consumer protection in relation to calls to 09 and 118, assessed the benefits and costs of each and the case for

¹⁸ Magrathea response to the 2010 December consultation, available at <http://stakeholders.ofcom.org.uk/binaries/consultations/simplifying-non-geo-numbers/responses/Magrathea.pdf>

¹⁹ EE response to the 2010 December consultation, available at http://stakeholders.ofcom.org.uk/binaries/consultations/simplifying-non-geo-numbers/responses/Everything_Everywhere.pdf

²⁰ BT response to the 2010 December consultation, available at <http://stakeholders.ofcom.org.uk/binaries/consultations/simplifying-non-geo-numbers/responses/BT.pdf>.

²¹ TNUK response to the 2010 December consultation, available at http://stakeholders.ofcom.org.uk/binaries/consultations/simplifying-non-geo-numbers/responses/The_NumberUKLtd.pdf

implementing the measures in conjunction with each of the options for a SC cap identified in Section 4; and

- in Section 6 we have summarised the options considered in Sections 4 and 5, set out our preferred approach and why we consider it is within our legal powers and our proposed timetable for implementation.

2.23 Sections 4 and 5 of this consultation contain our impact assessment of the proposals we are making.

Next steps

2.24 This consultation is one part of the review of non-geographic calls services (“NGCS”) review. Annex 7 to this consultation provides an overview of the review and its component parts. It also sets out our intended timelines for the completion of the NGCS review.

2.25 Proposals made in this consultation are predicated on the introduction of the unbundled tariff. We will reconsider these proposals should our proposals for the introduction of the unbundled tariff change materially. The proposals in this consultation do not in any way pre-judge the outcome of the April 2012 Consultation.

2.26 This consultation period will run from 25 July 2012 to 19 September 2012.

2.27 We intend to conclude on our proposals for unbundling and these proposals about 09 and 118 numbers together in a single Statement on NGCS (subject to any further consultation that will be required if we consider that additional consumer protection measures should be implemented on the 09 and/or 118 ranges). Our objective is to publish the Statement on the unbundling and freephone proposals at the end of the year.

2.28 In our statement we will consider the responses we receive to this consultation as well as the responses we receive to the April 2012 Consultation, to the extent they are relevant to the issues which are the subject of this consultation.

Section 3

Legal framework

Introduction

3.1 The legal framework which governs our powers to take action in relation to the use of non-geographic numbers and the provision of NGCS is contained in the Communications Act 2003 (“the Act”) and the EU Framework Directives²² that it implements. The framework was set out in detail in Section 5 of Part A of the April 2012 Consultation. This Section, which highlights the aspects of that framework that are relevant to the proposals in this consultation, should be read in the context of the wider discussion of the framework in the April 2012 Consultation.

Legal Framework

Ofcom’s powers to make and amend general conditions in relation to numbers

3.2 Ofcom’s specific powers to make and modify general conditions in relation to telephone numbers are set out in Sections 57 – 60 of the Act. The matters which may be the subject of a general condition under these provisions include:

- Conditions for limitations on allocation of telephone numbers;²³
- Conditions to secure access to telephone numbers;²⁴
- Conditions about the allocation and adoption of telephone numbers;²⁵ and
- Telephone numbering conditions binding non-providers.²⁶

3.3 As a result of amendments to the Act made for the purpose of implementing the revised EU Framework Directives, these powers include, at Section 58(1)(aa) of the Act, a power to set general conditions which:

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

²² The EU common regulatory framework for telecommunications comprises the Framework Directive (2002/21/EC), the Authorisation Directive (2002/20/EC) and the Access Directive (2002/19/EC), all as amended by Directive 2009/140/EC, and the Universal Service Directive (2002/22/EC) and the Privacy and Electronic Communications Directive (2002/58/EC), both as amended by Directive 2009/136/EC.

²³ Section 56A of the Act

²⁴ Section 57 of the Act.

²⁵ Section 58 of the Act.

²⁶ Section 59 of the Act.

- 3.4 Conditions set under Section 58(1)(aa) must be set for the purpose of consumer protection. As noted at paragraphs 5.17 – 5.22 of Section A of the April 2012 Consultation, the definition of “consumer” in the Act is wider than that in the EU Framework Directives. While the former includes persons “in their personal capacity or, for the purposes of or in connection, with their business”²⁷, the latter is confined to “any natural person who uses or requests a publicly available electronic communications service for purposes which are outside his trade, business or profession”.²⁸
- 3.5 The General Conditions which specifically relate to the use and availability of telephone numbers are:
- General Condition 14, which requires the publication of information in relation to calls to certain numbers (including premium rate numbers)
 - General Condition 17, which imposes requirements in relation to allocation, adoption and use of telephone numbers;
 - General Condition 20, which obliges Communication Providers (“CPs”) to ensure, where technically and economically feasible, that end users can access non-geographic numbers and all telephone numbers provided in the European Community. In addition, Ofcom can require CPs to block access to numbers on the basis of fraud or misuse and to withhold revenue associated with the numbers.

Ofcom’s powers to make and amend general conditions regulating PRS

- 3.6 Under Section 120 of the Act, Ofcom has the power to set conditions which regulate the provision, content, promotion and marketing of premium rate services. Such conditions may be applied to communications providers, providing access to premium rate services, and SPs.
- 3.7 Ofcom has set the PRS Condition²⁹ under this power. This power requires communications providers falling within the scope of the PRS Condition to comply with directions given by PPP in accordance with its Code of Practice and for the purposes of enforcing the provisions of that Code. The application of the PRS Condition is limited to ‘Controlled PRS’, so that only a specific subset of PRS are subject to Ofcom’s enforcement powers for breach of the PRS Condition.
- 3.8 The PPP Code of Practice³⁰ is approved by Ofcom under Section 121 of the Act and outlines wide-ranging rules to protect consumers as well as the processes that PPP applies when regulating the PRS industry.

²⁷ Section 405(5) Communications Act 2003

²⁸ Framework Directive, Article 2(i)

²⁹

[http://stakeholders.ofcom.org.uk/binaries/telecoms/policy/narrowband/PRSCondition_2 .pdf](http://stakeholders.ofcom.org.uk/binaries/telecoms/policy/narrowband/PRSCondition_2.pdf)

³⁰ <http://stakeholders.ofcom.org.uk/consultations/ppp/>

- 3.9 The PPP Code of Practice includes restrictions in relation to the maximum amount of the total charges for calls to certain types of premium rate services. For example, the maximum charge for a call to sexual entertainment services is £25.54 plus VAT while the maximum charge for a service aimed at or particularly attractive to children is £2.56 plus VAT.
- 3.10 The PPP Code also requires that certain types of service are not provided without the prior written permission of PPP.³¹ In granting permission, PPP may impose conditions additional to those contained in the Code and these conditions may also include limits on the total amount charged for a call. For example, services which cost over 85ppm plus VAT and which could result in a total call cost of more than £25.54 plus VAT and services which cost over £1.28ppm plus VAT are both subject to the requirement for PPP's prior permission. In each case, prior permission is subject to specific requirements in relation to the cost of the call. In the case of the former, the total call charge can exceed £25.54 plus VAT if the caller positively confirms that s/he wishes to continue the call once that threshold has been reached. In the latter case, the call must be terminated once the cost reaches £25.54 plus VAT.

Tests for setting or modifying general conditions

- 3.11 When we seek to set or modify general conditions, we have to ensure that we comply with Section 47 of the Act.
- 3.12 Section 47 requires that conditions cannot be set or modified unless they are:
- objectively justifiable (save for the case of the setting of new general conditions, when this requirement does not apply);
 - not unduly discriminatory;
 - proportionate; and
 - transparent.

³¹ The categories of service to which this applies are listed at:
<http://www.phonepayplus.org.uk/For-Business/Prior-permission.aspx>

Section 4

Service Charges for 09 and 118 numbers

Introduction

4.1 In this section we briefly outline the consumer concerns we identified in the April 2012 Consultation in relation to the provision of non-geographic calls (NGCs) on the 08x, 09 and 118 ranges and the proposals we made to address these, in particular in relation to the design and structure of the SC for these ranges. We then set out the options we have considered in relation to a maximum price for the SC for calls to 09 and 118 and the criteria that we consider appropriate for assessing each option.

The April 2012 Consultation

4.2 In the April 2012 Consultation we updated our analysis of consumer harm arising from the current provision of NGCs on the 08x, 09 and 118 ranges, that we had previously set out in the December 2010 Consultation. We proposed to address this harm by requiring the retail price for calls to these numbers to be separated into the AC set by the OCP, and the SC set by the TCP and SP. We briefly summarise the key aspects of those proposals in relation to the 09 and 118 ranges below.

4.3 The April 2012 Consultation is now closed and we are currently in the process of considering responses to it. References to the April 2012 Consultation in this document are included by way of background but do not reflect responses received or any further development of our proposals as a consequence of these responses.

Consumer concerns in the 09 and 118 number ranges

4.4 We identified three market failures in the NGCs market and five harmful impacts that stem from these market failures. The market failures we identified were:

- **a lack of consumer price awareness:** we presented evidence suggesting that callers often do not know the cost of calls to non-geographic numbers from mobile and fixed lines. We considered that consumers' awareness of the price of 118 calls was poor due to the wide range of tariffs and tariff structures but that it was not clear whether consumers over-estimated the price for these calls since they tend to be aware that they are relatively expensive. In relation to 09, we said that survey evidence showed that price awareness was low but that, unlike other non-geographic number ranges, consumers tend to under-estimate the price of these calls.³²

³² April 2012 Consultation, paragraphs 8.17 – 8.22.

- **the vertical externality:** we expressed concern that a significant proportion of SPs do not have sufficient control of retail prices, allowing OCPs to set prices to reflect their own incentives, without taking full account of the preferences of SPs and resulting in higher prices than SPs would like;³³ and
- **the horizontal externality:** we said that consumers' experience on one NGC number range was likely to influence their experience on another and that their experience of calls to these ranges from mobiles was likely to influence their perceptions of calls to the ranges from landlines. We said that the horizontal externality arose from the fact that, despite this, individual OCPs and SPs do not have an incentive to take into account the impact their call pricing decisions have on the reputation/brand perception of a particular number range or on non-geographic numbers as a whole, partly because consumers were unable to distinguish between different NGC number ranges. Although we considered that there was less likely to be confusion between each of the 08, 09 and 118 ranges because of their distinct identities, consumers' perceptions of prices for calling all these ranges from fixed lines was likely to be influenced by the price of mobile calls to the same numbers.³⁴

4.5 We then identified five harmful impacts of these market failures on consumers. In particular:

- **a reduction in demand for calls:** consumers were deterred from making calls to non-geographic numbers due to their tendency to over-estimate prices, as well as their general suspicion of these numbers. Although we said that consumers do not over-estimate the price of calls to 09 numbers, we considered that greater price transparency was likely to increase competition and lead to a downward pressure on prices, resulting in an increase in demand;
- **the price of calls does not reflect consumers' preferences:** lack of price awareness weakened competition on NGCs, allowing OCPs to raise NGC retail prices without a strong consumer reaction. We presented evidence suggesting that higher margins on NGCs could be associated with lower margins on other telephony services such as geographic calls. Although we said there could be legitimate reasons as to why prices for these ranges were relatively higher, we considered it more likely that the relative price levels did not reflect an efficient outcome;
- **loss of access to socially important services, particularly for vulnerable consumers:** the focus of our concern under this heading in the April 2012 Consultation was the 084 and 080 number ranges. As discussed below, we do not consider this harm is relevant to 09 and 118 calls;
- **higher consumer vulnerability to fraud:** number ranges offering a high revenue share, such as 09 and 118, have the potential to attract fraudulent behaviour and that poor consumer price awareness could be conducive to this. However, we said that in practice fraud was more common on other

³³ April 2012 Consultation, paragraphs 8.23 – 8.26.

³⁴ April 2012 Consultation, paragraphs 8.27 – 8.30.

ranges (specifically 070/076) and therefore we considered that the market failures were unlikely to increase vulnerability to fraud on the 09 and 118 ranges; and

- **SPs' lack of incentives to invest in service availability and innovation:** the market failures, notably SPs' limited control over retail prices, this restricted SPs' ability to innovate by offering different combinations of price and quality to callers. We noted that this was particularly true on ranges, such as 118, where OCPs often charge the same price for all numbers within the range.³⁵

Our proposed remedy for revenue-sharing NGC ranges

- 4.6 In order to address the market failures we identified and the consumer harms to which they gave rise, we proposed in the April 2012 Consultation that the retail price for calls to the revenue-sharing ranges (including 09 and 118 numbers) should be unbundled into the AC set by the OCP and the SC set by the TCP. In relation to the design of the SC, we proposed that:
- the TCP/SP should charge the same SC to each OCP;
 - the SC could vary by time of day; and
 - that the SC could be charged on a pence per minute (ppm) or pence per call (ppc) basis.³⁶
- 4.7 We also proposed that the number of price points for the SC across the 08x, 09 and 118 ranges should be restricted to between 60 - 100, in order to limit implementation costs. In relation to 09, we said that a minimum of 20 price points would be needed but that a greater number might be appropriate in order to allow for competition and future innovation in services. In relation to 118, we suggested that 15 additional price points might be appropriate but noted that if price points were not restricted by range, DQ providers could use any of the price points applying to the 08x or 09 ranges.³⁷
- 4.8 In relation to the 08x and 09 ranges, we also proposed that there should be a cap on the maximum amount of the SC. We said that this would contribute to consumers' understanding of the prices they were likely to face for calling each of the ranges and give them greater confidence about those prices. We said that greater consumer confidence would also benefit SPs and encourage demand for their services.³⁸
- 4.9 While we made proposals in relation to the level of the caps on the 08 number ranges, we said that we needed to understand in more detail the potential benefits and risks of setting a cap on the SC for 09 calls at a level higher than the current maximum retail price of £1.53 pm charged by BT for these calls. We noted that there was substantial industry interest in higher revenue options for 09

³⁵ April 2012 Consultation, paragraphs 8.31 – 8.49.

³⁶ April 2012 Consultation, paragraphs 10.197 – 10.263.

³⁷ April 2012 Consultation, paragraphs 10.346 – 10.387.

³⁸ April 2012 Consultation, paragraphs 10.264 – 10.283.

calls in order to encourage innovation but that this carried a risk of increased incentives for fraud and could require additional consumer protection measures in order to help consumers control their expenditure on these numbers.³⁹

- 4.10 In relation to the 118 range, we said that it was not obvious that the service specific nature of the range removed the potential benefits of having a cap on the maximum SC in terms of enhancing consumer price awareness. Nonetheless, we did not propose in the April 2012 Consultation that there should be cap for the purposes of protecting the identity of the range but said that there were consumer protection arguments (namely controlling the risk of fraud and enabling consumers to control their expenditure) in favour of such a cap which required more detailed consideration.⁴⁰

Assessment criteria for SC cap options for 09 and 118 numbers

- 4.11 In this Section we describe the assessment criteria that we are proposing to use in deciding whether a maximum SC should apply to 09 and 118 numbers, and if so, its level. In the December 2010 Consultation, we identified the following policy objectives for our review of non-geographic numbers:

- Promoting greater transparency and consumer price awareness;
- Ensuring continued protection from fraudulent services;
- Promoting prices that are reflective of consumers' preferences; and,
- Promoting service quality, variety and innovation.⁴¹

- 4.12 From these policy objectives we derived five assessment criteria for the evaluation of our policy proposals and the options considered for non-geographic numbers:

- Transparency/consumer price awareness;
- Efficiency of prices;
- Service quality, variety and innovation;
- Access to socially important services; and,
- Regulatory burden.⁴²

- 4.13 In the December 2010 Consultation we noted that the relative importance of each criteria depended on the number range in question and that for some number ranges some criteria may not be relevant at all. In fact we cited the case of 09 or PRS where we considered that the criterion "access to socially important

³⁹ April 2012 Consultation, paragraphs 10.284 – 10.288.

⁴⁰ April 2012 Consultation, paragraphs 10.290 – 10.291.

⁴¹ December 2010 Consultation, paragraph A7.385.

⁴² December 2010 Consultation, Annex 1.

- services” did not apply. We continue to believe that the premium rate services provided in the 09 range cannot be classified as socially important services.
- 4.14 Nor, in the light of the approach we adopted in the April 2012 Consultation to defining socially important services, do we consider that there are sufficient grounds for treating directory enquiry services on 118 as falling within this category. However, we recognise that directory enquiry services may be particularly important for some consumers who have limited access to other information sources such as the internet.
- 4.15 Furthermore, as the UK’s national regulatory authority, we are required by virtue of obligations imposed under the Universal Service Directive, to ensure that directory enquiry services are made available to all end-users in the UK at an affordable price.⁴³ For this reason we are proposing to include within our assessment criteria for the 118 number ranges only (not 09 numbers) in this consultation the impact of our proposals on the availability of directory enquiry services at affordable prices.
- 4.16 In addition, we are proposing that we should consider two additional criteria in our assessment:
- consumers’ exposure to fraud and bill shock; and
 - CPs’ exposure to bad debt.

Transparency/consumer price awareness

- 4.17 Transparency of prices is necessary to ensure that choices made by consumers reflect their own preferences. There are several reasons why it is important that consumers make decisions based on correct price information:
- it ensures that consumers make the correct subscription and consumption decisions, which increases the welfare each individual consumer receives from the choices they make;
 - it puts downward pressure on prices. This is because in the absence of easy access to price information for consumers, SPs have an incentive to increase their prices as the demand for their services does not vary significantly with the price they charge. In contrast, if consumers are well-informed about prices they are more likely to respond to an increase in price by reducing the number of calls they make to that number. This acts as a deterrent to increasing prices, and tends to put downward pressure on prices to the benefit of consumers; and,
 - easy availability of price information helps protect callers from bill shock and scams (discussed separately below).⁴⁴

⁴³ Articles 3 and 5, Universal Service Directive (2002/EC/EC, as amended by Directive 2009/136/EC).

⁴⁴ December 2010 Consultation, paragraphs A1.10-A1.12.

- 4.18 The proposals set out in our April 2012 Consultation on the unbundled tariff proposals were aimed at fostering greater price transparency and improving consumer awareness of prices for calls to the 09 and 118 ranges. In this consultation, we look at the extent to which a cap on the level of the SC would further contribute to greater price awareness.

Efficient prices

- 4.19 Consumers benefit from prices that do not distort their consumption or subscription decisions. For prices to deliver this optimal outcome it is required that differences in the relative prices of services (e.g. geographic calls and non-geographic calls) reflect consumers' preferences or the relative costs of these services.
- 4.20 If, instead, differences in prices result from differences in consumers' price awareness, then those prices do not provide appropriate signals. For example, as consumers have greater awareness of the price of geographic calls compared to their awareness of the price of non-geographic calls, this may result in charges for the latter being higher than for the former, leading to too much consumption of geographic calls relative to non-geographic calls.
- 4.21 In deciding the best approach for the SC for 09 and 118 calls we need to ensure that our proposals are consistent with consumers' preferences and expectations on the prices for these number ranges.

Service quality, variety and innovation

- 4.22 Consumers have different and diverse preferences and it is important that OCPs and SPs have the right incentives to meet all consumers' preferences. Firms should not only be statically efficient (i.e. provide services using the most efficient technologies and with prices reflecting costs) but should also be dynamically efficient. Dynamic efficiency is achieved if firms invest in the quality of their services and have the incentives to innovate by launching new and better products that consumers value. Service availability also requires that SPs can recover an appropriate contribution to their costs and a reward for their investment.⁴⁵ In deciding the best approach to the 09 and 118 SC we need to ensure that our regulatory proposals provide SPs and OCPs with the right incentives to invest.

Access to directory enquiry services at an affordable price

- 4.23 As discussed above, we consider that directory enquiries may be particularly important for some consumers with limited access to other information sources such as the internet.
- 4.24 In addition, as noted above, we are required by virtue of obligations imposed under the Universal Service Directive, to ensure that directory enquiry services are made available to all end-users in the UK at an affordable price. Therefore we propose to include access to directory enquiry services at an affordable price as one of the assessment criteria for 118 services.

⁴⁵ December 2010 Consultation, paragraphs A1.23-A1.25.

Consumer exposure to fraud and bill shock

- 4.25 Due to consumers' infrequent use of NGCs and from the lack of price transparency, consumers are potentially more susceptible to unexpectedly high bills ('bill shock'). In addition, as noted above, the potential for raising high revenues on 118 and 09 may make them an attractive target for fraudulent users, although in practice fraud appears to be more common on other ranges.
- 4.26 For these reasons we are proposing to include consumers' exposure to fraud and bill shock amongst our assessment criteria. In deciding the best option for the 09/118 SC we need to ensure that we minimise the risk of bill shock and fraud while encouraging competition and innovation in service delivery.

Bad debt

- 4.27 In assessing the preferred approach for the 09 and 118 SC we need to take into account the impact of changes in SCs on bad debt and, ultimately, on the efficiency of OCPs' ACs.
- 4.28 In the April 2012 Consultation we said that due to the nature of payments in the NGCs market, where termination payments are frequently made by OCPs in advance of the collection of charges from customers, an OCP may find itself out of pocket in the event of an unpaid bill by the consumer. This has the effect of increasing the costs of OCPs of managing customer bad debt. We noted that this was a particular issue in the case of the 09 and 118 number ranges, where the incidence of bad debt is higher than under other number ranges due to:
- the higher charges on these number ranges;
 - calls being more likely to have been made without the bill payer's consent; and,
 - the service being more likely to be subject to undetected fraud.⁴⁶
- 4.29 In the past this has been reflected in the way we regulate BT's retention on non-geographic calls. We allow BT to retain an additional amount (5.2% of revenues) on 09 numbers to reflect higher bad debt costs associated with PRS (given that the regulations on BT otherwise restrict BT's capacity to recover or mitigate this cost).⁴⁷ As calls to 118 numbers are not subject to any limit – OCPs, including BT are able to set retail prices for calls to 118 numbers – there is no regulatory provision for the higher bad debt risk on 118 numbers.
- 4.30 In the April 2012 Consultation we proposed that, under the unbundled tariff, OCPs should be limited to a single AC across all non-geographic numbers per

⁴⁶ April 2012 Consultation, paragraphs 10.49-10.51.

⁴⁷ Under BT's NTS Call Origination Condition, which limits the amount it can keep when originating calls to certain non-geographic numbers, BT is allowed additional revenues for calls to 09 numbers (the 'PRS Bad Debt Surcharge') to compensate for the higher level of bad debt that is encountered on 09 calls. In July 2011 we found that the surcharge should be no more than 5.2% of BT's retail revenue (see <http://stakeholders.ofcom.org.uk/consultations/nts-retail-uplift/statement>).

tariff package. We accepted that setting the same AC for calls that attract a higher bad debt risk (such as 09 calls) as for other calls where this risk was smaller (such as 08 calls) was likely to decrease the OCPs' margin on the former call type but increase the OCPs' margin on the latter call type. This could result in relatively inefficient prices – as ACs would then not reflect differences in the underlying costs of each number range. However, our analysis suggested that the magnitude of this effect was small and would not outweigh the disadvantages of allowing the AC to vary by number range.⁴⁸

- 4.31 We consider that our proposals in relation to the SC for the 09 and 118 number ranges could affect the extent of bad debt costs. For example, if there were no SC cap and this resulted in higher prices for calls to 09 and 118 numbers, this would be likely to increase bad debt on these numbers. For the reasons set out in the April 2012 Consultation and summarised above, we consider that the level of the SC could have an impact on the OCP's AC.

Regulatory burden

- 4.32 The choice of regulatory intervention needs to consider the costs of its implementation, which are likely to be passed onto consumers. These costs may be the result of ongoing regulatory costs on the parties involved or, for options requiring providers to invest in new systems and procedures, they may impose additional one-off costs that also need to be taken into account.
- 4.33 In addition, regulation may result in unintended consequences. For example, the decision to set a cap and the subsequent decision about its level will have an impact on the industry. We would have concerns if the cap was set too high, and therefore failed to provide adequate protection to consumers, or too low, and stifled innovation and potential competition. Key to mitigating the likelihood of unintended consequences is the requirement to have sufficient information on the appropriate level of the cap.

Question 4.1: Do you agree with the assessment criteria we are proposing to use for our analysis, and in particular the three additional criteria we have identified as relevant?

Grounds for imposing a SC cap on 09 and 118

- 4.34 In the April 2012 Consultation we suggested that there should be a cap on the maximum level of the SC for 09 calls. In this Section, we set out in more detail the arguments for and against imposing such a cap. We also consider whether the same reasoning in favour of a cap on the SC applies to 118 or whether there are any differences between the 09 and 118 number ranges which justify a different treatment for directory enquiry services.

Transparency/consumer price awareness

- 4.35 We consider that most of the concerns about price transparency will be addressed through the introduction of the unbundled tariff. The unbundled tariff

⁴⁸ April 2012 Consultation, paragraphs 10.31.

- will allow SPs to ensure that their charges are clearly communicated in all advertising and this is likely to improve both price transparency and consumers' price awareness.
- 4.36 We also note that alternative micropayment services have been developed, and appear to operate effectively without the need for a cap on the maximum charges applicable other than the PPP regulations to secure appropriate price transparency for consumers. This includes, for example, services paid for by a one-off 'drop charge' via SMS for certain goods and services (such as accessing movies online) or to make charitable donations. In this case, the industry has self-imposed a maximum price per text of £10 with the significant majority of current usage around £5. It is worth noting that SMS charges benefit from consistent pricing across all mobile providers which is not a feature of the current PRS market, though will be in the unbundled tariff system.
- 4.37 Consumers appear content with the level and structure of these charges. We note that the mobile industry does control allocation of shortcodes and the revenue generated through their use and this may contribute to the effectiveness of the self imposed industry cap. This may be difficult for the wider industry to easily or practicably replicate in the context of 09 and 118 services. Nevertheless, given the likely importance of confidence in the 09 number range to the volumes and therefore revenues generated by 09 numbers, it is possible that industry could similarly develop its own rules on the maximum prices that can be charged if Ofcom did not impose a cap. This in turn could be effectively communicated to consumers without regulatory obligation
- 4.38 Under the unbundled tariff proposal, the available number of SC price points would also be limited. The April 2012 Consultation proposed a limit of between 60 and 100 SC price points. The ability of individual CPs to set significantly higher SCs for 09 and 118 numbers would therefore be reduced, which would further reinforce the likelihood of a self imposed cap.
- 4.39 Nonetheless, we consider that there are strong arguments for a regulated cap on the maximum level of the SC at this time in the interest of greater price awareness and consumer confidence.
- 4.40 First, in the April 2012 Consultation, we considered that there was value to consumers in having the SC being set within a cap so that consumers were able to make reasonable estimates of the likely price of calling an SP on that number range.⁴⁹ It is therefore particularly valuable under the current circumstances with the proposed introduction of the unbundled tariff.
- 4.41 Second, there are far more players in the provision of services on the 09 range, compared to mobile shortcodes. Given this, it is unclear how quickly it would be possible for an industry-wide agreement to be reached in relation to a maximum price for the 09 SC.
- 4.42 Also there is a risk that if the industry set a very high initial cap, even if this was not commonly used, this would distort consumer cost estimates at a time when

⁴⁹ April 2012 Consultation, paragraphs 10.276.

consumers are not yet familiar with the improved price transparency measures inherent in the unbundling structure.

- 4.43 Accordingly, we consider that specifying a maximum price for the SC is likely, on balance, to offer price transparency benefits, and these are likely to be particularly material in the initial implementation period of the proposed unbundled tariff.

Efficient prices

- 4.44 There are different ways in which a price cap may secure more efficient pricing. When competition is weak, prices are likely to be too high and the relative structure of prices may not reflect consumer preferences. Price caps can be used to address issues with both the level and structure of prices by ensuring prices are more closely aligned with underlying costs and relative prices are better reflective of consumer preferences. In the April 2012 Consultation we discussed that the relatively high OCP retention on 09 and 118 numbers, combined with the lack of consumer price awareness in these number ranges suggested that OCPs were generally able to set high retail prices for calls to these numbers.
- 4.45 We noted however that we did not consider price caps would be the most appropriate way to address any potential lack of competition. Setting a cap for this purpose was likely to be very challenging, given the range of different services offered on the 09 range. Instead, we proposed to rely on the unbundled tariff remedy to increase price awareness and competition, as well as to reduce the scope for vertical and horizontal externalities.
- 4.46 In relation to consumers' expectations of the price of calls to 09 numbers, our consumer survey evidence shows that consumers expect prices of calls to 09 numbers to be relatively higher than to other telephone numbers. This supports setting the SC on 09 numbers at a higher level than for other NGC numbers or, potentially, not setting any price cap on the SC for 09 numbers.
- 4.47 It can be argued (as discussed further below) that having no cap on the SC for 09 calls would allow SPs greater flexibility to provide services and set prices that match consumers' preferences. However, we would be concerned that without a SC cap, SPs may set high prices to exploit, particularly at the initial introductory stage of the proposed unbundled tariff regime, consumers' lower price awareness and ability to compare new and previous prices, rather than as a response to consumers preference for higher-priced services. This could result in significant detriment for consumers in the form of bill shock or fraud. Furthermore, we do not believe that a SC cap may necessarily limit SPs' ability to provide new services matching consumers' preferences. As long as the cap is set at an appropriate level, we consider that it will provide the incentives for SPs to innovate and meet consumer demand for new services.

Service availability and innovation

- 4.48 As noted above, alternative micro payment services on mobile shortcodes have developed, and appear to operate effectively, without the need for regulatory intervention. In this case, the industry has self-imposed a maximum price per text of £10 with the significant majority of current usage around £5. In light of this, it

could be argued, as noted above, that regulatory intervention to impose a SC cap is not required. Similar forms of self-regulation could take place in relation to the provision of 09 services. Furthermore, the absence of a cap would offer SPs the opportunity to make higher returns on their services and this may provide stronger incentives for service innovation.

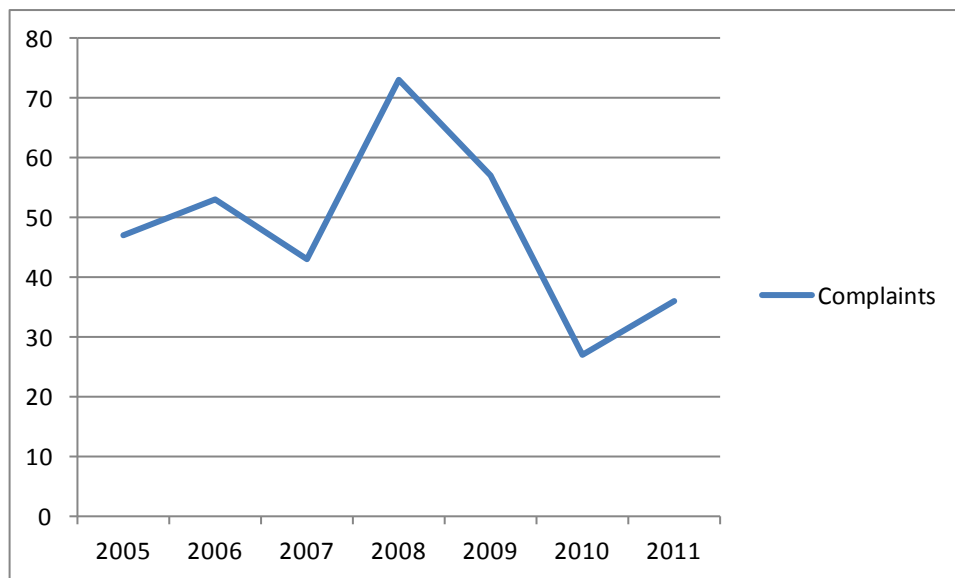
4.49 However, as set out above, we consider that the fact that the mobile industry controls allocation of shortcodes and the revenue generated through their use may contribute to the effectiveness of the self-imposed industry cap in the mobile sector. We believe that similar arrangements may be more difficult for the wider industry to easily or practicably replicate in the context of 09 and 118 services. This is due to the greater difficulties in coordinating between the larger number of players involved in these number ranges.

4.50 In addition, we consider that imposing a cap may benefit service quality, variety and innovation. A regulated cap is likely to provide greater protection against bill shock and fraud. This may increase consumers' confidence in PRS numbers and may therefore also benefit SPs by enhancing consumer confidence in the 'brand' and thus encouraging demand for their services. We therefore believe (as argued below when discussing the level of the cap) that the key issue is to find the level of the cap that sufficiently protects consumers and promotes consumer confidence while at the same time offering SPs incentives to innovate.

Consumer exposure to fraud and bill shock

4.51 The evidence from complaints in the 09 and 118 numbers suggests that there are currently low levels of complaints on these numbers. As shown in Figure 4.1 below, the number of complaints on 118 numbers has remained fairly low between 2005 and 2011.

Figure 4.1 Complaints and enquiries on 118 numbers (2005 – 2011)



Note: Complaints in 2005 and 2006 include both complaints and enquiries.

Source: PhonedayPlus.

- 4.52 Similarly, the complaints data from Ofcom's Advisory Team ("OAT") shows that there were a total of 86 complaints relating to the charges of directory enquiry services and only 36 relating to 09 numbers between June 2011 – June 2012. We consider that these low levels of complaints are an indication that fraud and bill shock may have been limited by a combination of the effectiveness of the current regulatory framework introduced by PhonepayPlus (described in Section 2) and some degree of consumer awareness of the relatively high price of these calls.
- 4.53 We note, however, that if we did not set a cap on the SC this could increase the incentives for fraud. Furthermore, in the context of a new regime, there may be consumer confusion about the structure and level of charges for non-geographic calls, which, in the absence of a cap, some SPs may seek to exploit by setting prices in excess of what would otherwise be possible once the new regime has bedded down and enhanced consumer understanding of prices of calls to non-geographic numbers.
- 4.54 We therefore believe that there are strong arguments to set a maximum SC cap to ensure that consumers are adequately protected against the risk of bill shock and fraud.

Bad debt

- 4.55 As discussed in the previous Section, the level of the SC is likely to affect the extent of bad debt costs. In the absence of a cap, it is possible that the average SC level across all SPs in the 09 range would be higher than it would be if a cap were imposed. This would in turn increase both the likelihood and level of bad debt costs. To compensate for any losses from increased bad debt costs, it is likely that OCPs would raise the level of their ACs and thereby adversely affect the ability of the unbundled charge to secure more efficient prices for calls to non-geographic numbers.
- 4.56 We therefore consider that a SC cap may be preferable to limit the extent of bad debt and to limit its distorting impact on OCPs' ACs.

Regulatory burden

- 4.57 We consider that it is unclear whether setting a cap may result in higher implementation costs to stakeholders than not setting a cap. On the one hand, a cap may restrict SPs' pricing freedom and may result in additional costs from agreeing the most appropriate pricing points within the limits of the cap. On the other hand, we believe that it may be in the interests of most SPs to have a maximum SC on 09 and 118 ranges since it should increase consumer confidence and foster demand for the services provided on these numbers. Hence, even if we decided that a cap was not needed, it is possible that the industry would try to agree on a maximum SC, as shown by the example of mobile shortcodes, discussed above. Because of the number of players involved, we consider that the costs for the industry to agree on a SC cap would be significantly higher than if we set the cap.
- 4.58 Taking the counterfactual of no industry agreed cap, a cap set by Ofcom would increase the costs of regulation compared to a situation with no cap. However,

we are not proposing to set a cap on the basis of a detailed analysis of underlying costs and therefore do not consider that these additional costs should be material. Imposing a cap also increases the risk of unintended consequences if we set the cap too high or too low. However, as discussed further below, we believe that this risk can be mitigated through consultation with stakeholders.

4.59 We therefore consider that a cap on 09 numbers is unlikely to result in significant regulatory costs on OCPs, TCPs and SPs.

Preferred option for the 09 range

4.60 In summary, we consider that a cap on the SC for 09 numbers:

- would improve consumer confidence and price awareness on 09 numbers, and this is likely to increase consumer demand and promote innovation by SPs;
- would protect consumers against bill shock and the risk of fraud;
- would limit the extent of bad debt and its distortionary effect on the efficiency of OCPs' ACs; and,
- if set appropriately, is unlikely to result in significant costs in terms of service availability and innovation, the efficiency of SCs and regulatory costs.

Question 4.2: Do you agree that a maximum SC should apply to 09 numbers for the reasons set out above?

118 directory enquiry services

4.61 As noted in Section 2 above (see paragraphs 2.16 to 2.21 above), we received few responses referring to the maximum SC on 118 numbers in our December 2010 Consultation.

4.62 We consider that the reasons for justifying a cap on 09 numbers apply similarly to the 118 number range. We discuss this below:

Transparency/consumer price awareness

4.63 As set out (in paragraph 4.35) we consider that most of our concerns about price transparency will be addressed through the introduction of the unbundled tariff. However, we identified a value to consumers' in having a maximum cap that enabled them to make reasonable estimates of the likely retail price of a particular call.⁵⁰

4.64 We also identified a risk that in the absence of a cap industry may set very high initial prices when the new unbundled regime is introduced,. Prices for 118 calls today already tend to be significantly higher than calls to 09 numbers. We consider there is a significant risk that operators could take the opportunity of

⁵⁰ April 2012 Consultation, paragraphs 10.276.

consumer uncertainty over the new pricing structure to increase prices further in the absence of a cap before consumers are sufficiently familiar with the improved price transparency measures inherent in the unbundling structure.

Efficient prices

- 4.65 Currently, 118 numbers present a wide variety of tariffs (e.g. has more than 100 different retail price points) and calls to 118 numbers tend to have the highest cost of all non-geographic numbers, as discussed further below.
- 4.66 We are not proposing a cap to address any potential competition concerns; we expect increased transparency of prices under the unbundled tariff to increase competition.
- 4.67 We also recognise that the market for services provided over 118 numbers is changing to reflect changes in consumer demand for these services. We would not be concerned about changes that reflect consumer preferences or changes to the inherent costs of providing the service.
- 4.68 We would be concerned however, if prices were set not to reflect such consumer preferences, but simply to take advantage of changes to regulation, consumers' relatively low price awareness and their inability to compare old and new prices. As described above we believe there to be a real risk that, in the absence of a cap, prices will be set at a higher rate than would otherwise be the case, increasing the incentives for fraud and the risk of bill shock, to the detriment of consumers.⁵¹

Service availability and innovation

- 4.69 We note that changes in the current demand for services provided over 118 numbers is changing, and that as a result SPs may choose to innovate in the services they offer in response to these market changes. The absence of a cap would offer SPs the opportunity to make higher returns on their services which may also provide stronger incentives for service innovation.
- 4.70 However, a cap may also benefit service quality, variety and innovation, by providing greater consumer protection against bill shock and fraud thereby improving consumer confidence in the 118 brand, and contributing to consumer demand for the services offered.
- 4.71 We also note that that while we would encourage service innovation, it is not clear that new services related to directory information which might require higher prices are inherently of a different nature to other innovative services which might be provided in the 09 range, and therefore, that they should be exempt from restrictions on charges applied to 09.
- 4.72 Furthermore, we consider that while a cap could affect service availability and innovation, this is unlikely provided the cap is set at a level that provides sufficient incentives for SPs to innovate and improve the services offered on the

⁵¹ See also paragraphs 4.51 to 4.54 above which discuss consumers' exposure to bill shock and fraud.

range. We consider that our proposals on the level of the cap for 118, as discussed below, are consistent with achieving this outcome.

Consumer exposure to fraud and bill shock

- 4.73 As set out above, we believe there to be a real risk that, in the absence of a cap, prices will be set at a higher rate than would otherwise be the case, increasing the incentives for fraud and the risk of bill shock, to the detriment of consumers.

Bad debt

- 4.74 For the reasons given in paragraph 4.55 above, the absence of a cap on the SC for 118 calls may increase the average level of the SC for this range, increasing the risk of bad debt. This, in turn, would mean that OCPs would be more likely to increase the level of their AC to compensate for any losses from increased bad debt costs.

Regulatory burden

- 4.75 As for 09 numbers, we consider it to be unclear as to whether setting a cap would result in higher implementation costs to stakeholders than not setting a cap. While a cap may restrict SPs' pricing freedom and require industry involvement in the setting of appropriate price points, it may also be in the interests of many SPs to have a maximum SC cap, given the potential benefits of increased consumer price awareness.
- 4.76 Likewise, we do not consider that the regulatory costs of setting a cap should be material. While this may increase the risk of unintended consequences if we set the cap too high or too low, we believe that this risk can be mitigated through consultation with stakeholders.
- 4.77 We also believe that treating both 09 and 118 numbers in the same way is consistent with our broader policy objective to simplify the regulatory treatment of non-geographic numbers.

Access to directory enquiry services at affordable prices

- 4.78 Finally, as discussed above, the Universal Service Directive requires us to ensure that directory enquiry services are available to all UK consumers at affordable prices. However, while we believe that the best way to ensure that there is access to 118 services at affordable prices is through the proposed imposition of the unbundled tariff and its likely impact in promoting competition in this number range, we note that in an environment of regulatory change, a cap would limit the risk of SPs subjecting consumers to exploitative prices that are not consistent with our obligations. For the reasons discussed above we consider that a maximum SC should also apply to 118 numbers.

Preferred option for the 118 range

- 4.79 In summary, we consider there to be a need for a cap on the maximum SC for 118 numbers, to:

- improve consumer confidence and price awareness of 118 numbers;
- protect consumers against bill shock and the risk of fraud;
- limit the extent of bad debt and its distortionary effects on the efficiency of OCPs' ACs; and,

4.80 In addition, provided it is set appropriately, we do not consider that it would act as a constraint on service availability or innovation, nor result in significant costs on efficiency or increase regulatory burden.

Question 4.3: Do you agree that a maximum SC should apply to 118 numbers for the reasons set out above?

Level of the maximum SC

4.81 In this Section we set out our views on the most appropriate form and level for the maximum SC on the 09 and 118 number ranges. Our assessment takes into account the views and information provided by stakeholders in response to the December 2010 Consultation and ongoing engagement with stakeholders since that time.

The structure of the maximum SC

SPs on 09 and 118 numbers are likely to require both price per call and price per minute charges

4.82 As discussed in the previous Section, SPs on the 09 and 118 range are likely to require a SC including either a price per call ('ppc') or a price per minute ('ppm') or both types of charges.⁵² For clarity, when referring to a ppc, ppm and set up fee in this consultation we mean the following:

- a price per call tariff indicates the total price charged for a call to a number, independently from the duration of the call (e.g. a drop charge or a one-off payment);
- a price per minute tariff indicates the price charged for every minute of the call. A difference with the price per call is that the price per minute does not reflect the total price of the call, which will depend on the duration of the call; and
- a call set up fee is a one-off charge applied to the first minute of the call and is followed by a different price per minute charge for the remainder of the call.

4.83 SPs currently offer a variety of services on these number ranges and they choose the price structure that better suits them. For example, the top ten most

⁵² April 2012 Consultation, paragraph 10.248.

used tariffs in the 09 range (representing 78% of total termination traffic on this range) are made up of 7ppm and 3ppc (i.e. drop charge) tariffs.⁵³

- 4.84 In addition, SPs have indicated to us that they intend to introduce a variety of new services on the 09 and 118 number ranges that require both types of tariffs. We therefore consider, in line with the April 2012 Consultation, that we should allow both types of SCs.

The ppc charge is likely to require a higher SC cap than the ppm charge

- 4.85 The evidence submitted by stakeholders (discussed in more detail below) suggests that ppc type services may require a higher cap than services charged on a ppm basis. Conversely, services that are charged on a ppm basis typically require lower per minute charges but may incur higher prices for the call (e.g. if customers remain for a long period of time on the call). For example, charity donations or one-off payments for services require large drop charges (e.g. a £5 one-off charge) whereas tariffs for services such as adult entertainment are typically lower and charged on a per minute basis.
- 4.86 Due to the broad range of services offered by SPs and the different maximum charges that they are likely to require, we consider that it would not be appropriate to set a single maximum SC that applied to both the ppm and ppc tariffs on 09 and 118 numbers. There is a risk that if we set a high cap applying to both charges to allow for ppc services requiring high prices (e.g. one-off payments) this would not be appropriate for services charging on a ppm basis. It would give rise to concerns about the total cost for consumers making calls to the latter type of services. The actual costs of a ppm call could be considerable, providing further incentives for fraud and increasing the risk of bill shock. In addition, a high rate per minute might reduce confidence in the market and therefore usage of these number ranges.
- 4.87 To show the difficulties in having a single maximum SC for both types of charges, suppose that in the previous example we set a SC cap of £3. This would be insufficient to meet the needs of charity donations requiring one-off payments of £5 per call (e.g. a £3 cap would require consumers to hold the line for almost 2 minutes to reach the £5). Conversely, a cap of £5 would give rise to concerns about the total bill for calls charged on a ppm basis. Such a high cap could result in bill shock and may not provide sufficient confidence to consumers on the charges applied on the 09 and 118 number ranges.

We are proposing to assess the maximum SC for ppc and ppm calls separately

- 4.88 In light of the above, we are proposing to assess the maximum SC for calls charged on a *per call* basis and for calls charged on a *per minute* basis separately.

⁵³This data was obtained informally following the Commercial Working Group meeting held by Ofcom on 14 July (see <http://stakeholders.ofcom.org.uk/telecoms/groups/nts-focus-group/notes-of-meetings/ngcs-14072011>). Volumes only include data from BT, Gamma, Three, Everything Everywhere and O2.

- 4.89 We are aware that some services on these ranges are charged on a combination of a per minute tariff and some form of one-off set up charge. Under our proposal, SPs wishing to use this type of tariff structure will need to comply with the maximum SC per minute that we adopt. For example, in the event of a maximum SC cap of £2, a SP could not charge a call set up fee of £3 and thereafter a £1 per minute charge for its services, on the basis that the average ppm of the call would be within the cap. Each per minute charge must be within the maximum cap that is set.

Question 4.4: Do you agree that a different maximum SC for calls charged on a per call basis and calls charged on a per minute basis is appropriate?

Setting the SC cap at BT's current maximum retail price would not be appropriate

- 4.90 As discussed, BT's charges for calls to 09 numbers are effectively constrained at £1.53 ppm by virtue of the NTS Call Origination condition and their adherence to the Numbering Plan. In practice, this constraint has also applied to all fixed line communications providers since they have chosen not to retail 09 calls at prices higher than those charged by BT. This has limited the amount of revenue that TCPs can share with SPs.
- 4.91 Several respondents to our December 2010 Consultation noted that the value of BT's current maximum retail price has significantly eroded in real terms since the NTS Call Origination condition was introduced in 1997.⁵⁴ They indicated that this has discouraged innovation and has limited the quality of existing services in the 09 number range. Additionally, as highlighted in our April 2012 Consultation, the constraint on termination rates for 09 calls has encouraged alternative revenue sharing channels and practices by SPs to bypass the limit (for example, encouraging multiple calls for a single service, or unnecessarily long messages).⁵⁵
- 4.92 These alternative revenue sharing mechanisms have resulted in significant detriment to some of the users of services in the 09 range. For example, consumers willing to purchase a service with a drop charge that is higher than the existing maximum SC have to stay on the line until the required time has elapsed (e.g. if the SP's charge is £6 and the SC is say £1.5 the caller would have to hold the line for 4 minutes to reach the £6). AIME have informed us that around 30% of consumers hang up before the required time has elapsed and as such do not receive the goods or services, but are still charged for the call made.
- 4.93 In addition, stakeholders have indicated to us that there is consumer demand for new services requiring higher price levels than the existing retail cap. These include, for example, charity donations (similar to the services offered through mobile shortcodes), higher value information services, higher value entertainment services, more engaging competition formats or higher value prizes. The current

⁵⁴ See, for example, responses from BT, 4D Interactive, AIME, C&W, Colt, ITV, PhonepayPlus, TalkTalk, available at <http://stakeholders.ofcom.org.uk/consultations/simplifying-non-geo-numbers/?showResponses=true>

⁵⁵ April 2012 Consultation, paragraph 10.287.

level of BT's outpayment for 09 calls is unlikely to address the type of problems we have identified above. We also consider that it would not provide the incentives for SPs to innovate and therefore it would ultimately limit consumer choice. We therefore consider that setting the SC cap at this level would not be appropriate.

4.94 In the next Section we set out our proposed options for the different types of cap separately.

Options for the maximum price per call SC

4.95 In this Section we describe our proposed options for the maximum price per call SC. These have been developed using the views and information provided by stakeholders in response to the December 2010 Consultation and in meetings with Ofcom, some international comparisons⁵⁶ and tariffs for other methods of communications, such as mobile shortcodes.

4.96 In light of this evidence, we have considered the following options for the price per call cap:

- Option 1: £2.29 (i.e. the current BT retail price cap uplifted by inflation);
- Option 2: £5; and,
- Option 3: a SC between £5 - £10.

4.97 Below we explain in more detail what has motivated our choice of options for the price per call cap.

Option 1: £2.29 (the current BT maximum retail price for 09 uplifted by inflation)

4.98 The first option we have considered for the maximum SC per call is to set a cap by reference to BT's maximum retail price for 09 calls uplifted by inflation. This would ensure that its value remains constant in real terms since its introduction in 1997. This option would address stakeholders' concerns that the value of the current maximum has eroded due to inflation, as indicated in their responses to our December 2010 Consultation.

4.99 Under this option we would need to decide what is the most appropriate measure of inflation to uplift the current price of £1.53. For this purpose we have considered two measures of inflation: the Consumer Price Index (CPI) and the Retail Price Index (RPI). We note that both measures of inflation produce similar results. Using the RPI we estimate that the level of the cap would be £2.29⁵⁷ compared to £2.04 using the CPI (both including VAT).⁵⁸

⁵⁶ We asked a small set of countries what the maximum PRS rates were in their respective countries. Details of this work are provided in Annex 6 to this consultation.

⁵⁷ Calculated using the Office for National Statistics annual RPI percentage changes in the CZBH series (which include all items), from 1997 to 2011.

⁵⁸ Calculated using the Office for National Statistics annual CPI percentage changes in the D7G7 series (which include all items), from 1997 to 2011.

- 4.100 The RPI remains a widely used measure of general inflation and is the index typically used to set price caps in other sectors subject to economic regulation.⁵⁹ It is, for example, the inflation measure we have used to set the charge control on BT's Number Translation Services and Premium Rate Services.⁶⁰
- 4.101 We acknowledge that we have previously used the CPI in the Postal sector to set the safeguard cap for Second Class stamp letters. In that case we said that the main rationale for the safeguard cap was to protect vulnerable consumers and ensure that a basic affordable universal service product was available for all. We concluded that using CPI was more appropriate for that purpose as the income of many vulnerable consumers is derived (at least in part) from Government pensions or benefits which are indexed using CPI.⁶¹
- 4.102 We believe that the same rationale does not apply to the same extent in the case of PRS. The majority of PRS (including, for example, charity donations, sexual entertainment, etc.) cannot be considered essential. In addition, while we recognize that in the case of 118 one of our objectives is to ensure access to affordable directory enquiry services, these only represent a small share of PRS and the SC cap is not intended to protect a particular group of vulnerable consumers but consumers more generally.
- 4.103 We are therefore proposing that we should use the RPI measure of inflation to set the cap under this option, giving a maximum SC of £2.29.

Question 4.5: Do you agree that we should use the RPI measure of inflation to uplift the BT's current maximum retail price for 09 calls to derive the maximum SC under Option 1?

Option 2: £5

- 4.104 Under Option 2 we are considering a cap of £5. We have derived this amount from the evidence that the most common retail price for drop charges from mobile shortcodes is £5, even though there is scope to price up to £10. For the reasons set out above we consider that a cap on the SC at this level will allow service providers to offer equivalent services on the 09 range to those currently provided via mobile shortcodes.

Option 3: a SC between £5 - £10

- 4.105 The third option that we have considered is a SC cap between £5-£10 per call. This addresses demands from stakeholders that we should explore the possibility

⁵⁹ For a more detailed discussion, see our April 2010 consultative document on wholesale mobile voice termination, and references therein at http://stakeholders.ofcom.org.uk/binaries/consultations/wmctr/summary/wmvct_consultation.pdf.

⁶⁰ See our 2011 Statement on *Wholesale Charges for Number Translation Services and Premium Rate Services*, available at <http://stakeholders.ofcom.org.uk/consultations/nts-retail-uplift/statement>.

⁶¹ Ofcom, *Securing the Universal Postal Service*, paragraph 3.19, available at <http://stakeholders.ofcom.org.uk/consultations/securing-the-postal-service/>

of increasing the cap up to £10, the maximum retail price available for mobile shortcodes.

4.106 While this is the maximum price that is charged for services provided via mobile shortcodes, we do not consider that SC prices at this level are necessary to secure parity with the services available to SPs over mobile shortcodes, as suggested by some stakeholders. This is for the following reasons:

- different maximum prices between mobile only services and services provided on fixed and mobile networks may be justified by the inherent differences between fixed and mobile communications (as discussed further below);
- a SC cap of £5 per call is likely to provide similar pricing points to SPs as the £10 maximum retail drop charge available on mobile shortcodes. This is due to MNO's significant retention on their retail drop charges which effectively reduces the revenue shared with SPs using mobile shortcodes; and,
- according to a survey of the Association for Interactive Media and Entertainment ('AIME'),⁶² a significant share of SPs considered that a ppc of £5 would already be sufficient to provide services similar to those offered over mobile shortcodes, such as charity donations.

4.107 Nonetheless, we believe that it is appropriate to consider a cap between £5-£10. This is because a cap at this level is likely to provide greater flexibility to SPs to adapt to potential future developments in the market, for example, if services requiring higher levels of revenue were to develop in future.

Options for the maximum price per minute SC

4.108 We have developed the options for the price per minute cap using the views and information provided by stakeholders in response to the December 2010 Consultation, as well as industry representations made at meetings with Ofcom. We have considered the following three options for the price per minute SC:

- Option 1: £2.29 (the current BT maximum retail price for 09 calls uplifted by inflation);
- Option 2: £3; and,
- Option 3: a SC between £3 - £5.

4.109 We explain below the rationale behind our choice of options for the ppm cap.

Option 1: £2.29 (the current BT retail price cap uplifted by inflation)

4.110 The first option we have considered for the maximum SC per minute is to set it by reference to BT's maximum retail price for 09 calls, uplifted by inflation, as in the

⁶² AIME submission to Ofcom 4 May 2012. AIME provided a survey of 10 members, including Square 1 Communications, Vodafone, BT Agilemedia, Com& Tel, ITV (two members), Telecom Express, Horizon Finance, Orca Digital and Oxygen8.

case of the maximum ppc SC (discussed above). This would result in a ppm SC of £2.29.

Option 2: £3

4.111 The second option we have considered is to set the SC cap at £3 per minute. Stakeholders have indicated to us that a cap at £3 per minute would allow them to offer the full range of services that they are willing to provide on the 09 range. Similarly, a survey of SPs on the 09 range submitted to us by AIME shows that a cap at this level would satisfy the revenue requirements of most SPs. The evidence on 118 prices discussed below equally shows that a cap at this level would allow sufficient headroom for the vast majority of existing, as well as future 118 services.

Option 3: a SC between £3 - £5

4.112 Under our third option we consider a SC cap between £3 - £5, as suggested by some stakeholders. In its response to our December 2010 Consultation, the Premium Rate Association indicated that we should consider maximum SC caps at £3, £5 and £10 as either per minute and/or single drop limits.⁶³ Some of the respondents to AIME's survey considered that a tariff between £2-£5 per minute was the most appropriate for certain services such as higher value entertainment and information services.⁶⁴

4.113 Although we consider that a cap at £3 per minute is likely to provide sufficient revenue for the services SPs are willing to offer at this time, we believe it is also appropriate to consider a higher cap. This is because we recognise that a cap between £3-£5 per minute is likely to provide greater flexibility to SPs to adapt to potential future developments in the market such as the development of new services which could only be supported with higher prices.

Annual uplift by inflation

4.114 In light of stakeholders' comments that inflation had eroded the value of the BT's maximum retail price, we have considered whether we should uplift the SC cap annually by inflation going forward. If we were to adopt this measure, we would allow the SC cap to vary every year in line with the RPI (i.e. our choice of measure of inflation).

4.115 Uplifting the cap by inflation would ensure that over time the value of the cap we set remains constant in real terms. In addition, as long as the RPI reflects the evolution of SPs' costs of provision, it would allow SPs to adjust their prices in line with the changes in their costs. We believe that it may also reduce (at least in part) the need for shorter reviews of the SC cap we set.

4.116 We consider that an annual uplift by inflation is likely to be more attractive for Option 1 and less so for Options 2 and 3. In the case of Options 2 and 3, we

⁶³ Premium Rate Association's response to our December 2010 Consultation, available from our website at: http://stakeholders.ofcom.org.uk/binaries/consultations/simplifying-non-geo-numbers/responses/Premium_Rate_Association.pdf

⁶⁴ AIME 4 May 2012 submission to Ofcom.

consider that the level of the cap would already reflect any potential increase in the costs of SPs since we introduced BT's retail price cap in 1997. It would also provide some parity with the services offered by mobile CPs such as shortcodes or, in the case of Option 3, it would allow even higher price levels than those currently offered by mobile CPs. We therefore think that under Options 2 and 3 most SPs would already have sufficient flexibility to adapt their prices to future market developments and/or any changes to their underlying costs of provision. Consequently, we consider that the case for uplifting the SC cap annually is weaker if we adopt either of Options 2 or 3 than if we adopt Option 1.

- 4.117 Further, if we decided to regularly uplift the SC caps by inflation, consumers would need to be aware and remember the regular movement of the cap. We consider that this may affect consumers' price awareness and may therefore not be in the best interests of consumers.
- 4.118 Accordingly, we consider that it is not appropriate to annually uplift the SC cap by inflation. We recognise however that this may require us to review the SC caps in future to assess the need for adjustments to their level.

Question 4.6: Do you agree that we should not uplift the SC caps by inflation on an annual basis?

VAT

- 4.119 In the April 2012 Consultation we considered whether SC caps for 084 and 087 numbers should be set exclusive or inclusive of VAT. This is also relevant to how a maximum charge for 09 and 118 numbers should be set.
- 4.120 There are arguments for and against setting a maximum cap that includes VAT. Setting a cap inclusive of VAT would ensure that the maximum SC faced by a consumer could be presented as an absolute number that we dictate. For example the maximum retail SC could be set at £3 inclusive of VAT. This may be useful if we considered that full or round numbers improved consumers' awareness of the retail prices.
- 4.121 However, were VAT to change, either the maximum SC would also need to change, potentially to another round or full number, requiring a process for updating the maximum SC cap. Or TCPs/SPs would receive more or less revenue from consumers dependent on whether VAT increased or decreased.
- 4.122 The way in which companies present retail prices to consumers varies; prices may be presented as whole numbers or not. For example, BT presents retail prices for geographic calls to two decimal places. It is not clear therefore that presentation of round numbers is particularly important to consumers' understanding of retail prices. SPs will also have options to set prices in round terms at prices below the cap – as is currently the case for many PRS calls.
- 4.123 A process to update and change the maximum SC cap to reflect changes to the VAT rate would be complex and involve a degree of cost. Setting a maximum SC cap exclusive of VAT would not require such a process, and would not prevent SPs presenting retail prices for their services inclusive of VAT.

- 4.124 In light of the above, we consider that the maximum level of the SC for 09 and 118 numbers should be set exclusive of VAT in the Telephone Numbering Plan. This is also consistent with the proposals set out in the April 2012 Consultation in relation to 084 and 087 numbers.

Question 4.7: Do you agree that the maximum SC cap should be set exclusive of VAT?

Assessment of the options for the price per call and price per minute service charge caps

- 4.125 In this Section we assess the options for both the price per call and price per minute SC cap against the assessment criteria listed above. As many of the benefits and costs associated with the options for the price per call and price per minute are similar, we present our assessment for both types of charges together below.

Transparency/consumer price awareness

- 4.126 As discussed in the previous Section, price transparency is required to ensure that choices made by consumers truly reflect their preferences. We consider that many of the concerns in respect of price transparency and awareness will be addressed by the proposed unbundled tariff, because SPs will be able to ensure that their charges are clearly communicated in all advertising and OCPs will be able to communicate a single AC for these calls.
- 4.127 However, in the April 2012 Consultation, we said that in the case of certain number ranges, such as 118, a wide range of tariffs and tariff structures could result in poor price awareness and consumers wrongly estimating the price of calls. In its response to our December 2010 Consultation, Cable and Wireless (“C&W”) argued that the 09 range already included a significant number of price points and that any increase to the maximum tariff would exacerbate this problem, potentially leading to further consumer mistrust.⁶⁵
- 4.128 In deciding the most appropriate level for the cap, we need to consider that higher caps (e.g. in Option 3) could potentially lead to a greater number of pricing points than lower caps (e.g. Option 2 or 1). For this reason, a higher cap may reduce consumer price awareness.
- 4.129 However, as noted above, we proposed in the April 2012 Consultation a limit to the number of SC price points across all non-geographic numbers of 60-100. We proposed that the process for agreeing the specific price points within that overall restriction will be led by industry but with Ofcom involvement.⁶⁶ Although we recognize that a higher cap for PRS may result in more pricing points on this range, we believe that this will be mitigated by our decision to restrict the number of pricing points for those number ranges under the unbundled tariff. We

⁶⁵ C&W response to our December 2010 Consultation, available at http://stakeholders.ofcom.org.uk/binaries/consultations/simplifying-non-geo-numbers/responses/C_W_Worldwide.pdf.

⁶⁶ April 2012 Consultation, paragraph 10.384.

therefore consider that the impact of a higher cap on price awareness is not likely to be significant.

Efficient prices

- 4.130 A price cap prevents SPs from setting their prices freely. In this way, price caps may constrain SPs from being able to offer services and prices that reflect consumer preferences. Higher caps (e.g. Option 3) provide SPs greater flexibility to set their prices and may allow them to offer a wider range of services that better match consumer preferences than lower caps (e.g. Option 2 or 1). Conversely, higher caps have other disadvantages, such as greater risk of bill shock and fraud, which can damage consumer confidence in the whole number range. Therefore, when determining the right level of the cap we need to balance the potential benefits of higher caps, such as greater choice for consumers, against these disadvantages. A key question to assess the benefits of a higher cap is therefore to understand whether there is consumer demand for services requiring higher prices (in which case a higher cap may be preferable).
- 4.131 The availability of mobile shortcodes offering drop charges of up to £10 shows that there is currently consumer demand for services charged at this level. Several respondents to our December 2010 Consultation indicated that we should set the SC cap at this level. BT considered that we should set the cap on 09 numbers in two phases. In the first phase, we should set a maximum SC of £3. In the second phase, we should align prices across fixed and mobile operators, allowing higher rate services of up to £10. It argued this would be particularly appropriate for services such as charity donation, higher competition prize values and multi round/longer call time competitions. BT argued that these services should be subject to additional consumer protection and industry protection measures designed to complement the PhonepayPlus 12th Code.⁶⁷
- 4.132 In response to our December 2010 Consultation the Federation of Communication Services (“FCS”) indicated that mobile shortcodes could incur charges of up to £10 (with no restrictions for shortcodes with higher prices) and that we should address the current situation which clearly favoured MNOs over fixed telecommunications operators.⁶⁸ Similarly, Magrathea argued that the price maxima should not vary between fixed and mobile providers, as this would erode the reference value of the Numbering Plan.⁶⁹
- 4.133 ITV argued that drop calls should be equalised with the maximum tariff for mobile shortcodes (i.e. £10). It disagreed with our view that the differing characteristics

⁶⁷ BT listed measures to protect vulnerable customers such as new rules regarding pricing consents, outpayment delays (the “30 day rule”), PCA at key price points and prior permission opt-ins. See BT’s response to our December 2010 Consultation, available at <http://stakeholders.ofcom.org.uk/binaries/consultations/simplifying-non-geo-numbers/responses/BT.pdf>.

⁶⁸ FCS response to our December 2010 Consultation, available at <http://stakeholders.ofcom.org.uk/binaries/consultations/simplifying-non-geo-numbers/responses/FCS.pdf>.

⁶⁹ Magrathea response to our December 2010 Consultation, available at <http://stakeholders.ofcom.org.uk/binaries/consultations/simplifying-non-geo-numbers/responses/Magrathea.pdf>.

- of mobile and fixed communications guaranteed a need for a different treatment of the two. It argued that consumers must be aged over 18 in order to receive a fixed telephone line, whereas younger consumers can purchase pre-pay mobile phones. Also, it considered that there were risks arising from the cloning of SIM cards and the theft of mobile phones.⁷⁰
- 4.134 In AIME's May 2012 submission to Ofcom, SPs indicated that a tariff range between £5-£10 was the most appropriate for services such as charity donations.⁷¹
- 4.135 We recognize that setting the maximum price per call at £10 may have some benefits, such as eliminating a discrepancy between services provided via mobile shortcodes and those on the 09 and 118 ranges. We have, for example, a duty to regulate in a consistent and technology neutral manner. However, we believe that increasing the SC cap up to £10 per call may not be necessary to provide parity with current mobile drop charges. In the case of the latter, the actual revenues accruing to SPs using these services are significantly below the £10 retail price because MNOs typically retain between [x%] of the price charged to retail customers.⁷²
- 4.136 For this reason, a cap at £10 per call (i.e. Option 3) is likely to be significantly higher than the maximum price currently available to SPs on mobile shortcodes. We therefore consider that a cap at £5 per call (i.e. Option 2) is likely to be sufficient to provide SPs with similar revenues to those existing on mobile drop charges.
- 4.137 In addition, we continue to believe that different maximum prices between PRS and mobile shortcodes may be justified by the inherent differences between fixed and mobile communications. We disagree with ITV's arguments that mobile devices provide less protection against risk of unauthorised usage than fixed telephones. Although consumers may need to be above 18 years to receive a fixed telephone line, as described in our December 2010 Consultation, controlling the usage on a fixed line is inherently more difficult than on a mobile telephone. Mobile devices are more personal to their owners than landlines and are generally at less risk of unauthorised usage. While under-aged users can receive pre-pay mobile phones, pay-as-you-go arrangements can be subjected to a form of close expenditure control by consumers. We also consider that landline services are subject to risks of remote control and hacking that are not present to the same degree yet for mobile devices (e.g. internet diallers reprogrammed to call 09 numbers, or hacking of PBXs).⁷³ We note that similar views were expressed by PhonepayPlus in its response to our December 2010 Consultation.⁷⁴

⁷⁰ITV response to our December 2010 Consultation, available at http://stakeholders.ofcom.org.uk/binaries/consultations/simplifying-non-geo-numbers/responses/Independent_Radio_News.pdf.

⁷¹ See AIME's 4 May 2012 submission.

⁷² Information provided by PhonepayPlus at a meeting with Ofcom on 14 October 2011.

⁷³ December 2010 Consultation, paragraph A7.381.

⁷⁴ PhonepayPlus response to our December 2010 Consultation, available at <http://stakeholders.ofcom.org.uk/binaries/consultations/simplifying-non-geo-numbers/responses/PhonepayPlus.pdf>.

- 4.138 In general, price caps have the potential to become a “focal point”, providing incentives for SPs to increase their charges to the maximum level allowed by the cap. Where there is a risk that a cap may become a “focal point”, lower caps (e.g. Option 1 or 2) may be more appropriate than higher caps (e.g. Option 3) to prevent SPs setting excessive prices. We consider however that the risk that an increase in the SC cap would result in SPs setting their prices at the maximum level allowed is small. Currently, SPs chose a variety of pricing points in the 09 and 118 range. For example, of the 20 most used pricing points on the 09 range (representing 96% of the total termination traffic) only 2 (20% of the total termination traffic) are a ppc and a ppm at the current maximum cap (i.e. £1.53).⁷⁵ In other words, the vast majority of SPs do not set their prices at the maximum currently allowed, and we do not expect that an increase in the SC cap would alter SPs’ pricing behaviour.
- 4.139 In summary, while we consider that a higher SC cap is likely to provide greater pricing flexibility, we believe that we do not need to set this at £10 per call (e.g. Option 3), the maximum charge available on mobile shortcodes, to provide parity between PRS and mobile shortcodes. Instead, a SC cap at £5 per call (e.g. Option 2) may be sufficient, particularly, in light of the inherent differences between mobile and fixed communications discussed above.

Service quality, variety and innovation

- 4.140 The level of the cap may affect service quality, variety and innovation in two opposing ways. Firstly, higher caps offer SPs the opportunity to make higher returns on their services and this may provide stronger incentives for service innovation. Secondly, lower caps provide greater protection against bill shock and fraud. This can in turn increase consumers’ confidence and may therefore also benefit SPs by encouraging demand for their services. For this reason, as previously discussed, the key issue is to find the level of the cap that sufficiently protects consumers and promotes consumer confidence while at the same time offering SPs incentives to innovate. We discuss these issues separately for 09 and 118 numbers below.

Service quality, variety and innovation on 09 numbers

- 4.141 In May 2012 AIME provided a survey of SPs that listed the new services that SPs are willing to offer on 09 numbers and their views on the most appropriate charges for these. The information provided is summarised in Table 4.1 below.

Table 4.1 Types of new services and most appropriate tariff chosen

Type of service	Price per call		Price per minute	
	1 st choice	2 nd choice	1 st choice	2 nd choice
Subscription payments or access payments	£5-£10	£10-£15		
Charity donations similar to SMS	£5-£10	£2-£5		

⁷⁵ Data received informally from BT, Gamma, Three, Everything Everywhere and O2 following the Commercial Working Group meeting on 14 July 2011.

Higher value information services		£10-£15	£2-£5	
Higher value entertainment services		£2-£5	£2-£5	£1.53-£2
More engaging competition formats	£2-£5	£5-£10 and £1.53-£2		
Higher prize value competitions	£2-£5	£5-£10		

Source: AIME survey 4 May 2012. Most chosen tariff highlighted.

4.142 In summary, AIME's survey shows that SPs have different views on the most appropriate tariffs for their services. These differences notwithstanding, there does seem to be some consensus across these SPs that:

- the most appropriate SC per call would be around £5, or potentially £10 to accommodate some industry demand to offer charity donations or payment services at this higher price;
- the most appropriate SC per minute would be in the range of £2-£5 to allow SPs to offer new higher value information and entertainment services; and,
- there is some, albeit smaller, demand for tariffs above these levels.

4.143 In addition, some stakeholders have indicated to us that a SC of £3 per minute would be sufficient to offer the services they are willing to provide on the 09 range.

Service quality, variety and innovation on 118 numbers

4.144 In the case of 118 numbers, BT currently has 135 chargebands available on its network but only 80 of these are actually being used to carry calls. These chargebands are similarly used by other CPs to set their prices for 118 services. In Table 4.2 we present the four type of tariffs used by CPson 118 numbers.

Table 4.2: BT's retail directory enquiry call prices (April 2012)

Type of tariff	Chargebands in use	Most used band	Highest charge	Maximum price
Price per call	[X]	[X]	£1.63	£1.63
Price per minute (ppm)	[X]	[X]	£2.04	£2.04
Set up fee + ppm where both apply from the start of the call	[X]	[X]	£2.21 fee + £2.71 ppm	£4.92 (first minute)
Set up fee applying for the first minute (or part thereof) + ppm thereafter	[X]	[X]	£1.97 fee + £1.59 ppm	£1.97 (first minute)

Source: BT 'DQ Chargebands', meeting 18 July 2012.

- 4.145 According to BT, the choice of tariff structure depends on the type of service offered on the specific number. For example, price per call tariffs are frequently used by business customers wishing to know the total price of the call beforehand. Tariffs with a set up fee and a ppm charge from the start of the call are used for a diversity of services, including international directory enquiry services.
- 4.146 Following a Commercial Working Group meeting on 14 July 2011⁷⁶ we informally requested CPs' data on volumes of traffic by chargebands. This data shows that the volume of calls to 118 numbers is significantly concentrated around a small number of chargebands. For example, in the case of BT, two chargebands [X] represented [X] of BT's originated traffic to directory enquiry numbers in August 2011.⁷⁷
- 4.147 As shown in Table 4.2, the cost of calling a directory enquiry service can be significant (up to £4.92 for the first minute in the case of some numbers including a set up fee and a ppm charge from the start of the call). We have investigated further the number of 118 chargebands with prices above £3 pm (i.e. the SC cap proposed under Option 2) and the share of total 118 calls that they represent. In Table 4.3 below we present the volumes of originated traffic per chargeband and their share of total 118 originated traffic.

Table 4.3: Retail directory enquiries call prices and volumes above £3 pm

Chargeband	Charge	Price first minute	Volumes	% total
dq 97	£0.99 fee + £2.99 pm	£3.98	[X]	[X]
dq 98	£2.21 fee + £2.71 pm	£4.93	[X]	[X]
dq 114	£2.03 fee + £1.83 pm	£3.86	[X]	[X]
dq 122	£2.00 fee + £1.86 pm	£3.86	[X]	[X]
TOTAL			[X]	less than 1%

Note: Volumes include data from BT, Gamma, Three, Everything Everywhere and O2.
 Source: Information request following the Commercial Working Group meeting, July 2011.

- 4.148 As shown in Table 4.3 only 4 of the 80 chargebands in use in the 118 number range have prices above £3 pm. These chargebands represented less than 1% of the originated traffic to directory enquiry services from the five CPs included in the table. We do not have origination traffic from all CPs using 118 numbers. However, we have no reason to believe that the position is any different for the remaining CPs, ie the four chargebands described above also represent only a very small fraction of their total traffic to 118 numbers. We also note that the price for the first minute of the next highest chargeband in use (dq85) is £2.75 (i.e.

⁷⁶ See <http://stakeholders.ofcom.org.uk/telecoms/groups/nts-focus-group/notes-of-meetings/ngcs-14072011>

⁷⁷ We informally requested 118 call volumes from BT in April 2012 and this showed similar level of call volumes to the August 2011 data discussed here.

£.153 fee + £1.22 pm). This price level would be comfortably below the £3 pm SC cap proposed under Option 2.

Our proposals on service quality, variety and innovation

4.149 In light of the evidence above, we consider that a SC cap at the level of Option 2 for both the price per call and price per minute is likely to satisfy most SPs' demands for a higher cap on 09 and is therefore likely to promote innovation by SPs in this range. Similarly, we consider that Option 2 would allow sufficient headroom for the vast majority of existing and future 118 services. We acknowledge that there appears to be some SPs demanding a cap at a higher level for 09 numbers, as well as some minority 118 services currently requiring more than £3 pm charges. However, in deciding the appropriate level of the cap we need to balance the benefits of higher caps, such as greater incentives for innovation, against their greater risk of bill shock and fraud. We discuss the latter in more detail below.

Consumer exposure to fraud and bill shock

- 4.150 As discussed above the evidence on complaints in the 09 and 118 number ranges suggests that there are currently low levels of complaints on these numbers. We note however that in the case of the 09 range, an increase in the level of the cap could alter this situation.
- 4.151 If we were to increase the prices allowed on the 09 range this would increase the incentives for fraud and the likelihood of bill shock. We consider that the level of distrust on the number range is likely to increase with the level of the cap, particularly if implemented at the same time as the structure of prices is changing significantly. It is possible that SPs could take advantage of consumers' confusion to set prices in excess of what would otherwise be possible once the new regime is fully in place and consumers are more aware of prices for calls to non-geographic numbers.
- 4.152 This has been the view of some respondents to our December 2010 Consultation. For example, Gamma expressed its concern that a maximum SC above £2 per minute could increase the incentives for fraud, although it recognized the need to increase the current price cap due to its depreciation in real terms. Colt argued against a price per minute SC cap above £3, due to the incentives for greater fraud if we increased the SC further.⁷⁸
- 4.153 Similarly, as discussed above in relation to 09 numbers, we would be concerned if the cost of calls to 118 numbers were to increase significantly above their current level, providing greater incentives for fraud. For this reason, we consider that lower caps (e.g. Option 1 or 2) that constrain more significantly the revenues on the number range have the advantage of reducing the incentives for fraud and limiting the opportunity for bill shock compared to higher caps (e.g. Option 3).

⁷⁸ Colt response to our December 2010 Consultation, available at <http://stakeholders.ofcom.org.uk/binaries/consultations/simplifying-non-geo-numbers/responses/Colt.pdf>.

4.154 It could be argued that the existence of unregulated services with charges of up to £10, such as mobile shortcodes, shows that services with these price levels may not require additional consumer protection measures. We note however that, as discussed further in the next Section, higher price caps may require additional consumer protection measures such as PCAs to limit their greater risk of fraud and bill shock.

Bad debt

4.155 Due to the nature of payments in the NGCs market, calls made from an OCP are often left unpaid and result in bad debt costs. In the April 2012 Consultation we said that reflecting any higher costs (such as bad debt) associated with certain call types may send more efficient price signals to consumers. However, we proposed that OCPs would only be able to set a single AC across all non-geographic numbers and per tariff package in order to reduce the risk of consumer confusion over prices. This means that if we were to set a higher SC cap for 09 and 118 numbers and this resulted in additional bad debt costs, OCPs would not be able to set a distinct AC to reflect the higher costs on these numbers.

4.156 We recognise that a higher SC cap has the potential to result in higher bad debt costs for the OCP, and may lead to higher ACs. For this reason, a lower SC cap (e.g. Option 1 or 2) may have an advantage over higher caps (e.g. Option 3) in partially mitigating any distortion on ACs arising from bad debt.

Regulatory burden

4.157 We consider that any of the three options considered is likely to result in similar costs of implementation, as these are unlikely to depend on the level of the SC. We note however that the potential for unintended consequences is likely to be greater for higher SC caps. For example, the risks of greater incentives for fraud and of the cap becoming a “focal point” are both greater than if we were to set a lower SC cap. This tends to favour setting lower caps (e.g. Option 1 or 2) rather than higher caps (e.g. Option 3).

Access to directory enquiry services at affordable prices

4.158 As discussed above, we consider that the best approach to ensure access to directory enquiry services at affordable prices will be through the introduction of the unbundled tariff remedy, rather than the SC cap. We note however that ensuring the affordability of 118 services would point towards lower rather than higher caps and that this cap would avoid demonstrably exploitative pricing.

Summary of our assessment

4.159 In light of the above evidence, we consider that Option 2, a SC cap of £3 pm and £5 pc, would be the preferred option for 09 and 118 numbers. In particular, because a SC cap at this level is likely to:

- satisfy most SPs’ demands for a higher cap on 09 while allowing sufficient headroom for SPs to continue offering most of the existing services on 118

numbers (as well as future services on this range), whereas Option 1 would not meet these requirements;

- lead to a lower number of price points than Option 3 and therefore further increase consumer price awareness;
- be sufficient to provide SPs with similar revenues to those existing on mobile shortcodes;
- better protect consumers against the risk of fraud and bill shock than Option 3;
- further constrain the impact of bad debt on the efficiency of OCPs' ACs than Option 3;
- limit the scope for unintended consequences to a greater extent than Option 3; and,
- promote the affordability of directory enquiry services to a greater extent than Option 3.

Question 4.8: Do you agree that Option 2 (a £3 per minute and £5 per call cap) is the most appropriate maximum service charge limit for 09 and 118 numbers? If not, please explain why.

Section 5

Consumer Protection Measures

Introduction

- 5.1 In Section 4, we said that the higher prices and the higher revenues potentially available for calls to 09 and 118 numbers, coupled with poor price transparency, led to some additional effects not present on other non-geographic number ranges. These were a greater risk of bill shock for consumers calling these numbers, greater incentives for the ranges to be used for fraudulent purposes (although we noted that in practice there did not appear to be material levels of fraud on these ranges) and higher levels of bad debt as a result of unpaid bills. We said that imposing a maximum price for the SCs for the 09 and 118 ranges would help to control these risks. In this Section, we consider what, if any, other measures may be required in addition to a cap on the SC, in order to reduce further consumers' risk of bill shock or fraud for calls to 09 and 118 numbers and to control the OCPs' bad debt risk.
- 5.2 We first set out the current regulatory measures that are in place to protect consumers against the risks of unduly high call costs and fraud associated with these numbers. We then look at additional measures that could be taken to tackle the risks we have identified in connection with these ranges and the costs and benefits of each of them. Finally, we examine the extent to which there is evidence to support the imposition of one or more of these additional protections at the SC price levels considered in Section 4.
- 5.3 In the final Section of this consultation, Section 6, we summarise the options we have identified for the level of the caps for the SC charged at a price per call or price per minute basis and our current views as to the additional consumer protection measures which may be appropriate at these different levels.

How premium rate services on 09 and 118 are currently regulated

- 5.4 As set out in Section 3, the PRS regulatory framework consists of a hierarchy with three components:
- (i) the Communications Act 2003;
 - (ii) the PRS Condition; and
 - (iii) the PPP Code of Practice ("the Code").
- In addition, the PPP Code requires that certain types of service obtain prior authorisation from PPP before they can be offered to consumers and it imposes conditions in relation to the grant of that authorisation. The categories of service that are subject to prior authorisation include: services charged at over 85ppm (plus VAT); services charged at over £1.28 ppm (plus

VAT); multi-party chat services; and subscription based services charged at over £4.50 in any 7 day period.

- 5.5 The overall effect of this hierarchy of powers is that services on 09 and 118 are subject to the Code and any conditions which are imposed under the prior authorisation requirement. Under the PRS Condition, both CPs and the SPs are required to comply with any directions given by PPP under the Code and are subject to Ofcom's statutory backstop enforcement powers.

Consumer protection measures required by the Code

- 5.6 The current Code⁷⁹ came into force in September 2011 and, as mentioned above, sets out the rules and regulations, including various outcome-based measures, for every company in the PRS value chain in the UK (ie both communications providers and service providers). The provisions of the Code include the following:
- Premium rate services must:
 - Be upfront about the service they offer and the cost;
 - Treat consumers fairly;
 - Comply with the law;
 - Not invade consumer privacy;
 - Not cause harm or unreasonable offence to consumers; and
 - Resolve consumer complaints quickly.
 - Communication providers and service providers involved in the provision of PRS have to:
 - Register with PPP before providing a PRS (with some limited exceptions);
 - Submit and maintain accurate details of its services and numbers to PPP;
 - Check the companies they contract with;
 - Ensure consumers are not put at risk; and
 - Follow any direction, instruction, notice or request for information from PPP.
- 5.7 There are also discrete obligations imposed on different parties within the PRS value chain. For example, terminating communications providers, as network

⁷⁹ Further detail and the full wording of the Code's rules can be found at <http://www.code.phonepayplus.org.uk/pdf/PhonepayPlusCOP2011.pdf>

- operators, are required to withhold payments due to a SP for at least 30 days after the use of the PRS to which the payment relates. This period can be extended at the direction of PPP.
- 5.8 In the event providers do not follow the obligations defined in the Code, PPP can undertake an investigation and, dependent on the severity of the compliance failure, has a range of sanctions which it is able to impose, including:
- Issue a reprimand and/or warning;
 - Order providers to give refunds to consumers;
 - Fine providers – up to a maximum of £250,000 per rule broken;
 - Bar access to service(s);
 - Require providers to obtain compliance advice or permission to run services; or
 - Ban providers from running some or all PRS.
- 5.9 In addition to the requirements of the Code, services on 09 and 118 may be subject to conditions under the prior authorisation requirement. In this way, PPP tailors the obligations it imposes to the nature of the risk posed by the particular category of premium rate services.
- 5.10 The type of conditions which PPP has imposed under the prior authorisation regime include:
- a cap on the total call costs – for example, calls charged at more than £1.28ppm must be terminated once £25.54 plus VAT has been spent;
 - alerts in relation to the amount spent in the course of a call – for example, multi-party chat services must include call cost warnings when £10 and £20 has been spent, with a restriction on the total call cost of £30;
 - a text message of the cost of the service at the beginning of the transaction – for example, consumers of subscription-based services costing over £4.50 per week must text their agreement to such a message before they may be charged;
 - a pre-call announcement for live entertainment services of a sexual nature stating that the user must be over 18, must be the bill payer or have the bill payer's permission and that details of the call may appear on the phone bill.

Additional consumer protection options

- 5.11 In the light of stakeholder comment and a review of existing measures and international comparators, there appear to be 4 additional measures which we could impose in order to reduce the risks of bill shock and fraud:

- **pre-call announcement (PCA):** an announcement informing the consumer of the service charge prior to being connected to the service. This could include a requirement for action (i.e. press 1) to continue with the call prior to being connected with the service;
- **opt-in to premium rate services:** consumers would need to contact their OCP to be able to contact 09 and/or 118 numbers from their mobile or landline;
- **notification of time elapsed:** notification to alert the caller that they have been on the call for a certain time (e.g. beeps every 5 mins);
- **dedicated number ranges for higher rate calls:** where the SC is above a particular level, the service must be provided on a dedicated range within the 09 range, or, in the case of a directory enquiry service, with the 118 range.

5.12 Each of these measures would impact directly on consumers. We have also considered a fifth option, which would not affect consumers directly but might benefit them indirectly by reducing incentives for 09 and 118 numbers to be used fraudulently, namely extending the period for which the TCP is required under the PPP Code to withhold the outpayment to service providers from 30 days to 6 – 8 weeks.

5.13 We consider in the paragraphs below the extent to which each of these measures might provide a greater degree of protection for consumers compared to that achieved by existing regulation and the costs to which they could give rise.

Question 5.1: Are there any other consumer protection measures we should consider for the 09 and 118 ranges? Please explain why you consider any additional measures you identify might be appropriate.

Pre-call announcement

5.14 The pre-call announcement we are considering would be a recorded message, provided by the TCP and played prior to the service being accessed to inform consumers of the amount of the SC which will be charged if they remain on the line. It may also require some form of action on the part of the caller to access the service (such as pressing 1). Pre-call announcements are used in both Australia and New Zealand for premium rate services⁸⁰ and are required in the UK for calls to 0800 numbers which are not free.

5.15 A pre-call announcement of this nature would be likely to improve consumer awareness and transparency of the SC at the point of call. Such a measure would help to ensure that consumers make more informed decisions about both the cost of the call and accessing the service in question. This should reduce the incidence of bill shock and fraud on these number ranges. It would also reduce the risk of consumers incurring charges (beyond the AC) by inadvertently calling an 09 or 118 number.

⁸⁰ See Annex 6

- 5.16 By improving price awareness, it is possible that a pre-call announcement would result in increased consumer confidence in the 09 and 118 number ranges. This could improve future call volumes and therefore incentives on service providers to invest in new product development and/or the quality of current services. However, the evidence on this is mixed. It has been suggested by a directory enquiry service provider that a pre-call announcement can adversely affect the consumer experience of a service provided on these number ranges and hence demand, notably where the speed of call completion is important to consumers.⁸¹ Research conducted for Ofcom in 2005 provides some support for this view – in a survey of consumers and business users in relation to a wide-range of numbering issues, a quarter of residential customers said that they did not want notification of cost on any calls.⁸²
- 5.17 Pre-call announcements informing consumers of the cost of the service immediately prior to consumption may also lead to a reduction in the incidence of bad debt by prompting them to consider the affordability of accessing the service in question. As explained in Section 4, reducing the OCP's risk of bad debt will also reduce the risk that the OCP will increase the level of the AC which will apply across all the non-geographic number ranges.
- 5.18 A pre-call announcement would add to regulatory costs. Given that the announcement would be providing details of the SC, rather than the total call cost (ie AC plus SC) our expectation is that the TCP would be responsible for implementing the announcement.⁸³ While the individual caller should not be charged for the PCA under this option, the TCP would be able to factor the cost of the pre-call announcement into the amount of the SC.
- 5.19 Nonetheless, we recognise that cost will be an issue. AIME has said that recent surveys of its members have highlighted technical and operational issues associated with a free pre-call announcement.⁸⁴ In our 2005 statement, 'Number Translation Services: A way forward', we said that implementation of a TCP PCA would be considerably higher than an OCP based solution because there were approximately four times as many TCPs as OCPs handling these calls and the unit costs of the systems used by CPs have a strong volume dependency.⁸⁵
- 5.20 Some of these considerations are still likely to be relevant today. That said, as a result of our proposed changes to the structure of charges for 09 and 118 calls, specifically the separation of the charges made by the OCP and the TCP, we consider that the costs of providing a PCA on the 09 and 118 ranges should be significantly lower than they would be today. That is because, currently, the provision of a PCA, whether by the OCP or TCP, would require the interrogation of databases of tariffs by number, tariff package or OCP in order to provide accurate pricing information. Under the new regime we are proposing, the TCP would only need to access information in relation to the SC for the number called, which does not vary by OCP.

⁸¹ Response of TNUK to the April 2012 consultation

⁸² Numbering Review: Final Report of Findings, August 2005. See also paragraph A7.17 of Ofcom's 2005 Statement, 'Number Translation Services: A way forward'.

⁸³ As noted in Ofcom's statement, 'Number Translation Services: A way forward', a PCA made by the SP would be made after the call is connected and so would be chargeable to the caller.

⁸⁴ AIME letter to Ofcom, dated 4 May 2012

⁸⁵ Paragraph A7.9

- 5.21 We do not believe that the considerations that led us to remove the requirement to provide a PCA for calls to the 070 range are applicable to the 09 and 118 range.⁸⁶ In the case of 070, there were certain automated services, including personal alarms and burglar alarms, provided on that range which failed because of the dialling delay caused by the PCA. The risk to human life and property that resulted from these failures was the determining factor in our decision to withdraw the PCA requirement on the 070 range.
- 5.22 We do not believe that this risk arises in relation to a PCA for services on the 09 and 118 ranges for the following reasons:
- 118 numbers should not be used for automated services of this nature;
 - the TCP, which we propose should be responsible for implementing the PCA, is better placed than the OCP to understand the technical configuration of the relevant service and to anticipate and address any problems that might arise as a result of the PCA;
 - the risk would only emerge if a PCA was introduced with application to existing services on existing tariffs. If, however, the PCA was only applied to services on new, higher price points, then the SP or TCP would have a commercial imperative to ensure at the outset that the new service, or an existing service charged at a new price point, was capable of being provided in conjunction with a PCA.
- 5.23 In summary, we consider that a pre-call announcement of the level of the SC could contribute to a reduction in the risks of bill shock, fraud and bad debt on the 09 and 118 ranges. However, implementation of the measure will add to regulatory costs and there is some evidence that it may adversely affect consumer demand for services on these ranges

Question 5.2: Do you have any comments on our assessment of the costs and benefits of a pre-call announcement on the 09 and 118 range? Please provide reasons for your view.

Question 5.3: If relevant, please provide an estimate of the likely costs that you would incur if a pre-call announcement were implemented on these ranges, taking account of any benefits it may bring.

Opt-in to premium rate services

- 5.24 BT put forward this option in its response to the December 2010 Consultation. It would entail OCPs blocking 09 and 118 numbers unless the consumer proactively requested access to these numbers. We understand that this measure is employed in Spain, where the two most expensive premium rate ranges are blocked unless the consumer requests access.

⁸⁶ Section 6, Review of the 070 personal numbering range, 15 October 2008 - <http://stakeholders.ofcom.org.uk/binaries/consultations/070options/summary/070options.pdf>

- 5.25 From the perspective of consumer protection, the measure will almost certainly have an impact. Those consumers that do not request access will be at no risk of bill shock or fraud since they will not be able to call these numbers. Furthermore, those consumers that do request access are likely to consider the cost and affordability of calls to these numbers before making that choice and this should also reduce their risk of bill shock and potentially, their vulnerability to fraud, at least in the short term. These effects would also lead to a reduction in bad debt arising from calls to these numbers. As noted above, this should make it less likely that the OCP will increase the level of the AC which will apply across all the non-geographic number ranges.
- 5.26 Notwithstanding these benefits, we have a number of reservations about this option. First, it is likely to have a significant, adverse impact on demand for 09 and 118 services. This, in turn, may dampen competition in the provision of these services and the incentives for service providers to invest in service quality, variety and innovation – one of the benefits we consider should flow from the enhanced transparency of the unbundled tariff.
- 5.27 Even if the opt-in option could be confined, as in Spain, to sub-ranges for the most expensive 09 and 118 services,⁸⁷ the scope for innovation that we expect to flow from the ability to set the SC at rates higher than current outpayments to service providers on these ranges, is likely to be constrained. Given this, and taking account of the low level of complaints on the 09 and 118 ranges in relation to fraud and bill shock (as set out in the previous Section), the proportionality of the measure appears doubtful.
- 5.28 Second, we think it is possible that for those consumers that opt in to accessing the 09 and 118 number ranges, the effectiveness of the measure may diminish over time. That is because a consumer which has opted-in would have no on-going protection in relation to these number ranges (beyond the benefits flowing from the unbundled tariff and a cap on the SC). Thus, as time passes, it is possible that the consumer will become less sensitive to these number ranges and therefore more vulnerable to bill shock and fraud.
- 5.29 Third, a requirement for OCPs to block access to the 09 and 118 ranges (or even sub-ranges within them) appears at odds with the requirement in Article 28 of the Universal Service Directive that “relevant national authorities take all necessary steps to ensure that end users are able to: (a) access and use services using non-geographic numbers within the Community”. While Article 28(2) of the Directive enables Ofcom to require CPs “to block, on a case by case basis, access to numbers or services where this is justified by reasons of fraud or misuse”, it is not apparent that this allows for the blocking of entire ranges, particularly where the extent of fraud appears to be very limited.
- 5.30 For all these reasons, we are therefore very doubtful that the opt-in option offers a viable mechanism for providing additional consumer protection in relation to calls to 09 and 118. That said, we note that BT does offer its customers a call

⁸⁷ While this would be feasible for the 09 range, it is not possible to have a distinct sub-range on 118 for more expensive services. In relation to 118 services, therefore, this option would either require CPs to block the 118 range entirely, or individual numbers which are charged at or above a specified level, unless the consumer requested access.

barring service which gives them the option of blocking premium rate number if they wish.⁸⁸ We consider the voluntary provision by CPs of this functionality, available at the request of the consumer, is helpful in providing an additional tool for consumers to control their expenditure on these ranges, without the disadvantages of the opt-in option.

Question 5.4: Do you have any comments on our assessment of the costs and benefits of a consumer opt-in for 09 and 118 numbers? Please provide reasons for your view.

Notification of time elapsed

- 5.31 This measure would involve the TCP providing some form of notification to the caller about how long they have been on the call or alternatively how much they have spent. For example, in Australia a series of beeps are used to alert the caller to the time that they have spent on the call (every five minutes) for premium rate services charged above a certain level. In the case of multi-party chat services, it is a requirement of PPP's prior permission that callers are told when they have spent £10 and £20 on the call (and the call must be cut off once £30 has been spent).
- 5.32 A notification of this nature (whether time-related or of the amount spent) would only be relevant to calls where the SC is charged on a pence per minute basis. In relation to these calls, notification of the amount spent during the course of the call should improve consumers' ability to monitor and control their expenditure, and therefore should reduce the risk of bill shock and bad debt. The effectiveness of time-related beeps in achieving a similar result, will be more dependent on the consumer's understanding and price awareness of the 09 and 118 ranges.⁸⁹
- 5.33 It is less clear that either type of notification would be particularly effective in tackling the risk of fraud. It is unlikely, for example, to be effective against call-back scams, where consumers are induced, for fraudulent purposes, to ring numbers charged at a premium rate.
- 5.34 As with pre-call announcements, such a requirement would add to the regulatory costs faced by TCPs. We do not have clear evidence at the current time of the scale of such costs but would expect them to be of a similar magnitude as the implementation costs for the pre-call announcement.
- 5.35 The practicality of such a measure may also be an issue for services charged at the highest rates, given PPP's current requirement that the total cost of a call does not exceed £30. For example, with a total call cost cap at that level, a call costing £5 pm could last no more than 6 minutes. Notifications within a call of such a relatively short duration are likely to be particularly intrusive and potentially annoying for the consumer. It therefore may be more appropriate to

⁸⁸ See

<http://www.productsandservices.bt.com/consumerProducts/displayTopic.do?topicId=25504>

⁸⁹ In Australia, these beeps are used in combination with a pre-call announcement which informs the consumer of the per minute cost at the start of the call.

revisit the appropriateness of this measure if PPP decide to increase its cap on total call costs as a result of the changes we are proposing.

- 5.36 In summary, we consider that notifications of the time spent on a call could make some contribution to a reduction in the risks of bill shock and bad debt on the 09 and 118 ranges but appear less likely to be effective at reducing the risk of fraud. Implementation of the measure will add to regulatory costs and, on the basis of current PPP regulation, may adversely affect consumer demand for services on these ranges.

Question 5.5: Do you have any comments on our assessment of the costs and benefits of time-related notifications on the 09 and 118 range? Please provide reasons for your view.

Question 5.6: If relevant, please provide an estimate of the likely costs that you would incur if time-related notifications were implemented on these ranges, taking account of any benefits it may bring.

Dedicated number ranges for higher rate calls

- 5.37 Currently, premium rate services on the 09 range are allocated a number depending on the price that would be charged by BT for a call. Thus, service providers wishing to offer a service which will be charged at no more than 51ppm and with a total call cost of £4.25 are allocated a number on the 0900 – 0902, 0910 and 0912 ranges; services charged by BT above this rate are allocated numbers on the 0903 – 0907, 0911 and 0913 – 0919 ranges. This option would follow that model and require the most expensive premium rate services to be provided on a new, dedicated sub-range within the 09 range, ie 09X. This could give consumers the opportunity to bar calls to this number range⁹⁰ and therefore would provide them with an additional tool to control expenditure on premium rate services. This, in turn, could help to reduce the risks of bill shock and bad debt on these numbers.
- 5.38 This option could not be applied to the 118 range, however, since there is no spare 118X range that could be designated for DQ services charged at the highest rates.
- 5.39 Furthermore, it is unclear whether this measure would have a material beneficial impact on the risks of bill shock and bad debt on the 09 range. The evidence we drew on in the April 2012 Consultation led us to conclude that consumers struggle to distinguish between numbers beyond the second digit and hence are confused about price differences between the various 08X ranges.⁹¹ This would suggest that only more informed consumers would be able to make correct inferences about the higher cost of calls from such dedicated sub-ranges and

⁹⁰ For the same reason, providers of sexual entertainment services are allocated an 098 number, in accordance with the Numbering Plan. As discussed above, although we have not mandated CP's should offer call barring services, we consider that consumers can switch providers if they are concerned about having access to call barring facilities and this service is not offered by their CP.

⁹¹ See, for example, paragraphs 8.27 – 8.30, April 2012 consultation.

- hence be in a position to seek a bar on calls to that range if they considered that advisable. That said, having the most expensive calls on a discrete range would make it easier for the OCP to block calls if the consumer sought a bar on calls costing more than a specified amount.
- 5.40 For a similar reason, it is unclear whether this option would materially reduce the risk of fraud, arising from the higher level of SC on the dedicated range. That would only be the case if consumers were able to distinguish the range from other 09 ranges and recall the price characteristics associated with it. As noted, the available evidence suggests this is unlikely to be the case.
- 5.41 While we consider the effectiveness of this option is likely to be limited, there do not appear to be any material implementation costs, unlike the other options under consideration. While a service provider may choose to migrate to the new range in order to charge a higher SC, that would be a commercial decision for the SP, weighing the cost of migration against the additional revenue that it expects to generate, rather than a regulatory requirement.
- 5.42 In summary, this option is low cost but it is unclear as to whether it would have a material beneficial impact on the risks of fraud, bill shock and bad debt in relation to calls to 09 services. It is not applicable to the 118 range.

Question 5.7: Do you have any comments on our assessment of the costs and benefits of dedicated number ranges on the 09 and 118 range? Please provide reasons for your view.

Extension of the 30 day withhold period for the service charge

- 5.43 TCPs are currently required to retain the outpayment that is payable to the SP for 30 days from the date of the call under the PPP code of practice. This measure was primarily put in place to reduce the incentives for fraud since it allows an opportunity for detection before the revenues generated by fraudulent activity are passed back to the fraudster. PPP also has the power when investigating complaints to require the TCP to withhold payments even after the 30 days has expired if it considers that appropriate.
- 5.44 It has been suggested that extending the retention period from 30 days to 6 – 8 weeks may further reduce incentives for fraud since it will allow a greater opportunity for detection before revenues are passed through to the SP.
- 5.45 This option would not have any impact on the risk of bill shock or on the incidence of bad debt. The extent to which it is capable of protecting consumers from the particular harms identified in relation to the 09 and 118 ranges is therefore more limited than the other options we have considered in this Section.
- 5.46 Delaying outpayments on the 09 and 118 ranges for 2 - 4 weeks will adversely affect the SP's cashflow and we would expect this to give rise to costs for them. Given that the delay (and the resulting costs) will apply to all SPs on these ranges, we consider the measure is only likely to merit consideration if there is evidence to suggest that it could result in a material reduction in the frequency and level of payments obtained through fraud. However, this does not appear to

be the case on the basis of the evidence currently before us. First, levels of fraud on the 09 and 118 ranges are not material; second, PPP has not been able to identify from its case handling practice any examples where a longer retention period might have made a material difference to the ability of a fraudster to benefit from its illegitimate activities.

- 5.47 In summary, this measure is only capable of benefiting consumers indirectly by reducing incentives for fraud on the 09 and 118 range. However, there is no evidence before us to suggest that it would have a material beneficial impact in this regard and it appears likely that it will incur costs for all SPs on these ranges.

Question 5.8: Do you have any comments on our assessment of the costs and benefits of an extension of the 30 day withhold period on the 09 and 118 range? Please provide reasons for your view.

Our assessment of the case for additional consumer protection measures under the SC cap options

Evidence of current consumer complaint levels for 09 and 118

- 5.48 In Section 4, we set out data in relation to the volume of complaints made to PhonepayPlus and Ofcom in respect of calls to 09 and 118 numbers. As we explain, the number of complaints in relation to both ranges is low and has declined over time.
- 5.49 Table 5.1 below provides a split of the total number of complaints received by PPP between 2005 and 2012 between fixed line and mobile services. Complaints in relation to mobile services include voice services provided on the 09 and 118 ranges, mobile short code services and mobile web-based services.

Table 5.1: Complaints to PhonepayPlus 2005 - 2012

	2005/2006	2006/2007	2007/2008	2008/2009	2009/2010	2010/2011	2011/12
Mobile complaints	8966	4340	2249	20900	10540	4508	7451
Landline complaints	10626	6788	8010	1478	709	868	1048
Total	19593	11128	10259	23278	11249	5376	8499

Source: PhonepayPlus

- 5.50 As these figures show, the number of complaints in relation to fixed line services has declined both in volume and as a proportion of the total number of complaints (54% in 2005/06 compared to 12% in 2011/12). The trend in relation to mobile services is less clear cut, with a spike in complaints in 2008/09 and complaints in 2010/11 and 2011/12 higher than they were in 2006/07 and 2007/08.

- 5.51 One reason for this is likely to be the growth in the number and range of premium rate mobile services during the period. Another factor may be the higher retail charges that are made for these services compared to the fixed line retail price of 09 and 118 services, although PayphonePlus have been unable to provide us with a breakdown of its complaints data by reference to the costs of the services in question to substantiate this.
- 5.52 Given the overall low level of complaints, we consider that the current consumer safeguards (including the additional requirements imposed by PPP in giving prior approval for the most expensive services) are effective in providing an appropriate degree of protection for consumers from the risks of fraud and bill shock, as well as the OCPs' risk of bad debt, and that additional measures are not required at the current prices and SP revenues on the 09 and 118 ranges.

Maximum price options for the SC

- 5.53 As set out in Section 4, we have identified 3 options for setting a cap on the SC for calls to 09 and 118 numbers. Option 1, a cap set at the level of BT's maximum retail price, uplifted for inflation, would represent a very small increase in the maximum amount that SPs receive currently for calls to 09 but would be below the amount that some DQ providers currently receive on 118. We therefore consider that a cap at this level is unlikely to give rise to a greater risk of consumer harm than exists at the present time. For this reason, we are not proposing that any of the additional consumer protection measures considered in this Section should be imposed if the SC for services on the 09 and 118 is capped at this level.
- 5.54 Similarly, we do not consider that any additional measures are likely to be justified if the Option 2 caps were to be adopted. While these caps are higher than the revenues that SP can currently generate on the 09 range and above the level charged by the vast majority of DQ services on 118, we consider the difference is sufficiently small that any increased risk of consumer harm is unlikely to be material. Accordingly, our current view is that it would not be proportionate to impose additional costs associated with the measures most likely to be effective at addressing that risk (notably the pre-call announcement).
- 5.55 However, should the caps be set within the ranges proposed under Option 3 (£3 - £5 pm and £5 - £10 per call), the SCs that SPs will be able to charge will be significantly higher than the outpayments they are currently able to secure on the 09 and 118 ranges. The higher and steadier volume of complaints in relation to mobile services, some of which are charged at levels equivalent to those under the Option 3 caps, suggests that in this scenario the increased risk of consumer harm may be sufficient to justify additional consumer protection measures. On the basis of the assessment set out above of the range of options we have identified, we consider that the pre-call announcement is likely to be most effective means of addressing the increased risk of harm that may flow from SCs within the Option 3 ranges.

Question 5.9: Do you agree with our assessment that additional consumer protection measures would only be justified if SPs are able to set SCs for services on 09 and 118 with the ranges proposed under Option 3? Please

provide reasons for your view, including, if relevant, the measures that you consider would be appropriate.

Section 6

Options, implementation and next steps

Introduction

- 6.1 This Section summarises the various options for the level of the maximum SC cap for 09 and 118 calls charged on a per minute and a per call basis as set out in Section 4 of this consultation. It also summarises the consumer protection measures that we consider are likely to be appropriate for the different levels of the maximum SC as set out in Section 5.
- 6.2 We have also assessed in this Section how we consider our proposals meet the relevant legal tests. In addition we discuss the indicative timetable for implementing these proposals if, after assessment of the responses to consultation, we decide that it is appropriate to do so.

Integrated options for the level of the caps and consumer protection measures

Level of the maximum SC caps

- 6.3 In Section 4 we assess the need for imposing a maximum cap on the SCs for 09 numbers. We consider that a maximum SC, if set at an appropriate level, would be likely to improve consumer confidence and price awareness, and as a consequence probably increase consumer demand and promote innovation by the SPs. We also consider it would provide some protection to consumers from bill shock and the risk of fraud as well as limit bad debt and the wider impact this could have on the level of the AC which the OCP sets for calls to the 08x, 09 and 118 ranges.
- 6.4 We also consider that these benefits outlined apply equally to a cap on the SC for 118 numbers. We therefore propose to impose a cap on the SC for both the 09 and 118 ranges.
- 6.5 Given the significant variety of services offered on these number ranges, both price per call and price per minute charges are required. We have assessed the maximum SCs for these different tariffs separately. The options for the maximum cap for both price per call and price per minute tariffs are set out in Table 6.1 below.

Table 6.1: Options for the level of the caps and consumer protection measures to apply to 09 and 118 numbers

Option	Price per minute	Price per call
1	Inflation increase (£2.29)	Inflation increase (£2.29)
2	£3	£5
3	£3 - £5	£5 - £10

6.6 We consider that the level of the caps set out in Option 2 would be sufficient to meet the current and future needs of SPs (which option 1 would not). It would also lead to increased consumer price awareness, greater protection against the risk of fraud and bad debt, limit the scope for unintended consequences and promote the affordability of directory enquiry services in comparison to Option 3. In addition, we note that Option 2 would also allow SPs to better compete with mobile shortcodes than Option 1.

6.7 We are therefore proposing that caps at the level of Option 2 should be adopted.

Consumer protection measures

6.8 In Section 5 we consider the current consumer protection measures that apply to 09 and 118 calls, either through the PRS condition imposed by Ofcom or the PhonepayPlus code of practice. We also consider whether any additional measures may be warranted under the options for the level of the caps for price per minute and price per call tariffs. Specifically, we have assessed the need for:

- A pre-call announcement (PCA) – informing the consumer of the SC prior to connection;
- Opt-in to premium rate services – consumers are required to contact their SP to be able to access 09 and 118 calls;
- Notification of time elapsed – alerts to the caller about the length of the call;
- Dedicated number ranges for the most expensive PRS – allows consumers to bar access to these services (but not PRS services overall) and
- Extension of the 30 day withhold period – to reduce incentives for fraud on these ranges.

6.9 We consider that a PCA could contribute to a reduction in the risks of bill shock, fraud and bad debt on the 09 and 118 number ranges. However, it would result in some additional regulatory costs and there is some evidence it may adversely affect consumer demand for services on these ranges.

- 6.10 A requirement that consumers can only access PRS on 09 and 118 if they opt-in does not appear to be a viable option (but this should not preclude CPs voluntarily offering call barring services which can bring consumer protection benefits.) Notifications of time spent on a call may help to reduce the risks of bill shock and bad debt but appears less effective at preventing fraud. Like a PCA, this option will add to regulatory costs and could adversely affect consumer demand. The dedicated number range would be a low cost option, but it is unclear whether it would have a material beneficial impact on the risks of bill shock, fraud and bad debt for 09 numbers (and it is not an available option for the 118 range).
- 6.11 Given the overall level of complaints currently for calls to 09 and 118, we consider existing consumer protection provided via PPP regulation is sufficient both at current price levels and, under the new regime, if SCs can be priced up to the caps under Option 2. However, if the SCs can be priced within the ranges proposed under Option 3, there is some evidence to suggest that there would be an increased risk of consumer harm which would justify the imposition of additional protective measures. We consider that a pre-call announcement would be the most effective means of addressing this increased risk.
- 6.12 Table 6.2 below summarises our current views as to the need for additional consumer protection measures at each of maximum price cap options we have identified:

Table 6.2: Options for the level of the caps and consumer protection measures to apply to 09 and 118 numbers

Option	Price per minute	Price per call	Additional consumer protection measures
1	Inflation increase (£2.29)	Inflation increase (£2.29)	None required
2	£3	£5	None required
3	£3 - £5	£5 - £10	Pre-call announcement

- 6.13 In summary, our preferred option is to impose caps of £3 pm and £5 per call on the SCs for the 09 and 118 ranges. We do not consider that additional consumer protection measures are required if the SCs are capped at these levels.

Question 6.1 – Do you agree that the level of the SC should be set at £5 per call and £3 per minute and that no additional consumer protection measures will be required? If not, please provide alternative options and evidence to support your preferred option.

Legal tests

- 6.14 We set out in Section 3 the legal framework and the powers underpinning the proposals in this consultation to impose a cap on the SC for calls to 09 and 118 numbers.
- 6.15 In proposing to make or modify a General Condition, we can only do so if the proposed General Condition (or modification) imposes an obligation that we are authorised to impose under Sections 51, 52, 57, 58 or 64 of the Act.⁹²
- 6.16 Section 58 gives Ofcom the power to set General Conditions about the allocation and adoption of telephone numbers. Under Section 58(1)(aa), such General Conditions may impose tariff principles and maximum prices for the purpose of protecting consumers in relation to the provision of an electronic communications service by means of telephone numbers.
- 6.17 We consider that the current use of non-geographic numbers gives rise to consumer harm, as set out in the April 2012 Consultation and summarised in Section 4 of this consultation. For the reasons set out in Section 4, we consider that a cap on the SC for calls to 09 and 118 numbers under Section 58(1)(aa) will contribute to the protection of consumers from the harm identified.
- 6.18 Accordingly, we propose to implement these proposals for a cap on the SC for 09 and 118 calls by making or modifying a General Condition under our powers in Section 58. We anticipate that the General Condition in question will require that the SC for a number within one of the 09 or 118 number ranges designated in the Numbering Plan must be no higher than the maximum specified for the relevant range in the Numbering Plan. If we decide to implement the proposals in this consultation (in addition to those set out in the April 2012 Consultation), we will publish draft conditions for consultation with our final statement. Our proposed timing for the publication of this statement is set out below.
- 6.19 Additionally, the implementation of these caps will also necessitate amendments to the Numbering Plan to reflect the price restrictions that will apply in relation to the use of the 09 and 118 ranges.⁹³ The modifications we propose to make to the Numbering Plan will form part of our separate consultation on the draft conditions and modifications to the General Conditions required to implement the unbundled tariff proposal, as set out above.
- 6.20 When modifying the Numbering Plan or making or modifying a General Condition, Ofcom must be satisfied that the condition or modification complies with the legal tests set out in Sections 60(2) and Sections 47(2) of the Act, namely, that the proposed conditions and modifications are objectively justifiable,⁹⁴ not unduly discriminatory, proportionate and transparent. The reasoning in this consultation document will form the basis of our assessment as

⁹² See section 45(3) of the Act.

⁹³ This in turn is like to necessitate amendments to the numbering application forms which communications providers must use when applying for an allocation of numbers, in accordance with GC17.10. The requirements of section 49 of the Act will apply to any proposed modification to these forms.

⁹⁴ This test does not apply to the setting of General Conditions

to whether the condition and modifications we will propose satisfy these tests. The assessment will be carried out in the separate consultation on the draft conditions and modifications to the General Conditions and the Numbering Plan, which will be required if we decide to implement the unbundled tariff proposal.

Ofcom's statutory duties

- 6.21 The assessment criteria that we have applied to the regulatory options set out in this consultation were derived from our statutory duties. We are satisfied that the proposal to impose a cap on the SC for 09 and 118 calls is consistent with our general duties in carrying out our functions as set out in Sections 3 and 4 of the Act. In particular, we consider that imposing such a cap will help to ensure that consumers are protected against the market failures we have identified, will help to restore consumer confidence in the 09 and 118 ranges while providing benefits to SPs, including increased call volumes and greater scope to innovate. We consider that this proposal, combined with the broader proposals in relation to the provision of NGCs, will mean that the changes will further the interests of citizens in relation to communications matters and further the interests of consumers in relevant markets, and in the longer term, should contribute to the promotion of competition.
- 6.22 We also consider that the proposal will contribute to the fulfilment of Ofcom's general duty in carrying out its telephone numbering functions under Sections 56 – 62 of the Act to:
- **Secure the best use of appropriate numbers:** by addressing the market failures and resulting consumer harm, we expect consumer confidence in 09 and 118 to improve so that call volumes should increase. This, in turn, should enhance SPs' incentives to invest in service availability and innovation on these number ranges.
 - **Encourage efficiency and innovation:** these caps will be part of a package of measures which, by improving consumer price awareness, should result in more efficient prices and encourage innovation in service provision.

Implementation

Timing

- 6.23 As set out in Section 2 the options set out in this consultation are predicated on the proposed introduction of the unbundled tariff. In the event that our proposals in respect of the unbundled tariff were to materially change, we would reconsider the proposals for maximum SC caps on 09 and 118 numbers set out in this consultation. The proposals in this consultation do not in any way pre-judge the outcome of the April 2012 Consultation.
- 6.24 We propose to take account of any responses to this consultation at the same time as reaching our final decision in relation to the unbundled tariff. Responses received as part of the April 2012 Consultation that are relevant to our assessment of the options set out in this consultation will also be taken into account in forming our final decision.

- 6.25 A number of stakeholders⁹⁵ have raised the question of whether, irrespective of whether the unbundled tariff is adopted in the future or not, the current maximum charge of £1.53 from a BT line should be increased. This, it is argued, is a cap⁹⁶ that limits SPs ability to deliver services valued by consumers, compete effectively with alternative methods for micro-payments for service delivery (eg mobile phones or credit cards) and limits innovation. It was set in 1997, and should be amended sooner than rather than later to at least take account of inflation over that period.
- 6.26 We recognise stakeholders concerns over the current level of £1.53, but do not consider it appropriate to increase this independent of our wider restructuring of the NGCS regulatory framework. We agree that there are arguments for allowing greater revenue to be generated through calls to 09 numbers, which we set out in detail in Section 4 of this consultation.
- 6.27 However, our primary concern is that in doing so consumers are adequately protected. We believe that introduction of the unbundled tariff will provide consumers with increased levels of tariff transparency and price awareness, and that this, potentially alongside additional consumer protection measures (as set out above) will provide the right level of consumer protection for any increase in the level of the cap. This may not be the case under the current market structure.
- 6.28 Therefore, we propose that implementation of the proposals set out above in relation to a maximum SC cap for 09 and 118 numbers will take effect at the same time as the unbundled tariff takes effect. As set out in our April 2012 Consultation we currently expect to publish our final decision on the unbundled tariff at the end of this year, and have consulted on an 18 month implementation period for the unbundled tariff to take effect.

Question 6.2 – Do you agree with our proposals in relation to the timing of our proposals for a maximum SC charge for 09 and 118 numbers taking effect?

Next steps

- 6.29 The period of this consultation is from the 25 July 2012 to the 19 September 2012. Annexes 1 – 3 provide details on how to respond to this consultation.
- 6.30 It is our intention to conclude on our proposals for the unbundled tariff at the same time as our proposals in this consultation on the SC caps and additional consumer protection measures for the 09 and 118 number ranges. Our objective is to publish this final statement at the end of this year.

⁹⁵ For example in discussions with AIME and a number of stakeholder responses to our December 2010 consultation.

⁹⁶ As set out in section 4 the current charge of £1.53, while not a regulatory cap in the formal sense, acts in practice as a retail price cap on fixed-line CPs given that all fixed line communications providers have chosen not to retail 09 calls at prices higher than those charged by BT.

Annex 1

Responding to this consultation

How to respond

- A1.1 Ofcom invites written views and comments on the issues raised in this document, to be made **by 5pm on 19 September 2012**.
- A1.2 Ofcom strongly prefers to receive responses using the online web form at <https://stakeholders.ofcom.org.uk/consultations/service-charge-caps/howtorespond/form>, as this helps us to process the responses quickly and efficiently. We would also be grateful if you could assist us by completing a response cover sheet (see Annex 3), to indicate whether or not there are confidentiality issues. This response coversheet is incorporated into the online web form questionnaire.
- A1.3 For larger consultation responses - particularly those with supporting charts, tables or other data - please email NGCSRReview@ofcom.org.uk attaching your response in Microsoft Word format, together with a consultation response coversheet.
- A1.4 Responses may alternatively be posted or faxed to the address below, marked with the title of the consultation.
- Chris Handley
Floor 4
Competition Group
Riverside House
2A Southwark Bridge Road
London SE1 9HA
- Fax: 020 7783 4109
- A1.5 Note that we do not need a hard copy in addition to an electronic version. Ofcom will acknowledge receipt of responses if they are submitted using the online web form but not otherwise.
- A1.6 It would be helpful if your response could include direct answers to the questions asked in this document, which are listed together at Annex 4. It would also help if you can explain why you hold your views and how Ofcom's proposals would impact on you.

Further information

- A1.7 If you want to discuss the issues and questions raised in this consultation, or need advice on the appropriate form of response, please contact Chris Handley on 020 7783 4186.

Confidentiality

- A1.8 We believe it is important for everyone interested in an issue to see the views expressed by consultation respondents. We will therefore usually publish all responses on our website, www.ofcom.org.uk, ideally on receipt. If you think your response should be kept confidential, can you please specify what part or whether all of your response should be kept confidential, and specify why. Please also place such parts in a separate annex.
- A1.9 If someone asks us to keep part or all of a response confidential, we will treat this request seriously and will try to respect this. But sometimes we will need to publish all responses, including those that are marked as confidential, in order to meet legal obligations.
- A1.10 Please also note that copyright and all other intellectual property in responses will be assumed to be licensed to Ofcom to use. Ofcom's approach on intellectual property rights is explained further on its website at <http://www.ofcom.org.uk/about/accoun/disclaimer/>

Next steps

- A1.11 Following the end of the consultation period, Ofcom intends to publish a statement at the end of this year.
- A1.12 Please note that you can register to receive free mail Updates alerting you to the publications of relevant Ofcom documents. For more details please see: http://www.ofcom.org.uk/static/subscribe/select_list.htm

Ofcom's consultation processes

- A1.13 Ofcom seeks to ensure that responding to a consultation is easy as possible. For more information please see our consultation principles in Annex 2.
- A1.14 If you have any comments or suggestions on how Ofcom conducts its consultations, please call our consultation helpdesk on 020 7981 3003 or e-mail us at consult@ofcom.org.uk . We would particularly welcome thoughts on how Ofcom could more effectively seek the views of those groups or individuals, such as small businesses or particular types of residential consumers, who are less likely to give their opinions through a formal consultation.
- A1.15 If you would like to discuss these issues or Ofcom's consultation processes more generally you can alternatively contact Graham Howell, Secretary to the Corporation, who is Ofcom's consultation champion:

Graham Howell
Ofcom
Riverside House
2a Southwark Bridge Road
London SE1 9HA

Tel: 020 7981 3601

Email Graham.Howell@ofcom.org.uk

Annex 2

Ofcom's consultation principles

A2.1 Ofcom has published the following seven principles that it will follow for each public written consultation:

Before the consultation

A2.2 Where possible, we will hold informal talks with people and organisations before announcing a big consultation to find out whether we are thinking in the right direction. If we do not have enough time to do this, we will hold an open meeting to explain our proposals shortly after announcing the consultation.

During the consultation

A2.3 We will be clear about who we are consulting, why, on what questions and for how long.

A2.4 We will make the consultation document as short and simple as possible with a summary of no more than two pages. We will try to make it as easy as possible to give us a written response. If the consultation is complicated, we may provide a shortened Plain English Guide for smaller organisations or individuals who would otherwise not be able to spare the time to share their views.

A2.5 We will consult for up to 10 weeks depending on the potential impact of our proposals.

A2.6 A person within Ofcom will be in charge of making sure we follow our own guidelines and reach out to the largest number of people and organisations interested in the outcome of our decisions. Ofcom's 'Consultation Champion' will also be the main person to contact with views on the way we run our consultations.

A2.7 If we are not able to follow one of these principles, we will explain why.

After the consultation

A2.8 We think it is important for everyone interested in an issue to see the views of others during a consultation. We would usually publish all the responses we have received on our website. In our statement, we will give reasons for our decisions and will give an account of how the views of those concerned helped shape those decisions.

Annex 3

Consultation response cover sheet

- A3.1 In the interests of transparency and good regulatory practice, we will publish all consultation responses in full on our website, www.ofcom.org.uk.
- A3.2 We have produced a coversheet for responses (see below) and would be very grateful if you could send one with your response (this is incorporated into the online web form if you respond in this way). This will speed up our processing of responses, and help to maintain confidentiality where appropriate.
- A3.3 The quality of consultation can be enhanced by publishing responses before the consultation period closes. In particular, this can help those individuals and organisations with limited resources or familiarity with the issues to respond in a more informed way. Therefore Ofcom would encourage respondents to complete their coversheet in a way that allows Ofcom to publish their responses upon receipt, rather than waiting until the consultation period has ended.
- A3.4 We strongly prefer to receive responses via the online web form which incorporates the coversheet. If you are responding via email, post or fax you can download an electronic copy of this coversheet in Word or RTF format from the 'Consultations' Section of our website at www.ofcom.org.uk/consult/.
- A3.5 Please put any parts of your response you consider should be kept confidential in a separate annex to your response and include your reasons why this part of your response should not be published. This can include information such as your personal background and experience. If you want your name, address, other contact details, or job title to remain confidential, please provide them in your cover sheet only, so that we don't have to edit your response.

Cover sheet for response to an Ofcom consultation

BASIC DETAILS

Consultation title:

To (Ofcom contact):

Name of respondent:

Representing (self or organisation/s):

Address (if not received by email):

CONFIDENTIALITY

Please tick below what part of your response you consider is confidential, giving your reasons why

Nothing	<input type="checkbox"/>	Name/contact details/job title	<input type="checkbox"/>
Whole response	<input type="checkbox"/>	Organisation	<input type="checkbox"/>
Part of the response	<input type="checkbox"/>	if there is no separate annex, which parts?	

If you want part of your response, your name or your organisation not to be published, can Ofcom still publish a reference to the contents of your response (including, for any confidential parts, a general summary that does not disclose the specific information or enable you to be identified)?

DECLARATION

I confirm that the correspondence supplied with this cover sheet is a formal consultation response that Ofcom can publish. However, in supplying this response, I understand that Ofcom may need to publish all responses, including those which are marked as confidential, in order to meet legal obligations. If I have sent my response by email, Ofcom can disregard any standard e-mail text about not disclosing email contents and attachments.

Ofcom seeks to publish responses on receipt. If your response is non-confidential (in whole or in part), and you would prefer us to publish your response only once the consultation has ended, please tick here.

Name

Signed (if hard copy)

Annex 4

Consultation question

Sub heading

A4.1 This consultation contains the following questions on which we would like stakeholders input.

Question 4.1: Do you agree with the assessment criteria we are proposing to use for our analysis, and in particular the three additional criteria we have identified as relevant?

Question 4.2: Do you agree that a maximum SC should apply to 09 numbers for the reasons set out above?

Question 4.3: Do you agree that a maximum SC should apply to 118 numbers for the reasons set out above?

Question 4.4: Do you agree that a different maximum SC for calls charged on a per call basis and calls charged on a per minute basis is appropriate?

Question 4.5: Do you agree that we should use the RPI measure of inflation to uplift the BT's current maximum retail price for 09 calls to derive the maximum SC under Option 1?

Question 4.6: Do you agree that we should not uplift the SC caps by inflation on an annual basis?

Question 4.7: Do you agree that the maximum SC cap should be set exclusive of VAT?

Question 4.8: Do you agree that Option 2 (a £3 per minute and £5 per call cap) is the most appropriate maximum service charge limit for 09 and 118 numbers? If not, please explain why.

Question 5.1: Are there any other consumer protection measures we should consider for the 09 and 118 ranges? Please explain why you consider any additional measures you identify might be appropriate.

Question 5.2: Do you have any comments on our assessment of the costs and benefits of a pre-call announcement on the 09 and 118 range? Please provide reasons for your view.

Question 5.3: If relevant, please provide an estimate of the likely costs that you would incur if a pre-call announcement were implemented on these ranges, taking account of any benefits it may bring.

Question 5.4: Do you have any comments on our assessment of the costs and benefits of a consumer opt-in for 09 and 118 numbers? Please provide reasons for your view.

Question 5.5: Do you have any comments on our assessment of the costs and benefits of time-related notifications on the 09 and 118 range? Please provide reasons for your view.

Question 5.6: If relevant, please provide an estimate of the likely costs that you would incur if time-related notifications were implemented on these ranges, taking account of any benefits it may bring.

Question 5.7: Do you have any comments on our assessment of the costs and benefits of dedicated number ranges on the 09 and 118 range? Please provide reasons for your view.

Question 5.8: Do you have any comments on our assessment of the costs and benefits of an extension of the 30 day withhold period on the 09 and 118 range? Please provide reasons for your view.

Question 5.9: Do you agree with our assessment that additional consumer protection measures would only be justified if SPs are able to set SCs for services on 09 and 118 with the ranges proposed under Option 3? Please provide reasons for your view, including, if relevant, the measures that you consider would be appropriate.

Question 6.1 – Do you agree that the level of the SC should be set at £5 per call and £3 per minute and that no additional consumer protection measures will be required? If not, please provide alternative options and evidence to support your preferred option.

Question 6.2 – Do you agree with our proposals in relation to the timing of our proposals for a maximum SC charge for 09 and 118 numbers taking effect?

Annex 5

International Comparisons

Introduction

- A5.1 In considering the policy options for the 09 and 118 range, we have undertaken a short benchmarking exercise using international comparators. The scope of this exercise is limited to reviewing the existence of price caps and the associated consumer protection measures for the number ranges in question.
- A5.2 The purpose of the benchmarking is to provide an illustration of the approaches adopted internationally and therefore to inform our policy proposals in this consultation.
- A5.3 We have selected both European and non-European countries in our review of international regulation. In making our selection, we have included countries that were used as part of the “International Experience in Non-Geographic Numbers” benchmarking exercise which fed into the April 2012 Consultation⁹⁷.
- A5.4 The countries whose regulation of premium rate services we have looked at:
- Australia;
 - New Zealand;
 - Spain;
 - Germany; and
 - France.
- A5.5 We have not, as part of this review, undertaken a detailed assessment of the structure or regulatory frameworks in each of these countries as that is beyond the scope of this exercise.
- A5.6 The findings of the benchmarking exercise is set out below at Table A5.1:

⁹⁷ <http://stakeholders.ofcom.org.uk/binaries/research/telecoms-research/International-experience.pdf>

Table A5.1: Summary of the international benchmarking

	UK	Australia	New Zealand	Spain	France	Germany
Regulations and regulatory code	<p>PhonepayPlus is the dedicated regulator for PRS services who enforce a code of practice. Ofcom holds overall responsibility for PRS services as they are defined in the Communications Act 2003. There is also an industry code which manages the services run on mobile short codes.</p>	<p>For premium rate services (fixed), the industry self regulates via the industry code governed by TISSC¹. Premium SMS (mobile) service is regulated by the industry code governed by ACMA². Quarterly compliance monitoring reports are submitted to ACMA.</p>	<p>The Commerce Commission is the competition authority in New Zealand. Telecom New Zealand is the network operator and self-regulates the 0900 range through the '0900 Policy'.</p>	<p>SETSI³ is responsible for approving PRS legislation. There is a code of conduct for the provision of PRS which is governed by CSSTA⁴. Service providers are subject to a Code of Proper Behaviour.</p>	<p>ARCEP⁵ is responsible for drafting and ensuring the application of regulation for voice services. AFMM⁶ and AFOM⁷ promote mobile based services. There is a mix of regulations and codes of conduct applied.</p>	<p>Requirements are set out in the German Telecommunications Act. Statutory responsibility lies with BNetzA, the regulator, who is responsible for regulation, pricing and numbering. DVTM⁸ imposed a voluntary code of conduct for mobile PRS.</p>
Pre-call announcement (PCA)	<p>Calls to premium rate services are subject to PCAs. Additionally, 'prior permission' to provide these services should be obtained from PhonepayPlus.</p>	<p>Where recorded services are expected to cost more than AUD0.82 in total, PCAs are required.</p>	<p>PCAs are required for 0900 numbers and must inform the cost of the call, whether that cost is per minute or per call and whether that cost includes or excludes GST⁹. For adult services a warning that the service is intended only for persons over 18 is required.</p>	<p>PCA of 20 seconds for PRS calls are required.</p>	<p>PCAs are used for fixed line calls costing more than 0.15euros per call or per minute.</p>	<p>PCA is required at the beginning of a call. If the price changes during the call, this also has to be notified before the price increases. This applies for PRS and DQ services.</p>

<p>Opt in/Opt out options</p>	<p>Consumers have the option of pre-barring calls to PRS services through their service provider.</p>	<p>Default call barring for restricted pre-barring where age verification is required.</p>	<p>Telecom PSTN customers can request some or all calls to Telecom 0900 numbers be barred from their telephones.</p>	<p>Bands eight and nine of the nine separate price bands for fixed and mobile services are automatically barred therefore opting in is required.</p>	<p>Access to adult content is subject to age verification administered by the mobile operator.</p>	
<p>On-going price alerts</p>		<p>Expenditure alerts and alerts for on-going services required. For Premium SMS, two confirmations are required as authorisation. Expenditure beeps are required for calls which cost more than AUD2.75 and exceed 5 minutes.</p>				
<p>Dedicated number range for PRS services</p>	<p>Higher rate PRS services are allocated to the 09 range. 0908/9, 098 are specifically for adult services. 118 for directory enquiry numbers.</p>	<p>PRS services are allocated to 190 numbers (1901 is a restricted prefix for adults only). Premium SMS are 19 numbers (with 195 and 196 also being restricted prefixes).</p>	<p>Premium rate services are allocated to the 0900 number range.</p>	<p>803 (adult entertainment), 806 (leisure and entertainment) and 807 (professional services) number ranges are for premium rate services from fixed lines. 25, 27, 28, 35, 37 797, 995, 997 and 999 numbers are premium rate services from mobiles.</p>	<p>10 digit numbers starting with 08 or short 4 digit numbers starting with 3 or 1 are premium rate services.</p>	<p>Premium rate services are allocated to the 0900 number range. 09001 are information services, 09003 are entertainment services, 09005 are other services (chat) and 09009 are dial-through services.</p>

Service Charge Caps for 09 and 118 Services

Level of price cap	From a BT line, there is a £1.53 per call or per minute cap. Mobile codes have no formal regulation but the self-imposed industry code sets a ceiling of £10 per message.	Premium rate services can charge between AUD0.38 and AUD4.75 or by minute of AUD 5.50. For premium SMS, the range is between AUD0.25 and AUD6.60 per message.	There is no price cap but there is a maximum call charge cap imposed by Telecom New Zealand who is the only operator in the country with active 0900 allocations.	There are nine separate price bands individually for fixed and mobile services. There is no overall maximum price ceiling however.	Each 08 number range (i.e. 081, 0821 and 0891) has its own price cap either on a per call or per minute basis.	Metered PRS and DQ services are capped at 3euros per minute. Unmetered PRS calls are capped at 30euros per call.
Maximum call lengths/charge and call disconnection	The maximum call charge for an individual call is £30.	For call costing less than AUD4.40, the maximum call length is 60 minute followed by disconnection. For calls costing more than AUD4.40, this is reduced to 30 minutes. Where call costs vary during the call, the call will have a maximum charge of AUD165.	The maximum charge that can be made for any call regardless of duration is \$88.88 (excluding GST).	The maximum single call length is 30 minutes.		The maximum call length is 60 minutes for metered PRS and DQ services followed by disconnection.

¹ TISSC is the Telephone Information Services Standards Council in Australia.

² ACMA is the Australian Commissions and Media Authority.

³ SETSI is The State Secretary for Telecommunications and for the Information Society

⁴ CSSTA is the Commission for the Supervision of Premium Rate Services in Spain.

⁵ ARCEP is the Authority of Regulation of Electronic Communication and Postal Services – the French telecoms regulator.

⁶ AFMM is the French Association of Mobile Multimedia.

⁷ AFOM is the French Association of Mobile Operators.

⁸ DVTM is the Association for Telecommunications and Media in Germany.

⁹ GST stands for Goods and Service Tax which is currently 15% in New Zealand.

Annex 6

Equality Impact Assessment

Introduction

A6.1 Over and above our duties to promote the interests of consumers, we are required by statute to take into consideration any potential impact our proposals may have on different equality groups. We fulfil these obligations by carrying out an Equality Impact Assessment ('EIA'), which examines the potential impacts our proposed policy is likely to have on people, depending on their background or identity. The equality groups we are required to consider are:

- Age;
- Disability;
- Gender reassignment;
- Pregnancy and maternity;
- Race;
- Religion or belief;
- Sex;
- Sexual orientation;
- Religious belief/Political Opinion (Northern Ireland only); and
- Dependants (Northern Ireland only);

A6.2 We undertook an EIA as part of our April 2012 Consultation⁹⁸. We do not consider that the proposals in this consultation differ significantly in their impact than those set out in our April 2012 Consultation. We set out below the positive and negative impacts that we consider relevant to the proposals set out in this consultation.

Positive Impacts

A6.3 We consider that the proposals on which we are consulting as part of this consultation are likely to have significant benefits for consumers, in particular:

- 6.3.1 improved price awareness;
- 6.3.2 prices for NGC services that better reflect consumer preferences; and

⁹⁸ See Annex 15 to our April consultation at:

6.3.3 better service variety, innovation and availability through the increased demand for NGC services.

A6.4 We consider that these benefits will apply equally to all consumers. There may nevertheless, be some particular benefits for vulnerable consumers, by which we mean (as set out in Section 5 to our April 2012 Consultation) consumers that have a low income (i.e. less than £11,500 a year) or belong to low socio-economic groups, i.e. DE, in particular because a larger proportion of these consumers are in mobile only households (26%).⁹⁹ We also consider that consumers that are involuntarily mobile-only and elderly and/or disabled consumers that are dependent on telecoms should be included in this category.

Negative Impacts

A6.5 We do not consider that any group will be specifically negatively impacted on by our proposals in this consultation. Consumers will be able to decide for themselves whether or not to purchase premium rate services, as they can today, and will likely benefit from the increased transparency that we expect from an unbundled tariff structure to do so.

Equality impact groups

A6.6 We do not repeat the breakdown of equality impact groups here as we did for our April 2012 Consultation, but would note that we consider the proposals set out in this consultation are consistent with our view, set out in the April 2012 Consultation, that our proposals will have a positive impact on equality groups overall.

⁹⁹ Ofcom, 2011 CMR, p.319, Figure 5.90.

Annex 7

Overview of forthcoming publications in relation to NGCS

Background

- A7.1 Our review of NGCS is considering the 03, 05, 070/076, 080, 0870, 0843/4/5, 0871/2/3, 09, 116 and 118 number ranges. These number ranges are used by consumers to call businesses, financial institutions, helplines and government agencies, to get information and to make payments for services.¹⁰⁰
- A7.2 In December 2010, we published our preliminary findings in our strategic review of the market for non-geographic calls. We proposed simplifying and rationalising non-geographic number ranges, making the pricing structures clearer, and removing confusing and misleading inconsistencies.¹⁰¹
- A7.3 In April 2012, following a period of further evidence gathering and engagement with stakeholders, we published detailed proposals in relation to:
- calls to Freephone numbers (080 and 116) being free from all telephones, fixed and mobile;¹⁰² and
 - a new tariff structure – the unbundled tariff – for calls to all ranges on which revenue sharing is permitted (08 ranges (including 0843/4/5, 0870/1/2/30) other than 080, all 09 premium rate numbers and 118 directory enquiry numbers).¹⁰³
- A7.4 We also explained that we would publish detailed proposals about 0500, 055/056, 070/076, 09 and 118 number ranges, and the changes necessary to the legal framework, over the course of 2012.

Current and forthcoming publications

- A7.5 We are consulting on our proposals in relation to the 09 and 118 number ranges at the same time as this consultation.¹⁰⁴
- A7.6 We are also planning the following publications in relation to NGCS:

¹⁰⁰ A more detailed description of each of these number ranges can be found in paragraph 2.4 of our April 2012 consultation in relation to NGCS (see footnote 103 below).

¹⁰¹ Ofcom, *Simplifying Non-Geographic Numbers*, 16 December 2010:

<http://stakeholders.ofcom.org.uk/consultations/simplifying-non-geo-numbers/>

¹⁰² We also proposed that 03 would become the only non-geographic number range linked to the price of a call to a geographic number (i.e. the 01/02 number ranges).

¹⁰³ Ofcom, *Simplifying Non-Geographic Numbers, Detailed proposals on the unbundled tariff and Freephone*, 4 April 2012: <http://stakeholders.ofcom.org.uk/consultations/simplifying-non-geographic-no/>

¹⁰⁴ Ofcom, *Premium Rate Services, calls to 09 and 118 numbers*

- Q4 2012: we plan to consult on our proposals for the 070/076, 055/056 and 0500 number ranges.
- December 2012: we plan to publish a statement with our final policy decisions in relation to Freephone (0800 and 116), the unbundled tariff and on SCs for 09 and 118 services. This statement will also include a consultation on the legal instruments necessary to implement these decisions and, if necessary, any proposed guidance on the mobile origination charge for Freephone calls.
- Q1 2013: we plan to publish the final legal instruments which give effect to our decisions on Freephone (0800 and 116), the unbundled tariff proposal and SC for 09 and 118 services.
- Q1 2013: we plan to publish our final statements in relation to the 070/076, 050/056 and 0500 number ranges.

Annex 8

Glossary

Access Charge ('AC'):

This will be the charge levied by the Originating Communications Providers on its customers for a non-geographic call under the unbundled tariff.

Access Directive:

Directive 2002/20/EC on the authorisation of electronic communications networks and services (2002) OJ L 108/21, as amended by Directive 2009/140 (2009) OJ L 337/37

Authorisation Directive:

Directive 2002/19/EC on access to, and interconnection of, electronic communications networks and associated facilities (2002) OJ L 108/7, as amended by Directive 2009/140 (2009) OJ L 337/37.

Bill Shock:

This is when consumers find themselves facing bills that far exceed what they are used to, or expected.

Communications Act 2003 ('the Act'):

The Act of Parliament that established Ofcom, set out its duties, and the powers which Ofcom has to discharge those duties.

Communications Provider ('CP'):

This is a person who provides an Electronic Communications Network or provides an Electronic Communications Service.

Common Regulatory Framework ('CRF'):

This is the package of Directives which harmonise the framework for the regulation of electronic communications across the EU.

Controlled Premium Rate Services ('CPRS'):

These are the subset of PRS subject to the PRS Condition.

Directory Enquires ('DQ'):

A phone service used to find a specific telephone number and/or address for an individual, residence, business or government entity, which are accessed through the number range 118XXX.

Freephone:

A special services number that is not normally charged to the caller, except where charges are notified to the caller at the start of the call. Freephone numbers begin with 080 (e.g. 0800 and 0808) and also include the legacy 0500 range. 116XXX, (see Harmonised European Numbers for services of social value below) are also required to be Freephone or Free-to-Caller/

Framework Directive:

Directive 2002/21 on a common regulatory framework for electronic communications networks and services (2002) OJ L 108/33, as amended by Regulation No 717/2007

(2007) OJ L 171/32, Regulation No 544/2009 (2009) OJ L 167/12 and Directive 2009/140/EC (2009) OJ L 337/37.

General Conditions:

Obligations on all communications providers imposed by Ofcom under powers provided under the Communication Act.

Geographic number or geographic call:

A telephone number, or call to a telephone number, where part of the digit structure (beginning with 01 or 02) contains a geographic area code that is used for routing calls to the physical location of the subscriber to whom the number has been assigned.

National Regulatory Authority ('NRA'):

The relevant communications regulatory body for each country in the EU.

National Telephone Numbering Plan ('the Numbering Plan'):

This is a document setting out telephone numbers available for allocation and restrictions on the Adoption and other uses of those numbers, and as provided for in Section 56(1) of the Communications Act 2003.

Non-geographic call ('NGC') or non-geographic number:

A telephone number, or call to that telephone number, which are used to identify a type of service rather than a geographic location. These services include NTS and PRS numbers. Mobile and Personal Numbers are also non-geographic numbers.

Non-geographic call services ('NGCS'):

A service that is provided through a non-geographic number.

NTS Call Origination Condition:

SMP Condition AAA11 set out in Part 2 of Schedule 1 to the Notification which is contained in Annex 8 of the Regulatory Statement completing the Review of the fixed narrowband services wholesale markets published by Ofcom on 15 September 2009.

Number Translation Services ('NTS'):

Telephone services using the following numbers: Special Service numbers (including Freephone, special basic rate and special higher rate) and Premium Rate Services numbers ('PRS') (services currently provided under 090 and 091 number ranges). Within these ranges calls to 0844 04 numbers for Surftime internet access services and calls to 0808 99 for FRIACO ('Flat Rate Internet Access Call Origination') are excluded.

Originating Communications Provider ('OCP'):

These are the Communications Provider on whose network a call originates in other words the communications provider of the end-user making the call. There can be fixed OCPs or mobile OCPs.

PayphonePlus ('PPP'):

The premium rate services regulator in the UK, formerly ICTSIS (www.phonepayplus.org.uk)

Personal Numbers:

A telephone number in the 070 range which allows a subscriber to receive calls or other communications at almost any telephone number, including a mobile number.

POLO:

Payment to Other Licensed Operator. This is a BT term for the termination rates it pays to other TCPs for numbers it originates.

ppc: pence per call

ppm: pence per minute

Pre-call announcement ('PCA'):

This is a pre recorded message played to the caller before the call is connected setting out how the call will be charged for.

Premium rate service ('PRS'):

These are a particular type of service provided on the 090, 091, 098 and 0871/2/3 number ranges. Calls are generally charged above 10p a minute from a BT landline.

PRS Condition:

Section 120 of the Act defines PRS and provides Ofcom with the power to set conditions for the purpose of regulating the provision, content, promotion and marketing of PRS.

Revised EU Framework Directives:

The common regulatory framework for telecommunications consisting of the Framework Directive, the Authorisation Directive, the Access Directive, the Universal Service Directive and the Privacy and Electronic Communications Directive (2002/58/EC) as amended by Directive 2009/140/EC and Directive 2009/136/EC of the European Parliament on 25 November 2009.

Reseller:

A Communications Provider that resells non-geographic call services directly to Service Providers on behalf of Terminating Communications Providers.

Service Charge ('SC'):

The charge levied by the Terminating Communications Provider and the Service Provider for a non-geographic call under the unbundled tariff.

Service Provider ('SP'):

This is a provider of voice or data services to third parties using non-geographic numbers.

Significant Market Power ('SMP'):

The Significant Market Power test is set out in European case law, the new EU Communications Directives and the Commission's SMP Guidelines. It is used by the National Regulatory Authorities such as Ofcom to identify those CPs who must meet additional obligations under the Access Directive.

Short Messaging Service ('SMS'):

This is a means by which short text-based messages can be sent to and from digital mobile phones and other devices.

Tariff Package Effect ('TPE'):

This is the term used to refer to how prices for different call services could change (either by increasing or decreasing

Terminating Communications Provider ('TCP'):

These are the Communications Provider on whose network a call terminates.

Termination rate:

the wholesale charge levied by Terminating Communications Providers for call termination either on a fixed or mobile network.

Unbundled tariff:

A type of tariff structure which we are proposing in this consultation should apply to the 08X (excluding 080), 09 and 118 number ranges. Under this structure the call charge will be divided into an Access Charge and a Service Charge.

Universal Service Directive ('USD'):

Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services [2002] OJ L 108/51, as amended by Directive 2009/136 [2009] OJ L 337/11.