Aloha welcomes the opportunity to provide feedback to Ofcom's further consultation on revenue share in an attempt to improve clarity and consistency while reducing misuse and potential harms in the telephony market.

NOTE: This response to the consultation is based on our interpretation and understanding of the current supplier, regulatory and technical landscape proposed which may be subject to change.

Introduction

The telephony market today has evolved considerably over 10-15 years. In our view, the market is competitive and highly innovative. When comparing the UK to the international market, we believe the UK has one of the most, if not the most, competitive supplier eco systems of any country.

However, in the fixed sector, there could be storms on the horizon. As highlighted by recent Ofcom research, fixed minutes are reducing[1]. Furthermore, competition is increasing. Therefore, it is important we as CPs stay relevant by progressing in a direction that encourages consumer/business confidence in the sector while not undermining competition and creating a fair playing field.

During the pandemic, we saw how important and innovative the telephony sector is and how it can partially reinvent itself overnight to be able to meet the demands of the country shifting to a more home based market. It is critical that any proposal does not impede or restrict such innovation.

The supply chain of the sector is incredibly nuanced in detail and highly complex where in our view we think there to be at least 1,000 PECNs and several thousand more PECSs as defined by the act[2] and based on public data available through Ofcom's numbering data[3], Ofcom ADR data[4] and DCMS[5] survey research would at least in part reinforce our view on the sector size.

It is also worth considering that CPs are now being seen more as technology companies rather than traditional telephone companies and as such, public perception around our sector is changing along with customer expectations on innovation, commercials and functionality.

Generally we are fully supportive of Ofcom's proposals and in favour of splitting ranges into 3 categories (Table 3.1). However, we have a deeply concerned view in the term

[1] https://www.ofcom.org.uk/__data/assets/pdf_file/0018/240930/Communications-Market-Report-2022.pdf
[2] https://www.legislation.gov.uk/ukpga/2003/21/section/151
[3] https://www.ofcom.org.uk/phones-telecoms-and-internet/information-for-industry/numbering/numbering-data
[4] https://www.ofcom.org.uk/phones-telecoms-and-internet/advice-for-consumers/problems/adr-schemes
[5] https://www.gov.uk/government/publications/telecommunications-providers-survey-october-2021-to-february-2022/telecommunications-providers-survey-october-2021-to-february-2022-research-notes

"indirect" and how common, generally (in our view) innovative legitimate uses (especially post-pandemic) of fixed telecoms (which there are large eco systems supporting consumers and businesses) could be unintentionally caught within the scope of "indirect" based on how the sector works. It could be argued it solves 1 set of problems but then creates many others. Furthermore, given the nuanced landscape of the supply chain we could see it creating a competition imbalance and competition issue where suppliers further down the supply chain would be better off (through certainty of money flows) than suppliers higher up the supply chain (therefore potentially causing issues in respect to S63(2)[6] of the CA2003[7] and when considered overall, potentially failing the tests referred to in 2.4-2.5, 2.29-2.32, 2.36 and 4.5. We would also ask you consider the impacts on businesses (which also includes local authority organisations) which appears to be missing in 2.27). We appreciate the potential balancing act need and have thought long and hard about how to overcome some of our concerns. On reflection, we therefore feel there could be several solutions to appease these. This could be one or more of the following:

- to confirm types of services would not fall within the term "indirect". This would be by clarifying the following type of services would be excluded from the term "indirect":
    - Discount incentives (including welcome bonuses/sign-up incentives, freemium models, recuring discounts etc.) for legitimate telecom services
    - Conferencing type facilities
    - Domestic Number Translation Services (NTS)
    - Any telecom service, that is used in a legitimate way for valid educational/religious purposes or to support the assisting of legitimate attempts to meeting accessibility requirements covered under the Equality Act 2010 (e.g. assisting those with protected characteristics)[8]
- Put geographic numbers into their own category specifically prohibiting the direct/indirect revenue sharing on any international surcharge element of the call
- Explicitly allow PECS to be part funded by indirect revenue share on category 1 numbers and possibly category 2 numbers (for either calling/called party), but prohibit the whole funding of the PECS. We feel this is the safest and simplest option.

<u>Consultation Questions</u>

Question 3.1

Do you agree with our proposals to prohibit direct and indirect revenue sharing with called parties (end-users) on the category 1 number ranges, including UK geographic numbers?

Please provide reasons for your view and any relevant evidence.

[6] https://www.legislation.gov.uk/ukpga/2003/21/section/63
[7] https://www.legislation.gov.uk/ukpga/2003/21/contents
[8] https://www.legislation.gov.uk/ukpga/2010/15/section/4

We agree with the prohibiting of direct revenue sharing, however, we have concerns around the broadness of the term "indirect" where attempts to clarify in the consultation in our view have made the landscape more confusing. We agree with the logic of applying categories to numbers as it makes classification easier. However, given how the sector works (i.e. on almost every phone call a micro payment exchanges hands typically based on duration) it creates uncertainty as you could easily argue that every telephony service is at least in part funded by a call onto the receiving number (except for freephone where the originating CP is paid).

Reinventing the fixed voice market (01/02/03/08/09 numbering)

The fixed line market is decreasing in overall minute volume[1], yet it appears more and more suppliers are entering the market. Furthermore, uses of the fixed line network are changing and as we have seen in the SMS market which has been able to reinvent itself by being used in more significant important use cases in modern society, it is our view that the fixed voice market must be allowed to go through its own transition of acceptable use cases. Whatever is decided must allow CPs to be flexible, agile, competitive and essentially allow CPs to be innovative. We appreciate many CPs will have completely different views on what is and isn't acceptable, what is and isn't reasonable and what is and isn't legitimate use.

Inclusive minute bundles are more common and it is becoming more rare for users to call outside of inclusive minutes. Therefore, from a consumer/business view point it increases confidence in the sector and makes telephony consumption less of a consumption-based utility and more of a predictable fixed cost service. However, from the CP perspective, offers and minute packages only work on a "typical" usage of good faith consumption and not abusing their plan. Therefore, it is fairly common to come across CPs having fair use policies to make sure customers are aware what they can and cannot do with their plan. It is common to see no AIT Traffic, no Telesales etc. Anything that will artificially prolong a call beyond its useful service and nothing that would typically create an excessively high usage scenario is typically banned. In our view, cash for calls is not a legitimate use of unused minutes, is abusive of minute bundles and generally bad faith use of the telephony networks.

Therefore, for many of the harms that are discussed in the consultation there will most likely be contractual mechanisms to limit or prevent such abuse. Equally, as highlighted in the consultation, there are industry mechanisms to claim back revenues where clear abuse has been highlighted (A1.14-A1.18).

In our view anything that directly makes a payment out in money (or monetary value) for a call unless it is on a general range designated for revenue share (084/087/09) should not be paid out to any calling or called party. The issue here is whether indirect (or what can be perceived as indirect including benefit in kind) for 01/02/03/05/070/076 should be banned and where exactly between the threshold of acceptable part funding of a PECS and the unacceptable boundary lie (as every PECS where the PECN is well integrated will be receiving revenue and thus indirectly funding that PECS).

From our understanding to date, there has never been an enforcement investigation into the term "indirect" and when a potential investigation did start, it was closed down early on[9].

Given the small micro-pence amounts involved in a category 1 scenario, a solution could be to explicitly allow for a PECS utilising Category 1 numbers to be funded in part by the termination payment (but not wholly funded). In a practical use case scenario: A conference provider utilising 01/02/03 numbering could provide a limited free conference (e.g. by functionality and how many participants are allowed) and the called party (organiser of the conference call) can then choose to pay the conference provider directly to increase their functionality and allowed participants. Almost a freemium like model but in the telephony context. In our view this is perfectly acceptable and represents the telephony market keeping up with times. Many conference services work like this and interface with an app/web browser for omnichannel communication. It is worth considering that most if not all CPs are now effectively regulated technology companies and the freemium model is fairly common in technology services and products.

Direct/Indirect Redundancy for Geographic Numbers

As highlighted in 3.11, there are very limited occasions of opportunities for some CPs to share revenue based on whether the call originates from overseas and for this reason we do agree that direct revenue share should never be shared as we cannot think of a legitimate use case for this. However, for innovative safety, we are of the view that indirect (which we will expand on further) should be removed to prevent scenarios which could limit genuine innovation through ambiguity of meanings, equally in the context of national domestic calls and given the low rate of FTR[10], we see there being little to no benefit to competition on applying the term "indirect" to the geo range.

We do absolutely agree and support your point in 3.12 and have seen this occur in our view in other countries that surcharge (e.g. Hacked PBX traffic generating revenues through the surcharging mechanism on geographic numbers in other EU countries). However, we would recommend further research into this area as it could be other CPs involved in this harm (i.e. they are on the other end of the call) meaning the suggested mechanism to assist in preventing this would be redundant due to it not being end user traffic.

Supply Chain Competition Distortion

As highlighted in our introduction, we do believe a scenario may develop where competition distortion could occur.

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9 https://www.ofcom.org.uk/about-ofcom/bulletins/enforcement-bulletin/all-closed-cases/cw_01203
10 https://www.ofcom.org.uk/about-ofcom/analysts/regulated-prices

As the term “indirect” is extremely broad (which other CPs also suggested as highlighted in the current consultation regarding responses to the previous consultation (A3.13)), it can be argued that all well interconnected telecom services are at least partially funded by the fees received for calls onto numbers (except freephone where the payment process is reversed). This can create a situation where a telecom provider who is better integrated into the UK voice network eco system (e.g. what Ofcom defines as an access network[11]) may withhold from providing services to end users (especially those services that are innovative and novel in nature) in fear of being accused of part funding the service by the revenue received (even if this is a very negligible small amount). However, a smaller PECN/PECS, who is not a range holder and is sub allocated from another CP (where they will not receive part or some of the revenue for the call) can safely not be accused of sharing indirectly the payment received for such calls to the end user as it is the CP above (or in many cases, multiple CPs above) that CP who does receive the payment. A good example is the conferencing option discussed above where an access network (who will receive revenues) could be accused of sharing indirectly in our view if they provided the service, but a smaller PECN who has been suballocated (and does not receive any revenue for the call) cannot be accused of sharing indirectly.

Therefore, given the scenario we have outlined above, by applying such a broad term of “indirect” then we feel there are genuine grounds to ask whether the term “indirect” is compatible with Ofcom’s obligations under Section 60(2)[12] and Section 63 (1)/(2)[6] of the Act.

We see multiple solutions to overcome which we will discuss later.

Pandemic, Conferencing and Content

In a matter of days during the pandemic, many CPs brought telephony products and solutions to market to assist businesses, schools, communities etc. to transition to home-based landscape. Many of these services were focused on those who were digitally excluded in some way or at risk of falling under the protected characteristics of the Equality Act 2010[8].

Many of the solutions that were introduced were conferencing type solutions. Some of the use cases we are aware of were schools who used conferencing services to run lessons, but also dial in using an 01/02/03 to enable those without a laptop to take part in classes to enable learning to continue. Equally, community groups running religious services through a conferencing type service so those communities can stay connected and worship as they would if they were present in person. Some of these evolved to provide recordings to be consumed at leisure to make sure that education/religious worship remains flexible. Some of these services were also used to keep families connected where those who were digitally excluded (and highly likely to be isolated) were able to take part in group calls (e.g. during lockdown) where those who were technology included used apps and those who were not used the telephone to dial in.

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[11] https://www.ofcom.org.uk/__data/assets/pdf_file/0029/216794/statement-2021-26-wholesale-voice-markets-review.pdf

[12] https://www.legislation.gov.uk/ukpga/2003/21/section/60

Overall, especially in the world of business, conferencing services have become paramount to business collaboration and since the pandemic have noticed a surge in conferencing use.

If we have understood your consultation correctly from our interpretation of 3.78 ("we have revised our proposals to explicitly allow the provision of a service to the caller (e.g. an advice service or a conference call facility) for the 084 and 087 ranges (where revenue sharing with the called party is permitted).") and then A3.76 , then you would want conference access numbers to be migrated from 01/02/03 (inclusive minutes) to 084/087 numbers (service charge + access charge). We see this being a significant problem for a number of reasons:

- Many conference solutions are provided by large multinational IT companies who provide access numbers and moving to 084/087 may force them to cut access to call in options to prevent reputation harm (as they may have no interest in wanting to make money via that mechanism) and furthermore are concerned of the regulatory compliance in providing services on a number range that is not included in inclusive minutes.
- However, in our view, more importantly, this would substantially increase costs for businesses and consumers who use telephony-based conference services where there is a higher probability they may be digitally excluded and/or fall within protected characteristics of the Equality Act 2010. Typically, the cheapest method of utilising/consuming many conferencing solutions is free via an app or web browser. Therefore, by introducing a higher cost entry (i.e on-top of the nominal cost of the customers inclusive minute package (comparable to a broadband package)), those who choose not to or cannot use an app or web browser are being substantially financially penalised not necessarily willingly by the service provider, not by the phone companies, but by the regulator.

In 3.78 you have also mentioned "advice service" being allowed on the 084/087. We feel that this is very broad and would like confirmation that advice services (especially those provided by charities/government departments) that sit on the 01/02/03 number ranges will not be required to move to 084/087 as this in our view substantially decreases the effectiveness of those valued operations. We don't believe this is your intention, however we're failing to see what else you could mean here. We fail to see how "indirect" revenue share could wholly (or significantly) fund an advice service on 01/02/03 numbering (or category 1 if you move ahead with it).

Building on some of the innovation we witnessed during the pandemic and services that have come to fruition that we believe are genuinely legitimate use cases and keep the fixed networks relevant (including readiness should there be another national effecting event which requires a similar response,) then looking at 3.79 we would like you to consider and then confirm that pre-recorded educational and religious content (when consumed in a legitimate way) will not be considered banned in the context of revenue share.

We appreciate the above could be a vector for abuse, therefore we have used the phrase "when consumed in a legitimate way".

Discount incentives for end users

Given the word "indirect" being so broad, we feel that genuine telephony services that utilise incentives, sign-up bonuses, discounts, freemium subscription models could be inadvertently caught up in the term "indirect". Therefore, we'd like clarification that the above incentives would not be classed as an indirect benefit in kind.

Domestic NTS

Many numbers still utilise number translation service (NTS) to redirect a phone call from one number to another, which is one of the oldest services of the telephony networks. Therefore, it could be argued that NTS (where the CP is well integrated) is in part being funded by the termination payment received to the CP conducting the NTS. After factoring in the net cost of the call for the CP, there is a likelihood that if they are well connected, the net cost of the call is zero or even a profit. Therefore, some CPs will provide unlimited packages as the cost base is negligible, zero or even a profit. Therefore, any discount provided on NTS (including unlimited packages) could be argued to be a benefit in kind. Therefore, we'd like clarification that in this use case the status quo is perfectly acceptable and is not the intention of this consultation and therefore will not be classed as indirect.

The "indirect" conundrum and potential solutions

As implied by 3.3 in the consultation, you are attempting to use "the least intrusive light-touch" methodology to "improve clarity and consistency and to remove some incentives which risk misuse of numbers and potential consumer harms". However, as we have hopefully explained well above that for various reasons the opposite (in our view) would most likely occur. Furthermore, the proposals of "indirect" and some of the examples you have mentioned in the consultation actually make things more uncertain and ambiguous and could lead to an increase in disputes rather than a decrease as more is left for interpretation.

We are in support of what you are trying to achieve and recognise (even witnessed in some cases) the harms you have considered. However, our issue is with the modus operandi of applying a blanket ruling on "indirect" in attempt to prevent such harm.

Our sector is at a crucial turning point and it is important that we as CPs are in no way limited in the way we can be innovative and flexible to meet customer demands while promoting effective and efficient use of the telephony networks.

Considering the options available we see several options which all have pro's/con's associated to them and we try to discuss them here:

Option 1: Keep the proposal of "indirect"

Pro: It covers many future use cases of potential harm.
Con: It is a very broad term and many legitimate services would be caught up within it which could result in those with protected characteristics and those who are financially disadvantaged be forced to use more expensive options. Furthermore, it could limit innovation in fear of being classed as indirect benefit in kind and/or create a market distortion where CPs who do not receive termination revenues can provide services without fear of being accused of providing a benefit in kind. Finally, should another Covid like event occur, then the viable options available to businesses, schools and community groups would be severely restricted.

Option 2: Exempt certain services from indirect/benefit in kind meaning

Pro: Provides certainty to the vast majority of services and provides certainty to those who wish to enter with innovative/novel services based on similar solutions/technologies.

Con: There may be services that might not have been thought of which could then provide problems.

Option 3: Introduce a category for 01/02 numbers and only prohibit revenue share in relation to international surcharges

Pro: provides a fail-safe that any service caught in scope of 03 upwards can fallback onto an 01/02.

Con: Customers may want a national presence and would create complexities around discounting.

Option 4: Add a footnote for "indirect*" for both calling and called party on category 1 and possibly category 2 numbers – "* where service is fully funded by revenue share. Indirect part funded service is allowed".

Pro: Very simple. Very clear what is/is not allowed. Resolves concerns around supplier distortion. Future proof. Difficult to see how it could be abused and covers all genuine use cases we can think of.

Con: There could always be a risk that there may be a loop hole (although we cannot think of a way) in which this could be abused.

Question 3.3
(a) Do you consider that there is a need to introduce revenue sharing rules for UK 07 mobile phone calls?
(b) Do you have any view on the appropriateness or benefits of applying such rules also to UK 07 SMS/MMS text and media messages, including to remove a possible incentive for misuse or artificial generation of text message traffic?
(c) Do you have any views on the impact of such a measure on legitimate SMS/MMS-based services?
(d) Do you have any views on whether there would be an increased risk of revenue sharing on the 07 range in light of the other proposals set out in this consultation?

Please provide reasons for your view and any relevant evidence.

(a) – For some of the harms identified in other numbers we feel it is worthwhile there being a dedicated consultation to consider this. The point raised at the end of 3.86 in our view does need further exploring.

(b) – If misuse is reduced, this may reduce costs across the supply chain which will hopefully feed into low pricing for businesses who are making use of SMS which could encourage further uptake in utilising SMS increasing further confidence.

(c) – No

(d) – Given the availability of mobile ranges, it is not hard to guess that if 07 is the only number range that doesn't have revenue share rules in place that illicit traffic may find a way onto these ranges. Therefore, for this reason we feel that it is at least worth considering.

Question 3.4
Do you agree with our proposed approach to implementation in giving six months after the publication of our final decision before our new rules come into force?

Please provide reasons for your view and any relevant evidence.

For reasons highlighted in response to our Q3.1 response, should "indirect" include part funded and services like conferencing/advice services be required to renumber to 084/087 from category 1 numbers then realistically we'd like to see at least 12-18 (possibly even longer) months notice as businesses may be locked into contracts on the current numbers they currently use and also it allows the sector enough time to communicate to their customer base their options moving forward. Furthermore, marketing material may need to be updated.

Question 4.1
Do you agree with our proposal to amend the Numbering Plan to remove the 082 number range?

Yes