

The 03 Number Range - Proposal to confirm that revenue-sharing with callers is not permitted on the 03 number range

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Dear Sir,

Here is our response to the Ofcom consultation described above and we confirm that our response can be published in full.

Lexgreen Services Limited has been involved in the provision of personal numbers, geographic, non-geographic and premium rate number services for a number of years. We have built up a significant business in providing discount international phone calls via premium rate and non-geographic numbers.

We respond to the questions as follows:

Section 3 – Commercial conduct of concern and case for intervention Consultation question 3.1: Do you agree that the modification to the Numbering Plan that we propose – which would prohibit direct or indirect revenue-sharing with callers and/or end-users by those who use 03 numbers – is appropriate and proportionate to address the conduct of concern that we have described in this document? If not, please explain why.

We do not believe that it is appropriate or proportionate to address the conduct that Ofcom and some other large OCPs have concerns with in the manner suggested.

We take issue with Ofcom on several areas. Ofcom are concerned that end users may receive direct or indirect revenue share from calling 03 numbers. We don't have any issue with restricting direct revenue share, as has always been the case, and this is easy to quantify. Direct revenue sharing would mean receiving payment in pounds and pence or any other currency for making calls. However, indirect revenue sharing is very vague and open to interpretation. It will open up opportunities for OCPs to issue speculative AIT notices for whatever reason they see fit. Ultimately calling any service which offers something useful to a caller could be construed as indirect revenue sharing. Common services include conference calling services, calling card access numbers, and call centre numbers. The small revenue received may cover the cost of call routing by the organisation running the service and could be deemed as indirect revenue share. If Ofcom wish to go down this route, they need to provide a specific set of clearly set out and quantifiable rules which confirm what does and does not constitute indirect revenue sharing.

Ofcom have not carried out any reasonable amount of research to substantiate their statements in their consultation document.

Firstly Ofcom state that the economic viability of bundles offered by OCPs would be threatened by consumers using services that are considered to be providing an indirect revenue share. It is not clear why this requires Ofcom to take any action at all. Bundles are a marketing decision and not a requirement for offering any form of telecommunication service. OCPs have plenty of ways to ensure that their customers do not excessively use bundles, including, but not limited to the implementation of fair usage policies to a pre-defined and a specified number of minutes that a consumer can use. There should be no restriction on what a consumer uses their inclusive minutes for, in particular when many purchase bundles which provide a specific number of minutes. It is quite clear that many OCPs provide bundles to their customers fully anticipating them not to use them, and threaten customers when they make more calls than they would like. Many OCPs

also unreasonably restrict what bundles can be used for, for example excluding certain normal number ranges from being called. Innovative services operating on 03 numbers can allow customers to use allowances which they have bought, for which they have no other use for.

If Ofcom feel they should intervene in the marketplace to control how consumers use bundles and influence the costs of these bundles, perhaps they should look to regulate the composition of bundles or outlaw bundles altogether and simplify the market in a similar way to what has happened in the electricity market. On the whole, bundles cost consumers more as it is very rare that someone will make exactly the same number of calls every month and will therefore often pay more than if they had no bundle at all and just paid per minute. The only reason for having a bundle these days is because out-of-bundle charges are truly excessive. Bundles are not provided by OCPs for any other reason, than to increase margins and the costs to consumers. The cost to OCPs in actually providing bundles has constantly fallen, but bundle prices have not. The most recent change implemented by Ofcom was a reduction in costs to terminate calls to geographic numbers. This cost reduction has had no significant positive impact on consumers.

Mobile networks in particular have regularly increased out-of-bundle costs since bundles were first introduced. There appears to be no relationship at all between "out of bundle" call charges and the number of consumers calling 03 services which are deemed to be providing indirect revenue sharing.

Ofcom go on to say that the inflation of traffic through the use of such services could harm the ability of communications networks to provide access to genuine services. Again this is not substantiated and does not stand up to scrutiny. It will be the case that only a small proportion of the general population will use services that provide indirect revenue sharing in ways suggested by Ofcom. In the grand scheme of things, the numbers of minutes to 03 numbers compared with the total number of voice minutes generated in the UK are small. Even if they grew, it seems far fetched to say networks would not be able to cope. A few years ago when dial-up internet access on 0845 numbers was very popular, there were huge numbers of minutes generated on 0845 numbers and communications networks were able to cope without noticeable problems.

Ofcom has not gathered any facts on these volumes, so cannot possibly make any accurate decisions. This fact was confirmed by Ofcom in a freedom of information request.

Ofcom go on to say the reputation of the 03 number range would be harmed if indirect revenue sharing was not prevented. Again, there is no evidence provided to suggest that this would be the case. As far as we can see, the reputation of number range is only harmed when consumers have to pay excessively high prices to make calls. 03 numbers have a good reputation as they must cost the same to call as geographic numbers. Most OCPs charge consumers far more to call 0870 numbers, than 03 numbers, even though the wholesale termination rates are identical. Consumers only care about having a certain and low price to call a number. They are not really concerned about any revenue share, unless they are being ripped-off to make a call.

The damage inflicted on non-geographic numbers in general so far, has mainly been inflicted by OCP's, in particular the mobile networks and Ofcom itself. Mobile networks have continued to charge excessive and varying amounts to call non-geographic numbers and Ofcom has been aware of the situation for many years, without taking any prompt action. The only significant action taken by Ofcom has been the reduction in the termination rate for 0870 numbers. However, the prices consumers pay to call 0870 numbers have not changed very much, despite Ofcom suggesting otherwise when introducing the changes to 0870 numbers. Ofcom is finally taking action with non-geographic numbers generally next year, but it comes many years too late and significant damage to the reputation of non-geographic numbers has already taken place. The action being taken next year has already been delayed before due to procrastination and it would not be surprising if Ofcom delayed implementation again. As far as looking after the interest of consumers in the telecoms market is concerned, Ofcom does not appear to be fit for purpose.

Ofcom suggests that implementing the changes to prohibit indirect revenue sharing would have a beneficial effect of encouraging investment and innovation. This seems unlikely as prohibiting indirect revenue sharing will prohibit most useful services that could run on 03 numbers, as any useful service could itself be deemed as an indirect benefit, and therefore in breach of the proposed changes to the numbering plan.

This consultation appears to suggest that Ofcom are simply going through the motions of a consultation exercise and it is written in a way to suggest that the proposed changes will be implemented in full irrespective of the answers Ofcom may receive. It is also written in a way to suggest that it has been initiated in conjunction with the input and pressure from some large OCPs in the UK to protect their vested interests and prevent their customers from using allowances which they

should be entitled to use as they see fit. A freedom of information request made to Ofcom during the consultation period provides significant evidence that this has been the case.

Section 4 – Relevant legal framework Consultation question 4.1: Do you have any comments on the draft modifications to the Numbering Plan that we are proposing, as set out in Annex 7? Where you disagree with any of the proposed modifications, please explain why.

We disagree with the modifications as proposed. The proposed wording in schedule 1 “Those who Adopt or otherwise use Non-Geographic Numbers starting 03 shall not directly or indirectly share with any End-User or any Calling Party any revenue obtained from providing a service on those numbers.” Is not quantifiable and could be used to suggest that the and service operating behind an 03 number is providing indirect revenue share. For example a company that has an 03 number to that routes calls to a foreign call centre is providing indirect revenue share to a caller as it would cost far more to call the foreign call centre directly. Another example would be a call conference service with no extra usage fees, operating on 03 numbers. An equivalent service operating on geographic numbers may charge an extra fee. Therefore callers to the service on 03 numbers may be receiving an indirect revenue share.

If Ofcom wish to tighten the rules on how termination revenue for 03 numbers can be used, the Ofcom need to provide specific exact rules, not simply introduce a rule that is vague and open to interpretation so that just about any service could be deemed as providing indirect revenue share.

Yours sincerely

Mikael Armstrong
Director