Introduction

I represent a client that wishes to remain anonymous. They operate a number of non-geographic call services acting as (in Phone-paid Services Authority language) the Level 2 Provider, or in Ofcom's language a "Service Provider".

My client is grateful for the opportunity to respond to the Ofcom's "Directory Enquiries" ["**DQ**"] (118) Review: A review of the cost of calling Directory Enquiries (118)" (the "**Consultation**") and hopes that their comments will assist Ofcom in achieving sound consumer outcomes.

The intention of this document is to draw Ofcom's attention to the fact that, in our opinion, this market is broken as there was no cap imposed on Access Charges when the new NGCS regime was implemented.

It appears Ofcom is reviewing segments of markets without looking at the overall picture acknowledging that there is a hole in the regulation on Access Charges, especially the Access Charges of the mobile operators.

This response is using a comparable vehicle to highlight in, our opinion, that Ofcom has failed to regulate the whole market.

Our ICSS consultation response will contain many of the same points, that it is the model in its entirety, not the pieces Ofcom chose to break out, which is broken. A further response (to the consultation on ICSS) will make the point that many ICSS services have been necessary since the Government changes to aftercare numbers which saw many customer service numbers disappear as they were no longer a revenue stream. Therefore, promoting the growth of a genuine service.

The Access Charge

In this Consultation, Ofcom has referred to "bill shock" but has not, *prima facie*, distinguished between shock derived from the total cost of the call versus shock relating to the Service Charge in isolation. In my client's experience with consumer complaints, consumers focus on the total cost of the call and the Access Charge can be a significant amount of this.

As an example, a 90 second call from an EE or Vodafone mobile will cost an additional 82.5p on top of the per minute charge – over 26% of a call made to a number with a Service Charge at the proposed cap of £3.10. Consumers will often be unaware until they see the bill that a significant amount of the overall charge will be the originator's Access Charge.

In my client's view, Ofcom has focused too much on the service providers' charges at the expense of demonstrable harm arising from the originating communications providers' charges, especially that of the Access Charge from the mobile operators, whose charges are often a quarter of the total cost to consumer. Kantar Media's research, while thorough in other areas, has not differentiated between these elements of the cost and this may have left Ofcom's conclusions on a weak foundation.

In the April 2012[1] Consultation, Ofcom predicted a single mobile Access Charge of 16.1ppm; in real terms this is 16.9ppm today, however EE and Vodafone's Access Charge is now 3.25 times higher than originally predicted in 2012 (EE[2] and Vodafone's[3] Access Charge is 55 pence per minute)

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[1] https://www.ofcom.org.uk/consultations-and-statements/category-1/simplifying-non-geographic-no

[2] https://ee.co.uk/help/help-new/billing-usage-and-top-up/call-text-and-data-charges/charges-for-calling-non-geographic-numbers

[3] https://www.vodafone.co.uk/help-and-information/costs-and-charges/call-and-text-charges

Furthermore, my client recalls that Vodafone's initial Access Charge was announced in the run-up to the July 2015 non-geographic calls services regime change and was immediately varied upwards when EE announced a higher one than them.

The European Commission's definition of joint dominance (or collective dominance) is;

> *A collective dominant position exists where, in view of actual characteristics of the relevant market, each member of the dominant oligopoly in question, as it becomes aware of common interests, considers it possible, economically rational, and hence preferable, to adopt – on a lasting basis – a common policy for their market conduct with the aim of selling at above competitive prices, without having to enter into an agreement or resort to a concerted practice within the meaning of Article 101 of the Treaty and without any actual or potential competitors, customers or consumers, being able to react effectively.*

The actions of Vodafone and EE would appear to be a case of anti-competitive (anti-trust) behaviour and my client remains surprised that Ofcom has not sought to use either its retail price control powers (which have been used to intervene in the free to caller market, for example) or its Competition Act 1998 powers in respect of this.

We do not believe that consumers shop around for the best Access Charge, despite it potentially making a material difference to the cost of ownership of their contract. We urge an urgent review given the obvious failure of the market to live up to expectations.

Magnitude of the Cap

BT's directory enquiries service, a monopoly at the time, was priced at 25p in September 1994, and increased in February 1998 but only to 45p[4] – in real terms, even O2's (lower cost) service is between twice and four times the cost in real times (depending on which historic BT price is used in comparison). £15.98, in real terms is nearly *fifty times* the lowest historical price in real terms, an enormous increase.

Clearly, the liberalisation of the DQ market has unfortunately not resulted in lower costs for consumers despite Oftel's good intentions at the time.

How can the deregulation of the market and introduction of competition lead to such a negative outcome for the consumer? This isn't just a negative outcome on the price alone, Ofcom's own conclusions in the Consultation are that there has not been substantial innovation to mitigate the effect.

Ofcom's proposed cap of £3.10 per 90 seconds is comparable to BT's current pricing level for its service, however this is still between 4 and 7 times the amount in was in the 1990s when it held a monopoly.

This is especially exasperating for my client because they operate Information, Connection and Signposting ("**ICSS**") services on fixed fee numbers. My client has elected to take the risk of long duration calls and not to penalise the consumer by adding additional minute costs, thereby providing

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[4] At the point of deregulation in December 2002, BT's 118500 service was charged at 30ppm plus 25ppm (41.5ppm and 34.5 ppc in real terms).

value for money. However, the customer is still taking the hit of the high Access Charge for the longer duration call. My client has tried to make the cost of a call as simple as possible by making it a fixed price however the additional Access Charge can still create a bill shock for consumers.

EE and Vodafone's Access Charge is 55 pence per minute; it is obvious where bill shock originates from in that scenario when the lion's share of the call charges is gross profit for the Originating Communications Provider; a gross profit that increases as a percentage of the call cost on a fixed fee range for each additional minute that passes.

We believe Ofcom has ignored substitutes in their economic analysis in the Consultation. If the market is defined as "reducing economic search costs by way of a charge to a telecommunications bill" then clearly the far better value ICSS services have to be considered alongside DQ. In absence of ICSS, how many more harmful DQ calls would have been made?

Given the ICSS consultation has been published on whether ICSS utilising 084 numbers should also be regulated by the PSA, we would add this is a move which my client welcomes. We also respectfully suggest that the analysis of the situation regarding DQ and ICSS is conducted in parallel because both services overlap in terms of the target market and additionally both consultations raise significant questions for Ofcom to address in relation to the Access Charge.

In conclusion, the ever-increasing Access Charges by the Mobile operators needs to be addressed by Ofcom before a clear and fair understanding of consumer cost complaints regarding DQ, or indeed any other Premium rate business, can be considered.