



BT Group Response

Ofcom consultation on Business
messaging - Review of the A2P SMS
termination market



8 April 2025



BT Group



Executive summary

Ofcom is wrong to conclude that it is appropriate to introduce Significant Market Power (“SMP”) regulation in the Application to Person (“A2P”) SMS market. Ofcom has reached this conclusion as it has chosen to take a very theoretical and narrow economic analysis of market definition and of its justification of the SMP finding, one that is not based on the current and future realities of this competitive, well-functioning market:

- **Key aspects of the market are fundamentally ignored**, with insufficient account taken of:
 - The fact that customers are highly satisfied by the A2P SMS product and its pricing.
 - The presence of a plethora of substitutes, many of which are rapidly increasing their market share and constrain A2P SMS pricing¹. Ofcom’s analysis is materially undermined by its focus solely on the method via which a message is delivered to a mobile phone (where Ofcom considers only on the ability to terminate an SMS message on a mobile number range held by an MCP) rather than the customer demand/purpose of the product – which is to deliver a message from a business sender to a recipient.
 - The ease of switching to alternative communication methods, supported by platforms facilitated by aggregators.
- **Ofcom significantly oversimplifies its assessment of pricing:**
 - Pricing for different services reflects their *value* to users and should be considered against counterfactuals set out in Ofcom’s research i.e. missed appointments, lost restaurant bookings, failed deliveries.
 - Real terms analysis of historic pricing of A2P SMS – which Ofcom has not undertaken – shows prices have been flat over the last five years for the cheapest products, which are more likely to be used by the most efficient senders of messages.
 - Ofcom has elected not to use any forecast data to support its supposition that mobile communications providers (“MCPs”) would have the ability or incentive to increase prices over the review period.

Accordingly, Ofcom has not demonstrated to the required standard under s79 Communications Act 2003 (“CA03”) that there is a relevant market in which Ofcom is empowered to make a market power determination.

Ofcom fails to take account of the fact that business messaging services provided via A2P SMS are competitively constrained by substitutes today and will continue to be so during the review period – including a range of non-number-range based substitutes that are both provided and used alongside A2P SMS to business senders.

These errors have important implications for the subsequent SMP assessment. The existence of these constraints today demonstrates that barriers to entry are neither high nor non-transitory.

Ofcom also fails to engage meaningfully in an assessment of whether competition law alone is sufficient to address the market failures Ofcom concludes it has identified. Ofcom has not established why targeted action against those actors pricing above what it deems to be a competitive level using Ofcom’s competition law powers would not be a more proportionate remedy, rather than a blanket cap penalising all MCPs [REDACTED]

Moreover, this proposed intervention would be unique in Europe and is wholly incongruent with the drive to reduce unnecessary regulation on business. This is particularly critical in relation to the mobile sector, where Ofcom and the Government agree that improved connectivity, through greater network investment, will be a critical driver of economic growth. Unnecessarily restricting future revenue opportunities will further limit funding available for investment and will have an outsized impact relative to the very small customer benefit (c.£30m) that Ofcom assesses this intervention may create.

¹ [REDACTED]

1 Introduction

- 1.1 Ofcom’s proposed price cap in the unduly narrowly defined A2P SMS market marks a shift in the regulation of electronic communications services (“**ECS**”) in the UK, marking the first time that SMS will be subject to SMP regulation. It goes against the conclusions of regulators elsewhere in Europe and the rest of the world given the UK will be alone in regulating SMS amongst countries which apply the SMP framework.²
- 1.2 BT does not consider that this intervention is warranted based on the evidence cited by Ofcom, nor by the experience of users, who appear happy with the service they receive in using SMS and choose to continue to use them even as new alternatives appear in the market.
- 1.3 In the remainder of this document, we set out the following:
- i. In Section 2, we discuss the wider structure of the market, which we consider to be far broader than simply A2P SMS, and outline the value of SMS to users (both senders and receivers). Given this context, we believe that Ofcom’s market analysis exercise is flawed – and that the relevant market has been defined too narrowly by Ofcom.
 - ii. In Section 3, we outline mischaracterisations in Ofcom’s historic analysis of pricing which limit its utility as a model for describing pricing behaviour by MCPs. We do not believe that Ofcom’s pricing analysis is robust enough to suggest that prices have gone up above the level described in Ofcom’s SSNIP test – nor that senders of messages would not switch to alternatives should such a price increase take place in future.
 - iii. In Section 4, we set out the implications of (i) and (ii) for Ofcom’s conclusions that the criteria set out in section 79 of CA03 have been satisfied.
 - iv. Finally, in Section 5, we set out the limited benefits and substantive risks of the intervention.
- 1.4 Please note, BT has jointly commissioned separate economic analysis which has been performed by the economic consultancy Oxera. While this will be shared separately, we fully endorse the conclusions of that report.

² See Assembly Research (2024) [Is it time to regulate SMS?](#) Accessed 2 April 2025

2 The business communications market is functioning well

The range of options for business-to-customer communications is broad and use case-specific

- 2.1 The market for business-to-customer communications is broad, diverse, and well-functioning.
- 2.2 Today, retail users³ of this market have the choice of a wide range of both ECS and non-ECS when they wish to engage with their customers.⁴
- 2.3 These include alternatives described in Ofcom's consultation document, but also a much wider group of services which Ofcom does not consider at all – flash phone calls⁵, voice calls including ['automated' calls](#) for verification purposes, third-party apps (Microsoft Authenticator, Passkeys⁶), and letters (which are used extensively by the [NHS](#) and other [public service providers](#), for example).
- 2.4 There has been substantive growth across a whole range of communications channels in recent years due to both wider societal changes (e.g. the increasing popularity of 'digital' services) and innovation on the part of wholesale platforms. We expect this to continue over the prospective review period, as wholesale market participants seek to gain market share and increase revenues through innovation – particularly on price.⁷
- 2.5 In this context, retail users can choose services based on a range of factors, including price, quality of service, reliability, relative coverage and user 'engagement'. Our experience suggests they are also highly likely to consider the specific use case when deciding which method to use to contact their customers. A financial services institution, for example, seeking to perform authentication is likely to consider different factors when choosing a communications method compared with a restaurant seeking to confirm a booking.
- 2.6 This is highly relevant for Ofcom's market definition exercise as it suggests a far broader market than simply A2P SMS, encompassing the plethora of options which are employed by retail users to engage with customers. We set out some of the potential alternatives to A2P SMS – the majority of which are not discussed by Ofcom – in Figure 1.

³ We use the same nomenclature as Ofcom – i.e. retail users are senders of messages

⁴ We note that not all use cases for A2P SMS require active customer 'engagement' – authentication, for example, might be performed by substitutes such as flash calls or 'hidden' SMS which do not require action on the part of the customer.

⁵ [Flash phone](#) calls are automated instant calls which are dropped to check whether a phone number is valid.

⁶ [REDACTED]

⁷ See – for example – the introduction of Meta's [new](#) per message pricing model starting in July 2025

Use case	Substitutes	Discussed in Ofcom consultation?
Authentication	Proprietary apps Banking, NHS etc.	Yes – but no volume data
	Third party apps ⁸ Passkeys, Authenticator	No
	Email	Yes – but no volume data
	Online services WhatsApp Business, RBM	Yes
	Flash phone calls	No
	Phone calls	No
Reminders Appointments, bookings etc.	Proprietary apps	Yes – but no volume data
	Email	Yes – but no volume data
	Online services WhatsApp Business, RBM	Yes
	Phone calls	No
	Letters	No
Marketing	Proprietary apps	Yes – but no volume data
	Email	Yes – but no volume data
	Online services WhatsApp Business, RBM	Yes
	Phone calls	No
	Letters	No

Figure 1: Possible methods for A2P communications and the extent to which they are considered by Ofcom

2.7 It is self-evident that some communications methods might not be appropriate for all use cases. However, it does not follow that Ofcom should not discuss possible alternatives in its market definition exercise, still less that it should not seek to understand the extent to which these substitutes will grow relative to SMS over the review period.

⁸ By this, we mean apps branded/administered by third parties but which perform functions on behalf of a retail user – e.g. Microsoft Authenticator

There is substantial and substantive evidence of switching and substitutability

2.8 Ofcom’s failure to adequately consider the full suite of alternatives available to retail users is compounded by its decision to not include any forecast in its market analysis exercise.

2.9 [REDACTED]. Google, [for example](#), has elected not to use SMS for its authentication purposes for its Gmail service, while many financial services institutions are [phasing](#) out text messages, both for [administration](#) purposes and authentication. [REDACTED]

[REDACTED]

Figure 2: [REDACTED]

2.10 [REDACTED]

2.11 [REDACTED]

2.12 This substitutability is facilitated by the widespread availability of platforms – often marketed by aggregators – which allow retail users to ‘cherry pick’ which communications method is most appropriate for their given use case, sometimes even for the same instance of communication (e.g. a reminder for the same medical appointment).

2.13 To give one such example, the aggregator [REDACTED] markets a product through which email, SMS and WhatsApp Business are all sold as part of the same bundle for a fixed monthly fee. Retail senders with a subscription can send communications of any type included in the bundle up to a specified volume limit, with further ‘ancillary services’ (including management of data protection compliance) also available.

2.14 Many NHS providers in England, meanwhile, have access to a single platform, developed on a bespoke basis, which builds in a ‘fallback’ option, meaning that users who do not reply to a notification on the proprietary app within a specified timeframe will receive an SMS message. We set this out in Figure 3. This clearly shows that where a method of communication fails to trigger a user response, the NHS substitutes it with an alternative communication method.

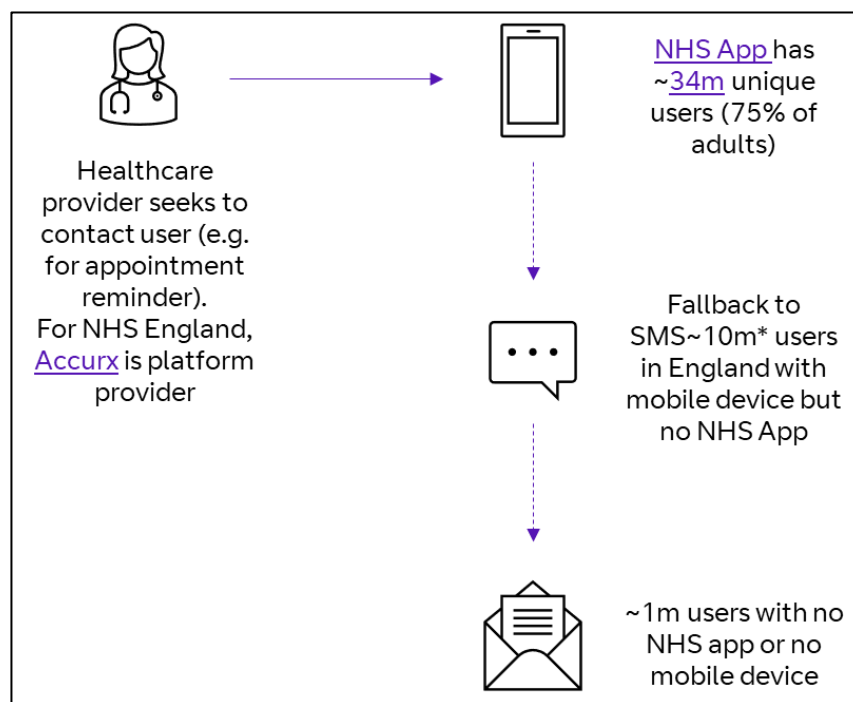


Figure 3: Example of how platform ‘tiering’ works in example of NHS England

- 2.15 It is unclear why Ofcom has not considered this market feature given its relevance to any discussion of substitutability. Indeed, much of the data on alternatives which Ofcom has omitted from its analysis (volumes for alternatives, forecasts for future use) would be available from aggregators on the basis they market them to retail users.

Application-to-Person SMS is priced according to the value it provides to users

- 2.16 In this context, continued preference amongst certain retail users for A2P SMS should be understood as a reflection of the value that it delivers to their respective organisations. Retail users are not ‘captive’ in A2P SMS markets, nor do they choose to continue to pay for the service due to inertia. Rather, they elect to use SMS because of the importance of it to their commercial/operational effectiveness.
- 2.17 In circumstances where business senders are freely able to switch to substitute products/services that can send messages to their customers, Ofcom cannot infer from the fact that business senders exercise their commercial freedom to continue purchasing A2P SMS as determination of market power. As much is clear from the Competition Appeal Tribunal’s (“CAT”) judgment in *Le Patourel v BT*, where the CAT concluded the principle that: “[...] the ability to switch and the fact of switching (or not switching) can be relevant to economic value”;⁹ and “Put another way, it may be possible to infer that those who stay with the product have actively chosen to stay (since it was open to them to switch but they have not) because they subjectively attach a positive value to the product or the brand [...] in principle, we consider that the phenomenon of switching can be legitimately relevant in this way.”¹⁰
- 2.18 Simply put, the fact that some retail users do not switch away from SMS [REDACTED], despite some price increases from certain MCPs, cannot itself support the conclusion that MCPs hold market power where pricing and volumes increase.¹¹ Customers remain because they *value* the service and view the pricing as good value for that service. As much is confirmed by Ofcom itself: “In particular, the evidence presented in Section 4 indicates there is not much willingness from business senders to materially switch away from A2P SMS when faced with a SSNIP as they see it as an affordable and effective product that meets their needs.”¹²
- 2.19 This concept is particularly clear when the use of SMS is considered against the potential ‘costs’ to retail users of lost revenue stemming from missed appointments and bookings, unsuccessful marketing campaigns from a lack of end user engagement and failed authentication ‘journeys’ which require further user engagement (and might even present a security risk). In other words, retail users (senders) of SMS are neither disengaged nor captive – rather they are prepared to pay (more) for a SMS because of the benefit it offers them.
- 2.20 Ofcom’s own research confirms this – with multiple users from a range of sectors describing how SMS provides them with a ‘cost-effective channel of communication offering a good return on investment’ that is ‘definitely worth it in the long run and worth that little bit extra cost’¹³ – so much so that some even specify they would be prepared to pay more for the continued availability of SMS.
- 2.21 On this basis, where customers are expressly telling Ofcom that they think the price of A2P SMS represents good value for the service (which includes an account of the benefits accruing to the customers themselves as discussed above), the case for regulatory intervention is entirely unclear and unsubstantiated.

⁹ *Le Patourel v BT Group plc* [2024] CAT 76, paragraph 960.

¹⁰ *Le Patourel v BT Group plc* [2024] CAT 76, paragraph 961.

¹¹ Ofcom Consultation, paragraph 5.44.

¹² Ofcom Consultation, paragraph 5.18.

¹³ Ofcom A2P Business Sender Research

By failing to consider the evidence above, Ofcom defines the market too narrowly

- 2.22 Ofcom has made substantive errors in its market definition exercise: the existence of a plethora of substitutes has not been considered; there is a failure to provide any forecast data regarding expected volumes for different services during the review period; and the preferences of retail users are disregarded.
- 2.23 Even a cursory analysis using data available in the public domain/information held by BT suggests that Ofcom has defined the market for A2P SMS communications too narrowly.
- 2.24 It is our assessment that this error undermines Ofcom's subsequent SMP finding. We discuss further in Section 4.

3 Ofcom's pricing analysis

- 3.1 The assessment of price in Ofcom's consultation oversimplifies the dynamics of the A2P SMS market. It overstates the (historic) pricing freedom of MCPs and uses this evidence to suggest that MCPs have (had) the ability and incentive to increase prices above the competitive level.
- 3.2 There are three mischaracterisations in this pricing analysis, however:
- i. Ofcom makes the supposition that 2020 is a competitive price point on which to base the case for regulatory intervention – in fact there is no evidence for this.
 - ii. Ofcom aggregates historic pricing data across the market, so the approach of individual terminators is impossible to determine.
 - iii. Ofcom uses nominal rather than real pricing in its assessment, risking materially overstating the impact of any price rises on retail senders. On the contrary, there is clear evidence that prices have been flat in real terms for some retail senders over the period considered by Ofcom.

The reasons for Ofcom's supposition that 2020 is a competitive price point are unclear

- 3.3 Ofcom has provided a limited rationale and evidence to support its supposition that a stable price (over a short time period) is “a reasonable reference point of what a competitive price level could be”.¹⁴ If Ofcom decides to continue with its proposals, it should first provide more detail on why it considers this to be the case, whether prices should only be considered ‘stable’ if they do not change over a specific timeframe and how an unchanged rate would be considered in an inflationary environment (which would mean a price fall in real terms). In particular, Ofcom should provide greater clarity on the underlying economic theory which underpins this supposition.
- 3.4 While we do not agree that price regulation is warranted, we agree with Ofcom that the main two alternative approaches for setting the maximum price for A2P SMS termination are to (i) set an upper bound cap based on MCPs' reasonably incurred costs of providing A2P SMS termination allowing for a fair return on investment (i.e. a “cost-based” cap), or (ii) setting a cap without explicitly tying it to Ofcom's estimate of such costs. We also agree that – if any remedies were indeed warranted – the latter would be preferable to the former to minimise the regulatory burden on MCPs as it would not require the provision of detailed cost information (including a reasonable attribution of common costs to A2P SMS termination services).
- 3.5 We disagree, however, with Ofcom's view that setting a cap based on the prices charged by the four MNOs in December 2020 is appropriate simply due fact that they were broadly stable and similar, thereby suggesting they were competitive. Prices simply happened to be similar during that period. Rather, we believe prices were competitive then for the same reasons they continue to be competitive now, i.e. because they're reflective of:
- Competitive constraints (see section 2 above);
 - The specific offering of each MCP – such as investments in quality of service such as scams prevention (see section 4 below) but also where MCPs have provided specific commercial offerings such as volume discounts [REDACTED];
 - The economic value ascribed by customers [REDACTED]
 - The cost base of each MCP.

¹⁴ See Ofcom Consultation, [paragraph 6.59](#)

3.6 Moreover, Ofcom has – for a reason not specified – limited its pricing analysis to a short period of pricing for A2P SMS, which happened to also be an extraordinary period (in terms of rising volumes). Yet longer term analysis strongly implies that prices remain low in real terms compared with historic averages. [REDACTED]

Ofcom's aggregation of pricing implies higher pricing across the market

3.6 Ofcom has chosen to rely on aggregated standard highest/lowest prices across the market in its analysis, with volumes data from aggregators only being provided by the largest senders.¹⁵ An approach which more closely reflected market dynamics would focus on weighted average price per message – on a per MCP basis or based on volumes across the market. This would allow sufficient detail on the actual price paid for termination rather than simply a description of list prices.

3.7 Ofcom's decision to design its analysis implies that prices for termination were higher than those actually paid by purchasers. There are two reasons for this:

- a) First, it masks where MCPs might have fundamentally changed their pricing model (e.g. from volume discounts to single 'spot prices'), meaning that the 'long tail' of (smaller, lower volume) aggregators who might have paid a lower price following the change might not be captured. [REDACTED]
- b) Secondly, the 'highest possible price' (if including off-net pricing) would only be paid for termination by aggregators who had elected to route all their traffic through a single MCP, with messages then forwarded on via the interconnect route between MCPs. In reality, this inefficient routing is only used sparingly by aggregators who instead choose to direct messages to the correct MCP in the first instance (and therefore benefit from the lowest price).

Use of nominal rather than real-terms prices also suggests that prices were lower than Ofcom claims

3.8 Ofcom's use of nominal rather than real prices in its historic analysis in the period 2019 – 2024 ¹⁶ overstates the impact of price changes on aggregators. A more reasonable pricing benchmark would take account of inflation in its characterisation of historic prices.

3.9 To demonstrate this, BT have converted the figures published in Ofcom's consultation document to reflect real terms prices (from nominal) for A2P SMS termination prices for each quarter between 2019 Q2 and 2024 Q2 at Figure 4.¹⁷

¹⁵ See Ofcom Consultation Figure 3.7 and Ofcom Figure 3.8

¹⁶ See Ofcom Consultation paragraph 3.59

¹⁷ We have converted nominal prices into real prices by applying the Consumer Price Index (CPI) inflation index published by the [ONS](#).

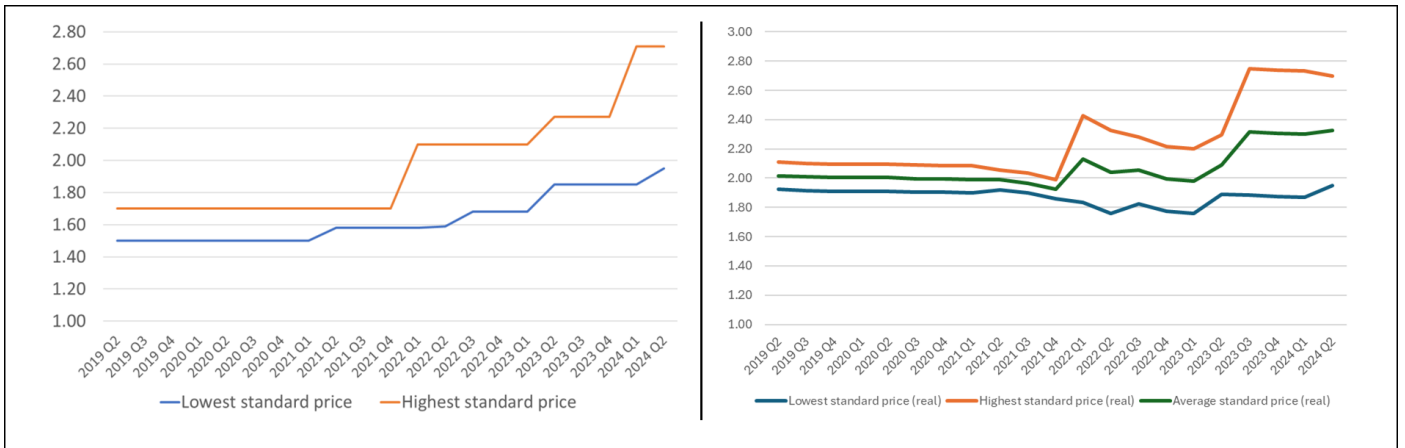


Figure 4: Comparison of Ofcom's Figure 3.7 (left hand graph) with BT analysis of A2P SMS termination standard prices (CPI-adjusted prices, 2024 Q2=100) based on Figure 3.7 in Ofcom's consultation document (right hand side)

3.10 This analysis is instructive. It shows broadly flat real terms standard (rather than bespoke) pricing for the lowest cost termination services over the period. Indeed, the compound annual growth rate (CAGR) for the lowest priced messages is around 0.3% and for the highest priced messages around 6.4%. [REDACTED]

3.11 [REDACTED] We discuss the implications of this on Ofcom's conclusions on SMP finding in section 4.

4. Ofcom's conclusions and SMP finding

4.1 Ofcom identifies the three broad analytical stages of a market review that it must carry out to find SMP and regulate a market: “(i) the identification and definition of the relevant markets (the market definition stage); (ii) the assessment of competition in each market, in particular whether the relevant market is effectively competitive (the market analysis stage); and (iii) the assessment of appropriate regulatory obligations (the remedies stage).”¹⁸

4.2 Ofcom's relevant market for the purposes of the SMP assessment is: “wholesale A2P SMS termination services that are provided by each terminating MCP to third parties (including Aggregators and other CPs), for the termination of A2P SMS to the mobile numbers allocated by Ofcom to that terminating MCP (excluding any ported-out number), and to any ported-in mobile number, in the area that it serves.”¹⁹

4.3 In summary, this section demonstrates that:

- a. **Ofcom's relevant market has not been defined correctly pursuant to s79 CA03** and has not completed limb (i) above.
 - i. For the reasons set out in Section 2 above, Ofcom has erred in the finding of such a narrow market definition, which has dismissed the range of substitute products that are available even today (let alone any consideration of supply-side substitutes or sources of potential competition, which Ofcom does not consider at all) without full and proper analysis on a forward-looking basis. Importantly, Ofcom is wrong to limit its market definition and its frame of reference solely to SMS products that can be terminated on a number-range held by MCPs. In doing so, Ofcom fails to properly consider and give weight to the competitive constraints offered by (wholesale) non-number-range based products/services that deliver business messaging today and on a forward-looking basis.
 - ii. Simply put, through a focus on termination of communications to mobile-number ranges only, Ofcom unnecessarily and incorrectly blinkers itself and its relevant market analysis solely to SMS products, in circumstances where most (if not all) of the substitute products use non-number-based delivery mechanisms to compete effectively with SMS e.g. via OTT data services.
 - iii. Further, given the diversity and vibrancy of the solutions offered at the retail level that sit in the context of a dynamic and technologically developing market, it is not clear that Ofcom has adequately identified an issue with effective competition in retail markets at all that would justify ex-ante regulation at the wholesale level.
- b. In failing to correctly identify a relevant market, **Ofcom has not established any of the ss79 (2A) and (2B) CA03 elements sufficiently to establish that the relevant market is not effectively competitive**, and has not completed limb (ii) above:²⁰
 - i. In failing to properly consider and give weight to the competitive constraints offered by non-number-range based products/services that deliver business messaging today and on a forward-looking basis, Ofcom's analysis becomes flawed and circular. Ofcom justifies a finding of SMP not according to the capabilities of alternative products/services to deliver a business sender's message to a mobile device (which is the purpose of A2P SMS), but

¹⁸ Ofcom Consultation, paragraph A6.6.

¹⁹ Ofcom Consultation, paragraph 5.13.

²⁰ ss79(2A) and (2B) CA03 preclude Ofcom from making a market power determination in respect of a relevant unless it can demonstrate that: high and non-transitory barriers exist, that the market structure will not tend towards effective competition within the review period, and that competition law alone is insufficient to adequately address the identified market failure.

rather according to the *method* by which an A2P message is delivered – i.e. termination on the mobile number ranges held by the MCPs. Here Ofcom’s analysis is fatally undermined where its relevant market analysis in Section 4 of the consultation – and therefore the application of the s79(2B) CA03 criteria in Section 5 of the consultation – structurally fails to allow consideration of any alternative products due to the fact that the substitute products that compete with A2P SMS today (let alone over a forward-looking period) analysed by Ofcom do not require access to the mobile number range held by the MCP to deliver the same (and, as acknowledged by Ofcom, often improved) messaging functionality to business senders and receivers than that provided by A2P SMS today. In this sense, barriers to entry are already low as substitutable products compete strongly with SMS today; and will indeed continue to compete effectively with SMS on a forward-looking basis within the review period.

- ii. Accordingly, Ofcom has failed to demonstrate that the MCPs hold significant market power in a relevant market.
 - iii. Finally, Ofcom has failed to undertake sufficient analysis under s79(2B)(iii) CA03, which requires Ofcom to consider whether competition law would be sufficient to adequately address the alleged market failure without the need for regulation.
- c. Even assuming that Ofcom had correctly identified that the MCPs hold such market power (which is not conceded), Ofcom’s approach to remedies is not appropriate or proportionate, and has not completed limb (iii). We set out material risks resulting from Ofcom’s intervention here and further in Section 5.

Ofcom has not correctly identified a relevant market for the purposes of making an SMP determination

4.4 In response to Question 1 of the Consultation, BT does not agree with Ofcom’s provisional conclusion regarding market definition.

4.5 Ofcom’s application of the hypothetical monopolist test (“HMT”) identifies “*wholesale A2P SMS on-net[work] termination*” as the focal product for its assessment of whether a party/parties hold market power in relation to business messaging services.²¹ Ofcom seeks to establish whether customers would switch to alternative retail and/or wholesale products in response to a 5- 10% price increase for wholesale A2P SMS on-net termination above the “the competitive level”.

4.6 Ofcom concludes that the relevant market for the purposes of the SMP assessment is: “*wholesale A2P SMS termination services that are provided by each terminating MCP to third parties (including Aggregators and other CPs), for the termination of A2P SMS to the mobile numbers allocated by Ofcom to that terminating MCP (excluding any ported-out number), and to any ported-in mobile number, in the area that it serves.*”²²

4.7 For the reasons set out below, Ofcom has failed to correctly identify a relevant market.

Ofcom fails to consider the range of substitutable products at the retail level adequately

4.8 Having identified the focal product (wholesale A2P SMS on-net termination), Ofcom then proceeds to consider substitutes that are available to retail customers (i.e. business senders) in response to a 5- 10% price increase for the wholesale A2P SMS termination rate. Ultimately, Ofcom concludes that customers would not switch to these substitutes in response to an increase.

4.9 However, as set out in Section 2, **Ofcom has failed to conduct properly a market definition exercise where it does not account at all in its analysis for a significant number of products that are substitutable with A2P SMS** for the purposes of business sender messages to a recipient. *Figure 1* above presents the range of

²¹ Ofcom Consultation, paragraph 4.14.

²² Ofcom Consultation, paragraph 5.13.

substitutable products available to business senders to communicate messages to their recipient customers that are available at least today, regardless of any further consideration of forward-looking sources of potential demand-and-supply-side substitution and potential competition. It is incumbent upon Ofcom under ss79(2A) and (2B) CA03 when determining a relevant market to consider, at the very least, the products that are currently available and that are proven demand-side substitutes to senders to communicate to their customers today. In doing so, the analysis should include, *at least*, those products that are offered: (i) by the aggregators themselves, whose complaints are understood to have initiated this market review (such as authentication services); and (ii) by the business senders themselves – whether procured via third party services or administrated themselves (such as email, proprietary apps and (flash) calls).

4.10 Even for the products that Ofcom has taken into account in its analysis, it ignores the very real evidence of switching that has taken place. In fact, there have been several instances of real competitive constraint being exerted over providers of A2P SMS by, and switching to, substitutable products that should be considered as forming part of the same relevant market:

- a. [REDACTED] Most notably, Microsoft has switched from SMS to WhatsApp for Business for authentication services. This switching provides clear evidence that barriers to entry to compete with A2P SMS are sufficiently low for (non-number-range based) services such as WhatsApp for Business to be a credible competitive constraint and undermines Ofcom’s conclusions on the appropriateness of suitable alternatives. For example, Ofcom interprets its business research to find that there is a barrier to switching to WhatsApp for Business caused by the need for receivers to download an app and be connected to data. However, such conclusions are undermined specifically in the case of Microsoft’s switch to WhatsApp for Business, where the acceptable ubiquitous coverage threshold is at least as low as WhatsApp’s adoption rate in the UK (reported by Ofcom as being 87% of UK adults) and where 90% of the population has a smartphone (i.e. a devices with a data connection).²³ It is not credible in these circumstances for Ofcom to maintain that barriers to switching to alternatives such as WhatsApp are high and that such products are not credible competitive constraints on SMS where a business sender of the scale of Microsoft has elected to switch its supply away from A2P SMS. Business senders very clearly consider (at least) WhatsApp for Business to be a substitutable product with A2P SMS in the same relevant market.
- b. **Aggregators and other intermediaries have launched propositions that bundle such substitutes with A2P SMS** to offer senders the *choice* as to which product best meets their particular use requirement.
 - i. Ofcom concludes that there are switching and effort costs that preclude business senders switching to other services.²⁴ Strikingly, Ofcom reaches this conclusion without any evidence, noting: *“While we do not have quantitative evidence on the scale of associated costs/effort required for business senders to obtain consent or undertake other changes required in order to switch to other business messaging channels, to the extent that these are material, they may act as a barrier to switching in response to a 5-10% increase in SMS prices.”*²⁵
 - ii. These conclusions are undermined by the evidence in Section 2 above, which shows: (i) the bundling of different products into one service by aggregators; and (ii) the prevalence of cascading between different products/services – where most (if not all) of these products/services use non-number-range based solutions as an alternative to A2P SMS. Importantly, these practices rebut a central position that appears to be taken by Ofcom in its analysis of the competitive constraints on A2P SMS: that such alternatives must be an effective substitute for all message types, senders and recipients of A2P SMS today. As discussed at paragraphs 2.11–2.15 above, aggregators are including at least SMS and

²³ See Ofcom Consultation, paragraph 4.30 and footnote 89, respectively. We note that the figure provided for smartphone adoption is derived from June 2023 population estimates – almost 2 years old – which suggests that this number may be higher still today.

²⁴ Ofcom Consultation, paragraph 4.58-4.62.

²⁵ Ofcom Consultation, paragraph 4.61.

WhatsApp in the same service, including with flat pricing between the two products, whilst also offering email and authentication services/verification services.²⁶ Further, the prominence of cascading between products and services used as fallback methods demonstrates that switching between products is neither technically nor practically difficult to implement – indeed, the availability of cascading demonstrates **market solutions have been developed (by the aggregators themselves) to facilitate switching without the need for regulatory intervention.** That inter-platform solutions may emerge and be credible demand-side substitutes is provided for by the SMP Guidelines – which Ofcom has elected to apply in the consultation:²⁷ “*At retail level, technological developments have generally led to inter-platform competition, as retail services have been found to be equivalent and increasingly interchangeable.*”²⁸ Each of these market solutions demonstrates that barriers to switching are not high and that alternatives for A2P SMS can be deployed when and where preferred by the sender, according to the message type and their recipient as required.

- iii. Ofcom is therefore wrong to dismiss such non-number-range based services in its analysis of barriers to entry and expansion in Section 5 of the consultation. Under the statutory framework, Ofcom is obliged to have regard to “*other sources of competition behind the barriers to entry.*”²⁹ Such services have entered the business communications market and are being offered alongside A2P SMS in the same offering. These act as competitive constraints on A2P SMS today and will continue to do so on a forward-looking basis.
- c. The deployment of RCS business messaging, which “*may now be available by default to comparable numbers of smartphones as those that can be reached by A2P SMS*”³⁰, is now being made available by MCPs [REDACTED] even before Ofcom’s proposed regulatory intervention takes effect.³¹ **On a forward-looking basis, it is not credible for Ofcom to determine that RCS business messaging will not be a significant competitive constraint on A2P SMS** even in 2025 alone where it would be available by default, let alone over the next three-year period, to which senders will likely switch. It is concerning that Ofcom appears to base its conclusions that RCS business messaging is not a competitive constraint entirely on user perception gathered through its survey evidence³² which, as highlighted by the Oxera report, may not be sufficiently robust to have allowed for proper consideration by participants of the alternatives to A2P SMS.³³ [REDACTED]

Ofcom’s switching analysis is materially undermined by a lack of pricing data and analysis for the A2P SMS substitutes

- 4.11 There is no **historic pricing data analysis** on a like-for-like basis for the majority of possible substitutes to A2P SMS set out in section 2 to support Ofcom’s narrow market definition. For example, Ofcom provides only the current pricing for WhatsApp for Business³⁴, with no analysis of WhatsApp for Business’s historic pricing trends since the service became available c.2018. It is unclear why Ofcom has not collected and presented this data, given the clear practice that: “*Where available, [Ofcom] should examine historical price fluctuations in potentially competing products, any records of price movements, and relevant tariff information.*”³⁵
- 4.12 This lack of analysis, even for the narrow subset of products/services considered by Ofcom, is particularly surprising given that many of these substitutable products have been offered by aggregators and other

²⁶ <https://bird.com/en-gb/pricing> (accessed 3 April 2025).

²⁷ Ofcom Consultation, paragraph 5.4. We note that Ofcom has referred to the 2002 version of the EC SMP Guidelines, despite publication of the 2018 version. Where we refer to the 2002 version, we consider the principle to be unchanged.

²⁸ (2018) EC SMP Guidelines, paragraph 40.

²⁹ s79(2B)(b) CA03.

³⁰ Ofcom Consultation, paragraph 4.41

³¹ RCS messaging has been provided by Google on Android devices for a number of years already.

³² Ofcom Consultation, paragraphs 4.41

³³ Oxera Report, section 3.2.

³⁴ [REDACTED]

³⁵ (2002) EC SMP Guidelines, paragraph 49 (emphasis added).

suppliers/intermediaries on a standalone basis and even as part of the same product bundle i.e. where they are marketed such as to be expressly substitutable with A2P SMS depending on the sender's preferences.

4.13 Moreover, the lack of such analysis becomes critical where: (i) Ofcom's finding of a narrow relevant market is based upon allegedly inelastic demand for A2P SMS that is claimed by Ofcom to be demonstrated by simultaneous volume and price growth;³⁶ and (ii) Ofcom appears to have derived a "competitive price" for A2P SMS based solely on the claimed "stability" of pricing for A2P SMS in 2019.³⁷ **Ofcom has failed to provide any such authority for its proposition that pricing stability is synonymous with a "competitive price" and disagree with this conclusion entirely.** However, leaving aside Ofcom's arbitrary conclusion on what a competitive price would be, for there to have been no analysis of the pricing of potential substitutes over the same period as considered for A2P SMS fundamentally undermines both of these conclusions: where Ofcom cannot state what was the pricing of alternatives during the alleged "stable" period of A2P SMS pricing, which should clearly be a factor considered when determining whether a business sender would likely switch to them in the application of the SSNIP test.

4.14 As with the lack of historic pricing data, there is no **forecast data analysis** for any service discussed in the consultation and those provided in section 2 to support Ofcom's broad conclusion that "...there is not enough momentum for these channels to develop into substitutes to A2P SMS and therefore act as a competitive constraint...".³⁸ It appears that Ofcom's conclusion is based almost entirely on its user perception surveys, without any forecast data (or even up-to-date current volume data) having been presented. Taking WhatsApp for Business as an example:

a. Despite Ofcom's presentation of a very limited snapshot of WhatsApp direct-sales volume data (between Q3 2022 and Q1 2024), the chart presented by Ofcom appears to show an approximate 800% increase in WhatsApp volumes.³⁹ We note that these figures only record the direct sales made by Meta and Ofcom has failed to present any data on indirect sales at all.⁴⁰

b. Ofcom then notes that the charging scheme for WhatsApp for Business changed in 2024:

"WhatsApp made changes to its pricing for different conversation categories in 2024, with Utility and Marketing conversations having their price cut in the UK. Prices for Marketing conversations decreased by 25%, while prices for Utility conversation decreased by 44.7%. Meanwhile, Service messages became free to send, and Authentication conversations remained at the same price."⁴¹

c. Ofcom further notes that from 1 April 2025 and 1 July 2025 WhatsApp will again change its charging scheme which, we note, is likely to further increase WhatsApp's competitiveness with A2P SMS as it will be a like-for-like service with A2P SMS that is charged per message.⁴² As set out in Ofcom's own analysis, the figures provided by Ofcom for WhatsApp pricing in Ofcom's Table 3.1 show that A2P SMS termination pricing would be towards the lower-middle of that pricing structure. It is unclear why Ofcom has not sought to engage with any data on forecasted volumes for WhatsApp for Business (and indeed any other substitutes) that would be affected by the impact of such pricing when considering whether WhatsApp for Business would exercise a credible competitive constraint on A2P SMS on a forward-looking basis.

d. Even if Ofcom considers that it would be inappropriate to consider forecasted volumes in its forward-looking analysis, it is incumbent on Ofcom under the SMP Guidelines to consider existing

³⁶ Ofcom Consultation, paragraph 4.63.

³⁷ Ofcom Consultation, paragraph 5.37.

³⁸ Ofcom Consultation, paragraph 4.70.

³⁹ Ofcom Consultation, Figure 3.5.

⁴⁰ We note Ofcom presented a correction note on 28 March 2025, which confirms that the WhatsApp for Business volume data excludes indirect volumes.

⁴¹ Ofcom Consultation, paragraph 3.37 (emphasis added).

⁴² Ofcom Consultation, paragraph 3.38.

market conditions.⁴³ Ofcom’s analysis of WhatsApp for Business current volumes stops at 2024 Q1.⁴⁴ This means that Ofcom’s dismissal of WhatsApp for Business as a credible competitive constraint during the forthcoming three-year period cannot have taken account of the effects of rapidly changing market dynamics, including the 2024 pricing changes introduced by WhatsApp that continue to apply today, let alone consider them on a forward-looking basis. This is also in circumstances where Ofcom notes that WhatsApp will *again* change its pricing structure this year before Ofcom’s proposed regulation comes into effect to be directly comparable with A2P SMS.

- 4.15 On a forward-looking basis, such failure to engage with forecasted volumes, clearly signalled pricing changes and their effects, as well as the effects of significant pricing reductions that have already happened in 2024, materially undermines Ofcom’s conclusions – especially where Ofcom itself observes that: “*demand for other channels is growing steadily from a low base and might be expected to continue to grow further in the future.*”⁴⁵ Rather than engage with and collect/provide evidence of such growth, Ofcom simply dismisses the growth out-of-hand merely because it is starting from a low base – this is despite the extraordinary growth demonstrated in between 2022 and Q1 2024 alone. That the growth of a substitute product is starting from a low base is irrelevant to a consideration of whether the product would grow sufficiently to act as a competitive constraint to compete with the focal product on a forward-looking basis during the review period. Even in its corrected analysis – which does not accurately record indirect WhatsApp for Business volumes and highlights Ofcom’s failure to collect such data – Ofcom does not engage with how a c.800% growth rate in 2 years alone would not be expected to be a competitive constraint on A2P SMS (and indeed the other substitutable products) on a forward-looking basis. Such analysis must take place especially in the light of pricing changes that are/will be in effect prior to regulation, which firmly put WhatsApp for Business on a like-for-like (message-for-message) pricing basis with A2P SMS. We note that WhatsApp for Business has already established itself as a very real competitive constraint in other jurisdictions, e.g. most notably in India⁴⁶. In such circumstances, Ofcom cannot have discharged its statutory obligations to consider the existing market conditions on a forward-looking basis sufficiently to define a relevant market.
- 4.16 Moreover, Ofcom’s A2P SMS pricing analysis is of limited value given it does not discuss **real-terms pricing**. A real-terms analysis suggests broadly flat, or at least more moderate, pricing for A2P SMS than implied by Ofcom when using Ofcom’s collected data (see section 3 above). In these circumstances, not only does Ofcom’s entire basis for intervention fall away, but the analysis suffers from the same deficiencies discussed at paragraph 4.13 when discussing historic pricing trends in relation to elasticity of demand and a competitive price. By failing to provide real-terms pricing for substitutable products, **Ofcom cannot have accurately applied a SSNIP test where there has been no analysis of the real-terms pricing of potential substitutes over the same period as considered for A2P SMS**. In these circumstances, Ofcom cannot state what was the pricing of alternatives during the alleged “stable” period of A2P SMS real-terms pricing, which should clearly be a factor considered when determining whether a business sender would likely switch to them in the application of the SSNIP test.

The deficiencies in Ofcom’s analysis mean that it cannot have applied the modified greenfield approach correctly

- 4.17 Ofcom’s approach to market analysis follows a modified greenfield approach which: “*should take into account existing market conditions as well as expected or foreseeable market developments over the course of the next review period in the absence of regulation based on significant market power*”.⁴⁷ As acknowledged by Ofcom and the SMP Guidelines, the starting position should always be an analysis of corresponding retail markets in relation to wholesale markets that are claimed to be susceptible to ex ante regulation.⁴⁸

⁴³ (2018) EC SMP Guidelines, paragraph 17.

⁴⁴ Ofcom Consultation, Figure 3.5.

⁴⁵ Ofcom Consultation, paragraph 3.38.

⁴⁶ The Economic Times, 10 Jan 2025, [India's business messaging market set to hit billion-dollar revenue mark in 2025](#) Accessed 8 April 2025

⁴⁷ (2018) EC SMP Guidelines, paragraph 17.

⁴⁸ (2018) EC SMP Guidelines, paragraph 15.

- 4.18 However, as demonstrated above, where Ofcom has not properly considered the plethora of possible retail substitutes available to business senders and the switching that occurs between them, Ofcom has failed to analyse effectively the level of competition that is taking place on the retail level.⁴⁹ This conclusion holds absent the substantive analysis itself – for Ofcom not to have considered the elements set out above in its analysis of retail markets, it has not passed the first hurdle in the EC SMP Guidelines to move to examination of the wholesale level of supply.
- 4.19 This is of critical importance where, as Ofcom notes: *“If the underlying retail market(s) is (are) prospectively competitive under these circumstances, we would conclude that regulation is not needed, or no longer needed in the case of a regulated market, at the wholesale level.”*⁵⁰ As set out above, there are many substitute products to A2P SMS that exercise competitive constraints over it, and which suggest that the retail market for these services is vibrant and well-functioning.
- 4.20 Ofcom notes that its market review was triggered by complaints from Aggregators over MCP’s A2P SMS termination pricing.⁵¹ Ofcom goes on to state its concern that (excessive) pricing above a “competitive level” at the wholesale level of supply would mean that aggregators would be faced with higher costs that must be passed onto business senders at the retail level.⁵² However, further to the evidence set out above with regard to a well-functioning market for business messages, it is not clear from Ofcom’s analysis that there is a competition problem to resolved at all at the retail level. In fact, **there is a real risk that Ofcom’s intervention at the wholesale level would have the effect of creating competition issues at the retail level** where there is no incentive for aggregators to pass on savings in wholesale pricing to business senders:
- a. Ofcom sets out the very wide spread of pricing that is applied by aggregators in the response.⁵³ The spread of aggregator pricing presented by Ofcom shows pricing that is both above and below the average A2P wholesale pricing presented by Ofcom and sits well when compared against the real-terms wholesale pricing analysis that we have provided above at Section 3. This suggests that competition is working well at the retail level, where aggregators are using price effectively to compete with each other, and will continue to do so on a forward-looking basis. Moreover, Ofcom has only recorded the pricing of 7 aggregators, which may not be representative of the retail market as a whole.
 - b. Ofcom observes that aggregators already have the ability to absorb A2P SMS pricing.⁵⁴ This suggests that margins at the retail level are healthy and aggregators have sufficient strength with which to flex their pricing according to their customer preferences. This suggests a flourishing retail market in which, as set out above, customers consider that A2P SMS is providing them with value for money.
 - c. Ofcom does not discuss at all how likely aggregators or other intermediaries would be to pass on any savings on A2P SMS rates from the wholesale level to their customers – especially in circumstances where volume discounts are secured by those aggregators, as acknowledged by Ofcom, meaning that it is unlikely that aggregators have faced “headline” A2P SMS termination rates at all. Assuming that Ofcom’s view of A2P SMS as a distinct relevant market from the substitutes is correct (which is not conceded) – and therefore there is unlikely to be any switching to substitutes from A2P SMS – **all Ofcom’s regulatory intervention is likely to do is result in regulatory failure, where it would cement the market power of the aggregators and higher retail pricing charged to business senders.**

By restricting its focus to termination on a mobile number range, Ofcom fails to consider at all the substitutable products that are widely available at the wholesale level

⁴⁹ (2018) EC SMP Guidelines, paragraph 16.

⁵⁰ Ofcom Consultation, paragraph A6.23.

⁵¹ Ofcom Consultation, paragraph 2.10.

⁵² Ofcom Consultation, paragraph 3.65.

⁵³ Ofcom Consultation, Table 3.2.

⁵⁴ Ofcom Consultation, paragraph 3.65.

- 4.21 Despite acknowledging that Aggregators sell a range of alternative products in its discussion of retail substitutes which must necessarily require the purchase of alternative wholesale inputs with which to supply to those retail customers with business messaging services, Ofcom does not at all engage with the wholesale supply of such products.
- 4.22 For example, Ofcom notes that (at least) WhatsApp for Business, RCS business messaging and email are substitutable services at the retail level and acknowledges that wholesale demand is derived from retail demand for services. However, Ofcom’s analysis of the wholesale product market is fundamentally undermined by the errors above that are carried forward where Ofcom fails to accurately account for the substitution that readily occurs at the retail level. Instead, Ofcom simply concludes that “... *Aggregators would not switch to, for example, WhatsApp for Business in response to a SSNIP on wholesale A2P SMS termination rates (e.g. offer their customers WhatsApp for Business instead of A2P SMS messaging) because their customers at the retail level would not switch in response to changes in relative retail prices due to a wholesale SSNIP.*”⁵⁵ In dismissing the retail switching that occurs out of hand, Ofcom does not consider at all that such products are alternative wholesale inputs to aggregators that are making retail sales to customers. This omission, in and of itself, is enough to undermine fatally Ofcom’s entire market analysis.
- 4.23 However, Ofcom goes on to compound its error where, in its discussion of the wholesale product market, having dismissed any of the other wholesale inputs that aggregators purchase in relation to retail demand (e.g. WhatsApp for Business), Ofcom proceeds to limit its demand-side substitution analysis only to the ability of an Aggregator to purchase wholesale SMS termination inputs from other MCPs. **In doing so, Ofcom’s analysis of the relevant market loses its focus entirely – which should be to identify who holds market power in relation to (wholesale) business messaging services.**
- 4.24 In dismissing the alternatives, **Ofcom’s relevant market analysis is flawed, where the relevant market is focussed not on the capability of the product itself (i.e. delivery of business messaging services), but on the number range that is held by the MCP.** Ofcom’s analysis effectively becomes one of access to mobile-number ranges for the purposes of SMS termination rather than a proper analysis of available wholesale inputs that aggregators may (and indeed do) purchase to supply customers with business messaging services alongside and in place of A2P SMS. Ofcom therefore ignores the actual and potential competitive constraints of these products entirely. By disregarding the evidence that switching between A2P SMS and the non-number range based alternatives occurs at the wholesale level, Ofcom’s market definition is fundamentally weakened.⁵⁶

Ofcom’s flawed wholesale product market analysis means it has failed to properly consider supply-side substitution and potential competition

- 4.25 **There is inadequate analysis of supply-side substitution and potential competition.** Whilst Ofcom’s consultation and research considers whether some of the existing products identified in Section 2 above would be a potential substitute to A2P SMS from the demand-side perspective, there is not adequate consideration of supply-side substitutability and no consideration at all of sources of potential competition. This is due to Ofcom’s narrow consideration of the wholesale product market as detailed above.
- 4.26 It is well-established that a market definition exercise for the purposes of identifying market power should take into account sources of supply-side substitutability and potential competition. Indeed, the SMP Guidelines noted that whilst it may be difficult to distinguish between supply-side substitution and potential competition in electronic communications markets due to their dynamic character, “*What matters, however, is that potential entry from other suppliers is taken into consideration at some stage of the relevant market analysis, that is, either at the initial market definition stage or at the subsequent stage of the assessment of market power (SMP).*”⁵⁷

⁵⁵ Ofcom Consultation, paragraph 4.75.

⁵⁶ [REDACTED]

⁵⁷ (2002) EC SMP Guidelines, footnote 24.

4.27 **Ofcom’s analysis of supply-side substitutes is limited to a single paragraph in the response at the market definition stage⁵⁸ – and there is no discussion at all of potential competition.** However, even Ofcom’s limited supply-side analysis suffers from the same error carried throughout the consultation. Instead of considering expansion out from the focal product (a business message that is delivered by A2P SMS), Ofcom analyses possible supply-side substitution only under the lens of a product that could be terminated on a mobile number range held by the MCP. By erroneously focussing solely on termination on a mobile-number range, rather than whether suppliers could switch their own means of products to supply products/services that can deliver a business message to a receiver’s mobile device, Ofcom fails to discharge its obligation to identify a relevant market under s79(1) CA03 to identify a relevant market.

Ofcom has failed to satisfy the statutory criteria to determine significant market power in relation to A2P SMS

4.28 **In response to Questions 2 and 3 in the Consultation, BT does not agree with Ofcom’s provisional conclusion regarding SMP; or Ofcom’s provisional conclusions from the application of s79(2B) CA03.**

4.29 Even if it was assumed that Ofcom had correctly identified a relevant market for the A2P SMS (which is not conceded), Ofcom has not satisfied the statutory criteria to establish that MCPs hold SMP in relation to the relevant market.

Ofcom’s restrictive analysis of the relevant market according to mobile number-range based termination materially undermines Ofcom’s market power analysis

4.30 In dismissing the alternatives and focussing only on the number range that is held by the MCP, Ofcom’s analysis loses its primary focus, which should be to determine who (if anyone) holds market power in relation to delivery of business messaging services provided by A2P SMS. Having found that the relevant market consists only of an A2P SMS message, which Ofcom determines can only be terminated by a mobile number range held by the MCP, the inexorable conclusion by Ofcom is that this is a “*monopoly market*” due to high market shares⁵⁹ and that barriers to entry are high where competing substitutes do not use the number range termination to compete with SMS.

4.31 However, for the reasons set out above, this narrow focus on number range termination means that Ofcom fails to take account of any source of competition that is not based on number-range termination. This is despite the overwhelming evidence, as set out above, that A2P SMS is indeed competitively constrained by the substitute products at the wholesale level – even if those products are to be considered outside of the relevant market (which is not conceded). Ofcom’s market definition analysis carries this flaw throughout, where Ofcom’s conclusions in dismissing each alternative centre around whether that alternative is provided via a mobile number range.

4.32 Ofcom’s dismissal of these actual and potential competitive constraints disregards the evidence that switching between A2P SMS and the (non-number range based) alternatives occurs [REDACTED] In dismissing the alternatives, **Ofcom’s relevant market analysis is flawed, leading to a self-fulfilling SMP analysis, where the relevant market is focussed not on the capability of the product itself (i.e. delivery of business messaging services), but on the number range that is held by the MCP.**

4.33 For example, in discussion of countervailing buyer power (“**CBP**”), Ofcom posits that: “*the main lever through which a buyer of wholesale A2P SMS termination could credibly threaten to buy less from a seller in response to a price rise corresponds to an Aggregator deciding to purchase less A2P SMS termination services from the terminating MCP in response to it raising prices.*”⁶⁰ Ofcom then reaches the conclusion that: “*... Aggregators are unable to exercise CBP by credibly threatening to buy less A2P SMS termination from terminating MCPs*

⁵⁸ Ofcom Consultation, paragraph 4.87

⁵⁹ Ofcom Consultation, paragraph 5.12.

⁶⁰ Ofcom Consultation, paragraph 5.28.

*in response to a price rise, by switching to another messaging service.*⁶¹ However, the intervening analysis of the exercise of such CBP does not focus at all on the ability to exercise CBP in relation to switching to other messaging services – rather it only discusses the ability of an Aggregator to purchase A2P SMS from other MCPs, and merely dismisses the ability of any other messaging services because *“there are no viable alternatives at present to terminate an A2P SMS on the phone of a specific subscriber”*.⁶² In its application of its very narrow relevant market, Ofcom fails to engage with the exercise of CBP in relation to demand which could be, and indeed is being, switched away from A2P SMS entirely and to business messaging products/services *that do not use mobile number ranges* to terminate/deliver the communication – for example, proprietary apps, emails, passkey/authentication services and RCS business messaging.

Ofcom’s conclusion on what a competitive price would be as a criterion against which to establish market power is flawed, unsubstantiated and without evidence

- 4.34 Ofcom seeks to confirm its market power assessment by reference to the claim that MCPs (in particular, the MNOs) have increased their pricing above a “competitive level”.⁶³ Ofcom establishes what such competitive level would be by reference to an arbitrary point in time where there was pricing stability between MCP pricing for A2P SMS on-net termination. However, Ofcom has provided no economic or legal authority for the proposition that pricing stability between competitors results in a competitive price.
- 4.35 As has been made clear by the CAT, the determination of a “competitive price” is not a requirement in the determination of SMP⁶⁴ and Ofcom is wrong to include such analysis as supporting a finding of SMP.⁶⁵ However, assuming that such a competitive price was appropriate to establish, as set out above, Ofcom’s failure to provide or analyse historical, current or future pricing (where such has been clearly signalled by competing wholesale suppliers, as in the case of WhatsApp for Business), materially undermines any establishment of what such a competitive price point would be when considering what are the possible alternatives that could constrain A2P SMS.
- 4.36 Even without such analysis, Ofcom’s failure to analyse even current pricing on a real-terms basis means that Ofcom’s own analysis of what that competitive price would indeed be is flawed. As set out above in Section 3, an analysis of real terms prices shows that A2P SMS on-net termination pricing has been broadly flat – it is not credible for Ofcom to maintain, for example, that a CAGR for the lowest priced messages at around 0.3% is “significantly” above even a competitive level determined by Ofcom’s arbitrary point in time of alleged pricing stability.

The errors in the market definition analysis detailed in this response mean that Ofcom cannot have adequately satisfied the statutory three-criteria test in s79(2B) CA03

- 4.37 Under the statutory framework, Ofcom is precluded from making a market power determination unless it can show that the following three criteria in respect of a relevant market are met: (i) there are high and non-transitory barriers to entry; (ii) there is a market structure which does not tend towards effective competition; and (iii) competition law alone would not adequately address the market failure(s).
- 4.38 As set out in section 2 and the relevant market analysis above, there is insufficient consideration of the competitive constraints and substitutes on A2P SMS, which would serve to demonstrate **that barriers to entry are low** for business messaging services. Ofcom’s erroneously narrow focus on only services that can be terminated on a number-range held by MCPs has blinkered Ofcom’s analysis to the range of substitute products that effectively constrain A2P SMS – whether number-range based or not.
- 4.39 To the extent such barriers existed at the time the market review was launched (which is not conceded), they can only be considered **transitory in nature**. As noted by the SMP Guidelines:

⁶¹ Ofcom Consultation, paragraph 5.29 (emphasis added).

⁶² Ofcom Consultation, paragraph 5.29 (emphasis added). See also conclusions reached at: Ofcom Consultation, paragraph 5.45.

⁶³ Ofcom Consultation, paragraph 5.36.

⁶⁴ *TalkTalk & Vodafone v Ofcom* [2020] CAT 8, paragraph 256.

⁶⁵ Ofcom Consultation, paragraphs 5.36-5.38.

*“high barriers to entry may become less relevant in markets characterised by ongoing technological progress, in particular, due to the emergence of new technologies permitting new entrants to provide qualitatively different services that can challenge the SMP operator. In electronic communications markets, competitive constraints may come from innovative threats of potential competitors not currently in the market.”*⁶⁶

- 4.40 Such innovation and rapid technological progress in business messaging is evidenced by [REDACTED]
- a. [REDACTED] major business senders such as Microsoft have transitioned their base to competing wholesale products such as WhatsApp for Business, it is not credible for Ofcom to claim that there are high barriers to entry and customer switching.
 - b. Moreover, the analysis above refutes Ofcom’s conclusion that there are high barriers to entry and expansion caused by *“technical barriers to switching to other [non-number-range based] messaging services, perception issues from both business senders and message recipients, and issues with the reach of these other services”*.⁶⁷ The fact that the Aggregators themselves – the cohort that instigated this market review – have developed commercial solutions which provide A2P SMS and other wholesale business messaging services together in the same bundle/platform and allow for cascading between wholesale inputs and/or proprietary solutions means that there cannot be material barriers to switching as Ofcom claims.
- 4.41 This is important as, even assuming Ofcom’s narrow focus on number-ranges is correct (which is not conceded), Ofcom is required by the legislative framework to *“have regard to the state of infrastructure-based and other competition behind the barriers to entry”*⁶⁸ when considering whether there is a market structure that will tend towards effective competition. **Each of these market solutions demonstrates that barriers to switching are not high and that alternatives for A2P SMS can be deployed when and where preferred by the sender, according to the message type and their recipient as required.** Ofcom is therefore wrong to dismiss such non-number-range based services in its analysis of barriers to entry and expansion in Section 5 of the consultation. Such services have entered the business communications market and are being offered alongside A2P SMS in the same offering. These act as competitive constraints on A2P SMS today and will continue to do so on a forward-looking basis.
- 4.42 **Ofcom has failed to consider effectively whether competition law alone is sufficient adequately to address the alleged market failure.** Indeed, we note that Ofcom’s substantive consideration is limited to a single paragraph in Section 5 of the consultation.⁶⁹
- 4.43 As set out in its justification for regulatory intervention, Ofcom is concerned that: *“absent regulatory intervention, further price increases would risk the price of wholesale A2P SMS termination being set (and maintained) at an excessively high level (substantially above the competitive level), so as to have adverse consequences for end users.”*⁷⁰ However, **Ofcom offers no discussion or analysis of why or how competition law would not be sufficient adequately to address this risk, or indeed engage in any analysis at all of what an excessive price would be.**
- 4.44 This is concerning, where it seems clear that the reason why Ofcom is not able to assess whether competition law alone would be sufficient adequately to address this risk (i.e. excessive pricing) is because (even if the MCPs held a dominant position) Ofcom has failed to establish to that the pricing charged by the MCPs would be (or is today, where it is above the proposed price cap) abusive (i.e. excessive):
- a. Ofcom’s intervention is prompted by Ofcom’s view that the termination rates for A2P SMS have become unstable and that there is a lack of effective competition at the wholesale level of supply.⁷¹

⁶⁶ (2018) EC SMP Guidelines, paragraph 60.

⁶⁷ Ofcom Consultation, paragraph 5.18.

⁶⁸ S79(2B)(b) CA03 (emphasis added).

⁶⁹ Ofcom Consultation, paragraph 5.48.

⁷⁰ Ofcom Consultation, paragraph 5.46.

⁷¹ See Ofcom’s letter to MNOs (25 September 2023) < [Letter to MNOs - Business messaging services and Ofcom’s wholesale voice markets review 2026-31](#) > (accessed 6 April 2025).

In the consultation, Ofcom claims that pricing “stability” was in place for A2P SMS termination and interconnection rates provided by the MNOs between 2019 Q2 and 2021 Q4.⁷² Thereafter, Ofcom infers there was pricing instability as rates became dissimilar, and therefore they were above a level that Ofcom arbitrarily deems to be a “competitive level”.

- b. As set out in Section 2 and this Section above, Ofcom has not sufficiently substantiated why it considers that A2P SMS termination rates are either currently or would be above a “competitive level” (or indeed what economic authority supports Ofcom’s conclusion that similar pricing between suppliers results in that pricing being competitive) where, implicit in this claim, Ofcom considers the pricing for A2P SMS termination to be excessive.
- c. Although Ofcom infers that there is a risk that pricing is or would become excessive, Ofcom does not sufficiently apply the appropriate test determined by case law for what such an excessive price would be. This should consider whether: (i) the difference between the costs incurred (including a reasonable rate of return) and the price charged is excessive; and (ii) the price is unfair in itself or when compared to competing (or comparable) products.⁷³ Whilst Ofcom attempts to engage in a cost-based analysis of A2P SMS pricing to address limb 1 of the test,⁷⁴ this analysis is – by Ofcom’s own admission – incomplete where it does not include any data on shared/common costs relevant to A2P SMS⁷⁵ and therefore cannot be an appropriate basis on which to base regulatory action.⁷⁶ Further, even when setting aside these issues, Ofcom has not provided any analysis in line with the case law to show why such pricing above Ofcom’s competitive level is (or would be) unfair to address Limb 2 – either of itself or compared to the pricing of the range of substitutes products to A2P SMS. As discussed in Section 2, there is no attempt by Ofcom to engage in any meaningful analysis of why customers see the value of SMS that would justify current pricing as competitive, despite the widespread availability of substitutes.

4.45 However, even on the assumption that Ofcom has established that pricing is above a “competitive level” (i.e. excessive), there is no consideration by Ofcom of how competition law – whether exercised privately by the competitors or customers themselves, or publicly by Ofcom through enforcement action using its concurrent competition law powers – would be sufficient to adequately and more proportionately address the alleged issue that pricing is above a competitive level (i.e. excessive).⁷⁷ Instead, Ofcom baldly states that “...*ex ante regulation would be more effective... [and] would also be more efficient and effective to enforce...*”, without any supporting analysis or consideration of any other redress mechanisms that are available to Ofcom or any other concerned parties under competition law.

4.46 Further, assuming that Ofcom is correct that pricing is above a “competitive level” – [REDACTED] regulatory intervention is not appropriate or proportionate to be applied to all MCPs. Ofcom has not established why targeted and proportionate action under its concurrent competition law powers **against any specific MCPs that are pricing (or would be pricing) above the competitive level** would not be sufficient adequately to address Ofcom’s concerns. Instead, Ofcom’s proposed cap punishes all MCPs unnecessarily and is an entirely disproportionate response to any perceived competition issue.

4.47 Finally, Ofcom offers no analysis at all of whether **competition law interventions at the retail level would be more appropriate, proportionate or likely to address Ofcom’s concerns on pricing stability and pricing above a competitive level** in these circumstances. For example, Ofcom does not address whether e.g. when taking Aggregator 7’s pricing (up to 5.7p per SMS in 2024 Q2), compared against BT’s on net A2P SMS

⁷² Ofcom Consultation, paragraphs 3.59 and 3.60.

⁷³ Judgment in *United Brands v Commission*, C-27/76, EU:C:1978:22; as applied in the UK by *Le Patourel v BT Group plc* [2024] CAT 76.

⁷⁴ Ofcom Consultation, paragraph 6.19-6.21

⁷⁵ Ofcom Consultation, footnote 156.

⁷⁶ As determined by Ofcom in previous SMP determinations, the appropriate cost standard to assess the risk of excessive pricing is the long run incremental cost standard (“LRIC”), which must take an account of common costs incurred in providing the product/service. See, for example, mobile call termination (Wholesale Voice Markets Review 2021, paragraph 6.58).

⁷⁷ Ofcom is obliged to exercise its functions under CA03 according to the principles of proportionality and should only exercise its functions “targeted only at cases in which action is needed” (s3(3) CA03).

termination rate [REDACTED], the retail pricing offered by aggregators would be above a “competitive level” (i.e. excessive) and unfair and whether competition law interventions at the retail level against such pricing would be more appropriate and proportionate to address any harm to business senders.

Ofcom’s remedies are neither appropriate nor proportionate in a well-functioning business messaging market

4.48 In response to Question 4, we do not agree with Ofcom’s provisional view that setting a price cap on A2P SMS termination rates (based on historical prices with indexation) would be the most appropriate and proportionate response for addressing our competition concerns arising from SMP.

4.49 For the reasons above, Ofcom has failed to satisfy the statutory criteria to determine that MCPs hold significant market power in relation to A2P SMS termination rates, and therefore the proposed remedies are without legal basis.

4.50 However, even assuming that Ofcom had correctly identified that the MCPs hold such market power (which is not conceded), Ofcom’s approach to remedies is not appropriate or proportionate. In Ofcom’s supposition of what a competitive price would be as the starting point for the proposed cap, Ofcom offers no legal or economic basis for its conclusion that such a competitive price may be derived from a period of pricing stability between the MCPs. In these circumstances, Ofcom’s starting point for the proposed cap lacks sufficient grounding – particularly where Ofcom’s analysis deals only with nominal rather than real-terms pricing – and must be further underpinned.

4.51 As set out below more fully in Section 5, we see three further risks from the imposition of a price cap:

- a. [REDACTED]
- b. The proposed price cap **undermines the contribution to MCPs’ common costs** made by A2P SMS, e.g. with respect to the bundled/free P2P SMS services that have been made available to customers. As set out above, Ofcom’s analysis has made no attempt to engage with common costs in its analysis of whether the currently priced A2P SMS services offer value to senders.
- c. Ofcom has not considered the wider impact of the proposed cap on regulation of the wider mobile ecosystem, in particular where **intrusive regulation in what are well-functioning markets not only harms the investment strategies of the MCPs themselves, but is likely to deter investment in the mobile ecosystem more broadly.** [REDACTED] the proposed blanket cap applicable to all MCPs is wholly disproportionate where Ofcom’s enforcement action under competition law powers could be more effectively targeted to the actors whom Ofcom views have priced above this supposedly competitive level.

4.52 Ofcom’s concern from the consultation and prior letters to MCPs appears to be one of seeking pricing stability from MCPs. However, Ofcom has not considered in sufficient detail why its rejection of other, more proportionate remedies, is warranted.⁷⁸ [REDACTED]

4.53 [REDACTED]

⁷⁸ Ofcom Consultation, paragraphs 6.27-6.29

5. The benefit is very small, with a risk of downsides

The benefits from the proposed intervention are not guaranteed

- 5.1 It is not clear from Ofcom's consultation document how the plethora of perceived benefits – which cover price stability, innovation, and maintenance of A2P SMS volumes – will actually derive from the intervention.
- 5.2 Indeed, pricing evidence cited by Ofcom⁷⁹ suggests that, even at the time when Ofcom deemed prices to be 'stable' at the beginning of its historic pricing analysis, some aggregators⁸⁰ added a mark-up of around [REDACTED] on the highest rate they would have received from BT [REDACTED]. Most aggregators charged well in excess of 2p per message, in spite of pricing [REDACTED].
- 5.3 Moreover, we understand that in general terms aggregator prices charged to retail users have gone up consistently since 2019 – regardless of the price charged for termination or the terminating MCPs' pricing model (e.g. volume-based or otherwise and what figure is charged).
- 5.4 In this context, it is not clear why Ofcom believes that retail customers or consumers would see the benefit from lower or more stable prices for aggregators. The assessment that the large number of aggregators will act as a natural constraint on pricing is at odds with some Ofcom's evidence on aggregator pricing ([table 3.2](#)) which suggests that some aggregators have been able to charge retail prices at two or three times the rate charged by their competitors.

Even in the event all the benefits accrue to retail customers/consumers, the benefits are very small

- 5.5 Even assuming net benefits discussed by Ofcom do (eventually) accrue to aggregators, retail customers and – ultimately – consumers, Ofcom's own analysis suggests these will be small compared to the relative size of the market. Indeed, a net benefit of £30m in the first year is circa 6.5% of Ofcom's stated value of the MCP A2P SMS market (around £400m per year) and a much lower proportion of revenues amongst the 51 MCPs. While Ofcom has not provided data on A2P SMS revenue for large aggregators, an average 'spot price' cited by Ofcom⁸¹ for six of the seven aggregators (not including Aggregator 6 due use of 'weighted average prices' in the table) was 3.54p per message meaning an aggregator revenue of ~£700m (when combined with the figure cited by Ofcom of 20bn messages). A £30m intervention – therefore – will account for less than 4% of aggregator UK revenues from termination of A2P SMS.

There is no clarity on how 'innovation' will follow from the intervention

- 5.6 Ofcom provides limited data for its claim ([paragraph 2.24](#)) that its intervention will encourage 'innovation' in retail markets – suggesting ([paragraph 5.55](#)) that SMP price caps might (i) underpin fixed term pricing and (ii) support quality of service. Yet, these innovative benefits are already features of messaging markets – with some (particularly larger) retail customers using their bargaining power to secure multiyear contracts with a single price from aggregators. Aggregators in turn consider what prices they can offer on these longer-term (often public sector) considering (flexible) input costs required to deliver a service. [REDACTED]. Similarly, MNOs such as BT have been required to invest in quality of service to ensure retail customers continue to value SMS. [REDACTED]

⁷⁹ See Ofcom Consultation, [Table 3.2](#)

⁸⁰ E.g. 'Aggregator 7' – with a high price of 5p per message

⁸¹ See Ofcom Consultation, [Table 3.2](#)

- 5.7 In any future statement, Ofcom should provide more clarity on precisely how innovative benefits will follow for UK citizens from a price cap in a market which (in our view) is competitive.

There are substantive risks from the intervention

- 5.8 We see three substantive risks from Ofcom's intervention – both in SMS specifically and across the mobile ecosystem more broadly. We set these out in more detail below.
- 5.9 [REDACTED]
- 5.10 [REDACTED] We understand Ofcom's justification for its preferred approach (of a 'general cap' on A2P traffic irrespective of route) is underpinned by its belief that; (i) it will prevent MCPs from denying access to certain aggregators, so avoid the need for additional regulatory obligations (i.e. a requirement to connect on 'fair and reasonable' terms), and (ii) it will enhance 'resilience', as traffic blocked via the A2P route can be routed via interconnect.
- 5.11 [REDACTED]

Consumers of SMS – and mobile users more generally – might be negatively impacted by the cap

- 5.12 Today, customers across BT's mobile network (including consumers, large corporations and public sector customers, and wholesale customers) are able to benefit from the 'pooling' of resources as operators spread the substantial costs of running a network across the plethora of services which use it. It is common practice for those services which are most valued by the market – including A2P SMS – to contribute a higher share of these costs relative to others. Any regulatory intervention risks a distorting effect on the market. Operators, seeking to recover 'lost' revenue, might seek to increase charges elsewhere to make up for a shortfall. This ultimately could impact consumers of other services (and citizens who pay for public services) who will be faced with higher prices.
- 5.13 Indeed [REDACTED] there are credible scenarios where rationally acting operators seek to do this within the messaging space, either through new charges (for example for person-to-person SMS which are currently 'included' in bundles for a majority of BT/EE) or [REDACTED] This challenge is particularly acute in SMS where the recent [decline](#) in volumes (and associated revenues) from person-to-person messages has been offset by growth in A2P SMS [REDACTED].

It is not clear that Ofcom has considered the implications of regulation for the wider mobile ecosystem

- 5.14 We agree with [Ofcom](#) that fast, secure, reliable connectivity – and improving digital inclusion - are fundamental to addressing the UK's productivity challenges and enhancing quality of life for UK citizens. Fundamental to this is continued investment in UK electronic communications networks.
- 5.15 From a policy perspective, this investment must generally be underpinned both by: (i) investors being able to secure a reasonable return on investment and (ii) by a regulatory and policy environment which allows investors to make a reasonable assessment of risk. Ofcom has considered the first of these by moderating its proposed cap to allow providers to benefit from CPI on their investment going forward – but the very consideration of imposing SMP conditions where competition law would be sufficient risks undermining (ii). We urge Ofcom to reconsider the intervention in this context.



8 April 2025

Find out more at [bt.com](https://www.bt.com)




Offices worldwide



© British Telecommunications plc 2021

Any services described in this publication are subject to availability and may be modified from time to time. Services and equipment are provided subject to British Telecommunications plc's respective standard conditions of contract. Nothing in this publication forms any part of any contract.



Registered office: 1 Braham Street, London E1 8EE

Registered in England No. 1800000



BT Group

