



Business Messaging

Review of the A2P SMS termination market consultation

Virgin Media O2 response

7th April 2025

Non-Confidential Response

Executive Summary

1. A2P SMS has developed over the past decades into the highly valued channel that it is today. From 2012 onward, MCPs' prices were low in an attempt to stimulate interest in the service. At the same time, there has been increased digitalisation of our society which has spurred growth in business messaging services more broadly, initially through growth of A2P SMS but later other business messaging services have also emerged and grown. The steady growth in A2P SMS volumes over this period therefore reflects both the underlying growth drivers and market development by MCPs through pricing and improving the quality of the channel.
2. It is also apparent (not least in Ofcom's Business Sender research) that A2P SMS messaging is a highly valuable service to its users. Senders, from private and public sector, regard the benefits of sending messages to greatly outweigh its low costs. However, until 2021, little of that value flowed through to MCPs such that MCPs have, in recent years, sought to extract more value through price rises so as to enable greater investment in the networks that support this and other services.
3. Indeed, A2P SMS revenues contribute materially to common cost recovery for mobile networks, maintaining MCPs' incentives to invest. It is therefore understandable that MCPs may have wished to increase the contribution from A2P SMS towards common cost recovery, at a time when Ofcom, Government and consumers want increased investment in better quality mobile networks. It is unclear why senders of A2P SMS should be shielded from shouldering some of the burden for improving the networks from which they derive substantial benefit.
4. It is therefore a mistake for Ofcom to look at recent price rises through a narrow lens of a few years' figures. Prices have in fact decreased in real terms over the longer term whilst total business messaging volumes (across all channels) have increased substantially. At the same time, the value of business messaging to senders has increased and they remain satisfied with the service provided. This does not suggest monopolistic behaviour, let alone imply that MCPs have the ability or incentive to exploit their users absent regulation. It points to MCPs initially setting low prices to grow nascent A2P SMS volumes and later raising prices to extract a greater value, whilst ensuring the channel remains secure and attractive to its users.
5. Other channels (including WhatsApp for Business (WAB) and in-app notifications) that support delivery of messages to smartphones have taken off in recent years.

Whilst they have not (yet) achieved the ubiquity of A2P SMS, they have their own benefits and appeal. Not as universal across use cases as A2P SMS, but attractive for certain senders and for major use cases. In its analysis, Ofcom focused on establishing only whether there was any other service that can match the exact universality of A2P SMS. This is not the relevant question. Instead, Ofcom should have identified whether other channels, through their more focused appeal, materially constrain segments of A2P SMS provision. As MCPs cannot determine the use of each message, there is a common pricing constraint imposed by other channels, even if they are only attractive to a sub-set of message use cases. The consequence is that other channels are an increasing competitive constraint, such that they should form part of the relevant market.

6. As a result, the proposed regulatory intervention risks either diluting investment incentives (and hence lowering the sector's contribution to economic growth in direct contravention to Ofcom's "growth duty") or raising consumer prices for other services via the "waterbed effect". This latter outcome would appear to be a direct breach of Ofcom's statutory duty¹, given that absent intervention, consumers do not bear the cost of A2P SMS services.
7. Ofcom's primary concern that underpins its proposed intervention is the potential risk of *future* excessive pricing and the adverse consequences to which this could give rise. Ofcom has, however, not justified or evidenced this concern.
8. As shown by Oxera², Ofcom has not established that prices currently or prospectively exceed the competitive level and the combination of high value and low prices implies that A2P SMS pricing is and will remain fair. Both limbs of the *United Brands* test are not met, which means that Ofcom has not substantiated its excessive pricing concern such that it does not meet the requirement under section 88 of the Act and undermines the credibility of its objective justification for imposing a SMP condition pursuant to section 47 of the Act.
9. When setting out the impact of its proposed intervention, Ofcom has erred by both overstating the positive and understating the negative effects that a price cap would

¹ Section 3 of the Communications Act 2003

² Jointly with the other MNOs, we asked Oxera to undertake an economic assessment of Ofcom's underlying assessment and proposals to introduce ex ante regulation in the A2P SMS market. Oxera has agreed to submit this report directly to Ofcom.

have, and thus the balance of benefits and costs of intervening has not been accurately assessed. Positive effects are limited given that the only tangible effect is potentially to reduce senders' A2P SMS bills as senders will continue to send messages through A2P SMS or other channels absent intervention. In contrast, the negative effects are far greater on MCPs and providers of other messaging services. To estimate the impact on MCPs, Ofcom uses current prices as opposed to future prices in the scenario in which MCPs raise prices. By understating the constraints imposed by and between other channels and A2P SMS and also failing to acknowledge the greater base from which other channels are growing, Ofcom underestimates the adverse effects that providers of other messaging services will experience. This is concerning as these providers are presumed outside the identified A2P SMS market.

10. Therefore, to intervene in the face of these risks, we would expect a well-evidenced, robust market review that is conducted with an open mind and diligence, sufficient to withstand profound and rigorous scrutiny. We consider that Ofcom has not met its own standards and duties on this regard.
11. Ofcom's approach results in the identification of 51 termination markets, in which MCPs are inevitably designated with SMP, and then the application of a common price cap to address the presumed risk of future excessive pricing. These termination markets do not have the same characteristics as the voice termination markets that Ofcom has historically regulated. Other channels are available and increasingly used to send messages to recipients' smartphones. None of the 51 "monopolists" has conducted any obvious exploitative conduct that termination monopolists would have the ability or incentive to undertake. MCPs only recently increased prices and continue to invest in the A2P SMS channel. These observations support the conclusion that Ofcom has erred in its market analysis.
12. We find that Ofcom's analysis of constraints exerted by other channels on A2P SMS is limited in scope, fails to take account of all relevant factors, informed by non-representative qualitative research of senders and recipients, and not forward-looking despite this being an explicit requirement of the three-criteria test as set out in section 79(2B) of the Act. To impose regulation on this basis would not only be unreasonable but also a failure to follow due process and procedure.

13. Regarding Ofcom's underlying research, Ofcom developed its proposals based on an unrepresentative survey of only 30 senders and on a Message Recipient research that is materially flawed. Ofcom infers from this research that senders and recipients strongly prefer A2P SMS over other channels and that senders are not willing to substitute to other channels
14. The Business Sender research is not representative for the market overall. Gathering a few indicative responses of how some senders may respond to price rises does not provide robust evidence of substitution to inform market definition.
15. The Message Recipient research through its design and execution is flawed. Participants do not understand well what they are asked to give their views on, and their responses can be expected to be influenced by their previous experiences and by the framing of questions. Combined the flaws mean that this research does not support the conclusion that recipients strongly prefer A2P SMS over other channels.
16. The basis for intervention rests materially on Ofcom's review of demand response to recent price changes. However, Ofcom has failed to take account of the fact that there is a lag between price increases and demand moving to other channels as a result of frictional costs in demand substitution to other channels. VMO2's most recent data shows that growth in our A2P SMS volumes has stalled because of senders switching volumes to WAB and app-based authentication services.
17. Moreover, Ofcom's analysis fails to consider developments in broader business messaging services. The growth in demand for such services exceeds that of A2P SMS, demonstrating not only the interest in such services by business senders but also their ability to compete such that there is clear demand and supply substitutability. Ofcom's analysis is therefore not a reasonable basis on which to draw robust and forward-looking conclusions and to impose regulatory intervention.
18. Furthermore, Ofcom failed in its duty to carry out sufficient enquiry given it used its information gathering powers to seek comprehensive information about other channels, including WAB and in-app notifications. For WAB, Ofcom presented volumes of conversations over the last two years but it did not adequately address the limitations inherent in this data. For in-app notifications, Ofcom did not collect volume data at all, not even to get an idea of the scale and growth of this channel. The combined impact of not having carried out sufficient enquiry is that Ofcom is not

able to conclude that other channels grow from a very low base and thus would lack momentum in constraining A2P SMS.

19. If Ofcom had diligently conducted a forward-looking analysis of channel volumes, it would find that WAB and in-app notifications, individually, likely involve as high volumes as A2P SMS before the end of the review period.
20. Errors in Ofcom's analysis of demand-side substitution has led it to draw the incorrect conclusions about market dynamics, which if corrected for, means that Ofcom no longer satisfies the statutory criteria for imposing SMP conditions. This and several of other procedural errors lead us to conclude that the approach, analysis and the outcome of this market review are insufficient to withstand profound and rigorous scrutiny.
21. The concerns that the NHS and aggregators raised to VMO2 (and also Ofcom) relate to price stability rather than the level of prices. A price cap is an unsuitable and disproportionate remedy to deal with this issue.
22. Based on its flawed market analysis, Ofcom proposes a price cap based on December 2020 prices and to adjust this by inflation from that time onward. Taking the price at that point in time results in the lowest price cap possible compared to taking any other historic prices and adjusting by inflation. It means that the cap would be set inappropriately low, greatly restricting the flexibility that MCPs should be allowed to recover common costs and harming their ability and incentives to invest in mobile networks. It would result in the UK regulated price for A2P SMS termination being materially lower than the prices of A2P SMS as an unregulated service in most EU countries.

Section 1: Introduction

23. A2P SMS is a widely used and valued service for businesses and public organisations to send messages in bulk to their customers or audiences. Such messages are instantly delivered to phones over mobile networks and do not require recipients to have smartphones that benefit from data connectivity.
24. Ofcom identifies “*increased use of digital services more generally*” as a major driver of the growth in A2P SMS volumes.³ Use cases are varied: OTPs for people accessing software or making financial transactions online or through apps, dinner reservations, delivery notifications, appointment reminders and so on.⁴ Many use cases are embedded in the increasingly digital society that we live in. This backdrop is highly relevant to reviewing competition in business messaging markets and deciding on whether there are grounds for regulatory intervention.
25. Other channels that allow for delivery of business messages to smartphones have emerged and rapidly grown over recent years. In many ways, other channels (such as WAB⁵, in-app notifications and Rich Business Messaging (RBM⁶)) are more in tune with the requirements and preferences of generations growing up with new data-oriented technologies and with digital services playing a bigger part in their lives. Whilst A2P SMS will continue to play an important role in business messaging, the future is with the other channels since, when 2G networks are retired, all consumers will have connectivity that allows delivery of alternative messaging services to their phones.
26. Ofcom’s primary duty, when carrying out its functions, is to further the interests of consumers and citizens and, in performing that duty, it should intervene only when the action is proportionate and targeted at cases in which action is needed⁷. As such, Ofcom must prioritise regulatory intervention when there is clear and significant harm to UK consumers and citizens and when it can demonstrate that intervention mitigates this harm ideally by removing underlying competition concerns. This is not the case in the A2P SMS situation. Consumers do not pay to receive messages, costs for senders are very limited compared to their overall costs

³ See paragraph 1.2 of Ofcom’s Business Messaging Consultation.

⁴ OTP stands for One Time Password.

⁵ WAB is a version of WhatsApp set up for businesses to communicate with their customers. It offers additional features beyond the standard app to help businesses manage customer interactions more efficiently. To receive messages through WAB requires recipients to have WhatsApp downloaded on their smartphone and data connectivity. It may also require recipients to have granted permission to businesses to send them messages through WAB.

⁶ RBM is an evolution of traditional SMS messaging. It involves a business messaging platform that allows companies to engage with customers through rich, interactive messages. Until recently it was restricted to Android smartphones but Apple has recently enabled use of RBM and RCS on iOS devices.

⁷ Sections 3 and 47 of the Act.

of engaging with customers, and senders and recipients extract great value from A2P SMS showing that pricing is neither excessive nor unfair.

27. Ofcom provisionally decided that it would impose a three-year market review period running from 1 January 2026 until 31 December 2028.⁸ It notes that this is consistent with section 84A(7) of the Act, which sets out that markets must be reviewed at least every five years.⁹ Duration of the review period is an important variable. It determines how long SMP designations and remedies apply and also the period that Ofcom has regard to in conducting its forward-looking market assessment when initially imposing its SMP condition. Given the dynamics and developments in broader business messaging markets as well as the pace of technological change, the duration of review period has a major bearing on market analysis and thus on decisions taken as part the regulatory review. It is our strong view that other channels exert a stronger constraint on A2P SMS than found by Ofcom and the development in competition is greater when viewed over a longer period than Ofcom intends.
28. It would be consistent with other Ofcom market reviews, including TAR¹⁰ and the WVMR¹¹ which is closely linked to A2P SMS, to opt for a five-year period and to align in timings with that of the 2026 WVMR. The review period for A2P SMS would then start in April 2026 and run until March 2031. Adopting a longer review period strengthens our view that Ofcom has no grounds to introduce *ex ante* regulation on A2P SMS services, because competition has longer in which to have an increased effect. Further, as we will see in this submission below, the indirect nature of the relationship between MCPs and senders means that there is a lag between prices changing and senders responding to those price signals and thus it can take time for market developments to play out.
29. It would be a Type I regulatory error, if Ofcom used such a short measurement window to engineer a “false positive” finding of SMP. Ofcom must avoid introducing new regulation that it can only marginally justify for a short review period and then inevitably must withdraw at the next review. Either Ofcom must strengthen the basis of its proposed intervention and show that it is not sensitive to duration of the review period or it must recognise that longer term market development will prevent its concerns from materially playing out over the revised review period in which case Ofcom does not have the legal grounds on which to intervene as it is neither necessary nor proportionate to intervene at this time. We believe the latter is justified. The arbitrary selection of this shorter review period, in the face of the how this market is developing is, in our strong view, one of a number of elements of Ofcom’s approach that would be viewed as unreasonable and procedurally improper, if subject to the appropriate scrutiny.

⁸ See Executive Summary of Ofcom’s Business Messaging Consultation.

⁹ See paragraph 6.117 of Ofcom’s Business Messaging Consultation.

¹⁰ TAR stands for Telecoms Access Review. Ongoing Consultation available [here](#)

¹¹ WVMR stands for Wholesale Voice Markets Review. Latest Statement available [here](#)

30. Without prejudice to our above position with respect to the appropriate review period, for the remainder of our response, we do not challenge Ofcom on the proposed three-year review duration for the purposes of comparability with its own assessment and proposals. We show that even for such a short review period, Ofcom has erred in identifying unduly narrow markets and introducing a tight price cap. Even within such a short period, Ofcom's proposals are not robust enough to withstand profound and rigorous scrutiny. Extending the review period removes any doubt on whether constraints exerted by other channels are sufficient to control A2P SMS provision.
31. We have structured the remainder of our response into four sections:
- Section 2 sets out our serious concerns with the analysis undertaken by Ofcom to inform market definition and how this results in identification of unduly narrow markets. We explain that other channels are closer substitutes to A2P SMS and exert sufficient constraint on A2P SMS termination pricing to justify identifying wholesale markets that include other modes of technically delivering messages to smartphones in addition to A2P SMS.
 - Section 3 sets out VMO2's concerns with regards to Ofcom's failure to apply the relevant legal and regulatory framework correctly, such that it has erred in its conclusions and incorrectly seeks to impose an SMP condition which cannot be justified based on a market analysis of the potential adverse effects of future excessive pricing. In addition, we show that, even if we are wrong about Ofcom's failure to apply the three criteria test properly, the evidence lends itself to a finding that MCPs do not have SMP based a broader forward-looking market definition.
 - Section 4 identifies and discusses major procedural shortcomings in terms of how Ofcom has conducted its review.
 - Section 5, without prejudice to our views above, looks at Ofcom's proposals to intervene through *ex ante* regulation and to do so by applying a tight price cap that will be adjusted by inflation. Even if Ofcom is right on the market analysis, we explain that its proposals would result in the price cap being introduced at an inappropriately low level.
32. Jointly with the other MNOs, we asked Oxera to undertake an economic assessment of Ofcom's proposals to impose *ex ante* regulation on A2P SMS services covering market analysis and approach to remedies. Oxera will directly submit the confidential version of its report on behalf of the MNOs to Ofcom. We agree with the assessment undertaken and the conclusions drawn by Oxera. They validate that Ofcom does not have the evidence base required for introducing a new regulatory intervention.

Section 2: By understating the retail constraints that other channels exert on A2P SMS, Ofcom identifies overly narrow termination markets

33. Ofcom proposes to identify separate relevant markets in relation to wholesale A2P SMS termination provided by individual MCP for any third party that wants A2P SMS delivered to numbers allocated to that MCP.
34. We disagree with the identification of such narrow termination markets. Whilst termination of A2P SMS can only be carried out by the MCP to whom numbers were allocated, in contrast to other “termination markets” other readily useable channels exist that support delivery of instant bulk messages to smartphones and are widely used already. The presence and growth of these channels and the constraints they exert on supply of A2P SMS means that A2P SMS is not comparable to traditional call termination markets where no alternative technical routes to end-users exist. We explain in this section that identification of termination markets is a mistake and the consequence of Ofcom understating the constraints that other channels exert on A2P SMS. Before providing this explanation, we describe the other channels that business can use to deliver messages to the smartphones of their customers.

Channels to deliver business messages to smartphones

35. Businesses can use differing channels to deliver instant messages to smartphones, including A2P SMS, WAB, in-app notifications and RBM. The first three are likely the closest substitutes to each other now and over the coming years, with greater uncertainty around the position and role of RBM.¹² We describe these other channels highlighting their strengths and limitations relative to A2P SMS.

WhatsApp for Business (WAB)

36. WAB is only available to smartphone users who have downloaded the app to their devices and messages can be received only when a device has a data or WiFi connection. These are minor and diminishing limitations as the proportion of smartphone users that use WAB and availability of data connection are very high and rising.¹³ Indeed, when 2G networks are retired, no device will be without a data connection and SMS will be emulated over the digital networks.
37. Ofcom’s Business Sender research identifies the benefits of WAB compared to A2P SMS and other channels in terms of its functionality – principally this is the fact that WAB is not constrained by the 160-character limit of A2P SMS and has heightened levels of security (with end-to-end encryption), with WAB recognised as having a

¹² Email is another mode of delivering business messages to smartphones though it may not perform as strongly in ensuring that messages are observed and read within a short period of sending.

¹³ This said, we recognise that these limitations may remain important for businesses that must send messages with all-encompassing audiences.

particular strength in catering for the requirements of specific audiences.¹⁴ Ofcom uses this research to portray WAB as a good alternative only in niche use cases rather than more widely because of its limitations of being too informal for some senders and the perception that recipients are less comfortable receiving to receive certain message types (such as medical texts) through WAB compared to A2P SMS.¹⁵

38. This is unduly negative. Ofcom's research confirms that senders regard WAB as an attractive channel for some use cases as evidenced by suppliers (of both personal and professional services) being particularly attracted to WAB as they can use it for visually attractive, personal, two-way and ongoing communication. This extends beyond niche use cases and will likely expand to other segments and use cases over the next years. Indeed, if Ofcom were to request internal documents from Meta (which we do not believe it has done) then we would expect Meta to have evidence of a strong desire to expand the use cases for WAB. Failure to follow this line of enquiry constitutes a procedural failure by Ofcom.
39. Most MSPs offer businesses the option of sending messages through WAB (in addition to A2P SMS) via their platforms and 13 out of the 30 respondents to Ofcom's Business Sender research confirmed that they already use WAB to send business messages. This shows that WAB is readily available, that senders know about WAB and are willing to use WAB. The appropriate conclusion is that WAB is a highly attractive channel for particular use cases. The implication for the purpose of robust market analysis is that WAB exerts a material constraint on A2P SMS for those use cases where its benefits are stronger, and that the constraint will intensify as WAB continues to expand to other use cases. As there is a common pricing constraint for SMS services from an MCP, if a critical mass of applications can use alternative channels to SMS, then it will act as a competitive constraint on the price of A2P SMS overall. It is not necessary for alternative channels to perfectly replicate the utility and reach of SMS before they can be considered a constraint.
40. We discuss WAB volumes extensively below. Growth in WAB has been rapid and will continue to be substantial both before and during the review period. As a result of major errors in its volume analysis, Ofcom fails to acknowledge that the base from which WAB will grow is much greater than it accounted for. Ofcom's approach to its analysis of WAB is cursory and does not stand up to scrutiny. Ofcom appears to have focused its review on examining A2P SMP (and its impact) with very little effort and interest in analysing the constraints arising from other channels, such as WAB. This suggests that the constraints posed by other channels may have been an afterthought in Ofcom's conduct of this review.

¹⁴ See pages 31-37 of Application to Person (A2P) Business Sender Research – Report.

¹⁵ See paragraphs 4.32-4.34 of Ofcom's Business Messaging Consultation.

In-app notifications

41. Senders recognise that in-app notifications offer additional security compared to A2P SMS as apps can require users to complete security checks / securely identify themselves before accessing any notifications.¹⁶ Other benefits for senders include the ability for the sending of messages to be integrated into systems, to offer customers/users a more seamless experience and the zero marginal cost when sending notifications through apps. These are significant benefits that can make senders more inclined to develop and use apps to communicate with their audiences.
42. Ofcom's Message Recipient research establishes that awareness of in-app notifications is high, that acceptance and comfort levels for in-app notifications are also high amongst those aware of this channel and that message frequency is very high compared to A2P SMS and WAB. This accords with a substantial minority of smartphone users – likely people using apps for banks, utilities and retail providers – receiving in-app notifications with a very high frequency.
43. Using responses to Ofcom's Message Recipient research, we have been able to estimate (set out later in this submission) that message volumes of in-app notifications are already significant relative to A2P SMS volumes. This provides testimony to the success and growth of apps as a channel for senders to communicate with their audiences. By not collecting data on the use of in-app notifications, Ofcom is not able to understand the role and impact of in-app notifications in relation to business messaging.
44. Ofcom argues that limitations of in-app notifications have a strong bearing on the channel. These include senders having to develop their own app and to persuade its users to download it on their smartphones. Whilst both points are accurate, the very high growth in app creation, downloads and their use in business messaging means that such limitations have not constrained the growth of this channel. This indicates that not only have senders the ability and incentive to develop their own apps but that recipients are willing to download and use them such that apps are used at scale by senders to communicate with audiences. It does not have the same ubiquity and reach as A2P SMS but it involves a major segment of business messaging especially for senders that wish to send high volumes of messages and that would otherwise send via A2P SMS (e.g. NHS, HMRC, banks, large retailers).
45. Ofcom suggests that "*the decision of business senders to develop and roll out their applications primarily reflects broader business/organizational considerations*", and that "*the cost of A2P is not the main factor driving this change*".¹⁷ This is probably true. Businesses are unlikely to invest in apps solely with the costs of business messaging in mind but because communicating by apps offers enhanced security, functionality and user experience in engaging with their users. However, if an app

¹⁶ See pages 31 to 27 of [Application to Person \(A2P\) Business Sender Research – Report](#).

¹⁷ See paragraph 4.50 of Ofcom's Business Messaging Consultation.

allows a sender to reduce, limit or remove their A2P messaging costs, that must be a factor in the overall business case. It is restrictive for Ofcom to only have limited regard to the constraint exerted by in-app because of the one-off cost incurred by senders in developing their own app. We note that Ofcom has not conducted any inquiry in regard to the business cases of major classes of in-app notifiers, even though such firms (e.g. banks or utilities) could be compelled to respond to statutory requests for information. There may also be studies by relevant industry associations. None of these avenues have been explored, consistent with Ofcom's largely superficial review of constraints exerted by other channels on A2P SMS.

46. There are significant benefits for senders to communicate with their audiences through apps, including: cost effectiveness, media capabilities (as apps allow to send images, videos, and other engaging content that A2P SMS does not support), branded and consistent user experience, analytics and tracking, greater personalisation based on preferences and behaviour, two-way communications, integration with other services, privacy compliance and reduced friction for recurring customers. These benefits have driven the growth in apps, their increased use for business messaging in recent years and for this trend to continue going forward as more businesses develop their own apps.
47. By way of example, the NHS uses in-app notifications and A2P SMS to send messages. We understand that the NHS has recently changed its policy to prioritise the sending of messages by way of in-app notifications (for people that have downloaded the app) and to only send messages, to those same customers, by A2P SMS when notifications have not been read for several hours. This provides an example of how a major sender is flexible in using in-app notifications alongside A2P SMS. We understand that Ofcom has had communication with the NHS about its use of A2P SMS and its concerns (which we understand to be largely about price stability rather than price levels). Yet, we find no analysis of the strategy of the NHS in developing its app.
48. In addition to government agencies, providers of financial services are pivoting away from A2P SMS towards in-app notifications in part because sending confidential information by A2P SMS is restricted by guidance from their regulator. Moreover, banks seek to reduce reliance on A2P SMS instead encouraging customers to use their app, e.g. certain banks no longer inform customers about their bank balance by sending them A2P SMS messages, directing them to using their app or online banking to check their balance.
49. In-app notifications are therefore an alternative to A2P SMS for major segments of business messaging. They already are close substitutes to A2P SMS in these segments, and the constraint they exert on A2P SMS will increase over time. The significant, focused constraint by in-app notifications must not be disregarded as Ofcom effectively does by looking at the channel's ability to constrain A2P SMS across use cases and segments.

RBM messages

50. RBM is nascent as a messaging service and it is uncertain how it will develop over the coming years as a new channel for delivering business messages.¹⁸ If RBM develops successfully, it is likely to develop into a substitute for A2P SMS over the review period exerting a constraint additional to that which is already imposed by WAB and in-app notifications.
51. With the recent development that RCS is now available on Apple devices (vastly expanding the reach and potential scale of RBM), there is the opportunity for RBM to take flight over the next years. Given the superiority of RBM in terms of functionality and user experience, we anticipate interest and switching will increase over time, potentially very significantly. Following on from the recent adoption by Apple, the next year will be pivotal in providing an indication of the trajectory that RBM may take as a channel in broader business messaging markets. Because of its nascent status, it is appropriate to account for RBM as potentially exerting an incremental constraint to A2P SMS, additional to that of more established other channels. Whilst RBM is in its early stages, the underlying RCS technology has been developed as an evolution to SMS. This suggests that over time it may have the potential to achieve the ubiquity that A2P SMS reached in current times.

Channel substitution is key for retail market analysis

52. The hypothetical monopolist test provides a conceptual framework to identify competitive constraints arising from demand-side or supply-side substitution. As noted by Ofcom it is often challenging to apply in practice thus requiring balancing different types of evidence and exercising judgement. Ofcom notes that its analysis draws on: i) qualitative evidence on the availability and appropriateness of potential retail demand substitutes (including the business sender and message recipient research); and ii) evidence on volume changes in response to price increases, based on collected volume and price data.¹⁹
53. The central question for market definition in this review is whether senders switching from A2P SMS to other channels – notably, WAB, RBM and in-app notifications – limit the ability of MCPs to profitably increase their wholesale prices. Ofcom provisionally finds that such substitution is unlikely to constrain A2P SMS termination pricing as: (1) recipients and senders strongly prefer A2P SMS over other channels; and (2) volumes of other channels have grown from a low base and not at the expense of A2P SMS volumes. These were major factors in Ofcom concluding that other channels are not close substitutes to A2P SMS in retail markets.

¹⁸ For instance, Ofcom observes it is unclear to what extent intermediaries will begin to actively promote RBM and senders and recipients will become more aware and comfortable to use this messaging service. See paragraph 4.43 of Ofcom's Business Messaging Consultation.

¹⁹ See paragraph 4.11 of Ofcom's Business Messaging Consultation.

54. We consider that Ofcom greatly underestimates the constraints that retail substitution exerts on A2P SMS and that this is the consequence of the Business Sender research, the Message Recipient research and its volume/price analysis not supporting the two findings above. In turn, we now discuss the flaws in these three evidence points and explain implications for what can and cannot be concluded on retail substitution.

The Message Recipient research is critically flawed and driven by recipients being more familiar with A2PSMS

55. Ofcom argues that the Message Recipient research shows that recipients prefer receiving messages that contain personal or sensitive information by A2P SMS instead of by other channels and find it more acceptable to receive most message types by A2P SMS rather than through other channels.²⁰ It considers that the evidence shows that recipients perceive A2P SMS as the more appropriate means to receive communications from businesses.
56. It is instructive to consider the initial questions that were posed to the participants in this research. Participants that own a smartphone are asked whether they are aware of channels through which they can receive (business) messages and whether they received a message through any channel they are aware of in the last month. Channel awareness is very high for A2P SMS, WAB, and email (over 90%), high for in-app notifications at 70%; and lower at 23% for RBM. Variation is greater where it concerns participants having received a message through channels over the last month: much higher for A2P SMS and email (at 70% and 74%) than for WAB and in-app notifications (at 17% and 32%). The responses to these questions provide the basis to ask participants about their preferences over channels and their levels of acceptability receiving messages through channels.
57. The Message Recipient research is subject to three critical flaws.
- Participants unlikely understand channels in the context of receiving business messages. Most adults use WhatsApp but they may not yet have experienced or associate this channel with receiving business messages, and few adults can likely distinguish between SMS, RCS and iMessage.²¹
 - Findings on preferences and acceptability are based on the responses given by participants that are aware of differing channels. But responses are likely greatly driven by previous experience with differing channels. Given the higher current use of A2P SMS, one can expect that participants respond more favourably to A2P SMS as that is the channel with which they are familiar. The correct approach that Ofcom should have taken is to look at the responses from

²⁰ See page 35 of Ofcom's Business Messaging Consultation.

²¹ This is evidence by MNOs receiving spam reports from consumers relating to voice calls, iMessage and RCS through a reporting channel that is intended to report SMS scam communications. See page 13 of the Oxera report.

participants that have received messages through differing channels as they can more meaningfully express their views between channels. Ofcom could then have compared the views of participants with relevant experience across channels.

- Questions ask participants to compare A2P SMS with other channels. Such framing makes it easier and more acceptable to agree with statements.²² It makes participants more likely to report that they prefer receiving messages by A2P SMS or to find it more acceptable to receive message types through A2P SMS relative to other channels.

58. These flaws mean that Ofcom's Message Recipient research does not support the conclusion that UK adults strongly prefer receiving messages through A2P SMS. To the extent that inferences can be drawn, the appropriate finding is that recipients have very high awareness of A2P SMS, frequently receive messages through this channel, and have positive views on receiving messages through it. Whilst this accords with why A2P SMS is highly valued, it does not allow the drawing of inferences about recipients' views of the merits of different channels, one versus the other.
59. Moreover, any survey captures the views as they were perceived by people when they participated in that survey. It is highly plausible that people expressed positive views about A2P SMS as that is the channel that they were most familiar with when they were interviewed. However, when senders increasingly switch to other channels (time), recipients will become more familiar with these channels and this will affect their views on which channels they are comfortable receiving messages through.²³ Preferences for channels can exist for individual use cases but that reflects variation across segments of business messaging as opposed to the general and strong preference for A2P SMS that Ofcom purports to exist. There are already major segments where senders and recipients hold favourable views on other channels as they recognise the higher functionality, security and more personal communications they support.

The Business Sender research does not allow Ofcom to conclude that senders have a limited willingness to substitute to other channels

60. The Business Sender research provides insights into why senders value the A2P SMS channel and what they identify as benefits and drawbacks of A2P SMS and other channels. We discuss these insights before turning to the shortcomings in this research and what they mean for any conclusions that can be drawn from this research.

²² See pages 14 and 15 of the Oxera report for an evaluation of the biases and ambiguity aversion that likely affected survey responses.

²³ As noted by Oxera, there are also indications of underlying dissatisfaction where it concerns the presence of scams in the broader SMS channel. This could make people to think more favourably about other channels that provide additional security and encryption features.

61. The Business Sender research identifies that senders consider there to be significant value in A2P SMS arising from its perceived advantages:
- *universal reach*: the universality makes it a vital channel for many senders (especially those with an all-encompassing audience);
 - *tied to clear benefits and outcomes*: it is instant and commands attention, and its impact is direct and can be measured²⁴;
 - *largely commoditised*: regarded as a basic service with limited functionality, and;
 - *small proportion of budget*: senders deem the price per message to be low and A2P SMS expenditure to be negligible as part of overall spend.
62. These findings, which accord with our experience, confirm that senders are highly satisfied with A2P SMS and consider it a highly cost-effective service. Senders thus deem that they get value from A2P SMS and do not consider prices high or unfair, in light of the value they generate.
63. Ofcom concludes from this research that senders prefer A2P SMS as the channel through which to send messages primarily because of its unparalleled reach and ubiquity.²⁵ We agree that A2P SMS is a highly valuable and well-regarded service and that its reach and ubiquity make it an attractive channel for many use cases.
64. Ofcom observes that senders commonly use other channels only for niche use cases and alongside continued use of A2P SMS. The former is a speculative judgement and, in our view, not substantiated by evidence that proves use cases are (and will remain) niche. The latter is true but must not be narrowly interpreted as senders having poor views on other channels, rather that senders cannot switch their entire bulk messaging traffic, at least not yet. The research shows that nearly half of the senders already use other channels indicating that they interchangeably use A2P SMS and other channels. Actual use of other channels based on messaging volumes may be more limited but ability and incentive is already established for senders to send messages across multiple channels and for other senders to follow their example.
65. The Business Sender research illustrates that benefits and drawbacks of channels vary: WAB is attractive for informal, personal and ongoing communication; A2P SMS has reach and ubiquity as key advantages; and in-app notifications are great for senders that value security and already engage audiences through their apps. Individual other channels are attractive for certain use cases, less so for other use

²⁴ For instance, senders across sectors (health care, restaurants, estate agents) confirm that A2P SMS is highly effective and offers great value in reducing missed appointments which has significant monetary implications.

²⁵ Additionally, Ofcom observes that SMS is the default messaging application on all mobile devices and does not require users to download dedicated applications.

cases, with A2P SMS likely having a broader appeal (for the moment). However, for Ofcom to make a blanket conclusion that A2P SMS is “*by far the preferred business messaging services for business senders and message recipients*” is not justified.²⁶

66. The Business Sender research singles out reach as the single key feature: “*While overall other services can offer more unique benefits over SMS and combat some of its limitations, the benefit of reach overrules these.*”²⁷ Reach and ubiquity are major benefits of A2P SMS but this does not mean that the balance of benefits and drawbacks favours A2P SMS over other channels in all – but niche – use cases. There are use cases where individual other channels are highly attractive alternatives to A2P SMS and these involve large segments.
67. Whilst the Business Sender research provides interesting qualitative insights on senders’ views across channels, it does not provide a basis to conclude senders have limited willingness to substitute to other channels as a major input in defining the relevant markets. It is based on a small sample and it is not shown to be representative of overall use of business connectivity services (or of major segments within these).²⁸
68. The Business Sender research does not provide quantitative evidence of the extent to which senders may consider switching from A2P SMS to other channels as a function of price or other considerations. The indicative responses to price change questions in this research cannot be used to draw conclusions on what potential substitution away from A2P SMS may be at market level. Any substantive judgement on senders’ responses to price rises can only be based on observed demand responses at market level as opposed to on the responses of some research participants.
69. Ofcom opted for qualitative research to learn about senders’ views and experiences across differing channels which it expressly sought for varied senders. It would have been possible to identify which businesses and sectors make substantial use of A2P SMS, and to conduct surveys that produce representative evidence of how large senders may respond to price changes. This would provide more suitable evidence for us in application of the hypothetical monopolist test.
70. A proposal that relies so heavily on a **qualitative** survey of only 30 respondents to derive a **quantitative** conclusion about substitution in response to price changes fails to withstand profound and rigorous scrutiny.

²⁶ See page 20 of the Oxera report.

²⁷ See page 37 of the Business Sender research.

²⁸ Oxera refer to the Business Sender research itself acknowledging this limitation on page 8 of its report: ‘*these figures describe the composition of our sample of 30 qualitative interviews – they should be treated as indicative only and should not be considered representative of the wider market*’.

Developments in business messaging are greater and more profound than Ofcom accounts for

71. Ofcom observes that demand for A2P SMS has grown despite significant price increases at the retail level, and it concludes from this that demand is relatively inelastic.²⁹ Whilst VMO2 acknowledges that there has been growth in A2P SMS, [X] The conclusion of inelastic demand is also weak as Ofcom does not take account of the rapid volume growth in broader business messaging services. Our understanding is that the overall volume of business messaging has grown significantly and that other channels have gained a large share of the new volumes. When viewed in the round, A2P SMS volumes have only seen moderate growth [X] This points to greater activity and market dynamics than Ofcom accounts for, with intense competition for new demand and material substitution from A2P SMS to other channels at a retail level. Ofcom missed this bigger picture by focusing excessively on A2P SMS.
72. Ofcom supports its observations regarding the volume response to A2P SMS price rises by concluding that “*most business senders would be unlikely to switch significant volumes away from A2P SMS as a result of small price increases*” and stating that “*some of the businesses interviewed indicated that it would take substantial increases in retail prices, for them to re-evaluate their demand volumes and consider other channels.*”³⁰ Both conclusions rely on evidence gathered through the Business Sender research which was designed to collate qualitative evidence and insights from a small number of senders. If and how this can be extrapolated to the market level (or to key segments where other channels are closer substitutes to A2P SMS) is unclear.

View on substitution and constraints at the retail level

73. Ofcom is wrong to conclude that other channels are not close substitutes at the retail level and that this means they do not ultimately constrain A2P SMS wholesale pricing. This conclusion is largely based on three evidence points, each of which is materially flawed in how it was collected and analysed. Overall, retail substitution is stronger and more dynamic, making that other channels are already closer substitutes and will become even closer substitutes to A2P SMS over time. There is much greater momentum for other channels to exert strong constraints on A2P SMS.
74. Other channels being closer substitutes, growing rapidly, and being very successful in gaining new demand for business messaging points to the presence of a broader retail market that includes WAB, in-app notifications, RBM and possibly other channels in addition to A2P SMS. These are all services that involve instant delivery of messages to smartphones.

²⁹ See paragraph 4.63 of Ofcom's Business Messaging Consultation.

³⁰ See paragraph 4.66 of Ofcom's Business Messaging Consultation.

75. Oxera's assessment support our findings. They conclude that Ofcom has not sufficiently demonstrated that alternative communications channels are neither effective substitutes to A2P SMS for both recipients and senders for these channels to act as effective constraints on provision of A2P SMS nor will deliver increased competitive pressure on A2P SMS in the future, absent intervention.³¹ In doing so, Oxera explain that no alternative channel may be an effective substitute across all message types, but they are and can be individual messages types and then collectively acting as a strong constraint on A2P SMS prices.³²

Looking at relevant wholesale markets

76. Following on from the above, Ofcom's review of wholesale markets is driven by its flawed understanding of substitution and constraints at the retail level. Logically, if other channels offer no constraint to A2P SMS at the retail level, then the technical means of delivery of other channels cannot be close substitutes to A2P SMS termination, and wholesale markets would be confined to A2P SMS termination.
77. However, as set out above, retail substitution is material and will increase substantially over the short term to the extent that other channels will impose an even greater constraint on A2P SMS provision. We deem it likely that other business messaging services are in the same retail market as A2P SMS which can be defined as services that allow senders to instantly deliver messages to smartphones. This more appropriate perspective on retail competition has been our starting point to look at relevant wholesale markets.
78. When retail markets involve differing business messaging services, then wholesale markets logically include the underlying technical modes of delivering these services. That includes terminating MCPs for A2P SMS, Meta for WAB, Google/MNOs for RBM and own apps for in-app notifications.
79. Whilst it is correct that for each mobile number, only one MCP can terminate A2P SMS to that number, the constraints exerted by other channels (at the wholesale level) on individual MCPs are very similar, and hence, we consider it appropriate to identify a single UK market for the delivery of instant business messages to smartphones. It is in relation to this wider wholesale market – which includes differing technical modes for delivering messages to smartphones – that Ofcom must undertake its analysis as to whether each of the MCPs can be designated as having SMP.

Pricing in developing and mature wholesale markets

80. A2P SMS volumes have moderately increased in recent years (though more recently growth is near zero) whilst other channels have grown rapidly. As explained above, this is likely as a result of other channels having gained a very high share of new business messaging volumes (rather than A2P SMS) and senders having

³¹ See page 9 of the Oxera report.

³² See page 12 of the Oxera report.

started to switch established volumes from A2P SMS to other channels. Compared to other channels, supply of A2P SMS has been more stable reflecting the channel's maturity.

81. The maturity of A2P SMS and growth of other channels means that A2P SMS providers face a challenge where it concerns the revenue they can accrue from A2P SMS provision. Large senders of A2P SMS are increasingly able and willing to switch material volumes to other channels at the expense of A2P SMS volumes and revenues. This trend will inevitably continue over the coming years.

Ofcom's analysis of wholesale volumes fails to satisfy the relevant legal criteria that underpin an SMP determination and it has failed to meet its duty of enquiry

82. Ofcom acknowledges the recent growth of other channels but concludes there is not enough momentum for these channels to act as competitive constraint over the review period. In arriving at this conclusion, Ofcom observes that volumes of WAB and RBM "*represent a small fraction of the respective A2P SMS volumes*" and that "[w]e have not collected data on the usage of in-app notifications".³³ Both observations are the result of Ofcom not having conducted a sufficiently diligent analysis of current volumes of WAB, RBM and in-app notifications.
83. Additionally, Ofcom has not projected volumes by channel over the review period which means it cannot have an informed view of the constraints that other channels exert on A2P SMS over time. This omission means that Ofcom has not conducted a true forward-looking assessment of the relevant market, taking account of the expected and foreseeable developments that may affect competition pursuant to section 79(1A) of the Act. In so doing, Ofcom has irrationally concluded that each limb of the three-criteria test is met under section 79(2B) of the Act and, as such, has erred in identifying a market that is need of a market power determination.

Ofcom's analysis of recent volume data pertaining to other channels is littered with errors and suffers from major limitations including the failure to undertake sufficient enquiry

84. In its Consultation document, Ofcom reported that the recent WAB and RBM volumes were 0.002% and 0.0005% respectively of A2P SMS volumes in 2023/24.³⁴ These figures contain clear errors given that the reported volumes on which the percentages are calculated are 21 billion A2P SMS messages for 2023/24 (full year)³⁵ vs 38 million WAB conversations and c. 10 million RBM Messages respectively in Q1 2024 (one quarter). Whilst A2P SMS volumes are greater, 38 million WAB conversations and 10 million RBM Messages already amounts to 0.2% and 0.05% respectively of A2P SMS message volumes and this is not like-for-like as WAB and RBM volumes are reported on a quarterly basis whereas A2P SMS volumes are reported on an annual basis. Correcting for this difference, we determine that WAB conversations and RBM messages are 0.72% and 0.2%

³³ See paragraphs 4.68 and 4.69 of Ofcom's Business Messaging Consultation.

³⁴ See paragraph 3.57 of Ofcom's Business Messaging Consultation.

³⁵ See paragraph 3.56 and Figure 3.4 of Ofcom's Business Messaging Consultation.

respectively of A2P messages volumes for Q1 2024. Ofcom thus reported figures that were incorrect by more than two orders of magnitude.

85. Ofcom then published a note (ten days before the response deadline raising concerns around procedural fairness) in which it admitted to having made arithmetical errors and correcting its earlier reported WAB and RBM volume figures as follows.
- It revised its reported percentages (which we understand to cover the period Q2 2023 to the end of Q1 2024³⁶) to 0.058% for WAB and 0.09% for RBM. Based on corrected numbers, RBM volumes are a greater proportion than WAB yet it is immediately apparent from Figure 3.5 that WAB volumes are six times greater than RBM volumes. It is clear that Ofcom have misreported the percentage for WAB volumes once again. These volumes account for 0.58% instead of 0.058% of A2P SMS volumes in 2023/24. The corrected figure thus is one order of magnitude wrong compared to the accurate figure, though an improvement on the proportions reported in the Consultation.
 - Ofcom clarified that the WAB volumes it reported only concern conversations sold through the direct channel and that the indirect channel likely involves a similar number of conversations. It means that total WAB conversations over the period 2022 to 2024 are plausibly double compared to the volumes that Ofcom reported.
86. Errors can be made but there is a pattern of mistakes and lack of diligence in the way that WAB conversation volumes are analysed and discussed. Moreover, Ofcom says that the corrections do not change its analysis and proposals but, given the differing orders of magnitude of WAB compared to A2P SMS, we consider it likely that Ofcom could have drawn different conclusions in its overall market analysis had it been more diligent in its volume analysis and better understood how volumes of other channels already compare with A2P SMS.
87. With respect to WAB, we note that the volumes are based on conversations rather than total messages. Our best estimate of WAB message volumes (albeit it remains a conservative estimate) compared to A2P SMS is calculated using the following methodology:
- a. Using WAB volumes for Q1 2024 (i.e. 38 million), calculate the percentage based on a quarter of A2P SMS volumes for 2023/2024 (i.e. 5.25 billion): = 0.72%;
 - b. Multiply the percentage calculated under step 1 by two to adjust for the total of WAB conversation volumes both indirectly and directly sold via Meta: $0.72*2=1.44\%$, and;

³⁶ See footnote 123 of Ofcom's Business Messaging Consultation.

- c. Assume that there are 2 messages per each conversation: $1.44 * 2 = 2.9\%$. Thus, multiply the figure from step 2 times two.
88. Applying these steps we estimate WAB message (as opposed to conversation) volumes to be 2.9% of A2P SMS volumes in Q1 2024. Accordingly, the base from which WAB will grow is thus much greater than the 0.002% or 0.056% that Ofcom had regard to in its Consultation or Correction Notice respectively. Moreover, what was 2.9% for Q1 2024 has likely doubled again by Q1 2025 (when we respond to the Consultation).
89. With respect to RBM, when applying only step 1 of the approach above, that it conservatively accounts for 0.2% of A2P SMS volumes in Q1 2024 compared to the 0.09% over the full year ending at Q1 2024 as per Ofcom's Correction Notice.

Ofcom did not deem it necessary to forecast channel volumes over the review period

90. A review requires conducting a forward-looking assessment of competitive conditions over the review period. Volumes are clearly an important parameter of competitive conditions. As such, we would expect Ofcom to have projected volumes of A2P SMS volumes and other channels over the review period. The Consultation does not present any substantive discussion of future volumes and what this means for how other channels evolve relative to A2P SMS. It is unclear how Ofcom believes it has satisfied the second limb of the three-criteria test which requires Ofcom to have concluded that the market will not tend towards effective competition within the relevant period of review (section 79(2B) of the Act) when not accounting for future volumes.
91. When asked in a VMO2/Ofcom meeting on 31 March 2025, Ofcom reported that it had not projected future volumes of A2P SMS and other channels. When pressed, Ofcom admitted that it had not undertaken a prospective assessment of likely future volumes, notwithstanding the forward-looking nature of a market review. Not accounting for volumes of potential substitutes raises fundamental questions about the diligence with which Ofcom has undertaken this review and whether a regulator, acting reasonably, would have reached the same conclusions. It suggests that Ofcom has not conducted itself with the rigour MCPs would have legitimately expected when designating a new market with SMP and imposing SMP conditions on over 50 MCPs.
92. Ofcom says that its corrections to reported recent WAB and RBM volumes do not require it to revisit its analysis and provisional conclusions. However, this is plainly incorrect, not least because Ofcom still under reports the market share of WAB by a factor of 10. Based on the analysis conducted and process followed to date, we are not confident that Ofcom has accounted for anywhere near what the volumes of WAB and RBM are likely to be over the review period since they considered greatly underestimated bases from which other channels would grow. This means that Ofcom cannot have been able to informatively conclude that other channels lack momentum to develop into constraints on A2P SMS over the review period.

93. We project A2P SMS and WAB volumes from their 2023/24 actuals through to 2028 by making the following assumptions on messages per WAB conversation and channel growth as follows:

- reported WAB volumes multiplied by two to account for the missing indirect channel;
- two messages per WAB conversation (which is a conservative estimation given that conversations can include a multitude of messages over any 24 hour periods);
- A2P SMS volumes to continue growing at ~5% per annum (in line with historic growth); and;
- WAB volumes to continue to grow at over 100% per annum as they have done in the past two years (then somewhat reduced growth from 2026 onward).

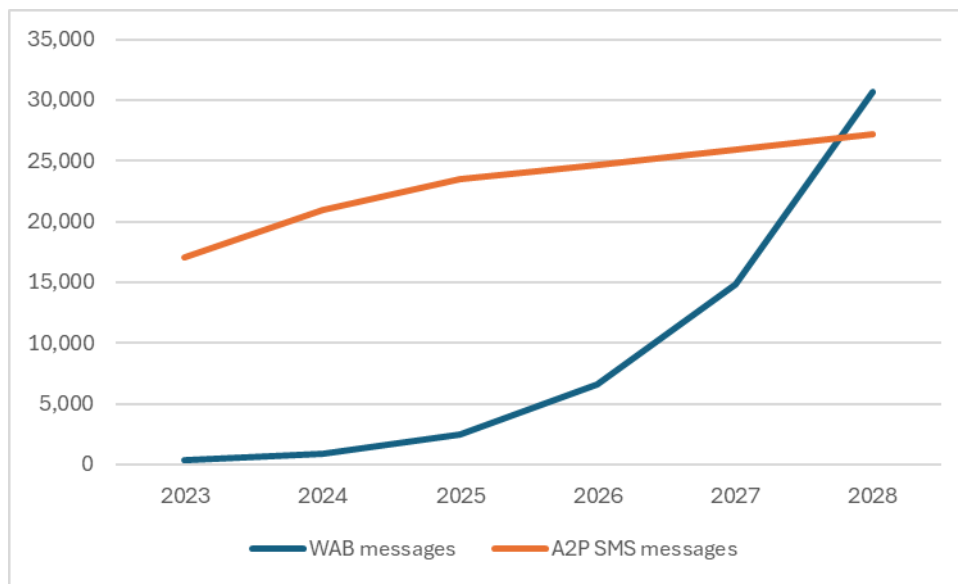
94. Starting from a conservative base of 2.9% of A2P SMS volumes in Q1 2024, we project that WAB messaging volumes will be substantial compared to A2P SMS in the first year of the review period (at 26% in 2026) and will exceed A2P SMS by 2028. Whilst we acknowledge we are working with slightly historical figures (Q1 2024, based on the latest data has include in its Consultation) and have had to make assumptions that may have a material impact on projections, it is clear that WAB messages volumes will be material compared to A2P SMS even if WAB growth were to slow down. It is incumbent on Ofcom to undertake a robust volume analysis post-Consultation as part of a true forward-looking assessment,

95. Indeed, internal documents of Meta may well be instructive as to its views of the future demand of WAB and competition with A2P SMS. Whilst Ofcom appears keen to repeatedly use its information gathering powers on ECS providers,

[<

] We discuss this later when we turn to the issues related to procedural fairness.

Figure 1: Projecting A2P SMS and WAB volumes through to 2028



Source: VMO2 analysis. Messages reported in millions per annum. For instance, 21 billion A2P SMS message vs 470 million WAB messages sent in 2024. We converted WAB conversations to messages assuming a 2:1 ratio.

96. Volumes of WAB and RBM projected over the review period are very important for the market analysis. Our projections – shown for WAB but directionally extending to RBM – seriously undermine Ofcom’s conclusion that “*there is not enough momentum for these channels to develop into substitutes to A2P SMS*”.³⁷ This might have seemed reasonable based on Ofcom’s analysis of recent volumes but it does not stand when correcting for errors made and projecting volumes going forward.
97. Ofcom has not collected data on in-app notifications volumes.³⁸ Given the role and growth of this channel, it is incumbent on Ofcom to collect data on volumes of this channel over the past years. At a minimum, it could have asked for message volumes in regulated sectors (utilities, communications, finance) as businesses active in these sectors are likely large senders of both A2P and in-app notifications to support 2FA and other regulatory requirements.³⁹ This would have allowed understanding volumes of in-app notifications and their growth in recent years.
98. Using the Message Recipient research adopting a set of credible assumptions allows to determine the number of participants that received messages through individual channels over the last month and the frequency with which they receive messages. We used Ofcom’s reported figures to estimate message volumes for A2P SMS, WAB, and in-app notifications on a comparable basis. This is particularly

³⁷ As Ofcom says in paragraph 4.70 of its Consultation.

³⁸ See paragraph 4.69 of Ofcom’s Business messaging Consultation.

³⁹ 2FA stands for two factor authentication.

insightful for in-app notifications as Ofcom has failed to gather sufficient data in relation to this channel. This adds further weight to our observation that the analysis of constraints on A2P is somewhat of an afterthought by Ofcom.

99. Our analysis drawing from data reported as part of the Message Recipient research provides insights in relation to both the current usage and volumes of these channels.
- In terms of use, participants received messages less frequently through in-app notifications and WAB in the last month than through A2P SMS: 33% in-app, 17% WAB, 70% A2P SMS. In the case of WAB, the data points to greater use of this channel than the volumes reported by Ofcom suggest. Also, it indicates that in-app notifications are well known and commonly used.
 - In terms of volumes, our estimates reported in Table 1 below show that volumes of other channels are material when compared to A2P SMS when accounting for participants that received a message in the last month and message frequency. We estimate in-app notifications and WAB volumes to represent 61% and 36% respectively of A2P SMS volumes. This confirms that volumes of WAB and in-app notifications are already material compared to those of A2P SMS. Also, it points to apparent misalignment between Ofcom’s volume analysis and the Message Recipient research suggesting that WAB and RBM have made greater inroads than Ofcom volumes account for.

Table 1 By-channel comparison of message volumes

Number of messages received through a channel			
	A2P SMS	In-app notifications	WAB
<i>Daily</i>	3,309	3,025	1,780
<i>Weekly</i>	2,388	614	325
<i>Monthly</i>	221	61	72
<i>Less than monthly</i>	130	11	20
<i>Total</i>	6,048	3,711	2,197
<i>As % of A2P SMS</i>		61%	36%

Source: VMO2 analysis using numbers reported in Ofcom’s Message Recipients’ research and making assumptions on message frequency (e.g. daily = 15, weekly = 4, monthly = 1 and less than monthly = 0.5).

100. Our analysis shows that in-app notification is a material channel in terms of volumes. Whilst compared to A2P SMS, there is lower awareness of this channel and fewer participants who are aware of the channel received a message through it in the last month, we note that these factors are materially offset by the higher message frequency which is observed. This points to a particular segment of UK people being comfortable (possibly preferring) using apps to communicate and to, for example, arrange their banking, monitor use of utilities, use the NHS or conduct other business. Ofcom has not discussed this segment of business messaging in its Consultation, which raises doubt on its understanding of how in-app notifications

has grown through substitution from A2P SMS and what the potential for further switching may be.

Our view on definition of relevant wholesale markets

101. Our view that other channels impose material indirect retail constraints on A2P SMS is supported by the analysis of recent and projected volumes that we presented in this section. As a result of multiple errors, Ofcom has failed to provide even an indicative understanding of the inroads that other channels have made and what this means for their potential to increase as constraints on A2P SMS over the review period. This means that we strongly disagree with the proposed identification of termination markets at the wholesale level.
102. Given the constraints that other channels increasingly exert on A2P SMS, markets should be defined that comprise of the differing technical modes of delivering instant business messages to smartphones. At a minimum, this would include WAB, in-app notifications and RBM (possibly others) in addition to A2P SMS.⁴⁰

⁴⁰ For simplicity, we look at a single market for instant delivery of business messages to smartphones without delineating separate markets for the individual MCPs terminating A2P SMS to numbers allocated to them. We do this as competitive conditions will be very similar across markets that can be identified varying by MCP.

Section 3: Failure to follow the proper legal and regulatory framework for conducting the market review process

103. In this section, we find that Ofcom has failed to follow the legal and regulatory framework when conducting its market review and, as such, has reached a conclusion that no authority, acting reasonably, would have reached. We consider that there is a demonstrable flaw in Ofcom's reasoning as a result of a set of serious methodological errors:

- failure to conduct the three-criteria test prior to assessment of market power;
- intrinsically linked to the first failure, failure to conduct a forward-looking assessment as required pursuant to section 79 of the Act, and;
- failure to properly analyse the risk that the MCPs might increase prices in the future such that they are set at excessively high level so as to give rise to adverse effects as necessitated in section 88 of the Act.

Ofcom's Legal and Regulatory framework

104. When conducting its market review, Ofcom follows three broad analytical stages namely (i) market definition; (ii) competition assessment; and (iii) application of remedies.

105. Section 79(1) of the Act states that:

“Before making a market power determination, Ofcom must –

- *identify (by reference, in particular, to area and locality) the markets which in their opinion are the ones which in the circumstances of the United Kingdom are the markets in relation to which it is appropriate to consider whether to make the determination; and*
- *carry out an analysis of the identified markets”*

106. Section 79(1A) of the Act confirms that, when analysing the services market in order to make a market power determination, *“Ofcom must conduct a forward-looking assessment of the market, taking into account expected or foreseeable developments that may affect competition in the market”*.

107. Section 79(2A) of the Act explicitly calls out that unless the three criteria set out in section 79(2B) of the Act are met, then Ofcom may not identify that market as being suitable for a market power determination.

108. The three criteria set out in section 79(2B) that must be cumulatively satisfied before *ex ante* regulation can be considered are:

- presence of high and non-transitory barriers to entry;

- a market structure which does not tend towards effective competition, and;
 - competition law alone would not adequately address the market failure(s).
109. The aim of the test is to avoid new regulation being introduced when it is not absolutely clear that market forces and application of competition law are not able to remove and mitigate the competition concerns present. It is the second of the three criteria that inherently relies on Ofcom carrying out its forward-looking assessment in section 79(1A) of the Act.
110. Accordingly, in essence Ofcom's market review process should follow the steps below:
- define the relevant markets;
 - assess whether the markets that have been defined meet the three criteria test;
 - markets which do not satisfy the three criteria test are not susceptible to a market power determination, which would trigger ex-ante regulation;
 - for markets which satisfy the three criteria test, assess whether any provider has SMP; and
 - where Ofcom make a determination of SMP, the identification of appropriate remedies, based on the nature of the competition problems affecting the relevant markets including a review of whether the proposed SMP obligations stratify the requirements of section 88 of the Act.
111. The above process is incontrovertible and indeed is the exact same process conducted when reviewing call termination markets and setting SMP conditions as part of the Wholesale Voice Markets Review 2021-26.

Failure to follow the legal and regulatory framework as part of this review

112. As set out in Section 5 of the Consultation, Ofcom carries out its assessment of SMP prior to conducting its analysis of whether the three criteria test is met. This is a clear reversal of steps 2, 3 and 4 above. In this way, Ofcom carries out a grave methodological error by pre-determining that the MCPs have SMP before concluding whether the market is one which is susceptible to a market power determination. This procedural error gives weight to VMO2's suspicion that Ofcom had, from the outset, concluded that it would impose regulatory intervention and was retrofitting its analysis to meet that determination.
113. Had Ofcom followed the correct process i.e. carried out the three criteria test (including a forward-looking review (see further below) prior to market power assessment), it is VMO2's contention that Ofcom would not have the grounds on which to conduct a SMP assessment.

114. As noted in Section 4 below, this procedural failure means that Ofcom has breached its common law duty to act reasonably by reaching a (provisional) decision that no authority, acting reasonably, would have reached.

Failure to conduct a forward-looking analysis

115. The above failure is exacerbated by Ofcom's failure to carry out a truly forward-looking assessment of the markets which would have taken account of the constraints imposed now and in the future by other channels.
116. In our view (and supported by the Oxera report), Ofcom has not properly assessed neither the current, nor future, competitive dynamics in the A2P messaging market, which results in it underestimating the competitive constraints imposed on A2P SMS by other channels.
117. It is clear that if, as VMO2 believes to be correct, the relevant market is not limited to A2P SMS termination but rather one in which there is inter-channel competition which constrains the MCPs, then the three-criteria test is not met. The varied and competitive market structure underlying such markets means that markets are evolving towards effective competition if material competition has not established already.
118. For the avoidance of doubt, even if Ofcom is correct to identify the relevant market as that of A2P SMS termination, we do not accept that the three-criteria test is met as supported by the Oxera report. Even if other channels are not sufficiently close substitutes to exert constraints on A2P SMS provision for the purpose of identifying broader markets, they are already material out-of-market constraints that will intensify over time. There is the clear prospect that competition between A2P SMS and other channels will intensify over the coming years which changes the outlook in favour of the market structure evolving towards effective competition (i.e. the second of the three criteria will not be met). It is critical for Ofcom to take account of the ongoing changes to market structure and increases in competition for the overall provision of business messaging. Even if constraints exerted by other channels are deemed limited today, they will be significant enough over time to accord with market structure evolving towards effective competition over time.
119. Ofcom must apply an appropriate bias against intervention. Applied to the context of A2P SMS, Ofcom must not deem the three-criteria test to be met when there are likely developments that mean the market structure is evolving towards effective competition. Indications of increasing competition between channels over time implies that the trend towards effective competition is likely and material, requiring Ofcom to apply utmost caution in deciding on *ex ante* regulation when market forces will likely make such intervention unnecessary within years.

A2P SMS providers do not have SMP in a broader market

120. Without prejudice to our contention above that there would have been no need to conduct an SMP assessment on the basis that a forward-looking assessment would find that the three-criteria test is not satisfied, we find that, if Ofcom had, for some

inexplicable reason, determined that a market determination was appropriate, then it should still find that VMO2 and other MCPs do not have SMP. This is based on the only logical conclusion Ofcom could have drawn had it properly accounted for the material constraints exerted by other channels on A2P SMS provision within co a broader overall market for business messaging services.

121. In support of this point, we have conducted a high-level assessment of market power in an appropriate broader market applying the same criteria that Ofcom had regard to, i.e. market shares, barriers to entry and expansion, buyer power and pricing evidence. Our conclusion is that evidence is not consistent with MCPs having significant market power in the delivery of business messages to smartphones.
122. Our review of volumes in Section 2 above enables us to estimate *market shares* over the review period. Based on our projections of A2P SMS and WAB volumes and estimated recent volumes across the A2P SMS, WAB, and in-app notifications channels, we find that each of WAB and in-app notifications will account for a substantial share of the broader market over the review period, and jointly over 50%. When also accounting for the likely rapid growth in RBM, it is our conservative estimate that A2P SMS will account for <40% of the broader market by 2028 (if not earlier). This is below the level that normally gives rise to market power concerns. The decline in A2P SMS market share compared to today is driven by the growth of other channels (winning a large and increasing part of the “new” business messaging demand) as well as increased switching of “existing” demand away from A2P SMS to other channels.
123. *Barriers to entry and expansion* for each channel that is part of a broader messaging market may be high but the presence of multiple channels within the market implies that barriers are lower than they are for termination markets. This said, we expect most competition to come from existing providers of messaging services across differing channels facing limited barriers to expansion, less from new entry, i.e. we expect Meta, with its scale and scope, to be able to expand its market presence rather there be a new entrant developing a scaled equivalent of/substitute for WAB. These existing providers do not face material barriers to expansion as they already have the technical means to deliver messages to all smartphones. Expansion requires marketing, sales and improving customer experience, not taxing investment in infrastructure.
124. With respect to *buyer power*, we have had regard to large senders and to MSPs that offer business messaging services across differing channels. Individual large senders have attractive options in using WAB and in-app notifications to send messages.
 - Large senders with a global footprint increasingly switch to other channels (WAB and in-app notifications). [X]

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- Large businesses and organisations will increasingly use apps to communicate with their audiences. This not only relates to “new” volumes of business messaging but also switching of considerable volumes from A2P SMS to apps. In this way, senders can leverage the existing use of apps to put pressure on A2P SMS providers to give them discounts.

125. Smaller senders commonly purchase messaging services from MSPs. The Business Sender research identified that the majority of MSPs already offered A2P SMS, WAB and potentially other messaging services. We expect that soon all MSPs will offer WAB, with a strong uptake of RBM as well. This will make it easier for smaller senders to compare and try out WAB and RBM) as substitutes or complements to A2P SMS as they can purchase it from the same platform and using the same API. Moreover, apps will become more accessible for smaller businesses as they recognise the value and benefits of communicating directly to their customers and white label offering of apps makes this more accessible, particularly if some of the constraints posed by the mobile ecosystems including app development are subject to controls imposed by the CMA as part of its Strategic Market Status investigations. The options available to smaller senders and their ability to use them will grow which means they increasingly are able to switch to other channels.
126. With regards to **pricing**, Ofcom deems that increases in A2P SMS termination rates by MNOs provide an additional indicator of SMP as they were largely made independently of considerations regarding underlying costs or possible substitution and price increases have not been commensurate with evidence on SMS-specific costs.⁴¹ As shown by Oxera, A2P SMS termination rates did not increase by materially more than inflation.⁴²
127. Ofcom’s assessment is unduly restrictive as it did not consider how current prices compared to competitive levels. [3<

⁴¹ See paragraphs 5.36-5.38 of Ofcom’s Business Messaging Consultation.

⁴² See page 54 of the Oxera report.

] Moreover, Ofcom considered that this cap reflects the effective competitive conditions around 2020 and was “a reasonable starting point to calculate what an appropriate current price might have been”. This must mean that our current and historical prices cannot be deemed to exceed the competitive level. Any assertion that prices are above the competitive level is inconsistent with Ofcom’s justification for setting the cap at its proposed level. Oxera assessed how current A2P SMS prices compare to the competitive level, concluding that Ofcom has neither robustly demonstrated that prices are set at an excessively high level compared to costs nor that prices are unfair given the significant value that senders derive from using A2P SMS services.⁴³

128. Accordingly, when looked at in the round, the evidence we analysed as part of market power assessment (<40% market shares, low barriers to expansion, material buyer power, and no evidence of pricing above the competitive level) is not consistent with MCPs having market power in a broader business messaging market such that they cannot, to a significant extent, act independently from their competitors, customers and consumers. The implication is that there is no basis for Ofcom to seek to impose SMP conditions.
129. Notwithstanding our conclusions above, many of the MCPs that have been provisionally determined by Ofcom to have SMP, at the same time, have limited phone numbers allocated to them raising questions about whether Ofcom’s decision is proportionate in line with its statutory duties. Alternatively, Ofcom needs to take account that WAB message volumes are higher than the large majority of the 51 MCPs that Ofcom proposes to designate with SMP. Moreover, the reach of WAB is greater than each of the MCPs with the exception of the MNOs. By Ofcom’s definition, Meta is a bottleneck monopolist as it is the only one that can provide delivery of business messages to WA subscribers. If Ofcom were to maintain its position that SMP conditions should be imposed on MCPs, it would, based on Ofcom’s rationale, be appropriate to at least designate WAB with SMP and to impose remedies to prevent exploitative conduct by Meta.

Ofcom has not justified its concern for future risk of excessive pricing

130. Section 87 of the Act states that where Ofcom have made a determination that a person has SMP (which we contend above it should not conclude in this case), it shall impose relevant SMP conditions.
131. Section 87(9) entitles Ofcom to impose price controls subject to meeting the requirements set out in section 88 of the Act. Section 88 of the act states that Ofcom is not permitted to set a price control SMP condition unless it concludes that:
 - (a) based on market analysis, there is a relevant risk of adverse effects arising from price distortion (which based on section 88(3) can be found if the dominant provider might “fix and maintain some or all of his prices at an excessively high

⁴³ See sections 4 and 5 of the Oxera report.

level ...so as to have adverse consequences for end-users of public electronic communications services”; and

- (b) it is appropriate to set the condition for the purposes of (i) promoting efficiency; (ii) promoting sustainable competition; (iii) conferring the greatest possible benefits on the end-users of the PECS; and (iv) where relevant to the market analysis, promoting the availability of new and enhanced networks.
132. Whilst Ofcom does not regard VMO2’s (or any another MCP’s) current wholesale prices to be excessive, Ofcom justifies the need for intervention by referring to the future risk arising from the ability and incentive of MCPs to raise prices to an excessive level *absent regulation*.
133. For Ofcom to conclude there is such a risk and, in turn, intervene in the market, they must undertake a level of analysis that can withstand scrutiny and demonstrate that the level of risk is more than just spurious. Indeed, given the impact on those subject to SMP, Ofcom should find, for this risk to be justified, that there is a high likelihood that MCPs, *absent regulation*, will raise prices to a level that is excessive compared to the competitive level. Ofcom has simply presumed the nature and scale of this risk to justify intervention but it has not applied appropriate rigour, based on market analysis as is necessitated by section 88(1) of the Act, to determine that there is a risk of adverse effects arising from the price and that the proposed SMP condition will promote efficiencies or the greatest benefits to end-users.
134. Indeed, in our call with Ofcom on 31 March 2025, we were told that Ofcom deems prices materially above costs to be excessive. This is an unduly narrow interpretation of what constitutes excessive pricing because pricing relative to costs is an inherently complicated matter (not least because this relates to cost recovery for networks used to deliver multiple services). In addition, for Ofcom to establish that there is an excessive pricing “abuse” which needs to be remedied, the prices would also need to be unfair.
135. Ofcom could have analysed the potential of this risk by applying the United Brands test on a forward basis in accordance with the future pricing risk it identified. Albeit an excessive pricing case under competition law, this test asks (a) if the difference between the costs incurred (including a reasonable rate of return) and the price charged is excessive; and (b) if so, if the price is unfair in itself or when compared to competing or comparable products. Pricing only constitutes an abuse of dominance when it is shown to be both excessive relative to costs and unfair.
136. In its report, Oxera assessed whether the United Brands test is met on a current and forward basis. It concludes that Ofcom has not demonstrated that A2P SMS prices are, or are at risk of being, set at an excessively high level when compared to relevant costs, and that it has neither established that A2P SMS prices are unfair when compared to their value to A2P SMS pricing in other countries, the pricing of other channels, and the trend of A2P SMS pricing in the UK over time. We agree with Oxera’s findings. [38]

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137. For avoidance of doubt, we do not accept that even future prices are at risk of being excessive relative to costs. Prices must not be compared against the incremental costs of providing A2P SMS termination. Most of the costs involved in mobile networks to support voice, data and SMS delivery are fixed and common across investing in and maintaining the network. It is appropriate (based on the Ramsay pricing principle) to give operators flexibility in how they can price differing services delivered over the same network to most efficiently recover the fixed and common costs. This can involve operators setting a higher price for services with inelastic, and a lower price for services with elastic demand. This is integral to maintaining investment incentives to contribute to economic growth (a key Ofcom duty).
138. Total P2P SMS volumes have been in decline for years, and this fall has recently greatly accelerated reflecting ongoing migration towards WhatsApp but also switching towards iMessage and RCS. The latter two factors likely explain most of the recent fall. The implication is that A2P SMS over time has started to account for a substantially greater proportion of total SMS volumes which likely means that operators expect and want to contribute more to recovery of SMS-specific and common costs of mobile networks.
139. With respect to section 88(1)(b), Ofcom has failed to take account of the fact that the imposition of price caps would introduce major inefficiencies given it would not enable the MCPs to fully recognise the contributions that A2P SMS can make to recovery of fixed network costs thereby reducing the MCPs ability to invest in networks and compete with the alternative business messaging channels (contrary to the requirement to promote sustainable competition). Whilst this may be justifiable in classic voice termination markets, such as mobile call termination, where the regulator may decide that harm arising from such markets is material and extends to mobile retail markets and that allowing operators to recover only incremental costs (first LRIC+, then reduced to pure LRIC) can be beneficial for competition and market outcomes, this is not the case with respect to A2P SMS in which (as set out above) it continues to face sizeable (and ever increasing) competition from and constrain imposed by alternative business messaging channels.
140. The history of pricing of mobile call termination is very different to that of A2P SMS. Prices of mobile call termination were very high before regulated caps were introduced and several major cap reductions were necessary for prices to come down to their current much lower level. Instead, non-regulated A2P SMS termination prices came down in 2010/11 then stayed constant in nominal terms for a decade and only recently increased. Overall, the observed pricing is not consistent with MCPs having been monopolists of A2P SMS termination that have sought to maximise the profits they can generate from this channel.
141. We make two comments that add to Oxera's assessment.

1) [redacted] as the price cap which Ofcom has set based on what it deemed “a reasonable reference point of what a competitive price level could be”.⁴⁴ This must mean that [redacted]

] and that a very major price increase must occur for our future prices to be excessive relative to the competitive level.

2) Senders perceive a great benefit from using the A2P SMS channel and its cost-effectiveness. This means that current pricing and provision of A2P SMS is deemed fair and will remain so *absent intervention* (especially with other channels restricting the ability and incentives of MCPs to substantially raise prices).

142. If Ofcom seeks to introduce SMP regulation because of a concern for excessive pricing, it must demonstrate through the application of the ‘United Brands’ test that there is a relevant risk of adverse effects arising. Setting aside the speculative nature of an intervention based on potential future outcomes, it requires Ofcom to demonstrate that the ‘United Brands’ test is met in circumstances that would prevail *absent regulation*. Ofcom has not done so which means it has not justified intervention based on a concern of future excessive pricing. If Ofcom were to apply the test, it would find – as Oxera has done – that the test is not met on a forward basis as neither limb of the test is satisfied.

⁴⁴ See paragraph 6.59 of Ofcom's Business Messaging Consultation.

Section 4: Ofcom's procedural failures

143. In this section, we set out the procedural failures which we are concerned have already arisen as part of the Consultation process or may arise as part of the final decision if further actions are not taken by Ofcom. These failures are:

- failure to have regard to relevant considerations;
- failure to undertake sufficient enquiry or evidence gathering; and
- failure to provide sufficient clarity for consultees.

Ofcom has failed to have regard to relevant considerations

144. We note that Ofcom has a common law duty to act reasonably and to ensure that it sets out its reasoning in a clear and transparent manner including that to which it has given relevant consideration. Indeed, a decision by an authority may not be robust if *“there is a demonstrable flaw in the reasoning which led to it – for example, that significant reliance was placed on an irrelevant consideration, or that there was no evidence to support an important step in the reasoning, or that the reasoning involved a serious logical or methodological error”*⁴⁵.

145. As VMO2 has demonstrated in the sections above, Ofcom has failed in a number of places in its Consultation to have regard to all relevant considerations and has committed a serious methodological error. Not only has Ofcom incorrectly applied the three-criteria test set out in section 79(2B), it also failed to conduct an appropriately forward-looking analysis as required under section 79(1A) of the Act. As such it did not take full account of the other channels – and the constraint they exert on A2P SMS pricing – consequently reaching conclusions that no rational authority should have done.

146. As above, Ofcom has failed to appropriately establish recent volumes of WAB, RBM and in-app notifications, how these developed over the past years and compare with A2P SMS volumes. It greatly understated recent volumes of these channels (or in the case of in-app notifications it did not gather data) and thus the base from which other channels constrain A2P SMS provision and will increasingly do so over the coming years. The deficiencies in analysis of collected data are amplified by Ofcom not having projected volumes of other channels over the review period. Combined, the errors and omissions that Ofcom made on volumes are serious and imply that the analysis underpinning its proposals is biased towards intervention, lacks rigour and does not meet the standard for market reviews.

⁴⁵ R (Law Society) v Lord Chancellor [2018] EWHC 2094, p.98

Ofcom has undertaken insufficient enquiry / evidence gathering

147. Ofcom holds itself out to be an evidence-based regulator⁴⁶. As has been established, Ofcom has considerable power when issuing its decisions and, as a sector regulator, is afforded a wide discretion to exercise that power. Ofcom therefore has a duty of enquiry and to gather sufficient evidence.
148. Ofcom must, however, act rationally. There is a wealth of case law that reinforces that a public authority, such as Ofcom, must act reasonably and ensure that the inquiries it makes prior to issuing a decision are sufficient so as to arrive at a rational conclusion. As acknowledged by the Competition Appeal Tribunal (CAT) in the *CityFibre* appeal⁴⁷, it is also an established principle that “[t]he wider the discretion conferred on the Secretary of State, the more important it must be that he has all relevant material to enable him properly to exercise”⁴⁸.
149. However, VMO2 is concerned that Ofcom has failed to conduct sufficient enquiry with it openly admitting that it has not sought to gather certain information from third parties. We highlight, by way of example of our concern, the use of speculative language and assertions that Ofcom rely on with respect to the current and future role of other channels. For the purposes of any decision it takes as part of this review, Ofcom must be guided by evidence and not rely on assertions and speculation.
150. In terms of the evidence gathering that has been undertaken, VMO2 contends that the way in which the Business Sender research and the Message Recipient research were conducted and then analysed does not meet the standards for evidence in a market review. They provide qualitative insights but not robust evidence for analysing substitution from A2P SMS to other channels to inform market definition. Ofcom has put undue weight on (i) indicative responses by individual senders that are unlikely representative for overall business messaging demand, and (ii) recipient responses that are likely materially influenced by the design and execution of the message recipient research.
151. Ofcom’s final decision needs to be made on robust evidence not assertion guided by qualitative insights to avoid the risk of similar errors arising.

Failure to provide sufficient clarity for consultees

152. As a public authority, Ofcom is also subject to the public law duty of consultation. When issuing a Consultation and inviting responses from interested parties, Ofcom is obliged to follow the Gunning/Sedley criteria⁴⁹ which includes the principle: “that

⁴⁶ See Ofcom’s Impact Assessment Guidance – paragraph 1.3.

⁴⁷ *CityFibre Limited v Ofcom* [2022] CAT 33, p.88.

⁴⁸ *R (Pharmaceutical Services Negotiating Committee) v Secretary of State for Health* [2017] EWHC 1147, § 56(6).

⁴⁹ *R v Brent London Borough Council, ex p Gunning* (1985) 84 LGR 168, p.189.

the proposer must give sufficient reasons for any proposal to permit of intelligent consideration and response”.

153. In order for a consultee to be afforded the opportunity to provide an intelligible response, it is necessary for the public authority to provide sufficient information. “[S]ufficient information to enable an intelligible response requires the consultee to know not just what the proposal is in whatever detail is necessary, but also the factors likely to be of substantial importance to the decision, or the basis upon which the decision is likely to be taken”⁵⁰ .
154. In its Consultation document, Ofcom has presented a degree of reasoning underpinning its provisional decision but VMO2 is concerned that Ofcom has not provided, in sufficient detail, all factors on which it seeks to rely. In part, this is due to the significant level of analysis it has failed to undertake but also in terms of evidence it has not detailed in its Consultation. In this regard, the Consultation refers to the NHS and the public sector as large users of A2P SMS that have experienced substantial rises in their A2P SMS spend and may face additional spend increases if additional A2P SMS price rises are implemented. We understand that Ofcom has spoken to the NHS and GDS but neither the nature of these conversations nor the extent of the conclusions which have been drawn from it are transparent.
155. If, as we assume, based on our own discussions with such governmental organisations, these discussions or correspondence were only to show that the public sector is seeking price stability over multi-year period, then it is incumbent on Ofcom to disclose such findings as it a key factor in determining whether price regulation is a proportionate form of intervention and targeted at resolving the problems in the market. If price stability is the key concern, this can be overcome through contractual provisions subject to committed volumes. That would be the more appropriate way for the public sector to overcome some of the frictions that may be present in supply of A2P SMS.
156. Failure to provide such pertinent information denies VMO2 and other MCPs their right to respond fully and “*draw to the attention of the decision maker relevant factors which the decision maker may, either by accident or design, have overlooked when deciding upon a preferred option for consultation*”⁵¹ .

⁵⁰ R (Devon CC) v Secretary of State for Communities and Local Government [2010] EWHC 1456, p.68

⁵¹ Ibid, p.69.

Section 5: Ofcom overplays the need for introducing a price cap and in how it proposes to set the cap

Introduction of the cap is proposed with little justification

157. As its primary competition concern, Ofcom identifies the risk that MCPs will set and maintain future A2P SMS termination rates at an excessively high level with adverse consequences for *end-users of public electronic communications services*. It interprets end-users broadly having regard to impact on senders and recipients as well as stifling growth and innovation across both the private and public sector. Ofcom did not establish the likelihood and scale of such adverse consequences.
158. If MCPs were to raise A2P SMS termination prices, the likely outcome is that senders would place more volumes through other channels but continue to send messages to their audiences, with no impact on growth or innovation and with limited cost impact borne by senders.
159. Intervention in this market does not accord with Ofcom's precedent to not intervene when consumers do not pay and do not experience material harm (e.g. in the regulation of NI-ICS services, for example). Given the need for Ofcom to prioritise its work where it delivers the greatest benefits to UK communications users, we are concerned that Ofcom proposes to intervene when the harm to be addressed has not arisen and to the extent it could arise would be of small scale and transient. Moreover, new regulation would be introduced when constraints on A2P SMS are greater than ever before and increasing year-on-year.
160. [✂

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] It is uncertain that material adverse consequences of the type identified by Ofcom will occur *absent regulation*. In such circumstances, it is more appropriate to wait until there is greater certainty around the comparative merits of intervening vs not intervening.

161. Additionally, Ofcom expresses its concern "*that the future exercise of SMP may reduce the quality of A2P services provided to aggregators, and in turn to end users, relative to the service offered in a competitive market*".⁵³ It argues this concern would arise because purchasers of A2P SMS termination cannot discipline poor service by switching to an alternative provider. This reasoning is wrong on two counts. First, senders can switch to other channels when they experience poor quality of A2P SMS provision which incentivises providers to maintain service quality. Secondly, a price cap does not enhance the incentives of MCPs to improve

⁵² See paragraph 6.59 of Ofcom's Business Messaging Consultation.

⁵³ See paragraph 5.55 of Ofcom's Business Messaging Consultation

service quality. If anything, it discourages MCPs to invest in the quality of A2P SMS provision as it restricts their ability to extract value.

Ofcom's impact assessment is skewed in favour of the price cap

162. As part of its impact assessment, Ofcom accounts for the impact of imposing the price cap on senders, recipients, aggregators, MCPs and providers of other messaging services. It deems that the positive impacts for the first three will be greater than the adverse effects that the proposed cap may have for MCPs and providers of other messaging services. We consider this assessment is skewed as Ofcom overstates positive and understates adverse impacts of a cap.

Ofcom overstates the positive impacts of a price cap as only senders will benefit moderately

163. Recipients do not pay to receive A2P SMS and are only affected when A2P SMS price rises result in them receiving fewer messages which they value to receive. Ofcom presents anecdotal evidence that some senders may have reduced A2P SMS volumes because of recent price rises. But it has not shown that, *absent intervention*, materially fewer A2P SMS will be sent, that senders will not send messages through other channels, and thus that recipients receive fewer messages they regard as valuable. Moreover, by intervening, Ofcom risks slowing the development of competition and innovation in business messaging which can harm consumers longer term.
164. Senders may pay higher retail prices to send messages through A2P SMS if further price rises are implemented. But they expressed that A2P SMS is a valuable and a highly cost-effective channel. Hence, it seems likely that apart from somewhat higher costs (A2P SMS spend accounts for a very small proportion of senders' cost base), there is no risk that senders will be restricted in their ability to send messages. This is further validated by other channels becoming increasingly attractive for functionality, security and other reasons, implying that senders have alternatives to A2P SMS and our recent volume data shows they are increasingly taking advantage of alternatives by switching away from A2P SMS.
165. Termination prices account for most of their costs but aggregators are able to pass on wholesale cost rises to customers. In terms of a concern around price volatility, this can be effectively addressed by remedies that oblige MCPs to apply longer notification periods and to restrict price rises to once per annum. A price cap does not address such concern as it only limits the prices that MCPs can charge.

Ofcom understates the adverse effects that a price cap will have for MCPs and providers of other messaging services

166. The introduction of a price cap will have greater adverse effects for MCPs and providers of other business messaging services than Ofcom accounts for.
167. Ofcom argues that MCPs will be left no worse-off than under a competitive market, that there will unlikely be a negative effect on their investment incentives and that the knock-on effects on mobile consumers will be unlikely and limited. We are

concerned about these arguments given Ofcom's duties to have regard to investment and economic growth.

168. Ofcom recognises that MCPs will be affected by the price cap as it will restrict the revenues they can generate from A2P SMS termination. Ofcom estimates a £30m per year revenue reduction which it deems unlikely a substantial impact across MNOs. We deem that an impact of £10m per MNO is significant as it means much lower contributions to the recovery of common costs incurred in building and running mobile networks. MNOs must either raise their prices elsewhere, or (more likely) the revenue reduction comes at the expense of profitability and liquidity reducing cost recovery and diminishing their ability and incentives to invest.
169. Furthermore, we observe that the £30m estimate is based on current prices. It would be significantly higher (in the order of tens of £m per MNO per year) when compared to the price rises that Ofcom anticipates MCPs may implement *absent regulation*. Imposing the price cap denies MCPs the opportunity to raise additional revenue and to use it for investment. This would be detrimental to MNOs and to the millions of households and businesses that use their services and that want them to invest in their networks.
170. The price cap will also harm providers of other messaging services as it reduces substitution from A2P SMS to other channels restricting their ability to grow and pricing of the services they sell. This will affect individual providers of such services but also the development of competition and innovation in broader business messaging markets. Ofcom notes that the proposed cap is within the range of current prices of other messaging services. This is both an indication of existing competition between A2P SMS and these services and it means that the risk of the price cap distorting the pricing of other messaging services is substantial.
171. Ofcom understating both the constraints exerted by other channels and the base from which they grow greatly impacts on its assessment of the magnitude of the impact on providers of other messaging services. When other channels are not close substitutes to A2P SMS and grow from a very small base (as Ofcom believes), it is plausible to expect impact to be minor as a price cap on A2P SMS would not materially impact on other messaging services. But neither presumption holds. There is greater competition between A2P SMS and other channels and the current base of other channels is much higher than Ofcom accounts for.⁵⁴ This means that providers of other messaging services are at risk of losing substantial revenues as they would face lower volumes and potentially lower prices when a price cap is introduced.

⁵⁴ Oxera, on page 19 of its report, identify that the pricing of WAB, and recent changes it, demonstrates that WAB actively competes with A2P SMS services in a broader business messaging market. They also note that it can take time for price changes to play out in the market. This accords with our view that Ofcom must not rely too much on observed response to A2P SMS price changes having been limited to date.

172. It must be concerning to Ofcom and to providers of other messaging services that the price cap will have a major adverse impact outside of the markets that Ofcom proposes to intervene in.

Overall impact of a price cap does not favour its introduction

173. We find the positive impact of a price cap is confined to senders and much less material than Ofcom purports it to be whereas adverse effects on MCPs and providers of other messaging channels are significant and real – which ultimately results in tangible adverse effects on consumers. This implies that the test in section 88(1)(B) of the Act is not met and that it is not appropriate to introduce the SMP condition in these circumstances.

Ofcom has not considered the impact of the “waterbed effect” and what this means for the prices that consumers pay for other services

174. Telecoms markets are characterised by multiple services being delivered to a range of residential and business customers over the same network. In case of our mobile networks, we deliver a wide range of voice, SMS and data services at a wholesale and retail level to differing customer types, including businesses and households. For instance, A2P and P2P SMS is delivered over the same infrastructure with P2P SMS bundled in retail packages and A2P SMS sold separately to business senders (through aggregators).
175. Mobile operators incur incremental costs in delivering particular services but many costs are fixed and common across services and customers. Hence, it is important for operators to recover the fixed and common costs involved in building and developing their networks through the range of services they sell and thus from across their differing customers.
176. The principle of Ramsay pricing is that recovery of common costs is achieved more efficiently when businesses can vary the contribution that differing services make to cost recovery. More specifically, it can be efficient for businesses to set higher prices for services with inelastic demand and lower prices for services with more elastic demand. This prevents adverse volume impact to occur from the services for which demand is more elastic. Differences in elasticity likely originate from variation in competitive constraints and demand features across services and the customers exercising demand for services.
177. All else equal, restricting the ability of operators to vary pricing to allow for efficient cost recovery can be deemed harmful as the prices of individual services would be guided by other factors. For instance, when imposing a price cap, Ofcom effectively restricts MCPs’ ability to recover common costs through a greater degree from provision of A2P SMS termination. It means that MCPs must recover more of their common costs through other, retail markets in order to not endanger their recovery of common costs and for there to be detrimental impact on their ability and incentives to invest in mobile networks. This has long since been accepted by the European Commission, BEREC and NRAs (including Ofcom).

178. The implication is that restricting cost recovery (which a price cap clearly does) comes at a price which Ofcom has not accounted for. It suggests that impact on MCPs would be minimal as the cap would leave them no worse off than under a competitive market. But the reality is that lower revenues from A2P SMS means either lower investment by MCPs in mobile networks (as increased contributions to cost recovery by other services crowd out investment) or higher prices in retail markets as MCPs seek to retain their ability to invest whilst recovering their common cost base.
179. Ofcom has not undertaken an assessment of the waterbed effect (i.e. higher retail prices for other services because of price cap restricting A2P SMS revenues) that could arise when introducing the price cap. Depending on the functioning of this effect, it could well be consumers who pick up the tab for costs that would otherwise be paid for by businesses. This would even further deteriorate the balance of benefits and costs that introducing the price cap may deliver.
180. Where operators cannot raise retail prices, the effect is not a distributional one but a detrimental impact on the ability and incentives of operators to invest in their mobile networks. We would expect such impact to be top of Ofcom's list given its "growth duty"⁵⁵ and the Government having asked economic regulators to contribute to its growth agenda where possible.

[A price cap is disproportionate as other remedies can more effectively address Ofcom's wider concerns](#)

181. Ofcom proposed to address its competition concerns by setting a price cap based on December 2020 prices and to adjust this by inflation to determine the cap in today's prices and then going forward. In arriving at these proposals, Ofcom has not had due regard to remedies other than a price cap that can more effectively mitigate its concerns.
182. Ofcom proposes a price cap as it deemed that competition law alone, non-pricing remedies or a requirement for FRAND pricing would not be sufficient to address its competition concerns. We understand Ofcom's concerns to include the risk of future excessive pricing to have adverse consequences for end-users, but to extend to volatility of prices, quality of service, and distortions of retail competition.
183. In deciding on a price cap, Ofcom must account for how A2P SMS termination rates are and will be constrained over the review period. We explained above that constraints exerted by other channels are material and will increase over time, thus greatly reducing the excessive pricing risk that Ofcom is concerned about (and implying that the second limb of three-criteria test is not met). When this risk is lower, it would be appropriate to have more regard to its other concerns, volatility of prices in particular.

⁵⁵ See paragraph 2.32 of Ofcom's Business Messaging Consultation.

184. Ofcom has not considered how a concern around price volatility is addressed through a price cap or other remedies. For instance, price notification requirements can oblige MCPs to advise customers on price changes months ahead of changes taking effect, or price changes can be limited to once per year. Such remedies would reduce the uncertainty that aggregators experienced in recent years. A price cap would have no bearing on when and how often price changes are made and thus does not effectively address a volatility concern.

Ofcom’s proposals will restrict prices as at an inappropriately low level

185. Ofcom proposes to set the cap based on average on-net A2P SMS termination prices across the four MNOs in December 2020 and adjusting this by CPI to determine the cap in today’s prices. It argues that December 2020 prices provide a reasonable representation of competitive prices at the time.

186. Ofcom only looked at the last five years finding prices to be stable in 2019-2021 with substantial prices rises in later years. But Ofcom did not consider the development of prices over a longer period. If it did, it would have observed that prices were constant in nominal terms from 2012 to 2022 and had come down from a higher level previously. Table 2 reports the cumulative changes in our A2P SMS termination prices and CPI over three periods illustrating how prices changed relative to inflation.

Table 2: Comparing A2P SMS price changes to CPI changes

	CPI change (%)	A2P SMS price change (%)
2010 to 2024	50%	[X]
2014 to 2024	34%	[X]
2019 to 2024	24%	[X]

VMO2 analysis based on TUK A2P SMS prices and ONS CPI data over the period 2010-2024. We only used the lowest prices for the highest volume commitments.

187. From 2010 to 2024, A2P SMS prices fell by [X] in nominal terms whilst CPI increased by +50%. From 2014 to 2024, [X]]. From 2019 to 2024 (which aligns with the period that Ofcom analysed), [X]

]. This puts in doubt Ofcom’s claim that prices increased by more than inflation which may only be true for individual MCPs and when restricted to the last five years. It also means that using the December 2020 prices results in the lowest price cap in today’s terms than any other prices charged by MNOs between 2010 to 2024. For instance, the cap would be [X] higher when using our 2012 price ([X]) and adjusting for

inflation to set the cap, and [§<]. We consider that it would be entirely in line with Ofcom's rationale to set the cap on 2012 prices.

188. Oxera looked at evidence on A2P SMS termination (or retail) prices in other countries where A2P SMS termination is not regulated. They do not find UK prices to be high in comparison to prices in other countries.⁵⁶ This means that the price cap would be introduced at a level well below what are the prices for the same services in international markets for A2P SMS termination that are deemed by national regulators to be competitive. This raises questions about the need for Ofcom to intervene and about the level of the proposed cap. Ofcom should have also looked at international case studies to learn about the growth of other messaging services in Asian countries as these show that A2P SMS can be replaced as the most used channel within years.
189. Ofcom proposes to adjust the cap going forward by adjusting for CPI as it considers that this provides sufficient allowance for changes in the costs of providing the service. Adjusting by CPI may provide enough cost allowance when volumes grow but our volumes have stalled and we expect volumes to fall now that substitution to other channels has begun to accelerate. Keeping the cap constant in real terms when volumes decline means that our A2P SMS revenues will fall in real terms, and in turn, that A2P SMS will contribute less to common cost recovery. As an illustration, A2P SMS revenues will fall by +30% in real terms if volumes fall by 8% per annum from 2025 under Ofcom's price cap proposals. This risks greatly exacerbating the adverse impact on MCPs discussed above.
190. At a minimum, MCPs must be given the opportunity to keep revenues constant in real terms. This can be achieved by implementing CPI+X where X is set as a function of (projected) A2P SMS volumes over the period. Subject to robust volume projections, Ofcom can set X to keep revenues constant in real terms, thereby mitigating adverse impact from falling real revenues on investment and cost recovery. Alternatively, this can be achieved by revising X over the review period as a function of observed volume changes.

⁵⁶ See Figure 5.1 of the Oxera report.