080 and 116 number ranges

Consultation on proposed dispute resolution guidance

Consultation

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Section 1

Introduction

NGCS document

1.1 Over the last three years we have undertaken a detailed review of non-geographic call services. We have today published a document which sets out the decisions that we are minded to take: *Simplifying non-geographic numbers, policy position on the unbundled tariff and the 080 and 116 ranges* (the NGCS document).[1]

1.2 In the NGCS document, we state that we are minded to make the 080 and 116 ranges free-to-caller[2] from all telephones (both fixed and mobile).[3] We also set out our view that, if we proceed to make these number ranges free-to-caller, then we should also set an access condition on persons that terminate calls to 080 and/or 116 numbers (terminating communications providers or TCPs) requiring them to purchase wholesale origination for calls to these numbers on fair and reasonable terms (including charges).[4]

Proposal for guidance

1.3 We anticipate that making the 080 and 116 ranges free-to-caller may prompt changes to current wholesale arrangements for calls to these numbers. We recognise that negotiations relating to revised origination charges for these calls may give rise to potential disputes as to what constitutes a fair and reasonable charge (as required by our proposed access condition). We therefore consider that it would be helpful to provide guidance as to how we would resolve any such future dispute.

1.4 In this consultation we set out for comment draft guidance on how we would be likely to assess what is a fair and reasonable origination charge for calls to (free-to-caller) 080 and 116 numbers, if called to do so in a dispute. We would also expect TCPs and originating communications providers (OCPs) to draw on this guidance in any negotiations on revised origination charges. We believe that this guidance will be useful for stakeholders, both in terms of their negotiations with respect to these charges and preparation for any dispute resolution should those negotiations ultimately fail.

The dispute resolution process

1.5 Section 185(1)(a) of the Communications Act 2003 (the Act) gives Ofcom jurisdiction to resolve certain disputes, including those relating to the provision of network access between different communications providers (CPs). By virtue of section 185(8), this includes a dispute as to the terms or conditions on which network access is or may be provided in a particular case. Section 185(2) of the Act also gives Ofcom jurisdiction to resolve a dispute between CPs relating to rights or obligations conferred or imposed by or under Part 2 of the Act.[5]

[1] http://stakeholders.ofcom.org.uk/consultations/simplifying-non-geo-no/
[2] By ‘free-to-caller’ we mean that the number can be accessed by consumers at a retail price of zero and, where the call is made from a public payphone, without having to use coins or cards.
[3] See Part C of the NGCS document for further details.
[4] See Section 14 of the NGCS document for further details.
[5] Provided the dispute is not excluded by virtue of section 185(7) of the Act.

1.6 Section 185(3) provides that any party to a dispute may refer it to Ofcom. Section 185A empowers Ofcom to invite any one or more of the parties to a dispute to refer it to Ofcom under section 185(3).

1.7 Section 186 of the Act provides that where a dispute is referred to Ofcom in accordance with section 185, Ofcom must decide whether or not it is appropriate to handle it, and sets out the considerations that Ofcom may take into account in doing so.

1.8 Where it is appropriate for Ofcom to handle the dispute, section 188 of the Act provides that Ofcom must consider the dispute and make a determination for resolving it within four months, except in exceptional circumstances.

1.9 Ofcom's powers to resolve disputes are set out in section 190 of the Act. They include the power to make a declaration setting out the rights and obligations of the parties to the dispute, to give a direction fixing the terms or conditions of transactions between the parties to a dispute, and/or to give a direction imposing an obligation, enforceable by the parties to a dispute, to enter into a transaction on the terms and conditions fixed by Ofcom. For the purpose of giving effect to a determination of the proper amount of a charge in respect of which amounts have been paid by one of the parties to the dispute to the other, Ofcom may also give a direction requiring the payment of sums by way of adjustment of an underpayment or overpayment.

How Ofcom resolves a dispute

1.10 Ofcom has published guidelines, which describe our dispute resolution process in detail.[6] Stakeholders should refer to those guidelines for information on how to refer a dispute to Ofcom, the submission requirements we will apply and the process we will follow.

1.11 Dispute resolution is a statutory function, which Ofcom must exercise consistently with its statutory duties, in particular as set out in sections 3 and 4 of the Act (which give effect, amongst other things, to the requirements of Article 8 of the Framework Directive).[7]

1.12 A determination made by Ofcom to resolve a dispute binds all the parties to that dispute.[8] Since a subsequent dispute with similar facts is likely to result in a similar decision (given our statutory duties, including our duty to have regard to the principle that regulatory activities should be consistent) we would expect dispute determinations to be read across and followed in situations where a third party is facing similar questions *vis-à-vis* one of the parties to the dispute that has been determined.

1.13 Ofcom's duty to resolve disputes within four months (except in exceptional circumstances) has an impact on the level of analysis that it is appropriate and feasible for Ofcom to undertake. We are very rarely, for example, able to carry out the same detailed level of analysis of costs as we would in exercising other *ex ante* regulatory powers, such as in a market review. In making a determination to resolve

[6] *Dispute resolution guidelines*, 7 June 2011, published at: http://stakeholders.ofcom.org.uk/binaries/consultations/dispute-resolution-guidelines/statement/guidelines.pdf
[7] Directive 2002/21/EC.
[8] Section 190(8) of the Act.

a dispute, Ofcom will rely on its best assessment of the available evidence within the four month statutory deadline.

Structure of this document

1.14 In **Section 2** we summarise, at a high level, our draft guidance as to how we would approach any future dispute as to whether origination charges for calls to the 080 or 116 number ranges are fair and reasonable (assuming that we proceed to make these number ranges free-to-caller). The draft guidance is set out in full in **Annex 1**.

1.15 In **Section 3**, we explain how we have recently applied the three Principles in our draft guidance to currently available evidence for the purposes of our impact assessment contained within the NGCS document.

Consultation

1.16 We welcome comments from stakeholders on the draft guidance in **Annex 1**. Any comments should be submitted to us by 5pm on 28 May 2013.

Section 2

Proposed guidance

Proposed framework for determining a fair and reasonable charge

2.1 Annex 1 contains our proposed guidance for determining a fair and reasonable origination charge for calls to the 080 or 116 number range in any future dispute (assuming that we proceed to make these number ranges free-to-caller).

2.2 In summary, our analytical framework for assessing whether origination payments are fair and reasonable will consist of the following three cumulative Principles. We have previously used these Principles when considering wholesale charges for calls to 080 numbers in other regulatory contexts.[9] We will apply this analytical framework to both fixed and mobile origination payments:

- **Principle 1:** OCPs should not be denied the opportunity to recover their efficient costs of originating calls to a free to caller number range.

- **Principle 2:** the origination payment should, taking into consideration our statutory duties:

    - provide benefits to consumers, taking into account indirect and tariff package effects; and

    - avoid a material distortion of competition either among OCPs or among TCPs.

- **Principle 3:** the origination payment should be practical to implement.

2.3 Our proposed guidance in Annex 1 sets out in detail the factors we will take into account and the issues we will consider under each of these Principles.

2.4 In our April 2012 consultation on non-geographic call services[10] (the April 2012 consultation), we consulted on the application of these three Principles in the context of deriving an assumption about the likely range of mobile origination payments for the purposes of assessing the impact of a free-to-caller approach (our impact

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[9] We have used these three Principles in previous disputes (see *Determination to resolve a dispute between BT and each of T-Mobile, Vodafone, O2 and Orange about BT's termination charges for 080 calls*, 5 February 2010: ('080 Dispute Determination'), available at: http://stakeholders.ofcom.org.uk/binaries/consultations/draft_deter_bt_tmobile_vodafone/nonconf.pdf and *Determination to resolve disputes concerning BT's tiered termination charges in NCCNs 1101, 1107 and 1046, Final determination*, 4 April 2013, available at: *http://stakeholders.ofcom.org.uk/binaries/consultations/provisional-conclusions/statement/040413.pdf*) and in reaching assumptions about the likely level of origination charges for the purpose of assessing the impact of making the 080 and 116 ranges free-to-caller (see the NGCS document, Section 12). The use of these three Principles was also accepted by the Competition Appeal Tribunal in its judgment on the appeals against the 080 Dispute Determination (see *British Telecommunications plc and Everything Everywhere Limited v Office of Communications*, 1 August 2011, [2011] CAT 24, available at: http://www.catribunal.org.uk/238-7221/Judgment.html). However, the precise wording of the three Principles may differ slightly between these uses, depending on the regulatory context in which they are employed.

[10] *Simplifying Non-Geographic Numbers, Detailed proposals on the unbundled tariff and Freephone*, 4 April 2012, published at: http://stakeholders.ofcom.org.uk/consultations/simplifying-non-geographic-no/

assessment range, or IAR) . Having taken stakeholder comments into account, we now use the same three Principles to derive our assumptions about the likely level of both fixed and mobile origination payments for the purposes of our impact assessment in the NGCS document, as well as in the draft guidance in Annex 1 of this document.

Question 1: Do you have any comments on how we have applied these three Principles to generate the draft guidance in Annex 1?

2.5 The limited four month dispute resolution period affects the level of analysis it is appropriate and feasible for us to undertake in determining a dispute. For example, we are normally unable to carry out the same detailed level of analysis of costs as we would in a market review. In determining any dispute as to whether origination charges are fair and reasonable, we are therefore likely to draw on existing evidence that we have gathered or work that we have undertaken in other regulatory contexts (for example, cost modelling work). We would nevertheless consider any cost or other evidence presented to us by the parties to a dispute and consider the specific facts and circumstances of that dispute.

2.6 As any dispute will have to be considered on its specific facts, our guidance is intended to provide a framework for assessment, and an indication of the factors we would be likely to take into account. It does not purport to provide a definitive answer to any individual set of circumstances.

2.7 We nevertheless explain in the next Section how we have recently applied these three Principles to currently available evidence in the context of assessing origination charges for calls to (free-to-caller) 080 and 116 numbers. We consider that this explanation may assist stakeholders in understanding how we would apply our guidance to specific evidence in any future dispute.

Application of guidance to alternative enforcement action

2.8 Finally, we note that whilst dispute resolution is likely to be the most common regulatory means of considering whether a TCP's origination charge is fair and reasonable, it is not the only regulatory instrument available.

2.9 It remains open to Ofcom to investigate whether or not TCPs are complying with an access condition by commencing enforcement proceedings under sections 94-103 of the Act, whether or not a dispute has been submitted.

2.10 Our current position is that we would propose to take this guidance into account in any such enforcement proceedings.

Section 3

Recent application of the three Principles

Introduction and summary of findings

3.1 We consulted on the application of the three Principles to derive an impact assessment range for mobile origination payments in the April 2012 consultation. We updated some of our analysis in response to stakeholder comments and, in the NGCS document, have applied the three Principles in order to reach assumptions about the level of mobile and fixed origination charges that would arise if the 080 and 116 ranges were made free-to-caller. We have used these assumptions to inform our assessment of the impact of a free-to-caller approach. As part of that exercise, we considered what a fair and reasonable origination charge is likely to be for each of the 080 and 116 ranges (assuming that they are made free-to-caller in due course). We did this by applying the three Principles to the currently available evidence. This assessment is set out in full in Section 12 of the NGCS document and is summarised below.

3.2 The fair and responable origination charge range that was derived from the application of the Principles in the NGCS document became our base case scenario range for the purposes of our impact assessment and informed the wider impact assessment range (derived from flexing underlying assumptions) against which our proposals were assessed.

3.3 The base case scenario range for the origination charges based on the Principles and currently available evidence is:

- For 080:
  - **0.3 - 0.6ppm** for fixed originated calls and**1.3 - 3.0ppm** for mobile originated calls. However, we note that we would only consider a mobile origination charge to be fair and reasonable if it resulted in an average service provider (SP) outpayment of between 1ppm and 1.5ppm (taking into account the fixed origination charge and the likely proportion of calls that are originated from fixed and mobile lines). As a result, we consider mobile origination payments at the extreme ends of the range (e.g. below 1.5ppm or above 2.5ppm) to be fair and reasonable in a more restrictive set of circumstances than we would payments closer to the middle of our range (i.e. **1.5ppm - 2.5ppm**).
- For 116:
  - fixed and mobile origination charges either both maintained at existing levels (approximately **0.5ppm** for both fixed and mobile calls) or set at our estimates of pure LRIC (**0.0 – 0.1ppm** in the case of fixed origination charges and **0.8-0.9ppm** in the case of mobile).

3.4 We are currently consulting, as part of the NGCS document, on certain aspects of this analysis which are new or rely on updated evidence. However, much of the framework and evidence used in the NGCS document is the same as that on which we have already consulted in the April 2012 consultation. We therefore expect that our concluding statement on NGCS will contain a similar assessment, which takes into account stakeholder responses to the NGCS document. We consider that this final assessment of likely fair and reasonable charges, based on currently available evidence, will provide TCPs and OCPs with a good starting point for their negotiations in relation to fair and reasonable origination charges. We expect to publish a concluding statement on NGCS in summer 2013 (on or before the date on which any final access condition would be made).

3.5 As noted in Section 2, we would nevertheless approach any future dispute on its own facts and would have regard to the evidence available to us at the time of any dispute (including any evidence adduced by the parties to the dispute).

080 range

3.6 In the NGCS document, we considered what fair and reasonable fixed and mobile origination charges are likely to be for calls to a free-to-caller 080 range, using currently available evidence.

Principle 1: recovery of efficient costs of origination

3.7 In our draft guidance (see Annex 1), we state that origination payments should allow OCPs to recover the marginal costs of origination, as this will avoid any incentive for OCPs to block outgoing calls, but that OCPs should not recover A&R costs through origination payments as expenditure on A&R does not provide benefits to SPs. On this basis, we consider that the range of efficient costs relevant to cost recovery through origination charges lies between the **pure LRIC** of origination and the **LRIC+ (with no allowance for A&R costs)**. In the NGCS document, we used these principles and our cost modelling work[11] to derive the range of efficient costs relevant to recovery through fixed and mobile origination payments under Principle 1.

3.8 We estimated that the range of costs derived under Principle 1 for fixed origination charges is between **0.0 to 0.6ppm.**[12]

3.9 We estimated that the range of costs derived under Principle 1 for mobile origination charges is between **0.8 to 3.3ppm**.[13]

[11] For fixed costs, we used our modelling of BT's network costs on which we are currently consulting as part of our current Narrowband Market Review (see *Review of the fixed narrowband services markets,* 5 February 2013, published at: http://stakeholders.ofcom.org.uk/binaries/consultations/nmr-2013/summary/NMR_Consultation.pdf) and our modelling of the NTS retail uplift for non-network costs. For mobile costs, we used our mobile call termination ('MCT') cost model for network costs and the Competition Commission's 2009 Determination in relation to MCT (*Mobile phone wholesale voice termination charges, Determination*, Competition Commission, 16 January 2009 (the 'CC 2009 MCT Determination'), published at: http://www.competition-commission.org.uk/appeals/communications_act/mobile_phones_determination.pdf) for non-network costs. For further detail of the cost modelling work we relied on, see Section 14 of the NGCS document.

[12] Both figures rounded to one decimal place. The lower bound represents the lower bound of our pure LRIC estimate and the upper bound reflects the upper bound of our LRIC+ estimate with no A&R costs. As we anticipate our decision on free-to-caller will be implemented in 2014/15, we used 2014/15 cost figures for our assessment.

[13] Both figures rounded to one decimal place. The lower bound represents the lower bound of the pure LRIC and the upper bound reflects the upper bound of the LRIC+ with no A&R costs, as described above. As we anticipate our decision on free-to-caller will be implemented in 2014/15, we used 2014/15 cost figures for our assessment.

Principle 2: benefits to consumers and avoiding material distortion of competition

3.10 In the NGCS document we distinguished between two analytical steps under Principle 2.[14]

Step 1: Trade off between service availability and tariff package effect

Overall approach

3.11 We identified that higher origination payments would have two off-setting effects on callers. On the one hand, they would give rise to a higher increase in average SP costs and would therefore be likely to lead to a greater number of SPs withdrawing their number, to the detriment of service availability on the 080 range. On the other hand, higher origination charges would provide a greater contribution to OCPs' incremental profits from 080 calls. Depending on the level of the origination payment this could limit the extent to which callers faced higher prices for other telecommunications services or reduce these prices via the tariff package effect.

3.12 Step 1 therefore required an assessment of how origination charges would affect these two factors.

Reduction in prices for other services and/or access

3.13 We assessed the tariff package effect, noting that we considered that the magnitude of the tariff package effect was likely to be significant but incomplete. Specifically, we considered the impact on mobile and fixed OCPs' profits of making the 080 range free-to-caller under varying assumptions (e.g. the level of origination payment and the proportion of calls originated from fixed and mobile lines).[15] We estimated that the impact on mobile CPs could be positive or negative depending on the assumptions used, of which the most important determinant was the level of origination payments. In the case of fixed CPs, we estimated that making the 080 range free-to-caller was likely to have a negative impact as a result of fixed-mobile substitution.

Reduction in the availability and/or quality of services on the free to caller number range

3.14 In the NGCS document, we assessed the impact on service availability of different levels of origination charges using the results of a survey of SPs which we commissioned in 2011 (the 2011 SP survey).[16]

3.15 The 2011 SP survey asked SPs about the likelihood that they would get rid of their 080 number as a result of different levels of increases in their current outpayments to TCPs. In light of this evidence, we considered that increases in SPs' current origination payments beyond 1ppm would result in a steady decline in availability.[17]

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[14] As noted in Annex 1, we include a third analytical step under Principle 2 in our draft guidance which was not relevant to our analysis in the NGCS document.

[15] See Annex 28 of the NGCS document

[16] 2011 Survey of SPs by BDRC Continental, published at: http://stakeholders.ofcom.org.uk/binaries/research/telecoms-research/Non-geographic-numbers.pdf

[17] This evidence is set out in greater detail in Section 12 of the NGCS document.

Asymmetric risk of the level of payments

3.16 As discussed in our draft guidance in Annex 1, there are two potential sources of asymmetric risk, namely, that callers could suffer to a greater extent from origination payments that are: (i) too low compared to the harm they would suffer if origination payments were too high; or (ii) too high compared to the harm they would suffer if origination payments were too low.

3.17 In the NGCS document, we set out our view that the potential adverse effect on consumers of origination charges that are 'too high' are likely to be more significant than those arising from origination charges that are 'too low'. We considered that the adverse effects on consumers of a loss in service availability on 080 that is greater than we were anticipating was likely to be more significant than a TPE that was larger than we had estimated. This is because in the first case consumers suffer a degradation of the service offered on 080, whereas in the second case there is only a slightly different balance of retail prices (which changes the balance of prices between SPs and callers).

3.18 In this respect, we took into account the 2011 SP survey, which suggests that origination charges leading to an average outpayment of more than 1.5ppm could result in a material increase in the extent of SP migration away from the 080 range. However, we also considered it appropriate to take into account the risk that the actual migration decisions by SPs may turn out to be different than indicated by the responses in the 2011 SP survey. We also noted that the impact of higher average SP outpayments ('too high' charges) may be a reduction in the quality of the service provided by SPs (e.g. through the application of measures to mitigate the costs of calls from mobiles), or a loss in service availability on 080 through migration to another number range or (perhaps in a small proportion of cases) a loss in the availability of the service on any number range. While the loss in service availability may be mitigated if 080 SPs migrate to another range (e.g. 03 or 084), we considered that there was still likely to be a reduction in consumer benefits.

3.19 In addition, we considered that there was an asymmetry in the degree of uncertainty surrounding our estimates of the extent of migration away from 080 and the TPE. We considered that the loss in service availability on 080 is more difficult to predict than the TPE because survey evidence is necessarily subject to a margin of error. Conversely, although there is uncertainty surrounding the exact level of the TPE, we could be confident it would not be greater than the 100% we had assumed to arrive at our estimates. Therefore whilst we recognised the possibility that the impact on service availability may be either more or less favourable than we had assumed, the TPE would only be more favourable than our assumptions suggested.

3.20 We considered that the existence of this asymmetric risk supported limiting the SPs' average outpayments to below 1.5ppm.

Positive caller externality

3.21 The positive caller externality relates to the benefits callers receive from SPs choosing to remain on 080 if it is made free-to-caller, and is explained in more detail in our draft guidance in Annex 1. The magnitude and existence of this externality will depend on the degree to which SPs' internalise the benefits to callers from their choice of a free to caller range.

3.22 In general, there is often significant scope for call externalities to be internalised and this is the view that we have usually taken (e.g. for geographic calls, through the ability of consumers in a calling relationship to call each other, rather than one person always calling the other). However, we noted in the NGCS document that the externality in the case of non-geographic calls is different as it relates to a discrete event, the choice of number range by SPs, rather than a continuous series of call by call decisions that build on a calling relationship. This difference may limit the extent to which the externality is internalised in practice. The external benefit to callers is also potentially significant compared with other call externalities because when the SP chooses to use the 080 range, callers will pay a zero call price- which could be considerably lower than if the SP had chosen another number range. As a consequence of these differences, the potential for uninternalised caller externalities may be more significant in the case of 080 than in the case of geographic calls.

3.23 The right response to a positive externality is generally to reduce the price paid by the decision-maker, in this case the origination charge paid by the SP (via its TCP). This is to reflect the positive externality and make it more attractive for the SP to choose the free to caller number, thereby yielding the benefits to callers. We stated in the NGCS document that the existence of a positive caller externality (if there is less than complete internalisation by SPs) may therefore imply that the optimal origination charge for consumers is below SPs' willingness to pay (i.e. its private benefit of remaining on the free to caller range as opposed to migrating to another number range), that we derived under Step 1 of our analysis. This is to enhance the incentives on SPs to remain on the range so that consumers obtain the net benefit that result from free calls.

Conclusion on Step 1

3.24 Based on the available evidence, we stated in the NGCS document that origination charges which resulted in SPs' average outpayments exceeding the 1.5ppm level would have negative effects on consumers through a steeper reduction in service availability, which would outweigh the moderate consumer benefits in terms of lower prices for other mobile services (via the tariff package effect).

3.25 In addition, we considered that the asymmetric risk of the level of payments and the potential for a positive caller externality that is not fully internalised also supported limiting SPs' average outpayments to below the 1.5ppm level. In light of evidence from the 2011 SP survey, we also considered that there may be a slightly smaller risk of SPs exiting the 080 range at an average SP out-payment of 1ppm.

3.26 We noted that whilst quantifying these factors was not straightforward, we considered that, in assessing fixed and mobile origination charges for the purposes of our impact assessment in the NGCS document, we should consider levels that result in an average SP out-payment of between 1ppm and 1.5ppm.[18]

[18] We note that in the NGCS document, our working assumption for the purposes of our impact assessment is that all calls to 080 will be made free-to-caller, and that origination payments will not be differentiated in practice based on whether the caller is a residential or business customer, despite our proposal that regulation should only apply to calls made by residential customers. We are currently consulting on this assumption.

Step 2: Relative prices between fixed and mobile origination charges

3.27 As discussed in our draft guidance in Annex 1, we would determine a fair and reasonable fixed or mobile origination charge in Step 2 by adding to our analysis an assessment of:

- the proportion of calls that are (or are likely to be) originated from fixed and mobile lines, respectively;
- the implications that different price differentials between fixed and mobile OCPs will have on the price signals given to SPs; and
- the implications that different price differentials between fixed and mobile OCPs will have on competition.

3.28 We followed these same steps in the NGCS document.

The proportion of fixed and mobile originated calls

3.29 As discussed in our draft guidance in Annex 1, the assumed share of fixed and mobile originated calls will affect the relative strength of the impact of the fixed and mobile origination charge on SPs' average outpayments and, hence, on the extent of migration by SPs away from the relevant number range.

3.30 In the NGCS document, we considered that between **45-60%** of calls to 080 numbers would be originated from mobiles over time if a free-to-caller approach was adopted in late 2014 (when we expect a free-to-caller approach to be implemented). We noted that there was significant uncertainty about this assumption and we had therefore assumed a relatively wide range. In reaching this assumption we considered several sources of evidence, namely:

- evidence from a stakeholder showing the increase in the share of mobile originated calls to their 080 number after they had agreed with mobile OCPs to make it free to caller;
- evidence on the share of all voice calls originated from mobiles in the years 2006 – 2011 (we also used this evidence to project a forward-looking trend to late 2014);
- evidence on the share of residential voice calls originated from mobiles in the years 2006 – 2011 (we also used this evidence to project a forward-looking trend to late 2014); and
- anecdotal evidence on the share of calls originated from mobile to other free-to-caller numbers.[19]

The level of origination charges implied by the assumed proportion of fixed and mobile originated calls

3.31 On the basis of our Step 1 analysis in the NGCS document, we considered that origination payments were unlikely to be fair and reasonable unless they led to an SP's average outpayments of between 1ppm and 1.5ppm (with the exact position within this range being dependent on the weight given to the asymmetric risk from

[19] This evidence is discussed in greater detail in Section 12 of the NGCS document.

having origination payments which are too high and the existence of a positive caller externality).[20] In light of our analysis of the 2011 SP survey evidence, we considered that this represented an appropriate trade-off between service availability and the TPE.

3.32 We then went on to determine the distribution of this average outpayment (i.e. 1.0-1.5ppm) between fixed and mobile origination charges, taking into account:

- our assumption that the share of calls to 080 originated from mobile is likely to increase to 45-60%; and
- the application of Principle 1 to our cost modelling suggested a range of costs that it was appropriate to recover from 080 calls of 0.0-0.6ppm for fixed calls and 0.8-3.3ppm for mobile calls.

3.33 In summary, we considered that the levels of origination payments that generate an average SP cost between 1.0 and 1.5ppm are:

- 0.3ppm – 0.6ppm for fixed originated calls; and
- 1.3ppm – 3.0ppm for mobile originated calls.[21]

3.34 However, the level of mobile origination payment we consider appropriate depends on what we assume about the extent of fixed-mobile substitution and the level of the fixed origination payment. In particular, the mobile origination charge consistent with a given SP average outpayment decreases with higher shares of mobile originated calls and higher fixed origination charges. Consequently, we said that there were some combinations of assumptions within the mobile range given above where the average SP cost would be greater than 1.5ppm - potentially more than 2ppm - with consequent adverse effects on service availability, or lower than 1.0ppm with consequent effects on the TPE. We demonstrate this in Table 3.1 and Table 3.2 below, where we estimate the average SP outpayment for a fixed origination payment of 0.3ppm and 0.6ppm,[22] respectively, and different combinations of the assumptions regarding the share of calls originated from mobile and mobile origination payments.[23]

[20] For the purpose of our assessment, we assumed that SPs were already making an average outpayment of 0.5ppm for calls to 080 numbers. An average outpayment of 1ppm to 1.5ppm would therefore imply an increase of between 0.5ppm to 1ppm in existing average outpayments.
[21] Section 12 of the NGCS document explains in greater detail how we generated these ranges.
[22] In the NGCS document, we limited our estimation of the average SP outpayments to the two extremes of our range of fixed origination payments (i.e. 0.3ppm and 0.6ppm) for simplicity. We noted however that other values within the 0.3-0.6ppm range of fixed origination payments would result in slightly different average SP outpayments than the ones presented in these Tables.
[23] These tables replicate Table 12.8 and 12.9 of the NGCS document.

Table 3.1 Average SP outpayment for different mobile origination payments and shares of mobile originated calls, keeping the fixed origination charge at 0.3ppm

Share of calls originated from mobile		45%	50%	55%	60%
Mobile origination payment (ppm)	3.0	1.52	1.65	1.79	1.92
	2.5	1.29	1.40	1.51	1.62
	2.0	1.07	1.15	1.24	1.32
	1.5	0.84	0.90	0.96	1.02
	1.3	0.75	0.80	0.85	0.90

Table 3.2 Average SP outpayment for different mobile origination payments and shares of mobile originated calls, keeping the fixed origination charge at 0.6ppm

Share of calls originated from mobile		45%	50%	55%	60%
Mobile origination payment (ppm)	3.0	1.68	1.80	1.92	2.04
	2.5	1.46	1.55	1.65	1.74
	2.0	1.23	1.30	1.37	1.44
	1.5	1.01	1.05	1.10	1.14
	1.3	0.92	0.95	0.99	1.02

3.35 In these tables, the scenarios where the average SP outpayment is below 1ppm or exceeds 1.5ppm are highlighted in purple. We stated in the NGCS document that we would not consider an origination charge that resulted in this level of SP average outpayment to be fair and reasonable. We set out in red in the tables above the levels of mobile origination payment that result in an average SP outpayment of 1ppm to 1.5ppm, and which we consequently would consider to be fair and reasonable.

3.36 Consequently, we stated in the NGCS document that, within the 1.3ppm to 3.0ppm range of mobile origination charges referred to above, we would place less weight on mobile origination payments at the extreme ends of the range (e.g. below 1.5ppm or above 2.5ppm) because we would consider these payments to be fair and reasonable in a more restrictive set of circumstances than we would payments closer to the middle of the range.

Implications of the differential between fixed and mobile origination charges on price signals

3.37 The ranges of fixed and mobile origination charges discussed in the previous section (i.e. 0.3-0.6ppm for fixed and 1.3-3.0ppm for mobile) would result in a different pence per minute contribution to fixed and mobile CPs' fixed and common costs.

3.38 In our draft guidance in Annex 1, we state that if the difference between fixed and mobile origination payments is greater than the difference in the incremental costs of fixed and mobile origination, then the price signal for SPs would not be efficient. This is because SPs would have an incentive to attempt to mitigate their costs of more expensive mobile-originated calls (e.g. by shortening the duration of mobile originated calls or playing recorded announcements that re-direct mobile callers to another number). Such cost mitigation measures by SPs may reduce the risk of

SPs exiting the free-to-caller number ranges by enabling them to manage their costs, which benefits consumers, but they may also adversely affect the consumer experience of calling from a mobile phone. We refer in our draft guidance to the LRIC differential charge (i.e. the mobile origination charge that would make the same contribution to mobile CPs' fixed and common costs as fixed CPs receive), which avoids these inefficient price signals to SPs.

3.39 In the NGCS document, we considered that there is potential for consumer detriment to result from differentials between fixed and mobile origination charges that exceed the LRIC differential. We therefore considered that we should place some weight on the negative impact that mobile origination charges above the LRIC differential could have in distorting the price signals to SPs. We estimated the LRIC differential mobile origination charge to be in the range of **1.0 to 1.5ppm** (depending on the mobile pure LRIC estimate assumed).

3.40 In reaching this view, we took into account consultation responses from some TCPs and SPs and additional submissions from SPs, which indicated to us that higher mobile origination payments (relative to fixed origination payments) may encourage SPs to request measures from their TCPs to mitigate the cost of mobile calls (such as those described above). We noted that it was difficult for us to determine how widely adopted these methods may become if the 080 range were made free-to-caller. We also recognised that it was unclear the extent to which the SPs we had received submissions from were representative of the entire 080 range. However, we estimated that, under relatively conservative assumptions, an SP could avoid between 36%-49% of the increase in costs associated with higher mobile origination payments (depending on the share of calls originated from mobile: 45% and 60%, respectively) if it were to play a recorded announcement asking a mobile caller to redial another number.[24]

3.41 In addition, we noted that many SPs are likely to derive the same benefit independently of whether the call originates from a mobile or fixed line (even if there are some exceptions to this). We considered that this may be a further reason for ensuring that SPs make the same contribution to the common costs of fixed and mobile CPs.

3.42 We considered that this reasoning supported a fair and reasonable mobile origination charge below the top of the 1.3-3.0ppm range, to be closer to our estimated LRIC differential of 1.0-1.5ppm. We said that the greater the weight that is placed on the importance of efficient price signals for SPs regarding cost mitigation measures for mobile originated calls, the closer the mobile origination payment should be towards the bottom end of the 1.3–3.0ppm range.

Implications of the differential between fixed and mobile origination charges on competition

3.43 In our draft guidance in Annex 1, we state that different fixed and mobile origination charges may have an impact on competition between fixed and mobile OCPs in relation to:

- the retail origination of calls, and
- wider bundles of telephony services.

[24] The evidence and calculations upon which we relied are discussed in greater detail in Section 12 of the NGCS document.

3.44 With respect to retail origination, we stated in the NGCS document that mobile CPs could be disadvantaged by mobile origination payments that are too high when competing against fixed CPs. This is because we consider that a significant proportion of SPs could resort to some type of measure to mitigate the increase in the costs of calls from mobile (as discussed above). This could reduce the quality of service provided to mobile callers by SPs and so make originating 080 calls from mobile phones less attractive to callers than from a fixed line. However, we did not place much weight on this issue as a similar consideration was already taken into account in our analysis of the differential between fixed and mobile origination charges.

3.45 With respect to competition on wider telephony bundles, we stated in the NGCS document that the impact of higher mobile origination payments was unlikely to have a *material* impact on competition between fixed and mobile OCPs, given our view that they operate in different retail markets and that revenues from origination payments are comparatively small, compared to overall mobile revenues.

Conclusion on Principle 2

3.46 In the NGCS document, we considered that the application of Step 1 suggests that the average SP outpayment should be between 1.0 and 1.5ppm. This takes into account the trade-off between service availability and the tariff package effect and additional factors such as the asymmetric risk of the level of payments and the potential for a positive caller externality.

Mobile origination payments

3.47 The level of mobile origination payment that generates this average SP outpayment depends on what we assume about the extent of fixed-mobile substitution and the level of the fixed origination payment. We stated in the NGCS document that, for assumptions we consider reasonable, a fair and reasonable mobile origination payment consistent could range from **1.3ppm to 3ppm**. However, we also noted that there are some combinations of assumptions within this range where the average SP cost would be greater than 1.5ppm - potentially more than 2ppm - with consequent adverse effects on service availability, or lower than 1.0ppm with consequent effects on the TPE. We said that we would only consider fair and reasonable those combinations of assumptions that result in an average SP cost of between 1ppm and 1.5ppm. These are set out in Tables 3.1 and 3.2 above. We also noted that we would place less weight on mobile origination payments at the extreme ends of the range (e.g. below 1.5ppm or above 2.5ppm) because we would consider these payments fair and reasonable in a more restrictive set of circumstances than we would payments closer to the middle of our range (i.e. **1.5ppm to 2.5ppm**).

Fixed origination payments

3.48 In the case of fixed origination, we did not consider that the evidence supported a different range from that derived as a result of considering the trade-off between the TPE and service availability. We recognised that both the asymmetric risk of the level of payments and the existence of a positive caller externality could suggest that *both* the fixed and mobile ranges should be reduced from this level. However, we did not consider this appropriate as we considered that we would then need to reduce the mobile range further in order to address the difference in common cost recovery between the mobile and fixed charges (and the distortion in price signals arising from that). We therefore considered that the range for fixed origination charges should remain unchanged from that presented at the end of Step 1 – i.e. between **0.3ppm to 0.6ppm** based on our modelling of the costs of fixed origination.

Principle 3: practicality

3.49 In the draft guidance at Annex 1, we state that Principle 3 has potential relevance in relation to the ability of TCPs to identify whether a call is originated from a fixed line or a mobile, because of the prospect of differing fair and reasonable charges for mobile and fixed originated calls.

3.50 In the NGCS document, we considered that any fixed or mobile origination payment falling within the ranges we had specified would be practical to implement. We believed that TCPs would be able to identify if the party originating the call was a fixed or mobile CP using calling line identification (CLI). In addition, we considered that they would have a commercial interest in ensuring that the OCP presents the information necessary for this purpose.

Conclusion

3.51 In light of the available evidence, our view in the NGCS document was that fair and reasonable origination charges for calls to a free-to-caller 080 range are likely to be:

- **0.3 - 0.6ppm** for fixed originated calls; and
- **1.3 - 3.0ppm** for mobile originated calls. However, we noted that we would only consider a mobile origination charge to be fair and reasonable if it resulted in an average SP outpayment of between 1ppm and 1.5ppm (taking into account the fixed origination charge and the likely proportion of calls that are originated from fixed and mobile lines). These are set out in Tables 3.1 and 3.2 above. In particular, we noted that we would consider mobile origination payments at the extreme ends of the range (e.g. below 1.5ppm or above 2.5ppm) to be fair and reasonable in a more restrictive set of circumstances than we would payments closer to the middle of our range (i.e. **1.5ppm - 2.5ppm**).

116 range

3.52 While the principles that we have considered above for the 080 range clearly also apply for the 116 range, the nature of the two ranges is materially different - particularly in terms of their intended purpose, the SPs who use them and their retail call prices applicable under the status quo. In the NGCS document, we therefore applied the Principles to current available evidence to arrive at a different assumption about origination payments for 116 calls for the purposes of our impact assessment. We noted that, in case of 080, our proposal would imply significant changes to the retail price of mobile 080 calls, which we would expect in turn to give rise to changes in wholesale arrangements. In contrast, we noted the three 116 numbers currently in use were already free-to-caller for both fixed and mobile calls, and so our proposal to make the 116 range free-to-caller would have no impact on the retail price of calls to these numbers. We therefore considered it was possible that origination payments for calls to 116 numbers may remain at their current commercially agreed levels following the implementation of our proposal.

3.53 Nonetheless we recognised that existing arrangements may be subject to change. In light of this possibility, we considered it appropriate to consider how the three

Principles would apply to 116 origination payments for the purposes of our impact assessment of making the 116 number range free-to-caller.

Principle 1: recovery of efficient costs of origination

3.54 In the NGCS document, following the same reasoning discussed in the case of 080, we considered that the minimum level of costs that OCPs should have the opportunity to recover through origination charges should be determined by the minimum level that ensures that OCPs have an incentive to supply origination - that is, the pure LRIC of origination. As in the case of 080, we did not consider it efficient for A&R costs to be recovered from origination charges for 116 free-to-caller numbers. As a result, we considered that the upper bound of the range of costs that it is efficient to recover from origination charges in Principle 1 should be LRIC+ (with no allowance for A&R costs).

3.55 In line with our conclusion on 080, based on our cost modelling, the range of efficient costs we considered relevant to recovery from fixed origination charges to a 116 free-to-caller number was between 0.0-0.6ppm, and 0.8-3.3ppm in the case of mobile origination. However, we noted that Principle 1 requires that OCPs are not denied the opportunity of recovering this level of efficiently incurred cost. We considered it was therefore open to OCPs to agree to a charge lower than this should they wish to do so (e.g. for reasons of social responsibility).

3.56 In this respect, we observed that we understood origination payments for 116 calls to be the same for both fixed and mobile, and linked to fixed origination payments for 080 calls made prior to the introduction of tiered termination rates. This implied that mobile OCPs were providing call origination to 116 number ranges at a price below our latest estimate of the mobile LRIC (i.e. 0.8-0.9ppm). We considered that this may be due to the specific features of the services offered on the 116 range, for example, their characterisation as services of social value.

Principle 2: benefit consumers and avoid material distortions of competition

3.57 In the NGCS document, we distinguished between the two analytical steps followed under Principle 2.

<u>Step 1: Trade off between service availability and tariff package effect</u>

3.58 In the April 2012 consultation we assumed that the mobile origination payment for calls to 116 numbers should only cover the incremental cost of mobile calls, mainly because:

- it is a range used to provide services of extreme social value and allocated by Ofcom; and
- some mobile CPs voluntarily choose not to charge for calls to certain helplines for social responsibility reasons (e.g. Childline, and members of The Helplines Association) and they have historically not required any origination payments from these SPs.[25]

3.59 In the NGCS document we noted that we had several meetings with current and prospective SPs on the 116 range following the April 2012 consultation.[26] The main

[25] See paragraph A27.30 of the April 2012 consultation.
[26] See Section 12 of the NGCS document for further details of these meetings.

conclusion from these meetings was that there are some SPs who are already facing financial difficulties in meeting the current level of hosting charges.

3.60 We were therefore concerned that any increase in the level of origination charges could have a significant negative impact on service availability on this range. We noted this is of particular concern given the type of services being offered on 116.

3.61 We also noted that the relatively low volume of calls to 116 means that, compared to 080, the impact on mobile and fixed CPs' incremental profits from agreeing origination charges equal to (or below) pure LRIC is likely to be very small.

3.62 In the NGCS document, we considered that the two additional factors discussed under Step 1 for 080 similarly apply in the case of 116. We considered that the asymmetric risk of the level of payments and the potential for a positive caller externality reinforced our conclusion that limiting the origination charges for calls to 116 as much as possible is appropriate to mitigate any impact on service availability.

3.63 We therefore considered in the NGCS document that the evidence suggested that from the application of Step 1 a maximum origination charge equal to the pure LRIC for both fixed and mobile CPs would be appropriate for the 116 range, in order to mitigate the impact of any changes in origination charges on service availability. According to our cost modelling, the pure LRIC of fixed origination is 0.0-0.1ppm and that of mobile origination is 0.8-0.9ppm (as further discussed in Annex 26 of the NGCS document).

3.64 However, we recognised that prevailing charges for both fixed and mobile calls to the three existing 116 numbers were outside of the ranges implied by our estimates of pure LRIC. We also recognised that our proposal to make the 116 range free-to-caller would have no impact on the retail price of calls to these numbers, and therefore that OCPs and TCPs may wish to continue their existing wholesale arrangements for these calls. We observed that as long as both fixed and mobile charges are maintained at current levels, average charges to SPs would remain the same and so there would be no impact on current levels of service availability. As a result, we also considered fixed and mobile origination charges both equal to prevailing levels to be consistent with Step 1.

Step 2: Relative prices between fixed and mobile origination charges

3.65 In the NGCS document, we observed that if fixed and mobile origination charges were renegotiated and set at LRIC in line with Step 1 above, the concerns discussed under Step 2 in the case of 080 relating to differences in common cost recovery between fixed and mobile CPs would not apply as there would be no contribution to either fixed or mobile common costs.

3.66 We noted that if instead fixed and mobile origination charges were both maintained at prevailing levels for existing 116 services, there would obviously be a difference in the contribution made to fixed and common costs between fixed and mobile OCPs because fixed OCPs would continue charging above pure LRIC and mobile OCPs below. However, we noted that our concerns regarding this issue in relation to 080 arose from the fact that the origination payment for mobile calls could be significantly higher than for fixed calls, and that this could give rise to inefficient price signals to SPs about whether to engage in cost mitigating measures for mobile calls. We observed that if both fixed and mobile origination charges for 116 calls were maintained at current levels, then there would be no difference in the origination charge paid by an SP to receive a fixed or mobile call and this situation would obviously not arise. We also noted that we did not consider that the prevailing level of origination charges for 116 calls led to any material distortion of competition between fixed and mobile OCPs given the low volumes and revenues associated with 116 calls. As a result, we did not consider that we should exclude the scenario in which existing wholesale arrangements for 116 are maintained on the basis of Step 2.

Principle 3: practicality

3.67 We considered that if origination payments were maintained at their existing levels, this would clearly satisfy Principle 3 as it must be practical to implement charges that are already in place.

3.68 If instead origination payments for 116 calls are renegotiated to reflect our estimates of pure LRIC, we recognised this would imply a different level of payment for each of fixed and mobile 116 calls. In this case, we considered that our conclusion for 080 under Principle 3 is equally relevant to 116; i.e. that it would be possible to distinguish between fixed and mobile originated calls if a separate charge for each were to be implemented.

Conclusion

3.69 In light of the available evidence, our view in the NGCS document was that origination charges for calls to 116 numbers are likely to be fair and reasonable in either of the following two scenarios:

- both fixed and mobile origination charges are maintained at existing levels (approximately 0.5ppm for both fixed and mobile origination); or

- both fixed and mobile origination charges are set at our estimates of pure LRIC (0.0-0.1ppm for fixed origination and 0.8-0.9ppm for mobile origination).

Annex 1

Proposed guidance on dispute resolution in relation to origination charges for calls to 080 and 116 numbers

Scope of guidance[27]

A1.1 This guidance relates to wholesale origination for calls to 080 and 116 numbers. In the document entitled *Simplifying non-geographic numbers, Policy position on the unbundled tariff and the 080 and 116 ranges*, published on 15 April 2013 (the NGCS document), we propose to make these ranges free-to-caller.[28] We also propose to set an access condition on persons who terminate calls to 080 and/or 116 numbers (TCPs).[29]

A1.2 Annex 17 of the NGCS document contains the draft access condition and includes a list of the TCPs on whom Ofcom is proposing to set the condition. The access condition would require TCPs to purchase wholesale origination for calls to 080 and 116 numbers on fair and reasonable terms (including charges).

A1.3 Ofcom exercises dispute resolution powers under sections 185 to 191 of the Communications Act 2003 (the Act). This guidance describes how Ofcom would approach any future dispute as to whether origination charges for calls to 080 or 116 numbers are fair and reasonable.

The dispute resolution process

A1.4 Section 185(1)(a) of the Communications Act 2003 (the Act) gives Ofcom jurisdiction to resolve certain disputes, including those relating to the provision of network access between different communications providers (CPs). By virtue of section 185(8), this includes a dispute as to the terms or conditions on which network access is or may be provided in a particular case. Section 185(2) of the Act also gives Ofcom jurisdiction to resolve a dispute between CPs relating to rights or obligations conferred or imposed by or under Part 2 of the Act.[30]

A1.5 Section 185(3) provides that any party to a dispute may refer it to Ofcom. Section 185A empowers Ofcom to invite any one or more of the parties to a dispute to refer it to Ofcom under section 185(3).

A1.6 Section 186 of the Act provides that where a dispute is referred to Ofcom in accordance with section 185, Ofcom must decide whether or not it is appropriate to handle it, and sets out the considerations that Ofcom may take into account in doing so.

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[27] In the final version of the guidance, this section would be updated to reflect Ofcom's concluding statement.
[28] By 'free-to-caller' we mean that the number can be accessed by consumers at a retail price of zero and, where the call is made from a public payphone, without having to use coins or cards.
[29] http://stakeholders.ofcom.org.uk/consultations/simplifying-non-geo-no/
[30] Provided the dispute is not excluded by virtue of section 185(7) of the Act.

A1.7 Where it is appropriate for Ofcom to handle the dispute, section 188 of the Act provides that Ofcom must consider the dispute and make a determination for resolving it within four months, except in exceptional circumstances.

A1.8 Ofcom's powers to resolve disputes are set out in section 190 of the Act. They include the power to make a declaration setting out the rights and obligations of the parties to the dispute, to give a direction fixing the terms or conditions of transactions between the parties to a dispute, and/or to give a direction imposing an obligation, enforceable by the parties to a dispute, to enter into a transaction on the terms and conditions fixed by Ofcom. For the purpose of giving effect to a determination of the proper amount of a charge in respect of which amounts have been paid by one of the parties to the dispute to the other, Ofcom may also give a direction requiring the payment of sums by way of adjustment of an underpayment or overpayment.

A1.9 Dispute resolution is a statutory function, which Ofcom must exercise consistently with its statutory duties, in particular as set out in sections 3 and 4 of the Act (which give effect, among other things, to the requirements of Article 8 of the Framework Directive).[31]

A1.10 Ofcom's duty to resolve disputes within four months (except in exceptional circumstances) has an impact on the level of analysis that it is appropriate and feasible for Ofcom to undertake in determining a dispute. We are very rarely, for example, able to carry out the same detailed level of analysis of costs as we would in exercising other ex ante regulatory powers, such as in a market review. In making a determination to resolve a dispute, Ofcom will rely on its best assessment of the available evidence within the four month statutory deadline.

Framework for assessing fair and reasonable origination charges

A1.11 In assessing whether origination payments are fair and reasonable, we will apply the following three cumulative principles, which we have previously used in other regulatory contexts.[32] We will apply this analytical framework to both fixed and mobile origination payments:

- **Principle 1:** OCPs should not be denied the opportunity to recover their efficient costs of originating calls to a free to caller number range.

[31] Directive 2002/21/EC

[32] We have used these three Principles in previous disputes (see *Determination to resolve a dispute between BT and each of T-Mobile, Vodafone, O2 and Orange about BT's termination charges for 080 calls*, 5 February 2010: (080 Dispute Determination), available at: http://stakeholders.ofcom.org.uk/binaries/consultations/draft_deter_bt_tmobile_vodafone/nonconf.pdf and *Determination to resolve disputes concerning BT's tiered termination charges in NCCNs 1101, 1107 and 1046, Final determination*, 4 April 2013 (the Tiered Rates Determinaton), available at: *http://stakeholders.ofcom.org.uk/binaries/consultations/provisional-conclusions/statement/040413.pdf*) and in reaching assumptions about the likely level of origination charges for the purpose of assessing the impact of making the 080 and 116 ranges free-to-caller (see the NGCS document, Section 12). The use of these three Principles was also accepted by the Competition Appeal Tribunal in its judgment on the appeals against the 080 Dispute Determination (see *British Telecommunications plc and Everything Everywhere Limited v Office of Communications*, 1 August 2011, [2011] CAT 24, available at: http://www.catribunal.org.uk/238-7221/Judgment.html). However, the precise wording of the three Principles may differ slightly between these uses, depending on the regulatory context in which they are employed.

- **Principle 2:** the origination payment should, taking into consideration our statutory duties:
  - o provide benefits to consumers, taking into account indirect and tariff package effects;[33] and
  - o avoid a material distortion of competition either among OCPs or among TCPs.
- **Principle 3:** the origination payment should be practical to implement.

A1.12 With respect to a dispute on an origination charge, our analytical framework will follow these three principles by considering whether such a charge is consistent with the answers to the following questions:

- **Range of efficient costs relevant to recovery through origination charges**: what type of costs should and should not be recovered through origination charges? (**Principle 1**);
- **The appropriate level within the range of costs determined under Principle 1**: within the range of costs determined under Principle 1, what is the level of fixed and mobile origination charge that maximises benefits to consumers and avoids material distortions to competition (**Principle 2**);
- **Practical to implement**: are the origination payments implied by the application of our framework practicable to implement? (**Principle 3**)

A1.13 In order to help the explanation of our approach in answering each of these questions, we first set out the relationship between our analytical framework and Ofcom's six principles of pricing and cost recovery below. We then explain in more detail our approach in each of the three Principles.

Relationship between our analytical framework and the six principles of pricing and cost recovery

A1.14 We have used the six principles of pricing and cost recovery in previous decisions,[34] these are:

- cost causation: costs should be recovered from those whose actions cause the costs to be incurred;
- cost minimisation: the mechanism for cost recovery should ensure that there are strong incentives to minimise costs;

[33] Indirect effects refer to the factors that influence the attractiveness to an SP of offering a service via a number on the free to caller range. Changes in the number, quality and variety of services provided by SPs on the free to caller range affect the welfare of consumers. There are two types of consumer in the NTS value chain: the caller and the call recipient (the SP) (see paragraph 2.33, *Determination to resolve a dispute between BT and each of Vodafone, T-Mobile,H3G, O2, Orange and Everything Everywhere about BT's termination charges for 0845 and 0870 calls*, 10 August 2010 (the 0845/0870 Dispute Determination), published at: http://stakeholders.ofcom.org.uk/binaries/enforcement/competition-bulletins/closed-cases/all-closed-cases/761146/Final_Determination.pdf, and paragraph 2.28 of the 080 Dispute Determination).
[34] See, for example, the 080 Dispute Determination, at paragraphs 4.55 – 4.59

- effective competition: the mechanism for cost recovery should not undermine or weaken the pressures for effective competition;

- reciprocity: where services are provided reciprocally, charges should also be reciprocal;

- distribution of benefits: costs should be recovered from the beneficiaries especially where there are externalities; and

- practicability: the mechanism for cost recovery needs to be practicable and relatively easy to implement.

A1.15 The six principles of pricing and cost recovery cover the same substantive issues as the analytical framework of Principles 1 to 3 set out above, as follows:

- Principle 1 relates to the principles of *cost causation* and *distribution of benefits*, focusing primarily on the benefits derived by persons who provide services using 080 or 116 numbers (service providers or SPs) from different types of origination costs, and *cost minimisation*;

- Principle 2 relates to the principles of *effective competition* and *distribution of benefits* more widely between callers and SPs; and

- Principle 3 relates to the principle of *practicability*.

A1.16 The one principle that is not listed above is *reciprocity*. We consider that reciprocity is not relevant in this context as origination is not necessarily a reciprocal service.

Principle 1: recovery of efficient costs of origination

The range of efficient costs relevant to recovery through origination charges

A1.17 Under Principle 1, we establish the range of efficient costs relevant for recovery through origination charges for calls to 080/116 numbers. In other words, what types of efficient costs should and should not be considered for recovery from origination charges for calls to each of these number ranges.

A1.18 We will apply the principles of *cost causation, cost minimisation* and *distribution of benefits* to the evidence available to us. The limited four month dispute resolution period affects the level of analysis it is appropriate and feasible for us to undertake in determining a dispute. For example, we are normally unable to carry out the same detailed level of analysis of costs as we would in a market review. In determining any dispute as to whether origination charges are fair and reasonable, we are therefore likely to draw on existing cost modelling work that we have carried out for other regulatory purposes.[35] We would nevertheless consider any cost or other evidence presented to us by the parties to a dispute in light of the specific facts and circumstances of that dispute.

A1.19 The activities that OCPs perform to originate a call can be classified into two categories of costs, namely:

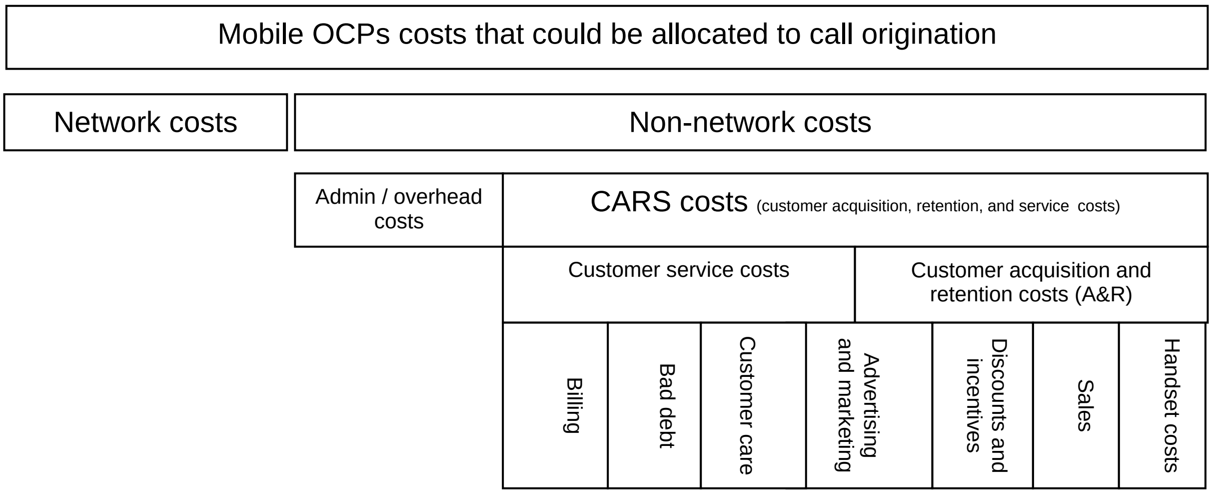
- network costs: operating cost and capital costs of maintaining, running, and operating the network the call is originating on; and

[35] In particular, our mobile call termination (MCT) cost model and our modelling of BT's network costs.

- non-network costs: costs associated with customer acquisition, customer retention, and the administration and distribution activities associated with selling and providing telecommunications services.

A1.20 We consider that non-network costs can further be divided into two categories: (i) customer acquisition, retention and service costs ('CARS costs'); and (ii) administration and overhead costs. All of these costs can be classified as shown in Figure A1.1 below.[36]

Figure A1.1: Mobile call origination costs



A1.21 The difference between customer acquisition and retention ('A&R') costs and customer service costs, shown in Figure A1.1 above, is that the former are incurred to win new subscribers or incentivise existing subscribers to stay whereas the latter are incurred in the ordinary course of servicing existing subscribers.

The minimum level of efficient costs relevant to recovery through origination charges

A1.22 We consider that the minimum level of costs that OCPs should have the opportunity to recover through origination charges should be determined by the minimum level of cost recovery that ensures that OCPs have an incentive to supply origination. This is the **pure LRIC** of origination. This is because any origination charge above the marginal cost (approximated by the pure LRIC) will make a contribution to the recovery of fixed and common costs and therefore is likely to ensure that OCPs have an incentive to provide origination.

A1.23 In the case of calls to a free-to-caller number range, we consider it unclear whether non-network costs are incremental to call origination. We consider that customer care costs could be incremental, depending on the evidence provided by TCPs and/or OCPs. We may therefore produce a range for incremental costs, the lower bound excluding all non-network costs and the upper bound including an allowance for customer care costs. There are different methodologies that could be used to

[36] We consider that it is only appropriate to consider net handset costs (i.e. gross handset costs less any revenues associated with the subsequent sale of those handsets) rather than gross handset costs.

approximate the pure LRIC of customer case costs in this case, for example, applying a downlift factor to the LRIC+ customer care costs.

Acquisition and retention costs should not be recovered through origination charges

A1.24 We consider that the upper bound of efficient costs relevant to recovery by OCPs through origination charges for calls to 080 and 116 numbers is the LRIC+ cost of origination, including a contribution to both network and non-network common costs.

A1.25 In terms of network costs, we believe that SPs are likely to benefit from this expenditure, since it allows callers to contact them. We therefore consider that it may be appropriate for origination charges to include a contribution from SPs to the OCPs' fixed and common network costs.

A1.26 In relation to non-network costs, we do not consider the LRIC+ measure of costs should include a contribution to all types of these costs. We believe that a contribution to customer care costs would be consistent with the principle of distribution of benefits (i.e. that costs should be recovered from the beneficiaries), as these include expenditure on activities such as call centres from which SPs are likely to benefit. However, we do not consider that SPs should be required to contribute to the recovery of OCPs' A&R costs through higher origination charges, as SPs are unlikely to benefit from these costs.

A1.27 A&R costs relate to the following categories (see Figure A1.1 above):[37]

- **Marketing and advertising**: these costs include all the expenses associated with attracting customers through marketing and advertising. Examples of these costs are advertising campaigns and brand sponsorship.

- **Handset costs**: handset costs are incurred by mobile OCPs when they supply customers with a handset to make and receive calls. It is usual within the UK mobile sector that the initial cost of a handset for post pay customers is subsidised wholly or in part by the mobile OCP.

- **Discounts and incentives**: discounts and incentives are offered by OCPs in order to attract or retain customers on or to their network. These generally take the form of reduced retail prices.

- **Sales**: a significant proportion of these costs relate to the large mobile OCPs' branch network of shops and particularly the personnel, distribution and depreciation costs associated with operating this network of shops. The other significant element within this category is contract commissions paid to third-party retailers for selling mobile OCPs' products. There are also a small amount of costs relating to telesales and Internet sales.

[37] This characterisation comes from the Competition Commission's 2009 Determination in relation to Mobile Call Termination, at paragraph 8.5 (*Mobile phone wholesale voice termination charges, Determination*, Competition Commission, 16 January 2009 ('CC 2009 MCT Determination'), published at: http://www.competition-commission.org.uk/appeals/communications_act/mobile_phones_determination.pdf). We consider that A&R costs for fixed OCPs can be broken down in a similar way, albeit that some of the categories listed above are more relevant for mobile OCPs than for fixed OCPs (e.g. handset subsidies).

A1.28 We do not consider SPs are likely to benefit from expenditure associated with these activities and therefore should not be required to contribute to these costs. We similarly consider that recovery of A&R costs is unlikely to be consistent with the principles of *cost causation* and *cost minimisation*. In terms of *cost causation*, we consider that the activities described above are primarily targeted at callers (rather than SPs*).* Under these circumstances, we do not consider that SPs should make a contribution to these costs because they do not cause these activities to take place. In relation to *cost minimisation*, we consider that allowing OCPs to recover A&R costs from SPs is unlikely to provide them with the right incentives to minimise costs. This is because OCPs do not directly compete for SPs. Therefore, if SPs contribute to A&R costs, OCPs may have an incentive to increase their A&R expenditure to inefficient levels, as this would allow them to subsidise the services they offer to the customers they compete for (i.e. callers) through the origination payments they charge to SPs. [38]

A1.29 In light of the above, we consider that **LRIC+ (with no allowance for A&R) costs** should be the upper bound of the range of efficient costs relevant for recovery from origination charges in Principle 1.

Principle 2: benefit consumers and avoid material distortions of competition

Overview of the analytical steps in Principle 2

A1.30 As discussed above, our analysis under Principle 2 relates to the principles of *effective competition* and *distribution of benefits.* We will consider how different levels of origination charges would impact consumers and competition, trading off the impact on service availability against the impact on wider retail prices. Our framework under Principle 2 can be separated into distinct steps:

- **Step 1: Trade off for consumers between the reduction in service availability/quality and tariff package effect.** We have discussed above that OCPs should not be denied the opportunity to recover their efficient costs of origination and that a charge between pure LRIC and LRIC+ (with no A&R costs) satisfies this principle. We will need to determine how different levels of origination charges within this range are likely to affect consumers. Higher origination charges have two opposing effects on consumer welfare. This trade off arises because higher payments from SPs (who ultimately pay the origination charge through their host TCP) are likely: (i) to limit service availability/quality on the 080 and 116 ranges as a result of SPs exiting those number ranges (e.g. by migrating to other number ranges on which callers have to pay for calls); but (ii) to reduce the prices which OCPs charge consumers for other retail services through the tariff package effect ('TPE'). We will need to determine the average level of SPs' origination payments that would, in our view, best take account of this trade off.

- **Step 2: Assess the relative level of the fixed and mobile origination charges.** Once we have determined under Step 1 an appropriate level of SPs' average origination payments, we will need to look at the level of fixed and mobile origination charges that would be likely to result in an average SP payment of this amount, given the relative volume of fixed and mobile calls. For

[38] For a fuller discussion as to why SPs should not contribute to A&R costs, see paragraphs 12.30 – 12.42 of Section 12 of the NGCS document.

this, we will first need to take a view on the relative proportions of calls to free-to-caller 080 or 116 numbers originated from fixed and mobile lines (as this will affect how different fixed and mobile origination charges translate into the average payments made by SPs). Depending on whether the number range in question already free-to-caller or not, this may involve making an assumption about the likely level of fixed-mobile substitution that would result from making it free-to-caller. There may also be other predicted changes to the relative call mix which we would need to take into account. Second, we will need to look at the implications that different price-cost differentials between fixed and mobile OCPs will have on competition and the price signals to SPs.

- **Step 3: Assess whether there are any material distortions to competition.** It is possible that origination payments could give rise to other material distortions to competition that are not considered in Step 2 in relation to the relative level of fixed and mobile origination payments (e.g. among fixed OCPs or among mobile OCPs or between different TCPs). We will consider whether any such potential distortions are likely to arise as part of our assessment of Principle 2.[39]

A1.31 We explain in more detail each step in turn below.

Step 1: Trade off between the reduction in service availability/quality and the tariff package effect

A1.32 We need to take into account how increases in the payments made by SPs are likely to affect consumers Higher origination charges are likely to have both positive and negative effects on consumers. We look into these in turn below.

Positive effects on consumers

A1.33 In terms of the positive effects, we consider that these include:

- reduction in the prices for other services and/or access; and
- positive network externality effect.

Reduction in prices for other services and/or access

A1.34 In relation to the first effect, higher origination payments are generally likely to increase OCPs' profits from 080/116 calls. Those higher profits are likely to support lower retail prices for other services and/or access via the tariff package effect. The

[39] The competition issues between fixed and mobile OCPs considered under step 2 are assessed in the NGCS document. However, we note that the step 3 competition issues, such as those between different fixed OCPs or between different TCPs, are not part of the analysis for the NGCS document (summarised in Section 3 of this document). We only needed to consider the potential impact of step 2 competition issues between fixed and mobile OCPs in the NGCS document because for the purposes of our impact assessment we did not need to reach a view on whether there would be multiple fixed and/or mobile origination payments, which could give rise to step 3 competition issues. This was because we derived a range of likely origination payments to reflect our uncertainty about various assumptions. Whether payments were the same for all OCPs and/or TCPs therefore had no effect on our impact assessment as long as all payments fell within our IAR. We recognise, however, that a consideration of other potential distortions to competition could be relevant in the context of a dispute. We therefore include this additional step for completeness in our approach to assessing principle 2.

more complete that the tariff package effect is, then the greater proportion of any origination payments that are passed onto consumers.

Positive network externality effect

A1.35 Higher origination charges can be directed to the provision of subsidies to marginal consumers (through the TPE), which may expand the number of subscribers and result in a positive network externality that increases total consumer welfare. We do not consider that higher origination charges are an appropriate means of expanding the number of (marginal) subscribers because: (i) the majority of these subsidies would benefit existing subscribers rather than attract additional subscribers; (ii) it is unclear the extent to which SPs would benefit even from genuinely marginal subscribers; and (iii) in any event, any origination payment above pure LRIC will create incentives to attract additional subscribers. For this reason we do not consider this effect further.

Negative effects on consumers

A1.36 In terms of the negative effects, we consider that these include:

- reduction in the availability and/or quality of services on the number range;
- increase in the price paid by SPs.

Reduction in the availability and/or quality of services on the free-to-caller number range

A1.37 Higher origination payments are likely to be ultimately passed on to SPs by TCPs through higher charges for hosting. Higher origination payments are likely to discourage SPs from delivering services via the free to caller number range and may prompt some SPs on the number range to migrate to other ranges or reduce the quality of the services provided over the free to caller range. A reduction in the number of SPs offering their services on the free to caller number range (or the quality of the services offered) is likely to reduce the attractiveness of the number range for consumers.

A1.38 In addition, we consider that there are two additional factors that imply that higher origination payments may result in negative effects for consumers and, consequently, affect the appropriate trade-off for consumers, namely:

- **Asymmetric risk of the level of payments**: in setting origination charges in a dispute, we consider that there are two potential risks; namely, the origination payments could be (i) too low or (ii) too high. In the case of too low (high) origination payments, these are likely to result in lower (higher) levels of migration away from the free-to-caller range, and a lower (higher) tariff package effect on other telecommunications prices. We therefore need to consider whether consumers may be more adversely affected by one of these outcomes (compared to the other) in light of the available evidence on (i) the tariff package effect on other telecommunications prices and (ii) the extent of likely migration. For example, if we found that there is an asymmetric risk (e.g. that consumers may be worse off from too high a level of fixed and mobile origination payments than too low) this could mean that we should take this into account when assessing a fair and reasonable origination charge.

- **Caller externality:** SPs base their decision to stay on (or move to) a free-to-caller number by weighing their private benefit against the costs of their decision. The SPs may not have an incentive to take into account, at least not to the full extent, the benefits to callers of being able to make free calls to 080/116 numbers (paid for by the SP). In other words, there may be a positive externality for callers resulting from the SP's decision to stay on (or move to) a free to caller number range.

Increase in the price paid by SPs

A1.39 As discussed above, we would expect the payments made by SPs to OCPs (through their TCPs) to increase as a result of higher origination charges. This would negatively affect SPs, who fall within the definition of consumers in the Act.[40] We do not consider we should put much weight on this factor in determining a dispute about fair and reasonable origination charges, because the increase in the price paid by SPs would simply be a consequence of shifting the payment of origination costs from callers to SPs (rather than representing an increase in the net cost to consumers) and we tend to favour callers over SPs where their interests are in conflict. To the extent that SPs' reaction to higher origination charges adversely affects callers through reduced service availability or quality, we take this into account through the previous consideration.

<u>Focus on the trade off between the reduction in service availability/quality and the tariff package effect</u>

A1.40 Our assessment in Step 1 will therefore be based primarily on the trade off between lower prices for other telecoms services and/or access (first positive effect above) and reduced service availability on 080 and 116 (first negative effect described above, taking into account the two further considerations - caller externality and asymmetric risk of the level of origination payments). We do not consider that we should account for the potential positive network externality effect or the negative effect of increased prices paid by SPs from higher origination charges, for the reasons discussed above.

A1.41 Therefore, our analysis in Step 1 will determine the appropriate level of average SP origination payments by trading off the impact of higher origination charges on service availability/quality against the potential for lower prices for other telecoms services and/or access.

Step 2: Relative prices between fixed and mobile origination charges

A1.42 In Step 1 we will take a view on the average SP payment that strikes the right balance for consumers between service availability and the TPE. There are however many combinations of potential fixed and mobile origination charges (within the range of costs established under Principle 1) that would yield this average SP payment. In determining a dispute, we will need to take a view on a fair and reasonable fixed or mobile origination payment having regard to:

- the proportion of calls to the free-to-caller range originated from fixed and mobile lines, given that this will determine the average payments made by SPs for calls to their numbers. This may require an assumption about the likely extent of fixed-mobile substitution if the number range in question is not already free-to-caller, or if further changes in the mix of calls are anticipated; and

[40] Section 405(1) and (5) of the Act

- the implications that different price-cost differentials between fixed and mobile OCPs will have on competition and the price signals given to SPs.

A1.43 We explain in more detail each of these issues in turn below.

Fixed to mobile substitution

A1.44 The share of calls to 080 and 116 numbers that are originated from mobiles will, in turn, affect the relative impact of the level of fixed and mobile origination charges on SPs' average outpayments and, hence, on the risk that higher SPs' outpayments may lead to additional migration away from these ranges, as considered under Step 1.

A1.45 For example, assume that under Step 1 we conclude that an average SP outpayment of 1ppm strikes the appropriate balance between service availability/quality and the TPE. If we assumed that the level of fixed origination payments was 0.5ppm, this would mean that an appropriate mobile origination charge would be:

- 1.50ppm if 50% of call minutes came from mobiles[41]; but
- 2.17pm if 30% of call minutes came from mobiles.[42]

A1.46 This means that, in order to determine a fair and reasonable fixed or mobile origination charge from the average SP outpayments obtained in Step 1, we would need to form a view in any dispute on what proportion of call minutes to a free to caller number range are (or are likely to be) accounted for by fixed and mobile CPs. In doing so, we would take into account any relevant evidence provided by the parties or otherwise available to us.

The impact of price differentials on competition and price signals

A1.47 Differences in fixed and mobile origination charges may have an impact on:

- the price signals given to SPs; and
- competition between fixed and mobile OCPs.

The price signals for SPs

A1.48 If the difference between fixed and mobile origination payments is greater than the difference in the incremental costs of fixed and mobile origination, then the price signal for SPs would not be efficient. This is because SPs may have too much of an incentive to mitigate the costs of more expensive mobile-originated calls with measures that may result in consumer detriment. For example, SPs may resort to measures (e.g. shortening the duration of the call when originated from a mobile) or request their host TCP to apply alternative measures (e.g. playing recorded announcements that re-direct mobile callers to a non free-to-caller number). Such cost mitigation measures by SPs may reduce the risk of SPs exiting the free-to-caller number ranges by enabling them to manage their costs, which benefits

[41] It can be seen that if we assume fixed origination payments of 0.5ppm and the share of calls originated from mobile is 50%, then the value for the mobile origination payments that gives an average SP outpayment of 1ppm is 1.5ppm. In other words, 0.5ppm x 50% + 1.5ppm x 50% = 1ppm.

[42] In other words, 0.5ppm x (1-30%) + 2.17ppm x 30% = 1ppm.

consumers, but they may also adversely affect the consumer experience of calling from a mobile phone.[43]

A1.49 In order to avoid these inefficient price signals to SPs, differences between fixed and mobile origination charges should reflect differences in their LRIC costs.[44] We can calculate the extent to which any given level of fixed origination charge contributes to a fixed OCP's fixed and common costs. This will be the amount by which the charge exceeds the pure LRIC of fixed call origination. By adding the same pence per minute amount to the pure LRIC of mobile call origination, we can derive a mobile origination charge which gives the mobile OCP the same pence per minute contribution to its fixed and common costs as the fixed OCP has received. We call this the LRIC differential charge. A mobile origination charge at the LRIC differential level reflects the difference between fixed and mobile incremental costs, and therefore creates incentives for SPs to only engage in cost mitigation measures regarding mobile calls when it is efficient to do so.

A1.50 In determining whether an origination payment is fair and reasonable, we will consider the extent to which any implied difference between fixed and mobile origination payments exceeds the difference between fixed and mobile origination incremental costs. In light of this, we would consider the likelihood of SPs employing cost mitigation measures and their impact on consumers.

The impact on competition between fixed and mobile OCPs

A1.51 Fixed and mobile OCPs compete in relation to:

- the retail origination of calls, and
- wider bundles of telephony services.

A1.52 In terms of competition in retail origination, there cannot be price competition between fixed and mobile OCPs in the supply of origination to a free to caller number, as the price for callers is zero. SPs can, however, influence which device callers use (e.g. if they use measures to mitigate the higher costs of calls originated from mobiles such as using recorded announcements, as discussed above). In determining a dispute about fair and reasonable origination charges, we will consider the extent to which these measures may be used by SPs and the extent to which they may impact on competition between fixed and mobile CPs in retail origination, taking into account the evidence available to us.

A1.53 In terms of competition for wider telephony bundles, it is possible that a distortion in competition may arise if mobile OCPs obtain a greater contribution from TCPs/SPs to the recovery of their common costs than fixed OCPs receive. This may enable them to undercut fixed OCPs when competing against them for subscribers or calls in wider telephony bundles (i.e. to numbers other than to 080). While fixed and mobile CPs provide services in separate markets this does not preclude some material degree of competitive interaction between the two. In determining a dispute about fair and reasonable origination charges, we will consider the extent to

[43] Our proposed access condition will effectively prevent TCPs from blocking calls from mobile, as they will be required to purchase call origination from mobile OCPs upon reasonable request.
[44] We recognise that efficient pricing may involve additional considerations, such as differences in the elasticity of demand and/or the range of services over which common costs are recovered, but focus here on the efficiency of price signals to SPs because of their direct impact on service availability.

which a proposed origination charge may give rise to such a distortion of competition, taking into account the evidence available to us.

A1.54 In considering these two potential impacts, we will also take into account the materiality of any distortion in competition between fixed and mobile OCPs.

Step 3: Assess whether there are any material distortions to competition.

A1.55 It is possible that origination payments could give rise to other material distortions to competition that are not considered in relation to the relative level of fixed and mobile origination payments. For example, an origination payment paid to a particular mobile OCP that differed significantly from the level paid to other mobile OCPs could potentially create a distortion to competition between mobile OCPs. We will consider whether any such potential distortions are likely to arise as part of our assessment of Principle 2 and, if so, whether they are likely to be material.

Principle 3: practicality

A1.56 The analysis under Principle 3 relates to the principle of *practicability*, namely, that any fair and reasonable charge that we determine needs to be practicable and relatively easy to implement.

A1.57 We envisage that the level of a fair and reasonable origination charge may differ for fixed and mobile originated calls. This would require TCPs to identify the type of OCP – fixed or mobile - that has originated a particular call (for the purposes of deciding which origination payment is appropriate, mobile or fixed). One of the issues that we may therefore consider under Principle 3 is whether CPs are likely to be capable of distinguishing the identity of the originator of the call for the purpose of deciding which origination payment is applicable, particularly when the call has been routed through a transit provider.

A1.58 If charges differ by OCP and/or by TCP, we will also need to be satisfied that this is practical to implement. Our assessment of the practicality of multiple origination charges in this case would be likely to consider factors similar to those raised in relation to Principle 3 in previous disputes, which involved termination rates that varied by OCP.[45] These factors may include, but are not necessarily limited to, a consideration of whether porting at the OCP end would affect billing accuracy and whether multiple origination payments would introduce significant additional complexity and/or to potential distortions to OCPs' choice of transit provider.

Enforcement action

A1.59 Whilst dispute resolution is likely to be the most common regulatory means of considering whether an origination charge is fair and reasonable, it is not the only regulatory instrument available. It is open to Ofcom to investigate whether TCPs are compliant with an access condition, and to take enforcement action under sections 94 to 103 of the Communications Act 2003 (whether or not a dispute has been referred to us for resolution). Ofcom will also take the content of this guidance into account in any such proceedings, as appropriate.

[45] The 080 Dispute Determination, the 0845/0870 Dispute Determination and the Tiered Rates Determination.

Annex 2

Responding to this consultation

How to respond

A2.1 Ofcom invites written views and comments on the issues raised in this document, to be made **by 5pm on 28 May 2013**.

A2.2 Ofcom strongly prefers to receive responses using the online web form at http://stakeholders.ofcom.org.uk/consultations/080-116-ranges/howtorespond/form, as this helps us to process the responses quickly and efficiently. We would also be grateful if you could assist us by completing a response cover sheet (see Annex 4), to indicate whether or not there are confidentiality issues. This response coversheet is incorporated into the online web form questionnaire.

A2.3 For larger consultation responses - particularly those with supporting charts, tables or other data – please email NGCSReview@ofcom.org.uk attaching your response in Microsoft Word format, together with a consultation response coversheet.

A2.4 Responses may alternatively be posted or faxed to the address below, marked with the title of the consultation.

Elizabeth Gannon
Competition Group
Riverside House
2A Southwark Bridge Road
London SE1 9HA

Fax: 020 7783 4109

A2.5 Note that we do not need a hard copy in addition to an electronic version. Ofcom will acknowledge receipt of responses if they are submitted using the online web form but not otherwise.

A2.6 It would be helpful if your response could include direct answers to the questions asked in this document, which are listed together at Annex 4. It would also help if you can explain why you hold your views and how Ofcom's proposals would impact on you.

Further information

A2.7 If you want to discuss the issues and questions raised in this consultation, or need advice on the appropriate form of response, please contact Elizabeth Gannon on 020 7981 3501.

Confidentiality

A2.8 We believe it is important for everyone interested in an issue to see the views expressed by consultation respondents. We will therefore usually publish all responses on our website, www.ofcom.org.uk, ideally on receipt. If you think your response should be kept confidential, can you please specify what part or whether all of your response should be kept confidential, and specify why. Please also place such parts in a separate annex.

A2.9 If someone asks us to keep part or all of a response confidential, we will treat this request seriously and will try to respect this. But sometimes we will need to publish all responses, including those that are marked as confidential, in order to meet legal obligations.

A2.10 Please also note that copyright and all other intellectual property in responses will be assumed to be licensed to Ofcom to use. Ofcom's approach on intellectual property rights is explained further on its website at http://www.ofcom.org.uk/about/accoun/disclaimer/

Next steps

A2.11 Following the end of the consultation period, Ofcom intends to publish a statement in the summer of 2013.

A2.12 Please note that you can register to receive free mail Updates alerting you to the publications of relevant Ofcom documents. For more details please see: http://www.ofcom.org.uk/static/subscribe/select_list.htm

Ofcom's consultation processes

A2.13 Ofcom seeks to ensure that responding to a consultation is easy as possible. For more information please see our consultation principles in Annex 3.

A2.14 If you have any comments or suggestions on how Ofcom conducts its consultations, please call our consultation helpdesk on 020 7981 3003 or e-mail us at consult@ofcom.org.uk . We would particularly welcome thoughts on how Ofcom could more effectively seek the views of those groups or individuals, such as small businesses or particular types of residential consumers, who are less likely to give their opinions through a formal consultation.

A2.15 If you would like to discuss these issues or Ofcom's consultation processes more generally you can alternatively contact Graham Howell, Secretary to the Corporation, who is Ofcom's consultation champion:

Graham Howell
Ofcom
Riverside House
2a Southwark Bridge Road
London SE1 9HA

Tel: 020 7981 3601

Email Graham.Howell@ofcom.org.uk

Annex 3

Ofcom's consultation principles

A3.1 Ofcom has published the following seven principles that it will follow for each public written consultation:

Before the consultation

A3.2 Where possible, we will hold informal talks with people and organisations before announcing a big consultation to find out whether we are thinking in the right direction. If we do not have enough time to do this, we will hold an open meeting to explain our proposals shortly after announcing the consultation.

During the consultation

A3.3 We will be clear about who we are consulting, why, on what questions and for how long.

A3.4 We will make the consultation document as short and simple as possible with a summary of no more than two pages. We will try to make it as easy as possible to give us a written response. If the consultation is complicated, we may provide a shortened Plain English Guide for smaller organisations or individuals who would otherwise not be able to spare the time to share their views.

A3.5 We will consult for up to 10 weeks depending on the potential impact of our proposals.

A3.6 A person within Ofcom will be in charge of making sure we follow our own guidelines and reach out to the largest number of people and organisations interested in the outcome of our decisions. Ofcom's 'Consultation Champion' will also be the main person to contact with views on the way we run our consultations.

A3.7 If we are not able to follow one of these principles, we will explain why.

After the consultation

A3.8 We think it is important for everyone interested in an issue to see the views of others during a consultation. We would usually publish all the responses we have received on our website. In our statement, we will give reasons for our decisions and will give an account of how the views of those concerned helped shape those decisions.

Annex 4

Consultation response cover sheet

A4.1 In the interests of transparency and good regulatory practice, we will publish all consultation responses in full on our website, www.ofcom.org.uk.

A4.2 We have produced a coversheet for responses (see below) and would be very grateful if you could send one with your response (this is incorporated into the online web form if you respond in this way). This will speed up our processing of responses, and help to maintain confidentiality where appropriate.

A4.3 The quality of consultation can be enhanced by publishing responses before the consultation period closes. In particular, this can help those individuals and organisations with limited resources or familiarity with the issues to respond in a more informed way. Therefore Ofcom would encourage respondents to complete their coversheet in a way that allows Ofcom to publish their responses upon receipt, rather than waiting until the consultation period has ended.

A4.4 We strongly prefer to receive responses via the online web form which incorporates the coversheet. If you are responding via email, post or fax you can download an electronic copy of this coversheet in Word or RTF format from the ‘Consultations’ section of our website at www.ofcom.org.uk/consult/.

A4.5 Please put any parts of your response you consider should be kept confidential in a separate annex to your response and include your reasons why this part of your response should not be published. This can include information such as your personal background and experience. If you want your name, address, other contact details, or job title to remain confidential, please provide them in your cover sheet only, so that we don’t have to edit your response.

Cover sheet for response to an Ofcom consultation

BASIC DETAILS

Consultation title:

To (Ofcom contact):

Name of respondent:

Representing (self or organisation/s):

Address (if not received by email):

CONFIDENTIALITY

Please tick below what part of your response you consider is confidential, giving your reasons why

Nothing	☐	Name/contact details/job title	☐
Whole response	☐	Organisation	☐
Part of the response	☐	If there is no separate annex, which parts?	

If you want part of your response, your name or your organisation not to be published, can Ofcom still publish a reference to the contents of your response (including, for any confidential parts, a general summary that does not disclose the specific information or enable you to be identified)?

DECLARATION

I confirm that the correspondence supplied with this cover sheet is a formal consultation response that Ofcom can publish. However, in supplying this response, I understand that Ofcom may need to publish all responses, including those which are marked as confidential, in order to meet legal obligations. If I have sent my response by email, Ofcom can disregard any standard e-mail text about not disclosing email contents and attachments.

Ofcom seeks to publish responses on receipt. If your response is non-confidential (in whole or in part), and you would prefer us to publish your response only once the consultation has ended, please tick here. ☐

Name　　　　　　　　　　Signed (if hard copy)

Annex 5

Consultation question

Question 1: Do you have any comments on how we have applied these three Principles to generate the draft guidance in Annex 1?