Annexes

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Annex 1

Assessment of costs – response to stakeholder comments

Introduction

A1.1 In this Annex we set out and address stakeholder comments we received on the cost estimates of implementing the unbundled tariff and making the 080 and 116 ranges free-to-caller set out in our April 2013 policy position (in Annex 10).

A1.2 The cost estimates used in the April 2013 policy position incorporated some revisions and updates following stakeholder comments received in response to our previous consultation. We therefore offered stakeholders an opportunity to comment on those specific, revised, aspects of our assessment. In particular we asked consultation questions on the following issues:

- the billing costs resulting from implementing the unbundled tariff;
- the misdialling costs resulting from making 080 free-to-caller; and
- the consumer time costs resulting from making 080 free-to-caller.

A1.3 We have therefore set out the stakeholder comments we received, and our response, on each of these issues below. In addition, stakeholders have raised additional issues relating to our assessment of costs beyond those on which we invited comments. We summarise stakeholder comments and our response to these for both the unbundled tariff and 080/116 free-to-caller in turn below. The comments we received have not led to any material changes in our overall cost estimates or our assessment of the impact of our regulatory changes.

The unbundled tariff

A1.4 We estimated the costs of implementing the unbundled tariff in Annex 10 of the April 2013 policy position. We discussed five categories of costs that we considered would potentially arise as a result of implementing the unbundled tariff on the 084, 087, 09 and 118 ranges:

- billing costs (see paragraphs A10.4-A10.47 of the April 2013 policy position);
- migration costs (see paragraphs A10.66-A10.124 of the April 2013 policy position);
- misdialling costs (see paragraphs A10.153-A10.180 of the April 2013 policy position), which we sub-divided into costs to SPs of misdialled calls and consumer time costs of misdialling; and
- communications costs (see paragraphs A10.203-A10.252 of the April 2013 policy position), which we divided into OCP communications with callers; TCP communications with SPs and Ofcom communications campaign); and
- other costs (see paragraphs A10.270-A10.278), including an SC database.

A1.5 As noted above, we only consulted on our billing cost estimates as part of the April 2013 policy position. We have therefore first set out, and responded to, the stakeholder comments we received on billing costs. We have then set out, and responded to, stakeholder comments we received on other aspects of our cost estimates of implementing the unbundled tariff. Finally we have set out any necessary revisions to our estimates and our final conclusions on the costs of implementing the unbundled tariff.

Billing costs

Summary of assessment in the April 2013 policy position

A1.6 We presented a revised estimate of billing costs arising from the unbundled tariff in the April 2013 policy position.[1] In particular, our estimates reflected our view that there would be a requirement for 100 SC price points as well as additional evidence gathered from mobile OCPs on their likely costs of implementation.[2]

A1.7 We presented higher and lower cost estimate scenarios and within each of those we assumed there were likely to be higher complexity billing systems, medium complexity billing systems and lower complexity billing systems. We assumed that four to ten OCPs were likely to have high complexity billing systems and 10 to 30 were likely to have medium complexity billing systems, with the remainder having low complexity billing systems.

A1.8 The Table below summarises our estimates.

Table A1.1: Assumed high and low total industry billing costs (£m) [✂]

	Total up-front cost range		Total annual cost range	
	Higher cost	**Lower cost**	**Higher cost**	**Lower cost**
High complexity billing systems	[✂]	[✂]	[✂]	[✂]
Medium complexity billing systems	[✂]	[✂]	[✂]	[✂]
Low complexity billing systems	[✂]	[✂]	[✂]	[✂]
Total costs	£35.1m	£11.2m	£7.4m	£1.4m

A1.9 We acknowledged this range was wide but we noted it reflected the different state of each OCP's billing systems, in particular whether or not they had legacy billing systems and their current approach to pricing (e.g. the number of tariff bands they currently used).

[1] See paragraphs A10.24 to A10.47 of the April 2013 policy position.
[2] We noted the estimates we had provided indicated that there was a clear difference between the expected (higher) billing costs of mobile CPs and the (lower) billing costs of fixed CPs. See paragraph A10.33 of the April 2013 policy position.

A1.10 In light of the changes to our estimates of billing costs when compared to those we presented in the April 2012 consultation, we asked the following question:

Question 10.1: Do you agree with our estimates of the billing costs for implementing the unbundled tariff? If not, please explain why and provide evidence to support your response, particularly of the level of costs you are likely to incur as a result of our approach.

Stakeholder comments

A1.11 Several stakeholders said they were not able to comment on Ofcom's billing cost estimates due to much of the data being redacted. Three, for example, said it was not in a position to review Ofcom's calculations in detail due to the confidential nature of the data used as inputs.[3] O2 said it was difficult to comment on Ofcom's treatment of the data, given that it did not know what the other mobile CPs' cost estimates were, nor what Ofcom means by "taking the average of costs submitted by [✂] (all mobile CPs that provided cost estimates)". O2 said that, on the face of it, it considered that an upper estimate of £35.1m appeared low.[4] EE argued it was not possible to meaningfully comment on the billing cost estimates when the estimated costs for CPs with high, medium or low complexity were not separately published. It noted this was in contrast to the April 2012 consultation which provided some differentiation between the cost types and in the absence of similar disaggregated comparator OCP costs it was difficult to comment on the modelled cost for an OCP requiring complex billing changes relative to EE's own expected costs of implementation.[5]

A1.12 BT said it agreed in principle with the billing cost estimates; however it did not consider it had sufficient detail of the impact of implementing Ofcom's proposals to respond more fully to the question. It said this detail would most likely only become available with the move to the implementation phase and when it could consider the actuals of how the SC price points would be placed, how ACs would be set out on the bill and how much information would be disseminated to consumers and by whom.[6] [✂] noted that the wide estimate of costs should cover the billing costs for any CP.[7]

A1.13 EE considered that the changes made to Ofcom's assessment of the costs of the unbundled tariff regarding billing costs were subject to a number of weaknesses which caused Ofcom to understate the true implementation costs likely to be incurred by the industry. First, EE said that the annual costs would be sensitive to the frequency in the change in SC price points but this was a matter that currently remained undefined by Ofcom and highly uncertain. It noted that in its comments on the cost benefit analysis for unbundling the 09 range (see Annex 2) it had identified that 09 prices were likely to change more frequently because of the following factors:

- diversity of discretionary 09 services reflecting a wide variety of preferences;

[3] Three, April 2013 policy position response, p.26.
[4] O2 quotes paragraph A10.42 of the April 2013 policy position, O2, April 2013 policy position response, p.2.
[5] EE, April 2013 policy position response, pp.64-65.
[6] BT, April 2013 policy position response, p.16.
[7] [HSBC , April 2013 policy position response, p.1-**CONFIDENTIAL**]

- disruptive price discovery generated by new PRS entrants as they got used to the new higher rate price points and iterated to price points that maximised profit. It said this was likely to generate higher ongoing billing costs if manual processes were relied on to facilitate that process;

- the costs of correcting any billing errors or handling call centre queries from customers suffering confusion where new entrant 09 prices were changing frequently; and

- opportunistic behaviour from 09 service providers to raise prices taking advantage of the introduction of the new caps.

For these reasons EE said it was particularly concerned about the annual costs of managing changing price points on the 09 number range.[8]

A1.14 Second, EE noted that in both the fixed and mobile sectors network operators who provided managed end to end services to fixed OCPs and MVNOs would have to provide billing platforms, support and format solutions to those operators under Ofcom's unbundled tariff regime. It said Ofcom's cost benefit analysis did not appear to adequately factor in the costs of those wholesale level billing changes and given the prevalence of that commercial model it believed Ofcom had underestimated the number of OCPs requiring complex billing changes. In particular it strongly objected to the reduction in the number of OCPs modelled to have complex billing costs from 20 down to between 4 and 10 and it believed this should be increased to cover fixed resellers and MVNOs that rely on the same wholesale network operators for their billing solutions.[9] It argued that the incremental resource required for implementing the unbundled tariff for fixed and mobile network operators with resellers could be considerable – it also noted that an MVNO might wish to have different approaches to implementing tariff unbundling and then the costs would not simply be incremental to the billing solution but instead require a separate bottom-up solution with the associated additional costs.[10]

A1.15 Third, EE said that whilst not strictly a billing cost, the rigidities of the AC structure would expose wholesale customers such as fixed resellers and MVNOs to a greater risk of cost under-recovery on 084/087, 09 and 118 calls than currently. It noted that under the existing structure wholesale customers could reflect differing mark-ups in termination rates through changes in the retail prices they charged to their end-customers so as to cover the relevant individual costs of each different type of call. EE argued that such an approach would no longer be possible under the unbundled tariff. Instead, wholesale customers would have to seek to receive an average of all those wholesale mark-ups by inflating their aggregate ACs accordingly. It said there was consequently a materially higher risk that mis-estimates could cause such costs to be under-recovered and it argued that Ofcom should reflect that risk as a cost in its impact assessment.[11]

A1.16 Fourth, EE also noted it strongly objected to any suggestion that legacy billing system costs were inefficient or overstated the efficient costs.[12] It said if Ofcom was to fail to give full weight to these costs it would be discriminatory against businesses

[8] EE, April 2013 policy position response, pp.64-65.
[9] EE, April 2013 policy position response, pp.14-15.
[10] EE, April 2013 policy position response, p.65.
[11] EE, April 2013 policy position response, p.66.
[12] EE noted some stakeholders had argued that legacy billing systems should be viewed as inefficient and that those costs should not be included in Ofcom's estimates.

undergoing unprecedented and ongoing integration of the legacy retail and network elements (e.g. Vodafone and CWW, Sky and O2 fixed, as well as EE's legacy networks). It noted that Ofcom was not in this case setting prices to try to mitigate the impact of SMP and for that reason Ofcom must accept those cost bases which had developed under competitive markets.[13]

A1.17 Finally, EE noted that billing costs might be dwarfed by call centre queries arising from the unbundled tariff bill format and final charges set by SPs. It expected customer queries to call centres might increase significantly, particularly with the likely SP entry on the 09 range (with the higher SC cap). It said Ofcom should examine the costs to consumers of their time in making those queries as well as OCPs' costs in handling the calls (including both direct costs and indirect costs such as the opportunity cost of not being able to provide business as usual customer support).[14]

A1.18 [✂] (a reseller) argued that Ofcom had estimated a very broad range of set up costs for implementing the unbundled tariff. It agreed that each company would experience its own particular challenges when undertaking the implementation and, thus, it expected the costs to differ widely. In relation to its own costs, it anticipated that they would be towards the lower end of Ofcom's estimations. However, as it was currently in the process of migrating its managed service from one provider to another, it was difficult to tell with any degree of accuracy.[15]

Ofcom's response and decision

A1.19 We note Three, O2 and EE's comments that due to the confidential nature of the data used to estimate billing costs it was difficult for them to comment on our analysis. However, in order to make an informed assessment of billing costs, and due to a lack of publicly available information, it was necessary to use data from OCPs, who marked this information as confidential (including Three, O2 and EE). Thus, inevitably we have had to redact any cost information that would allow readers to calculate the cost estimates provided by stakeholders. That said, we disagree with EE's comment that the level of detail provided in the April 2013 policy position was inferior to that provided in the April 2012 consultation. We have sought to reflect the evidence from OCPs as closely as possible in coming to our estimates of the billing costs, but always bearing in mind stakeholders' concerns regarding the public disclosure of their confidential information. We believe that we have provided stakeholders with sufficient detail to at least form a broad view on the likely billing costs resulting from our changes.

A1.20 We take on board BT's comments and agree that once we move to the implementation phase the actual billing costs of implementing the unbundled tariff will become clearer. We agree with [✂]'s view that in taking a wide range for the billing costs, this should cover the range of potential billing costs of CPs.

A1.21 Both O2 and EE considered that we had understated the costs. As explained in the April 2013 policy position, we took CPs' billing cost estimates at face value (e.g. with no adjustment for efficiency, as discussed in paragraph A10.26 of the April 2013 policy position) and derived our different scenarios taking the average of stakeholders' cost estimates (as described in paragraph A10.42). We recognise that there is some degree of uncertainty regarding the expected billing costs of

[13] EE, April 2013 policy position response, p.66.
[14] EE, April 2013 policy position response, p.66.
[15] [✂]

implementing the unbundled tariff. In fact, this has been reflected in the submissions from stakeholders, which included a relatively wide range of cost estimates and several outliers. Thus, we believe it is unavoidable that some CPs (taking the perspective of their own cost estimates which are higher than average), will be of the view that we have understated the costs. However, we note that stakeholders have not suggested an alternative method for deriving billing costs and, in the absence of a better method, we continue to consider that taking the average of CPs cost information to estimate the billing costs is an appropriate approach. Furthermore, this approach takes into account the fact that some OCPs are likely to face higher implementation costs and others lower costs.

A1.22 EE commented on what it considered to be material costs of SC prices being more likely to change under the new 09 SC caps compared to 084/087 services. We agree that over time 09 are more likely to change more often than 084/087 numbers due to the nature of services that operate using these numbers. However the relevant question for the purposes of this impact assessment is whether the costs associated with changes to 09 prices are likely to be materially greater if we introduce unbundling than if we do not intervene. We disagree that these costs are likely to be material for a number of reasons:

- SPs seeking a different revenue level does not in itself mean there is a need for either a new price point or changes in the number ranges associated with a given price point;
- presently, most SPs seeking specific price points for particular services choose a number which is associated with this revenue level. Given that such numbers are allocated a price point (now and under our new regime) in 10k number blocks, it is unlikely that they will be able to choose to revise the price point unilaterally. They are more likely to seek a new number with a different revenue share;
- we accept that there will continue to be demand for new price points in the future but we do not have evidence that the pace of demand is likely to be materially higher than what we have seen in the recent past once the initial 100 price points are established; and
- similarly we would expect that there will continue to be demand for new number block allocations but again we do not have evidence that would suggest a material increase in demand for such number blocks, certainly beyond the initial establishment of the new system.

A1.23 We also do not consider that there will be material costs of correcting billing errors or handling call centre queries. As explained in Section 10 of the April 2013 policy position,[16] Ofcom will be including in its published data on non-geographic number blocks which it has allocated, the SC which is associated with each block and this will provide CPs with a single point of reference for this information. In addition, SPs will be required to advertise the correct SC associated with their non-geographic number when they promote their service (see paragraphs 3.47 to 3.48 in Section 3). Enforcement of this requirement for SPs on the 09 and 118 ranges falls within the remit of PPP. In addition, the unbundled tariff will lead to clearer pricing information for consumers so we expect there to be less confusion and therefore lower call centre costs (see paragraphs A10.235 to A10.236 of the April 2013 policy position where we discussed this point).

[16] Paragraphs 10.33 to 10.38 of the April 2013 policy position.

A1.24 We disagree with EE that we have not adequately factored in the costs of the wholesale level billing changes for those mobile CPs who provide services to MVNOs. In fact, the estimates from O2 that we used to derive our billing costs included costs associated with MVNOs. Following EE's response, we also queried Three and Vodafone on this issue. Three stated that including MVNO costs would not change its billing costs materially[17] and Vodafone indicated that its estimates also included costs associated with MVNOs.[18] In addition, the estimates we obtained from [✂], who have a number of reseller customers, included the costs of wholesale changes to their billing systems for those customers. As noted in the April 2012 consultation (see paragraph A19.23) we also specifically contacted some smaller resellers in order to obtain cost estimates. More recently, [✂] (another fixed re-seller) confirmed to us that it considered that their costs of implementation would be towards the low end of our estimates.[19] We consider it is difficult to know with precision the level of costs for MVNOs and fixed resellers that are likely to result from the unbundled tariff, however, we consider that contrary to EE's suggestion our cost estimates do factor in the additional costs for those operators who provide services to fixed OCPs and MVNOs.

A1.25 We also disagree with EE's view that the number of OCPs with complex billing costs should not have been reduced from 20 down to between 4 and 10. In the April 2013 policy position (paragraphs A10.39 to A10.47) we explained that in light of the additional evidence provided by mobile CPs we believed it was appropriate to include three industry cost scenarios (high, medium and low cost) as opposed to just two in the April 2012 policy position (high and low). Under this reclassification, we consider that between 4-10 CPs were likely to require adjustments to their billing costs that fell within the high cost category. In particular, our estimate assumes that the four MNOs will need to make significant changes to their billing systems (as suggested by their submissions) and allows leeway for the possibility that some MVNOs and/or fixed CPs may also incur costs towards the higher end that we considered. EE has not submitted any convincing arguments against our reasoning, and we therefore continue to believe that assuming that between 4 to 10 CPs will have complex billing systems remains appropriate. We disagree in particular that we should increase the number of CPs that we assume are likely to fall in the high cost category to account for MVNO and resellers costs because, as explained in paragraph A1.24, stakeholders have confirmed to us that their cost estimates already reflected these costs or that they would not be material.

A1.26 We do not consider that there is a risk of under-recovery of costs for MVNOs and re-sellers due to the rigidity of the AC structure, as suggested by EE. As with MNOs, we understand that MVNOs and re-sellers may need to change their pricing mechanisms following the introduction of the unbundled tariff. However, in light of the length of time that MVNOs and re-sellers have been in the market, we consider that they should have sufficient experience with NGCs to be able to set an AC which ensures that they do not under-recover their costs across 084/087, 09 and 118 calls.

A1.27 We note EE's comment concerning inefficiently incurred billing costs. However, as we discussed in the April 2013 policy position, for the purposes of our impact assessment we accounted for CPs' billing costs at face value and made no judgment on the efficiency of CPs' billing systems. This was because we did not consider it necessary to make a judgment on the relative efficiency of CPs' billing

[17] Three email to Ofcom dated 7 August 2013.
[18] Vodafone email to Ofcom dated 5 August 2013.
[19] [✂]

systems as our impact assessment showed that the benefits of the unbundled tariff were likely to outweigh the costs (even where the billing costs provided by some CPs may not reflect efficiently incurred costs).[20] Therefore, we note that we have given full weight to the costs provided by each individual CP.

A1.28 As highlighted above, EE argues that we should consider the costs to consumers and OCPs of handling increased call centre queries as a result of the unbundled tariff. As noted in our April 2013 policy position in paragraph A10.235, we accounted for one-off costs of communication campaigns and one-off costs of additional calls to call centres in our estimates of communication costs. Furthermore, we considered that over the long term, the unbundled tariff should reduce OCP's annual communications costs as well as the existing number of calls to call centres made by OCP's customers as the unbundled tariff will result in a simplification of non-geographic calls. We therefore disagree with EE's suggestion that we should make any additional adjustments to billing costs for these purposes.

A1.29 We agree with [✂] that our range of estimates for the unbundled tariff's billing costs is relatively wide and that the actual costs will only be known once our decision is implemented. We take note that their costs are likely to be at the lower end of the estimates that we provided in the April 2013 policy position and understand that currently it can be difficult for resellers to estimate their costs if they are migrating between network providers.

Other unbundled tariff costs

A1.30 We also received a number of stakeholder comments on other elements of the costs of implementing the unbundled tariff, including:

- TCP pays transit regime;
- increased retail prices; and
- SC price points – negotiation and SP migration.

A1.31 We respond to each area in turn below.

<u>TCP pays transit</u>

Stakeholder comment

A1.32 Magrathea argued that Ofcom had failed to take into account in its impact assessment the cost to both TCPs and OCPs of modifying network interconnect points to adapt to Ofcom's proposal. It said that changing the responsibility for transit payments would require the introduction of new interconnect circuits to connect to additional OCP points of handover and that it may also require a reduction in the size of existing circuits, such as intercity circuits. It argued that BT would also have to rearrange its network to adapt to the change in traffic patterns. It concluded that Ofcom should take these considerations into account.[21]

[20] April 2013 policy position, paragraph A10.26.
[21] Magrathea, April 2013 policy position response, p.4.

Ofcom response

A1.33 We recognise Magrathea's comments that there may be some short-term costs resulting from changing to a TCP pays transit approach. However, we note the following points:

- there is currently a mix of regimes, with some ranges where the OCP pays for transit and others where the TCP pays. In the April 2013 policy position we assessed options of either having an OCP or TCP pays transit regime and we highlighted that costs would apply to either approach.[22] It is only in continuing with the current approach that no new costs would arise. However, CPs have previously indicated a preference for having a standardised and consistent approach to transit payments across the number ranges and specifically requested that this standardisation of approach be included within the changes we were considering.[23] We also note that no other CPs have raised concerns with us about the costs involved in this change;

- second, we note that only those routes where the OCP currently pays for transit (and not those where the TCP currently pays for transit) can be considered to be subject to change due to our decision. This would act to limit significantly any potential costs associated with our decision;

- third, the scale of the re-routing required for OCPs and TCPs where transit was previously used (for example, via BT or Vodafone), is not clear (as it is not clear why moving to a TCP pays transit regime would mean that current routing is no longer efficient and therefore subject to change); and

- finally, we consider that any incremental cost associated with these changes will be mitigated by the long implementation period, which will allow operators to consider these routing changes in parallel with their assessments of the impact of changes to other number ranges and any business as usual network rearrangements (for example, driven by changes in traffic volumes or network configurations).

A1.34 Thus, in light of the above, we do not consider that we should increase our assessment of costs to reflect costs associated with re-routing of traffic as a result of adopting a TCP pays for transit regime. In any case, we consider that an assessment of the costs associated with any re-routing of traffic following our decision would be highly complex. As traffic routes tend to be constantly re-assessed and re-dimensioned on an ongoing basis, it would be difficult to specifically identify re-routings that occurred only as a result of our decision.

Higher retail prices under the unbundled tariff

Stakeholder comment

A1.35 Magrathea also argued that Ofcom had not adequately assessed the costs of implementing the unbundled tariff because it had not taken into account that the retail price was likely to be higher for 0845/0870 numbers which were previously included in a bundle. Ofcom had not taken account of the financial cost to consumers of the measures and therefore had failed in its duty under the Act to

[22] See paragraph A23.77 in Part B, Annex 23 of the April 2013 policy position.
[23] For example see paragraph A23.18 in Part B, Annex 23 of the April 2013 policy position. See also paragraph A18.21 in Part B of the April 2012 consultation.

correctly assess the costs and benefits. In particular, it highlighted that the cost of calling 0844 numbers would be higher than BT's current retail rate and estimated that the increased cost to consumers of the 0870 range would be between £200-£400m. It suggested that Ofcom should have quantified this effect.[24]

Ofcom response

A1.36 We have previously responded in detail to stakeholder concerns about the level of retail prices being higher under the unbundled tariff compared to the status quo.[25] As explained in the April 2013 policy position we do not consider that, taking the market as a whole, the unbundled tariff structure is likely to lead to price rises occurring. Instead we consider that, by developing an environment in which competition is encouraged, prices under the unbundled tariff are overall more likely to reflect consumer preferences than they do under the status quo. We therefore disagree with Magrathea's comment that we have not taken into account the costs of higher retail prices. In any case, as noted in Section 3 we have revised our approach to the bundling of the AC and as a result OCPs will now be able to continue their current approach to bundling of specific number ranges (0845 and 0870). We also note that Magrathea's cost estimates were based on TCPs/SPs choosing the highest SC price point available on a specific number range (i.e. 13p for the 087 range), whereas we consider that the increased transparency on the SC will lead to pressures on at least some SPs to select a lower price point (or at least maintain a price point which matches the level of current outpayments).

<u>SC price points – negotiation and SP migration costs</u>

Stakeholder comments

A1.37 Vodafone argued that our proposed model of bilateral negotiation between all OCPs and all TCPs in relation to the establishment of SC price points introduced new questions about billing and commercial settlement across industry that had not been scoped and could not yet be scoped in the existing cost estimates.[26]

A1.38 Vodafone also considered that because the available menu of SC price points was not yet clear, and TCPs could not guarantee that any particular price point would be available industry wide, there was a risk that the time available to SPs to make informed choices about whether to migrate to a different number range could be as little as six months. It said that, from discussions with its SPs, changes to promotional material, particularly print medium, typically required much longer than a six-month time period. It considered that such timescales were not achievable and would significantly increase the costs involved because it would force SPs to change promotional material outside of their typical publication cycles. It also highlighted that the costs of transition did not only affect SPs who decided to migrate to a different number range but also those that decided to stay faced new communication requirements and publication obligations that they needed time to prepare and plan for. It said that a lead time which allowed cost-effective communication of the associated SC for a number was critical if implementation costs were to be contained. Vodafone said that the sooner the ASA clarified the price publication requirements the more likely SPs would be able to minimise their

[24] Magrathea, April 2013 policy position response, p.4.
[25] See paragraphs A19.91 to A19.104 in Part B, Annex 19 of the April 2013 policy position.
[26] Vodafone, April 2013 policy position response, p. 6.

costs (for example, it questioned when the requirements came into force, whether they applied to 03 numbers or to business to business advertising).[27]

Ofcom's response

A1.39 We recognise Vodafone's comment that we have not accounted for the costs of bilateral negotiation on SC price points in our impact assessment. We consider that estimating these costs would be complex but the points we made in the April 2013 policy position in relation to the process of notifying and agreeing 080/116 origination charges also apply here – i.e. that notifying and agreeing charge changes is a relatively frequent activity for CPs and this would to a large extent be a business as usual process (albeit we expect that the volume of notifications is likely to be larger, as these changes will apply across several number ranges).[28] We have responded in more detail to Vodafone's concerns about the process of establishing SC price points in Annex 3 and we have provided more guidance to assist these negotiations in relation to existing prices in Annex 4. We consider that the guidance will therefore act to reduce the potential bilateral negotiation costs.

A1.40 We also consider that our guidance on SC price points addresses many of Vodafone's concerns about the timing, and costs, for SPs considering whether to migrate away from unbundled tariff number ranges, or SPs preparing their promotional material. We have set out the price points we consider should be made available based on the call volume data evidence we have assessed. Therefore this should give SPs using existing prices a clearer indication of what price points will be available to them under the new model and will allow them to take a decision well in advance of the implementation date about whether to migrate to a different number range (thereby reducing the extent of any migration costs).

A1.41 In Annex 3, we have set out our view that for the purpose of determining SC price points which do not reflect current outpayments on the unbundled tariff ranges (for example higher rate SCs on the 09 and 118 ranges), there would be an advantage in doing this through the medium of an independent body to receive and process SC requests from SPs and TCPs.[29] In particular, we consider that this will improve certainty for CPs and thereby enable SC price points to be determined more quickly. CPs will inevitably incur some costs in appointing, funding and interacting with this new body and we have therefore considered whether this could alter our assessment of the costs of implementation. However, in view of the weight of stakeholder comment about the difficulties and potential costs of determining SC price points through separate bilateral commercial negotiation,[30] we consider that, by comparison, the costs of centralising this process are likely to be lower. Further, there are unlikely to be material ongoing costs (because the determination of SC price points will occur primarily during the implementation period, and in the period 12 months after implementation, with only occasional requirements thereafter, for example if there is demand for different price points). We therefore consider that the costs of establishing and operating such an independent mechanism for the determination of SC price points are not likely to be more (and may even be less) than costs already incurred as existing business processes in negotiating and agreeing wholesale termination rates. We therefore do not consider that including negotiation costs over SC price points within our impact assessment is necessary.

[27] Vodafone, April 2013 policy position response, pp.11 and 18.
[28] See paragraphs A10.259 to A10.260 in Part A, Annex 10 of the April 2013 policy position.
[29] See paragraphs A3.48 to A3.58 in Annex 3.
[30] See paragraphs A3.23 to A3.35 in Annex 3.

A1.42 In relation to Vodafone's comments on costs of changing promotional material, we consider that the advertising requirements in relation to the SC are already sufficiently clear for SPs to start planning for changes to their promotional material. The non-provider Numbering Condition (in Annex 12) states that where an SP is promoting their non-geographic number they must include the relevant SC for that number. This requirement will come into effect on the implementation date (alongside all the other changes). The requirements do not apply to 03 (because this is not an unbundled tariff number) and they do not apply to business to business advertising to the extent that the number advertised is not used to provide a service to consumers. We have explained in Annex 7 that we consider that whatever material is captured by the remit of the CAP (and BCAP) Codes (administered by the ASA) should also be considered as advertising and promotional material for the purposes of the non-provider Numbering Condition and this therefore provides an indication to SPs of the types of material that they will need to amend to include their SC. We therefore consider that our position in the April 2013 policy position in relation to these costs remains appropriate – that is, that the 18 month implementation period will be sufficient to allow SPs to make any updates to their promotional material in parallel with their normal cycle of replacing these materials and any costs are therefore unlikely to be material.[31]

Final conclusions

A1.43 In light of the discussion above, we have decided not to alter our approach to estimating the costs of implementing the unbundled tariff. We however now expect that our decision will be implemented by mid-2015 (rather than late 2014 in the April 2013 policy position). This affects the level of volumes that we expect by the time of implementation of our decision, which in turn affects our estimates of the misdialling and consumer time costs.[32] In addition, we have updated the average price of geographic calls that we use to estimate misdialling costs such that it is consistent with the average prices in our 2013 CMR (which we also use to derive our estimates of the TPE in Annex 5). Our other cost estimates remain unchanged from those we relied on in the April 2013 policy position and are set out in the table below. As noted in the April 2013 policy position, we recognise that there are some areas in which it has been difficult for us to quantify costs and that in some areas we have tended to overstate the likely costs.[33]

[31] See paragraphs A10.278 in the April 2013 policy position.

[32] These costs are slightly reduced by the change in the implementation date of our decision, as we assume that volumes of calls to non-geographic numbers decline by 10% annually.

[33] See paragraphs A10.283 to A10.285 in Part A, Annex 10 of the April 2013 policy position for further explanation.

Table A1.2: Quantified resource costs of introducing unbundled tariff

Cost item	Updated	
	One off	Annual
Billing costs	£11.2m to £35.1m	£1.4m to £7.4m
Migration costs	£3.4m to £15.8m	None
Misdialling costs	£1.5m to £2.8m	None
Consumer time cost - misdialling	£6.3m to £11.7m	None
OCP communication with callers	£0.6m to £3.7m	None
TCP communication with SPs	£1.5m to £2.0m	None
Ofcom communications campaign	£0.2m	None
SC database	£0m	None
TOTAL	£24.7m to £71.4m	£1.4m to £7.4m

Making 080 and 116 free-to-caller

A1.44 In Annex 10 of the April 2013 policy position we estimated the costs of making 080/116 free-to-caller. With respect to the 080 range, we discussed four categories of costs that we considered would potentially arise as a result of making this range free-to-caller:

- billing costs (see paragraphs A10.48-A10.65 of the April 2013 policy position), in which we also considered the potential costs of multiple origination charges arising at the wholesale level;
- migration costs (see paragraphs A10.125-A10.152 of the April 2013 policy position);
- misdialling costs (see paragraphs A10.181-A10.202 of the April 2013 policy position), which we sub-divided into costs to SPs of misdialled calls and consumer time costs of misdialling; and
- communications costs (see paragraphs A10.253-A10.269 of the April 2013 policy position), which we divided into TCP communications with OCPs; OCP communications with callers; TCP communications with SPs and an Ofcom communications campaign.

A1.45 Our estimates of migration and misdialling costs were based on the assumption we had made for the purposes of our impact assessment about the likely level of origination payments and our assumption about the likely share of mobile origination calls on a free-to-caller 080 range. These assumptions were as follows:

- base case scenario range of mobile origination payments: 1.3-3.0ppm, although we placed more weight on values within 1.5-2.5ppm (as discussed in Section 12 of the April 2013 policy position);

- Impact Assessment Range ('IAR') for mobile origination payments: 1.0-3.7ppm;
- IAR for fixed origination payments: 0.3-0.6ppm; and
- mobile share of calls on a free-to-caller 080 range: 45-60%.[34]

A1.46 As we had assumed both a base case scenario range and a wider IAR for mobile origination payments, we presented alternative estimates of the costs of making 080 free-to-caller using each of these ranges.[35]

A1.47 With respect to 116, we stated in the April 2013 policy position that we did not consider it necessary to quantify the costs of making this range free-to-caller. This was because we did not anticipate changes to current origination payments (or, if changes did occur, we considered they would be unlikely to have a material impact on OCPs) and we expected insignificant (or no) migration, communications and billing costs.[36]

A1.48 Since the April 2013 policy position we have updated our assumptions about origination payments and the mobile share of originated calls and we have also received stakeholder comments in response to the specific points on which we consulted. In the remainder of this section we therefore first set out and respond to stakeholder comments on certain aspects of our cost estimates. We then reconsider our cost estimates in light of our revised assumptions and finally set out our conclusions.

Misdialling costs

Summary of assessment in the April 2013 policy position

A1.49 We acknowledged that we erroneously did not account for misdialling costs for 080 numbers in the April 2012 consultation and therefore we investigated further if we should account for these costs. Specifically we recognised that SPs would be responsible for paying origination charges to fixed and mobile OCPs under the free-to-caller regime, therefore misdialled calls to 080 numbers from which SPs had migrated could potentially result in call charges being incurred by SPs.

A1.50 In order to estimate the likely misdialling costs we used information from the 2011 SP survey on the percentage of SPs that were likely to migrate away from the free-to-caller range, and a number of assumptions on the volume of calls, the average call duration (one minute), and the likely charges incurred by SPs. We presented estimates for the misdialling costs both using our wider IAR range and our base case scenario range (see Section 4 where we explain these scenarios). The Table below summarises the estimates under our base case scenario.

[34] See, for example, the discussion in paragraphs A10.144-A10.145, Part A, Annex 10 of the April 2013 policy position.
[35] Our provisional conclusions on these cost estimates were set out at paragraphs A10.286-A10.289, Part A, Annex 10 of the April 2013 policy position.
[36] See paragraphs A10.290-A10.293, Part A, Annex 10 of the April 2013 policy position.

Table A1.3: SPs' misdialling costs for 080 numbers using the Base case scenario range (£m)

	High outpayment	Low outpayment
High migration (19% of 080 SPs)	£0.3m	£0.2m
Low migration (8% of 080 SPs)	£0.1m	£0.1m

A1.51 We considered, however, that these estimates were likely to significantly overestimate the true misdialling costs (to a greater extent than the estimates we presented for the 0845/0870 range). This was for two reasons; (i) because SPs were less likely to run a recorded announcement (or were likely to run an announcement for a shorter period of time) on their former 080 number in parallel with their new number in order to avoid paying the higher origination charges on 080 and (ii) given that SPs would be responsible for paying origination charges, they were likely to be less willing to receive calls from customers that had wrongly dialled the number and TCPs would be likely to leave a period of time before they reallocated the number to another SP.

A1.52 We asked the following question about our assessment:

Question 10.2: Do you agree with our estimates of the level of misdialling costs for calls to service providers who may migrate as a result of making 080 free-to-caller? If not please explain why and provide evidence.

<u>Stakeholder comments</u>

A1.53 BT said it agreed in principle with Ofcom's estimates but did not have any evidence to support them.[37] [✂] said the range of input variables Ofcom had used was broadly sensible, which in turn lead to a sensible range of results. It noted two exceptions. First, it said there was likely to be a mass migration of SPs wanting to avoid the higher mobile origination charges as soon as certainty over their level was achieved, which meant that up to 18 months of additional charges in misdials (i.e. during the implementation period) was avoided. Second, it considered that a recorded announcement with an average call duration of one minute was very conservative. It therefore agreed with Ofcom's view that the estimates were likely to be overstated.[38]

A1.54 [✂] said Ofcom's concern that we had overestimated the cost to SPs was valid and the base case scenario was more likely to be realistic, although still potentially higher than anticipated.[39] It believed that SPs would run a recorded announcement for a relatively short period of time on the line they had migrated away from as they would not want to receive charges on a line they were no longer using.[40]

A1.55 [✂] welcomed Ofcom revisiting misdialling costs but it questioned the reliability of the assumptions used. However, it said it appreciated that it was difficult to be

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[37] BT, April 2013 policy position response, p.16.
[38] [✂]
[39] [✂]
[40] [✂]

objective as it was a speculative task and only time would tell if the assumptions proved correct.[41]

A1.56 The Helplines Partnership noted that organisations which operated socially important services would be likely to only consider migration away from a free-to-caller number where it was essential and unavoidable. It considered that further development of the Special Freephone Tariff could minimise migration away from free-to-caller by socially important services. It said misdialling costs should not be borne disproportionately by the most vulnerable in society.[42]

A1.57 Three said it agreed that the costs Ofcom had presented were likely to overestimate the misdialling costs for calls to SPs who might migrate as a result of making 080 free-to-caller. More specifically it said that if some SPs migrated away from the 080 range, the misdialled calls would not be connected and therefore there would be minimal network costs associated with those calls.[43]

A1.58 EE said it welcomed the correction of Ofcom's error in the April 2012 consultation of omitting the misdialling costs from its impact assessment. It said that the outpayment assumptions Ofcom had used in calculating the misdialling costs should be updated to make them consistent with the adjustments EE had proposed to the IAR (see Annex 5 where we set out EE's comments on the IAR).[44]

A1.59 EE said it did not agree that the estimates Ofcom had used would overstate the misdialling costs to SPs. It noted that currently Ofcom's analysis only covered a very limited sub-set of the costs – the origination charges payable to the OCP. In particular EE considered that Ofcom's estimate of the cost to SPs of misdialling should include not only all costs payable by the 080 SP to their hosting TCP in relation to those calls (i.e. for termination and hosting and any call management services), but also an estimate of the negative business impact where the SPs decided not to maintain the number, such as the cost of lost sales/negative customer experiences.[45]

A1.60 EE also added that Ofcom should not have restricted its cost estimates to calls made by consumers for the same reasons it set out in paragraphs A1.84 below.[46]

Ofcom's response and decision

A1.61 We welcome BT's support for our estimates of misdialling costs. [✂] considered that SPs would start migrating away from 080 during the 18 month implementation period and that therefore misdialled calls over this period would be avoided. Contrary to [✂]'s view, we believe that any potential SP migration during the implementation period should be considered a consequence of our decision to make 080 free to caller and thus, should be taken into account in our analysis. In relation to [✂] and [✂]'s view that our estimates were likely to overestimate misdialling costs, we agree that this is likely to be the case (as discussed in the April 2013 policy position). However, this reflects erring on the side of caution when estimating the likely costs of our decision.

[41] [✂]
[42] The Helplines Partnership, April 2013 policy position response, p.4.
[43] Three, April 2013 policy position response, p.26.
[44] EE, April 2013 policy position response, pp.71-72.
[45] EE, April 2013 policy position response, pp.71-72.
[46] EE, April 2013 policy position response, p.72.

A1.62 We welcome [✄]'s comments on our policy position document. We believe that the assumptions we have used are the most appropriate for the purpose of estimating the misdialling costs for 080 and believe them to be reasonable based on the latest information available.

A1.63 We agree with The Helplines Partnership that misdialling costs should not be borne by the most vulnerable in society. However, development of the Special Freephone Tariff is outside of the scope of this project. We nonetheless encourage The Helplines Partnership to continue to maintain and develop this Tariff in agreement with OCPs.

A1.64 Three considered that our costs were likely to be an over estimate of the misdialling costs. We note however that we have assumed that misdialling costs only arise when the SP migrates from its previous 080 number but still leaves a recorded announcement to warn the caller of the change in the number of the SP. Thus, contrary to Three's assertion, misdialling costs could still arise even if the SP had migrated. We nonetheless agree with Three that when there is a pre-recorded announcement it is unlikely that hosting charges would arise, as the call would not be connected to the SP.

A1.65 We note EE's comments regarding the outpayment assumptions that we used to derive misdialling costs. We describe in Annex 5 the approach we have used to reach assumptions about the likely level of origination payments for use in our impact assessment. We have concluded on the basis of currently available evidence that a fair and reasonable mobile origination payment is likely to be between 1.5-2.4ppm based on the framework we set out in our April 2013 policy position. In Annex 5 we explain why we do not believe that the alternative level proposed by EE would be appropriate.

A1.66 EE comments that it believes our estimates are unlikely to overstate the true misdialling costs to SPs. We disagree that the costs to SPs from misdialled costs should also include hosting charges to TCPs (other than origination payments). This is because, as noted by Three as well as other CPs (see Annex 5) in their response to our April 2013 policy position, SPs are likely to use a pre-recorded announcement and in those situations TCPs are unlikely to charge for these calls (as they incur minimal network costs – if at all).[47]

A1.67 We recognise that SPs' businesses may be negatively affected by their decision to migrate away from 080. We see two main channels through which this could occur (in addition to the direct costs of migration, which we already take into account in our assessment). The first of these is that the volumes of calls migrating SPs receive may be reduced as a result of higher call prices to access their services and/or consumers' misdialling their numbers, which may in turn have a negative impact on these SPs' business (e.g. a sales line receiving fewer calls is likely to generate fewer sales). The second is that there may be a reduction in consumer goodwill as a result of paying a higher call price to access these services or misdialling these numbers, which may in turn have negative implications for these SPs' business.

[47] This is consistent with CWW's description of how they would implement mitigation strategies (see CWW email to Ofcom dated 18 March 2013). CWW explained that in the cases where a pre-recorded announcement on CWW's network would be used the call would not incur any charge, as it would not be answered.

A1.68 We do not consider it appropriate to include these in our assessment of the costs to SPs, as we do not consider they are likely to be significant and, in any event, have no means of reliably estimating them. In the first instance, we consider that there will be a natural limit on the scale of the costs to SPs, as any SP whose business would be materially affected by migrating from 080 would be likely to absorb the increased outpayments associated with remaining on the number range in order to avoid this. Secondly, to the extent SPs are concerned about the impact of an increased call price on their businesses, we consider they can mitigate this by maintaining pre-recorded announcements, the costs of which we have already taken into account in our assessment. Thirdly, to the extent that callers substitute from one SP to another, any negative effects on one SP may be offset by positive effects on other SPs. Finally, we note that as we discussed in the April 2013 policy position, if mobile origination payments are within our base case scenario range, a majority of SPs prefer making 080 free to caller over MMP. We consider that this evidence suggests that any negative impact on SPs' business is likely to be outweighed by the benefits.

A1.69 We therefore disagree with EE and continue to believe that our estimates of misdialling costs are likely to overestimate the true misdialling costs.

A1.70 We agree with EE's comment that our cost estimates should also include calls made from business customers. We explain in more detail below that the estimates we presented in the April 2013 policy position already assumed that both residential and business calls would result in misdialling costs. Therefore, we disagree with EE that we have restricted our cost estimates to just calls made by consumers.

Consumer time costs of making 080 free-to-caller

Summary of assessment in the April 2013 policy position

A1.71 As well as the costs incurred by SPs from misdialled calls to 080 we also recognised that there could be consumer time costs involved in those misdialled calls. In particular, the consumer time cost of misdialling the incorrect number and redialling the correct one. In the April 2013 policy position we therefore presented estimates of these costs using similar assumptions to those we had developed in estimating those costs for the 0845/0870 number range. As with 0845/0870, we assumed that the value of consumer's time was £5.97 per hour. However, contrary to the case with 0845 and 0870 numbers, we considered that SPs migrating away from 080 numbers are less likely to run PCAs informing callers of their new numbers. We therefore considered that the average time spent by consumers trying to find the correct number after misdialling a 080 number would be three minutes (compared to two minutes for 0845/0870).

A1.72 Using those assumptions we presented cost estimates for both our wider IAR and our base case scenario migration assumptions. Our estimates under the base case scenario are set out in the table below.

Table A1.4: Consumer time cost misdialling and redialling migrating 080 SPs using the Base case scenario range (£m)

	Cost
High migration (19% of 080 SPs)	£7.7m
Low migration (8% of 080 SPs)	£3.2m

A1.73 We asked the following question about our assessment:

Question 10.3: Do you agree with our estimates of the level of consumer time costs as a result of making 080 free-to-caller? If not please explain why and provide evidence.

Stakeholder comments

A1.74 [✂] said Ofcom's assessment was broadly sensible. It pointed out that even the most pessimistic outcome was immaterial to the levels of consumer detriment that the changes sought to address.[48]

A1.75 [✂] said that 3 minutes was suitably low.[49]

A1.76 [✂] agreed that it was unlikely that PCAs would be run on the old numbers due to the high costs involved with such an approach.[50]

A1.77 BT said it agreed with Ofcom's estimates of consumer time costs and, although it did not have any evidence to support them, they seemed logical. It also agreed that SPs migrating away from 080 were less likely to run a PCA or provide an alternative number. It said that three minutes seemed on the high side but it did not have any evidence to offer an alternative timing.[51]

A1.78 EE said Ofcom's estimates should be updated to be consistent with the adjustments EE had proposed to the IAR and base case scenario for origination charges (see Annex 5). EE also noted that it did not agree that Ofcom should have restricted its cost estimates to consumer calls only for the reasons set out in paragraphs A1.86 to A1.87 below.[52]

Ofcom's response and decision

A1.79 Both [✂] and BT agreed with our estimates of the consumer time cost. We agree with [✂] that even taking the most pessimistic outcome our cost estimates were immaterial when compared to the benefit that the implementation of the new tariff structure is likely to provide to consumers.

A1.80 We welcome the [✂]'s and BT's agreement with our expectation that SPs would be unlikely to run PCAs informing callers of new numbers for a long period of time.

[48] [✂]
[49] [✂]
[50] [✂]
[51] BT, April 2013 policy position response, p.16.
[52] EE, April 2013 policy position response, p.72.

A1.81 [✂] and BT differed on their view of the suitability of the call time. However, BT did not offer us any evidence of why three minutes may be on the high side for the length of the time spent finding the correct number. As a result, we have not revised our estimate, which is based on our assumption that the time taken by consumers to find the correct number after misdialling an 080 number is likely to be slightly above the time taken for 0845 and 0870. We consider this a reasonable assumption as SPs migrating away from 080 numbers would incur the higher origination charges they were trying to avoid through migration if they were to run a PCA. We consider this makes it less likely they will run PCAs compared to SPs migrating away from the 0845/0870 number ranges, who would not incur any origination charge in doing so.[53] In the absence of any additional information we believe that this is a reasonable estimate for the time spent to find the correct number after misdialling.

A1.82 We have responded to EE's comments on using its estimates of the impact assessment range in paragraphs A1.65 above. We respond to EE's comment regarding the restriction of cost estimates to consumer calls at paragraphs A1.86 to A1.87 below.

Other comments on the costs of making 080 free-to-caller

A1.83 In addition to the above, stakeholders made further comments relating to other parts of our analysis. We respond to these below.

<u>Application to business calls</u>

Stakeholder comments

A1.84 EE noted that Ofcom's cost assessment for making 080 free-to-caller was restricted to calls made by consumers but it considered that this approach was entirely inconsistent with what Ofcom had done to derive the base case ranges for the fair and reasonable origination charge, where Ofcom had assumed that free-to-caller would apply to all traffic. It said Ofcom could not have it both ways and therefore must estimate the full costs associated with that within the cost benefit analysis.[54]

A1.85 Vodafone said there was further potential complexity should the retail limitation on the regulation to 'consumer' callers drive a need to categorise call records by the type of caller. It said in the most extreme cases it might mean that the rating of calls to an SP operating 080 numbers for example would need to consider whether the call originated from a fixed line, a mobile device a business customer or a consumer. It said this was unneeded complexity that risked undermining all previous cost estimates and the prospectus on which the previous consultation was based. It said in order for Ofcom to realise its cost benefit analysis and to achieve its retail consumer benefit objectives practicably such wholesale arrangements needed to be kept simple and uniform.[55]

Ofcom's response

A1.86 In Annex 11 we have set out our final access condition, which will also apply to business calls when they are zero-rated at the retail level. Although we are not requiring business calls to be free to caller, our working assumption is that all calls

[53] For a more detailed explanation see the April 2013 policy position, paragraph A10.192.
[54] EE, April 2013 policy position response, pp.77-78.
[55] Vodafone, April 2013 policy position response, p.14.

will be zero-rated by OCPs on a voluntary basis. We note that contrary to EE's suggestion, our analysis in the April 2013 policy position accounted for the costs associated with both residential and business calls being zero-rated.[56] We therefore consider that, contrary to EE's view, we have been consistent in our approach.

A1.87 In light of our changes to the access condition (see paragraphs A6.98 to A6.104 in Annex 6), we consider that the complexities described by Vodafone relating to the treatment of business and residential callers are unlikely to arise. This is because our final access condition will apply to both business and residential callers where the call has been zero-rated, and our working assumption is that all calls will be zero-rated.

Negotiation and billing costs

Stakeholder comments

A1.88 Vodafone said the proposed model for commercial negotiation of wholesale 080/116 origination payments risked undermining the previous working development and cost assumption that underpinned the cost assessment because they were based upon there being no need to differentiate, based on CLI, beyond fixed/mobile origination. It said the prospect of needing to support multiple bilateral commercial arrangements with no guarantee of cascade billing was completely unscoped and it said it was not possible to scope everything required within the timescale of the consultation. It said the proposed regime risked inflating costs beyond those modelled by causing unmodelled transaction costs to be incurred and by creating additional unmodelled billing and settlement complexity for 080/116 charges as a result of the need to distinguish the identity of individual OCPs.[57]

A1.89 EE said it was concerned that Ofcom had severely underestimated the communications, negotiations and dispute resolution costs of its proposals. In particular it said Ofcom had failed to quantify the costs likely to be involved in TCPs 'communicating' with OCPs. It said by 'communicating' it understood Ofcom was actually referring to: communicating, negotiating, endeavouring to resolve any dispute commercially, filling a dispute with Ofcom / defending the dispute, engaging with Ofcom and then appealing the dispute to the CAT and potentially beyond.[58] EE said given Ofcom's vast experience with such matters, in particular in relation to the tiered termination rate disputes, it found Ofcom's claims that it would be too complex for Ofcom to estimate the cost of those activities not compelling. It said at the very least Ofcom could start by quantifying its own staff and litigation costs in relation to the tiered termination disputes. It said in relation to time costs for all parties Ofcom could at least use as a conservative starting point its consumer time cost estimates of £5.97 per hour. It said it found the factors listed in paragraph A10.260 of the April 2013 document highly uncompelling evidence that those costs were 'unlikely to be material'. It said based on time costs alone, it could see the

[56] We recognise that the language we used to refer to some of the cost categories described in the April 2013 policy position (e.g. "consumer time costs") may have caused confusion. We note however that our intention was to refer to callers (rather than non-business customers) and confirm that all our estimates included both business and residential callers, regardless of the title we used to refer to them.
[57] Vodafone, April 2013 policy position response, p.14.
[58] EE noted that paragraph A10.259 of the April 2013 document appeared to reflect that understanding.

relevant costs for the industry hitting the several hundred thousands of pounds mark if not more.[59]

A1.90 EE said it was not convinced that there would ultimately be a single fixed and mobile origination charge (or a very small number) given (i) the divergent interests of the different stakeholders, (ii) the fairly wide range of charges listed in Ofcom's the 080/116 Dispute Guidance, (iii) the potential importance in terms of business impact for the various stakeholders of differences in charges of just 0.5ppm, and (iv) the current divergent ladder pricing. It noted that if a large range of origination charges did emerge, EE disagreed that the wholesale billing and related staff time costs were unlikely to be material. In order to reduce the likelihood of those costs, (and as set out in more detail in EE's comments on the 080/116 Dispute Guidance[60]) EE said it would like to see a tighter range of fair and reasonable charges and much more specific guidance on the precise circumstances in which Ofcom would consider origination charges at particular points within the range as likely to be fair and reasonable.[61]

Ofcom's response

A1.91 Both Vodafone and EE disagreed with our view that the billing costs and costs of communication between OCPs and TCPs were unlikely to be material. As we described in paragraph A30.51 of the April 2013 policy position, we remain of the view that a number of factors relating to the characteristics of the market and our access condition will together create a process for commercial agreement and support convergence towards a small number of charges (if not a single charge) for each of fixed and mobile originated calls. We reiterate and explain our reasoning for this in more detail in Annex 6.

A1.92 In paragraph A10.260 of the April 2013 policy position we explained that it was very challenging for us to quantify the communications costs that were likely to result from the process of notifying and agreeing origination charges. This continues to be the case. We consider, however, that our response to stakeholder comments in Annex 6 on how the 080/116 access condition will work in practice (see paragraphs A6.20 to A6.73) supports the view we set out in April that these costs are unlikely to be material. Furthermore, as noted in paragraph A6.27 in that Annex, our 080/116 Dispute Guidance has further narrowed the terms of negotiation and there are a number of factors which mean that the model of bilateral negotiation between large numbers of OCPs and TCPs, which EE and Vodafone raise concerns about, is unlikely to occur in practice.

A1.93 We disagree with EE that we should include within these costs those associated with filing a dispute with Ofcom (or any subsequent appeal of that dispute). In the first instance, although we recognise the potential for a dispute over origination charges, it is open to CPs, should they wish to avoid the costs of a dispute, to reach a commercial agreement over the level of origination payment. We have increased the scope for such agreement to be reached by issuing detailed guidance on the level of charge we would be likely to consider fair and reasonable, including an indicative range for each of fixed and mobile originated calls based on current available evidence. In any event, we assess the costs of making 080/116 free-to-caller only insofar as they represent an increase in cost from the status quo. In the

[59] EE, April 2013 policy position response, p.23.
[60] See paragraph 2.33 in the 080/116 Dispute Guidance, the final guidance is available at: http://stakeholders.ofcom.org.uk/consultations/080-116-ranges/
[61] EE, April 2013 policy position response, pp.23-24.

absence of our intervention in the unbundled tariff number ranges and 080/116, we consider it likely that disputes similar to those that had arisen in NGCs over the last few years would have been likely to continue - this concern was raised by a number of stakeholders in response to our assessment of the wholesale level concerns in the December 2010 consultation (see Section 9 of the April 2012 consultation). As a result, although we recognise the potential for a dispute over origination charges, we do not consider it appropriate to include any associated costs in our impact assessment and, in any event, we do not consider this would result in any increase in costs for CPs relative to the counterfactual of the status quo.

A1.94 We remain of the view that there are factors that are likely to help in reducing the communications costs involved, as described in paragraph A10.260 of the April 2013 policy position. We therefore disagree that it would be appropriate to amend our estimates of negotiation and communication costs.

Updated analysis and conclusions

A1.95 In light of the discussion above, we have decided not to alter our estimates of the costs of making 080 free-to-caller as a result of stakeholder comments. However, as noted earlier, since the April 2013 policy position we have revised our assumption about fixed and mobile origination payments for the purposes of our impact assessment and our assumption about the mobile share of calls to a free-to-caller 080 range. In Annex 5 of this statement we conclude that we should use the following assumptions:

- IAR for fixed origination payments between 0.4-0.5ppm;
- base case scenario range of mobile origination payments between 1.5-2.4ppm;
- IAR for mobile origination payments between 1.0-3.7ppm; and
- mobile share of calls on a free-to-caller 080 range: 55-60%.

A1.96 In addition, as further discussed in Annex 5, we have taken into account that the implementation of our decision will occur in mid-2015.

A1.97 As noted above, we anticipated four categories of potential costs that would arise as result of making the 080 range free-to-caller. Of these, our estimates of billing costs and communications costs were not dependent on the assumptions set out above and therefore our view of these costs remains unchanged from that set out in the April 2013 policy position.

A1.98 In contrast, our estimates of migration costs and misdialling costs were dependent on the level of SP migration likely to occur once the 080 range is made free-to-caller which, in turn, is dependent on the assumptions set out above. We have therefore considered whether the revisions to these assumptions have an impact on our migration and misdialling cost estimates.

A1.99 In the April 2013 policy position, we estimated each of migration and misdialling costs by considering the minimum and maximum levels of SP migration that we thought likely to occur based on our assumptions about origination payments and the mobile share of calls. We derived a range of costs associated with a minimum and maximum level of SP migration, which in turn depended on the minimum and maximum average SP outpayment.[62] We estimated that the average SP outpayment consistent with our assumptions regarding (i) fixed to mobile substitution (45-60%), (ii) the wider mobile IAR (1.0-3.7ppm) and (iii) the fixed IAR (0.3-0.6ppm) was between 0.62ppm[63] and 2.46ppm.[64] Although in the case of the wider IAR we have revised our assumptions about fixed origination payments (now assumed to be between 0.4-0.5ppm) and the likely mobile share of calls (50-60%), these revisions result in average SP outpayments between 0.73ppm[65] and 2.42ppm[66], which do not greatly alter the resulting minimum and maximum levels of SP migration that we consider likely. In relation to the migration costs associated with the base case scenario range, we noted in the April 2013 policy position that our Base case scenario range only included combinations of assumptions that result in an average SP outpayment of between 1.0-1.5ppm.[67] Although we have adopted different assumptions in this statement (as described above), the minimum and maximum average SP outpayment resulting from these updated assumptions are 1.01ppm[68] and 1.50ppm.[69] These are very close to the 1.0-1.5ppm range used in the April 2013 policy position, and we have therefore assumed the same level of SP migration. This implies that our estimates of migration costs in April 2013 remain valid.

A1.100 In the case of misdialling costs (including consumer time costs), while the level of SP migration assumed remains unaltered (for the same reasons as in the case of migration costs), we consider that these costs should be updated to reflect 2015/16 volumes (as the expected date of implementation will be in mid-2015). This results in a slight reduction in our estimate of misdialling and consumer time costs (as we assume for these purposes that the volumes of calls to 080 numbers will decline between 2014/15 and 2015/16 before the implementation of our decision). In addition, we have also updated our assumptions regarding the high and low SP outpayment to 0.73ppm and 2.42ppm, respectively, consistent with the numbers discussed in the previous paragraph. We present our updated cost estimates in Table A1.5 below.

A1.101 In conclusion, our estimates of the costs of making the 080 range free-to-caller are set out in the table below. These are slightly lower than the estimates we set out in April 2013, as a result of the slight reduction in our misdialling and consumer time cost estimates. As noted in the April 2013 policy position, we recognise that there are some areas in which it has been difficult for us to quantify costs and that in some areas we have tended to overstate the likely costs.[70]

[62] Our approach was set out in detail in paragraphs A10.146-A10.152, Part A, Annex 10 of the April 2013 policy position.
[63] The lowest average SP outpayment would result with the lowest mobile origination payment (1ppm – the lower bound of the mobile IAR); the lowest fixed origination payment (0.3ppm – the lower bound of the fixed IAR) and the lowest share of mobile originated calls (45%). That is, 1.0ppm x 45% + 0.3ppm x 55% = 0.62ppm, see paragraph A10.148 of the April 2013 policy position.
[64] The highest average SP outpayment would result with the highest mobile origination payment (3.7ppm – the higher bound of the mobile IAR); the highest fixed origination payment (0.6ppm – the higher bound of the fixed IAR) and the highest share of mobile originated calls (60%).That is, 3.7ppm x 60% + 0.6ppm x 40% = 2.46ppm, see paragraph A10.148 of the April 2013 policy position.
[65] That is, 1ppm x 55% + 0.4ppm x 45% = 0.73ppm.
[66] That is, 3.7ppm x 60% + 0.5ppm x 40% = 2.42ppm.
[67] See paragraph A10.152 of the April 2013 policy position.
[68] That is, 1.5ppm x 55% + 0.4ppm x 45% = 1.01ppm.
[69] As we continue to believe that any combination of assumptions resulting in an average SP outpayment beyond 1.5ppm is outside of our Base case scenario range.
[70] See paragraphs A10.288-A10.289, Part A, Annex 10 of the April 2013 policy position for further explanation.

Table A1.5: Quantified resource costs of making the 080 range free-to-caller

Cost item	Using mobile base case scenario range		Using mobile wider IAR	
	One off	Annual	One off	Annual
Billing costs	Not material	Not material	Not material	Not material
Multiple origination charges	Not material	Not material	Not material	Not material
Migration costs	£3.2m to £19.0m	None	£3.2m to £36.0m	None
Misdialling costs	£0.1m to £0.3m	None	£0.1m to £0.8m	None
Consumer time cost - misdialling	£2.9m to £6.9m	None	£2.9m to £13.1m	None
TCP communication with OCPs	Not material	Not material	Not material	Not material
TCP communication with SPs	£2.1m to £2.8m	None	£2.1m to £2.8m	None
OCP communication with callers	£0 to £3.1m	N/a	£0 to £3.1m	N/a
Consumer time cost - communications	None	None	None	None
Ofcom communications campaign	£0.2m	None	£0.2m	None
TOTAL	£8.5m to £32.2m	None	£8.4m to £55.9m	None

A1.102 With respect to 116, we have not received any comments from stakeholders on the position we set out in the April 2013 policy position and we remain of the view that it is not necessary to quantify the costs of making this range free-to-caller. We do not anticipate changes to current origination payments (or, if changes occur, we consider they will be unlikely to have a material impact on OCPs) and we expect insignificant (or no) migration, communications and billing costs.[71]

[71] See paragraphs A10.290-A10.293, Part A, Annex 10 of the April 2013 policy position.

Annex 2

Impact assessment – response to stakeholder comments

Introduction

A2.1 In Annex 1, we address the comments which we received on our assessment of the overall costs of implementing the unbundled tariff and making 080 and 116 free to call. In addition to these comments, we also invited stakeholders to comment on our updated assessment of the quantified benefits of implementing the unbundled tariff on the 09 number range. With the exception of EE, those that did so were supportive of our analysis. EE, however, provided wide-ranging comments on this and other aspects of our impact assessment, notably:

- our finding in the April 2013 policy position that the implementation of the unbundled tariff on the 09 range is likely to be positive overall for consumers;
- the absence of a separate impact assessment in relation to the implementation of the unbundled tariff on the 118 range;
- our quantified impact assessment for the 084/087 number ranges;
- the absence of a quantified assessment of the benefits of making 080 and 116 free-to-caller; and
- our assessment of the option of imposing a maximum mobile price on the 080 and 116 ranges rather than making these ranges free-to-caller.

A2.2 We respond to these comments in this Annex, dealing first with EE's comments which relate to the impact of implementing the unbundled tariff on the 09 and 118 ranges (paragraphs A2.4 to A2.84), then with those in relation to the impact of implementing the unbundled tariff on the 084 and 087 ranges (paragraphs A2.85 to A2.94) and finally, with its comments relating to the impact assessment for the 080 and 116 range (paragraphs A2.95 to A2.101).

A2.3 Many of the comments discussed in this Annex do not necessarily draw on any new arguments or evidence compared to that we have already considered in the April 2013 policy position. Our consideration of these comments has not led to any changes in our overall assessment that the benefits of implementing the unbundled tariff and making 080/116 free-to-caller outweigh the costs. Our decision to adopt these changes is set out in Sections 3 and 4.

Impact assessment for the unbundled tariff on the 09/118 range

Summary of approach in the April 2013 policy position

A2.4 In the April 2013 policy position, following comments from EE, we reconsidered the available evidence on consumers' price awareness for calls to the 09 range but found that it was unclear how it should be interpreted.[72] As a result, we carried out

[72] See paragraphs A11.69 to A11.81 of the April 2013 policy position.

a separate assessment of the impact of unbundling the price for calling the 09 range under three scenarios:

- consumers overestimate 09 prices;
- consumer expectations of 09 prices are broadly accurate; and
- consumers underestimate 09 prices.

A2.5 Before we analysed these scenarios we first considered the incremental costs of implementing the unbundled tariff on the 09 range and decided that these were likely to be low. For the purposes of our consideration, we assumed that the unbundled tariff would already be implemented on the 084/087 number range and therefore many of the necessary steps (and associated costs) would already have been put in place.[73]

A2.6 Under each of the three scenarios, we said that the impact of implementing the unbundled tariff was likely to be positive.[74] On the basis of our assessment of the available evidence on consumers' price awareness for calls to the 09 range, we placed most weight on our assessment under the scenario that 09 callers have fairly accurate price expectations, where we said that the unbundled tariff was likely to lead to consumer benefits in the form of a more efficient pattern of prices and a greater level of service quality, variety and innovation.[75]

A2.7 We emphasised that, in any event, we placed significant weight on the benefits of applying the unbundled tariff consistently across the both the 084/087 and 09 number ranges (as well as the 118 number range). This was because we considered that applying separate remedies to different number ranges (on top of our separate treatment of 080 numbers) was likely to be less effective in addressing the problems of price complexity and lack of consumer price awareness experienced under the current system, as well as the other market failures we had identified.

A2.8 We invited stakeholders to comment on our assessment that the impact of implementing the unbundled tariff on the 09 range was likely to be positive overall.[76]

A2.9 In relation to the 118 range, we did not separately quantify the benefits of the unbundled tariff for the 118 range because we did not have the necessary data.[77] As set out in Section 8 of the April 2013 policy position, we have considered the benefits qualitatively as part of our analysis against our assessment criteria.

Overview of stakeholder comments and Ofcom's response

A2.10 A number of stakeholders agreed with our analysis that implementation of the unbundled tariff on the 09 range was likely to be positive overall, including Action4[78] BT, Three, the [✂][79] and [✂]. In particular [✂] said it would be "unconscionable" to implement the unbundled tariff on only a subset of NGCS and it agreed it would not achieve Ofcom's objective to restore consumer confidence and faith in the

[73] See paragraphs A11.84 to A11.89 of the April 2013 policy position.
[74] See paragraphs A11.90 to A11.133 of the April 2013 policy position.
[75] See paragraphs A11.92 to A11.95 of the April 2013 policy position.
[76] See paragraph A11.134 of the April 2012 policy position.
[77] See paragraph 8.70 of the April 2013 policy position.
[78] Action4, April 2013 policy position response, p.2.
[79] [✂]

industry.[80] Three also agreed that if Ofcom implemented the unbundled tariff for the 084/087 number ranges, the same tariff principles should be applied to the 09 number range in order to improve transparency and minimise confusion among customers.[81]

A2.11 Contrary to the supportive comments put forward by the majority of stakeholders, EE made a number of challenges to our analysis of the impact of implementing the unbundled tariff on the 09 range. It also made a number of comments on the impact of the measure on the 118 range. Its comments can be broadly categorised as follows:

a) there is insufficient evidence to support the existence of market failures (and the harmful outcomes associated with these market failures) on the 09 and 118 number ranges, and therefore insufficient evidence to justify implementing the unbundled tariff on these number ranges;

b) Ofcom's quantified analysis is flawed and there is a lack of evidence for the benefits of unbundling the 09 number range;

c) Ofcom has underestimated the incremental costs of implementing the unbundled tariff on the 09 and 118 number ranges; and

d) Ofcom has not undertaken a thorough cost benefit analysis ('CBA') for the proposals on the 118 number range.

A2.12 Before we set out, and respond to EE's specific comments on each of these areas, we note that many of EE's comments relate to the detailed methodology we have adopted as part of our assessment. The exercise we have undertaken is forward looking and therefore is necessarily hypothetical in certain areas (particularly where the evidence is limited or unavailable). It therefore requires the exercise of regulatory judgment on issues where there may be scope for alternative views. In addition, it is difficult to quantify the overarching benefit we have identified, namely the simplification of pricing structures across several non-geographic number ranges. We consider this to be a material benefit. Against that background, and in the absence of compelling evidence that our estimates of costs and benefits are unreasonable, our regulatory judgment of the information before us continues to be that the benefits of implementing the unbundled tariff on the 09 and 118 number ranges outweigh the costs and support our justification for intervention. The weight of stakeholder opinion supports this assessment.

A2.13 We also make the following observations. First, we recognise the benefits of unbundling in these number ranges are not likely to be as significant as they are in the 084/087 ranges. However, as noted below (see paragraphs A2.27 to A2.44), we do consider there to be benefits associated with unbundling the 09 and 118 ranges - not least the simplicity and reduced confusion arising from the implementation of the same tariff structure across 084, 087, 09 and 118 number ranges, the main non-geographic numbers for which retail charges will be payable by consumers.

A2.14 Second, EE also made a number of comments on the incremental costs of implementing unbundling on the 09 and 118 ranges. Our justification for implementing the unbundled tariff on the 09 range relied to a large extent on the

[80] [✂]
[81] Three, April 2013 policy position response, p.27.

incremental costs being relatively small and, having assessed EE's comments, we still consider the incremental costs of extending unbundling to 09, and the 118 number range (see paragraphs A2.67 to A2.77), are likely to be relatively low. As a result, we continue to consider these costs are likely to be more than offset by the benefits of the unbundled tariff.

A2.15 Last, as noted above, we assessed the impact of the unbundled tariff on 09 callers under three different scenarios in the April 2013 policy position:

- assuming that 09 callers overestimate the price of 09 calls: we considered that the impact of the unbundled tariff was likely to be positive overall;
- assuming that 09 callers underestimate the price of 09 calls: we considered that the overall impact of the unbundled tariff was more likely than not to be positive given that the remedy was likely to improve consumer price awareness; and
- assuming that 09 callers are relatively aware of the price of 09 calls: we considered that the impact of the unbundled tariff was also likely to be positive overall.

A2.16 EE has made a number of challenges to our assessment under the last of these scenarios, i.e. that 09 callers underestimate the price of 09 calls. Although we have responded to these comments for completeness,[82] our position remains as set out in the April 2013 policy position, namely that we consider it more likely that 09 callers are broadly aware of prices and therefore we place more weight on this scenario. This follows from our further consideration of the consumer survey evidence (see paragraphs A11.74 to A11.81 of the April 2013 policy position), which led us to believe that the apparent finding of consumer price underestimation across all respondents (i.e. including those who do not call 09 numbers) was not necessarily true for those respondents who actually call 09 numbers. For the reasons set out at paragraph A11.77 of the April 2013 policy position, we consider it likely that 09 callers have broadly accurate price expectations. In particular, as we noted, there are specific features of the 09 number range that mean 09 callers may be relatively price aware in comparison to 084/087 numbers, including PPP requirements which state that 09 SPs must include price information (i.e. the BT Retail price and a note that other charges may vary) in all promotional material in close proximity to the 09 number used to access the service.[83] On the basis that 09 callers are relatively aware of the price of 09 calls was most likely, we consider, as set out at paragraph A11.95 of the April 2013 policy position, that the impact of unbundling the 09 range is likely to be positive overall for consumers.

A2.17 We now respond to the detail of EE's comments on the impact of implementing the unbundled tariff on the 09 and 118 ranges under each of the categories set out in paragraph A2.11 above.

[82] See paragraphs A2.49 to A2.58 below.
[83] We recognise that this price information does not provide much of a guide to mobile callers, other than to suggest the cost of their call could be significantly higher. Overall, we still consider consumers are likely to have broadly accurate price expectations on average, given the relatively high proportion of fixed line callers for whom this pricing information is likely to provide a much more accurate guide to the cost of their call. We also consider the scenario in which callers under-estimate prices on average to be relatively unlikely, given the existence of this pricing information.

Evidence supporting the existence of market failures on 09 and 118

Stakeholder comments

Evidence to support Ofcom's assertion that 09 and 118 callers lack price awareness

A2.18 EE provided evidence[84] from a 2011 PhonepayPlus ('PPP') report suggesting that 09 price awareness has improved significantly – from 38% to 60% - between 2009 and 2011.[85] It also criticised survey evidence used by Ofcom to illustrate consumers' lack of trust in 09 numbers. According to EE, the 73.9% of consumers who stated their trust would be improved through more accurate information was based on a sub-sample of only 3% of current service users who cited lack of trust of the companies offering these services as the reason they were not interested in using additional types of 09 services.[86]

A2.19 EE also argued that changes to 09 pricing structures would not lead to additional 09 calls. It cited evidence from a PPP report which stated that, of those who gave reasons for not using PRS services, 99.3% responded that they were not interested in the 09 service. Of those that do call 09 numbers, EE argued that trust has dramatically improved in the range, citing evidence from the PPP report which suggests that the proportion of consumers lacking trust in PRS services has fallen from 20% in 2008 to 3% in 2010. EE also argued that there is no evidence that consumers would call 09 services more often even with accurate price information, referring to a quote from Ofcom stating: "this is in contrast to 09 where we consider it likely that many users simply do not need or want to call these [09] numbers".[87]

A2.20 Furthermore, EE referred to results of a survey it conducted itself to indicate that consumers are increasingly aware of alternatives to calling 09 numbers to access similar services.[88]

A2.21 Regarding 118 numbers, EE argued that different tariff structures for 118 prices were not evidence for or a cause of a lack of price awareness. Rather they were a response to competition and different consumer preferences that exist for 118 services. EE argued that even if it were true that different pricing structures lead to a lack of price awareness, unbundling could not impact these charging structures because it is only concerned with ensuring that SPs can advertise prices nationally, however they are expressed.[89]

Evidence to support the vertical externality

A2.22 While EE accepted that there is some degree of market failure, it argued that high retention by SPs indicated they have some measure of control over the ultimate retail price. EE also pointed to the increasing usage of mobile voice shortcodes ('MVSCs') and premium SMS services where SPs can directly control the retail price. EE highlighted evidence that these alternatives seemed to be displacing services provided via 09 numbers. For example, it pointed to the fact that the size of the premium SMS/MMS (including MVSCs) market was growing and was larger than the revenues made from voice 09 numbers, which are declining. EE argued

[84] EE, April 2013 policy position response, p.85.
[85] EE, April 2013 policy position response, pp.85-86.
[86] EE, April 2013 policy position response, pp.86-87.
[87] EE, April 2013 policy position response, pp.86-87.
[88] EE, April 2013 policy position response, pp.87-88.
[89] EE, April 2013 policy position response, pp.88-90.

that similar considerations applied to 118 numbers where SPs also had a high retention of retail revenues and alternatives such as premium SMS/MMS and mobile apps (such as the 118 app) were being used which give the SP control over the retail price. [90]

Evidence for suppressed demand on 09 and 118 number ranges

A2.23 As discussed above, EE argued that the vast majority of consumers were not interested in the services provided via 09 numbers and consumer trust in these numbers has improved. For these reasons, EE did not consider there was any evidence in support of suppressed demand on the 09 number range.[91] Similarly for 118 numbers, EE argued there was no evidence for a lack of consumer confidence and suppressed demand. EE noted that Ofcom identified there being few complaints of bill shock arising from 118 services and that there was no lack of consumer price awareness.[92]

Evidence that prices do not reflect consumer preferences

A2.24 As set out above, EE argued that most consumers were not interested in calling 09 numbers and consequently it argued that any improvements in this area are likely to be limited.[93] For 118 numbers, EE argued that the vast range of prices suggested that prices did reflect consumer preferences. It also highlighted that OCP revenue retention in relation to 118 services was relatively low (20% of the total revenue in 118 services).[94]

Evidence that SPs are revenue constrained

A2.25 As set out above, EE argued that 09 SPs achieved high revenue retention and had a range of alternatives available and therefore they have adequate control of the retail price they charged consumers. EE argued that this suggested 09 SPs had significant retention to invest back into their services. However, EE also argued that consumers' general lack of interest in services provided via 09 numbers did not provide significant incentives for SPs to invest in these services. Finally, EE argued any benefits in this context could be outweighed by the costs of SPs exiting the market as a result of reduced SP profits.[95]

A2.26 For 118 numbers, EE cited the same arguments, i.e. high revenue retention of 118 SPs and availability of alternatives suggesting that they were not overly revenue constrained and there was no evidence of consumers lacking confidence in these numbers, particularly given the low number of bill shock complaints.[96]

Ofcom's response

A2.27 EE made a number of comments on both the 09 and 118 market failures. We have first responded to their comments on the 09 range before then addressing their comments on the 118 range.

[90] EE, April 2013 policy position response, pp.91-93.
[91] EE, April 2013 policy position response, p.93.
[92] EE, April 2013 policy position response, p.94.
[93] EE, April 2013 policy position response, p.94.
[94] Compared to, for example, OCPs retaining 49% of call revenues across all non-geographic numbers. See the 2010 Flow of Funds report, p.39.
[95] EE, April 2013 policy position response, p.95.
[96] EE, April 2013 policy position response, pp.95-96.

09 market failures

A2.28 As discussed above, we recognise that the benefits of unbundling 09 are not of the same order of magnitude as the benefits of unbundling the 084/087 number ranges. In the April 2013 policy position, we were clear not to overstate the expected benefits of implementing the unbundled tariff on 09. We were clear that we considered it more likely than not that 09 callers were broadly price aware, by which we meant we consider it likely that most callers know 09 calls are more expensive than other call types and fixed line callers, who comprise the majority of 09 callers, are likely to be relatively well informed about the price of calls.[97] In paragraph 4.57, we stated that our principal concern regarding the 09 and 118 number ranges was that, as a result of the vertical externality, SPs' service availability and innovation was diminished resulting in a loss for consumers. We also expressed concerns that poor price awareness and a lack of trust *may* have been deterring some consumers from making calls to these numbers and that prices *may* not be reflective of consumer preferences as a result. However, we do not place much weight on these potential concerns, given our view that those calling 09 numbers are likely to have broadly accurate price expectations.

A2.29 We now assess each of EE's specific comments in turn. First, with respect to price awareness, EE argued that there was no evidence for a lack of consumer price awareness on the 09 range. EE stated that, according to PPP quantitative consumer studies, pricing clarity for PRS users improved dramatically between 2009 and 2011. We note that this supports our view that 09 callers are likely to be relatively price aware and, by extension, the scenario on which we place most weight.

A2.30 EE also considered Ofcom had misinterpreted a statistic about consumers' trust in services provided on non-geographic numbers. In relation to a statistic cited by Ofcom that 73.9% of phone-paid service users considered accurate pricing information as a factor that would help improve trust,[98] EE said that this was based on a sub-sample of only 3% of current 09 service users who cited "lack of trust of the companies offering these services". Further, EE argued that this lack of trust has fallen dramatically since 2008 when 20% of 09 service users lacked trust in the companies offering these services. However, we have checked with PPP, who confirm there is no link between the 73.9% of phone-paid service users and the 'sub-sample of 3% of current 09 service users'. PPP confirmed that these results came from separate survey questions and therefore we see no reason to change our original interpretation, i.e. that more accurate pricing information would help reduce PRS-users' lack of trust and would also help to address the vertical externality. We also consider that EE's assertion that the lack of trust has fallen may be overstated given that PPP stated in footnote 65 of the report: "Please note, since the formats of the questionnaires have differed by report, comparisons with 2008 and 2009 data are for indicative purposes only".

A2.31 We consider that the concepts of price awareness and trust are closely linked, and that trust is likely to be fostered by price transparency and consumer price awareness- as suggested by the survey results above. We therefore recognise that a scenario in which 09 callers are relatively price aware is also likely to be associated with a higher degree of consumer confidence in 09 numbers. We still consider it possible that the unbundled tariff could improve price awareness further

[97] Although we recognised it was difficult to be completely sure and thus we undertook scenario analysis (as mentioned above in paragraph A2.15).
[98] See paragraph 4.56 of the April 2013 policy position.

and, through this, overall consumer trust in 09 numbers - even in a scenario where callers are relatively price aware. This is because we consider the unbundled tariff would improve the transparency of pricing information for 09 calls from mobiles, which could potentially lead to an improvement in consumer confidence in making 09 calls from a mobile. However, we do not place much weight on these concerns because we consider that on average, 09 callers are likely to be relatively well-informed about prices and that there is therefore likely to be less scope for improvements in trust on 09 than on other non-geographic number ranges, including 084 and 087.

A2.32 EE also made several references to the fact that those that do not use 09 services clearly do not want to use the services because they are not interested in the service or because of the cost. We agree to a certain extent because we recognise that the types of services provided on 09 mean that they are only demanded by a relatively small proportion of consumers. We recognised this fact in paragraph A11.76 of the April 2013 policy position where we discussed the results of the 2010 consumer survey which indicated that only 20% of fixed and 8% of mobile callers ever call 09 numbers.[99] The case for implementing the unbundled tariff does not rely on the benefits of stimulating calls from those consumers who currently do not call 09. Therefore we do not consider that these comments contradict our position. Having said that, we do not think it is appropriate to completely rule out the possibility that there are some consumers who are disengaged from the market as a result of the problems we have highlighted in the NGCS market.

A2.33 EE also commented on the fact that many 09 consumers are increasingly accessing services through internet based services and mobile apps. We recognised this was true across all non-geographic number ranges and that is why we assumed a declining trend in NGC volumes when quantifying the costs and benefits of implementing unbundling on the 084 and 087 number ranges.[100] However, the relevance of these comments in the context of consumer awareness of 09 prices is not clear to us. If anything, it is possible that the migration of services to the internet or mobile apps could be, in part, driven by the lack of trust and transparency associated with the 09 number range.

A2.34 On the vertical externality, EE accepted that there is some degree of market failure but argued that this is mitigated to a certain extent by the factors mentioned above in paragraph A2.33, i.e. high SP retention and the availability of alternatives. However, we do not accept that these factors mitigate the vertical externality. In paragraphs 4.9 and 4.10 of the April 2013 policy position, we defined the vertical externality as the misalignment of incentives between OCPs and SPs – OCPs and SPs are likely to have different preferences for the retail prices of NGCs because each has their own independent objectives to pursue and these objectives may be conflicting because of features of the NGC market. OCPs have incentives to set mark-ups on these calls at a relatively high level (in order to charge lower prices for the more visible aspects of their retail offering) whilst many SPs would like OCPs to reduce retail prices in order to grow demand and maximise customer satisfaction for existing users.

A2.35 We did not argue that SPs have no control whatsoever over the prices they set. SPs have control over which number range they use and indeed have access to a range of alternatives if they are not happy with the price callers are charged to

[99] 2010 consumer survey. Q21/25: “How often do you make calls to [xxx] numbers from your landline/mobile?”

[100] See paragraphs A11.36 to A11.40 of the April 2013 policy position.

access 09 numbers (although, as set out in paragraphs A8.116 to A8.123 of the April 2013 policy position, we dispute whether some of these alternatives – including MVSCs - are effective substitutes for 09 calls). The point we made is that OCPs' influence on the price of 09 calls has a negative impact on SPs. Consequently we do not consider that EE's comments undermine concerns about the vertical externality and therefore remain of the view that this is a significant market failure that needs to be addressed.

A2.36 EE commented that Ofcom's claims of suppressed demand were not supported by the evidence. We reiterate that our principal concern regarding the 09 number range is the impact of the vertical externality on SP's service provision and propensity to innovate. In paragraph A11.93 of the April 2013 policy position, we considered that "if we assume that 09 callers currently have a good understanding of 09 prices then implementing the unbundled tariff would only have a limited impact on price awareness and it is questionable whether any additional 09 calls would be made as a result". Therefore, we accepted that it could be argued that implementing the unbundled tariff on 09 was likely to have a limited effect on demand and thus we did not place significant weight on these benefits in our CBA.

A2.37 Having said that, we consider it would be inappropriate to rule out the possibility that the unbundled tariff applied across the 084, 087, 118 and 09 numbers could stimulate additional demand. As discussed above, given that the majority of PRS-users consider that more accurate pricing would improve trust in these numbers, it is not implausible that Ofcom's intervention could reduce the lack of trust and stimulate additional demand including from those not currently using 09 services. In particular, we consider that the unbundled tariff would improve price transparency for 09 calls made from mobiles, which may help to improve consumer confidence in calling these numbers. Whilst we recognise the primary reason for consumers not calling 09 numbers is a lack of interest, we consider it possible that some may be deterred for reasons related to a relative lack of price transparency over mobile calls. We have not, however, relied on these potential benefits in our assessment of the case for the unbundled tariff but instead simply recognise their possibility.

A2.38 EE argued that any improvements in terms of relative prices reflecting consumer preferences were likely to be limited on the 09 range due to the clear survey evidence that most consumers were not interested in calling 09 numbers. EE also argued that it was unlikely that existing relative prices do not reflect consumer preferences. We accept that the extent to which prices do not reflect consumer preferences is not as substantial compared to the 084 and 087 number ranges. Also, in paragraph 4.57 of the April 2013 policy position, we considered that 09 (and 118 prices) *may* not reflect consumer preferences as a result of the poor price transparency but that this was not our principal concern.

A2.39 Finally, EE disagreed with our view that there is currently a loss of service diversity and innovation as a result of SPs' lack of incentives to invest in the market. EE highlighted SPs' relatively high retention, the range of alternative means for accessing these services and the lack of evidence for consumers' lack of confidence in 09 numbers as evidence that SPs exercise some control over retail prices. As set out above, we do not consider that SPs' relatively high retention and the availability of alternatives is evidence that challenges the vertical externality. We recognise that SPs have some control over the retail price of a call from a BT landline through their choice of number. However, they have far less control over the retail price of a call from a mobile, which may vary significantly from the BT landline price. We consider this lack of control over the mobile call price may adversely affect SPs' ability to compete on price or to offer a consistent calling price to callers to their 09 number, which in turn may have a negative impact on their incentives to innovate and invest in new services. In addition, we provided some examples of cases where we considered innovation had been stifled in Annex 11 of the April 2012 consultation but EE has not commented on this material.

118 market failures

A2.40 In the April 2013 policy position, we considered it likely that consumers' awareness of 118 prices was poor, although this was not our primary concern regarding this number range. In paragraph 4.57, we stated that our principal concern regarding the (09 and) 118 number ranges was that, as a result of the vertical externality, SPs' service availability and innovation was diminished resulting in a loss for consumers. We also expressed concerns that poor price transparency and a lack of trust may have been deterring consumers from making calls to these numbers and that prices may not be reflective of consumer preferences as a result of poor price transparency.

A2.41 EE disagreed with our interpretation of the evidence in relation to a lack of price awareness on 118. It commented that a variety of pricing structures for 118 services is not a legitimate reason for a lack of price awareness. EE also commented that the fact that OCPs can offer different pricing structures must be one of the most innate and fundamental differentiators that competitors can use to better target customer niches in a competitive market. We agree that pricing flexibility is important in order to target different types of consumers. However, as we argued in paragraph 4.56 of the April 2013 policy position, the wide range of tariffs combined with the fact that it is not currently possible for SPs to provide a clear pricing message leads to poor consumer price awareness. This is supported by survey evidence from Consumer Focus which indicated that, the last time they called, 79% of respondents did not know how much it cost to call a DQ number from their mobile (before they made the call).[101]

A2.42 EE also commented that unbundling will have no effect on these different pricing structures since tariff unbundling is only concerned with ensuring that SPs can advertise their prices nationally, however those pricing structures are expressed. We disagree. The intention of the unbundled tariff is to have a uniform tariff structure across unbundled tariff ranges, including 118. While alternative charging structures for the SC will be permitted (i.e. ppm, ppc or a combination of the two), the SC for a 118 number will be the same, whichever OCP originates the call. While this means there may still be different SCs for different 118 numbers, overall there will be much greater clarity over prices since there will be a single AC per caller[102] and the same SC for each 118 number, regardless of the OCP, which will be advertised when the SP promotes the number.

A2.43 EE also made specific comments about the 118 range with respect to the vertical externality. It argued that the evidence it presented indicated that non-users appear to be astute consumers who know they can find numbers for free using the web whilst those that do use 118 regularly are substituting to free services but are also willing to pay for alternative services such as mobile apps. As with 09, we recognise that many consumers do not call 118 numbers or at least do not call these numbers regularly as they have no need for the services provided via these numbers. We also recognise that there is currently a pattern of shifting demand towards the

[101] 2010 ICM mobile survey carried out on behalf of Consumer Focus, Q51.
[102] Callers that subscribe to more than one network, e.g. fixed and mobile, will have a single AC across all unbundled non-geographic calls for each of their networks.

internet and mobile apps. However, we have seen no evidence to suggest that the demand for the 118 range will completely disappear within the timeframe we are considering.[103] In any event, we do not see how the evidence of alternatives mitigates the vertical externality because it does not address problems associated with the fact that SPs providing these services have limited control over the price charged for accessing their services. [104] Further, while we have not sought to base our net benefit assessment on any positive change in demand for 118 as a result of the changes, it is likely that some of the impetus for consumer substitution of 118 comes from the current transparency and vertical externality market failures – addressing these may lead to a change in consumers' attitude to services on 118.

A2.44 Finally, EE commented that Ofcom's claims of suppressed demand were not supported by the evidence. As with 09, we reiterate that our principal concern regarding the 118 number range is the impact of the vertical externality on SPs' service provision and propensity to innovate. Nevertheless, we consider it is not implausible that, given the impact of the vertical externality on SPs service provision as discussed above, some SPs may be restricted from selecting prices which reflect consumer preferences and this, combined with the poor price awareness on the range (as discussed above) may be deterring consumers from making calls to these numbers. We previously quoted evidence from a PPP survey which found that 28% of users cited cost as a reason for not using PRS (which includes 09 and 118 services).[105]

Approach to quantified analysis and benefits of applying the unbundled tariff on the 09 range

Stakeholder comments

A2.45 EE disagreed with a number of areas of our quantified analysis. First, EE made specific comments regarding Ofcom's 'Effect 1' analysis. It considered that the assumption that the annual decline in the volume of NGC traffic will only drop to 7.5% by 2015 does not fit with the fact that it is a "dwindling market", particularly given there was a 10.7% decline between 2010 and 2011. EE argued that the annual decline in NGC volumes will accelerate rather than decelerate.[106] EE also strongly objected to Ofcom's assumption that the elasticity of 09 calls is -0.5 given that the highest assumed elasticity in the NCCN 1007 09 ladder charge dispute was -0.4.[107]

A2.46 EE argued that the high levels of potential price awareness improvement listed in Table A11.18 seemed to be quite unrealistic and did not tie into the modelling carried out for 084/087 in Table A11.19 which suggested ranges of between 1%-

[103] Survey evidence provided by TNUK suggests that for a small proportion of consumers who use DQ services, there is no alternative source of information. It asked consumers: "How else could you have got the information you needed at that time?" Whilst the majority of respondents mentioned sources such as the internet, the yellow pages and/or calling a friend, 15% stated that there were no other ways to get the information they needed at that moment (Directory Enquiries and Pre-announcement calls research, 2CV, September 2012).

[104] For example TNUK highlighted in its response to the December 2010 and April 2012 consultations that it could not offer a particular service with a fixed ppm rate because it could not guarantee availability of that price from all CPs – see p.19 of its response to the April 2012 consultation (available here: http://stakeholders.ofcom.org.uk/binaries/consultations/simplifying-non-geographic-no/responses/The_Number_UK_Ltd.pdf).

[105] See paragraph 4.18 of the April 2013 policy position.

[106] EE, April 2013 policy position response, p.96.

[107] EE, April 2013 policy position response, p.97.

11%. EE also argued that Ofcom should have modelled the delayed implementation scenario as well as the base case implementation scenario, as both would seem equally likely at this stage. Finally, EE commented that Ofcom should use a linear demand curve for the 084/087 (and 09) base case model, consistent with its approach in related areas.

A2.47 EE also commented on Ofcom's 'Effect 2' analysis. In particular, EE argued that this was speculative and not supported by the evidence. EE highlighted that Ofcom consumer evidence indicated that consumers could distinguish between the second digit and therefore "*there is no evidence that unbundling 09 will simplify pricing on 084/087 or 080 or that by not unbundling 09 this will make overall NGC tariffs, including 084/087 and 080 more complex or confusing*".[108] EE also argued that given that two thirds of 09 callers have price information at the point of call and this regulation was an effective remedy to maintain trust and confidence in 09, the 09 range could not be characterised by a lack of trust and confidence warranting duplicate and highly interventionist regulation.[109]

A2.48 EE also noted that 09 bill shock complaints were low, which it argued suggested that confidence in the range was not low, and argued that few consumers lack trust in the 09 range. Finally, EE argued that low volumes of 09 calls was not evidence of suppressed demand but rather a reflection that a limited number of consumers will ever call 09 services, particularly in light of the availability of alternatives. EE again noted the fact that 09 revenues were decreasing at the same time as revenues for premium SMS and mobile apps were increasing.[110]

Ofcom's response

A2.49 EE made a number of comments on our 'Effect 1'and 'Effect 2' analysis. Before we address these comments below, we note that the 'Effect 1' and 'Effect 2' analysis is only relevant to the scenario in which 09 callers underestimate the price of 09 calls – a scenario that we placed less weight on as we considered it less likely. Assuming 09 callers underestimate the price of 09 calls, we considered in paragraph A11.100 of the April 2013 policy position that the unbundled tariff will improve consumer price awareness and this will lead to two opposing effects:

- Effect 1 – consumers' price underestimation will be reduced which will lead to less over-consumption of 09 calls. This will reduce the volume of 09 calls; and
- Effect 2 – unbundling 09 in addition to unbundling 084/087 will serve to simplify the pricing message for all NGCs and contribute to a gradual increase in trust in the 09 number range and, as a result of this increased confidence, we expect there to be an increase in the volume of 09 calls. In contrast, implementing the unbundled tariff on a specific set of number ranges, i.e. 084/087, whilst leaving out others, i.e. 09, may contribute to tariff complexity and confusion.

A2.50 First, on the 'Effect 1' analysis, EE argued that the assumption that the annual decline in the volume of NGC traffic will drop to 7.5% in 2015 does not fit with the fact that it is a "dwindling market", particularly given that, according to a 2011 PPP report, there was a 10.7% decline in 09 voice revenues between 2010 and 2011. EE argued that the annual decline in NGC volumes will accelerate rather than decelerate. In paragraph A11.121 of the April 2013 policy position, we set out that,

[108] EE, April 2013 policy position response, pp.97-98.
[109] EE, April 2013 policy position response, p.98.
[110] EE, April 2013 policy position response, pp.98-99.

consistent with our approach in the 084/087 model, we assumed that 09 volumes decline by 10% per year before 2014 and at 7.5% per year after unbundling has been implemented. Our reasons for the change in the rate of decline were set out in paragraph A11.37 of the April 2013 policy position – despite the growth of alternative ways to make contact or obtain information such as the internet and, to a limited extent, MVSCs, we do not consider these alternatives will offer an adequate substitute for all services that are currently provided via non-geographic numbers, particularly where the consumer requires an instant and interactive response. Therefore we considered the rate of decline would slow over time to reflect the fact that a core of services would be likely to remain using the 09 number range. EE has not commented on this assessment. In addition, we consider that our assumptions about annual volumes *are* consistent with the fact that the market is 'dwindling'. Finally, we do not consider that the 10.7% decline in 09 voice revenues in 2010/2011 is necessarily informative about the future trend in 09 volumes. Even if it were, our assumption of an annual decline in 09 volumes of 10% until 2014 is broadly consistent with it for that period.

A2.51 EE also objected to Ofcom's assumption that the elasticity of 09 calls is -0.5 given that the highest elasticity proposed in the NCCN 1007 09 ladder charge dispute was -0.4.[111] In the April 2013 policy position[112], we explained that our choice of -0.5 for the elasticity of 09 calls reflected the nature of services hosted on the 09 number range in that 09 calls may be more discretionary than calls to other NTS number ranges. As far as we were aware, there had been no studies that reliably quantified the own price elasticity of 09 calls (or of NGCs more generally). However, we considered that -0.5 was sufficiently higher than the assumption we made with respect to 084/087 calls to reflect the potentially more discretionary nature of 09 calls, but at the same time sufficiently inelastic still to allow for the possibility that those consumers who did make 09 calls may have had relatively few alternatives (reflecting the limited alternatives available to SPs on the 09 number range). EE has not commented on this reasoning. Furthermore, any change in our elasticity assumption would still result in an outcome where the quantified benefits of unbundling the 09 number range would outweigh the costs.

A2.52 We have also assessed EE's other comments regarding our 'Effect 1' analysis. Regarding EE's comment that the potential price awareness improvements listed in Table A11.18 seem to be unrealistic, we reiterate that this analysis was undertaken under the scenario where consumers underestimate the price of 09 calls. We note that both EE and Ofcom seem to agree that this is a less likely scenario and we have considered EE's comments on this scenario in this context.

A2.53 On EE's comments regarding the assumptions to make with respect to the correct delayed implementation scenario, we note that EE does not also argue that employing the optimistic assumptions would be as equally appropriate. We accept that a more thorough analysis could explore these different scenarios in more detail but, in light of the fact that we seem to agree with EE that the scenario where consumers underestimate the price of 09 calls seems less likely and the lower weight we therefore place on this scenario, we do not consider it would be proportionate to conduct this more detailed analysis.

A2.54 Finally, with respect to EE's comment that Ofcom should use a linear demand curve in our base case model, for the avoidance of doubt, we highlight that this is the

[111] http://stakeholders.ofcom.org.uk/binaries/consultations/provisional-conclusions/statement/040413.pdf
[112] See paragraph A11.126.

assumption we made (see Table A11.6 and paragraph A11.127 of the April 2013 policy position).

A2.55 EE also made a number of comments about Ofcom's 'Effect 2' analysis. EE commented that there is no evidence that unbundling 09 will simplify pricing on 084/087 or 080 or that by not unbundling 09 this will make overall NGC tariffs more complex or confusing. We note that this argument is not just specific to the scenario where 09 callers underestimate the price of 09 calls, but also to the scenario we consider most likely, i.e. where 09 callers are broadly aware of 09 prices. On an intuitive basis, we consider it is likely that consumers will better understand NGC pricing if 084/087 and 09/118 calls have the same basic price structure. A number of stakeholders agreed with this position. We have considered whether we could reliably gather evidence on this factor. However it is not clear what evidence we could use to compare the effects of unbundling some major NGN number ranges but not others against the effects resulting from unbundling all of the 084, 087, 09 and 118 ranges (and EE has not suggested what evidence we could gather or presented any of its own).

A2.56 EE also commented that the 09 range cannot be characterised by a lack of trust and confidence warranting duplicate and highly interventionist regulation, given that two thirds of 09 callers have price information at the point of call. However, evidence from PPP does indicate that trust in the 09 range could be improved (see evidence above – paragraph A2.30). As noted above, we recognise the concepts of price awareness and trust are closely linked, and consider that on average 09 callers are likely to be broadly aware of the price of calls to these numbers. However, while it is true to say that 09 callers have more price information available to them than for other numbers (largely down to PPP regulation), the pricing message that is advertised only specifically applies to BT customers. We consider that BT landline customers (and potentially other fixed line callers) are therefore likely to be relatively well-informed about price, and recognise that these customers account for a large proportion of 09 callers. However, customers of other CPs do not have the same clarity over prices, particularly mobile prices which can be significantly higher, and we consider there may be scope for improvements in price awareness for these calls, and therefore overall levels of trust. We also note that we do not place much weight on this potential benefit in our assessment, as we recognise the scope for improvements in trust is likely to be more limited on the 09 range.

A2.57 EE suggested that trust and confidence in the 09 range was not low due to the lack of complaints over bill shock for NGCs. In the first instance, we question the logic of this comment. Bill shock is a measure of overconfidence when consumers underestimate prices and 'over consume'. We consider the fact that there are few of these complaints suggests few consumers are overconfident rather than that few consumers trust the number range. In addition, we note there are PPP measures in place to stop 09 bill shock such as caps on total spend and pre-call announcements (see the PPP Code of Practice) and thus we would not expect bill shock complaints to be high. More fundamentally, we note that a low number of bill shock complaints does not contradict Ofcom's position – it aligns with our view that few people call 09 numbers and those that do are likely to have broadly accurate price expectations (particularly those calling from a fixed line). We still consider there to be scope for improvements in trust, particularly in relation to calls from mobile numbers, but as set out above we place less weight on these potential benefits.

A2.58 Finally, EE commented that low 09 volumes are not evidence of suppressed demand but rather a reflection that a limited number of consumers will ever call 09 numbers, particularly in light of the availability of alternatives. We do not disagree with EE and note that we did not make this argument in the April 2013 policy position. We agree that it is likely to be the case that a limited number of consumers will ever call 09 numbers relative to the 08 ranges and low total 09 volumes reflects this. EE also highlighted evidence from a PPP report which indicated an 8.6% rise in premium SMS and mobile app revenues while there has been a reduction in revenues for 09 voice calls of 10.7% between 2010 and 2011. We recognise that 09 call volumes are falling over time (we account for this in our modelling analysis under the scenario where 09 callers underestimate 09 prices) whilst revenues for other services are rising but we do not consider that this contradicts our position. To a certain extent, we consider that these trends may reflect the problems facing the 09 range and the fact that some services have had to migrate away from the 09 range as a result of these problems. However, as set out above, we do not place much weight on this potential benefit as we recognise the scope for alleviation of suppressed demand on 09 may be lower than in the other non-geographic number ranges such as 084 and 087.

Incremental costs of implementing the unbundled tariff on the 09 and 118 number ranges

Stakeholder comments

A2.59 EE set out a number of comments on assessment of the incremental costs of implementing the unbundled tariff on the 09 and 118 number ranges.

09 incremental costs

A2.60 First, EE argued that Ofcom had underestimated the costs that arise through the Tariff Package Effect ('TPE'). It considered that, as well as modelling the impact of the TPE as a result of lost OCP profits, Ofcom should model the impact that "*the mandated strictures of a single AC across the 08, 09 and 118 ranges*" would have in terms of limiting OCPs' ability to recover current margins. EE argued that this would have a clear countervailing impact on any reduction in the AC brought about by increased competition between OCPs.

A2.61 EE said it also strongly objected to Ofcom's failure to model the impact of reduced service availability and innovation as a result of reduced SP profits. EE commented that many 09 businesses were marginal so a slight decline in profits could force those 09 SPs to migrate away from the range, incurring significant costs.

A2.62 EE also objected to the exclusion of costs associated with TCPs' fall in profits due to reduced 09 volumes. It highlighted that TCP retention on the range was 6%, compared to OCP retention of 27%. Therefore it argued that the TPE effect for TCPs should be 6/27 of the OCP TPE effect, implying that it should be around seven times higher than the amount Ofcom had estimated;[113]

A2.63 In relation to the incremental billing costs for 09, EE disagreed with Ofcom's view that these were unlikely to be material. It made a number of comments:

2.63.1 it argued that the restriction on OCPs' commercial flexibility to set cost reflective ACs separately for 09 raised exposure to bad debt risk. It considered this was an incremental cost of applying the unbundled tariff to

[113] EE, April 2013 policy position response, p.103.

the 09 range because EE would not have to manage the exposure to bad debt risk in this way if 09 was not unbundled;

2.63.2 it considered that there was likely to be considerable billing related fraud risk associated with implementing the maximum SC caps Ofcom had proposed (which were higher than the rates currently charged). EE argued that, as a result, it would need to scale up its fraud detection teams – it said a doubling of the incidence of fraud might require an additional five full time employees; and

2.63.3 it expected SC price points to change more often for 09 services than for 08 services – EE also made the same comment in relation to our overall estimates of the billing costs of the unbundled tariff, see paragraph A1.22 in Annex 1.[114]

A2.64 In relation to the incremental communications costs, EE considered that these costs could be significant for OCPs, because 09 pricing would need to be significantly revised and this was complex because of the large number of 09 price points. EE also considered that there would be costs of maintaining existing pricing information for business customers plus updated information for 08.[115] In addition it argued that there were communication costs associated with 09 SPs changing the way they currently advertised their prices. It said Ofcom had failed to identify and account for these costs in its assessment.[116]

A2.65 Finally, EE also commented that Ofcom should estimate migration and misdialling costs in line with the approach taken on 08. EE argued that MVSCs and premium SMS were obvious migration alternatives and there will be costs to consumers from misdialling and costs to SPs of migrating to these services.[117]

118 incremental costs

A2.66 EE also argued that Ofcom needed to consider the incremental costs of implementing the unbundled tariff on the 118 number range. It highlighted that Ofcom had not specifically quantified the incremental billing costs, communication cost and migration costs in line with its approach on 09. In addition it said that its comments above in relation to the 09 range applied equally to the 118 range (noting in particular that increased transparency on the SC might send some DQ SPs out of business and cause them to exit the market).[118]

<u>Ofcom's response</u>

09 incremental costs

A2.67 We considered the impact of the single AC requirements and the potential for a TPE in paragraphs A20.70 and A20.71 of the April 2013 policy position in response to comments made by EE in the previous consultation round. We set out there that we did not consider EE's analysis raised any material or reasoning that undermined our own analysis in relation to the impact of a single AC, which suggested that OCPs could set a single AC so as to maintain overall margins on calls to the

[114] EE, April 2013 policy position, pp.102-103.
[115] EE, April 2013 policy position response, p.103.
[116] EE, April 2013 policy position response, p.103.
[117] EE, April 2013 policy position response, p.103.
[118] EE, April 2013 policy position response, pp.105-107.

affected number ranges. We do not consider that EE has subsequently raised any such evidence in its latest response (see Annex 3 where we respond to EE's specific comments on the single AC issue – see paragraph A3.81 in particular). Therefore we see no reason to alter our position on this issue.

A2.68 EE commented on a number of incremental costs that we considered but excluded from the quantified analysis in the April 2013 policy position:

2.68.1 First, EE strongly objected to Ofcom's failure to model the impact of reduced service availability and innovation as a result of reduced SP profits. In the April 2013 policy position, we recognised that in our price underestimation scenario (which we placed less weight on) there may be some reduction in service availability due to the impact on SP profits of callers reducing the extent to which they over-consume 09 services. In paragraphs A11.130 and A11.131, we acknowledged this potential cost but noted the difficulties in quantifying it robustly. EE made no suggestions regarding how robust quantification could be achieved.

2.68.2 EE also commented on the marginal nature of 09 business and that slight declines in SP profits could put some SPs out of business. We recognised this point in the paragraphs of the April 2013 policy position mentioned above but we also noted that there were likely to be countervailing benefits such as increases in consumer confidence in the 09 range as a result of applying the same simplified pricing message to all non-geographic number ranges.

2.68.3 Overall we concluded that it was unlikely that these costs would be high enough to outweigh the benefits of reducing price underestimation. We have not seen any evidence which challenges this proposition.

2.68.4 EE also objected to the exclusion of costs associated with TCPs' fall in profits due to reduced 09 volumes. First we note that TCPs would only experience a reduction in profits in the scenario where consumers underestimate the price of 09 calls, which we place less weight on in our overall analysis. In addition, in paragraph A11.112 of the April 2013 policy position, we argued that there is no clear mechanism for how any loss to TCPs feeds back to consumers. EE did not comment on this so we see no reason to change our analysis not to place significant weight on these costs in our assessment.

A2.69 In relation to the incremental billing costs, EE argued that the restriction on OCPs' commercial flexibility to set cost reflective ACs separately for 09 raises exposure to bad debt risk. We have responded to EE's arguments about OCPs' ability to set cost-reflective ACs in paragraphs A3.77 to A3.81 of Annex 3. Our previous calculations of the potential level of a single AC have been based on the assumption that overall margins on non-geographic calls will be maintained, including any existing provisions for bad debt (we have in any case noted that these costs are likely to be lower for mobile OCPs).[119] In addition, setting higher prices is not the only method available for managing such costs.[120] We therefore disagree that the single AC requirement will raise OCPs exposure to bad debt risk and we do

[119] For example see paragraph A20.38 of the April 2013 policy position.
[120] For example OCPs could consider offering different payment methods to high risk customers (direct debit billing or up-front payments), or could consider applying usage or credit limits to customer accounts.

not consider this is an incremental cost which we need to take into account in our assessment.

A2.70 EE also commented on billing related fraud risk and the need to scale up its fraud detection teams as a result of including the 09 range within the unbundled tariff, particularly given the higher SC caps for this range. As with bad debt risk, we consider that to the extent that fraud risk on 09 remains at or around current levels, we consider OCPs could set a single AC to maintain current margins overall - i.e. that they will be able to set a single AC to cover these costs. In the April 2013 policy position, we recognised that as the 09 SCs increased, the incentives for fraud and potential for bill shock could also increase and, in the July 2012 consultation[121], we explicitly considered these issues in developing our proposals on both the need for a SC cap and the level of any such cap. Overall, we looked to balance the benefits of higher SC caps against these concerns. However, as set out in the April 2013 policy position[122], we were clear not to overstate the risk of fraud due to the current low levels of fraud and bill shock and the current low volume of calls to 09 numbers. We also note that PPP's Code of Practice has in place various requirements to help prevent fraud on the range, including a requirement for certain SPs to obtain prior permission from PPP before launching a service and a requirement for TCPs to withhold payments from SPs for a thirty day period.[123] PPP will also be reviewing what changes may be needed to its Code of Practice to take account of the higher SC cap for 09 (see Section 6). Overall therefore, we do not consider it likely that the risk of fraud will be significantly increased as a result of including the 09 range (even with its new, higher SC price points) within the unbundled tariff.

A2.71 On the likelihood of 09 price points changing more frequently than 08 numbers, we have responded to EE's comments on the materiality of these costs as a whole in Annex 1 (see paragraphs A1.22 to A1.23). We concluded there that these costs are unlikely to be material, albeit we recognise that over time 09 prices are more likely to change than 084/087 prices. We therefore consider that our comments in the April 2013 policy position remain appropriate in relation to the incremental billing costs – that is we recognise that there may be higher incremental ongoing billing costs resulting from the inclusion of 09 within the unbundled tariff, however, we consider this will be limited to a certain number of CPs and given our estimates of the overall upfront costs of implementing the unbundled tariff are significantly large than our ongoing cost estimates, the specific incremental ongoing billing costs of implementing the unbundled tariff on 09 are likely to be relatively low.[124]

A2.72 EE argued that OCPs' incremental communication costs will be significant whereas in the April 2013 policy position we considered they were likely to be low – in particular it considered that 09 pricing would need to be significantly revised and this would be complex because there are many 09 price points. We consider that 09 pricing is currently very confusing and agree that there are many different price points.[125] Under the new regime there will be a minimum of 100 price points (for all of the 084, 087, 09 and 118 ranges) but OCPs will not be under the same

[121] Ofcom, *Service charge caps for 09 and 118 services,* 25 July 2012 ('the July 2012 consultation'), available at: http://stakeholders.ofcom.org.uk/consultations/service-charge-caps/
[122] Paragraph A22.151.
[123] See paragraph A22.177 of the April 2013 policy position where we set out these PPP requirements.
[124] See paragraph A11.86 of the April 2013 policy position.
[125] For example, EE's current pay monthly price list which covers 09 numbers (as well as 070 and 118 numbers) is a 300+ page pdf document - http://e-gain.s3.amazonaws.com/external/content/Ts%20and%20Cs/EE_Charges_070-09-118_0313.pdf

requirement to list each individual price point – as set out at paragraph A7.55 of Annex 7, we consider that the fulfilment of the obligations in Annex 1 to GC14, which relate to the publication of prices for non-geographic calls, could be achieved by the publication of the *maximum* SC applicable to the unbundled tariff number range. The new requirements we are imposing through our modifications to GC 14 are primarily focussed on the OCP publishing their AC clearly.[126] Therefore we expect the amount of information OCPs will be required to communicate to be significantly streamlined. With reference to EE's comments regarding the costs of maintaining existing pricing information for business customers, we do not consider these costs to be incremental to unbundling the 09 ranges because this is an existing requirement under GC14. EE also commented that there will be costs of updated information for 08 but these costs are already included in our cost estimates and are not incremental to unbundling the 09 range.

A2.73 In addition EE argued that Ofcom had not considered the communication costs associated with 09 SPs that need to change the way they currently advertise their prices. However this is not the case – we considered these costs in paragraphs A10.277 and A10.278 of the April 2013 policy position. We noted that there will be an 18 month implementation period for the unbundled tariff and we also noted that advertising and promotional material tends to be replaced every year (with some exceptions of shorter and longer replacement cycles). In these circumstances, we considered that there may still be costs associated with changes to advertising materials for SPs that migrate away from a number range, given that these SPs may have less flexibility in deciding when to migrate and make these changes (and we considered these costs in our assessment of migration costs, discussed in Annex 12 of the April 2012 consultation and paragraphs A10.70 to A10.77 of the April 2013 policy position). However, we considered that those SPs that remain on the same number range are less likely to incur any such costs because they are more likely to be able to run any update to their advertising material in parallel to their normal cycle of replacement of this material. We therefore remain of the view that these costs are unlikely to be material and therefore we have not accounted for them in considering the incremental costs for 09.

A2.74 EE argued that Ofcom should estimate migration and misdialling costs in line with the approach taken on the 084/087 ranges. In paragraph A10.112 of the April 2013 policy position, we assessed the potential motivations of 0843/4, 0871/2/3 and 09 SPs and concluded that implementing the unbundled tariff was unlikely to lead to significant migration from these particular number ranges. EE has not responded to this analysis. Instead, EE argued that the existence of "obvious migration alternatives" such as MVSCs and premium SMS meant migration was likely. We disagree and consider that EE has failed to address the relevant question, namely why, as a consequence of the introduction of the unbundled tariff, 09 SPs are likely to cease operating an 09 service and instead use MVSCs and/or premium SMS. Moreover, we set out the limitations to these alternatives in the April 2013 policy position. For example, we questioned the viability of MVSCs as an effective substitute for regulatory intervention in paragraphs A8.116 to A8.123. In addition, in paragraph A11.37 we considered that in many cases, it is likely that the consumer values the human interaction offered by calling a 09 number – something that cannot necessarily be provided to the same extent via premium SMS or other alternatives such as web-based chat. We still consider this likely to be the case.

118 incremental costs

[126] See paragraphs A7.47 to A7.48 of Annex 7.

A2.75 We recognise that we did not specifically set out the incremental costs of unbundling the 118 number range in the April 2013 policy position. However, this was because we did not carry out a quantified assessment of the benefits on this number range because we did not have the available data (see paragraph A2.82 below) – therefore we did not consider it necessary to consider the incremental costs associated with including the 118 range within the unbundled tariff (given our conclusion that the overall benefits of the unbundled tariff outweighed the costs). Our overall cost estimates for implementing the unbundled tariff took account of the inclusion of the 118 range.

A2.76 In response to EE's comment, we consider, however, that our assessment of the incremental costs of 09 as set out in the April 2013 policy position applies equally to the 118 range[127] and therefore we consider that the incremental costs of including the 118 range within the unbundled tariff are likely to be low. In particular:

- **incremental billing costs:** our comments in paragraph A11.86 of the April 2013 policy position, as well as paragraphs A2.72 to A2.74 above apply to the 118 range, therefore overall we consider that the incremental billing costs for 118 are likely to be low;
- **OCP incremental billing costs:** as with the 09 range we consider that the incremental cost of OCPs informing consumers that the new tariff structure will also apply to the 118 number range will be low;
- **SP misdialling costs:** we recognise that some 118 SPs may choose to exit the market if they are faced with a reduction in profits but it is not clear how we would model those costs (as it is not clear how many SPs would specifically decide to cease their services as a result of changes in profits created by the unbundled tariff), or that they would be material (particularly given the low volume of calls on the 118 range); and
- **TCPs' communication costs**: as with 09, TCPs will have to communicate with 118 SPs to establish their SC price points. We considered these costs in relation to 09 in the April 2013 policy position where we stated that the costs were dependent on the number of 09 SPs that TCPs had to communicate with. As our calculations suggested that 09 SPs accounted for less than 1% of the total number of SPs on the 08 and 09 ranges, we concluded that the incremental communications cost of unbundling 09 for TCPs was approximately £0.02m.[128] Given that there are far fewer active 118 SPs than 09 SPs (there are just over 450 separate DQ numbers listed by BT but several of these are provided by the same company and therefore we expect the number of individual SPs to be lower[129]), this suggests that the incremental communications cost of unbundling 118 for TCPs is less than this amount.

A2.77 We also consider that our comments in paragraphs A2.68 to A2.75 above in response to EE's comments on the incremental costs of the 09 range also apply in relation to the incremental costs of unbundling the 118 range. For example, we recognise that some DQ SPs may lose profits as a result of increased transparency of the 118 SC leading to increased competition but, as highlighted in paragraph A2.68 above, there are also counterveiling benefits and therefore we do not consider these costs would be high enough to outweigh the benefits.

[127] In particular paragraphs A11.86 to A11.89 of the April 2013 policy position.
[128] See paragraphs A11.87 to A11.88 of the April 2013 policy position.
[129] http://www.bt.com/pricing/current/Call_Charges_boo/1634_d0e5.htm#1634-d0e5

Cost benefit analysis for the 118 range

Stakeholder comments

A2.78 EE said that it was unacceptable that Ofcom had not undertaken a CBA for its 118 proposals. It argued that whilst volumes of 118 calls were low, the revenues generated by all industry stakeholders from calls to these numbers were still very material. EE commented that this omission violated all of Ofcom's applicable statutory duties and powers. It said Ofcom could not make such drastic changes to the way in which the range operates under current market driven circumstances without a) a compelling case of consumer harm authorising Ofcom to impose its proposed retail tariff restrictions (see comments above) and b) a robust CBA demonstrating the proportionality of these measures.[130]

Ofcom's response

A2.79 We recognise that while 118 call volumes are low, the revenues generated by all industry stakeholders from calls to these numbers are significant. We disagree, however, that we have not sufficiently considered the costs and benefits of implementing the unbundled tariff on the 118 range.

A2.80 First, as set out in April 2013 and as supported by the evidence set out above (see paragraph A2.40 to A2.41 above), price awareness appears to be poor on the 118 range. For this reason, alongside the vertical externality and the impact this has on service availability and innovation,[131] we consider there to be a strong case for the existence of consumer harm on this number range. We have also responded to EE's additional comments on the market failures on the 118 range in paragraphs A2.42 to A2.44 above (which have not led to any changes in our assessment).

A2.81 In relation to the costs of implementing the unbundled tariff on the 118 range, we have responded to EE's comments above (see paragraphs A2.75 to A2.77). We conclude there that the incremental costs of unbundling the 118 number range are likely to be low. On this basis, it implies that the incremental benefits of applying the unbundled tariff to the 118 number range would not have to be particularly large in order to outweigh our assessment of the costs linked to the implementation of the unbundled tariff on the 118 range.

A2.82 In relation to the assessment of the benefits of implementing the unbundled tariff on the 118 range, we explained in the April 2013 policy position that we had not quantitatively modelled the benefits for the 118 range because we did not have the necessary data[132] but we had set out the benefits as part of our qualitative assessment of the unbundled tariff as a whole.[133] Specifically, we consider that by implementing the unbundled tariff on the 118 range we will reduce the harm highlighted in paragraph A2.80 above, which will lead to benefits for consumers. In particular it will improve consumer price awareness and will ensure SPs have appropriate incentives for service availability and innovation.

[130] EE, April 2013 policy position response, p.82.
[131] See paragraph 4.56 of the April 2013 policy position and Annex 11 of the April 2012 consultation.
[132] For example, we do not have access to data indicating consumers' expectations of the price of 118 calls because questions regarding the 118 number range were not included in the 2009 Consumer survey.
[133] For example in paragraphs 8.18 to 8.41 of the April 2013 policy position.

A2.83 Therefore, measured alongside the low incremental implementation costs, we consider that implementing the unbundled tariff on the 118 range is likely to be net beneficial. We also note that the weight of stakeholder opinion (including most CPs), is in favour of unbundling the 118 range.

Conclusion on the 09/118 impact assessment

A2.84 In conclusion, we do not consider that any changes are required to our assessment of the benefits of unbundling the 09 and 118 number ranges as set out in the April 2013 policy position.[134] We remain of the view that the benefits of implementing the unbundled tariff on these number ranges are likely to outweigh the costs.

Impact assessment for the 084/087 number ranges

Stakeholder comments

A2.85 EE reiterated its concerns expressed in response to the April 2012 consultation about Ofcom's cost benefit assessment of implementing the unbundled tariff on the 084/087 number ranges.

A2.86 EE said that some specific points from Ofcom's policy position tipped the balance in favour of finding that Ofcom's proposals lacked the necessary proportionality to be legally valid. As well as commenting on the amendments to billing costs (see Annex 1, paragraphs A1.13 to A1.17), EE noted that in Ofcom's recent decision in the disputes relating to BT's NCCN 1101, we had emphasised the benefits of a linear approach to estimating demand response.

A2.87 EE considered that Ofcom should apply that for its base case analysis of the benefits likely to result from unbundling the 084/087 ranges and it noted that it would imply a significantly larger reduction in price misperception to offset unbundling implementation costs than the current modelling by Ofcom.[135]

A2.88 EE also considered that many of the alternative means for accessing 09 and 118 services were becoming increasingly prevalent even for 084/087 services. For example it said banks and utilities were increasingly offering web-chat type solutions. It therefore strongly disagreed with Ofcom's assumptions that there were no viable alternatives to the real time interaction offered by 084/087 services. It considered that the current economic climate made it more rather than less likely that businesses would continue to encourage their customers to use cheaper technological customer service/interaction alternatives to 084/087 numbers over the coming years.[136]

A2.89 EE also noted that Ofcom's cost benefit analysis failed to factor in any impact from the impending government legislative changes requiring post sales helplines to be charged at no more than the basic rate. It argued that if the government maintained its current proposals to ban the use of revenue-sharing for those services, the impact on 084/087 volumes and revenues could be both material and substantial, and that threw into serious consideration Ofcom's arbitrary new assumptions in its

[134] See Part A, Annex 11 of the April 2013 policy position – in particular paragraphs A11.67 to A11.135. Also summarised in paragraphs 8.69 to 8.89 in Section 8, Part B.
[135] EE, April 2013 policy position response, pp.14-15.
[136] EE, April 2013 policy position response, p.15.

CBA that the rate of decline in 084/087 volumes and revenues seen in recent years would slow down after 2015. [137]

Ofcom's response

A2.90 EE commented that Ofcom should apply a linear demand approach to our base case analysis of the benefits. As can be seen in paragraph A11.47 of the April 2013 policy position, this is exactly what we did. Therefore we do not accept that our modelling has underestimated the reduction in price misperception required to offset the implementation costs of unbundling.

A2.91 With respect to EE's comments regarding alternative means for accessing 084 and 087 services, we agree that these alternatives have contributed, and are likely to continue to contribute, to the steady decline in the overall volume of NGCs. However, as set out in paragraph A11.37 of the April 2013 policy position, we consider that in many cases, it is likely that the consumer requires human interaction or desires an instant response when, for example, they need to discuss important or emotive matters such as health or finance. In this case we continue to consider that the less personal service typically offered over the internet may not be a good substitute for these situations. Further, to the extent that the current structure of pricing contributes to undermining consumer and SP confidence in using telephone contact we consider it is our duty to address such consumer concerns. We do not consider that EE has challenged this view on the utility of the services or addressed the impact of the current regime on the substitution trends. We therefore stand by our original conclusion that future NGC volumes are likely to continue to fall but this decline should decelerate rather than continue at the same rate to the point where NGC volumes have disappeared completely.

A2.92 EE has also commented on the potential impact of the Consumer Rights Directive. We noted in the April 2013 policy position that there may be an impact on SPs as a result of the requirements of the Directive, with some SPs potentially needing to migrate, or to use alternative number ranges for particular aspects of their service.[138] We do not consider that it is necessarily the case that the impact of implementation will be 'material and substantial' as EE suggests. This is because the requirements of the Directive only apply to communication with customers after contracts have been concluded, therefore sales lines and phone numbers for new customers could continue to be provided via revenue-sharing numbers. In addition, it may not lead to SPs migrating away from a particular number range but instead they may look to acquire another contact number specifically for after-sales queries which complies with the 'basic rate' requirement. This will tend to reduce the impact on 084 and 087 call volumes.

A2.93 We previously concluded it was likely that the unbundled tariff would improve price expectations by significantly more than the thresholds associated with our base case scenario. We also considered that even if the actual threshold were higher (due to a combination of pessimistic assumptions about the benefits of the unbundled tariff) it was still likely to be exceeded.[139] We therefore consider the

[137] EE, April 2013 policy position response, p.15.

[138] See paragraph A19.116 of the April 2013 policy position. The Consumer Rights Directive contains a requirement that where a customer telephone helpline is offered to deal with contracts that have been concluded (with some exceptions for specific services) the call must be charged at no more than a basic rate. See: Directive 2011/83/EU, Article 21 http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:304:0064:0088:EN:PDF

[139] See Paragraph A11.62 of the April 2013 policy position.

benefits of the unbundled tariff would still be likely to exceed the higher thresholds associated with a significant reduction in call volumes, particularly given that we previously concluded these were likely to be comfortably exceeded. As a result, we consider that our overall conclusions are unlikely to be affected by the Directive, even if it were to have a significant negative impact on call volumes in these number ranges.

A2.94 In conclusion, we do not consider that any changes are required to our assessment of the benefits of unbundling the 084/087 number ranges as set out in the April 2013 policy position.[140] We remain of the view that the benefits of implementing the unbundled tariff on these number ranges will outweigh the costs.

Making 080 and 116 free-to-caller – impact assessment

Stakeholder comments

A2.95 EE noted that Ofcom's benefits assessment remained qualitative for both the free-to-caller and the maximum mobile price ('MMP') options and it considered that this was a material weakness in Ofcom's assessment. It said given the materiality of the quantitative costs of the free-to-caller option (which it noted had increased markedly now that Ofcom had included migration and misdialling costs) it was incumbent upon Ofcom in order to demonstrate the proportionality of its proposals to be able to demonstrate a likelihood of quantitative consumers benefits that outweighed those costs. It noted, however, that Ofcom continued to argue against any quantification of any such benefits and it considered the reasons for that were unclear, especially when that was central to the approach to estimating benefits for the unbundled tariff regime. EE suspected that the reason Ofcom had not endeavoured to do that was because it was unable to demonstrate quantitative net consumer benefits.[141]

A2.96 EE said that Ofcom's cost benefit assessment for the free-to-caller and MMP options for the 080 and 116 ranges was finely balanced. It considered, however, that the free-to-caller option was likely to offer less net benefits to consumers than the MMP option when considered in the light of changes to Ofcom's analysis in its latest consultation, particularly that the implementation costs had increased markedly and therefore greater reliance had to be placed on the benefits. EE, however, continued to argue that the MMP option had the same or greater benefits than the free-to-caller option but with lower costs of implementation. In particular it noted that:

- Ofcom could not confidently claim the free-to-caller option was qualitatively better at achieving consumer price awareness than the MMP option unless it quantified the estimated reduction in price misperceptions for both options. It said Ofcom should at least test (by adopting the same approach taken for the 084/087 numbers) whether the benefits were likely to be of an order of magnitude higher than the costs or only slightly above (or below) cost to test the robustness of the assessment. It also considered it highly likely that MMP would also reduce price misperception and did not agree that it would suppress demand for fixed 080 calls given the MMP price would be relatively small. It said Ofcom already had the data necessary to estimate the benefits to consumer price awareness from its surveys;

[140] See Part A, Annex 11 of the April 2013 policy position – in particular paragraphs A11.5 to A11.66. Also summarised in paragraphs 8.69 to 8.89 in Section 8, Part B.
[141] EE, April 2013 policy position response, pp. 15 & 78.

- making the 080 range free-to-caller pushed retail prices below cost, which did not promote allocative or dynamic efficiency: MMP better promoted efficiency by ensuring retail consumers faced prices that reflect their costs of service provision and it avoided the need for OCPs to subsidise SP costs of origination that Ofcom was currently contemplating in order to mitigate any caller externality;

- SPs preferred MMP over the free-to-caller option at average call origination charges as low as 1.5ppm and therefore it considered that the MMP option (together with the introduction of a new free-to-caller range such as on 0500) better addressed the vertical externality;

- like the free-to-caller option, MMP would also improve the brand reputation of the 080 range because it would enable SPs to advertise a single low mobile price nationally. It also considered that Ofcom's arguments about increased demand and innovation on the range under a free-to-caller approach seemed less reliable and plausible when considering the likely exit of SPs from the market could be up to 38% under the IAR; and

- there were so few socially important services that were not already zero rated that the free-to-caller option was unlikely to make a material difference to promoting that particular stated aim (particularly when it was considered that the option might also cause the exit from the market of some current socially important SPs) and therefore it was not a proportionate response to this issue. It also considered that a charge of 5ppm under the MMP option would not materially reduce access to socially important services and might ensure that OCPs could continue to offer the service at no charge to the SP.[142]

Ofcom's response

A2.97 In paragraphs A11.141 to A11.154 of the April 2013 policy position, we set out in detail why we did not consider it appropriate to quantify the benefits of making the 080 range free-to-caller. In summary, the first reason was because we considered there to be technical reasons, related to the distribution of consumers' price expectations and fixed-to-mobile substitution, why the unbundled tariff modelling framework was not an appropriate means of modelling the benefits which are common to both the unbundled tariff and free-to-caller approaches. We considered that there were significant difficulties in developing an alternative framework to model these benefits in the context of a free-to-caller number range.

A2.98 Secondly, we argued that some of the key benefits of making the 080 range free-to-caller were not modelled within our unbundled framework. These benefits were inherently difficult to quantify but we considered that their exclusion would be misleading given their importance to our assessment of the policy options for the 080 range.[143] We note that EE has not directly engaged with or challenged our specific reasons for not quantifying the benefits of the free-to-caller option.

A2.99 Having considered EE's comments, we remain of the view that it is inappropriate to quantify the benefits of a free-to-caller approach.

[142] EE, April 2013 policy position response, pp.15, & 78-80.

[143] We also set out our reasons for not undertaking a quantitative assessment of the benefits of making the 116 range free-to-caller at paragraphs A11.155 to A11.159 of the April 2013 policy position.

A2.100 We assessed the free-to-caller and MMP options against each of our assessment criteria in detail in the April 2013 policy position.[144] We note that EE continues to challenge our assessment, however, we consider the points they have raised here do not necessarily draw on any new arguments or evidence that was not previously discussed in the April 2013 policy position. We therefore consider that the position we reached in that document remains valid, i.e. that making the 080 and 116 ranges free-to-caller will be most effective (and more effective than the MMP option) in addressing the consumer harm we have identified on these number ranges. To comment on each of EE's specific points in turn:

- we explain in the paragraphs above why we do not consider it appropriate to quantify the benefits of the free-to-caller option. We emphasised in the April 2013 policy position that the simplicity of the free-to-caller message was a significant benefit which the MMP option did not offer;

- we recognise that a free-to-caller approach implies that the retail price faced by callers will be below the cost of origination, which, if viewed in isolation, might suggest the potential for there to be an inefficiently high volume of 080/116 calls. However, the opportunities consumers will have to call these numbers, and therefore the total volume of 080/116 calls, will be determined by SPs' choice of number range. As SPs will bear the cost of originating calls to free-to-caller 080/116 numbers (via their TCP), they will take the resource cost of originating calls to these numbers into account in making this choice. We therefore consider that a free-to-caller approach, combined with a fair and reasonable origination charge, will not distort the volumes of 080/116 calls made by consumers.

- we disagree with EE's characterisation that OCPs will subsidise the costs of origination on behalf of SPs, as we believe that the framework we have used to derive the range of origination payments in Annex 5 (as well as in the final statement accompanying the 080/116 Dispute Guidance)[145] will ensure that origination payments cover the incremental costs of origination. In addition, we noted in the April 2013 policy position that prices under MMP would not necessarily send a more appropriate signal than free-to-caller about which device to use, as the difference in price of a fixed and mobile call under MMP may still significantly exceed the difference in resource cost. Overall we considered that a free-to-caller approach would be more effective at addressing the vertical and horizontal externalities than MMP, and would therefore be more likely to lead to efficient prices;[146]

- we noted in the April 2013 policy position that there were a significant number of 080 SPs who want a free-to-caller range and that SPs who would prefer a range with a retail charge had other alternatives (e.g. 03) whereas setting an MMP would result in there being no true free-to-caller range.[147] EE continue to argue that the 0500 range could be that alternative free-to-caller range, however, we have already set out our reasons for rejecting this specific approach (i.e. making

[144] See Section 13 of the April 2013 policy position, in particular the summary at paragraphs 13.132 to 13.155.
[145] Available here: http://stakeholders.ofcom.org.uk/consultations/080-116-ranges/
[146] See paragraphs 13.140 to 13.142 in the April 2013 policy position.
[147] See paragraphs 13.113 and 13.145 in the April 2013 policy position.

080 an MMP range and making 0500 free-to-caller).[148] We are now consulting on withdrawing the 0500 range from use;[149]

- because we have concluded that MMP will not offer the same benefits to price awareness as making 080 free-to-caller, in turn we consider that the benefits to service availability or the '080 brand' will not be as great under the MMP option compared to the free-to-caller option. In particular the simplicity of the 'free' pricing message may allow SPs to introduce innovative business models which would only work with a 'free' price point as opposed to MMP (e.g. reverse charging or advertising funded services).[150] EE refer to a migration scenario of up to 36% of SPs under the IAR on which we consulted in the April 2013 policy position. We acknowledged in that document that, in the most extreme scenarios, our survey results suggested that the proportion of SPs who said they would get rid of their 080 number could be between 28% and 36%, but we set out our reasons for considering these scenarios were unlikely to occur in practice and for placing more weight on the effects of origination payments within our base case scenario range (i.e. likely SP migration of 19%);[151] and

- we responded in the April 2013 policy position to EE's arguments that socially important services on the 080 range are already zero-rated. We noted there that there were clear examples of socially important services on the 080 range which were not zero rated and we highlighted the examples of the National Grid's emergency helpline and some government helplines as well. We also noted elsewhere that around 30% of services on the 080 range could fall within our definition of socially important. The main services within this which are already zero-rated are the charity lines under the Helplines Partnership and the DWP's helplines. The rest of those services, with some limited exceptions, are not zero-rated.[152] We assessed and compared the benefits of the free-to-caller and MMP options for access to socially important services in the April 2013 policy position and EE's comments do not cause us to alter our assessment.[153]

A2.101 We set out our final conclusion on our impact assessment in Section 4, where we set out our view that, for an origination payment within our base case scenario range, the net benefits of a free-to-caller approach are likely to be significant greater than an MMP approach. On this basis, we conclude that making the 080 and 116 ranges free-to-caller will be most effective (and more effective than MMP) in addressing the consumer harm we have identified on these number ranges.

[148] See paragraphs A29.169 to A29.171 of the April 2013 policy position. We also set out our position on this option in the April 2012 consultation, paragraph A25.18.
[149] http://stakeholders.ofcom.org.uk/consultations/re-consultation-0500-freephone/
[150] See paragraphs 13.143 to 13.146 of the April 2013 policy position.
[151] See paragraphs 13.61 to 13.65 and 13.25 to 13.26 of the April 2013 policy position.
[152] See paragraphs A29.141 and 13.75 in the April 2013 policy position.
[153] See paragraphs 13.147 to 13.149 in the April 2013 policy position.

Annex 3

Unbundled tariff – response to stakeholder comments

Introduction

A3.1 In this Annex we address additional comments received from stakeholders in response to the April 2013 policy position about the structure and operation of the unbundled tariff. We did not ask any consultation questions on these issues in the April 2013 policy position.

A3.2 We set out in detail stakeholder comments and our responses on two issues on which we have refined the position we set out in April 2013 policy position, namely:

- the treatment of the access charge ('AC') within call bundles; and
- the process for establishing service charge ('SC') price points.

A3.3 We have also reflected carefully on stakeholders' comments on other aspects of the unbundled tariff requirements which we set out in the April 2013 policy position but they have not led us to change the position we adopted then. We have not, therefore, set out these comments in detail in this Annex but instead have summarised the key points made by stakeholders. We have also responded to these points largely by pointing back to the assessment we presented in the April 2013 policy position.

Treatment of the access charge within call bundles

A3.4 In the April 2013 policy position we provisionally concluded that we should allow CPs the option of including their ACs within the price of call bundles, provided that applied to all unbundled tariff number ranges.[154] We set out proposed wording for this requirement in GC17.25 and 17.29. In response to our consultation on that proposed requirement, a number of stakeholders raised concerns about the effects of requiring CPs to treat calls to all unbundled tariff numbers in the same way when deciding whether or not to incorporate the AC element of the call price within a bundle.

Stakeholder comments

A3.5 A number of OCPs, including EE, Magrathea[155], TalkTalk, Sky and BT, said our approach was likely to lead to unbundled tariff numbers not being included in any call bundles and argued that this would be to the detriment of consumers who currently had certain 084/087 numbers included within their call bundles. EE, for example, said that given the bad debt and fraud risks, as well as the commercial impact, it was highly unlikely that OCPs would be able to include the AC for 118 and 09 number ranges in bundle. It said this would create a perverse adverse impact for consumers by not allowing more popular non-geographic number ranges to be

[154] See Section 9 of the April 2013 policy position, paragraphs 9.40 to 9.46.
[155] Magrathea, April 2013 policy position response, p.1.

included in the bundles of minutes.[156] BT made similar comments, noting that our approach carried considerable risk that no OCP would include an unbundled tariff number such as 0845 within call bundles due to the inability to offset or recover the cost of the higher rate, 09 and 118 ranges for which the OCP would still pay the SC. It considered it was more important that consumers understood what was included and how much they would pay for calls outside their inclusive bundle.[157]

A3.6 Sky argued that the exclusion of non-geographic numbers from call bundles would lead to a limitation of consumer choice and result in the perverse outcome of consumers paying more for calls that could otherwise have been included in inclusive bundles. Sky said it was not apparent from the April 2013 policy position that Ofcom had considered what the impact would be on consumer awareness or consumers' use of NGCS if calls to some unbundled tariff numbers were included in call bundles.[158] EE similarly argued that our approach risked reduced consumer trust in the non-geographic number range and the extent to which they felt comfortable calling these numbers.

A3.7 TalkTalk also argued that our approach could be detrimental to customers and welfare as a whole, and risked the unbundled tariff failing to achieve its consumer protection objectives.[159] It noted it was common practice among fixed OCPs to include 0845 and 0870 and there was clear evidence that customers had come to value the inclusion of these numbers in bundles as well as having a positive impact on customer understanding of call costs. In particular TalkTalk noted its experience of call volumes of 0845 and 0870 numbers increasing by 20% when it included them in bundles.[160]

A3.8 EE considered that allowing OCPs to vary the inclusion of the AC by number range was unlikely to create consumer confusion because Ofcom's market research showed that consumers were able to distinguish different numbers to the second digit.[161] TalkTalk also argued that there would not be any harm to consumers caused by allowing the current pricing practices to continue whilst implementing the new regime. It believed that consumers would intuitively assume that calls to non-geographic numbers outside the bundle would attract the AC (and an SC) and would not offer an opportunity for OCPs to 'circumvent the restrictions on variations of ACs by tariff package' as Ofcom had claimed.[162]

A3.9 In contrast, Magrathea continued to argue that Ofcom should require OCPs to waive the AC element of a call to an unbundled tariff number if the consumer had remaining minutes in their call bundle. Magrathea also highlighted the importance of maintaining some consistency for services like 0870 and 0845 which are in many cases included in call bundles currently.[163]

Ofcom's response

A3.10 We set out our reasons for not mandating the inclusion of calls to unbundled tariff numbers within call bundles, as argued by Magrathea, in paragraph A20.137 of the

[156] EE, April 2013 policy position response, pp.52-53.
[157] BT, April 2013 policy position response, pp.12-14.
[158] Sky, April 2013 policy position response, p.1.
[159] TalkTalk, April 2013 policy position response, p.2.
[160] TalkTalk, April 2013 policy position response, p.2.
[161] EE, April 2013 policy position response, pp.52-53.
[162] TalkTalk, April 2013 policy position response, p.2.
[163] Magrathea, April 2013 policy position response, p.2.

April 2013 policy position. Magrathea have not raised any new arguments or evidence which lead us to reassess this view.

A3.11 However, we have reassessed our position on requiring CPs to treat all unbundled tariff numbers the same when deciding whether or not the AC element of the retail price should be included within bundles, given the strength and number of stakeholder comments on this issue.

A3.12 In the April 2013 policy position, we provisionally concluded that if the inclusion of the AC in a call bundle varied by number range, this would reduce consumer price awareness and this disadvantage would not be offset by efficiency improvements which might result from such differential pricing. We acknowledged that our approach might result in some OCPs no longer including calls to 0845 and 0870 numbers in bundles, as some currently did. We considered, however, that some OCPs might choose to include the AC for all unbundled tariff number ranges in their call bundles.[164]

A3.13 There is a clear consensus in the responses we have now received that our approach is very likely to lead to OCPs including none of the unbundled tariff number ranges within call bundles. We agree with the comments that the inclusion of calls within bundles is a feature which consumers' value, and which provides benefits in terms of certainty of pricing, as demonstrated by the growing shift towards tariffs that include generous (and sometimes unlimited) call and message allowances, particularly for mobile.[165] The fact that some CPs currently include calls to certain non-geographic number ranges within their inclusive call packages[166] strongly indicates that consumers similarly value and obtain benefits from the inclusion of these calls in bundles.

A3.14 In the April 2012 consultation we presented evidence on the proportion of fixed and mobile calls that were included in bundle. That data indicated that 20% of 0845 and 0870 calls were included within fixed call bundles in 2009[167], and 5% were included within mobile call bundles in 2011.[168] We consider it likely that these percentages will have increased since then, given that more providers are now offering these calls within their bundle packages (for example Sky, the Post Office and T-Mobile). Therefore, if our approach were to lead to all these numbers being excluded from call bundles, it would affect a material proportion of the calls consumers currently make to non-geographic numbers, and result in consumers losing the benefit of price certainty in respect of those calls to non-geographic number ranges which are currently included within their call bundles.

A3.15 Accordingly, we consider that dis-incentivising CPs from including calls to all unbundled tariff numbers within inclusive call bundles would adversely affect

[164] See paragraphs 9.40 to 9.46 in Part B of the April 2013 policy position. See also paragraphs A20.128 to A20.140 in Part B, Annex 20 of the April 2013 policy position where we responded to stakeholder comments on the bundling of the AC.
[165] 2013 CMR, p.370.
[166] BT, TalkTalk and the Post Office all currently offer inclusive 0845 and 0870 numbers in some of their call packages, while Sky's call packages include 0870 numbers. This approach is less common in mobile packages, although T-Mobile does currently offer a pay monthly call package in which all 08 numbers are included within call bundles – see: http://e-gain.s3.amazonaws.com/external/content/T-Mobile/Price-plans-and-cost/May%202013/EE81005129_PAYM_18m_090513.pdf.
[167] See Table 3.8 in the April 2012 consultation, Part A, p.26. This was based on data provided to Ofcom on an informal basis and was based on 2009 volumes.
[168] See Table 3.9 in the April 2013 consultation, Part A, p.27. This was based on a formal information requires to the mobile operators in October 2011. The data is based on the month of August 2011.

consumer confidence in these numbers. Given the weight of responses from CPs on this issue, we consider that there is a very real and significant risk of this consumer detriment materialising if we were to implement a requirement that CPs treat all unbundled tariff numbers the same when deciding whether or not the AC element of the retail price is included within a bundle. On further reflection, we consider that this disadvantage outweighs our concern that allowing CPs to choose which non-geographic number ranges to include within a bundle could have an adverse impact on consumer price awareness. While we remain of the view that there is some risk of reduced consumer price awareness, we consider that this is mitigated by the fact that the same AC will apply where a consumer makes a call to an unbundled tariff number outside his or her call bundle, regardless of the range called.

A3.16 In the April 2013 policy position, we also said that if we were to allow differentiation by number range this could enable CPs to circumvent the prohibition on having variable ACs within a tariff package (for example, if the terms of a bundle allowed the consumer to make unlimited calls to 084 and 087 numbers so that the AC only applied to calls to 09 and 118 numbers). However, we note that currently the majority of bundles of inclusive minutes are not offered on an unlimited basis – for example mobile OCPs usually offer a certain number of minutes and fixed OCPs often have packages in which calls are inclusive at certain times of the day/days of the week (e.g. evenings and weekends).[169] In relation to the AC therefore, CPs would still need to set an AC for calls to unbundled tariff numbers that was the same, regardless of whether or not some of the ranges were included in bundle of inclusive call minutes. For example, if the OCP included the AC element for calls to all 084/087 numbers in the price of a bundle of inclusive minutes but not for calls to the 09/118 number ranges, it would still have to set an AC for 084/087 calls made outside of the bundle which was the same as that charged for all 09/118 calls. Therefore in practice, given that unlimited bundles of minutes are not prevalent and that the out of bundle AC would need to be the same as the AC set across number ranges, the ability of CPs to use their bundling approach to circumvent the requirements on the single AC is likely to be limited. In addition, the transparency requirements on OCPs in relation to the promotion of the AC apply equally whether or not unbundled tariff ranges are included within bundles (see the changes to GC14 discussed in Annex 7). Therefore OCPs will be required to make clear to consumers the level of the AC and consumers will be able to compare that AC with the AC available on different tariff packages and from different CPs when selecting a call contract, separately from any bundling offer that may apply.

A3.17 Therefore, in light of the concerns raised and the material risk of consumer detriment from the exclusion of particular calls from their bundle packages (which would otherwise have been included), we have decided that the inclusion of the AC in a bundle shall be permitted to vary by number range, provided that outside of the bundle the AC is charged at the same rate for all number ranges (in line with our requirements for a single AC per tariff package). We have amended the wording in GC17.29 to reflect this position.

A3.18 Notwithstanding the above, in line with our position on capping the level of the AC, if evidence was to emerge of consumer confusion or uncertainty about the inclusion of the AC in call bundles, or of OCPs using this to circumvent the restrictions for a single AC per tariff package, then we will reconsider whether it is necessary to introduce a requirement that the inclusion should not vary by number range.

[169] We are not aware of any CPs offering unlimited calls to non-geographic numbers currently.

Approach to establishing service charge price points

View in the April 2013 policy position

A3.19 In response to stakeholder concerns that the process for establishing SC price points was still unclear, we set out, in broad terms, how the process could work in the April 2013 policy position.

A3.20 We noted there was a need for a common set of SC price points available from all OCPs and our view was that the commercial needs of SPs, and ultimately the interests of consumers, would best be met where industry, not Ofcom, came to a view about the individual SC price points needed. In terms of how a common set of price points would be achieved, we noted that in the first instance TCPs would have to choose an SC for each non-geographic number block that they held (taking into account, where possible, the pricing needs of their SP customers on that number block and any relevant SC cap). Then those TCPs would need to ascertain through negotiation with each OCP whether the SCs they had selected would map across to price points within the OCP's billing system. The OCPs would be obligated to provide a minimum of 100 price points and we also proposed that that obligation should include a requirement for those OCPs to ensure that their 100 price points reflected on a fair and reasonable basis the price points proposed by SPs/TCPs, taking into account the volume and range of those proposals.[170]

A3.21 We said we expected a core of common price points was likely to emerge naturally and relatively quickly since OCPs would have the same incentive to offer, at the outset, established price points which attracted the most call volumes. We acknowledged that outside of these price points with the highest call volumes there might be more difficulties in securing a common approach, nonetheless we expected that over the course of the implementation period the 100 SC price points OCPs are required to provide should ultimately coalesce to a substantial degree because of the network benefits that would accrue to both SPs and OCPs as a result.

A3.22 Finally we noted that we could continue to monitor OCPs' development of their SC price points during the implementation period and would keep under review what action, if any, Ofcom should take to facilitate that process. We also highlighted that it would be open to parties to approach us if they considered OCPs were in breach of the proposed obligation we had set out in GC17 regarding SC price points.[171]

Stakeholder comments

A3.23 Vodafone, EE and TNUK all raised a number of concerns about what they considered was a lack of clarity over the process for establishing SC price points, and the potential for uncertainty that it would generate. EE said the bilateral TCP/OCP negotiation process that Ofcom seemed to currently envisage appeared to be unworkably complex and burdensome. [172]

A3.24 Vodafone said TCPs could not currently offer SP customers a well-defined choice of SC price points to choose from because there was no certainty that any particular

[170] This was set out in the proposed modifications to GC17 – in particular see GC17.29.
[171] See paragraphs 9.119 to 9.130 in Part B of the April 2013 policy position. See also paragraphs A21.133 to A21.177 in Annex 21 of the April 2013 policy position where we set out our response to stakeholder comments on the approach to establishing SC price points.
[172] EE, April 2013 policy position response, p.69.

price point would be supported by all (or even most) OCPs. It highlighted 0845 as an example noting that users of this range had the prospect of further commercial uncertainty with worsening commercials forecasted resulting from, they suggested, continued BT manipulation of retail discount pricing but that while the implementation of the unbundled tariff could offer long term certainty it might be at a price point which did not reflect their wishes - they needed to know what that price point was in order to assess the alternative options (although it noted some of those alternative options were not certain either, e.g. the wholesale costs of 080, see Annex 6 for discussion of Vodafone's comments on this point).[173] Vodafone considered that until certainty on these different options were provided, TCPs would find it difficult to present an informed and comprehensive commercial offering to their SPs, and SPs would only be able to turn their attention to migration/and or meeting their price publication obligations once they had that commercial offering from their TCP.

A3.25 TNUK said the main failing of the 'process' which Ofcom envisaged for setting the SC price points was that it was no process at all but instead an ad hoc series of 'behind closed door' bilateral discussions and negotiations which Ofcom hoped will ultimately lead to an agreement emerging between 200 CPs as to the 100 SC price points. It said it was particularly concerned that the SPs whose prices were being set would have no role in setting them and instead a group of operators/competitors with multiple, complex and conflicting commercial priorities and incentives would set their prices on their behalf and would place their own interests above the interests of the SPs.[174] TNUK said that its most fundamental principled objection was to any process which did not allow it to set the price which was paid for its own service and therefore to control the revenues which it generated. It said that concern was: "*exacerbated hugely by the fact that:*

> *(i) the power to set the price points was being given to operators who had such clear vested interests in the prices they were determining which could conflict directly with the interests of SPs; and*
>
> *(ii) the process by which the prices would be set was both exclusive and opaque."*

A3.26 TNUK emphasised its view that by allowing OCPs to set the SC price points, Ofcom was perpetuating the vertical externality. It considered that Ofcom had overlooked that the prices being set were not the total retail charges paid by consumers (in which OCPs would have a more legitimate interest) but simply the SCs which OCPs will merely pass through.[175]

A3.27 TNUK was also concerned that the process Ofcom had set out effectively granted OCPs "full power and authority" to impose a cap on the 118 SC by other means, despite our decision not to impose a cap on the 118 range. In particular it was concerned that despite a lack of evidence of bad debt on the 118 range Ofcom "*went as far as to recommend (in paragraph A21.154) that OCPs impose a 118 SC cap in order to address this non-existent problem*". It also noted a concern that we had not suggested any measurable criteria by which to judge whether predicted

[173] Vodafone, April 2013 policy position response, p.16.
[174] TNUK, April 2013 policy position response, p.5.
[175] TNUK, April 2013 policy position response, pp.3-4.

levels of bad debt at higher price points would justify a refusal to adopt those price points. [176]

A3.28 Furthermore TNUK raised concerns that Ofcom had not given any consideration or guidance as to how price points should be set which were above or different from existing prices, for which existing call volumes could not help. It argued that all operators (not to mention SPs) could legitimately have different views on this and there was no indication as to how agreement will be reached and conflict resolved.[177] It said that because Ofcom was proposing that SC price points were set according to existing call volumes, it would permit (and incentivise) operators to allocate as many of the 100 price points as possible towards the lower end of the scale. It contended that the single AC removed any incentive for OCPs to agree to higher price points, instead incentivising them to drive as much volume as possible at lower price points, which would enable them to retain a higher proportion of the total retail price. It believed that because, by definition, there were zero volumes at price points above the current levels, there was no reason why operators should agree to allow any price points at those levels. Based on the criteria Ofcom had set out, TNUK believed there was nothing to stop operators using all of the 100 price points to map across existing prices and reserving none for future higher prices. TNUK said it was therefore "*imperative*" that Ofcom ensured that operators were required to set some SC price points which were above the level of existing prices, in order to allow for future growth and innovation. It was concerned that the current wording of GC17.32 did not require this and that Ofcom's process for setting the price points positively militated against it. [178]

A3.29 TNUK also reiterated its concerns that Ofcom had not outlined any process by which price points might be reviewed or revised.[179]

A3.30 Both EE and Vodafone commented on the potential for additional costs generated by Ofcom's current approach. EE said clearly further work would need to be completed to arrive at sensible arrangements that were capable of being efficiently implemented without the need to incur huge industry time and resource costs that Ofcom had not factored into its cost benefit analysis. [180] Vodafone considered that "*the planning blight*" and the uncertainty for SPs could cause a mass exodus away from the very NGCS Ofcom was looking to reform. In addition it said that planning blight could strike at the benefits as well. It said the benefits to its SP customer, and ultimately to consumers which were supposed to come from volume growth/arrest in decline due to the correction of price misperception evaporated in the absence of clear NGCS alternatives. It noted that the vast bulk of the benefit underpinning Ofcom's view derived from the volume on the 084/087 ranges and this had to be preserved in order to justify regulatory intervention. It said there was a clear risk that protracted uncertainty would drive SPs away and further accelerate volume decline. Vodafone considered that it was highly doubtful that the unbundled tariff could be justified as a stand-alone business case for 09 traffic. It noted that Ofcom's updated analysis effectively assumed the unbundled tariff going ahead with the cost for 09 simply supporting maintenance of the higher range of rates but it said if it failed to capture the existing traffic there would only be a modest benefit

[176] TNUK, April 2013 policy position response, p.4.
[177] TNUK, April 2013 policy position response, p.4.
[178] TNUK, April 2013 policy position response, pp.4-5.
[179] TNUK, April 2013 policy position response, p.5.
[180] EE, April 2013 policy position response, p.69.

uplift achieved and in time the unbundled tariff would risk becoming a white elephant destined only to support the rump of 09 services.[181]

A3.31 In terms of alterative approaches, Vodafone suggested that Ofcom needed to provide mapping and migration options for a sub-set of the 80 price points which constituted the bulk of call volumes to facilitate industry agreement. It said this could be devised in conjunction with industry but required Ofcom to either provide a legal mechanism (which Vodafone provided a proposal for – see Annex 7 for these comments) with which to underpin the final selection or at the very least to issue clear best practice guidance to ensure that both TCPs and OCPs made the necessary ranges available. It noted Ofcom had argued that market players would have a better feel than Ofcom for where the price points should be set, however, it said that should not be an argument for Ofcom standing aloof, particularly as the industry had provided Ofcom with information that allowed it to construct a consolidated view, an ability which it noted was unique to Ofcom. Vodafone said there was a clear opportunity for Ofcom to take the initial step now of confirming where there was industry consensus on price points and where compromises could be made, using the evidence it already had available. It said this would facilitate implementation to provide timely certainty.[182]

A3.32 In respect of the competition law concerns that had been raised by industry, Vodafone said Ofcom, as a body with competition powers itself, could address those by taking a prominent visible role and by leading the relevant working groups to ensure that there were no inappropriate discussions. It said if Ofcom adopted this approach it believed that a regulatory framework could be put in place through whatever means Ofcom determined to establish the necessary price points. In contrast it said replaying on the outcome of haphazard bilateral commercial negotiations was extremely unlikely to result in a clear industry-wide confirmed solution in sufficient time to enable implementation within 18 months. It said Ofcom should move quickly to confirm an initial set of SC price points that would be supported across industry, prioritising the 08 number ranges that accounted for the majority of call volumes.[183]

A3.33 TNUK, however, suggested that Ofcom's proposed ad hoc process be replaced by a more formal structure process which was transparent and permitted SPs to have some input into the process, specifically it said such a process could work as follows:

i) **Submissions from SPs:** SPs submit proposals for specific price points to Ofcom. Ofcom circulate those in an anonymised form to all OCPs/TCPs who will be involved in the direct negotiations and in the absence of direct conflict between the proposals there should be a presumption in favour of the proposals being accepted (subject to the overall minimum requirement). Any OCP/TCP which has a specific objection to any proposal must provide written reasons to Ofcom;

ii) **Monthly reports from operators**: each OCP/TCP be required to submit a brief monthly written report to Ofcom stating which other OCPs/TCPs they have been in discussion with and what was proposed/discussed/agreed. Those reports should be published by Ofcom on its website to help all interested parties know

[181] Vodafone, April 2013 policy position response, p.17.
[182] Vodafone, April 2013 policy position response, p.17.
[183] Vodafone, April 2013 policy position response, p.17.

the status of current discussions in which they are not involved but avoiding competition law problems of any collective discussions;

iii) **Representations from interested parties**: any interested SP/OCP/TCP should be entitled to raise concerns or objections in response to the contents of those reports and submit them in writing to Ofcom. Ofcom will forward an anonymised version to the relevant TCP/OCP and they have to provide a brief written response which Ofcom will in turn forward to the SP or perhaps publish on its website;

iv) **Final approval of price points:** when agreements had been reached, the OCPs/TCPs would be require to publish their draft proposed price points and SPs who had not been involved in the direct negotiations would be entitled to make representations to Ofcom about the proposed price points which Ofcom would publish. If Ofcom has any concerns about the proposed price points it will require the OCPs/TCPs to provide a written response and/or to make amendments. Finally, Ofcom must give approval before the price points can be finally agreed and implemented.

A3.34 TNUK said that final approval by Ofcom was of particular critical importance because essentially it was Ofcom confirming that the proposed price points complied with GC17.32. It said this was far preferable to providing that approval retrospectively through compliance activities as it would give considerable reassurance to all parties that the price points were compliant with the requirements. TNUK believed that the process it set out above maintained Ofcom's core proposal that price points be set through a series of bilateral OCP/TCP negotiations and was intended to support the proposed requirement in GC17.32. It noted, however that the wording of that regulation would need to be amended and expanded to reflect the process it had proposed. TNUK considered its proposed process would reduce the chance that Ofcom would have to resolve regulatory disputes.[184]

A3.35 Finally, EE reiterated its view that the finally agreed SC price points should be reflected in the Numbering Plan. EE disagreed that this would mean Ofcom would need to issue a consultation every time a TCP/SP wanted to change an existing SC price point as it believed the only time a consultation would be required would be if it was considered that one of the pre-agreed SC prices points needed to be deleted and replaced with another. It considered that this obligation would be entirely appropriate to ensure that the best interests of consumers were maximised and that pricing innovation was not unduly restricted. It also said that in the long run this approach was likely to be more efficient than yet another use of Ofcom's dispute resolution powers to resolve any disagreements.[185]

Ofcom's response

A3.36 Stakeholders' responses on our assessment of how SC price points should be determined (and on the proposed legal instruments underpinning this) can be divided into two broad issues: determining the SC; and the process for establishing SC price points. We respond to the matters raised in relation to each of these questions in turn.

[184] TNUK, April 2013 policy position response, pp.6-8.
[185] EE, April 2013 policy position response, p.69.

Determining the SC

A3.37 In the April 2013 policy position, in response to concerns raised by TNUK, we said that it would not be practical for SPs to set their own SCs independently of the TCP and the OCP, given that, in general, the same SC must be applied to a block of 10,000 numbers on which large number of different SPs may be operating. We acknowledged that DQ providers were a slightly different case, and therefore we would expect them to be more directly involved in ensuring their requirements are reflected in the new structure.[186] Nonetheless, as we also noted in the April 2013 policy position, it would not be appropriate for SCs to be set independently of the OCPs and TCPs because both have an interest in the level of the SC: the OCP is responsible for billing the SC to their customers as it forms part of the retail price of a call to an unbundled tariff number and therefore has a potential impact on its customer relationships; the TCP is also likely to have a financial interest in the level of the SC since it will generally incorporate some or all of the costs it incurs for termination and conveyance of the call from the assumed point of handover.[187] For these reasons, we remain of the view that it is not possible to allow SPs to set SCs on their own.

A3.38 Instead what is needed is a mechanism that enables the SC to be determined in a manner which takes account, so far as possible, of the interests of all the parties in the value chain. In principle, this should be secured through the negotiation process outlined in paragraph A3.20 above. However, stakeholders have raised a number of concerns about how negotiations alone will secure a set of price points likely to be available from all OCPs within the timetable for implementation. We have therefore given further thought as to how to address these concerns, in particular those relating to uncertainty about the SC price points that may be offered by other operators and the risk that action by operators in the course of negotiations to tackle that uncertainty could give rise to competition issues.

A3.39 As proposed by Vodafone, we consider that in relation to the establishment of SCs for existing services on the unbundled tariff ranges, negotiations are likely to be more effective if they are informed by guidance on the set of SC price points that are likely to be available from OCPs because they reflect current prices and call volumes. Accordingly this is provided at Annex 4 and discussed in more detail at paragraphs A3.43 to A3.47 below.

A3.40 In relation to the setting of SCs which differ from current outpayments made on unbundled tariff range, TNUK has proposed that this could be secured by a process involving Ofcom receiving SC requests from SPs and forwarding them in an anonymised form to CPs.[188] We are aware that there have also been discussions at the NGCS Focus Group of mechanisms carried out under the auspices of an independent third party.[189] Although we have not adopted other aspects of these proposals, we consider that the use of an independent third party as a conduit for SC requests would provide a means of addressing stakeholder concerns. We set out how we envisage such a process working at paragraphs A3.48 to A3.58 below. As we explain there, we expect industry to take the lead in developing a mechanism of this nature during the implementation period but we will continue to work closely with stakeholders, providing assistance and guidance where appropriate, so as to

[186] See paragraph A21.166 in Part B of the April 2013 policy position.
[187] See paragraph A21.152 in Part B of the April 2013 policy position.
[188] See paragraph A3.33 above.
[189] See footnote 192 below.

ensure that they meet their regulatory obligations in accordance with the timetable for implementation.

A3.41 In connection with the setting of SCs above the level of current outpayments, we do not agree with TNUK's assertion that OCPs will have an incentive to minimise the SC in order to maximise the proportion of the total retail price that they retain. It is the level of the AC set by the OCP and the volume of calls that are made that will determine its revenue, not the proportion of the total retail price that it retains.

A3.42 TNUK also refer to the potential for CPs to apply a 'de facto cap' on SCs for the 118 range. Given that the SC for a 118 number must match an SC price point within the billing system of an OCP, we accept that that the maximum SC available to 118 SPs will be limited, notwithstanding the absence of a regulatory cap. The level at which that limit applies is, however, subject to GC17.32, which requires CPs to ensure that their price points reflect on a fair and reasonable basis the SC rates proposed by other providers, taking into account the volume and range of such requests. Therefore, as we noted in paragraph A21.154 of the April 2013 policy position, the price points selected by OCPs should accommodate higher rate SCs where there is demand for those price points from SPs. We did note, however, that those higher rate SCs should not make the risk of bad debt untenable. Whilst there is limited current evidence of bad debt on the 118 range, this does not necessarily mean that issues with bad debt could not emerge in future if the price points being charged are significantly higher than current prices.[190] Our comment on the potential for bad debt was not intended as a recommendation that OCPs did not offer higher SC price points, as TNUK imply. Instead we were acknowledging that this was a factor which it would be reasonable for OCPs to consider in determining whether or not to make available a higher rate SC price point sought by other providers.

The process for setting SC price points

A3.43 In terms of how the process of bilateral negotiation over SCs will work in practice, as we note above, there is a significant level of concern from stakeholders about the workability of the approach we have set out. We agree with Vodafone's comment about the importance of TCPs being able to offer a clear set of options to their SP customers with regards to different number ranges, and the price points that are available. We also agree with Vodafone that, as we noted in the April 2013 policy position, there is a sub-set of price points which, based on existing call volumes, could be established relatively easily. We have therefore obtained updated data from stakeholders on existing prices and call volumes to provide guidance on an initial set of price points which we consider would be likely to comply with the regulatory requirements in GC17. We consider such guidance will address the concerns of Vodafone and others about the burdensome nature of the SC negotiation process and, by improving certainty about the SC price points likely to be available, contribute to the effective implementation of the unbundled tariff in 18 months' time. In developing this approach we have looked at balancing the need to encourage competition with the need for certainty and we consider that this approach is the most pragmatic available to us within our legal powers.

[190] Albeit we recognise that there are factors about the specific nature of the 118 range which make this risk likely to be limited. For example we previously highlighted the consumer recognition of the 118 prefix and the smaller amount of 118 numbers available, both of which limit the potential for bill shock and fraud which may lead to issues with bad debt - see paragraphs A22.91 to A22.93 in Part B of the April 2013 policy position.

A3.44 Accordingly, in Annex 4, we set out the 67 price points which we consider it would be fair and reasonable for an OCP to provide on implementation of the unbundled tariff, based on:

- our analysis of call volume data by reference to the chargebands (i.e. wholesale termination rates) in use from June 2012 to July 2013 for calls to the 084, 087, 09 and 118 number ranges; and
- the methodological approach set out in Annex 4 for rationalising existing prices.

A3.45 The principles which we have applied in order to identify these SC price points are those which we set out in April 2013 policy position, namely:

- maintain SC price points with significant traffic volumes;
- merge similar price points (e.g. those within one penny on the 084/087 range);
- meaningful increments between price points (e.g. minimum of 1p increments up to 10p, 20p increments after £1) to ensure a good spread of SC options;
- price points available at the level of the SC caps (7ppm, 13ppm, £3pm, £5pc);
- price points are not number range specific (e.g. the same price point could be used for 09 and 118 numbers).

A3.46 OCPs are required under GC17.32 to set SC price points within their billing systems which reflect on a fair and reasonable basis the SC rates proposed by other providers, taking into account the volume and range of such requests. We consider that the principles set out in the preceding paragraph and, hence, the SC price points we have identified by applying them, should enable OCPs to discharge that obligation in respect of the determination of an initial set of 67 SC price points. We do not consider it necessary to incorporate these principles into the regulatory requirements imposed by GC17.31 and GC17.32 for the moment. However, if, notwithstanding the guidance we have provided at Annex 4, the negotiation and setting of SC price points remains problematic during the implementation period, then we will reconsider whether it would be appropriate to set these principles within the general condition requirements.

A3.47 Our expectation is that OCPs will make the 67 SC price points set out in Annex 4 available within their billing systems in order to comply with their obligations under GC17.31 and GC17.32. Nonetheless, it remains open to them to set alternative price points if the evidence available to them demonstrates that these will be a better reflection of the volume and range of demand for SCs from other providers.

The setting of additional SC price points, including those to be made available 12 months after the implementation date

A3.48 GC17.31 requires OCPs to have at least 80 different SC price points within their billing systems by the Effective Date and a further 20 SC price points 12 months after that. If OCPs were to adopt the price points we identify in the guidance at Annex 4, this would leave a further 33 to be determined in order to secure compliance with this obligation. Given that the 67 price points we have identified are based on our assessment of the current range and volume of demand in respect of existing charge bands, our expectation is that the remaining 33 SC price points should reflect the volume and demand for price points which are not currently available. These might be above current price levels and, in relation to services on the 118 range, above the regulatory caps that we are imposing on services on the 09 range. If there is SP demand, they may also be used to provide more variety in the availability of different price structures (for example ppc structures, which have very low call volumes on the 084/087 ranges and are only used to a relatively limited extent on 09 and 118) and for a wider range of price points within the 67 we have identified (we are aware, for example, that there has been interest expressed in a zero SC price point for 084 calls).[191]

A3.49 As noted, a number of those responding to the April 2013 policy position expressed general concern as to how negotiations would result in a defined set of price points made available from all OCPs. TNUK, in particular, said that Ofcom had not explained how price points which were above or differed from current prices would be set and suggested that this omission would incentivise OCPs to set as many price points as possible at the lower end of the scale. In addition, TNUK, Vodafone and participants in NGCS Focus Group meetings, have flagged the risk that any exchange of data between CPs in order to secure a single set of SC price points may give rise to competition issues.

A3.50 We accept that the principles we set out in the April 2013 policy position for identifying SC price points are of more limited application when it comes to setting price points for which there are no existing call volumes. Further, relying on bilateral commercial negotiations to identify new price points which are likely to be made available by OCPs may be a slow and uncertain process which may adversely affect the timely implementation of the unbundled tariff. The perceived risk of potential competition law implications emerging from the process may also contribute to the uncertainty and potential for delays.

A3.51 We have therefore given further thought to how the negotiation process might be facilitated, in a way that:

- addresses these concerns about certainty and competition law compliance;
- enables the interests of SPs, TCPs and OCPs to be taken into account; and
- secures a set of new price points which, in accordance of GC17.32, are a fair and reasonable reflection of the range and volume of requests from other providers.

A3.52 Our response is informed by representations that have been made by TNUK as to how this might be achieved in their consultation response. As set out at paragraph A3.33, TNUK has proposed a formalised process, whereby SPs submit requests for SC price points to Ofcom and these are circulated in anonymised form to TCPs and OCPs for the purposes of their negotiations. While we consider that the iterative nature of the process put forward by TNUK is potentially complex and uncertain, we consider that the intervention of an independent third party in the SC negotiation process has merit.[192]

A3.53 Specifically, we think there is an advantage in having an independent body receiving and processing requests from SPs and TCPs in relation to the SC price points they are seeking. Any such request should be accompanied by the

[191] See paragraph A19.156 in Part B, Annex 19 of the April 2013 policy position.
[192] In a similar vein, we note that a paper on the setting of SC price points put forward to the October 2013 NGCS Focus Group proposed a voting mechanism carried out under the auspices of an independent arbitrator.

TCP/SP's best estimate of the likely demand for the service it is proposing to provide at that price point – an assessment that we would expect any commercial operator to undertake before launching a new service. The independent body will then be in a position to aggregate these requests and thereby identify the SC price points for which there is likely to be most demand (both from SPs and consumers). Where there are requests for very similar price points or for price points which are very similar to the SC price points already available, the independent body may find it appropriate to make use of the principles we have applied to carry out an exercise similar to our rationalisation of existing prices.

A3.54 On completion of this exercise, the independent body would publish a proposed set of price points which, on the information available, appear likely to meet the requirement in GC17.32 to set SC price points which reflect on a fair and reasonable basis the SC rates proposed by other providers, taking into account the volume and range of such requests. In line with our approach to determining SC price points from current call volumes and outpayments, we consider it would be appropriate for the independent body to make this assessment range by range so as to ensure that, to the extent practicable, the price points proposed reflect demand on each range (rather than predominantly one). The information published could also be accompanied by an indication of potential demand on these price points (based on aggregated information provided by TCPs/SPs), without disclosing specific details of individual services that may be provided on them.

A3.55 OCPs then have an opportunity to submit representations on the proposed list, for example if they have concerns related to bad debt and fraud about price points at the higher end of the range. Having considered these representations and made any adjustments it considers appropriate as a result, the independent body would then publish its final set of price points which it considers are likely to enable OCPs to discharge their regulatory obligations. It will remain open to OCPs to set alternative price points if the evidence available to them demonstrates that these will be a better reflection of the volume and range of demand for SCs from other providers.

A3.56 The advantage of this approach is that it streamlines the process for identifying a single set of price points which are likely to be made available by all OCPs It avoids the risk of potentially unlawful information exchange between competitors and takes due account of the interests of all parties in the SCs that are set. Accordingly, we consider a mechanism of this nature would address the concerns which stakeholders have raised about the setting of new SC price points. We consider that this process could also be used after implementation to review on-going demand for SC price points and proposed replacements.

A3.57 We do not think it necessary for Ofcom to be the independent body to carry out this role. We consider that there are likely to be other organisations, independent of SPs and CPs, with the appropriate skill set and systems for handling and safeguarding commercially sensitive information, which would be able to carry out this function effectively and efficiently.

A3.58 We expect industry to take the lead in identifying an appropriate body and establishing a mechanism of this nature. We will continue to work with stakeholders during the implementation phase to provide assistance and guidance where appropriate. If it appears that industry discussions are not progressing sufficiently during the implementation period, we will look again at the need for further regulatory intervention.

Other issues in relation to SC price points

A3.59 EE continues to argue that the SC price points should be set in the Numbering Plan. We explained in paragraph A21.161 of the April 2013 policy position our reasoning for rejecting the option of reflecting the SC price points in the Numbering Plan. Our view remains that, even if a change to the Numbering Plan was only needed when one of the SC price points needed to be deleted and replaced, this approach could unduly restrict SPs pricing flexibility and would risk restricting the potential for innovation and competition by not offering sufficient speed in responding to market developments.

A3.60 Similarly, TNUK has argued that Ofcom should provide final approval of the list of SC price points. We remain of the view, however, that it is unnecessary for Ofcom to directly approve the final list of SC price points. As set out above, we have provided (at Annex 4) guidance in relation to the 67 SC price points that we consider are likely to satisfy the obligations of CPs under GC17.31 and GC17.32, based on our assessment of current prices and call volumes. We have also outlined a process for determining the remaining price points that CPs must have in place in order to fulfil their regulatory obligations. Ultimately, however, as we note above, SC price points should reflect the needs of SPs and CPs and the interests of consumers and this is most likely to be achieved if industry retains final responsibility for deciding the individual SC price points that are needed.[193]

A3.61 Nonetheless, as we said in the April 2013 policy position, it will be open to parties to approach us if they consider that an OCP is in breach of their obligation to ensure their 100 price points reflect on a fair and reasonable basis the price points proposed to them (taking into account the volume and range of those proposals). We have powers to resolve disputes relating to the rights and obligations imposed by a general condition, and to investigate compliance with general conditions on our own initiative.[194]

A3.62 Vodafone suggested a legal mechanism by which Ofcom could “underpin” the final selection of SC price points. We have responded to, and rejected, Vodafone’s proposed legal framework in Annex 7.

Stakeholder comments on other unbundled tariff issues

A3.63 We received comments from stakeholders on the following:

- the single access charge requirement;
- In relation to the service charge:
  - o the level of the 09 SC cap;
  - o implementation and review of the higher 09 SC cap;
  - o the decision not to cap the 118 SC;
  - o interaction between the SC price and mobile voice shortcodes;
  - o the number of SC price points; and

[193] See paragraph 9.123 in Part B of the April 2013 policy position.
[194] See paragraph 9.130 in Part B of the April 2013 policy position.

  - o SC call rounding.

- assumed handover point and transit arrangements;
- application of the unbundled tariff to business consumers;
- application of General Condition 9.6; and
- access to numbers.

Single access charge

April 2013 policy position and stakeholder comments

A3.64 In the April 2013 policy position we provisionally concluded that regulation should require that OCPs should only have one AC per tariff package and would not be permitted to vary that AC by number range. As part of that document we set out our response to a number of stakeholder comments and concerns on this issue. These comments included concerns from EE about the potential for a higher AC if it applied to all unbundled tariff number ranges because of the higher bad debt risk, the PCA requirements on the 09 range, the difference in calling patterns between the 084/087 and the 09/118 number ranges, and the potential for consumers to distinguish between the different types of number ranges which it argued made a single AC unnecessary and undesirable.[195]

A3.65 In their response to our April 2013 policy position, EE made a number of new points, and also expanded on particular points of their previous arguments. In particular, it said that the proposed restriction was not 'legally valid' because, in its view, we had failed to demonstrate that it was necessary for the protection of consumers. In summary EE argued that:

- we have overestimated the price awareness benefits of a single AC, particularly given our revised assessment of the awareness of 09 callers;
- that our assessment was not consistent with the assessment of the option for ACs to vary between tariff packages; and
- we have not adequately assessed the impact on pricing efficiency.

A3.66 We have set out EE arguments and our response on each of these issues in turn below.

Price awareness

A3.67 In the April 2013 policy position we said separate ACs would make it harder to be aware of prices compared to a single AC which applied to all number ranges – in particular we highlighted the likelihood of a single AC being more memorable to consumers and the risk that additional complexity introduced by having more than one AC would undermine that memorability.[196] Although we recognised that there

[195] See paragraphs A20.16 to A20.91 in Annex 20, Part B of the April 2013 policy position.
[196] We had previously set out a significant range of evidence (in Annex 8 of the April 2012 consultation and Annex 8 of the April 2013 policy position) indicating how as tariffs become more complex, consumers struggle to make informed subscription and/or calling decisions.

were potential price efficiency benefits from having two ACs,[197] improving consumer price awareness was central to our concerns about the retail market for calls to non-geographic numbers. Therefore, we placed more weight on the risk that two ACs could materially reduce price awareness than we did on the risk that a single AC could lead to less efficient pricing.[198]

A3.68 EE argued in its latest response that we have overestimated the likely price awareness benefits of a single AC. In particular it commented that:

- our assessment did not take into account our updated view that the price awareness of 09 users was actually relatively accurate and that the risk of poor price awareness / bill shock on the 118 range was relatively low, which meant that the lack of price awareness was causing limited consumer harm on these ranges; and

- consumers were not necessarily aware that all 084/087, 09 and 118 numbers fell within the definition of non-geographic numbers and that they would be charged in the same way – it reiterated its arguments that consumers were already familiar with prices varying between 084/087 calls, 09 calls and 118 calls. It also argued that consumers would already have to understand that other non-geographic calls (e.g. 080, 03) were not covered by the AC; and

- EE also said it was confident that Ofcom and the industry would be able to find a way to describe an unbundled tariff concept where the AC was linked to the number dialled in no less an efficient way than where the AC was the same across the number ranges in each tariff package. It failed to see how the inclusion of a single extra word (i.e. the relevant number range) to the phrase "your company's access charge" made the message any way materially more complex.[199]

A3.69 We recognise the case for a single AC involves a degree of judgement as there are conflicting considerations. Allowing two ACs would offer OCPs more pricing flexibility and the impact on price awareness in 084/087 and 09/118 is not certain given consumers' apparent ability to distinguish between these number ranges. However, we continue to consider there is a risk that separate ACs could undermine the effectiveness of the unbundled tariff, which relies on consumers learning the broad level of their AC over time. We consider this is more likely to occur in a situation in which consumers are presented with a single AC when taking out a subscription and on their bill subsequently, and we are concerned that presenting consumers with two ACs may reduce their ability to remember the broad level of even one of these. We recognise it is difficult to know how great this risk is because it depends on how the unbundled tariff works in practice and, in particular, on how easily consumers are able to learn and recall one AC compared to two. Nonetheless, given its potential implications for the success of our intervention, we place significant weight on this risk.

A3.70 With regard to EE's comment on price awareness and resulting levels of consumer harm in 09 and 118, we consider this relates more to our assessment of the case

[197] We noted at paragraphs 9.22 - 9.24 of the April 2013 policy position that these may not be material given (i) the potential for separate ACs to undermine the transparency objective and (ii) the greater competition we expect to materialise between CPs under the unbundled tariff with a single AC.
[198] See paragraphs 9.16 to 9.17 in Section 9 and A20.16 to A20.89 in Part B of the April 2013 policy position.
[199] EE, April 2013 policy position response, pp.51-53 and 57-58.

for unbundling these number ranges than it does the case for a single AC. Even if callers were broadly aware of prices on these number ranges under the status quo (as we consider may be the case for 09 callers - but not 118) it would not necessarily affect our concern that having two separate charges may reduce the ability of consumers to recall the broad level of the relevant AC or their understanding of the unbundled tariff more generally. We consider 09 callers may be broadly aware of 09 prices largely because PPP requirements mean pricing information must be included in all promotional material for 09 numbers and our survey evidence suggests the majority of callers will have this information available at point of call (see Annex 2 for more detail on this). As we do not expect the AC to be available at point of call but rather for it to be something that callers learn over time, we do not consider there to be a clear link between current broad awareness of 09 prices (to the extent this exists) and the ability of consumers to distinguish and remember two separate ACs. We consider consumer price awareness of 118 is likely to be poor for the reasons set out in Annex 2.

A3.71 We have previously acknowledged that consumers are able to distinguish between the 09/118 ranges and the 084/087 ranges, and continue to recognise this is likely to be the case.[200] We also recognise that consumers do not necessarily understand that 08, 09 and 118 numbers all fall within the definition of 'non-geographic numbers'. However, we have set out significant evidence in our previous consultations that there is confusion about the price of calls to these numbers in general and a key factor in addressing this confusion is simplification of the charging system to enable greater price awareness. We remain of the view that introducing a simpler charging system in the form of a single AC is likely to be more effective at addressing this confusion and improving consumer price awareness. We also consider the risk of consumers being unable to recall the relevant AC clearly at the point of call, or being able to compare ACs between providers, is likely to be lower under a single AC. Regardless of the fact that consumers may not currently associate these number ranges with each other, comparing and recalling a single ppm AC is necessarily simpler, and will therefore be easier for consumers. Given the importance that consumers are able to recall and compare the relevant AC in this way to the success of the unbundled tariff, we place significant weight on this.

A3.72 In terms of the other examples of non-geographic numbers that are not included within the unbundled tariff, we consider the examples EE highlights are unlikely to be confused by consumers with the ranges that will be subject to the unbundled tariff. The 03 range will clearly be associated with the 01 and 02 ranges (as it is currently in pricing plans published by all OCPs) and the 080 range is one of the most recognised non-geographic number ranges, with a significant proportion still recognising that the range as 'Freephone' (albeit that its recognition has significantly dropped in recent years).[201]

A3.73 Finally, EE argues that the pricing message will not necessarily be more complex, because SPs can simply refer to the "09 access charge" or similar and it also suggests that if two ACs were listed on consumer's bills it would be sufficient to ensure consumers were aware of the different ACs. We consider, however, that because consumers will not have the AC in front of them at the point of call, it is very important to the success of the unbundled tariff in improving price awareness that consumers are able to remember at least the broad magnitude of the AC. We consider this is significantly more likely with a single AC. If the pricing message has

[200] See paragraph A20.30 of the April 2013 policy position.
[201] See paragraph 4.29 in Part A of the April 2013 policy position.

to identify which specific AC is relevant to the call, consumers would need to remember, or have a sense of, not just one AC but two and the number ranges to which they each apply. As we have previously indicated, there is also a risk that the additional complexity introduced by having two ACs could undermine consumers' capacity to recall either AC clearly, even on the number ranges they call more frequently.[202]

Consistency with assessment of allowing the AC to vary between tariff packages

A3.74 EE said it could not discern the reason why Ofcom had decided that price awareness benefits from a single AC between tariff packages were limited, but had come to the opposite conclusion when considering the same restriction within tariff packages. It argued that Ofcom had no empirical evidence on this point and there was no logical distinction to be drawn between the two. EE considered that Ofcom had failed to apply its tests consistently across the two issues (varying the AC within a tariff package compared to varying it between tariff packages) and that we should have taken as our base case the non-interventionist position where OCPs were permitted flexibility to set ACs which reflected current margins on the different call types rather than assuming that an artificially created scenario of a single AC was the risk-free neutral base case.[203]

A3.75 We consider there is a logical distinction between our decisions to require a single AC within a tariff package and to allow different ACs for different tariff packages, and between the price awareness considerations of each scenario. Because of the requirement to publish the SC in any advertising or marketing of an unbundled tariff number,[204] it is likely that a consumer making a call to a particular service provided on a non-geographic number under the unbundled tariff will generally have the SC available in front of them.[205] That is less likely to be the case for the AC, which will not be included in the SP's advertising of the unbundled tariff number. The consumer therefore will need to either remember their AC, or at least have a sense of its broad magnitude. However the consumer does not need, at the point of call, to have an understanding of the cost of ACs for other tariff packages. The comparison between different ACs applicable to different tariff packages only occurs when, for the purpose of entering into a call plan, the consumer is deciding which set of tariffs on offer best meets his or her calling requirements (and we are imposing certain transparency obligations on OCPs in relation to the AC to ensure consumers can make appropriate comparisons in this respect). We therefore disagree that there is inconsistency between our assessment of these different options as they inform different consumer decisions in different situations.

Assessment of pricing efficiency

A3.76 EE made a number of comments on our assessment of the single AC under our 'efficient prices' assessment criterion, in particular:

3.76.1 EE considered that we should have approached our assessment by taking as the non-interventionist base case the situation where OCPs would be

[202] See paragraphs 9.16 to 9.17 in Part B of the April 2013 policy position.
[203] EE, April 2013 policy position, pp.53-57.
[204] See GC14.10-14.11 at Annex 7 and the non-provider numbering condition at Annex 12.
[205] In our 2011 Consumer survey, (question GL14) – 65% of callers said they obtained the telephone number for the last company or public organisation they caller from a source which would, under our requirements in relation to the promotion of the SC, present the level of the SC alongside the number (for example on the SPs website, a leaflet from the SP, a TV, radio or print advertisement by the SP).

permitted flexibility to set separate ACs in line with the difference between the current OCP margins on the different call types and that any intervention carried a high risk of regulatory failure.[206] It said that Ofcom had instead turned the test on its head and wrongly assumed that an artificially created and mandated scenario of having a single AC across all unbundled tariff numbers was the risk-free neutral base case;[207]

3.76.2 EE said we had placed inappropriate weight on the extent of difference in bad debt levels between the 084/087, 09 and 118 ranges. Whilst it recognised there was higher bad debt on the 09 range it considered there were much wider commercial reasons why, in a competitive retail environment, OCPs had typically chosen to recover higher ppm margins on the high SP charges and lower volume 09 and 118 calls compared to the lower SP prices and higher volume 084/087 calls. It also noted that recovery of margins on a cost plus percentage basis was the way in which Ofcom currently designed all of its charge controls for SMP products. It therefore considered it was inconsistent for Ofcom to suggest that this approach was somehow inefficient in the present case;

3.76.3 EE considered that it was highly inappropriate and *ultra vires* for Ofcom to be considering imposing retail tariff principles that were directed towards improving credit management practices;[208]

3.76.4 It argued that we had failed to adequately reflect in our analysis the fact that the evidence on consumer price awareness on the 09 and 118 ranges (i.e. that callers of these ranges may be relatively price aware) gave no basis for Ofcom's concerns that the current higher levels of OCP margins on 09 and 118 calls exploit a lack of consumer price awareness on those ranges; and

3.76.5 It argued that Ofcom should consider all the potential costs of the restriction, in particular the impact on the tariff package effect. It said the single AC requirement might mean OCPs were not able to set an AC which allowed them to recover fully their previous higher margins on 118 and 09 calls and this could flow through to consumers. EE expected that cost to consumers was likely to reach many tens of millions of pounds per annum. It considered Ofcom's presentation of the cost as the increase on the 084/087 AC tended to understate the cost of that risk.[209]

A3.77 Taking EE's points in turn, we did not claim that a single AC was a 'risk-free neutral base case' as EE indicates. We recognised that allowing the AC to vary by number range might enable greater price efficiency, and we also recognised that requiring a single AC could lead to it being set at a higher level than a separate AC for 084/087 calls (albeit we considered that our estimates potentially overestimated the likely increase).[210] We considered, however, that the price awareness benefits from a single AC outweighed these potential risks in relation to pricing efficiency. Part of our assessment did therefore involve a consideration of allowing OCPs to continue with current pricing practices in relation to the AC. In all previous consultations on

[206] i.e. that 084/087 calls were typically charged as low margin/cost and high volume/duration calls, whereas 09 and 118 calls were typically currently current as high margin/cost and low volume/duration calls.
[207] EE, April 2013 policy position response, pp.57-58.
[208] EE, April 2013 policy position response, p.57.
[209] EE, April 2013 policy position response, pp.57-58.
[210] See paragraphs A20.78 to A20.89 in Annex 20, Part B, of the April 2013 policy position.

this issue we have compared the option of allowing the AC to vary within the tariff package with an option where it is not allowed to vary by number range.[211]

A3.78 We have previously provided detailed comments on the differences in bad debt levels on the different number ranges because this was one of the key concerns that was raised by several stakeholders in relation to our proposal to set a single AC. We have also previously recognised that there are other factors which have led CPs to recover margins differently on the different call types, including differences in the elasticity of demand.[212] We have not rejected a 'cost plus percentage' model as being inefficient per se in this case, and as noted in the paragraph above, we have recognised that this type of model might potentially enable greater price efficiency. However, we have emphasised that in order for such efficiency arguments to be valid, consumers must be price aware and take price differences into account in making their calling decisions. On balance, we consider that this is less likely to be the case where there is more than one AC, given the significant evidence, as we have presented at length in our previous consultations,[213] that when tariffs become complex, consumers struggle to make informed subscription and/or calling decisions.

A3.79 In response to EE's comments about the single AC requirement being directed towards improving credit management practices, this is not the aim of the requirement nor has it been a driving factor in our assessment. As we have said, the improvement of consumer price awareness for calls to non-geographic numbers was central to our analysis and the risk of compromising that objective was a matter on which we placed significant weight in deciding that a single AC per tariff package was necessary. We have therefore set the tariff principle of having an AC which does not vary by unbundled tariff number range in GC17 for consumer protection purposes in accordance with our powers in section 58(1)(aa) of the Act. We referred to improvement in credit management practices as being a potentially beneficial outcome but this was specifically based on the reasoning that, in a fully competitive environment where consumers were fully aware of prices for these calls, competition would ensure that there were incentives on retailers to minimise credit management costs in order to offer the lowest charges.[214]

A3.80 EE commented that our updated analysis of price awareness on 09 provided no basis for our concern that current high margins on 09 and 118 were driven by a lack of price awareness. In the April 2013 policy position we said that difference between our estimates of a single AC and a separate AC for 09/118 suggested the difference was not solely due to differences in the cost of managing bad debt, and that we were therefore concerned that allowing OCPs to reflect cost differences in their ACs might not result in more efficient prices.[215] We also said that evidence of consumer price confusion meant it was possible that any difference in ACs would be set to

[211] For example, when we first discussed these issues in the December 2010 consultation, we presented two specific options, setting no tariff principles on the AC (and thereby allowing the market to determine how to set their ACs) or setting tariff principles on the AC which prevented it varying by number range. See paragraphs A5.19 to A5.63 of the December 2010 consultation.

[212] See paragraphs 10.76 to 10.81 of the April 2012 consultation,

[213] For example Annex 8 of the April 2012 consultation and Annex 8 of the April 2013 policy position.

[214] For example see paragraph 10.68 of the April 2012 consultation. In addition we referred to the potential for improved credit management practices from increased competition in paragraph 9.23 of the April 2013 policy position.

[215] Paragraph A20.39 – A20.40, April 2013 policy position.

exploit consumers' lack of price awareness rather than to reflect consumer preferences.[216]

A3.81 However, our main point was that we considered that setting two ACs would reduce consumer price awareness relative to a single AC and that, because of this, having two separate ACs may not fully reflect differences in elasticities.[217] We also said that, because pricing efficiency arguments assumed consumers had good price information, we placed less weight on a potential or theoretical improvement in pricing efficiency that was achieved at the expense of price awareness.[218] We have taken our updated assessment of the price awareness on 09 into account when assessing the impact of two ACs, and continue to consider it would be likely to reduce price awareness relative to a single AC. As a result, we continue to consider our conclusions on pricing efficiency appropriate.

A3.82 We responded to a submission from EE about the potential for OCP margin loss in paragraphs A20.70 to A20.71 of the April 2013 policy position. EE's latest response provides no further reasoning or evidence which would lead us to change the position we set out there – in particular it provided no further explanation as to why OCPs would not be able to set an AC which would allow them to maintain current margins. Our analysis of the impact of a single AC on pricing efficiency considered the level of the AC that would be needed to ensure overall margins were maintained such that there would be no negative TPE from requiring a single AC. We recognise there may be some reduction in overall OCP margins if the greater transparency and price awareness brought by the unbundled tariff leads to a reduction in the AC below this level. However, as we noted in the April 2013 policy position, we see any rebalancing of tariffs from downward pressure on AC margins as a result of improved transparency and a consequent encouragement of competition, to be beneficial to consumer welfare because prices as a whole will better reflect consumer preferences.

Conclusion on the single AC requirement

A3.83 EE's comments have not led us to revise our assessment that a single AC per tariff package applying to all the unbundled tariff number ranges is appropriate, as set out in the April 2013 policy position. We have implemented this decision by setting a tariff principle to this effect in GC17.25.

Stakeholder comments on the Service Charge requirements

Level of the 09 SC cap

A3.84 EE raised concerns about what it considered to be a lack of evidence of demand for higher caps, the risk of prices clustering at the caps, and whether the higher caps would lead to increase fraud and bill shock.[219] We responded to EE's arguments in paragraphs A22.149 and A22.152 of the April 2013 policy position and EE have not raised any substantively new points. We recognise that there are some risks attached to higher 09 price points. However, our assessment indicates that the caps we have decided on strike the right balance between the need to ensure service quality, variety and innovation while protecting consumers from fraud and bill shock

[216] Paragraph A20.73, April 2013 policy position
[217] Paragraphs A20.72 - A20.73 and A20.76, April 2013 policy position.
[218] Paragraphs A20.61 and A20.73, April 2013 policy position.
[219] EE, April 2013 policy position response, pp.66-68.

and mitigating the risk of bad debt.[220] We have previously highlighted that there are various PPP measures in place to help prevent fraud and bill shock, which in turn should mitigate bad debt risks.[221] We consider that these measures serve to reduce fraudulent practices as a whole, whether they directly impact consumers or not. PPP indicated in its response that it will be considering whether further consumer protection mechanisms would be appropriate and we will continue to work with them closely on this.[222]

A3.85 BT reiterated its comments that in the mobile sector (i.e. SMS and mobile voice shortcodes), no such price caps applied and therefore the playing field was heavily tilted in favour of the mobile operators.[223] It continued to argue that the principle of technological neutrality had not informed Ofcom's approach in this case and it considered we had not fully addressed this point. We responded to BT's arguments in the April 2013 policy position.[224] We consider that our assessment has taken into account the principle of technological neutrality and that there are justified reasons in this instance for different regulatory approaches.

Earlier implementation and timing for review of the 09 SC cap

A3.86 BT[225], AIME[226], Channel 5 and [✂] all indicated concerns about the potential damage to the market, including competitive distortions between the fixed and mobile sectors, from the delayed implementation of the higher 09 cap. Both AIME and BT reiterated their arguments that there was scope for an immediate introduction of higher price points and said that options had since been presented to Ofcom which would ensure that consumer harm was avoided ahead of the implementation of the unbundled tariff.[227] Furthermore, AIME[228] and BT[229] continued to argue in favour of periodic reviews of the level of the 09 SC cap.

A3.87 We set out in the April 2013 policy position our reasons why we consider it would be inappropriate to raise the 09 cap ahead of the implementation of the unbundled tariff and we do not consider stakeholders have raised any new points in their response which would lead us to change our position. We also responded directly to BT and AIME with our reasons for why their options for earlier implementation would not meet our objectives. With regards to the arguments about the review of the SC cap, we refer to our response to these points in the April 2013 policy position.[230]

Decision not to cap the 118 SC

A3.88 EE also argued that an SC cap was required on the 118 range to promote accessibility.[231] There were, however, a number of competing factors supporting

[220] Paragraphs 9.96 to 9.99 of the April 2013 policy position - we set out our assessment in more detail, including our response to stakeholder comments on this issue, in Annex 22, paragraphs A22.112 to A22.160.
[221] See paragraph A22.177 for details of processes PPP applies to regulate the PRS industry.
[222] PPP, April 2013 policy position response, p.3.
[223] BT, April 2013 policy position response, p.22.
[224] See paragraph A22.50 and A22.157 of the April 2013 policy position.
[225] BT, April 2013 policy position response, p.15.
[226] AIME, April 2013 policy position response, p.2.
[227] BT, April 2013 policy position response, p.23.
[228] AIME, April 2013 policy position response, p.3.
[229] BT, April 2013 policy position response, pp.15-16, and p.24.
[230] See paragraphs A22.169 to A22.174 of the April 2013 policy position.
[231] EE, April 2013 policy position response, p.68.

our view that a cap on the SC for 118 numbers was not required. As we explained in the April 2013 policy position the criterion of 'access to affordable DQ services' was not central to our original proposal to impose a cap and submissions we have received in relation to that consideration subsequently are not sufficient to override our reasons for not doing so.[232]

Interaction between SC price and mobile voice shortcode prices

A3.89 Channel 5 was concerned that if it kept all its current platforms for accessing its services available to viewers and keep the SC the same across those platforms it would have a negative impact on viewers wishing to use 09 because they could be charged considerably more for the same service being accessed by a mobile voice shortcode ('MVSC') call or SMS due to the additional AC amount. It was concerned that this was likely to lead to bill shock.[233] [✂] noted similar concerns.

A3.90 It will be a commercial decision for SPs as to whether they want to continue offering access to services through both 09 numbers and MVSCs, as well as whether they choose to offer an SC which is the same as the MVSC amount. We note that some MVSCs and SMS pricing models adopt an approach where the pricing message is similar to the unbundled tariff in any case (e.g. "This text cost 10p plus your standard network rate"). The AC will separately be advertised to the consumer by their OCP (see Section 3 where we set out the transparency obligations applying to OCPs in relation to the AC) and therefore we consider the risk of bill shock will be minimised.

Number of SC price points

A3.91 Three continued to disagree with Ofcom's view that 100 price points were required.[234] TNUK also disagreed and commented that because much of the cost data had been redacted from the April 2013 policy position it had been unable to respond to Ofcom's analysis.[235]

A3.92 We note TNUK and Three continue to disagree with our assessment of the number of SC price points. Our assessment of the appropriate minimum number of price points has been based on the responses to the April 2012 consultation, engagement with industry through working groups and bilateral discussions, current use of existing tariff price points for non-geographic number ranges as well as the cost information submitted by stakeholders. Using that information we came to the view that a minimum of 100 price points was appropriate.[236] Individual cost data submitted by stakeholders were, by necessity given its commercial confidentiality, redacted from the April 2013 policy position but aggregated cost estimates were published.[237]

SC call rounding

A3.93 BT said that, whilst Ofcom had set out duration rounding rules (to the nearest second), it had failed to consider the issue of price rounding for the SC. It believed that must be included within the final statement, or specific guidance provided

[232] See paragraph A22.96 – A22.97 of the April 2013 policy position.
[233] Channel 5, April 2013 policy position response, p.4.
[234] Three, April 2013 policy position response, pp.24-25.
[235] TNUK, April 2013 policy position response, p.10.
[236] Our reasoning was set out in paragraphs A21.122 to A21.127 of the April 2013 policy position.
[237] For example see paragraph A10.45 in Part A of the April 2013 policy position.

during the implementation phase to ensure rounding worked correctly in the new regime.

A3.94 We recognise that we have not provided specific guidance or set any requirements relating to the price rounding of the SC. We have set out specific rules on the duration rounding of the SC in order to provide some consistency for how it is billed by OCPs.[238] As we noted in the April 2013 policy position we have not specified the exact methodology for this rounding approach (beyond a requirement for it to be rounded up to the nearest second) because we noted that existing wholesale interconnect contracts had been able to establish rounding approaches without the need for Ofcom intervention and therefore it did not seem necessary for Ofcom to set more detailed requirements.[239] We consider the same reasoning applies to the duration rounding of the SC. We recognise that consistency of approach across the industry will be beneficial and we believe this should be one of the issues which is considered as part of the CP working groups which will be held during the implementation period.

A3.95 TNUK noted concerns about the different rounding methodologies being applied to the AC and SC as proposed in GC17.27. It said it accepted why a single rounding methodology had to be applied to the SC but it strongly objected to the proposed wording of GC17.27 because it allowed OCPs to round the AC to the next minute, not just for the first minute but also for every subsequent minute. TNUK considered that this discrepancy could clearly be both harmful and extremely confusing to consumers, for example a 2 minute 12 second call could have a SC billed for that specific amount of time but an AC billed for 3 minutes. It believed that it would be incomprehensible to any normal consumer (as well as to the OCP customer service agents that might have to explain the call charges to any customer who queried them) that the AC was rounded to the minute but the SC was charged per second. It was concerned that Ofcom had not fully considered the practical implications in this particular case nor the problem of consumer expectation regarding rounding of the calls (which it noted Ofcom had highlighted in relation to the SC but not in relation to the AC). In addition it considered it was fundamentally inequitable that different rounding rules should entitle OCPs to continue to generate revenue from NGCs when the call had ended when the SP had stopped charging for the service actually being provided. TNUK asked Ofcom to reconsider this point.[240]

A3.96 We have considered TNUK comments carefully but remain of the view that it is not necessary to mandate a common approach to rounding for the AC and the SC. We have set separate tariff principles in respect of the rates at which each of them may be charged: the AC must be set at a ppm rate while the SC may be set at a ppm, ppc or at a combined ppc/ppm rate.[241] As a result the charging structures of each within a retail price for a call to an unbundled tariff number may be quite different. Furthermore, while the same AC must be applied to calls made by the consumer to any unbundled tariff number (unless they are within the terms of a bundle of inclusive calls), each unbundled tariff number will have its own individual SC. Thus, while the total of the AC and the SC comprises the retail price of a call to an unbundled tariff number, they are, intentionally, distinct charges, enabling the consumer to distinguish between, respectively, the cost of making the call and the cost of the service called. Given this, we do not consider that a single methodology for rounding each charge is required to avoid consumer confusion.

[238] See General condition 17.28 in Annex 8.
[239] See paragraph A25.166 in Part B of the April 2013 policy position.
[240] TNUK, April 2013 consultation response, pp.8-9.
[241] See, respectively, GC17.25(b) and GC17.26(d) at Annex 8.

A3.97 In terms of consumer understanding of rounding, there are different considerations which apply to each of the AC and SC, which we set out at paragraphs 10.50 – 10.52 of the April 2013 policy position and which we consider justify the different approaches we have taken in relation to each. To clarify the position in relation to the AC, the OCP may round up the first minute of a call. It may also round up every subsequent minute if that is the rounding approach that it takes for calls of an equivalent length to a geographic number.[242] Therefore, contrary to TNUK's submission, apart from the first minute of the call, rounding of the AC is only permitted if that is the OCP's charging approach for geographic calls. We consider that securing consistency between the rounding approach taken by the OCP for geographic calls (which the consumer is likely to make more frequently) and the rounding of the AC will help to reduce the risk of consumer confusion rather than the reverse.

A3.98 Such an approach is not possible for the SC, given the requirement that the same SC must apply across all OCPs and different OCPs are likely to have different approaches to rounding geographic calls. In order to secure a common approach to the rounding of calls for the purpose of calculating the SC element of the call, we have made it a requirement that the length of the call can only be rounded to the next second for the reasons elaborated at paragraphs 10.51 to 10.52 of the April 2013 policy position. As we noted there, an SP may be able to achieve an outcome equivalent to rounding to the next minute in any event by selecting a price structure which combines a ppc and ppm rate.

Application of the unbundled tariff to business consumers

A3.99 FCS said it was concerned that the new requirements would only apply to consumers. It was concerned that the difference in the rules for residential and business customers would make the negotiation of commercial terms within the supply chain more difficult as it would not be possible to determine whether the caller was a business or residential client. It also noted that implementation and compliance with the requirements for provision of pricing information by service providers would also be far more complex.[243] Vodafone similarly noted that the SC regime at the wholesale level needed to apply uniformly to all call termination to a given number range. It noted that Ofcom had already clarified that 'bespoke' termination charges based on the identity of the OCP would be prohibited but it said Ofcom also needed to confirm that while the retail requirement to support unbundled tariffs may be confined to consumers, the resultant wholesale SC applied equally to all traffic irrespective of whether the caller is a 'consumer' or a business customer.[244] It said limiting the regulation to residential consumers-only left the door wide open to discrimination according to traffic type and origin and allowed BT to position itself as a controlling billing hub by occupying the position of sole entity able to identify the origination of transit traffic. It noted this risked leading to a repeat of the previous series of disputes on ladder termination rates.[245]

A3.100 As we highlighted in the April 2013 policy position, the legal powers we are using to implement the tariff principles for the unbundled tariff are specifically reserved for the purposes of consumer protection. Therefore whilst we recognise the concerns put forward by Vodafone and FCS, we do not have the power to extend the requirements to business customers. As we highlighted in the April 2013 policy

[242] See GC17.27(b) at Annex 8.
[243] FCS, April 2013 policy position response, p.2.
[244] Vodafone, April 2013 policy position response, p.15.
[245] Vodafone, April 2013 policy position response, p.18.

position, separating out business consumer calls in wholesale billing systems is likely to generate additional costs and therefore it seems plausible that CPs are likely to adopt a consistent charging approach. We recognise, nevertheless, that there is a risk that some CPs may seek to adopt differing charging structures for these call types. In assessing whether an OCP was entitled to a termination rate for a business call to a particular number range which was different from the established SC for a consumer call (for example any greater retention on that SC) an OCP would need to demonstrate that originating that business call generated additional costs. From our understanding of the cost of originating such calls, it seems unlikely that there would be evidence to justify differences in cost, although we would of course consider any such evidence presented in the event of a dispute on this issue.

A3.101 In terms of the compliance with publication requirements of the SC, it will be down to individual SPs to determine whether their advertising or promotional material of an unbundled tariff number is connected with the provision of a service to consumers and therefore whether they are caught by the requirement to advertise their SC. We note that other advertising requirements are specific to residential consumers in the same way, for example the requirement to advertise prices inclusive of VAT does not apply where the advertising is primarily aimed at business users.[246]

Assumed handover point and transit arrangements

A3.102 Vodafone said one of its key concerns over the wholesale arrangements proposed for the new regime related to the potential removal of a regulated single transit service and BT's ability to leverage market power in transit to gain wider competitive advantage, particularly in the NGCS hosting market. It said Ofcom's proposals to make the TCP responsible for all the NGCS traffic types would make the problem more pronounced – it anticipated that the inclusion of 0844 and 0871 calls alone would increase the number of NGCS transit minutes [✂]. It said if the reforms were to be a success it was imperative that Ofcom ensured a level playing field from the outset.[247]

A3.103 We have responded to Vodafone's arguments in our narrowband market review statement.[248] We noted there that we expected the impact of our changes to non-geographic calls on the single transit market to be limited. In particular we said this meant that, even if the volume of non-geographic calls increase, we would not expect a significant change in the nature of competition in the provision of single transit services.

A3.104 Magrathea noted that it continued to disagree with Ofcom that the assumed handover point ('AHP') should be the point of interconnection nearest the call origination.[249] We responded to similar comments from Magrathea on the AHP in the April 2013 policy position (see paragraph A23.13). Whilst we note Magrathea continue to disagree with our position, it has not raised any new arguments which lead us to change our view.

[246] For example clause 3.18 of the CAP non-broadcast advertising Code states that "VAT-exclusive prices may be given if all those to whom the price claim is clearly addressed pay no VAT or can recover VAT…". http://www.cap.org.uk/Advertising-Codes/Non-broadcast-HTML/Section-3-Misleading-advertising.aspx
[247] Vodafone, April 2013 policy position response, p.23.
[248] See paragraphs 7.50 to 7.56 of the NMR statement.
[249] Magrathea, April 2013 policy position response, p.3.

A3.105 BT believed that discussions about the costs of additional conveyance, where the call was handed over at somewhere other than the AHP, could be protracted during the implementation phase. It said it would be helpful if Ofcom could clarify expectations and set out how additional conveyance costs were to be recovered, to avoid any delays in implementation.[250]

A3.106 Where BT, as OCP, is requested to convey a call further than the DLE it can charge for that conveyance. Similarly if BT requests handover of calls from another OCP that requires the OCP to convey the call beyond the nearest potential point of interconnection to the origination of the call, BT would be subject to pay additional charges to that other OCP for the extra conveyance. In the case where an OCP chooses to use BT as a transit provider (rather than routing directly to the TCP), the OCP is required to cover the costs of delivery to the transit provider. Therefore if it carries the call further on its network than the originating switch, it does so at its own cost. As such, where BT is used as a transit provider, the point at which the call is deemed to be handed over to BT would be the AHP. In this final case therefore, the TCP would receive the SC (from BT as the transit provider, which would collect the SC from the OCP) and the TCP would pay BT the cost of transit. We recognise that the industry will need to negotiate and agree on any commercial arrangements for conveyance at points other than the AHP, however, we consider this is a matter for industry to take the lead on and that the 18 month period should be sufficient to establish these arrangements.

General Condition 9.6

Stakeholder comments

A3.107 Three believed it was important that Ofcom properly considered the interdependencies with its 'Price rises in Fixed term contracts consultation'. Three noted that in its response to that consultation it had argued that there were charges and costs passed on by a CP which were beyond their control and that those should fall outside the scope of any changes to regulation that Ofcom was considering in respect of price rises. Three said an increase in the SC for an unbundled tariff number illustrated perfectly the kind of situation which could not be controlled by the operator. It said it was therefore important that Ofcom ensured the teams working on the respective initiatives (NGCS and the GC9 consultation) properly considered the interdependencies between the two matters to avoid inconsistencies, inequality and confusion.[251]

A3.108 EE considered that the stance taken by Ofcom on the application of GC9.6 to the implementation of the unbundled tariff in relation to the setting of the initial level of the AC for each tariff package was unfair and inappropriate. It said it would expose OCPs to [✂] as a result of impacts on customers that were essentially beyond their reasonable control. It said its main issue with Ofcom's approach was the lack of regulatory certainty it provided because the possible number of customers suffering material detriment through changes related to the unbundled tariff was uncertain and the number of customers who were likely to have a right to terminate their contracts was high. It said exposing OCPs to that unnecessary uncertainty and risk undoubtedly increased the cost of implementing the unbundled tariff whereas that cost had not been included in Ofcom's impact assessment and it considered it could, in aggregate, have a significant impact on the net benefits. EE therefore

[250] BT, April 2013 policy position response, p.7.
[251] Three, April 2013 policy position response, p.22.

urged Ofcom to provide regulatory certainty in this area and to exempt at least the initial setting of the level of the AC from the application of GC9.6.[252]

Ofcom's response

A3.109 In the April 2013 policy position we set out a response to stakeholder comments on the application of GC9.6 under the unbundled tariff structure and provided some broad principles by way of guidance as to how we expected GC9.6 to apply to the implementation of the unbundled tariff.[253] The principles we set out continue to reflect our position on the particular issues they addressed. To recap, we do not expect the unbundled tariff to lead to increased retail prices for non-geographic calls overall but accept that, in a minority of cases, there may be specific number ranges where the total charge for a call could be higher under the unbundled tariff from a given CP than it was previously from that CP. We do not consider it would be appropriate to make such price rises exempt as a general principle from the potential application of GC9.6. We want to encourage competition and the potential application of GC9.6 should facilitate this.

A3.110 However, as we noted in the April 2013 policy position, there are limitations to this general principle – in particular in relation to the SC.[254] In addition, since setting out how we consider GC9.6 would apply to the implementation of the unbundled tariff in the April 2013 policy position, we have published a decision statement following our consultation on price rises in fixed term contracts.[255] As part of that decision, we have issued guidance on how we are likely to apply that rule in relation to certain price increases ('the GC9.6 guidance').[256] This guidance specifically concerns price rises to the "core subscription price" (as defined in paragraph A1.4 of the GC9.6 guidance) and therefore does not directly relate to non-geographic number pricing, unless those numbers are included within call bundle packages which, under the guidance, constitute part of the "core subscription price".[257]

A3.111 Where unbundled tariff numbers are not part of core subscription prices, our position remains the same as that set out the April 2013 policy position. First, and to address the point raised by Three, where a price rise for a call to an unbundled tariff number (which is not covered by the core-subscription price) is attributable to the level of the SC selected for that number, as a general rule there is unlikely to be a modification of material detriment to the consumer. This is because of the requirements that the SC cannot vary by OCP and must be incorporated in full in the retail price payable for calling that number.[258]

A3.112 Second, and in relation to the issue raised by EE, where there is an increase in the price of a call to an unbundled tariff number which is attributable in whole or in part to the level of the AC, the CP will need to assess whether that increase represents

[252] EE, April 2013 policy position response, pp.62-63.
[253] See paragraphs A25.148 to A25.156 in the Part B Annexes of the April 2013 policy position.
[254] Different considerations might apply where the SC in question relates to a service by the CP which is directly related to a communications service which the CP is providing (e.g. a customer helpline) and therefore would primarily be incurred by that CP's subscribers. See paragraph A25.154 of the April 2013 policy position.
[255] http://stakeholders.ofcom.org.uk/consultations/price-rises-fixed-contracts/
[256] This guidance is set out in Annex 1 of the statement available at the link in the footnote above.
[257] See in particular footnote 109 to the GC9 guidance.
[258] Different considerations might apply where the SC in question relates to a service by the CP which is directly related to a communications service which the CP is providing (e.g. a customer helpline) and therefore would primarily be incurred by that CP's subscribers. See paragraph A25.154 of the April 2013 policy position.

a material detriment to consumers compared to current charges. If the AC reflects no more than the existing revenue which an OCP is receiving for calls to a particular non-geographic range, minus any termination rates it pays to TCPs/SPs, then it is unlikely to reflect a material detriment to the consumer. Even where the AC is set above this level, the fact that the same AC will apply to calls across the 08, 09 and 118 ranges may make calls to other number ranges cheaper than was the case previously. If so, this may well be a relevant factor when considering whether or not the modification in question is likely to be of material detriment to a subscriber. However, whether or not a modification results in material detriment would depend on the individual circumstances of the customer.

A3.113 In response to EE's concerns in relation to this guidance on the setting of the AC, we do not consider that this exposes CPs to unnecessary risk or uncertainty because the level of the AC is within the control of the OCP and they will have the information available to them to make an assessment of whether the level of the AC they choose to impose represents a material detriment or not. Further, as noted above, OCPs will have the option of including certain non-geographic number ranges within an inclusive bundle and not others for the purposes of charging the AC. This will allow them to maintain the inclusion of those ranges in bundles, thereby further reducing any potential for the implementation of the AC to result in price increases for consumers – see paragraphs A3.11 to A3.17 above. We therefore do not consider it would be justifiable to exempt the initial setting of the AC from the application of GC9.6.

A3.114 Where unbundled tariff numbers form part of core-subscription prices, we said in the GC9.6 guidance that we would issue further advice on how the requirements of GC9.6 would apply where non-geographic calls are included in bundles and therefore covered by the core subscription price. Our view is that, in relation to the SC element of calls to unbundled tariff numbers, different considerations apply to the initial structuring of bundle packages upon implementation of the unbundled tariff structure, compared with (i) the treatment of the AC within bundles and (ii) changes to the treatment of the SC that may subsequently be made to bundle packages after the unbundled tariff has been implemented. We address each of these issues in turn below:

3.114.1 **initial restructuring of bundle packages upon implementation of the unbundled tariff in June 2015:** as discussed above (see paragraphs A3.13 to A3.14) a number of OCPs currently include calls to certain non-geographic number ranges within their call bundle packages (in particular 0845 and 0870). Once the unbundled tariff is implemented, however, those OCPs will no longer have control over the total retail price for these calls as they do currently because, as noted above, the level of the SC will be set by the TCPs/SPs which operate the numbers. The applicable SCs will be established on particular number blocks (rather than applying to an entire number range) and therefore there is potential for SCs to vary materially within number ranges (for example, from 1ppm to up to the level of the relevant SC cap). This may mean that OCPs need to reconsider whether they are able to incorporate the cost of calls to these non-geographic number ranges entirely within their inclusive call bundles. Given these circumstances and the fact that they have been triggered by regulatory intervention,[259] we consider that, exceptionally, a decision by the OCP on

[259] Although we would not regard changes to such charges as directly and specifically applicable regulatory levies, payment of which is compulsory, and which fall outside Ofcom's guidance on GC9.6 on that basis alone.

the implementation of the unbundled tariff, to charge separately the SC element of the price for calls to a particular non-geographic number range which immediately prior to the implementation date was entirely within a call bundle, should not be treated as a modification of the core subscription price that would fall within our GC9.6 guidance. Such a decision would be subject to the application of GC9.6 if it amounted to a modification likely to be of material detriment to the OCP's customers but that would depend on the particular facts of each case.

Different considerations apply to the OCP's decision in respect of charging the AC for non-geographic calls currently within a bundle. As noted in paragraph A3.111 above, the level at which the AC is set is, unlike the SC, entirely within the OCP's control and, as a result of our revised approach to the treatment of the AC within call bundles (see paragraph A3.17 above), the OCP is able to select which of the unbundled tariff number ranges to include within its bundles of inclusive calls. Thus, if an OCP currently includes certain non-geographic calls (for example, calls to 0870 numbers) within the core subscription price of a bundle but, on implementation of the unbundled tariff, or at any later stage, decides to remove those calls from the bundle during the fixed term of the contract and charge the AC separately for each such call the consumer makes, or otherwise increases the core subscription price on account of changes to the AC, we consider, in line with the GC9.6 guidance, that this is likely to amount to a modification giving rise to material detriment within the meaning of GC9.6; and

3.114.2 **changes to the inclusion of the SC in bundle packages post-implementation of the unbundled tariff:** where an OCP decides to include any SCs in its call bundles on implementation of the unbundled tariff but subsequently in the course of the fixed contract term removes those SCs from a customer's bundle, or otherwise increases the core subscription price on account of increases in the SC (for example by reducing the number of minutes to the relevant non-geographic number range included in that bundle), we consider that the analysis at paragraph A1.7 of the GC9.6 guidance would apply. In other words, this would constitute a price increase to the core subscription price which we would be likely to regard as constituting a modification giving rise to (or likely to give rise to) material detriment for the purposes of GC9.6. The same applies in respect of subsequent core subscription price rises on account of the same sorts of changes in respect of the AC.

Access to numbers

A3.115 BT continues to argue that there should be an additional obligation on OCPs to open access to non-geographic numbers. It said Ofcom could protect consumers and SPs by implementing an obligation on OCPs under condition 1 of Article 5 of the Access Directive. BT said that should Ofcom choose not to act on its recommendation, it would expect its prompt support in the event that a threat to access emerged post-implementation.[260]

A3.116 TNUK said it was "*surprised and disappointed*" that Ofcom had decided to take no further action in relation to guaranteeing access to non-geographic numbers. TNUK considered Ofcom's policy remained unclear as evidenced by the divergent

[260] BT, April 2013 policy position response, p.6.

responses to the April 2012 consultation. TNUK said it agreed with BT's point that operators might demand an additional payment in return for an agreement to provide access and noted that BT itself was guilty of adopting exactly that approach. TNUK suggested Ofcom had failed to provide a response to that point and it was particularly concerned that Ofcom has not stated that it believed such an approach to be illegitimate and unwarranted – it was concerned that by saying nothing Ofcom had given a green light to that type of tactic and as a result it would need to address it in the course of a dispute. Furthermore, it highlighted that BT and TNUK have outlined examples where the commercial incentives to open access are insufficient and it requested that Ofcom address that point.[261]

A3.117 We set out our response to similar comments from BT and TNUK in the April 2013 policy position (see paragraphs A25.74 to A25.76). We consider that the arguments above from BT and TNUK do not raise any substantively new points which would lead us to change that position. As we noted there, in the event that material difficulties of the type identified by BT and TNUK emerge are formally raised with us in a complaint or dispute, we will examine whether the behaviour of the parties is consistent with the requirements under General Condition 20.

[261] TNUK, April 2013 policy position response, p.18.

Annex 4

Guidance on Service Charge price points

Introduction

A4.1 As set out in Section 3, several stakeholders have raised concerns about the process for establishing the SC price points under the unbundled tariff. We have responded to these concerns in Annex 3 and as part of our response we are providing more guidance to CPs on SC price points that we consider, based on relevant information we have gathered, would enable CPs to comply with their regulatory obligations under GC17.31 and GC17.32.

A4.2 The SC price points we have identified are set out in this Annex. In particular, applying the principles set out in paragraph A4.5 below (and previously discussed in industry working groups and set out in the April 2013 policy position) we have used data provided by CPs in relation to current outpayments on the unbundled tariff ranges and associated call volume data to develop a list of 67 SC price points which we consider could be made available when the unbundled tariff is implemented in 2015. As we explain in Section 3, OCPs will be required to bill a minimum of 80 SC price points upon implementation (with a further 20 being made available 12 months later). We have set out in Annex 3 a process for facilitating negotiations in relation to the remaining 33 SC price points.

Principles and methodology

A4.3 We formally requested call volume data from BT and Vodafone[262] on the use of different chargebands (i.e. wholesale termination rates) across the 084, 087, 09 and 118 number ranges.

A4.4 We then matched up those chargeband codes (for example g6 is the chargeband code for the 5ppm rate used on several 084 number ranges) to BT's POLO for those chargebands.[263] Where that POLO varies by time of day we have taken whatever is the highest rate (for example the weekend rate is often higher) and then added VAT at 20% to establish what would be the equivalent of the retail SC price point (i.e. the amount charged to consumers).

A4.5 Using this data we adopted a similar methodology to that which we set out in the April 2013 policy position as part of our assessment of the appropriate minimum number of SC price points.[264] In particular that methodology was a reflection of the principles which were discussed with industry and set out in the April 2013 policy position. Those principles are:

- SC price points with significant traffic volumes should be maintained;
- similar SC price points (e.g. those within one penny on the 084/087 range, those within 5p on the 09/118 ranges) should be merged;

[262] BT and Vodafone responses dated 23 August 2013 to a s135 request dated 9 August 2013
[263] This is the 'Payment to Other Licensed Operator' – it is a BT term for the termination rates it pays to other TCPs for numbers it originates.
[264] See paragraph A21.121 in the Part B Annexes of the April 2013 policy position.

- there should be meaningful increments between price points (e.g. minimum of 1p increments up to 10p, 20p increments after £1) to ensure a good spread of SC options;

- price points should be available at the level of the SC caps (7ppm, 13ppm, £3.60pm, £6pc);

- price points should not be number range specific (e.g. the same price point could be used for 09 and 118 numbers).

A4.6 Therefore, using these principles as guidance, we applied the following steps to the call volume data:

i) rounded up the retail SC price point (as per paragraph A4.5 above) to the nearest 1p up to 13p;

ii) after 13p, rounded up prices to the nearest 5p (with the exception of the 118 range, where we rounded to 1p (see paragraph A4.19);

iii) removed/merged together any duplicated price points resulting from that rounding process;

iv) removed any price points with zero volumes; and

v) retained all price points that cover the top 99% of call volumes;

A4.7 We understand that each type of call structure requires a different price point and that all of the current call structures will be retained. Currently there are four types of call structure:

- pence per minute ('ppm');

- pence per call ('ppc');

- ppc plus ppm, where the ppm rate is charged after the first 60 seconds of the call; and

- ppc plus ppm, where both the ppc and ppm rate are charged as soon as the call is answered.

A4.8 Below we set out the results of our analysis and list of SC price points we have identified as a result.

A4.9 As we explain in Annex 3, OCPs are required under GC17.32 to set SC price points within their billing systems which reflect on a fair and reasonable basis the SC rates proposed by other providers, taking into account the volume and range of such requests. We consider that the application of the principles set out in paragraph A4.5 above should assist OCPs to discharge that obligation in respect of the determination of an initial set of SC price points. We do not consider it necessary to incorporate these principles into the regulatory requirements imposed by GC17.31 and GC17.32 for the moment. However, if, notwithstanding the guidance we have provided, the negotiation and setting of SC price points remains problematic during the implementation period, then we will reconsider whether it would be appropriate to set these principles within the general condition requirements.

A4.10 Our expectation is that OCPs will make the specific SC price points set out below available within their billing systems in order to comply with their obligations under GC17.31 and GC17.32. Nonetheless, it remains open to them to set alternative price points if the evidence available to them demonstrates that these will be a better reflection of the volume and range of demand for SCs from other providers. As discussed below, however, we recognise that DQ pricing is more complex, and may be subject to more frequent changes than outpayments on the other ranges and therefore the list of DQ SC price points we have set out is of a more indicative nature and may require modification in response to changes over time (possibly even during the implementation period) than the other price points.

A4.11 We have set out a list of 67 price points only based on the top 99% of current call volumes and the methodology outlined above. OCPs are required to make 80 available upon implementation. A further 20 are required to be made available 12 months after implementation. We have set out in Annex 3 a process for facilitating negotiations in relation to the remaining 33 SC price points. We consider that this process could also be used to consider, from time to time, the replacement of existing price points established by OCPs in their billing systems with new price points for which there is demand.

SC price points

SC price points derived from 084/087 outpayments and call volumes

A4.12 We have identified 10 SC price points from our analysis (described below) of 084 and 087 outpayments and call volumes. These are set out the Table below.

Table A4.1: Price points from current 08 chargebands

SC price points										
ppm	1	2	3	5	6	7	8	9	10	13

A4.13 We adopted the following specific steps (accordance with the methodology outlined above) to derive these price points:

- rounded up the price point to the nearest 1p; and
- retained the top 99% of call volumes.

A4.14 Price points at 4p, 11p and 12p are not included in the Table above because they were not within the top 99% of call volumes. However, 11p is included Table A4.2 below (derived from 09 call volume data) and as noted in paragraph A4.24 below, we have also included the 4p and 12p price points in our consolidated list of SC price points.

09 SC price points based on current 09 outpayments and call volumes

A4.15 Currently the maximum BT POLO available on 09 is £1.53 pm. We set out in the Table below the SC price points we have derived from 09 chargebands and associated call volumes up to that maximum. We discuss price points above that maximum in the next sub-section below.

Table A4.2: Price points from current 09 chargebands

Price points																
ppm	11	15	20	25	30	35	40	45	50	55	65	75	80	100	120	145
ppc+ppm[265]	60 + 60		95 + 95		145 + 145											
ppc	45	70	95	145												

A4.16 In deriving these price points we adopted the following specific steps:

- we rounded up prices above 13p to the nearest 5p;
- we deleted any price points with zero volumes;
- we did not include any price points which were already included in the 08 price points set out above; and
- we retained all price points representing the top 99% of call volumes.[266]

A4.17 This represents a further 23 price points out of the 80 available.

SC price points from DQ chargebands and call volumes

A4.18 We have also looked at 118 call volumes. There are some of the existing chargebands for 118 services which were duplicated on the 09 chargebands which we have included in the SC price points above and so 118 providers using those chargebands will be able to use those SC price points.

A4.19 A common approach by DQ providers is having a ppc amount plus a ppm amount which are not the same (unlike the 09 pricing where the ppc and ppm amount tend to be the same). In addition, there is a separate charging model where the ppm amount is chargeable once the call is answered, as well as the ppc amount (i.e. rather than the ppm amount only being chargeable after the first 60 seconds as in the case of the 09 price points set out above).

A4.20 In establishing the list of price points below, we therefore adopted the following specific steps:

4.20.1 rounded up prices to the nearest 1p. Given that current pricing levels often are differentiated by a matter of a few pence we have rounded to 1p rather than to 5p as with the 09 price points

4.20.2 where the price point was the same as (or within 1p of) an 09 price point already set out above we discounted it; and

4.20.3 we retained all price points covering the top 99% of call volumes.[267]

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[265] Where the ppm rate is charged after the first sixty seconds of the call.

[266] We also performed a cross-check with the terminated call volumes for the 09 range. This cross-check confirmed that the chargebands within the top 99% of terminated volumes were all captured by those presented in Table A4.2.

A4.21 The Table below sets out the 30 price points we have identified based on our analysis of DQ charge bands and call volumes. With the exception of those which exceed the 09 cap for ppm charges, these price points may also be used for 09 services. However, it is worth noting the following feature of DQ services since this could have a bearing on the weight to be given to the price points we have identified.

A4.22 Our analysis indicates that DQ pricing is much more dynamic than pricing on other number ranges - for example many price points were changed within the 12 month period for which we had call volumes. As a result, by the time the unbundled tariff is implemented, the DQ prices, which represent 99% of call volumes to 118 numbers, may have changed from those from which the SC price points set out here were derived. Accordingly, OCPs will need to be alert to the possibility that provider demand may necessitate changes to SC price points available for DQ services. For this reason, the SC price points set out in the Table below should be taken as much more indicative than those set out in the previous tables.

Table A4.4: Price points derived from DQ chargebands and call volumes

Price points											
ppc + ppm [268]	20 + 40	36 + 10	41 + 23	41 + 101	55 + 99	59 + 239	60 + 8	60 + 14	70 + 14	81 + 81	117 + 161
	120 + 208	132 + 39	137 + 169	147 + 49	150 + 69	153 + 183	188 + 187	204 + 10	221 + 271	257 + 199	
ppc + ppm [269]	49 + 20	78 + 79	169 + 159		169 +169		257 + 179		397 + 299		
ppc	40	50	100								

Consolidated list of SC price points

A4.23 In total we have therefore derived 63 price points using the call data volumes. The table below consolidates all these price points.

A4.24 As highlighted in red in the table below, we have included four additional SC price points which are not derived from current call volumes. The first two are 4ppm and 12ppm. These were not represented in our analysis of the top 99% of 08 call volumes. However, because the caps limit the number of SC price points available for 084 and 087 services but these ranges account for the substantial majority of calls made to unbundled tariff numbers, we consider it appropriate to include these price points in our guidance on the basis that, intuitively, there is likely to be demand for them. In addition, one of the principles we have set out is that SC price

[267] As with the 09 price points we performed a cross-check with the volumes of terminated minutes we had been provided. In this instance, there were some price points in the top 99% of terminated volumes which were not included within the top 99% of originated call volumes – we therefore added those price points to the table below. There were some limitations to this data, however, which means this cross-check was not necessarily comprehensive. [✂].
[268] The ppm rate is charged as soon as the call is answered.
[269] The ppm rate is charged after 60s of the call has elapsed.

points should be made available at the level of the SC caps and on that basis we have also included SC price points of £3.60pm and £6pc (including VAT). Therefore the table below sets out 67 price points.

A4.25 The minimum we have said OCPs need to make available upon implementation is 80.

Table A4.5: Combined price points derived from 08, 09 and 118 call volumes

ppm		ppc+ppm		ppc+ppm (after 60s)		ppc	
1	1	30	20 + 40	51	49 +20	60	40
2	2	31	36 +10	52	60 + 60	61	45
3	3	32	41 + 23	53	78 + 79	62	50
4	4	33	41 + 101	54	95 + 95	63	70
5	5	34	55 + 99	55	145 + 145	64	95
6	6	35	59 + 239	56	169 + 169	65	100
7	7	36	60 + 8	57	169 + 159	66	145
8	8	37	60 +14	58	257 + 179	67	600
9	9	38	70 + 14	59	397 +299		
10	10	39	81 + 81				
11	11	40	117 + 161				
12	12	41	120 + 208				
13	13	42	132 + 39				
14	15	43	137 + 169				
15	20	44	147 + 49				
16	25	45	150 + 69				
17	30	46	153 + 183				
18	35	47	188 + 187				
19	40	48	204 + 10				
20	45	49	221 + 271				
21	50	50	257 + 199				
22	55						
23	65						
24	75						
25	80						
26	100						
27	120						
28	145						
29	360						

Annex 5

080 and 116; origination charges and other issues – response to stakeholder comments

Introduction

A5.1 This Annex sets out our response to stakeholder comments on our framework for assessing 080 and 116 origination charges as set out in the April 2013 policy position (in particular Part C, Section 12 and Annexes 26 and 27 of that document). We also respond to some stakeholder comments on other aspects of our proposal to make the 080 and 116 ranges free-to-caller. In Section 4 we set out our decision to make these ranges free-to-caller, as well as the framework for origination charges and our revised impact assessment range for fixed and mobile origination charges we have used in coming to that decision.

A5.2 The framework we set out in April 2013 was a revised and updated version of the analysis we had set out previously in our April 2012 consultation.[270] Because stakeholders had not had an opportunity to comment on some of those revisions to our framework we further consulted on some specific aspects of our assessment, in particular:

i) the non-network costs which we considered relevant to recovery through 080 origination charges;

ii) our approach to deriving the impact assessment range for fixed origination payments;

iii) the asymmetric risks associated with the level of origination payments;

iv) the potential for a positive caller externality and its impact on the level of origination payments; and

v) the likelihood of SPs resorting to alternative measures to mitigate the costs of calls from mobiles and how this supported a range towards the LRIC differential.[271]

A5.3 We received a large number of stakeholder comments in relation to our framework for assessing 080 and 116 free-to-caller origination charges, many of which related to aspects of our framework on which we had not specifically consulted. As a result, we follow a very similar structure to the April 2013 policy position, discussing each aspect of our framework on which stakeholders commented in turn. For each issue, we set out our assessment in the April 2013 policy position, the stakeholder comments we received, our response to these comments and finally any updates we have made to our assessment as a result.

A5.4 At the end of this Annex we then set out, and respond to, the other stakeholder comments we received relating to making the 080 and 116 ranges free-to-caller.

[270] See Annexes 22 to 23 in Part C of the April 2012 consultation.
[271] Questions 12.1 to 12.5 in the April 2013 policy position.

A5.5 First, we set out some minor modifications we have made to the drafting of our analytical framework for assessing origination charges. As discussed in Section 4, in order to conduct our impact assessment, we have applied the framework set out in the 080/116 Dispute Guidance to reach a view about the level of fair and reasonable fixed and mobile origination charges that would arise if the 080 and 116 ranges were made free-to-caller, based on currently available evidence. We consulted in April 2013 on our draft 080/116 Dispute Guidance[272] and said that our analytical framework would consist of the following three cumulative Principles.

- **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.

A5.6 Our draft guidance also detailed the factors we would take into account and the issues we would consider under each of these Principles. In light of stakeholder responses to our consultation on the draft guidance, we have modified the drafting of the three Principles to the following:

- **Principle 1**: originating communications providers (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 charge should be beneficial to consumers, taking into account the following factors:
  - Indirect effect: impact of the proposed origination charge on service provider (SP) costs, and on callers through resulting relevant decisions by SPs such as exiting (or not joining) a free-to-caller number range with an impact on service availability, and cost mitigation measures;
  - Tariff package effect: impact of the proposed origination charge on OCPs' retail prices for other services; and
  - Competition effect: impact of the proposed origination charge on competition, whether beneficial or detrimental.
- **Principle 3**: the origination payment should be practical to implement.

A5.7 These modifications are for the purposes of aiding clarity only and do not represent a substantive change in the way we apply the Principles. The modifications are discussed in more detail in the statement accompanying the final 080/116 Dispute Guidance, which we have published today alongside this statement. We use the revised drafting in the text below.

[272] See http://stakeholders.ofcom.org.uk/consultations/080-116-ranges/

A5.8 We now turn to the issues raised in relation to the derivation of our IAR by applying these Principles to available evidence.

Assumed fixed origination payments under a free-to-caller approach

Summary of assessment in the April 2013 policy position

A5.9 In the April 2013 policy position we explained that the proposals in the Narrowband Market Review ('NMR') consultation[273] implied that it was no longer appropriate to assume that fixed origination charges would remain unchanged at 0.5ppm (as we had assumed in the April 2012 consultation). We therefore proposed to apply the same principles to derive an assumption about fixed origination payments as we do for mobile origination payments.[274]

A5.10 We noted that we had used relatively wide origination payment ranges partly to reflect the uncertainty surrounding our final decision in the NMR, namely, the range of values for the LRIC+ of BT's wholesale call origination and pure LRIC of BT's call termination that we used to derive our assumptions for the fixed and mobile origination payments.[275]

A5.11 We asked the following question:

Q12.1 Do you agree that we should rely on our estimates of the cost of BT's call origination in the Narrowband Market Review to derive the fixed origination payments for the Impact Assessment Range for origination charges? If not, please explain why.

Stakeholder comments

A5.12 BT said it agreed with the principle that if call origination was to be regulated, it should be priced on a LRIC+ basis. It also agreed that the fixed origination payments for the IAR should be consistent with the costs of BT's call origination resulting from the NMR. It said, however, that this should not be taken to imply that it agreed with the cost modelling proposed in the February 2013 NMR consultation, which it considered had significantly understated BT's costs. It considered it essential that Ofcom correct these shortcomings if it was to meet its principle of affording OCPs the opportunity to recover their efficient costs of originating calls to a free-to-caller number range.[276]

A5.13 [✂] and FCS said that our approach, which derived fixed origination payments from the costs of BT's call origination, was not appropriate as it did not adequately consider the additional costs associated with originating calls by resellers. It said these needed to be accurately reflected to ensure that resellers did not lose money when originating calls to free-to-caller numbers. Both noted that margins within the

[273] In particular, our proposal to remove the NTS Call Origination Condition from the date of implementation of the new NGCs regime, as well as the new charge control model for BT's call origination.
[274] April 2013 policy position, paragraph 12.12-12.13.
[275] April 2013 policy position, paragraph 12.14.
[276] BT, April 2013 policy position response, p.17.

market were already very slim and it would disadvantage resellers if costs of calls originated to free-to-caller numbers were not fully recovered.[277]

A5.14 Vodafone argued that if Ofcom implemented a glide-path on the introduction of pure LRIC for geographic termination rates (which in turn would influence the LRIC+ for call origination – as the "+" included common costs no longer recovered from termination), then the LRIC+ for fixed origination should also evolve over time. This would imply that the mobile origination payment should similarly change over time. Vodafone also considered that a TCP could not determine the fair and reasonable mobile origination payment that satisfied our 080/116 Dispute Guidance until the fixed origination payment was determined. Thus, the entire dispute timetable had to move back until after the NMR Statement.[278]

A5.15 EE agreed in principle with the approach of using consistent figures for both fixed call origination in the NMR and fixed origination charges for 080 numbers. However, it said it was more important that there was also consistent treatment as between fixed and mobile OCPs. One particular area it had concerns about was the proportion of common costs that would be recovered from mobile origination to 080/116 numbers, as it noted these were no longer recovered from mobile call termination.[279]

Ofcom's response

A5.16 Most stakeholders (with the exception of [✂] and FCS) agreed that we should use our estimates of the costs of BT's call origination from the NMR's charge control model to derive an assumption about fixed origination payments for the purposes of our impact assessment. BT however disagreed with the costs that had been proposed in our February 2013 NMR consultation. We note that since the publication of our April 2013 policy position we published our NMR Statement on 26 September 2013.[280] We have used that statement to inform our updated assessment of the costs of fixed origination in this decision (as further discussed below).

A5.17 We however disagree with BT's assertion that the minimum level of fixed origination payments should necessarily be assumed to be LRIC+. In the April 2013 policy position we explained that Principle 1 of our framework implied that the range of efficient costs relevant for recovery from origination charges should be between LRIC and LRIC+ (with no allowance for A&R costs).[281]

A5.18 We disagree with the [✂] and FCS that our assumed fixed origination payments should be increased to reflect the additional costs associated with originating calls by resellers. We note that the fixed origination payments that we used in the April 2013 policy position included some allocation of non-network costs to take into account the costs of retailing calls to free-to-caller numbers. We do not consider however that we should increase these costs further to reflect the potentially higher costs of resellers because this would not be consistent with our framework. In particular, Principle 1 requires that OCPs are not denied the opportunity to recover efficiently incurred costs, and our assessment of what constitutes relevant costs in the context of origination charges for free-to-caller 080/116 calls depends on the

[277] [✂]

[278] Vodafone, April 2013 policy position response, p. 12

[279] EE, April 2013 policy position response, pp.72-73.

[280] http://stakeholders.ofcom.org.uk/consultations/nmr-13/

[281] See the April 2013 policy position, paragraphs 12.24-12.42.

potential benefit of this expenditure to SPs. It is not clear to us how a call originated by a reseller would offer any additional benefit to an SP over and above the benefit it would receive from a call originated by an OCP with its own network, and we therefore do not consider these additional costs should be recovered from 080/116 calls.

A5.19 Vodafone noted that in our framework mobile origination payments depended on the level of fixed origination payments. It argued that the introduction of a glide-path to LRIC for fixed call termination, and the recovery through origination of the common costs no longer recovered through termination, implied that the LRIC+ for call origination (and our assumption for fixed origination payments) should similarly evolve over time. We agree with Vodafone that the NMR Statement will introduce a glide-path for fixed call termination rates to their pure LRIC but we note that the glide-path will only have a duration of some months (with fixed termination charges being capped at LRIC from 1 January 2014). This means that call termination rates will already be charge controlled at LRIC by the time our decision on NGCs is implemented in mid-2015. Thus, the reduction of fixed termination rates to LRIC will not imply that our assessment of fair and reasonable origination charges should evolve over time as suggested by Vodafone.

A5.20 We welcome EE's support for our use of the NMR Statement's charge control model in deriving our assumption about fixed origination payments. We respond to its comments relating to the equal treatment of fixed and mobile common costs when addressing stakeholder comments on the LRIC differential below.

A5.21 In light of the above comments from stakeholders, we continue to believe that it is appropriate to rely on our estimates of the cost of BT's call origination in the NMR Statement to derive our Impact Assessment Range for fixed origination charges.

Principle 1: recovery of efficient costs of origination

Summary of assessment in the April 2013 policy position

A5.22 In the April 2013 policy position we said that Principle 1 required OCPs should not be denied the opportunity to recover their efficient costs of originating calls to a free-to caller number range. [282] We said that we thought it appropriate to follow this principle by assessing which types of cost should and should not be considered for recovery from origination charges. We explained that this represented a modification to our approach to Principle 1 because we now identified the upper limit of a cost-based charge as well as the lower limit on which we had focused the analysis of Principle 1 in the April 2012 consultation. We said that this modification was designed to enhance the clarity of our framework in response to stakeholder comments as it allowed us to separate the discussion of which costs should and should not be considered for recovery from origination charges (Principle 1) from the discussion about the level of contribution to fixed and common costs that maximised benefits to consumers (Principle 2) [283] We said we applied the principles of *cost causation*, *cost minimisation* and *distribution of benefits* to the evidence available to us, particularly our cost modelling, to derive a range of efficient cost-based charges under Principle 1.[284]

[282] April 2013 policy position, paragraph 12.16.
[283] April 2013 policy position, paragraph. 12.24-12.26.
[284] April 2013 policy position, paragraph 12.28.

A5.23 We concluded that the minimum level of costs that should be recovered through origination charges should be determined by the minimum level of cost recovery that ensured that OCPs had an incentive to supply origination. We considered this was the pure LRIC of origination given that any origination charge above the marginal cost (approximated by the pure LRIC) would make a contribution to the recovery of fixed and common costs and therefore it ensured that OCPs had an incentive to provide origination.[285]

A5.24 We explained that the upper bound of efficient costs relevant to recovery by OCPs through origination charges for calls to 080 numbers was the LRIC+ cost of origination, including a contribution to both network and non-network common costs. In the case of network costs, we considered that SPs were likely to benefit from this expenditure (as it allowed callers to contact them using mobile phones) and thus considered that origination charges should include an appropriate contribution from SPs to the OCPs' fixed and common network costs.[286]

A5.25 In the case of non-network costs, we did not consider that the LRIC+ measure of costs should include a contribution to all types of these costs. We argued 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 included expenditure on activities such as call centres from which SPs were likely to benefit. However, we did not consider that SPs should be required to contribute to the recovery of OCPs' acquisition and retention ('A&R') costs through higher origination charges, as SPs were unlikely to benefit from these costs.[287]

A5.26 We described the different categories of A&R costs and concluded that recovery of these costs through origination charges was also unlikely to be consistent with the principles of:

- *cost causation*: because A&R activities were primarily targeted at callers (rather than SPs) and, consequently, we did not consider that SPs should make a contribution to these costs as they did not cause these activities to take place; and

- *cost minimisation*: allowing OCPs to recover A&R costs from SPs was unlikely to provide them with incentives to minimise costs. This was because OCPs did not directly compete for SPs. This meant that if SPs contributed to A&R costs, OCPs could 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 charged to SPs.[288]

A5.27 We noted that MNOs argued that A&R expenditure (e.g. handset subsidies) helped ensure that mobile ownership was widespread, resulting in an expansion of the total number of subscribers in the market and hence in the number of calls that the SP might receive.[289] We considered that these arguments could be characterised as a network externality.[290] We considered whether the existence of this externality

[285] April 2013 policy position, paragraph 12.29.
[286] April 2013 policy position, paragraph 12.30-12.31.
[287] April 2013 policy position, paragraph 12.32.
[288] April 2013 policy position, paragraph 12.33-12.34.
[289] April 2013 policy position, paragraph 12.35.
[290] We explained that a network externality arose when some customers ('marginal customers') in the absence of A&R costs would choose not to get a mobile subscription because their private benefits would not cover the cost to them of becoming a subscriber, although total welfare would be enhanced

provided a justification for SPs contributing to the costs of acquiring marginal customers, as SPs might benefit from their subscription.[291]

A5.28 We argued that there were parallels between this discussion and the uplift that used to be applied to mobile termination rates ('MTRs') to reflect the positive externality created by growing the overall number of mobile subscribers (the 'network externality surcharge' or 'NES'). The objective of the NES was to increase termination revenues to support activities by mobile networks that increased the total number of mobile subscribers.[292]

A5.29 We noted that the Competition Commission ('CC') had concluded that the distortions associated with the NES were likely to outweigh its benefits due to the high proportion of 'leakage' and the inefficiencies associated with it. We considered that similar factors applied to the recovery of A&R costs through origination charges for a free to caller number, namely:

- revenues from higher origination payments charged to SPs that were not used to subsidise marginal subscribers could be retained by the OCP as profit to the extent that the waterbed was not complete, and the remainder would be dissipated in competition for non-marginal subscribers; and

- higher origination payments from SPs may produce unnecessary and inefficient upgrading and switching of handsets and of customers between one network and another.[293]

A5.30 We considered that even if origination charges for a free to caller number did not contribute to A&R costs, OCPs would still have commercial incentives to target marginal customers because origination charges would include some contribution to administration costs and other fixed costs (which do not necessarily increase linearly with an increase in subscriber numbers). OCPs would still have incentives to attract additional subscribers because this would increase revenues by proportionally more than the increase in administration and/or fixed costs, making a positive contribution to OCPs' profits.[294]

A5.31 In addition, we considered that at current levels of mobile penetration, the majority of A&R costs related to costs associated with subscribers switching between CPs, which are unlikely to benefit SPs, rather than expanding the total number of subscribers (as had been noted in the CC's 2009 MCT Determination[295]). Moreover, we argued that the substitution between fixed and mobile devices by callers, implied that a simple confirmation that A&R costs lead to an increase in the number of mobile subscribers would not be sufficient for us to consider that these costs truly benefited SPs. Instead, we would want to be satisfied that such marginal customers would not have made the call to the SP from a fixed line if they did not have access to a mobile device.[296]

A5.32 We noted in particular the example of smartphone subsidies provided by mobile OCPs currently. We did not consider that SPs should be required to contribute to

if they did because of the benefits that their joining the network would give to others (for example, SPs in the form of additional mobile callers available to call them).

[291] April 2013 policy position, paragraph 12.36.
[292] April 2013 policy position, paragraph 12.37.
[293] April 2013 policy position, paragraph 12.38.
[294] April 2013 policy position, paragraph 12.39.
[295] See paragraph 8.69 of the CC's 2009 MCT Determination.
[296] April 2013 policy position, paragraph 12.40.

subsidising these type of handsets at all because in many cases, due to the internet access these handsets offer, they may cannibalise demand for the services being provided by SPs on 080. In other words, not only may SPs fail to benefit from such expenditure being incurred, they could be adversely affected by it.[297]

A5.33 In light of the above, we considered 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.[298]

A5.34 We asked the following question:

Q12.2: Do you agree that the upper bound of non-network costs that are relevant to recovery through origination charges to 080 numbers should be LRIC+ excluding A&R, billing and bad debt costs? If not, please explain why.

Stakeholder comments and Ofcom's response

A5.35 Four stakeholders provided comments on this question. BT agreed with our analysis.[299] [✂], and in particular, EE and [✂] made several comments relating to:

- the exclusion of billing and A&R costs from our estimate of LRIC+ costs;
- the CARS costs we had used in our estimates of origination costs;
- our treatment of LRIC+ as the upper bound relevant for cost recovery;
- the recovery of termination common costs from origination; and
- the inflation assumptions we had used in our estimates of origination costs.

A5.36 Before addressing each of these issues in turn below, we note that a recurring theme in these comments (in some form or another) was the presumption that mobile OCPs should always be allowed to recover their full LRIC+ costs as long as these costs are efficiently incurred. These comments assume, but do not explain why, LRIC+ is the default measure of cost and that any departure from it would require extensive justification. We also presume they refer to costs as being efficiently incurred if they are not wasteful - i.e. that they achieve the OCPs' desired outcome for the best value for money.

A5.37 In our framework, the role of Principle 1 is to ensure OCPs are not denied the opportunity of recovering efficient costs. As discussed in paragraphs 12.30-12.42 of the April 2013 policy position, the decision to make 080 and 116 free-to-caller means that origination costs will be no longer be recovered from callers but will instead be recovered from origination payments charged to TCPs. As a result, we believe it is appropriate to consider the issue of whether TCPs should contribute to the entirety of the costs that were previously recovered from callers through retail prices. Our application of Principle 1 therefore involves an assessment of the costs that we consider are efficiently incurred and relevant to recovery through the origination charge. This leads to a range of cost-based origination charges that we consider would all satisfy Principle 1, from pure LRIC to a measure of LRIC+. We do not form a view on which of these measures of cost it would be appropriate to

[297] April 2013 policy position, paragraph 12.41.
[298] April 2013 policy position, paragraph 12.42.
[299] BT, April 2013 policy position response, p.17.

recover through the origination charge under Principle 1- i.e. we do not rule out recovery of all LRIC+ costs we consider efficient and relevant, nor do we rule out a lower origination charge of pure LRIC. Instead, we assess this issue with reference to the impact on consumers of different charges within this range under Principle 2.

A5.38 In our view, the primary issue for the types of costs we have excluded from LRIC+ in our application of Principle 1 is not whether these costs are efficiently incurred but whether these costs are relevant to be recovered from SPs via TCPs. In particular, it is our regulatory judgment that, in the context of free-to-caller 080/116 calls, the set of costs relevant to recovery from SPs through the origination charge is limited to those costs from which SPs derive benefits. As a result, certain categories of expenditure might be efficiently incurred in the sense that they are not wasteful expenditure but we would nonetheless consider them not relevant to recover from origination charges because they do not result in benefits to SPs. We discuss how we arrived at this view of relevant costs with reference to our principles of pricing and cost recovery in response to some of the stakeholder comments to which we now turn.

A5.39 Even where there is the potential for SPs to benefit from certain costs being incurred, such as the proportion of A&R costs that expand the total mobile subscriber base, it is also necessary to consider whether the inclusion of such costs in origination charges would be desirable overall. We consider that, as for the network externality surcharge for MTRs, the risks of distortions from leakage and inefficiency are more likely to outweigh the desirable effects.[300]

Stakeholder comments on the exclusion of billing costs and A&R costs from our estimate of LRIC+ costs

A5.40 EE argued that billing costs would still be incurred to bill TCPs and MVNO customers, even if free-to-caller would imply that there is no longer the need for retail billing. Thus, EE considered that we should include at least a proportion of billing costs in our estimates of the costs of origination.[301] [✂] suggested that billing should be included because the changes to billing systems that would be required to support the proposals needed to be recovered somewhere – it said it seemed proportionate to recover part of the attributed costs directly from one of the changes being proposed.[302]

A5.41 Telefonica O2 (‘O2’) and EE disagreed with our exclusion of A&R costs. EE argued that a LRIC+ excluding A&R costs should be the lower bound of the range of origination payments, with the upper bound including some recovery of A&R costs. EE then sought to justify the inclusion of A&R costs using three principles of cost recovery, namely, *cost causation*, *minimisation* and *distribution of benefits*.

A5.42 In terms of *cost causation* EE argued that A&R costs create a customer base that enables SPs to receive calls. It said that assuming A&R costs are only “caused” by callers ignores the two-way process of telecommunications services, arguing that both calling and called parties cause and benefit from A&R costs.[303] O2 said that the relevant consideration was the extent to which SPs should be excused from making a contribution to A&R costs whilst other users (including mobile subscribers) contribute a more than proportionate amount. It stated that Ofcom had not provided

[300] See paragraph 12.38 of the April 2013 policy position.
[301] EE, April 2013 policy position response, p. 31.
[302] [✂]
[303] EE, April 2013 policy position response, p. 28-29.

quantitative evidence (e.g. an analysis of efficiency or competition) to suggest this should be the case.[304]

A5.43 In relation to *cost minimisation* EE considered that the level of CARS costs is determined by a highly competitive overall mobile sector and that this is likely to drive operators' incentives to minimise these costs.[305] A similar point was made by O2, who stated that there was no evidence to suggest that recovery of A&R costs through origination payments would weaken the competitive incentive to minimise costs.[306]

A5.44 Regarding the *distribution of benefits* EE disagreed that the arguments used by the CC to reject the NES could be similarly applied in the case of Freephone. According to EE, the purpose of the NES was to contribute to the marginal increase of the overall mobile subscriber base, whereas in the case of Freephone the issue is about recovery of overall mobile costs (rather than a "surcharge" calculated purely in relation to the benefits of additional mobile subscribers). EE argued that these were therefore two conceptually different issues.[307]

A5.45 O2 similarly argued that the NES related to whether regulated termination rates should include a surcharge in addition to the LRIC+ cost estimate whereas the relevant question in the case of the free-to-caller approach was the extent to which SPs benefit from mobile operators investing in attracting and retaining a base of mobile subscribers to originate calls. O2 argued that in the absence of A&R expenditure the number of mobile subscribers would be much smaller, noting that pre-pay handsets are now generally not subsidised and the number of pre-pay subscribers has fallen as a result.[308]

A5.46 O2 disagreed with the argument that SPs may be adversely affected by A&R expenditure on smartphones and therefore should not contribute to these costs, noting that (i) if it were true that smartphones cannibalised demand for 080 calls, it would suggest the free-to-caller business model has become redundant; (ii) Ofcom has provided no evidence that smartphones cannibalise demand for 080 calls when they may also be complementary; and (iii) excluding these costs conflicts with Ofcom's duties to promote the interests of consumers, as smartphones have been provided in response to consumer demand.[309]

A5.47 EE considered that Ofcom had failed to show that A&R costs were inefficient and that as long as these costs were efficient, restraining the ability of mobile OCPs to recover these costs was likely to be detrimental to consumers. EE argued that Ofcom's market research showed that SPs were willing to pay up to 5.8ppm for mobile call origination charges and suggested that SPs saw tangible benefits accruing to them through mobile operators' A&R spend. EE considered that, as the cost information collected to model mobile call termination did not allow an assessment of the proportion of 'other CARS' costs that should be recovered from origination payments, Ofcom had dismissed this category of costs in its entirety. EE argued that this was not appropriate.[310]

[304] O2, April 2013 policy position response, p.3
[305] EE, April 2013 policy position response, p. 28-29.
[306] O2, April 2013 policy position response, p.3-4.
[307] EE, April 2013 policy position response, p. 28-29.
[308] O2, April 2013 policy position response, p.4
[309] O2, April 2013 policy position response, p.5
[310] EE, April 2013 policy position response, p. 28-29.

A5.48 EE concluded that the range of efficient costs that should be recovered from mobile origination charges for calls to 080 numbers should lie between 2.4ppm (Ofcom's estimation of LRIC+ with no allocation for CARS costs) and 5.5ppm (Ofcom's estimation of LRIC+ with 100% of A&R costs).[311]

A5.49 [✂] agreed with the adjustments that we had made to the mobile network costs element using the mobile call termination model, although some reservations on the adequacy of the pure LRIC measure remained (it considered it too low). Overall, it considered that our estimate of costs approximated its view of the LRIC+ network costs from the mobile call termination model. It also welcomed the fact that Ofcom had now included missing retail administration costs in the calculation of network costs.[312]

A5.50 [✂] noted that Ofcom had also changed its view on the retail cost elements that should be recovered from origination payments. It considered that the lowest measure of cost recovery in the April 2012 consultation (i.e. 'LRIC+ no A&R') had now become the ceiling, while the two higher cost measures at the time (i.e. 'LRIC+ 50% A&R' and 'LRIC+ 100% A&R") had now been excluded. In addition, Ofcom had added two cost measures below the floor of cost recovery considered in the April 2012 consultation, for reasons it considered were unclear. [✂] said the explanation Ofcom gave for those changes was unsatisfactory. It argued that it was not correct to remove all A&R expenditure from the assessment of the efficient costs of mobile origination.[313]

A5.51 [✂] considered that the basis for the formulations of the "LRIC+ (no other CARs)" and "LRIC+(share of other CARs)" cost categories was weak. It considered they arose more out of Ofcom's uncertainty on the contents of the mobile operators' retail costs, than from any new empirical data. It argued that having already decided to strip out a large proportion of such retail costs from its assessment in the April 2012 consultation (by excluding A&R), Ofcom could not possibly justify removing yet more costs from mobile operators' retail cost stack without evidence to substantiate it. It considered that the old floor, now the ceiling of "LRIC+ no A&R" established a reasonable and conservative baseline of origination costs against which a particular proposed outpayment could be measured and that was all that was really necessary. It said that the multiple measures simply obfuscated any such comparison.[314]

A5.52 [✂] said Ofcom was considering Principle 1 through the prism of what type of call origination costs actually benefited SPs but it believed that was a distortion of Ofcom's previous interpretation of Principle 1. It argued there were two problems with this approach: (i) it was a new and inconsistent reinterpretation of Principle 1 which restricted OCPs from recovering their efficient costs; and (ii) Ofcom's discussion of costs that might or might not be to the benefit of the SPs was in any case factually incorrect. [✂] pointed to Ofcom's latest dispute determination in relation to tiered termination rates[315] (Tiered Rates Determination) in which it considered Ofcom made use of a much simpler and clear definition of Principle 1. In

[311] EE, April 2013 policy position response, pp. 29-30.
[312] [✂]
[313] [✂]
[314] [✂].
[315] *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

particular, it considered that Ofcom had made it clear that it was the benefit to callers, not to SPs, that was the relevant consideration.[316]

A5.53 [✂] argued that, in the case of a free to caller 080 range, the interests of SPs and callers were quite clearly diametrically opposed: an 080 SP would prefer a zero, or very low origination cost whereas callers' interest would be to ensure that there was no cross-subsidisation of calls. Therefore it considered that consumers' interests would be better served if there was no restriction on origination cost recovery at all, provided that all such costs were efficiently incurred. [✂] accepted however that if the outpayment was so high that the SP was inhibited from providing the service, then there could be some benefit to the consumer in restricting cost recovery. Nonetheless, it argued that this was a more general point concerning the overall level of SP outpayment and that this did not give rise to a suggestion that there were particular cost heads that should be eliminated from recovery because the SP did not 'benefit' from them. [✂] said Ofcom was in effect using the same argument twice in its approach: having established the erroneous limit of 1.5ppm that the SP ought to pay, it then sought to justify such a limit by imposing a restriction for exactly the same reasons on what it thinks an OCP ought to be able to recover. It said this was "*incoherent"* as these were in reality separate and opposing issues, rather than the same issue as Ofcom sought to assert.[317]

A5.54 [✂] believed that even if the 'SP must benefit' rule were to be applied, it would still be inappropriate to exclude all of the A&R expenditure. It made a number of points in support of this:

- without at least some element of handset subsidies mobile OCPs would have no post-pay customers and the absence of those customers would disadvantage SPs;
- without incurring handset distribution costs and sales costs, OCPs would have no customers at all, and hence no 080 calls would be made;
- the network of shops also had an important role in providing after-sales service and customer support;
- without handsets that have internet access and thus were capable of sourcing 080 numbers the potential volume of 080 calls would be inhibited; and
- whilst Ofcom had discussed A&R costs on the grounds that they reflected smartphones, it had failed to account for the fact that in the year for which the retail cost data had been collected, the penetration of smartphones had not taken off and thus the reported costs did not include much smartphone subsidy in the first place, so Ofcom's negative point was already allowed for in the number it was using.[318]

A5.55 [✂] also argued that Ofcom had totally ignored the 'distribution of benefits' cost recovery principle. It said our conclusion that A&R activities were directed at callers rather than SPs was simply unhelpful because without callers and the costs incurred in obtaining customers, there would be no 080 calls. It considered that at a minimum, some proportion of A&R costs should be recovered and should be included in Ofcom's ceiling calculation. It assumed that a figure of 20% recovery

[316] [✂].
[317] [✂].
[318] [✂].

might be acceptable to Ofcom, given that it had indicated elsewhere that 25% was "still too high".[319] [✂] calculated that a LRIC+ figure with 20% A&R would be 3.76p and it argued that a higher view of mobile origination cost along those lines should be brought into consideration in any evaluation of what proportion of cost recovery is allowed by Ofcom's proposed outpayment levels.[320]

Ofcom's response

A5.56 We received several responses relating to our assessment of the costs that it is efficient to recover from origination charges. As set out above, many of these related to a misunderstanding of our main reason for excluding certain cost categories from the LRIC+ upper bound, which is the relevance of these costs for recovery from SPs, not whether or not those costs were efficiently incurred by the OCP.

A5.57 In relation to stakeholder comments on billing costs, we disagree with [✂] that we should allow the recovery of the costs associated with the billing systems changes resulting from the unbundled tariff (which is separate from our 080 and 116 decision) through higher origination payments for calls to 080 and 116 free-to-caller numbers. This would be inconsistent with the principles of pricing and cost recovery. In particular, *cost causation* (as the adoption of the free-to-caller approach for 080 and 116 would not have caused the costs to be incurred); *cost minimisation* (as the incentives on OCPs to minimise the costs associated with the changes to the billing systems for the unbundled tariff would be reduced, as they could load these onto the origination payments charged to TCPs); and *distribution of benefits* (as costs would be recovered from 080 and 116 SPs and TCPs, who do not directly benefit from the billing systems changes necessary to meet the unbundled tariff requirements).

A5.58 EE suggests that even if under a free-to-caller approach OCPs would not require retail billing for their customers (as calls to 080 and 116 would be free), they would still incur billing costs associated with their activities with MVNOs and TCPs. Thus, they argue that billing systems would still be required to provide origination to 080 and 116 free-to-caller ranges and that we should include at least a proportion of the total billing costs in our estimates. We agree with EE that some wholesale billing systems would still be required to bill MVNOs and TCPs for calls to free to caller 080 and 116 number ranges and we have updated our analysis accordingly. We have included all of the total billing costs allocated to call origination on a LRIC+ basis in our estimates of efficient costs relevant to recovery through origination payments. However, we note that this is an overestimate of the actual costs as, in practice, only those billing costs relating to MVNOs and TCPs are required in the case of 080 and 116 calls (not those relating to retail billing systems).

A5.59 In relation to EE's and O2's arguments on A&R costs, we disagree with EE's suggested reasoning for including A&R costs within the range of costs established under Principle 1 on the basis of the principles of cost causation, cost minimisation and distribution of benefits.

A5.60 In terms of *cost causation* we disagree that A&R costs are caused by SPs. As we described in paragraph 12.33 of the April 2013 policy position, A&R costs relate to activities such as marketing, advertising, handset subsidies, discounts/incentives and sales (e.g. mobile CPs' branch network of shops). These activities are primarily

[319] Paragraph A23.13 of the April 2012 consultation.
[320] [✂].

targeted at callers (rather than SPs). In our view, assuming that these costs are necessary to create a customer base of mobile callers that enables SPs to receive calls is an argument about the distribution of benefits, not cost causation. Furthermore it ignores that at current levels of mobile penetration, the majority of A&R costs relate to costs associated with subscribers switching between CPs, from which SPs derive no benefit, rather than extending the total number of mobile subscribers (as further discussed in paragraph 12.40 of the April 2013 policy position). For these reasons we disagree with O2's view that this implies that "other users" will have to contribute *disproportionately* to A&R costs. We do not consider that it is disproportionate to ensure that those who benefit from A&R costs (including mobile subscribers) bear their cost, while making sure that they are not recovered through charges on customers (SPs) who do not cause them to be incurred.

A5.61 In relation to EE and O2's points on *cost minimisation*, as discussed in paragraph 12.34 of the April 2013 policy position, we continue to believe that allowing OCPs to recover A&R costs from SPs would not provide them with the right incentives to minimise costs. As OCPs compete for callers (rather than SPs) they are likely to have an incentive to increase A&R costs (targeted at callers) and subsidise these through higher origination payments from SPs. Contrary to EE's suggestion, we consider that the more competitive the origination market is the higher the incentives on OCPs to increase A&R costs and subsidise these through higher origination payments from SPs.

A5.62 Regarding O2 and EE's comments on the *distribution of benefits*, in paragraph 12.32 of the April 2013 policy position we argued that out of all non-network costs, SPs only benefited from customer care costs (which included expenditure on activities such as call centres from which SPs were likely to benefit). However, we now consider that TCPs and SPs are also likely to benefit from the billing systems used by OCPs to bill them for calls terminating on their 080/116 numbers. We therefore consider that some of these billing costs should be included within the range of costs established under Principle 1 of our framework (as discussed above in paragraph A5.58).

A5.63 EE and O2 argue that the parallel we drew in the April 2013 policy position between the NES and the recovery of A&R costs through origination payments is not appropriate because the NES related to a "surcharge" in addition to the LRIC+ costs (calculated in relation to the benefit of additional mobile subscribers), whereas in the case of 080/116 the issue is about recovery of "overall mobile costs". As set out above, we consider it is appropriate to assess whether TCPs/SPs should contribute to the entirety of the costs that were previously recovered from callers through retail prices as part of our application of Principle 1. We believe that A&R costs should not be considered part of the relevant 080/116 mobile costs that should be recovered through the origination payments charged to TCPs because this would be inconsistent with several of the principles of cost recovery (as noted above and in paragraphs 12.32-12.34 of the April 2013 policy position). In our view, allowing the recovery of these costs through origination payments would effectively act as a surcharge over the costs that are truly caused by and benefit SPs. But we recognise that common costs that are not recovered from origination charges are likely to be recovered by mobile operators from other services and this effect (the tariff package effect) is an explicit and integral part of our analysis under Principle 2.

A5.64 Similarly, we consider that MNOs' arguments suggesting that A&R costs help ensure that mobile ownership is widespread are similar to those used to justify the NES in wholesale mobile call termination. As in the case of the NES, we consider that a surcharge on origination payments to contribute to A&R costs could be justified only if it was shown that this expenditure benefited TCPs and SPs with additional calls from marginal consumers and, in addition, that it was an efficient mechanism for that purpose (i.e. with no undue "leakage"), as described in paragraphs 12.36 to 12.41 of the April 2013 policy position.

A5.65 We consider that O2 has failed to provide evidence to support its view that, in the absence of A&R expenditure, the total number of mobile subscribers would be much smaller. O2 has not provided evidence to disentangle the effect of the reduction in subsidies for pre-pay handsets on the observed reduction in pre-pay subscribers from other factors that may also have been relevant influences. More importantly, we consider there is a significant difference between giving up a pre-pay subscription (either to switch to a post-pay subscription or to rationalise multiple subscriptions) and giving up mobile access altogether. We consider the average user is likely to have a high degree of attachment to their mobile and would be unlikely to give up mobile access in response to a reduction in handset subsidies.[321] In addition, whilst we accept that some A&R expenditure has the potential to expand the total number of mobile subscribers, there is the further question of whether recovery of such costs from SPs is appropriate or whether it should be rejected (for analogous reasons as for the NES in mobile termination charges).

A5.66 We disagree with O2's arguments suggesting that SPs should contribute to the subsidisation of smartphone handsets for callers. We agree that smartphones may be a complement as well as a substitute for the services offered by SPs on 080 and 116. However, unless smartphones result in a net increase in the number of calls to 080/116 SPs, we do not consider they provide benefits to SPs. O2 has not provided evidence that these subsidies benefit SPs in this way.

A5.67 We do not accept that, because smartphones may cannibalise some of the demand for 080, the free-to-caller business model has become redundant. In the first instance, we note that smartphone ownership is not ubiquitous- those mobile subscribers without a smartphone will clearly not be able to access services hosted on 080/116 using mobile internet instead. We also note that we were not suggesting that smartphone users do not make any 080/116 calls. We consider that for many callers, including smartphone users, the internet may not offer a sufficiently close substitute to accessing a service by dialling a 080/116 number. We made a similar point in the April 2013 policy position, where we observed that in many cases it was likely that the consumer requires human interaction or desires an instant response (e.g. when they need to discuss important or emotive matters such as health or finance), and the less personal service typically offered over the internet may not be a good substitute for these situations.[322] However, we recognise that the internet may provide an alternative for some callers accessing certain services on 080/116, and that the increasing use of smartphones may

[321] In our 2011 MCT Statement, we presented evidence to show that the number of unique mobile users in the UK (49.8m in 2010) was significantly smaller than the number of mobile subscriptions (80.5m in 2010), as a result of the large number of users with multiple subscriptions, i.e. second handsets/datacards, inactive or barely active subscriptions (2011 MCT Statement, Figure 7.7). The CC discussed this in its Final Determination on MCT when analysing the impact that reductions in MTRs (and consequential retail price changes) would have on mobile ownership and subscriptions. It considered that users with multiple accounts were more likely to give up one of those accounts than users with only one mobile phone were to give up mobile access altogether. The CC therefore concluded that a significant proportion of subscriptions lost as a result of price increases might be second subscriptions, rather than lost users (CC Final Determination, Mobile Call Termination, 9 February 2012, paragraph 2.733).

[322] See paragraph A11.37, Annex 11 of the April 2013 policy position.

therefore contribute towards further reductions in the volume of 080/116 calls (before taking into account the positive effects on demand from making these number ranges free-to-caller). We note that we took this likely decline in call volumes into account in our impact assessment in the April 2013 policy position.

A5.68 We do not consider that excluding handset subsidies from the costs we consider relevant to recover from the origination of 080/116 calls conflicts with our duties to promote the interests of consumers. We recognise there is consumer demand for these subsidies and consider mobile CPs remain free to provide them. However, we consider that only costs which benefit SPs are relevant to recovery from origination charges for calls to free-to-caller 080/116 numbers. As we do not consider SPs benefit from expenditure on smartphone handset subsidies, we do not consider it appropriate to include these costs in the range of costs relevant to recovery from origination charges.

A5.69 Several stakeholders have reiterated that as long as A&R expenditure is efficient, we should allow the recovery of these costs. We consider this reflects a misunderstanding over the relevant considerations. There is a distinction between the productive efficiency to which stakeholders refer, which requires that the benefits they enjoy from their A&R expenditure could not be achieved at a lower cost, and our judgement as to what costs it is potentially relevant and efficient to recover from SPs receiving 080/116 calls. We consider the relevant costs should be limited to those from which SPs derive benefit- which we consider excludes much of the A&R costs. We have justified our reasoning for adopting this approach in the context of 080/116 origination charges with reference to the principles of pricing and cost recovery (referred to above). As regards the potential for SPs to benefit from the proportion of A&R costs that expands the total mobile subscriber base, we consider that the risk of distortions from leakage and inefficiency are more likely to outweigh the desirable effects, for similar reasons as the exclusion of the network externality surcharge for A&R costs from mobile termination charges. We also note that mobile CPs remain free to recover these costs from the charges of other mobile services.

A5.70 In relation to EE's reference to the 2011 SP Survey, we note that the question on SPs' "willingness to pay" in return for callers being able to access their service for free from a mobile showed a mean increase in willingness to pay of 2.9ppm. Given that prevailing origination charges were approximately 0.5ppm prior to the introduction of tiered rates, we consider this suggests that on average SPs may be willing to pay up to 3.4ppm in origination charges- not 5.8ppm as suggested by EE.[323] We disagree with EE's interpretation of the answers to this question as meaning that "SPs see tangible benefits accruing to them through mobile operators' A&R spend". In any event, we have always reiterated that our view is that more weight should be given to the "willingness to exit" question in the 2011 SP Survey than to the "willingness to pay" question (referred to by EE) when assessing the appropriate level of origination payments for a free-to-caller 080 number for the reasons discussed in paragraphs A27.83-A27.90 of the April 2013 policy position.

A5.71 EE argued that we had dismissed the "other CARS" cost category due to the lack of granularity of the cost information collected for the mobile call termination modelling. We consider that this misrepresents our treatment of "other CARS"

[323] This relates to Question 16 of the 2011 SP survey. This question was posed to those SPs that had answered that they were disadvantaged by mobile charges in response to Question 14, and asked them by how much they were willing to increase their ppm hosting charges in return for mobile callers paying zero.

costs. In the April 2013 policy position we argued that we did not have sufficient granularity on what costs were included in the "other CARS" cost category to determine whether they should be recovered through origination payments. For this reason, our estimates of the costs of originating calls to a free-to-caller number range showed three scenarios, namely:

- LRIC+ with no "other CARS" costs;
- LRIC+ with a share of "other CARS" costs (with the share reflecting the proportion of total CARS costs that had been included in the LRIC+ measure);
- LRIC+ with all "other CARS" costs included.[324]

A5.72 The upper bound derived under Principle 1 in the April 2013 policy position was LRIC+ with no A&R costs, which equates to the figure represented by LRIC+ with all "other CARS" included (i.e. 0.3-0.6ppm in the case of fixed origination and 3.3ppm in the case of mobile origination). We therefore disagree that our approach necessarily implies that we have completely dismissed these costs. In light of the above, we continue to believe that the measures of origination costs that we presented in the April 2013 policy position remain valid (subject to any update discussed in this statement).

A5.73 We welcome [✂]'s approval of the adjustments we made to our estimates of the mobile network costs in the April 2013 policy position. We have already explained in paragraphs A5.71 to A5.72 above that we did not exclude "other CARS" costs, as suggested by [✂]) but rather presented three different measures each including a different allocation of "other CARS" costs. We believe that presenting three measures (rather than just one) was the most appropriate approach, as we did not have sufficient information to determine whether "other CARS" should be recovered from origination charges. However, as noted above, the upper bound we derived under Principle 1 used the highest of these measures and included all "other CARS" costs.

A5.74 [✂] said that our assessment of Principle 1 was a distortion of the previous interpretation of this Principle as we were now considering it from the perspective of SPs rather than callers. [✂] argued that considering this Principle from the perspective of callers would result in us allowing any efficiently incurred origination costs to be recovered through the origination charge, as long as it did not result in SPs exiting the number range, because this would benefit callers by reducing the extent of price increases on other services (which it referred to as 'cross-subsidisation').

A5.75 To be clear, our application of Principle 1 is not intended to maximise benefits to SPs but to ensure OCPs are not denied the opportunity to recover their efficient costs. In this sense, it is not assessed from the perspective of SPs. In our view this is achieved by any origination charge at or above the pure LRIC, which forms the lower bound. However, as set out above, the change in regime means these origination costs will now be recovered from SPs (via TCPs) rather than callers. As a result, we consider our application of Principle 1 should include a neutral assessment of which efficient costs we consider relevant to recover through origination charges. We have assessed this with reference to our principles of pricing and cost recovery, and have concluded the upper bound of costs it is relevant to recover from origination charges should be limited to those categories of

[324] April 2013 policy position, paragraph A26.56.

expenditure from which SPs derive benefit. We do not form a view under Principle 1 on whether it would be appropriate to recover this upper bound or whether a lower cost-based charge above pure LRIC would be more appropriate. We assess this issue under Principle 2 with reference to the level of charge within this range we consider would maximise benefits to consumers taking into account the impact this could have on the price callers pay for other services. As a result, we do not consider that our approach places the interests of SPs above that of callers.

A5.76 We recognise that our application of Principle 1 differs from that which we adopted in previous contexts but do not consider this to be a distortion of the Principle-instead we consider it to be a different interpretation reflecting a different context. In relation to the modifications we made to Principle 1 between the April 2012 consultation and the April 2013 policy position, we note that we did this in response to stakeholder comments and set out our reasoning for this in paragraphs 12.24-12.28 of the April 2013 policy position. With respect to the difference in application relative to the tiered rates disputes, we noted in the April 2013 policy position that the interpretation of Principle 1 (and the relationship between this Principle and the six principles of pricing and cost recovery) may differ from that in previous decisions, but that this responded to the specific aims and objectives of our framework for origination payments (see paragraph 12.23 of the April 2013 policy position).

A5.77 [✂] considered that assessing Principle 1 from the perspective of SPs and deriving the appropriate SP outpayment under Principle 2 amounted to using the same argument twice. In fact, we consider the reverse to be true - i.e. if we assessed Principle 1 in the manner set out by [✂], which is from the perspective of callers, we would be repeating our analysis for Step 1 of Principle 2. This is because we would essentially be choosing the range of costs that maximised benefits to consumers given the trade-off between service availability and the tariff package effect. In contrast, we consider there is a distinction between the assessment we conduct under Principle 1 and that which we conduct under Principle 2. In Principle 1, we derive the range of efficient costs we consider relevant to recover from origination charges, without forming a view on which of these costs it would be appropriate to recover given the impact different cost-based charges would have on service availability. In contrast, the assessment under Principle 2 narrows the range of cost-based charges derived under Principle 1 on the basis of the impact the origination charge would have on consumers (taking into account its effect on service availability). [✂] then said that even if we continued to consider Principle 1 in this way (erroneously in its view), there were several cost categories within A&R expenditure which did benefit SPs and that it would therefore be appropriate for SPs to contribute towards them through their origination payments. We disagree that the examples provided by [✂] support the view that SPs benefit from A&R expenditure and should contribute towards these costs for the same reasons described above when responding to EE's comments (see paragraphs A5.69 to A5.70). In summary, we consider this expenditure is mostly targeted towards competition between CPs rather than to broadening the number of mobile subscribers (and to the extent that the number of subscribers is increased by A&R costs, we consider that the risks of distortions from leakage and inefficiency from including such costs in origination charges are more likely to outweigh the desirable effects, for similar reasons as the exclusion of the network externality surcharge for A&R costs from mobile termination charges). We therefore do not accept that we have ignored the principle of "distribution of benefits", as suggested by [✂]

Stakeholder comments on the CARS costs used in estimating origination charges

A5.78 EE disagreed with the estimates of CARS costs we used (e.g. to estimate customer care costs) on the grounds that they were significantly out of date. It also disagreed with the reasons provided by Ofcom for not updating these cost figures, namely:

- That it would be disproportionate to recalculate these costs (paragraph A26.49 of the April 2013 policy position). EE considered that the overall cost estimates were being used to justify a significant and potentially disruptive change which resulted in essentially a price cap on the wholesale charges of non-SMP communications providers. It considered it was unclear how we would address this in any dispute resolution process, as Ofcom may need to revisit these costs in that context. EE suggested that Ofcom should consider these costs as part of its consultation process on its final policy position, rather than in the tightly time-constrained context of individual disputes. It considered that not doing so could make disputes over origination charges more likely;

- EE disagreed with Ofcom that an update of CARS costs might imply a need to update the whole of the mobile call termination model. EE argued that the network cost figures had been considered in some detail in the more recent CC proceedings whereas the mobile call termination market review had not applied the same level of scrutiny to CARS costs (as these were not part of call termination). Consequently, EE considered that the network cost estimates were unlikely to have changed materially and thus did not need the same level of scrutiny as CARS costs. In these circumstances, EE considered that it was appropriate for Ofcom to update the CARS cost estimates in isolation;

- EE disagreed with Ofcom that the fact that we were not setting a charge control justified not conducting a full cost modelling exercise. EE argued that the figures used by Ofcom would result in a de facto price cap on the level of origination charges. It therefore considered that the decision on whether to update the figures should be based on the potential impact on industry (which it considers extremely significant) rather than the legal instrument which is being used. [✂]; and,

- EE said that it had noted in response to the April 2012 consultation that the level of CARS costs had increased materially since the mobile call termination. EE argued that Ofcom did not provide any detail of how it would want these costs to be broken down or the types of CARS costs that it was including within relevant origination payments (e.g. customer care costs). Thus, it was incumbent on Ofcom to seek relevant information from the operators as part of its lengthy consultations rather than to expect operators to second guess what was required and supply it in response to consultations.[325]

A5.79 EE concluded that Ofcom should revisit and revise upwards the overall level of CARS costs. It estimated that based on the 3.12ppm CARS costs that it set out in its July 2012 response, and making reasonable assumptions for illustrative purposes, this could further increase the "LRIC+ (with all CARS included)" from 3.74ppm to around 3.9-4.0ppm. It would also imply that the top of the range (including all CARS costs) would increase from around 6.0ppm to around 7.0ppm. EE therefore concluded that Ofcom's current base case range should be revised as

[325] EE, April 2013 policy position response, pp. 31-33.

it did not allow appropriate cost recovery and would not lead to a fair or reasonable outcome were it to be applied in a dispute resolution.[326]

Ofcom's response

A5.80 We explained the reasons why we did not seek to update CARS costs using formal powers in paragraph A26.49 of the April 2013 policy position. In summary:

- First, it would have required an extensive data request to the mobile OCPs and considerable resource in analysing the responses. We also noted that we were forecasting unit costs to 2014/15 (in line with the expected date of implementation) and that there was always the likelihood of discrepancies between forecast and actual costs. We therefore considered that the exercise of updating the CARS cost data would be disproportionate to the additional clarity it was likely to provide.

- Second, if we were to update the CARS cost data, then an update of the MCT cost data might also have been in order. This would have engaged us in a full cost modelling exercise, of the kind that we would typically carry out to support the imposition of a charge control.

- Third, as we were not setting a charge control in this document we did not consider that a full cost modelling exercise (nor an update to the CARS cost data only) was appropriate or proportionate in this context. We considered that our cost estimates were sufficiently robust in order to produce assumptions about origination charges for the purposes of our impact assessment.

A5.81 EE disputed each of these reasons in its response to the April 2013 policy position. We agree with EE that the Competition Commission has more recently reviewed the mobile network costs as part of the appeals against our 2011 MCT Statement.[327] We accept that we might have therefore updated CARS costs in isolation (i.e. without updating the whole MCT model).

A5.82 However, we disagree with EE on all other points. We continue to believe that updating CARS costs would have required an extensive data request and that it was not appropriate or proportionate in the context of our policy position. We also note that the purpose of the cost modelling exercise in the April 2013 policy position was not to set a price cap on the level of origination charges (as we would typically do in a charge control). Instead, our aim was to assess the likely level of origination charges for the purposes of deriving an appropriate range for the impact assessment of our decision. In fact, we explicitly noted in paragraph 12.168 of the April 2013 policy position that we increased the upper bound of the range estimated under Principle 1 (i.e. 3.3ppm) by 0.4ppm (to 3.7ppm) to account for uncertainties surrounding our assumptions and to improve the robustness of our decision-making. We do not consider the IAR to be a de facto price cap. We do expect negotiations over origination charges to be conducted with reference to the base case scenario range as we have derived this range by applying the framework we would use to resolve a dispute about fair and reasonable origination charges to the currently available evidence. However, this is also not a de facto price cap as we have made clear that we will consider any further evidence in a dispute which suggests that a different rate may be fair and reasonable.

[326] EE, April 2013 policy position response, pp. 33-34.
[327] http://www.competition-commission.org.uk/our-work/directory-of-all-inquiries/bt-everything-huthchison-vodafone-telecoms-appeal-mobile-call-term

A5.83 We therefore continue to believe that a full cost modelling of CPs' CARS costs is neither proportionate nor appropriate in the context of our policy decision. It was for this reason we did not seek detailed information on CARS costs from operators in the course of previous consultations.

Stakeholder comments on the treatment of LRIC+ costs as the upper bound relevant for cost recovery

A5.84 EE disagreed that pure LRIC should be considered the minimum level of costs satisfying cost recovery. It considered that such an approach differed from our decision on call termination. In its view, we set call termination rates at LRIC on the basis that common costs could be recovered from other services without significant impacts[328], whereas in the case of Freephone we had not undertaken a similar analysis to show that the costs of originating calls to these numbers would be more efficiently recovered from other services.[329]

A5.85 EE considered that the imposition of consumer protection measures together with charge controls was limiting the flexibility of CPs to recover common costs from alternative revenue sources. It argued that without a finding of SMP, Ofcom lacked the justification for limiting prices below the levels which allowed a reasonable contribution to all relevant costs (including a contribution to common costs). Outside a charge control or a finding of SMP, EE argued that Ofcom should place most weight on, if not exclusively consider, LRIC+ level of costs (i.e. prices which allow a fair and reasonable contribution to common costs as well as direct costs).[330]

A5.86 EE argued that the rationale for considering that prices should be at least at the pure LRIC level (i.e. that operators would have an incentive to provide a service as long as it makes some contribution to common costs) is only valid in the relatively short term. In contrast, in the longer term operators would have an incentive to reduce the output of services which provide little contribution to common costs and concentrate on products with a higher contribution. It concluded that we should have regard to the longer term incentives of our proposals to be consistent with our approach to the unbundled tariff, where we had assumed a 10 year post implementation period.[331]

Ofcom's response

A5.87 In EE's view, pure LRIC cannot be considered the minimum level of costs satisfying cost recovery. It argues that in arriving at this conclusion we were applying a different approach to the one we adopted for mobile call termination. EE considers that in the case of the latter we had conducted analysis to show that common costs could be recovered from other services without significant impacts, whereas in the case of Freephone we have failed to show that the costs of originating calls to these numbers would be more efficiently recovered from other services.

A5.88 We do not consider that we should necessarily replicate the analysis we did in relation to mobile call termination in the present decision, as suggested by EE. We believe that our analysis should be tailored to each case, taking into account the context and market concerned. We consider that our framework is more appropriate

[328] EE mentioned section 7 (including the conclusion at paragraphs 7.212-7.215) of Ofcom's Wholesale Mobile Voice Call Termination: Statement, published 15 March 2011.
[329] EE, April 2013 policy position response, p. 27.
[330] EE, April 2013 policy position response, p. 27.
[331] EE, April 2013 policy position response, p. 27.

for assessing the likely level of origination payments for calls to free to caller 080/116 numbers than the analysis we conducted in relation to the mobile call termination charge control.

A5.89 In any event, we consider that there are some parallels between the framework we will use to derive fair and reasonable origination payments for calls to 080/116 numbers and the analysis we presented in the 2011 MCT Statement. In fact, our framework assesses the impact of different level of origination payments on SPs, OCPs and ultimately consumers (as further discussed below). In addition, in the April 2013 policy position we also investigated the impact of different levels of origination payments on competition.[332]

A5.90 With regard to EE's view that consumer protection measures and charge controls will limit OCPs' ability to recover costs, we recognise that we could not restrict all prices charged by mobile operators to pure LRIC as they would not be able to cover their fixed and common costs. We also recognise that mobile call termination is already regulated to be at pure LRIC, and that increasing the number of services regulated in this way would be a cause for concern to the mobile OCPs. However, we still consider there are a large number of services which are not subject to any such controls on which mobile OCPs should be able to recover these costs. Moreover, we are not suggesting that origination payments should be limited to pure LRIC - merely that we consider mobile OCPs should not be denied the opportunity to recover at least this level of cost.

A5.91 We disagree with EE's view that regulations adopted outside a charge control or a finding of SMP should necessarily be constrained to the use of LRIC+ as the primary or only relevant measure of costs. In our view that would be adopting an inappropriately narrow view of the relevant considerations and might fail to provide the greatest benefits to consumers. We consider a range of potential cost measures under Principle 1, including LRIC+, and use such analysis to establish a range of efficient costs that it is relevant to recover through origination charges (with the appropriate charge within that range, taking into account consumer and competition benefits, being established under Principle 2). Furthermore, the implications of the choice of origination charge for the recovery of common costs from other services is an explicit part of our analysis in Principle 2, through our assessment of the TPE.

A5.92 EE argued that if prices are set at pure LRIC in anything other than the short term, operators would have an incentive to focus on services providing a greater contribution towards their common costs. However, LRIC reflects a long run analysis of costs. If the operator's revenues exceed LRIC, it earns more profit by providing the services than ceasing it. Hence, whilst other services might provide a larger contribution to common cost recovery, the operator would not increase its profits by withdrawing the service but would diminish them.

Stakeholder comments on the recovery of termination common costs from call origination

A5.93 EE considered that the allowance for common costs that were no longer recovered from call termination (as a result of setting termination rates at pure LRIC) was inconsistent with the approach we had used in the NMR. EE said that, in the latter, Ofcom had allowed origination charges to recover all of the common costs

[332] See Annex 7 of the December 2010 consultation, Annex 23 of the April 2012 consultation and Section 12 of the April 2013 policy position.

previously recovered from call termination. In contrast, in paragraph A26.63 of the April 2013 policy position Ofcom explained that in calculating mobile origination costs, the termination common costs had been spread “across all services”, implying that not all of these costs had been allocated to origination as in the case of fixed call termination. EE argued that this difference in approach was not technology neutral and materially disadvantaged mobile OCPs. EE estimated that using the same approach for mobile as has been used for fixed would increase the mobile LRIC figures by approximately 0.2ppm.[333]

A5.94 [✂] made a similar point noting that whereas for fixed operators all common costs had been recovered through origination only, in the case of mobile operators, common costs were recovered from all other services, including data, and the resulting uplift on mobile origination was only 19%. It therefore argued that Ofcom should only allow for a similar uplift of 19% on the LRIC+ costs of fixed origination. It estimated that this would give a network LRIC+ for fixed origination of approximately 0.20p in 2014/15 costs (based on Ofcom’s base case in the NMR consultation).[334]

Ofcom’s response

A5.95 We recognise that we have used a different approach to reallocating termination common costs in the case of fixed CPs than we have used for mobile CPs. However, we do not consider we need necessarily to apply the same approach to different markets, and consider we have justifiable grounds for estimating the LRIC+ of origination on a different basis for fixed and mobile calls.

A5.96 In the September 2013 NMR Statement, we reallocated the entirety of common costs not recovered from fixed termination rates to wholesale call origination.[335] We explained in the statement that we had adopted this approach to correct for a potential competitive distortion that occurs when fixed termination rates are set at LRIC. In the case of fixed CPs, a CP is able to purchase access (in the form of Wholesale Line Rental (‘WLR’)) and origination (in the form of Carrier Pre-Selection (‘CPS’)) at regulated rates from network operators, but does not supply wholesale call termination to those same network operators. When fixed termination rates are set at LRIC, a CPS/WLR operator therefore benefits from a reduction in termination out-payments, but does not have a corresponding decrease in termination in-payments. Consequently, a CP using CPS/WLR would be able to undercut the retail prices of a network operator meaning that the network operator could be deprived from recovering the common costs no longer recovered from termination.

A5.97 In order to correct for this competitive distortion, we could have increased the regulated price of WLR, however, as outlined in the NMR Statement, we believed it was more appropriate to reallocate the entirety of common costs not recovered from termination to wholesale call origination. In contrast, in the mobile industry there is no regulated access and regulated indirect origination services such as CPS do not exist. Mobile CPs therefore do not have to compete against other CPs to whom they are required to offer wholesale access and call origination at regulated prices. Therefore, in the absence of any mobile wholesale access regulation, we believe that setting mobile termination rates at LRIC does not result in a similar risk of competitive distortions that would support allocating all the termination common

[333] EE, April 2013 policy position response, p. 31.
[334] [✂].
[335] See the 2013 NMR Statement (Section 6), available at: http://stakeholders.ofcom.org.uk/consultations/nmr-13/statement

costs to origination charges only. Instead, we believe that a more appropriate approach is to spread these costs across all mobile services on an equi-proportional basis (as we did in the April 2013 policy position).

Stakeholder comments on the inflation assumption used to estimate origination costs

A5.98 EE correctly noted that Ofcom had based its assessment of mobile origination costs on the mobile call termination model which uses 2008/09 prices and had inflated these costs to derive them in 2014/15 prices. It noted that Ofcom had used an inflation factor of 1.197, which EE considered was too low for the following reasons:

- since the publication of our April 2013 policy position more recent inflation figures had been published (for March 2013) and these were significantly above the 2.5% assumption that Ofcom had used for future years. Using the more up to date inflation figure, EE noted that the inflation factor increased from 1.197 to 1.206;

- EE also noted that there was a difference between the inflation assumption used in a charge control, where the actual rates are determined by out-turn inflation (and forecasts are only used to provide an indication of future years' rates), and the appropriate inflation assumption in the case of the determination of fair and reasonable charges and the impact assessment of the proposed policy changes for Freephone. EE suggested that in the case of the latter a more appropriate inflation forecast would be that published by HM Treasury, including an average of independent inflation forecasts. This suggested a 3.0% inflation for 2013[336] which would increase the inflation factor to 1.212; and,

- EE argued that we had inflated the 2008/09 costs to the end of the year before the implementation of our proposals in 2014/15 (i.e. 2013/14). EE considered that we should inflate costs further to the end of the relevant year (2014/15). Using the HM Treasury average of independent forecasts (3.2% for 2014), EE estimated the inflation factor at 1.251.[337]

A5.99 EE concluded that adjusting Ofcom's estimates of mobile origination costs to account for its proposed changes in: (i) inflation, (ii) billing costs, (iii) common costs from call termination, and (iv) appropriate "customer care" costs; the range of LRIC+ costs that we presented in Table A26.5 of the April 2013 policy position should be increased from 2.4-5.5ppm (depending on the share of CARS costs included) to at least 2.8-6.0ppm.

Ofcom's response

A5.100 As suggested by EE, in the April 2013 policy position we estimated mobile origination costs using the mobile call termination model which uses 2008/09 prices and derived unit costs for 2014/15 in 2014/15 prices using an inflation adjustment factor. We noted that our cost model used actual inflation figures (the RPI all item index) for the years available (2009/10 to 2011/12) and assumed 2.5% forecast inflation for the years 2012/13 and 2013/14. We calculated an inflation factor of 1.197 to convert 2008/09 prices to 2014/15 prices.[338]

[336] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/199018/201305_-_Forecasts_for_the_UK_economy.pdf.
[337] EE, April 2013 policy position response, pp. 30-31.
[338] See paragraph A26.42 of the April 2013 policy position.

A5.101 EE now argues that since the publication of our April 2013 policy position actual inflation figures have been published for the year to March 2013 and that our cost model should be updated to reflect this. EE also considers that it would be more appropriate to use the average of independent inflation forecasts published by HM Treasury. In addition, EE suggests that we have only inflated the 2008/09 costs to the end of the year before the implementation of our proposals (2013/14) and that we should instead inflate costs further to reflect the year of implementation of our proposals (2014/15).

A5.102 We agree with the changes proposed by EE. Below in Table A5.1 we present the inflation assumptions used to derive the inflation adjustment factor using the approach proposed by EE.

Table A5.1: Inflation assumptions

	Actual				Forecast		
	2009/10	2010/11	2011/12	2012/13	2013/14	2014/15	2015/16
Inflation	4.4%	5.3%	3.6%	3.3%	3.1%	3.1%	3.1%
Inflation factor	1.044	1.099	1.139	1.176	1.213	1.251	1.289

Source: Actual inflation from Office for National Statistics, *Consumer Price Inflation Reference Tables-June 2013*, RPI All Items (Table 37), 12-month change to March, available at http://www.ons.gov.uk/ons/rel/cpi/consumer-price-indices/june-2013/consumer-price-inflation-reference-tables.xls. Forecast inflation from HM Treasury, November, p. 20. We assume 3.1% for each of the financial years presented, using the information for years 2013, 2014, 2015 and 2016 (which correspond to calendar years), available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/261691/201311_ForecastComparison-1.pdf

A5.103 In light of the above, our new mobile origination cost estimates presented in Table A5.2 below use an inflation adjustment factor of 1.289, consistent with the changes proposed by EE.

A5.104 Having considered stakeholder comments in relation to Principle 1, we now set out any resulting changes to our assessment of fixed and mobile origination charges under this principle.

Updated fixed origination costs and range of efficient cost recovery for fixed origination

A5.105 As discussed in the previous section, we continue to believe that we should use the estimates of BT's call origination from the NMR Statement to derive our assessment of the costs of originating a call to a free-to-caller number range from a fixed CP. In Table A5.2 below we present the updated estimates of BT's call origination costs consistent with the NMR Statement.

A5.106 The main changes to our modelling since the April 2013 policy position are:

- we use the latest cost modelling in the NMR statement in relation to network costs;
- we include all LRIC+ billing costs to reflect billing systems costs associated with wholesale billing activities (recognising this is likely to be a significant over-estimate for the reasons set out above); and

- we use an updated inflation adjustment factor consistent with the inflation assumptions used for mobile origination costs to derive network and non-network unit costs in 2014/15 prices from the NMR and the Retail Uplift model, respectively.

A5.107 We present our updated fixed origination costs in the table below.

Table A5.2: Fixed origination costs for a free to caller range (2015/16 prices) – no A&R costs included

Free to caller / Max mobile price	Pure LRIC	LRIC+ (no 'other CARS')	LRIC+ (share 'other CARS')	LRIC+ (all 'other CARS')
Non-network costs				
CARS costs				
Administration costs[339]	N/a	N/a	N/a	N/a
Billing	0.000	0.028	0.028	0.028
Bad Debt	0.000	0.000	0.000	0.000
Customer care	0 - 0.024	0.024	0.024	0.024
A&R costs	0.000	0.000	0.000	0.000
Other CARS	0.000	0.000	0.018	0.067
Sub-total non-network costs	0 - 0.024	0.052	0.070	0.119
Network and admin costs from the 2011 Cost Model				
Administration costs[49]	N/a	N/a	N/a	N/a
Network costs on pure LRIC basis	0.035	N/a	N/a	N/a
Network costs on LRIC+ basis	N/a	0.425	0.425	0.425
Total[340]	**0.035 - 0.059**	**0.477**	**0.495**	**0.544**

A5.108 In the April 2013 policy position we estimated that the pure LRIC cost of terminating a call on BT's network was between 0.002-0.076ppm (in 2014/15 prices). We now estimate these costs to be 0.035ppm (in 2015/16 prices), in line with the NMR Statement.[341] We have also included some customer care costs to derive the pure LRIC network costs of originating a 080 call on BT's network (as we did in the April 2013 policy position). This means that we estimate the total **pure LRIC costs** of fixed origination to be between **0.035-0.059ppm** (to the closest third decimal).

A5.109 Consistent with our NMR Statement, we estimate the LRIC+ network costs to be 0.425ppm (in 2015/16 prices). In order to derive the costs of fixed origination we add the non-network customer care and billing costs on a LRIC+ basis. Thus, we estimate fixed origination costs to be in the range of 0.477-0.544ppm (in 2015/16 prices) depending on the level of "other CARS" costs included.

A5.110 As discussed later in this Annex, an implication of our framework is that we assume for the purposes of our impact assessment range that it would be appropriate for fixed origination payments to recover costs of call origination up to our estimated

[339] There are no separately identifiable administration costs in the case of fixed origination.
[340] These figures are rounded up to the closest first decimal.
[341] http://stakeholders.ofcom.org.uk/binaries/consultations/nmr-2013/statement/Final_Statement.pdf

LRIC+ with no A&R (i.e. the figures under "LRIC+ all 'other CARS'" in Table A5.2 above). The estimate provided in Table A5.2 above relates to the costs we expect in 2015/16, however, our decision on free to caller will span beyond this year. We expect that over time the costs of providing fixed call origination will decrease as a result of efficiencies and we should therefore reflect this in our assumption relating to fixed origination payments. For this reason we assume for the purposes of deriving the impact assessment range for fixed origination payments that the range for fixed origination payments in Principle 1 should be between **0.035-0.059ppm** and **0.4-0.5ppm** (the upper bound being slightly below our estimate of LRIC+ with no A&R costs in 2015/16 prices presented in Table A5.2 above under column "LRIC+ all 'other CARS'").[342]

A5.111 Using this assumption, we estimate that BT will recover approximately between 0.341-0.465ppm (in 2015/16 prices) of common costs for calls originated from its network. We use this to estimate the LRIC differential mobile origination charge shown in Table A5.3 below.

Updated mobile origination costs and range of efficient cost recovery for mobile origination

A5.112 In light of the stakeholder responses discussed above, we have updated the mobile call termination model to produce our latest estimates of mobile origination costs under each of the options for the 080 range: (i) free-to-caller and (ii) MMP. The main changes since the April 2013 policy position are:

- we include LRIC+ billing costs to reflect billing systems costs (recognising that this is likely to be a significant over-estimate of the costs associated with wholesale billing activities);
- we use an updated inflation adjustment factor of 1.289 to derive unit costs in 2015/16 prices from the 2008/09 unit cost prices on which the mobile call termination model is based; and
- we have corrected an error in the cost model as some of the cost items reflected the costs in 2013/14 (we intended to use 2014/15 costs in the April 2013 policy position and are using 2015/16 in this statement). As costs are forecast to decline over time, this more than offsets the increase in costs (compared to the April 2013 policy position) from the higher inflation assumed.

A5.113 We present our updated mobile origination costs in Table A5.3 below.

[342] We assume an upper bound LRIC+ for fixed origination (0.4-0.5ppm) that is slightly below our current estimates of fixed costs in 2015/16 (i.e. 0.48-0.54ppm). This is because we believe our cost estimates should reflect cost efficiencies after the implementation date of our decision in mid-2015.

Table A5.3: Mobile origination costs for a 080 free to caller and MMP range (2015/16 prices) – no A&R costs included

Free to caller / Max mobile price	Pure LRIC	LRIC Differential [343]	LRIC+ (no 'other CARS')	LRIC+ (share 'other CARS')	LRIC+ (all 'other CARS')	Max. Mobile Price [344]
Non-network costs						
Administration costs	0.000	0.000	0.039	0.047	0.321	0.321
Billing	0.000	0.000	0.075	0.075	0.075	0.075
Bad Debt	0.000	0.000	0.000	0.000	0.000	0.075
Customer care	0 - 0.106	0 - 0.106	0.267	0.267	0.267	0.267
A&R costs	0.000	0.000	0.000	0.000	0.000	1.860
Other CARS	0.000	0.000	0.000	0.068	0.544	0.544
Sub-total non-network costs	0 - 0.106	0 - 0.106	0.381	0.457	1.207	3.142
Network costs						
Admin. costs	0.000	0.000	0.197	0.197	0.197	0.197
Pure LRIC network	0.778	0.778	N/a	N/a	N/a	N/a
LRIC+ network	N/a	N/a	1.634	1.634	1.634	1.634
Unrecovered common costs	N/a	N/a	0.297	0.297	0.297	0.297
LRIC difference	N/a	0.719-0.849	N/a	N/a	N/a	N/a
Fixed origination payments assumed	N/a	0.4-0.5	N/a	N/a	N/a	N/a
Sub-total network costs	0.778	N/a	2.128	2.128	2.128	2.128
Total [345]	0.778-0.884	1.119 - 1.349	2.509	2.585	3.335	5.270

A5.114 In light of the above updated analysis, we estimate that the range of costs derived under Principle 1 for mobile origination charges to a free to caller number is likely to be between **0.778-3.335ppm.**[346] We recognise that there may be some limitations with the input data we have used to estimate the costs of mobile origination, however, as discussed above, we believe our cost analysis is appropriate and proportionate for the purposes of deriving an assumption about mobile origination charges in order to assess the impact of making the 080 range free-to-caller.

[343] As further explained above, we assume that fixed origination costs after the implementation of our free to caller decision are likely to vary between 0.4-0.5ppm. The LRIC differential presented in Table A5.3 is estimated based on this assumption.
[344] As discussed above, the MMP includes LRIC+ with all CARS costs on an EPMU basis.
[345] Figures are rounded up to the closest first decimal.
[346] 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. We note that we have not made any adjustment downwards to our estimates of mobile origination costs to reflect any efficiencies post 2015/16, as we have done above in the case of fixed origination payments. This is because an implication of our framework is that we consider that fixed origination payments should recover up to our estimate of LRIC+ with no A&R costs, whereas our analysis implies mobile origination payments up to a level slightly below our lowest estimate of LRIC+ with no A&R costs and no 'other CARS' (as discussed below). Thus, we have considered it necessary to adjust our cost estimates in the case of fixed origination because this directly impacts our view about the fixed origination payments. Conversely, adjusting mobile origination costs is unlikely to affect our analysis of mobile origination payments.

Principle 2: beneficial to consumers, taking into account the Indirect effect, Tariff package effect and Competition effect

A5.115 In the April 2013 policy position, we explained that we had decided to separate our framework under Principle 2 into two distinct steps for clarity, as follows:

- Step 1: Trade off for consumers between the reduction in service availability/quality and tariff package effect. In this step we determined how different levels of origination charges within the range derived in Principle 1 were likely to affect consumers. We noted that increasing the level of origination charges has two opposing effects on consumer welfare. This trade off arose because higher payments from SPs (who ultimately pay the origination charge through their host TCP) were likely: (i) to limit service availability/quality on free-to-caller 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 assessed the level of SPs' origination payments that would, in our view, best take account of this trade off under Step 1.

- Step 2: Assess the relative level of the fixed and mobile origination charges. Once we had determined under Step 1 an appropriate level of SPs' origination payments, we then assessed 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 this, we first considered how our proposals to make the 080 and 116 ranges free to caller were likely to affect fixed to mobile substitution (as this would affect how different fixed and mobile origination charges translated into the average payments made by SPs). Second, we looked at the implications that different price-cost differentials between fixed and mobile OCPs would have on competition and the price signals to SPs for their decisions on cost mitigation measures.

A5.116 In the 080/116 Dispute Guidance, we also set out a third step under Principle 2:

- Step 3: Assess whether there is any impact of the proposed origination charge on competition. We recognise it is possible that the level of the origination charge may impact on competition in a way that affects consumers and that we have 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).

A5.117 We explain in more detail each step in turn below.

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

A5.118 In the April 2013 policy position, we said that we needed to take into account how increases in the payments made by SPs were likely to affect consumers, noting that higher origination charges were likely to have both positive and negative effects on consumers.[347]

A5.119 The positive effects we considered were:

[347] See paragraphs 12.45- 12.50 of the April 2013 policy position.

- a reduction in the price for other telecoms services and/or access (the tariff package effect); and

- a positive network externality effect - this is the effect already addressed under Principle 1 above, so we do not discuss it further below.

A5.120 The negative effects we considered were:

- a reduction in the availability and/or quality of services on the free to caller number ranges; and

- an increase in the price paid by SPs.

A5.121 We said that our analysis should determine the appropriate level of average SP origination payments by focussing on the trade-off between service availability/quality and the tariff package effect. We assessed this trade-off by looking at the impact of higher origination payments on service availability/quality and the tariff package effect in turn. We then took into account additional considerations set out in our framework, namely the caller externality and asymmetric risk, before drawing our conclusions under Step 1.

A5.122 The only parts of our assessment on which we invited stakeholder comment were the caller externality and asymmetric risk because we had consulted on all other aspects in previous consultations. However, some of the responses to the questions we asked on asymmetric risk (set out below) and the draft 080/116 Dispute Guidance prompted us to conduct further analysis of the consumer impact of higher origination charges, focussing in particular on the harm to consumers from a reduction in service availability/quality on 080. We therefore present the results of this further analysis below, summarising and responding to stakeholder comments where relevant, before setting out our conclusions under Step 1.

A5.123 Firstly though, for reasons of clarity, we set out the baseline from which we measure the impact on consumers of changes in the origination charge.

A5.124 We set out in the 080/116 Dispute Guidance that the change in origination charges we consider will depend on the conditions prevailing at such time as any dispute regarding fair and reasonable charges is raised. For example, if a dispute were to be raised at a time when arrangements for origination charges for free-to-caller 080/116 calls are already in place, we would be likely to consider the change between the existing origination charge and the new rate being proposed. However, if a dispute were to be raised prior to any origination charges for free-to-caller 080/16 calls being agreed or determined, we would be likely to take into account the level of origination charges being proposed by the parties to the dispute and consider a change from the lower of those charges to the higher charge. We would also take into account the extent to which any given change would result in origination charges being outside of the range determined under Principle 1.[348]

A5.125 In forming the IAR by applying the 080/116 Dispute Guidance to current evidence, there are no agreed origination charges for free-to-caller 080 calls in place (at least not for mobile calls) nor has any dispute been raised. In the analysis below, we therefore assess the impact on consumers of higher origination charges starting from the relevant lower bounds derived under Principle 1, i.e. the pure LRIC for each of fixed and mobile originated 080 calls.

[348] See paragraph A1.43 of the final 080/116 Dispute Guidance.

A5.126 In this respect, there is a key distinction between the assumptions used to derive the IAR in this Annex and that used for our impact assessment (i.e. the assessment of options for 080 against our criteria). Whereas our derivation of the IAR assumes 080 is already free-to-caller, our analysis under the impact assessment assumes the current system of retail prices and wholesale charges is still in place. This is because the IAR is the range of origination charges we think likely to emerge when 080 is made free-to-caller, which requires us to assume that 080 is already free-to-caller. In contrast, the impact assessment compares net benefits in two states of the world: an initial state in which the current system of retail and wholesale charges are in place and a future state in which 080 is free-to-caller and wholesale charges are equal to the IAR. In conducting our impact assessment, the relevant starting point is therefore the status quo.

A5.127 In our assessment below, we are interested in comparing the impacts on service availability and the TPE resulting from given increases in origination charges from their baseline levels. However, our evidence on service availability comes from the SP survey, which asked SPs how they would respond to increases in their average outpayment from current levels (and not how they would respond to increases in the fixed and mobile origination charges from their pure LRIC levels). We therefore need to relate increases in the fixed and mobile origination charges from their baseline levels to increases in the average SP outpayment from current levels in order to conduct our comparison.

A5.128 The relationship between a given increase in origination charges and the resulting increase in the average SP outpayment will depend on the extent of TCP pass-through and the proportion of mobile-originated calls. For example, a 0.4ppm increase in the fixed origination charge and a 0.6ppm increase in the mobile origination charge will lead to a 0.5ppm increase in the average SP outpayment when 55% of calls are originated from mobile and 100% of the increase in origination charges is passed on by TCPs to their SP customers.[349]

A5.129 For the purposes of our assessment, we assume that increases in the origination charges are passed on in full to SPs by their TCP hosts (see paragraphs A5.219 to A5.223 below for a discussion of this issue) and therefore that a 0.5ppm increase in the blended origination charge corresponds to a 0.5ppm increase in the average SP outpayment. We discuss our assumptions on the likely proportion of mobile-originated calls once 080 is made free-to-caller in detail in relation to Step 2. Here, we present results associated with the mid-point of this range for simplicity but note that our conclusions would be the same if mobile originated calls were anywhere within our assumed range of 55-60%.

A5.130 In theory, the baseline fixed and mobile origination charges of pure LRIC could give rise to a baseline average SP outpayment that is either higher or lower than the current level. In practice, however, this complication does not arise. In the April 2013 policy position, we assumed that SPs' current outpayments included an average origination charge of 0.5ppm for both fixed and mobile 080 calls.[350] When fixed and mobile charges are at both at pure LRIC and the proportion of mobile calls is within the range we consider likely, the blended origination charge is very close to

[349] This is because TCP payments would increase by (0.4ppm*0.45) + (0.6ppm*0.55) = 0.51ppm, and passing this amount on in full would lead to the same increase in average SP outpayments.
[350] See 12.9 and 12.114 of the April 2013 policy position.

0.5ppm. As a result, we assume the baseline average SP outpayment is approximately equal to the current average SP outpayment.[351]

A5.131 Another complication arises from the fact that a given increase in.the average SP outpayment could be achieved for different combinations of increases in the fixed and mobile origination charges. For the purposes of our analysis under Step 1, we assume the fixed and mobile origination charge increase by the same amount until the fixed origination charge reaches its upper bound determined under Principle 1 (i.e. LRIC+ with no A&R). This upper bound approximately corresponds to a 0.4ppm increase in the fixed origination charge from its baseline level of pure LRIC. For increases in SP outpayment of more than 0.4ppm above the baseline level, we therefore assume the fixed origination charge remains at its upper bound and the increase in average outpayments is driven solely by increases in the mobile origination charge. We do not present increases in the SP outpayment of more than 1.5ppm because this would result in the MOP exceeding the maximum level set out under Principle 1.

A5.132 These assumptions give rise to the following relationship between increases in the fixed and mobile origination charges and increases in SP outpayments from their baseline levels.

Table A5.4: Relationship between increases in SP outpayments, fixed and mobile origination charges from their baseline levels

Increase in SP outpayment from baseline	Increase in fixed origination charge from baseline	Increase in mobile origination charge from baseline
0.5ppm	0.4ppm	0.6ppm
1.0ppm	0.4ppm	1.4ppm
1.5ppm	0.4ppm	2.3ppm

Source: Ofcom calculations.

A5.133 We present our discussion of the impact on service availability and the TPE below in relation to increases in the average SP outpayment and draw our conclusions under Step 1 in terms of the appropriate increase in average SP outpayment. At the end of Step 1, we translate this increase in average SP outpayments into the appropriate level of SP outpayment in order to calculate what this means for the level of the fixed and mobile origination charge under Step 2. In doing so, we abstract from all other costs billed to SPs by their TCP hosts (e.g. hosting charges) and focus only on the origination charge element of the SP outpayment. Thus, when we refer below to the appropriate average SP outpayment, we mean the appropriate average origination charge paid by SPs.

[351] For clarity, we consider the baseline average SP outpayment is likely to be greater than 0.5ppm as it will include other costs such as hosting charges. However, we do not consider these costs in our assessment as they are not related to making 080 free-to-caller. Instead, we focus only on changes in the average SP outpayment resulting from an increase in the blended origination charge from its baseline level, holding all other costs to SPs constant.

Consumer detriment from reduced service availability

Summary of assessment in the April 2013 policy position

A5.134 We used evidence from the 2011 SP survey to assess the impact of different levels of origination charges on service availability. We considered that the survey results showed even fairly low increases in SP outpayments were likely to result in a reasonable minority of SPs getting rid of their 080 free to caller number(s). In particular, we found that approximately 19% of SPs on the 080 range would get rid of their Freephone number for any increase in their current level of outpayment.[352] However, we noted that when the increase in SPs' outpayments exceeded 1ppm, this share increased significantly- to 28%. In light of this, we considered that the 2011 SP survey showed increases in outpayments beyond 1ppm would result in a steady decline in availability.[353] We did not quantify the harm to consumers from this decline.

Ofcom analysis and decision

A5.135 Some stakeholders commented that we had over-stated the harm to consumers from a reduction in service availability and quality on 080 - particularly in relation to services that migrate from the 080 range to other number ranges as a result of 080 being made free-to-caller.[354] As a result of these responses, and similar responses received in relation to our draft 080/116 Dispute Guidance, we have considered further whether it would be appropriate to quantify the harm to consumers from the reductions in service quality and availability on 080 that we consider likely for increases in the origination charge from its baseline level.

A5.136 We have concluded that such a quantification exercise would not be helpful and potentially misleading. This is because the results are very sensitive to what we assume about certain key factors that we consider to be inherently uncertain. However, we do consider it helpful to set out in more detail our qualitative assessment of the consumer harm from this effect in light of stakeholder comments and given the importance of this effect in determining the appropriate SP outpayment. In discussing our qualitative assessment, we also highlight the key factors that we consider to be uncertain and which have led us to discount a quantitative assessment.

A5.137 In doing so, we look at the consumer impact of:

- SPs cancelling their service altogether (i.e. no longer offering a service that can be accessed by means of calling a non-geographic number);
- SPs migrating to another number range (e.g. 03 or 0845);
- SPs using cost mitigating measures to reduce the costs associated with calls from mobiles or reducing other costs associated with offering a service on 080 (e.g. the number of staff answering calls) to the detriment of service quality;
- fewer new SP users being attracted to the range; and

[352] This is the sum of those SPs that responded that they were "very" and "fairly" likely to get rid of their 080 number for increases in the level of outpayments at each of 0.5 and 1ppm.
[353] See paragraph A23.65 of the April 2012 consultation.
[354] See, for example, the comments by O2 and EE summarised in paragraphs A1.246 and A1.248

- wider costs resulting from a reduction in service availability/quality on 080.

A5.138 We consider each of these effects in turn before setting out our overall conclusions on the impact on consumers of reductions in service availability/quality on the 080 range. Firstly, we set out the overall changes in service availability we consider likely for given increases in the SP outpayment from its baseline level. This is taken from the 2011 SP survey and is intended to provide a frame of reference for the discussion of the various effects below, whose impacts all vary with the extent of the reduction in service availability/quality on the 080 range. The Table shows both the total reduction in service availability from its baseline level and the reduction in service availability associated with a particular 0.5ppm increase in the SP outpayment. For example, if the SP outpayment were to increase by 1.5ppm, this would imply a 28% reduction in service availability from its baseline level and a 9% reduction in service availability relative to the scenario in which the SP outpayment increases by only 1ppm.

Table A5.5: Impact on service availability resulting from different increases in the average SP outpayment from its baseline level

	Increase in average SP outpayment from baseline			
	0.5ppm	**1.0ppm**	**1.5ppm**	**2.0ppm**
Total reduction in service availability from baseline	19%	19%	28%	36%
Reduction in service availability relative to previous increment of SP outpayment	19%	0%	9%	8%

Source: Question 17 of the 2011 SP Survey, which asked all SPs their likelihood of getting rid of their number if the cost per minute increased. We refer to this question elsewhere in this document as the “willingness to exit” question.
Notes: Total reduction in service availability from baseline is calculated as the sum of those SPs responding that they were either “very likely” or “fairly likely” to exit for an increase in average payment of that magnitude.

SPs cancel their service

A5.139 We consider it likely that some 080 SPs will cancel their service altogether as a result of any increase in outpayments, and that a larger increase in average SP outpayments will lead to a greater number of SPs choosing to do so. The 2011 SP survey asked those SPs who said they were ‘very likely’ to get rid of their 080 number for any increase in their outpayments what they were likely to do, to which 15% of respondents indicated they would cancel their service altogether.[355] Although these results should be considered indicative only, due to the small sub-

[355] Q18 of the 2011 SP survey. “if you did get rid of your Freephone number, which of the following would you be likely to do”. This was therefore asked to 24% (51 respondents) of the total SP sample (of 210 SPs). The small sample size for this question was therefore small and the results can only be seen as indicative. We note that getting rid of a 080 number does not necessarily require the SP concerned to cancel its service altogether as it could also choose to migrate to another number range. In fact, our SP survey suggests that for the increases in outpayment we considered in the SP survey, the majority of SPs getting rid of their number would choose to migrate rather than to cancel their service altogether.

sample of SPs to which the question was asked (51), evidence from the same survey also suggests that the proportion of SPs likely to cancel their service altogether increases when the increase in SP outpayment is greater. For the increases in average SP outpayments we considered in the survey (increases of up to 2ppm), the evidence we have seen suggests the overall proportion of SPs cancelling their service is likely to remain relatively low (less than 4% of all SPs[356]). However, we consider it possible that for larger increases in the SP outpayment the proportion of services affected could become more material.

A5.140 There are significant difficulties in estimating the quantitative value consumers attach to 080 services that are withdrawn altogether, including the fact it would require knowledge of specific properties of the demand for 080 calls, which, as we set out in the recent Tiered Rates Determination, we consider to be inherently uncertain.[357] As a result, we focus on a qualitative assessment here.

A5.141 We recognise that the harm to consumers could be more limited if some of the SPs cancelling their services as a result of a given increase in the SP outpayment made them available through an alternative to non-geographic numbers (e.g. Internet, instant messaging or any other means)- providing this alternative was indeed an adequate substitute for the caller. However, we consider that in the cases where consumers would no longer be able to access the service at all (or where they do not consider the alternative means of access an adequate substitute to a non-geographic call), the impact on consumers could be more material. The large volume of calls to 080 numbers - 11.2bn minutes in 2009, accounting for 36% of all call volumes to non-geographic numbers- suggests that consumers attach significant value to accessing the services currently hosted on the 080 number range. We also note that whilst alternative means of accessing services on non-geographic number ranges may be an adequate substitute for some callers, we consider that in many cases this is unlikely to be the case.[358]

A5.142 As a result, we consider the negative impact on consumers of SPs cancelling their service altogether as a result of an increase in the SP outpayment could be significant if a material proportion of SPs were to act in this way. We would be particularly concerned if we thought that socially important SPs were likely to cancel their services altogether. However, because these SPs tend to attach considerable importance to offering a service to their callers, we consider it more likely they would migrate to another number range.

A5.143 In addition to the direct impact on callers through the loss of service availability, SPs choosing to cancel their service will have an indirect effect on callers via the tariff package effect. This is because OCPs lose the revenue associated with origination charges for calls previously made to these numbers. As with the harm from no longer being able to access services, this impact will become more significant when the increase in SP outpayment is greater and more SPs choose to withdraw their service as a result. For instance, if 4%[359] of SPs were to cancel their service altogether, we estimate that OCPs would lose the revenues associated with

[356] We noted that we did not place much weight on this figure due to the low sample of SPs to which we asked Question 18 of the 2011 SP survey (51 SPs – weighted base).
[357] See paragraphs 6.33 and A3.25 - A3.27 of the Tiered Rates Determination from April 2013.
[358] See Paragraph A11.37 of the April 2013 policy position for more detail on why.
[359] This is approximately the share of SPs that would get rid of their line completely for any increase in average outpayment according to our 2011 SP survey (8 SPs out of 210 – weighted base). We note that we did not place much weight on this figure due to the low sample of SPs (51 – weighted base) to which we asked Question 18 of the 2011 SP survey.

origination charges for approximately more than 200m[360] minutes of calls by mid 2015.

A5.144 Overall, the consumer impact of SPs choosing to cancel their service as a result of a given increase in their average outpayment will depend on the number of SPs choosing to act in this way, which is likely to be higher when the increase in SP outpayment is higher. Although we are unable to quantify this effect robustly, we consider the harm to consumers from no longer being able to access services could potentially be significant if a large number of services were to be affected. This negative effect is further compounded by the tariff package effect resulting from associated reductions in OCP revenues, which is again higher when the number of services withdrawn is greater. However, we recognise that for increases in the SP outpayment of the order considered in our survey (i.e. 2ppm and below) the number of SPs cancelling their service altogether, and therefore the impact of this effect on consumers, is likely to be relatively small.

SPs migrate to another number range

A5.145 Another potential response by SPs to a given increase in their average outpayment is that they migrate to another number range in order to avoid the increase in cost they would face from remaining on 080. In the 2011 SP survey, 60% of SPs who were 'very likely' to get rid of their 080 number in response to any increase in their outpayment said they would migrate to another number range.[361]

A5.146 As noted in the April 2013 policy position, the impact on consumers of SPs migrating to another number range will depend on the number range they opted to move to. We consider it plausible that many SPs would migrate to number ranges offering many of the same benefits as the 080 number range (for example the 03 range, which is included in bundles of inclusive call minutes for many customers). Even if this were to be the case, we consider that for many callers the price of calling these migrated 080 services would still increase if SPs migrate away from 080 (e.g. because the caller is on a tariff that does not include bundled minutes). We also note that we have no evidence on where 080 SPs would be likely to migrate: they may also choose to migrate to a 08x number, for which callers would incur an AC and, in many cases, a SC.

A5.147 We have considered the impact of this increase in call cost in more detail, and have identified the following effects on consumers:

- a loss of consumer surplus on calls no longer made as a result of the increase in price;
- a negative tariff package effect resulting from lost OCP revenues on calls that are no longer made;
- a reduction of consumer surplus on calls made at a higher price; and

[360] We estimate 5.9bn of calls to 080 by mid-15 (i.e. 11.8bn of calls in 2009 reduced by 10% annually – 6 years – to mid-2015). This implies that 4% of calls would equate to 238m of calls by this date.
[361] As noted earlier, we consider these results are indicative only but nonetheless provide a helpful illustration of the potential extent of migration at different levels of the origination charge.

- a positive tariff package effect resulting from higher OCP revenues on migrated calls.[362]

A5.148 We note that in identifying these effects, we have considered the increase in call price relative to a situation in which those SPs who migrate had instead continued to offer a free-to-caller 080 number. As set out above, our baseline for considering the impact of changes in the origination charge assumes that 080 is already free-to-caller for the purposes of deriving our IAR.

A5.149 We would expect there to be some reduction in demand following an increase in call price, resulting in a loss of consumer surplus on all calls that are no longer made. The extent of this reduction in demand will depend on:

- the number ranges SPs choose to migrate to and therefore the price increase faced by callers; and
- the sensitivity of demand of 080 callers to price (i.e. the price elasticity of demand).

A5.150 There is a degree of uncertainty about both of these factors. However, as with services that are cancelled altogether, we consider the impact on consumer welfare from calls that are no longer made is potentially significant. We would be particularly concerned if callers were deterred from calling or made fewer calls to socially important services as a result of higher prices - especially vulnerable consumers. We consider this is more likely to occur for greater increases in the SP outpayment, where it is more likely that some socially important SPs would have no choice but to migrate. In doing so, we recognise that socially important SPs who do migrate are likely to be mindful of the impact their choice of number range has on the price paid by their callers, and this may act to limit the impact on their callers.

A5.151 A further negative impact on consumers arises through the reduction in OCP revenues associated with 080 calls that are no longer made. This reduction in revenues is likely to be passed through to consumers, at least partially, in the form of higher prices for other telecoms services. The scale of this impact is unclear because both the likely reduction in demand and the extent to which reduced OCP revenues are passed through to consumers (i.e. the extent of the tariff package effect) are unknown. Nonetheless, we consider this effect will act to further increase the detriment to consumers.

A5.152 Those calls which consumers continue to make to migrated 080 numbers will also be associated with a potentially significant reduction in consumer surplus associated with those callers who pay a higher price to access these services (compared to a situation in which these SPs continue to offer free-to-caller 080 numbers). We do not have evidence on where 080 SPs would be likely to migrate. As a result, we have considered the average retail call prices of some possible options for SPs migrating away from 080 in order to illustrate the potential price increase consumers accessing migrated numbers may face. For example, if SPs choose to migrate to the 03 number range, our evidence shows that callers, on average, would face price increases of approximately 1.5ppm for fixed line calls and

[362] This is in addition to the positive tariff package effect resulting from a higher origination charge on calls to SPs who remain on 080, which we consider separately from the consumer impact of a reduction in service availability.

1.9ppm for mobile calls.[363] If SPs migrate to 084/087 number ranges, the retail call price faced by consumers will increase by an amount equal to their AC, which will be the same for all 084/087 numbers, plus the SC associated with the particular number block to which the SP migrates. We have previously estimated the likely average level of the AC to be 2.9ppm for calls from a fixed line and 16.1ppm for calls from a mobile.[364] We do not yet know the SC price points that will be available under the unbundled tariff regime as these have yet to be agreed, but consider they are likely to vary along the lines of the price points we have presented in Annex 4.

A5.153 The extent of the reduction in consumer surplus associated with higher retail call prices will depend on the increase in price and the volume of calls to migrated numbers, both of which we consider uncertain but potentially large for material increases in the number of SPs migrating. We also note that some consumers are likely to be affected to a greater extent than others because the cost of accessing different number ranges varies by OCP and by tariff package. For example, pre-pay mobile customers are likely to pay more to access migrated services than those on monthly contracts.

A5.154 In contrast to the calls no longer made, calls to migrated numbers will also have a positive off-setting effect on consumer welfare via the TPE. This is because OCPs generally earn higher revenues (net of costs) from originating calls to the number ranges that SPs may migrate to than they do from the origination charge on 080, and these higher revenues are likely to be passed through to callers (at least to some degree) in the form of lower prices for other services. Whilst the magnitude of this effect is again unknown, it will never fully off-set the negative effect of paying a higher price for calls to migrated numbers. In the first instance, this is because the price increase faced by callers will always be higher than the per minute revenue increase received by OCPs (by an amount equal to the baseline 080 origination charge and any applicable termination charge on the new number range). In addition, we consider the extent of the tariff package effect is likely to be significant but not complete, with the result that pass-through of any increase in OCP revenues is likely to be less than 100 percent.

A5.155 We recognise this positive effect will act to mitigate the increased cost of accessing migrated services for those customers who continue to call these numbers despite an increase in the price of calling. Nonetheless, the impact of the increased cost of accessing migrated services net of any positive impact through the tariff package effect will always be negative and, under certain assumptions, may result in significant consumer detriment.

A5.156 In addition to the impact of higher call costs on consumers, we consider there are additional costs from SP migration that should be taken into account in our assessment. These include:

[363] This is because our evidence suggests the average price of a call to a geographic number (and also including 03 numbers) from a fixed line in 2012 was approximately 1.5ppm and the average price of a call to a UK fixed line from a mobile, which are typically charged at the same rate as 03 calls, was approximately 1.9ppm in the same year. These figures are derived from revenue and call volume data from the 2013 Communications Market Review. We derive landline call prices using revenues of "UK geographic calls" (in Figure 5.27) and volumes of "UK geographic calls" (in Figure 5.29); and mobile call prices using revenues of "calls to fixed" (in Figure 5.35) and volumes of "UK geographic" (in Figure 5.37), available at http://stakeholders.ofcom.org.uk/binaries/research/cmr/cmr13/2013_UK_CMR.pdf.

[364] See Section B, Paragraph 10.62 of the April 2012 consultation for how these figures were derived. We recognise they are based on 2009 Flow of Funds data, which is now four years out-of-date. We do not have any more recent evidence on the average price of calls to non-geographic numbers.

- consumer time costs; and
- SP migration costs.

A5.157 In the April 2013 policy position, we considered the potential for consumer time costs involved in misdialling 080 numbers.[365] We found there were two types of consumer time costs associated with misdialling a number, namely:

- the consumer time cost of misdialling the incorrect number; and
- the consumer time cost of redialling the correct one.

A5.158 To illustrate their potential scale and how they vary with greater reductions in service availability, we note that in Annex 1, we have estimated that, together, these would be approximately £2.9m if 8% of 080 SPs migrated, £6.9m if 19% migrated and £13.1m if 36% migrated.[366]

A5.159 Migration to other number ranges is also associated with a cost to those SPs that migrate.[367] As these are resource costs and SPs are consumers under the Act, we consider these costs are potentially relevant to our assessment of the consumer impact of migration.[368] We have set out our revised estimates of SP migration costs in Annex 1, where we have found costs would be between £3.2m and £8m when migration was low (8%) and between £14.4m and £36m when migration was high (36%), in line with our estimates in the April 2013 policy position.[369]

A5.160 Overall, we consider that migration of SPs to other number ranges as a result of a given increase in the average SP outpayment will have a negative effect on consumer surplus due to the higher average prices faced by callers in accessing the number ranges to which SPs migrate (compared to a situation in which they remained on a free-to-caller 080 range). The magnitude of the consumer detriment associated with a given increase in SP migration is difficult to estimate, as it will depend on uncertain variables. This negative effect will be somewhat offset by a positive tariff package effect resulting from the increased revenues to OCPs (as prices of calls to the numbers where SPs will migrate to are likely to be higher than the origination payments OCPs received on 080). However, the overall effect will always be negative, as the increase in costs of calls to consumers will always be larger than any increase in revenue to OCPs (and furthermore the tariff package effect is likely to be less than 100 percent). In addition, this net negative impact on

[365] Paragraph A10.195, April 2013 policy position
[366] Paragraphs A10.201 – A10.202, April 2013 policy position.
[367] See Paragraphs A10.66 – A10.77 of the April 2013 policy position for a discussion of the categories of cost associated with migration.
[368] In the April 2013 policy position, we concluded that, in reaching an assumption about likely origination charges for the purposes of our impact assessment, it was not appropriate to place much weight on the increase in the price paid by SPs as a result of higher origination charges. We said that this cost to 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 that we tended to favour callers over SPs where their interests are in conflict (see paragraph 12.56, April 2013 policy position). However, we consider there are important differences between higher migration costs to SPs and increases in the price paid by SPs which mean that we consider it appropriate to place weight on SP migration costs in our assessment. In the first instance, this is because migration costs represent an increase in total costs to consumers, rather than simply being a transfer between the two. Moreover, migration has a negative impact on callers outlined above, and so the effects on SPs and callers are in the same direction in this case.
[369] Paragraphs A10.151 – A10.152, April 2013 policy position.

consumers of higher costs of calls will be compounded by further negative impacts resulting from consumer time costs and SP migration costs.

SPs employ cost-mitigating measures or reduce some other aspect of service quality

A5.161 SPs may retain their 080 service but react in other ways to a given increase in origination charges which may reduce the quality of service. We consider that SPs could use two types of cost mitigation strategies, namely:

- measures aimed at reducing the cost to them of both fixed and mobile calls; and
- measures targeted towards reducing the cost to them of mobile calls, reflecting their higher origination charge.

A5.162 In the April 2013 policy position we focused on the second of these mitigation strategies, particularly in relation to the impact of the differential between fixed and mobile origination charges on the use of these measures. However, we also recognise it is possible that SPs could react to a given increase in origination charges by seeking to reduce other costs associated with providing a 080 service - for example, the number of staff employed to answer calls. This would affect fixed and mobile calls equally, and would be driven by the level of the average SP outpayment rather than the differential between fixed and mobile origination charges. Although we recognise it is possible SPs would react in this way, we have no evidence to suggest it would be likely to occur and so we do not place significant weight on it in our assessment. In the text below we therefore use ‘cost mitigation measures’ as a shorthand means of referring to measures applied to mobile calls only.

A5.163 In the April 2013 policy position we noted it was possible to retain an 080 service but treat calls from mobile differently (e.g. routing them to an automated message or using some other means to keep the duration of the call as short as possible).[370] We considered it was reasonable to assume this would occur at higher mobile origination charges but that the overall impact of this on consumers was unclear. We noted that to the extent cost mitigation measures were used instead of migration, they would reduce the negative impact on consumers from the reduction in service availability that would otherwise occur. However, for all other SPs, they would result in detriment to consumers.

A5.164 We said that we could not be confident of the degree to which these strategies would be used, but nonetheless considered that higher mobile origination payments (relative to fixed origination payments) may encourage SPs to request these measures. We also said that if SPs faced an excessive incentive to use these measures then it could cause consumer detriment in the form of lower quality of service when calling from a mobile or a reduction in service availability if the caller is requested to contact another number.

A5.165 We consider that at higher levels of the mobile origination charge, the incentives to mitigate the cost of calls from mobiles could be strong as the financial implications for SPs are significant. In the April 2013 policy position, we estimated the cost to SPs of an increase in the mobile origination charge of 1ppm (to 1.5ppm) could be up to £40m p.a., and an increase of 2ppm (to 2.5ppm) up to £79m p.a. Furthermore, as discussed below when assessing the LRIC differential and

[370] We received evidence from two TCPs [✂] who said that this may be a potential reaction from CPs to higher origination charges.

mitigation strategies, we estimate that SPs could mitigate up to about one-half of the increase in payments by using mitigation strategies.

A5.166 We have not been able to robustly quantify the harm caused to consumers from SPs employing cost-mitigating measures. However, we do consider it more likely SPs will employ these measures to the detriment of callers when the mobile origination charge is higher (and the differential between the fixed and mobile charges is therefore also higher). We consider this detriment could be significant if cost mitigation measures were to be used extensively by SPs. In the extreme, there would be little point making the number range free to call from mobiles as well as fixed lines if the origination payment were then set at such a level that meant all mobile calls were effectively blocked by SPs.

A5.167 We note that we have included this assessment of cost mitigation strategies in our description of the consumer detriment from reduced service availability for completeness only, as we consider it helpful to describe all possible impacts on consumers resulting from higher origination charges in one place. However, we only take these cost mitigation strategies into account in Step 2 below, where we assess the relative levels of the fixed and mobile origination charges.

New SPs are deterred from entering the range

A5.168 In the April 2013 policy position, we noted that our proposals would lead to a substantial increase in consumer confidence in the number range and thereby to increased call volumes, making the 080 range more attractive to SPs and boosting service availability. We also considered that addressing the vertical externality (through better price awareness and improved consumer confidence) would allow for the introduction of innovative business models that were difficult to introduce under the status quo (such as reverse charging and services funded by advertising revenue rather than revenue by share).[371] However, we also noted that for origination charges above our base case scenario range, the impact of these effects on the attractiveness of 080 to SPs was likely to be reduced by the greater increase in cost.

A5.169 We consider it likely that fewer new SPs will be attracted to 080 for greater increases in the average SP outpayment, resulting in detriment to consumers compared to a situation in which the increase in SP outpayment is lower. We have not been able to quantify this effect as we have no evidence on how the number of SPs likely to be attracted to the 080 range is likely to vary for incremental increases in the average SP outpayment. Nonetheless, we consider this effect potentially significant- not least because rejuvenating the 080 number range is one of the benefits we hope to achieve from making 080 free-to-caller.

Wider costs associated with a reduction in service availability/quality

A5.170 In addition to the effects outlined above, we are concerned that a significant reduction in service availability resulting from a given increase in the average SP outpayment could have a negative impact on two of the key benefits from making 080 free-to-caller, namely:

- the improvement in consumer confidence in 080, and the associated increase in demand for 080 calls; and

[371] April 2013 policy position, paragraph 13.52.

- the reduction in the effect of the vertical externality.

A5.171 We consider that both of these benefits will be affected by the number of SPs getting rid of their 080 number (or choosing not to enter the 080 range) for a given increase in the origination charge.

A5.172 In relation to the first, we consider the value in improving consumer confidence in 080 is linked to service availability on the number range. This is because there is clearly less merit in improving trust in the 080 brand when a greater proportion of the services currently hosted on the number range migrate elsewhere or cease to exist as a result of a given increase in origination charges. It is also less likely that making 080 free-to-caller will have a positive impact on demand for 080 calls when that increase results in there being fewer services on 080 for consumers to call. Although we have not been able to quantify the extent of this harm, we consider the benefits from improved consumer confidence are lower when reductions in service availability on 080 are greater and could be materially so for large reductions in service availability. We consider it appropriate to take this into account in our assessment.

A5.173 With respect to the vertical externality, one of the key market failures we identified on the 080 number range is the difficulty SPs currently face in obtaining a genuinely free-to-caller number. As a result, we consider that making 080 free-to-caller will offer significant benefits to the large proportion of SPs who would like to offer a genuinely free-to-caller number and are unable (or face significant barriers) to do so under the status quo.[372] These benefits are clearly reduced if a significant proportion of those SPs who would like to offer a genuinely free-to-caller number (and are willing to pay to do so) are still unable to because the origination charge is prohibitively high.

A5.174 We recognise there will inevitably be some migration away from 080 when it is made free-to-caller.[373] SP preferences are diverse and, though we have seen evidence of significant unmet demand for a free-to-caller number range, their willingness to pay differs. Indeed, the 2011 SP survey suggests that approximately 19% of SPs on the 080 range would migrate to another number range for any increase in SP outpayments from their baseline level. This percentage remains unchanged for an increase in SP outpayments of 1ppm (see Table A5.4). However, the same survey also shows that when SP outpayments increase by more than 1ppm above their baseline level, there is a sharp rise in the number of SPs who would get rid of their 080 number- from 19% to 28%. We place significant weight on this reduction in service availability. For increases in the SP outpayment of this amount and more, some SPs who would be willing to pay to obtain a free-to-caller number (and therefore stood to benefit from addressing the vertical externality) would leave the number range. As this reduces one of the key benefits of making 080 free-to-caller, we are very concerned about this reduction in service availability on 080.

A5.175 In this respect, we recognise that our reference to the "steady decline in availability" for increases in SP outpayments of more than 1ppm may have caused confusion

372 Paragraph 13.41, April 2013 policy position.

373 This is because we consider it likely there will be some increase in the average SP outpayment from current levels when 080 is made free-to-caller. The mobile origination charge will need to increase to cover the incremental costs of a mobile call and we consider it unlikely that fixed OCPs will accept a significantly lower charge than that which they currently receive (nor are vertically integrated TCPs likely to propose a charge significantly lower than this given they also operate as fixed OCPs).

(see, for example, [✂]'s comment on this made in relation to the appropriate increase in SP outpayment summarised in A5.256 below). In saying this, we intended to capture the fact that further increases in the average SP outpayment beyond this point would be likely to result in greater levels of exit still. We did not intend to detract from the initial discontinuity in service availability. We explained in detail in the April 2013 policy position why we do not consider it appropriate to quantify the benefits from making 080 free-to-caller, including the benefits from improving consumer confidence in 080 and addressing the vertical externality. For the same reasons, we do not consider it appropriate to quantify the harm from any reduction in these benefits as a result of greater levels of migration due to a given increase in the average SP outpayment. However, in the context of the trade-off between service availability and the TPE we consider the potential detriment could be relatively large given that both of the benefits potentially at risk of being weakened as a result of greater reductions in service availability on 080 are central to our aims in making 080 free-to-caller. As a result, we place significant weight on the risk that one or both are adversely affected in our assessment of the appropriate SP payment.

Overall consumer detriment from reduced service availability/quality

A5.176 Our SP survey provides an indication of the reductions in service availability on 080 likely to be associated with given increases in the average SP outpayment from its baseline level (reflecting increases in the fixed and mobile origination charges from their baseline levels). We have not been able to quantify the harm to consumers from these reductions in service availability because the results are dependent on factors we consider inherently uncertain. Nonetheless, we consider there is a risk that the cumulative impact of the effects outlined above, resulting from a given increase in origination charges, could result in reductions in service availability on 080 leading to significant detriment to callers, particularly if these reductions are on a scale that fundamentally affects the brand and identity of 080 as could be the case for larger increases in the average SP outpayment. We place significant weight on the risk of a reduction in service availability weakening the benefits of making 080 free-to-caller, and are therefore concerned that the SP survey results suggest that material reductions in service availability over and above those likely to exit anyway could occur for increases in the SP outpayment of more than 1ppm.

Consumer benefits of higher origination payments

Summary of assessment in the April 2013 policy position

A5.177 In the April 2013 policy position, we noted that higher origination payments were generally likely to increase OCPs' profits from calls to the free-to-caller number range. We said that these higher profits were likely to support lower retail prices for other services and/or access via the tariff package effect. We noted the more complete the tariff package effect, the greater the proportion of any origination payments that are passed onto consumers. Our view was that the extent of the tariff package effect was significant but unlikely to be complete. As a result, we considered that if mobile OCPs received an extra £1m from higher origination payments then the retail price of other telecoms services is likely to fall by less than £1m. We did not draw clear conclusions about which particular telecoms prices were likely to be affected by changes in origination payments or which customer groups were particularly likely to benefit from those price changes.[374]

[374] Paragraphs 12.48 – 12.49. April 2013 policy position

A5.178 We assessed the tariff package effect using our updated estimates of this effect. We found that the impact on mobile CPs could be positive or negative depending on the assumptions used, mainly the level of origination payments. For fixed CPs, we estimated that making 080 free-to-caller would have a negative impact.[375]

Ofcom decision

A5.179 We recognise that making the 080 range free-to-caller could result in a loss of revenues to OCPs, depending on the level of the origination charge, and that this could in turn affect the price paid by consumers for other telecoms services via the TPE. We take this cost to consumers into account in our impact assessment by assessing the likely level of the fixed and mobile TPE for origination charges within our IAR.

A5.180 In determining the appropriate IAR in the first place, however (i.e. reaching an assumption about the likely level of origination charges), we are applying the principles set out in our 080/116 Dispute Guidance to the evidence currently available to us. In the guidance, we state that we would take into account how a change in origination charges between the relevant rates would affect consumers through a change in the TPE. In assessing the appropriate IAR, we therefore also take into account the change in the TPE associated with given increases in the fixed and mobile origination charges from their baseline levels. As set out above, the baseline we use assumes 080 is already free-to-caller and origination charges are equal to pure LRIC for each of fixed and mobile. We consider the change in OCP revenues, and hence the TPE, for increases in origination charges from this level. However, we also present results in terms of the increase in average SP outpayment from its baseline level to aid comparison with the impact on service availability as discussed above.

A5.181 We have identified four mechanisms through which increases in the SP outpayment would affect OCPs' profits, and thereby lead to a change in the TPE (relative to the baseline described above):

- an increase in revenue per minute for calls made to SPs that do not get rid of their 080 number which therefore receive the new, higher origination charge;
- an increase in revenue per minute for calls to migrated numbers where the retail call price exceeds the baseline origination charge and termination charge payable on the new number range;[376]
- a decrease in revenues for calls no longer made to migrated numbers (as explained above, we expect that some calls would no longer be made as a result of the higher retail price for calling the new number range); and
- a decrease in revenues for calls previously made to numbers where the SP chooses to cancel its service altogether.

[375] Paragraph 12.98, April 2013 policy position

[376] We note that in theory there could be a reduction in revenues associated with calls to migrated numbers if the baseline origination charge exceeds the retail call price of the number range concerned. However, we consider this less likely to occur for origination payments consistent with Principle 1, which limits the upper bound for the fixed origination charge to 0.4-0.5ppm and the mobile origination charge to 2.5-3.3ppm.

A5.182 In the April 2013 policy position, we focussed primarily on the first of these effects. However, our assessment of the consumer impact of a reduction in service availability on 080 set out above suggests the other effects may also be important. Of particular significance in this respect is the potential increase in revenues from calls to migrated 080 numbers, which we recognise above may go some way towards off-setting the harm to consumers from paying a higher price to access these services.

A5.183 We also note that we received comments in relation to our draft 080/116 Dispute Guidance which suggest it may not have been clear how we consider the trade-off between service availability and the TPE in Step 1. In particular, Three thought that we had underestimated the benefits consumers would derive from further increases in the average SP payment via the TPE because our estimates of the TPE included the negative effect of making 080 free-to-caller. It said that we should take zero-rating as given and from there assess whether the extra consumer benefits for every increase in the SP origination payment (through the TPE) would outweigh the associated consumer loss due to reduced service availability.[377]

A5.184 We respond to Three's comment in full in the statement accompanying the final 080/116 Dispute Guidance, but consider it useful to clarify here that we agree the relevant consideration is the *change* in the TPE resulting from a given increase in the average SP outpayment (rather than the absolute level of the TPE itself). As explained above, in making the trade-off under Step 1, we weigh this change in the TPE against the impact on consumers from the change in service availability resulting from a given increase in the origination charge from the baseline level scenario described above.

A5.185 Consistent with our approach in the April 2013 policy position, we continue to consider that OCPs' profits are generally likely to increase as a result of an increase in SP outpayments. This is because we consider the positive effects on OCP revenue outlined above are likely to more than off-set the negative effects. However, we have not been able to robustly quantify this overall effect on OCP revenues for the reasons set out above in relation to service availability.

A5.186 Instead, we illustrate the potential change in OCP incremental profits for particular increases in the average SP outpayment using a similar methodology to that used to calculate the TPE for the purposes of our impact assessment. We do this by first calculating the baseline level of fixed and mobile OCP revenues, assuming both the fixed and mobile origination charge are at their pure LRIC levels, 080 calls are free from both fixed lines and mobile and the proportion of mobile-originated calls is at the mid-point of the range we consider likely when 080 is free-to-caller. We then calculate the change in incremental profit from 080 calls associated with 0.5ppm increases in the average SP outpayment from its baseline level, using the relationship between increases in the average SP outpayment and the fixed and mobile origination charges set out in Table A5.4 above. As discussed below, we also take into account the impact on OCPs' incremental profit of some SPs migrating away from 080 to other number ranges.

A5.187 Our estimates of the TPE presented below show both the overall change in the TPE from its baseline level and the change in the TPE relative to the previous increment in the SP outpayment. These estimates are likely to over-state the actual consumer impact as they assume that 100% of any change in OCP incremental profits will be passed on to consumers in the form of retail price changes for other telecoms

[377] Three, April 2013 policy position response, page 7.

services (i.e. 100% TPE), whereas we consider the TPE is likely to be significant but incomplete. For clarity, we also illustrate the level of the fixed and mobile charge associated with a particular increase in the SP outpayment from its baseline level.

A5.188 We present illustrative results associated with two different scenarios. The estimates in Table A5.6 below assume that all SPs migrating away from 080 will move to a number range with call prices equivalent to those of calls to geographic numbers (described in paragraph A5.146 above). This scenario is intended to estimate the TPE when SPs migrate to a number range such as 03 ("03-like" number range). In contrast, the estimates in Table A5.6 below assume that all SPs migrating will move to a number range with call prices equivalent to our estimates of the AC on 084/087 numbers (described in paragraph A5.152 above).[378] Although we do not have any evidence on the number ranges SPs would be likely to migrate, we consider these scenarios provide a helpful illustration of the potential scale of changes in the TPE. For example, if SPs migrate to a mixture of other number ranges including both 03 and 084/087, the changes in the TPE may lie in between the figures shown in the two Tables below.

A5.189 Table A5.6 below (which assumes that all SP migration is to an 03-like number range and 100% TPE) shows that a 1ppm increase in the average SP outpayment would result in a fixed origination charge of approximately 0.45ppm and a mobile origination charge of 2.28ppm. Given the assumptions, this would be associated with a favourable change in the fixed and mobile TPEs of £13.5m and £44.6m respectively from their baseline levels, and of more relevance to the Step 1 analysis, a favourable change in the mobile TPE of £24.1m compared with a scenario in which the SP outpayment increases by only 0.5ppm. The corresponding change in the mobile TPE in Table A5.7 (which assumes that all SP migration is to 084/087 numbers and 100% TPE) as between 0.5ppm and 1ppm above the baseline average SP outpayment is also £24.1m (these figures are the same in both Tables because we assume no change in SP migration in this case).

Table A5.6: Impact of increases in SP outpayment from baseline on change in TPE assuming all SPs migrate to a 03-like number range and 100% TPE

	Increase in SP outpayment from baseline			
	0ppm	**0.5ppm**	**1.0ppm**	**1.5ppm**
Fixed origination payment	0.05 ppm	0.45 ppm	0.45 ppm	0.45 ppm
Mobile origination payment	0.85 ppm	1.41 ppm	2.28 ppm	3.15 ppm
Change in fixed CPs' incremental profits relative to baseline	£0.0m	£13.5m	£13.5m	£15.1m
Change in mobile CPs' incremental profits relative to baseline	£0.0m	£20.5m	£44.6m	£64.1m

378 We note that CPs are required to have the same AC across all unbundled ranges. Thus, our assumption is valid for all number ranges and would not depend on the number range to which SPs decide to migrate in practice.

Change in fixed TPE relative to previous increment in SP outpayment[379]	-	£13.5m	£0.0m	£1.6m
Change in mobile TPE relative to previous increment in SP outpayment[380]	-	£20.5m	£24.1m	£19.4m

Table A5.7: Impact of increases in SP outpayment from baseline on change in TPE assuming all SPs migrate to 084/087 and 100% TPE

	Increase in SP outpayment from baseline			
	0ppm	**0.5ppm**	**1.0ppm**	**1.5ppm**
Fixed origination payment	0.05 ppm	0.45 ppm	0.45 ppm	0.45 ppm
Mobile origination payment	0.85 ppm	1.41 ppm	2.28 ppm	3.15 ppm
Change in fixed CPs' incremental profits relative to baseline	£0.0m	£37.3m	£37.3m	£50.1m
Change in mobile CPs' incremental profits relative to baseline	£0.0m	£32.6m	£56.7m	£81.9m
Change in fixed TPE relative to previous increment in SP outpayment[381]	-	£37.3m	£0.0m	£12.8m
Change in mobile TPE relative to previous increment in SP outpayment[382]	-	£32.6m	£24.1m	£25.2m

A5.190 The results above are calculated using the following assumptions:

- volumes by mid-2015 are estimated assuming that 2009 volumes from the Flow of Funds will decline 10% annually during a 6 year period;[383]

[379] For increases in SP outpayments above or at 0.5ppm, this denotes the change in fixed OCP incremental profits from 080 calls relative to a situation in which the SP outpayment is 0.5ppm lower.
[380] For increases in SP outpayments above or at 0.5ppm, this denotes the change in mobile OCP incremental profits from 080 calls relative to a situation in which the SP outpayment is 0.5ppm lower.
[381] For increases in SP outpayments above or at 0.5ppm, this denotes the change in fixed OCP incremental profits from 080 calls relative to a situation in which the SP outpayment is 0.5ppm lower.
[382] For increases in SP outpayments above or at 0.5ppm, this denotes the change in mobile OCP incremental profits from 080 calls relative to a situation in which the SP outpayment is 0.5ppm lower.
[383] For simplicity, we do not take account of the increase in demand that we expect as a result of our decision.

- the share of calls originated from mobile on 080 after making it free-to-caller will be 57.5%; and
- in terms of the number ranges where SPs are likely to migrate to from 080, we assume that, in the case of 03:
  - the share of calls to these SPs originated from mobile is likely to be 57.5% (consistent with our assumptions regarding the likely call split when 080 is free to caller[384]);
  - the average mobile retail price is 1.94ppm[385];
  - the average fixed retail price is 1.45ppm[386];
  - the average termination rate is 0.3ppm[387]; and
  - the fixed and mobile incremental profit (1.1ppm and 0.8ppm, respectively) is equal to the retail price minus the termination rate and the fixed and mobile incremental cost, respectively.

  In the case of 084/087 number ranges we assume:

  - the share of calls to these SPs originated from mobile is likely to be 10% (consistent with the share of calls originated from mobile across 084/087 number ranges in 2009 as indicated by the 2010 Flow of Funds);
  - the average mobile and fixed retail price billed by OCPs is 16.1ppm and 2.9ppm, respectively, consistent with our estimates of the AC presented in paragraph A5.152 above;[388] and
  - the fixed and mobile incremental profit (2.9ppm and 15.3ppm, respectively) is equal to the retail price minus the fixed and mobile incremental cost, respectively.

A5.191 The results above illustrate that the positive impact on consumers of an increase in origination charges may be considerable. For example, considering an increase in average SP outpayments from 0.5ppm to 1ppm above the baseline level could result in an increase in revenues made by fixed and mobile OCPs of £0m and £24.1m p.a. respectively. For this specific change in SP outpayment these figures are the same in both Tables above. For other changes, such as from 1ppm to

[384] We derived the fixed and mobile split for 080 numbers relying on evidence from all voice calls (as discussed further below), thus, we consider that an assumption for 03-like number ranges that is consistent with 080 is appropriate.
[385] Based on the average retail price of mobile “calls to fixed” in 2012, according to our 2013 Communications Market Report (see Figure 5.35 and 5.37).
[386] Based on the average retail price of fixed calls to “UK Geographic Numbers” in 2012, according to our 2013 Communications Market Report (see Figure 5.27 and 5.29).
[387] This is broadly consistent with the termination charges on 03 numbers by time of day that Ofcom determined were fair and reasonable in the 03 termination charges dispute, available at http://stakeholders.ofcom.org.uk/binaries/consultations/draft-everything-bt-termination/statement/determination.pdf.
[388] We note that we have excluded any applicable SC from our calculations. Although the SC will be billed to consumers under the unbundled tariff regime (wherever a SC is applied), it will not be retained by the OCP and therefore will not contribute to any change in OCP revenue. As a result, the level of the SC is not relevant to our calculations of the TPE.

1.5ppm above the baseline level, there are different changes in OCPs' incremental profit as between the two Tables with the figures larger in Table A5.7. In all cases we expect that the impact on consumers would be smaller than the figures shown in the Tables above, because we consider the extent of the TPE is likely to be incomplete, i.e. less than the 100% we have assumed for the purpose of the illustrative calculations above.

A5.192 In setting out the results of these calculations, we recognise that calls to the number ranges to which SPs migrate might be included in bundles of inclusive minutes for many customers. This will be the case for 03 call charges and could be the case for the AC for some 084/087 numbers under the unbundled tariff regime. We consider our illustrative calculations for the "migration to 03-like numbers" scenario are unlikely to be affected to any material degree by this practice. This is because the average retail prices for calls to 03 numbers used in these calculations are based on revenue and call volume data for all calls to UK geographic numbers in 2012, and as a result take into account those calls which were made within bundles. In contrast, our illustrative calculations for the "migration to 084/087 numbers" could potentially be affected to a more material degree. Our estimates of the AC used in these calculations are based on 2009 data from the Flow of Funds. Although this data includes calls to numbers which were included in bundles by some OCPs at that time (e.g. 0845), it also includes many number ranges which were not included in bundles. It is therefore likely to over-state the retail price of calls to 084/087 numbers wherever the AC is included in bundles of inclusive minutes. To the extent that SPs choose to migrate to these numbers, our calculations could therefore over-state the change in the TPE- potentially to a significant degree.

A5.193 However, although we have not been able to quantify this potential over-statement, we consider it unlikely that our overall conclusion would be altered. First, this is because we do not rely on the 084/087 calculation alone, and we recognise that SPs may choose to migrate to a mixture of 03 and 084/087 numbers. Second, a similar over-statement of average call prices on 084/087 would also be relevant to the service availability effect of callers paying increased prices when SPs choose to migrate to 084/087. Since our Step 1 analysis concerns the trade-off between changes in service availability and the TPE, there would be a smaller impact on the comparison between these two than on either considered in isolation.

Overall consumer impact of higher origination payments

A5.194 Increasing the SP outpayment from its baseline level will have both positive and negative effects on consumers. As noted above, the benefits to consumers from the resulting change in the TPE may be considerable. However, it is our judgement that where an increase in the origination charge leads to a material reduction in service availability, the overall harm to consumers is likely to exceed the benefits from the associated change in the TPE. Although we cannot robustly quantify this harm, we consider the cumulative impact of the negative effects outlined above may result in significant detriment to consumers. In doing so, we place particular weight on the risk of weakening the benefits of making 080 free-to-caller at greater levels of service reduction.

A5.195 The SP survey suggests that some SPs will choose to get rid of their 080 number (i.e. migrate to another range or withdraw their service altogether) for any increase in average outpayment from the baseline level. However, taken at face value and leaving aside the asymmetry of risk discussed below, the same evidence suggests that the average outpayment could be increased by up to 1ppm without triggering any further reduction in service availability (over and above the initial effect associated with any smaller increase in outpayment). Given that increases in the average SP outpayment up to this point would result in a positive tariff package effect without any material effect on service availability, we consider that increasing the average SP outpayment by this full amount (i.e. increasing by 1ppm) would be to the benefit of consumers.[389]

A5.196 However, our evidence suggests that further increases in origination charges that result in an increase in the average SP outpayment of more than 1ppm would be likely to result in a material reduction in service availability. In particular, the number of SPs likely to get rid of their 080 number could increase from 19% to 28% for a further 0.5ppm increase in the SP outpayment (i.e. a 1.5ppm increase from the baseline level). Further increases beyond this point would have a more negative impact still and, in any event, would imply increases in the fixed and mobile origination charges that are not consistent with the upper bounds derived under Principle 1. Because we consider the negative effects associated with these reductions in service availability are likely to outweigh the positive changes in the tariff package effect associated with the same increase in origination charge, it is our considered judgement that it is not appropriate to increase the average SP outpayment by more than 1ppm.

A5.197 We note there may be factors to support limiting the increase in SP outpayments to below this level, to which we now turn.

Caller externality

Summary of assessment in the April 2013 policy position

A5.198 In the April 2013 policy position we said that a positive caller externality on consumers of a free to caller range arises because SPs may not take into account (at least not completely) the positive effect that their decision to stay on (or move to) a free to caller range has on consumers (who can call them for free). The magnitude and existence of this externality depended on SPs' degree of internalisation of the benefits arising to callers from their choice of a free to caller range. If this internalisation was not complete, and therefore the benefits to callers from SPs staying on a free to caller range were higher than the benefits derived by SPs from this decision, then there would be a positive externality on callers.[390]

A5.199 We argued that in general there was often significant scope for call externalities to be internalised and that this was the view we had 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). We considered however that the externality in the case of non-geographic calls was different because it related to a discrete event, the choice of number range by SPs, rather than a continuous series

[389] We recognise this reasoning suggests there may be an argument to keep origination charges at their baseline level in order to avoid any reduction in service availability on 080. However, we consider it likely there will be some increase in the average SP outpayment from current levels once 080 is made free-to-caller. This is because the mobile origination charge will need to increase to cover the incremental costs of a mobile call and we consider it unlikely that fixed OCPs will accept a significantly lower charge than that which they currently receive (nor are vertically integrated TCPs likely to propose a charge significantly lower than this given they also operate as fixed OCPs). We therefore assess the appropriate increase in the SP outpayment under the assumption there is some increase from the baseline level. We also note that the range of origination charges we assumed in order to assess the costs and benefits of making 080 free-to-caller in the April 2013 policy position did not include pure LRIC charges. We are not re-opening this assessment for the final statement.

[390] April 2013 policy position, paragraph 12.106.

of call by call decisions that build on a calling relationship. This difference could limit the extent to which the externality was internalised in practice in the case of 080/116. The external benefit to callers was also likely to be potentially significant because when the SP chose to use the 080 range, callers would pay a zero call price. Thus, the potential for uninternalised caller externalities could be more significant in the case of 080 than in the case of geographic calls.[391]

A5.200 We explained that the right response to a positive externality was in general to reduce the price paid by the decision-maker, in this case the origination charge paid by the SP (via its TCP). This was 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 considered that the existence of a positive caller externality (if there was less than complete internalisation by SPs) could therefore imply that the optimal origination charge for consumers was 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 had derived under Step 1 in Principle 2 of our framework. This was to enhance the incentives on SPs to remain on the range so that consumers obtained the net benefit that results from free calls.[392]

A5.201 We noted that there were key differences between the caller externality and the network externality that we had discussed under Principle 1 when assessing the range of efficient costs relevant to recovery through origination charges. We considered that these differences meant that the former may be relevant to our assessment of the IAR but that the latter was not. In particular, we considered there was significant potential for leakage of any revenues intended to address the network externality given there were few genuinely marginal mobile subscribers. In contrast, we considered that a significant proportion of SPs may either withdraw their service or migrate to another number range as a result of higher origination charges, and therefore that there was less potential for inefficiency in setting a lower origination charge with the caller externality in mind. In addition, we considered there were clearer external benefits to callers from a marginal SP remaining on the 080 range than there were to SPs from an increase in the number of mobile subscribers (because of the potential for fixed-mobile substitution).[393]

A5.202 We asked the following question:

Q12.4: Do you agree that the potential for a positive caller externality supports limiting the increase in SP average outpayments to below 1ppm? If not, please explain why.

Stakeholder comments

A5.203 BT, [✂] and the [✂] agreed with our approach.[394] [✂] said limiting SP outpayments would make it more attractive for the SP to choose a free-to-caller number and to offer a better service to the customer.[395] BT said it believed that the potential for a positive caller externality could be eroded by any increase in the SP

[391] April 2013 policy position, paragraph 12.107.
[392] April 2013 policy position, paragraph 12.108.
[393] April 2013 policy position, paragraph 12.55.
[394] [✂]
[395] [✂].

average outpayment and to ensure that the benefit of the externality was realised the optimum action was in this case to limit the increase in outpayments.[396]

A5.204 The Helplines Partnership ('THP') said socially important services based their decision to stay on or move to a free-to-caller platform not on the private benefits identified by Ofcom, but were instead motivated by social benefits such as enabling more vulnerable callers to access the service, or reducing the financial impact on callers that were already facing multiple challenges. It said the weighting factor for helplines was the sustainability of their service and the availability of external funding and/or volunteers. THP said it agreed that the proportion of calls from mobile phones would increase if 080 and 116 move to a free-to-caller model, but it thought this would have benefits for the most vulnerable people in society and their ability to access helpline services.[397]

A5.205 Magrathea said that due to factors such as the inbound transit charges levied by the OCP and the profit margin added by the TCP, SPs were paying TCPs considerably more than 0.5ppm for 080 call origination. It said there was no evidence that the amount SPs paid would decrease following the new network charge control regime later this year (it noted, for example, that SP outpayments did not change after the fixed termination rates changed in October 2012). It noted that assuming a higher level of fixed origination payments would result in a lower "appropriate mobile origination charge". It believed the fact that TCPs and SPs paid, in practice, more than 0.5ppm for 080 call origination supported a mobile origination charge towards the very low end of Ofcom's base case scenario range. It said the maximum reasonable charge was 1ppm.[398]

A5.206 Three disagreed with our proposed approach. It said Ofcom had correctly dismissed the potential for a positive network externality that would justify a higher average SP outpayment on the basis that a certain proportion of that increased revenue was likely to be retained by the OCP as profit.[399] However, it said Ofcom had not considered whether similar arguments applied in respect of the "positive caller externality" at the other end of the market – in particular, it said Ofcom had not considered whether TCPs, who would benefit from the reduced origination charge in the first instance, would pass on the benefit to their SPs. Three said in that context, Ofcom appeared to ignore the CAT's and the Court of Appeal's judgments in the 08x appeals, where they concluded that the extent to which TCPs might pass-on any additional benefit received to SPs (i.e. the 'Indirect Effect') was "*so speculative as to be incapable of being weighted in the balance*".[400] Three invited Ofcom to dismiss the potential for a caller externality.[401]

A5.207 EE considered that Ofcom had failed to set out why it considered it was more efficient for the cost of subsidising this externality to be borne solely by OCPs and not also TCPs. It noted that the 2009 Flow of Funds study had found that almost half of the charges paid by SPs in respect of 080 calls was retained by TCPs. It therefore considered that there was a strong argument that TCPs, rather than

[396] BT, April 2013 policy position, p.17.
[397] The Helplines Partnership, April 2013 policy position response, p, 3.
[398] Magrathea, April 2013 policy position response, p.5.
[399] Paragraphs 12.36 to 12.42 of the April 2013 policy position.
[400] *Telefónica O2 UK Limited and others v BT plc* [2012] EWCA Civ 1002, paragraph 87, available at http://www.bailii.org/ew/cases/EWCA/Civ/2012/1002.html.
[401] Three, April 2013 policy position response, pp.26-27.

OCPs, should bear the cost of any subsidy required to be given to SPs to protect consumer interests.[402]

A5.208 EE disagreed that making 080 and 116 ranges free-to-caller would result in a positive caller externality. It provided examples of situations where an SP was likely to decide to stay on a free to caller range (e.g. when providing a government service or a free to call sales enquiry line). It considered that in these situations there was a significant benefit to the SP as well as the consumer from using the SP's free to caller number and therefore it was not obvious what was leading to the source of the alleged caller externality.[403] EE considered that the Competition Commission found no evidence of uninternalised caller externalities in its 9 February 2012 determination on the MCT Appeal.[404]

A5.209 EE argued that Ofcom's position was that as a result of the caller externality the prices paid by SPs for 080 call origination should be below the private value market clearing rate (i.e. where willingness to pay equals full origination costs) to further stimulate output. It considered that this was flawed because it did not take account of alternative more beneficial or more efficient ways in which a caller might contact the SP which may be available or incentivised if SPs are required to bear the full cost of mobile origination. It considered that limiting the level of the origination payment would result in CPs cross-subsidising 080 and 116 services and that Ofcom had failed to take into account the impact of this cross subsidy.[405]

A5.210 In addition, EE reiterated its view that Ofcom should base its analysis of the asymmetric risk and caller externality with reference to SPs' willingness to pay (rather than exit).[406]

A5.211 O2 disagreed with our proposed approach. It considered the caller externality to be the same point as the negative effect of migration from 080 considered under asymmetric risk. It said Ofcom had provided no evidence to suggest that the migration of some SPs away from 080 would lead to a deterioration in the value of the free-to-caller number range in the eyes of callers. It also said that any such migration would only impact marginally on the improvement in the brand value of 080 likely to result from making it free-to-caller.[407]

Updated analysis on the positive caller externality

A5.212 Before responding to stakeholder comments, we set out our revised analysis of the caller externality, which we have conducted as part of our assessment of the consumer impact of reduced service availability on 080 above. In this assessment we considered in detail the consumer impact of SPs migrating to another number range, including the higher cost to consumers of accessing migrated services.

A5.213 This higher cost to consumers of accessing migrated services is the same cost we consider SPs may not fully take into account when making the decision about whether to migrate or not. We continue to consider that when SPs do not take this cost into account fully, then too many SPs will migrate for a given increase in the average SP outpayment. We also consider the appropriate response to such an

[402] EE, April 2013 policy position response, p. 40.
[403] EE, April 2013 policy position response, pp. 38-40.
[404] See Competition Commission, 9 February 2012 Determination, available at http://www.catribunal.org.uk/237-7150/1183-3-3-11-Vodafone-Limited.html.
[405] EE, April 2013 policy position response, p. 40.
[406] EE, April 2013 policy position response, pp. 40-42.
[407] O2, April 2013 policy position, p.7.

externality- in the absence of any other effects- would be to reduce the price paid by SPs for remaining on 080, in order to bring their interests more closely in line with those of their callers.

A5.214 However, we now consider that we take this externality into account when assessing the appropriate increase in the SP outpayment given the costs to consumers we have taken into account in our assessment of reductions in service availability and the evidence we have used to assess the likely SP response to different increases in their average outpayment. In particular, we note that the consumer impact of higher call prices for accessing migrated services is now one of the effects we explicitly take into account when we weigh the trade-off between reductions in service availability and positive changes in the TPE as a result of a given increase in the average SP outpayment. Our assessment of this trade-off takes into account the results from the SP survey, which asked SPs how likely they would be to exit the number range for different increases in the level of the average SP outpayment. These responses are likely to have been based on a consideration of the private costs and benefits the SP would face at that size of increase in the SP outpayment. As a result, we no longer consider the caller externality is reason to limit the increase in SP outpayments to below 1ppm.

A5.215 We now respond to detailed stakeholder comments on the positive caller externality.

Ofcom's response

A5.216 We note the support from the [✂] and BT for our treatment of the caller externality in the April 2013 policy position. We continue to place weight on the caller externality in our assessment for the reasons set out by these stakeholders. However, we now recognise that the caller externality is taken into account in our assessment of Step 1 for the reasons set out above. We therefore no longer consider it a reason to limit increases in the SP outpayment to less than 1ppm.

A5.217 In relation to THP's comments, we agree that socially important services may take into account factors other than origination payments when making their decision to migrate or stay on 080/116. However, as noted by THP, an important factor in their decision would be the sustainability of their service and the availability of external funding and/or volunteers, which would be influenced by the origination payments to OCPs.

A5.218 We disagree with Magrathea's comment that the fact that TCPs and SPs paid more than the assumed 0.5ppm for 080 call origination (e.g. transit charges and TCPs' hosting charges) supports an average SP outpayment of at most 1ppm. Our analysis under Step 1 considers the appropriate *increase* in the average SP outpayment using evidence from the 2011 SP survey, which asked SPs about their likely reaction to an *increase* in outpayments (rather than the absolute value of their payments). Assessing the appropriate SP outpayment in this way in terms of its increase rather than its absolute level abstracts from other payments which may be made by SPs to TCPs (including hosting charges). For clarity, we have set out above in paragraph A5.133 that when referring to the average SP outpayment we mean the average origination charge they pay to TCPs only.

A5.219 Three suggested that we should have taken into account the extent to which TCPs were likely to pass on the benefit of reduced origination payments to their SPs in our assessment of the caller externality. Magrathea questioned the extent to which TCPs would be likely to do so in this context, giving the example that SP outpayments did not change in response to the change in fixed termination rates in October 2012. We recognise the issue of TCP pass-through is relevant to our assessment of Step 1, including the caller externality. This is because in assessing the trade-off between service availability and the TPE, we have assumed that TCPs would pass all of an industry-wide increase in origination charges onto their SP customers. If TCP pass-through were less than this, it would mean that a given increase in the origination charge would result in a smaller increase in the average SP outpayment (as not all of this increase would be passed on). This in turn could affect the trade-off between service availability and the TPE.

A5.220 However, we continue to consider our assumption of complete (or close to complete) pass-through to be appropriate for the purpose of deriving our IAR. Results from the theoretical and empirical literature suggest that industry-wide cost increases in competitive markets will tend to be passed on to customers in full, at least in anything other than the very short term.[408] As the increase in origination charges will be faced by all TCPs and we consider the market for TCP hosting to be working well for SPs, we therefore consider it appropriate to assume pass-through is likely to be close to 100% in the absence of any evidence to the contrary.

A5.221 We do not consider the examples put forward by Magrathea and Three should cause us to revise this assumption. With respect to the example proposed by Magrathea, we are unclear what it means by the change in fixed termination rates that occurred in 2012. Our understanding is that BT has not updated the origination payment it makes to fixed line operators for 080 calls terminating on its network since it increased this payment slightly in April 2009 (by 0.02ppm for daytime calls and 0.01ppm for evening and weekend calls). We do not know how, if at all, BT chose to pass this increase in the origination payment onto SPs as we have no information on hosting charges during this period (other than, perhaps, Magrathea's comment). We are also not aware of any major changes in fixed origination payments made by other TCPs during this period.

A5.222 In any event, we do not consider pricing responses by TCPs during this period are necessarily representative of their likely response to an industry-wide cost change. In the first instance, it is not clear that any cost changes occurring in this period were industry-wide. Although other TCPs later followed BT's ladder pricing for terminating 080 calls, this was a period in which there was significant variation between TCPs in the origination payments/termination rates applicable for 080 calls. Moreover, there was considerable uncertainty over termination rates for calls from mobile, even for a given TCP, during this time due to the disputes over BT's tiered termination rates. This uncertainty over termination rates may have affected the willingness of TCPs to adjust hosting charges in response to changes in the fixed origination charge.

A5.223 We consider that the CAT and Court of Appeal's judgments in the 08x appeals (or our own view, as set out in the most recent Tiered Rates Determination) on the limited weight that should be placed on the indirect effect in the context of these disputes should be distinguished from the context at hand. In disputes, we defined the indirect effect as the impact of BT's termination rates on SPs' revenue, and, through any knock-on impact on service quality and availability, on consumers who

[408] For summaries of this literature see, for example, p.117-118 of Oxera's report for the EC on Quantifying Antitrust Damages (2009), available at http://ec.europa.eu/competition/antitrust/actionsdamages/quantification_study.pdf or, for more detail, Stennek, J. and Verboven, F. (2001), 'Merger Control and Enterprise Competitiveness: Empirical Analysis and Policy Recommendations', European Economy, 5, 129–94.

call the affected number ranges. We said that in the medium to longer-term, we considered the pass-through of additional termination revenues to SPs was likely to be high as a result of competition between TCPs.[409] The reason the CAT considered the indirect effect to be very uncertain was because it depended not just on the extent to which BT was likely to pass on any increase in termination revenue to SPs but also on the increase in BT's termination revenue (which was itself uncertain).[410] We considered that further uncertainty arose as a result of a lack of information on the extent to which any increased revenue passed through to SPs would be used to the benefit of callers.[411] In the most recent Tiered Rates Determination, we also noted that the introduction of the unbundled tariff provided a natural expiry date for the termination rates in dispute. We considered this introduced additional uncertainty over the extent of any pass-through, particularly given the existence of contracts between TCPs and SPs.[412] We do not consider that these reasons for placing less weight on the indirect effect in our assessment of the tiered rates disputes should affect our assumptions over the likely rate of pass-through of origination charges from TCPs to SPs for free-to-caller 080 numbers as the two positions are consistent and reflect different circumstances and contexts.

A5.224 EE commented that TCPs should bear at least some of the cost of any subsidy to SPs designed to address the caller externality, particularly given their high revenue retention. We do not consider this would be either practical or appropriate because we could not mandate a reduction in TCPs' hosting charges without first having grounds for directly intervening in the market for TCP hosting (e.g. by conducting a market review and finding SMP). We have previously stated that the market for TCP hosting appears to be working well for SPs and are not aware of any evidence to the contrary that would cause us to revise this view. In particular, we do not consider relatively high levels of retention of SP outpayments by TCPs is evidence that the market is not working well for SPs, as an assessment of retention levels alone says nothing about the profitability of providing a given service (given that this will depend on the underlying TCP costs of supply).

A5.225 In any event, we are not requiring mobile OCPs to recover less than their incremental costs of origination from SPs. Our assessment of the impact of higher origination payments on consumers (including the higher prices they would pay to access migrated numbers), set out above, suggests we should limit the increase in average SP outpayments to no more than 1ppm. For the reasons we explain in relation to Step 2 below, this limits the mobile origination charge to below the upper bound derived under Principle 1, but by an amount that is still considerably above the lower bound of pure LRIC. This level still allows a material share of mobile common costs to be recovered from SPs through the origination charge, and so we do not consider it appropriate to characterise the mobile origination payment as a subsidy from mobile OCPs to 080 SPs (and we also take account of the impact of limits on OCPs' cost recovery from calls to 080 numbers through changes in the TPE). Contrary to EE's view, we consider the impact of any potential adjustments to other mobile prices as a result of making 080/116 free-to-caller when assessing the

[409] See, for example, paragraph 3.68 of the Tiered Rates Determination from April 2013.
[410] CAT 08x Judgment, paragraph 348 (*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).
[411] 0845/0870 Determination, paragraph 9.28 (*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, published at: http://stakeholders.ofcom.org.uk/binaries/enforcement/competition-bulletins/closed-cases/all-closed-cases/761146/Final_Determination.pdf).
[412] See paragraph 3.68 of the Tiered Rates Determination from April 2013.

tariff package effect in our impact assessment (see Section 4 of this statement and Section 13 of the April 2013 policy position).

A5.226 EE stated that it was unclear what led to the source of the caller externality because there are benefits to both the SP and consumer from the SP remaining on a free-to-caller number range. The externality arises because higher origination charges are likely to lead to additional migration by SPs to other number ranges. As a result of this migration, some callers may pay more to contact these SPs than they would if the SP had remained on a free-to-caller 080 number. The externality results from the fact that SPs may not take this increased cost to callers fully into account (unless SPs completely internalise the externality) when considering whether or not to migrate. In the April 2013 policy position we noted that, consistent with the view expressed by EE, we usually take the view that there is scope for call externalities to be internalised. However, we considered that the externality in the case of non-geographic calls was different for the reasons described in paragraph A5.199 above.

A5.227 EE has not provided any evidence to support its claim that alternative means of contacting SPs would be more beneficial or more efficient than calls using a mobile or fixed telephony device. EE makes a similar point in the context of asymmetric risk and we respond more fully when we discuss that issue below (see paragraph A5.270 below).

A5.228 We disagree with EE that our analysis should be done with reference to SPs' willingness to pay (rather than exit). We explained why we considered that the question on the willingness to exit was more relevant (than that on the willingness to pay) for the purpose of assessing the appropriate fixed and mobile origination payments in paragraphs A27.83 to A27.90 of the April 2013 policy position and our view remains unchanged.

A5.229 We agree to some extent with O2's comment that the caller externality effect is equivalent to the negative effect on consumers from SP migration that we consider under the asymmetric risk (see below). As set out above, we now recognise that the way in which we assess the trade-off between service availability and the TPE (as we have described above in Step 1) means we do not need to consider the impact of the caller externality separately. By implication the caller externality is also taken into account in our consideration of asymmetric risk because this risk applies to the outpayments that we derive from the trade-off between service availability and the TPE in Step 1. For this reason, we no longer consider the caller externality separately from our assessment of the trade-off to consumers from higher origination charges and the asymmetric risk associated with setting too high a charge.

Conclusion on the positive caller externality

A5.230 In light of the above, we consider that we do not need to take the caller externality into account separately from our assessment of the trade-off between service availability and the TPE in Step 1. As a result, we no longer consider the caller externality is a reason to limit the increase in average SP outpayments to below 1ppm.

Asymmetric risk

Summary of assessment in the April 2013 policy position

A5.231 In the April 2013 policy position we explained that there were different effects of origination payments resulting from commercial negotiations that were (i) too low or (ii) too high.

A5.232 We argued that the potential adverse effect on consumers of origination charges that were 'too high' were likely to be more significant than those arising from origination charges that were 'too low'. This was because the adverse effects on consumers of a loss in service availability on 080 that is greater than we are anticipating are likely to be more significant than a TPE that is larger than we have estimated. 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).[413]

A5.233 We noted that our assumptions about the loss of service availability on 080 from higher origination charges came from the 2011 SP survey. As with all survey evidence, we considered it could be subject to a margin of error with respect to any prediction of likely behaviour. For this and other reasons summarised in paragraph 12.101 of the April 2013 policy position, we considered it appropriate to take into account the risk that the actual migration decisions by SPs could turn out to be different than indicated by the responses in the 2011 SP survey. We explained that the impact of higher average SP outpayments (under the scenario of '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. We considered that while the loss in service availability may be mitigated if 080 SPs migrate to another range (e.g. 03 or 084), there is still likely to be a loss in consumer benefits.[414]

A5.234 We explained that there was another 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 was more difficult to predict than the TPE because the 2011 SP survey was necessarily subject to a margin of error and there was therefore a possibility that the loss in service availability associated with a given level of origination payment may be either higher or lower than we had assumed for the purposes of our assessment. Conversely, although there was 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 the estimates presented in the April 2013 policy position. Therefore, for increases in average SP origination payments at or around 1ppm, whilst it was possible that the impact on service availability may be either more or less favourable than we had assumed for the purposes of our assessment, the TPE could not be more favourable to consumers than our assumptions suggested.[415]

A5.235 We concluded that the existence of these asymmetric risks suggested that in determining the appropriate range of origination payments we should err on the side

[413] April 2013 policy position, paragraph 12.100.
[414] April 2013 policy position, paragraphs 12.101-12.102.
[415] April 2013 policy position, paragraph 12.103.

of caution. We considered that the existence of these asymmetric risks supported limiting the increase in SP average outpayments to below 1ppm.

A5.236 We asked the following question:

Q12.3: Do you agree that the asymmetric risk of the level of payments supports limiting the increase in SP average outpayments below 1ppm? If not please explain why.

Stakeholder comments

A5.237 [✂] agreed with the position we set out in the April 2013 policy position and considered that a cautious approach was sensible given there was no evidence to the contrary.[416]

A5.238 [✂] agreed, noting it would avoid a material increase in the extent of SP migration, and such an increase could result in a reduction in the quality of service provided by SPs.[417]

A5.239 THP noted that higher mobile origination payments would be immensely damaging for the helplines sector, and it was glad Ofcom had identified an acceptable range of charges. It noted that it would like to see socially important services receiving charges at the lower end of the scale and it supported any measure that kept the additional cost for socially important services to below 1ppm. It noted that even that additional level of cost might threaten the sustainability of some helpline services in remaining free-to-caller, and might have an adverse effect on socially important services.[418]

A5.240 BT said that any mechanism which significantly increased what SPs had to pay would deter them from using 080 numbers. It considered that even with a differential between fixed and mobile origination of less than 1ppm, there would still be a degradation of the service, as increased costs for SPs arising from covering the differential between fixed and mobile origination would be significant, particularly for the very large volume customers.[419]

A5.241 Three and EE disagreed that the risks of origination payments that were 'too high' or 'too low' were asymmetric. Instead, they argued that both risks were symmetric. Three said by definition, if the SP outpayment was 'too high' consumers would lose more by way of reduced service availability than they would gain from the lower prices arising from the TPE. Conversely if the payment was set at 'too low' a level, then consumers would benefit from further increases in the average SP payment, as they would gain more from the TPE than they would lose via reduced service availability. Three therefore said that there was no a priori reason to believe that an average SP payment that was 'too high' would be more detrimental to consumers than one that was 'too low'.[420] EE said that the risk in relation to the impact on service availability was in fact symmetric (i.e. it could be both more or less than Ofcom has assumed based on its market research).[421]

[416] [✂]
[417] [✂].
[418] The Helplines Partnership, April 2013 policy position response, p.4.
[419] BT, April 2013 policy position response, p.17.
[420] Three, April 2013 policy position response, p.27.
[421] EE, April 2013 policy position response, p. 35 and p. 74.

A5.242 EE disagreed with Ofcom's assumption that our estimate of the TPE was effectively a ceiling, given that we assumed a 100% TPE. EE believed that this ignored that Ofcom's estimates of the TPE relied very heavily on a number of assumptions (as explicitly acknowledged in Annex 28). It cited, for example, the level of origination costs and percentage of calls which switch from fixed to mobile as assumptions that have a critical impact on the estimated levels of the TPE. EE considered that these assumptions were clearly subject to symmetric risks of being either estimated too low or too high and were far less certain than Ofcom was implying in its consideration of the asymmetric risks between service availability and the TPE. EE argued that Ofcom had not taken into account the potential adverse impact of a TPE greater than it had estimated. In its view, this could mean that the overall impact on consumers was more adverse than would be suggested by simple financial measures of its size in revenue terms as assessed in Annex 28.[422]

A5.243 EE and O2 considered that underlying Ofcom's policy position was the view that Ofcom had assumed that all 080 service reduction would be unequivocally bad. O2 said there was no evidence to suggest services leaving 080 would disappear altogether, merely that some might move to another number range. It argued that we had not provided any evidence to suggest that the detriment arising from such migration should be given extra weight.[423]

A5.244 EE also argued that Ofcom's analysis needed to distinguish between cessation of service and migration of service away from 080 to another number range. It argued that it was preferable for 080 operators who did not share other SPs' willingness to pay for a free-to-caller number from mobiles to migrate to other number ranges than to expect mobile originators to subsidise their continued presence in the market (as the alleged asymmetry in risk effectively pushed mobile origination payments below LRIC+). It argued that in practice the asymmetric risk implied that the risk that there could be a reduction on 080 services should be given more weight than the risk that there could be a reduction in other services. It is entirely unclear why this should be the case (the justification given by Ofcom being simply uncertainty around the evidence base on which the policy is being derived).[424]

A5.245 EE considered that Ofcom's assumption of an asymmetric risk underestimated the residual benefits that would still flow to consumers as a result of SPs being able to implement mitigation strategies to limit the mobile call origination cost. EE argued that even in the case where SPs chose to migrate to another chargeable number range, it would only be the difference between the cost of calling the alternative number range and the calls being free to caller that would be relevant in the assessment of consumer detriment, and this could be negligible.[425]

A5.246 EE said we had not taken into account that alternative ways of contacting SPs or accessing the underlying services could be more efficient or beneficial for consumers (e.g. using mobile apps, websites, or Instant Messaging). EE considered that setting origination charges to reflect the appropriate level of underlying costs (including a reasonable contribution to common costs as discussed in the section above) would provide efficient incentives to all parties. In contrast, Ofcom's assumption that there was an asymmetric risk distorted the wider markets, inter alia reducing incentives for SPs to innovate. Thus, EE considered that there was no justification for Ofcom's view that it should "err on the side of

[422] EE, April 2013 policy position response, p. 36.
[423] O2, April 2013 policy position response, p.7.
[424] EE, April 2013 policy position response, p. 37.
[425] EE, April 2013 policy position response, p. 37-38.

caution" in "limiting the increase in SPs' average outpayments to below 1ppm".[426] [✂] noted that Ofcom's calculations suggested a negative TPE (of £24m) at a 1.5p mobile origination charge, a positive TPE (of £6m) at a 2.5p mobile origination charge and a positive TPE (of £42m) at a mobile origination charge of 3.7p when assessed against the counterfactual contribution of £43m (although it said it was not clear why the counterfactual results had been supplied at 3.7p given that the ceiling of Ofcom's view of costs was 3.3p). It therefore highlighted that only at the very upper portion of Ofcom's view of fair and reasonable outpayments i.e. above 2.5p was the TPE positive, so it said it was not clear that Ofcom's observation of a varied impact really stood up to its own data.[427]

A5.247 With respect to Ofcom's calculations of the traffic assumptions under its TPE, [✂] noted that from its own customers alone, it estimated [✂] minutes being generated by 2012/13 (an increase over 2011/12). It therefore considered that Ofcom's mobile industry total estimate of 383m minutes was light by some considerable margin. It suggested that either Ofcom had misjudged the overall decline in 080 traffic volumes and/or the proportion of mobile traffic was higher than Ofcom had assumed. In either event it considered that the £43m counterfactual mobile contribution margin in 2014/15 was potentially more than 100% too low. It believed that the effect of this was that the TPE was most likely consistently negative across the whole Ofcom preferred mobile origination charge range of 1.5p to 2.5p and quite likely still negative even at the full cost recovery of 3.3p. It argued that a revised TPE calculation would therefore show that in fact the mobile operators contribution margin would be generally reduced at all levels of cost recovery and that the TPE might be more powerful than Ofcom had concluded as a counterweight to any assumptions it was making about the willingness of SPs to exit. [428]

A5.248 [✂] also argued that the discussion of the impact on fixed operators was clouded by a further problem, in that it assumed that 0.5p was the correct rate to charge under the current regime. It said, however, that the conclusion of the NMR would make it clear what the appropriate rate should be and any measurement of the change between the current and new regimes should only record a volume variance and exclude any windfall unit rate variance. [429]

A5.249 [✂] argued that, given Ofcom had identified that approximately 30% of the 080 number range currently relates to socially important services, this substantially weakened any argument concerning the overriding importance of an absolute limit to SP outpayment. It said it was difficult to sustain an argument that the efficient cost of recovery of mobile origination by mobile operators (or similarly of fixed origination) should be denied in order to allow a subsidised and discounted cost to a sales line. It said this point was amplified by the arguments it made in response to the previous consultation where it noted that the necessary SP outpayment increase for mobile origination was only a small proportion of the SPs total costs, therefore it was only a small absolute increase in their costs. In addition it argued that such a small increase should be outweighed by the consideration that at least half of all calls in general are made from mobiles and therefore there were substantial benefits from securing a larger customer base of free calling. It

[426] EE, April 2013 policy position response, p. 36.
[427] [✂].
[428] [✂].
[429] [✂].

considered that that broader consideration was unlikely to have been fully captured in the 2011 survey. [430]

A5.250 [✂] said that - unlike the level of the mobile origination charge which was made dependent on the traffic mix where logically there was no such direct connection - there was no such dependency imposed on the level of the SP outpayment whereas it considered there was logically a direct connection. So for example it said there was no thought that the extent of the change in the proportion of mobile originated calls could be considered to vary to benefit to the SP. For example, it argued that the value that SPs would expect to receive from mobile calling would be greater in 2014/15, given the rise of mobile originated calls and the growing proportion of consumers with no access to fixed lines at all and thus the 1.5ppm 'ceiling' on SP outpayments (i.e. an increase of 1ppm when compared to the pre-existing average SP outpayment) should be raised to reflect that. It argued that the 1.5ppm SP outpayment was used in Ofcom's calculation as an absolute upper limit irrespective of the mix of traffic and irrespective of the fact that it was based on a 2011 survey that it said even Ofcom admitted was somewhat problematic.[431] [✂] made a similar point elsewhere in its response, where it argued that if the likely mobile proportion of calls was growing over time, then the SP willingness to pay would also increase over time. It considered that the value to consumers, both SPs and callers of 080 would be related to the proportion of mobile calling – the higher proportion of mobile calling the higher the overall benefit. Its view was that under that approach there was no absolute SP outpayment ceiling. [432]

A5.251 [✂] noted that Ofcom had adjusted its cost assessment to 2014/15 outputs but had failed to do the same to the 1.5p ceiling from the 2011 SP survey. It said that this should therefore be adjusted to 1.6p to reflect 2014/15 prices in Ofcom's evaluations.[433]

A5.252 [✂] noted it agreed with Ofcom about the uncertainties arising from the 2011 SP survey (it highlighted our comments in paragraph 12.101 of the April 2013 policy position). It was concerned that the limit of a 1ppm increase in SP outpayments that Ofcom was using was not an absolute limit at all, rather that Ofcom had apparently concluded that a loss of 19% of survey responders was acceptable, but a loss of 1% more was not (and it noted there was not real evidence of how representative those respondents were of the overall base of 080 traffic in 2011, let alone in 2014/5). [✂] said it continued to believe that in no way could the survey be construed to suggest that 1.5p (or an increase of 1p) was an inviolable upper limit to SPs' willingness to pay for making 080 free-to-caller.[434]

A5.253 [✂] said Ofcom had not paid attention to the evidence of what a willing purchaser was prepared to pay to secure the benefit of its customers being able to call their numbers from a mobile free of charge – i.e. the DWP payment for making its 080 numbers free-to-caller. It highlighted that the DWP payment was not out of the range of [✂] view of costs and was inside the range of Ofcom's assessment of LRIC+ A&R.[435]

430 [✂].
431 [✂].
432 [✂].
433 Paragraph 3.15 of the consultation on the draft 080/116 Dispute Guidance.
434 [✂].
435 [✂].

A5.254 [✂] noted its view that the greater the proportion of mobile originated calls, the greater that potential for additional SPs users of 080 to appear. It also highlighted that Ofcom had relied on that increased use elsewhere in its assessment (e.g. in our assessment of the case for making 080 free-to-caller). It argued therefore that the logical conclusion of that was that Ofcom should not be so concerned about the loss of a few SPs who do not support free-to-caller and the negative weight that Ofcom attaches to the willingness to exit and willingness to pay data should be downplayed. It said if Ofcom really believed the adverse nature of the survey data to that extent it should not be proceeding with the initiative.[436]

A5.255 Finally it argued that the cut off point for SP outpayments should not be 1.5p but somewhere between 1.5p and 2p, given that too many SPs indicated a willingness to exit at the 2p average outpayment level in the 2011 SP survey. It said the picture of "*steady decline in availability*" which Ofcom had referred to[437] supported the use of a mid-point between 2p and 1.5p. Taking the mid-point of 1.75p and adjusting it for inflation, [✂] suggested that a ceiling of 1.9p was a more realistic interpretation of Ofcom's evidence.[438]

A5.256 [✂] said its principal point on the willingness to exit question in the 2011 SP survey was that at an increase in SP outpayment of 0.5p and 1.0p almost exactly the same proportion of responders (19%) were indicating a willingness to exit. It therefore considered that that 19% of the survey could be relied on to represent those who would in large part exit anyway from 080 when free-to-caller was implemented unless there was no increase in the average SP outpayment at all. [✂] considered that Ofcom should be unconcerned about a small proportion of doubters and of more significant interest was the view of those who embraced Ofcom's vision. It argued that the willingness to pay survey question from 2011 suggested that some SPs were prepared, like the DWP, to value the benefit of free to mobile 080 calling quite highly. It said it was more sanguine of the prospects of Ofcom's free-to-caller vision that Ofcom was itself.[439]

Updated analysis on the asymmetric risk of the level of payments

A5.257 Before responding to stakeholder comments, we first set out our more detailed consideration of the source and impact of the asymmetric risk, which was prompted by our further analysis of the consumer impact of reduced service availability on 080, set out above.

A5.258 Our judgment is that where an increase in the average SP outpayment leads to a material reduction in service availability on 080, the overall harm to consumers is likely to exceed the benefits from the associated change in the TPE (see paragraph A5.196 above). However, taken at face value, the 2011 SP survey suggests that increasing the SP outpayment by 1ppm may not trigger any material reduction in service availability (over and above those SPs who will always exit the range) but will provide benefits to consumers via a positive change in the tariff package effect. As a result, we consider that increasing SP outpayments to this point could be to the benefit of consumers.

A5.259 However, we recognise there is a margin of error surrounding any survey results. As a result, we are conscious that the actual reduction in service availability

[436] [✂].
[437] Paragraph 3.15 of the consultation on the draft 080/116 Dispute Guidance.
[438] [✂].
[439] [✂].

associated with a given increase in SP outpayment may be greater or smaller than our survey results suggest. For example, the SP survey may over- or under-state the point at which a step reduction in service availability is likely to occur, or may misrepresent the profile of actual reductions in service availability (e.g. because service availability actually declines continuously with increases in the SP outpayment, rather than in a step-wise manner as suggested by the survey). We are not aware of any reason to believe that any of these scenarios is more likely than another. We therefore consider the impact of both under- and over-estimating the impact of a given increase in origination charges on service availability.

A5.260 In general, we consider the adverse effects from a material reduction in service availability are likely to be greater than the benefits from a favourable change in the TPE. However, we recognise the survey may over-estimate the impact on service availability to such an extent that SPs would actually tolerate increases in outpayments of significantly more than 1ppm before there was any material increase in exit. We recognise that, if this were the case, we could increase revenues to OCPs without having a detrimental effect on service availability and consumers would therefore suffer some harm as a result of missing out on the potential for a positive improvement in the TPE.

A5.261 Nonetheless we consider the harm to consumers from under-estimating the likely impact on service availability is potentially significantly greater. For example, if a reduction in service availability were to occur at a smaller increase in SP outpayment than is suggested by the survey, then an increase of 1ppm in the SP outpayment could result in material detriment for consumers- particularly as it could weaken some of the key benefits from making 080 free to caller.

A5.262 We consider that the latter scenario could result in significantly more harm to consumers than the former, as the detriment to consumers from setting the SP outpayment too high when the SP survey understates the loss in service availability and triggering a material reduction in service availability is likely to be significantly greater than the benefits to consumers from an improvement in the TPE resulting from an increase in the SP outpayment of a similar order when the SP survey overstates the loss in service availability. We therefore place more weight on the risk of under-estimating the impact on service availability than on the risk that consumers miss out the potential for a slightly greater positive TPE due to an average outpayment that was too low.

A5.263 We therefore continue to consider it appropriate to take the asymmetric risk into account when assessing the appropriate increase in the SP outpayment. As a result, we continue to consider it may be appropriate to limit the increase in SP outpayments to less than 1ppm.

A5.264 We discuss the issue of how much lower this increase should be below, when we assess the relative level of the fixed and mobile origination charges taking into account the LRIC differential. This is because, whilst motivated by different concerns, the asymmetric risk and LRIC differential are both addressed by reducing the level of the mobile origination payment. There is a risk that considering the two separately would lead to too low a mobile origination charge because addressing one of these concerns by reducing the mobile origination charge may at the same time address the other.

A5.265 We now respond to stakeholder comments on the asymmetric risk.

Ofcom's response and decision

A5.266 [✂], THP and BT agreed with the position we set out in the April 2013 policy position that it would be appropriate to limit the increase in origination payments.

A5.267 Three and EE argued that the risks associated with the level of payments were symmetric (rather than asymmetric as suggested in our April 2013 policy position). We consider that Three and EE have misunderstood what we meant by an asymmetry in the risk of the level of payments. We agree that there is a risk that origination payments could be set at both "too high" or "too low" a level. We also agree that we have no reason to believe that one scenario is likely than the other, as we set out clearly above. Instead, the asymmetry arises from the consequences of the risk, because we consider that the adverse effects from a material reduction in service availability are likely to be greater than the benefits from a favourable change in the TPE. It follows from this that we consider the harm to consumers from under-estimating the likely adverse impact on service availability is potentially greater than the harm from over-estimating it. For example, if a reduction in service availability were to occur at a lower increase in SP outpayment than was suggested by the 2011 SP survey, then an increase of 1ppm in the SP outpayment could result in material detriment for consumers- particularly as it could weaken some of the key benefits from making 080 free to caller.

A5.268 We agree with EE that our estimates of the change in the TPE associated with increases in the origination charge rely on a number of assumptions that are also subject to uncertainty- including the volume of 080 calls, the extent of fixed to mobile substitution and the extent to which OCPs pass on any increase in revenues to consumers (i.e. the extent of the TPE). However, we consider it more likely that our quantified estimates over-state the benefits to consumers from a favourable change in the TPE than it is that they under-state these benefits. This is because we consider that the extent of TPE is likely to be less than the 100% we have assumed for the purposes of our calculations, but we have evidence of a clear under or over-estimate in any of the other inputs. We consider this is consistent with, or even tends to reinforce, our conclusions about the asymmetric risk.

A5.269 We agree with EE that there may be alternative ways of contacting SPs or accessing their underlying services (e.g. mobile apps, websites and/or instant messaging). We have taken these alternatives into account in our assessment of the consumer harm from cessation of 080 services, set out above, where we recognise consumers may still be able to access these services through alternative means. With regard to price signals for SPs between 080 calls and their alternatives, we note that differences in the prices between closely substitutable services should reflect differences in incremental costs to provide efficient price signals to SPs on the choice of contact method, as discussed below. However, we have no information on the level of substitutability for SPs between the services listed by EE and calls to 080 SPs from fixed and mobile devices. To the extent that these services are close substitutes for SPs, there would only be a distorted price signal in favour of telephony if the price differential to SPs compared to the alternative methods was less than the difference in LRICs. We do not have evidence suggesting this is the case. On these grounds we disagree that considering the asymmetric risk of the level of payments is likely to "distort the wider markets".

A5.270 EE argues that it is preferable for 080 operators that do not share other SPs' willingness to pay for a free-to-caller number to migrate to other number ranges. We believe our approach is to some extent consistent with this. For example, before taking into account the asymmetric risk we believe it is appropriate to increase the average SP outpayment from roughly 0.5ppm to 1.5ppm even if this implies that around 19% of existing SPs would get rid of their 080 number according to the 2011 SP survey, as the survey results suggest these SPs would get rid of their 080 number for any increase in the origination charge from current levels. Our concerns in the context of the appropriate level of the origination charge relate to the significant reduction in service availability on 080 over and above those SPs who would exit for any increase in the origination charge, which our survey suggests is likely to occur when average SP outpayments increase by more than 1ppm. We do not consider that the positive change in the TPE from increasing average outpayments by more than 1ppm would be likely to compensate for the negative effects of the change in service availability on 080. In this sense, it is true that we place more weight on reductions in service availability on 080 than on the impact on (the price of) other telecoms services. We consider this appropriate in light of our analysis set out above.

A5.271 EE considered our analysis underestimated the benefits to consumers resulting from the ability of SPs to mitigate the increased cost of mobile calls and over-estimated the harm from migration, which it argued could be limited to a negligible difference in call cost. We note that we have taken both of these considerations into account in our analysis. We look at the impact of migration on call prices in our assessment of the trade-off between service availability and the TPE. We consider the impact of SPs' cost mitigation measures in Step 2 of Principle 2. In particular, we recognise that cost mitigation measures may mean some SPs who would otherwise have migrated remain on the 080 range and that this will provide benefits to consumers. We however disagree with EE that the difference between the cost of a call to a free-to-caller range and the number range where SPs may migrate to is likely to be negligible. We set out above that our evidence suggests that the average price of a call to a 03 number was 1.5ppm from a fixed line in 2012 and 1.9ppm from a mobile. The retail call price to 084/087 numbers under the unbundled tariff regime are likely to be higher than this, as our estimates of the AC suggest these calls will incur a minimum AC of 2.9ppm for fixed line calls and 16.1ppm for mobile calls, with calls to many of these numbers being likely to incur a SC in addition. We therefore do not agree that the differences between these prices and a price of zero can be considered negligible and instead consider that callers facing these increased call prices could suffer material detriment, particularly if SPs choose to migrate to 084/087 number blocks with higher SCs. For this reason, we also disagree with O2 that we are placing extra weight on the consumer detriment arising from migration. We take full account of both the detriment to consumers from reductions in service availability (including migration) and the benefits to consumers from a favourable change in the TPE. However, our assessment suggests it is likely that, when a given increase in the origination charge leads to a material reduction in service availability, the harm to consumers from this reduction in service availability would exceed the benefits from the associated favourable change in the TPE.

A5.272 [✂] made several comments on our TPE estimates. It argued that the TPE was only positive at the very upper portion of our IAR (i.e. above 2.5ppm) and therefore questioned whether our characterisation of the TPE was appropriate. We note that our base case scenario range in the April 2013 policy position was between 1.3 – 3ppm, and we said that we placed most weight on the 1.5-2.5ppm range. Our analysis suggested that the TPE could be in the range of -£24m to +£22m for an origination charge of 1.5-2ppm (see Table A28.7 of the April 2013 policy position). We consider this implies that the impact on mobile profits is likely to vary depending on the origination payment within that range. In any event, we note this is relevant in the context of our impact assessment, which considers the absolute level of the TPE, rather than the derivation of our IAR, which looks at the change in the TPE resulting from a given increase in the origination charge from its baseline level. This latter effect is always positive for an increase in the origination charge (see Tables A5.6 and A5.7 above illustrating the change in the fixed and mobile TPEs associated with different increases in the average SP outpayment). To the extent the absolute level of the TPE is negative or positive, this has a bearing on our impact assessment but not our derivation of the IAR.

A5.273 [✂] estimated that based on its customers alone it had generated [✂] of minutes to 080 numbers by 2012/13, compared to an estimate of approximately 383m for the entire mobile originated traffic using the assumptions from Ofcom's April 2013 policy position. It noted that its 080 traffic had increased compared to 2011/12 – rather than decreased as assumed by Ofcom. [✂] is correct that we derived our 080 volumes using the data from the 2010 Flow of Funds (which related to the end of 2009) and then assumed that volumes decreased by 10% annually. In 2012 we requested volume data from the main 080 terminating providers (including BT and CWW) and we observed that volumes had declined broadly in line with our 10% assumption. Thus, we consider that our assumption regarding the decline in overall 080 volumes is likely to be broadly correct.

A5.274 [✂]. We have evidence to suggest there was a material increase in the proportion of mobile-originated calls following the zero-rating of certain DWP helplines. As many of the helplines which were responsible for driving this change have since been withdrawn (see paragraphs A5.324 to A5.327 below), we consider that much of the increase in [✂] reported 080 call volumes may have been temporary.[440]

A5.275 Even if it were not, and we have in fact under-estimated the current share of mobile calls (and through this, the absolute level of the TPE), it would not affect the trade-off we make between service availability and the TPE for the purposes of deriving the IAR. This is because, as we set out clearly above, we make this trade-off by considering the change in the TPE associated with a given increase in the origination charge from its baseline level, assuming 080 is already free-to-caller. We do not consider [✂]'s data has any implications for the volume of calls we use to calculate these changes in the TPE as the volumes we use for this are based on our assumptions regarding the likely fixed-mobile split after 080 is made free-to-caller.

A5.276 We do recognise that under-estimating the volume of mobile calls could affect our impact assessment, where we weigh the absolute levels of all costs associated with making 080 free-to-caller (including the mobile TPE) against the benefits. We consider our evidence on overall call volumes and possible explanation for a temporary increase in the proportion of mobile-originated calls set out above supports our assumptions regarding the volume of mobile calls. However, even if we had under-estimated the TPE by as much as 100%, as [✂] argues, this would not affect our overall conclusions under our impact assessment. In particular, we would still expect to conclude that even our upper estimates of the TPE were small in relation to overall mobile OCP revenues and, when taken together with the other

[440] This is supported by a comment from EE, who noted in its response to the April 2013 policy position that one individual DWP number had accounted for [✂] of all Freephone traffic on EE's network and has consequently led to a [✂], See EE, April 2013 policy position response, p.43.

costs associated with making 080 free-to-caller, still more than offset by the anticipated benefits.[441]

A5.277 We agree with [✂] that our assessment of the fixed TPE for the purposes of our impact assessment should reflect the changes made to the payment received by fixed operators for originating 080 calls as a result of the publication of the recent NMR Statement. As set out above, our impact assessment compares the retail prices and wholesale charges under the status quo (including the charges fixed OCPs will receive as a result of the recent NMR Statement) with those that will apply when 080 is free-to-caller. We therefore take these changes to the fixed origination charge into account in our updated impact assessment in Section 4. However, in deriving the IAR, we are assuming that 080 is already free-to-caller and that origination charges are at their baseline levels of pure LRIC. As a result, the NMR Statement does not affect our estimates of the change in the fixed TPE resulting from increases in the fixed origination charge from its baseline level, other than to the extent our estimates of the incremental costs of originating a fixed 080 call and the upper bound for fixed origination charges have been updated to reflect the latest cost estimates from the NMR Statement. We clarify that all inputs to our calculations of the change in the fixed TPE set out above are consistent with the NMR Statement. Our estimates of the change in the fixed TPE set out above are consistent with these assumptions.

A5.278 [✂] argued that the finding that approximately 30% of the 080 number range (in paragraph 13.75 of the April 2013 policy position) was associated with socially important services weakened the argument that there should be a limit to SPs' outpayments. However, our reason for considering it in the interests of consumers to limit the increase in SP outpayments is not based on a consideration of the impact on availability of socially important services alone but on all services currently available on 080. We do not consider that limiting the SP outpayment in this way constitutes a subsidy of 080 SPs' costs for the reasons set out in paragraphs A5.225 above, and so we disagree with [✂] that our approach will require mobile operators to subsidise the costs of non-socially important SPs on 080 (such as sales lines).

A5.279 [✂] then argued that the 2011 SP survey did not account for the fact that SPs' willingness to exit could be correlated with the share of calls originated from mobile. In other words, SPs' benefit from holding a 080 number would be greater with a higher proportion of calls originated from mobile (particularly, given the growing proportion of consumers with no access to fixed lines). As a result, [✂] argued that the average SP outpayment should reflect the traffic mix, with the average SP outpayment increasing with the share of calls originated from mobile.

A5.280 We agree with [✂] that making 080 free-to-caller is likely to increase the volume of calls to SPs on this range. We also recognise that SPs may value the increase in mobile-originated calls that we expect to see when 080 is made free-to-caller- for example, because this allows customers to contact them on the move, or because they benefit from an increase in goodwill as a result of the greater convenience enjoyed by their customers. However, much of the increase in mobile-originated calls to 080 is likely to be substitution by callers from fixed-originated calls. For such substitution traffic, there is no change in the volume of calls received by the SP which limits or may remove any additional benefit to the SP of receiving a mobile-originated call. That is, many SPs are likely to derive the same benefit

[441] See our comments on efficient prices in the 'Assessment of Options for 080' as set out in paragraphs 13.40 – 13.54 of the April 2013 policy position.

independently of whether the call originates from a mobile or a fixed line (even if there are exceptions). We therefore do not consider we should adjust our estimates of SPs' willingness to exit to reflect the impact of potential increases in mobile call volumes. In the first instance, we note that the value that SPs attach to an increase in the share of mobile-originated calls is highly uncertain and likely to vary considerably across SPs. In any case, we consider it plausible that SPs took at least some of this impact into account when responding to the 2011 SP survey, which specifically asked SPs about their likelihood of exit assuming 080 were made free to all callers.[442] Thus, we believe it is reasonable to expect that in responding to the question SPs may have already taken into account the benefit they are likely to derive from free calls from mobile (including any potential increase in calls from mobile users). For the same reasons, we do not consider that an increase in the proportion of mobile-originated calls over time would be reason not to place an absolute limit on SP outpayments.

A5.281 [✂] notes that we adjusted our assessment of costs to 2014/15 prices in the April 2013 policy position. It considers that our 1.5ppm average SP outpayment assumption should similarly be adjusted to reflect prices consistent with the date of implementation of our decision (i.e. 2015/16 as the date of implementation will be around June 2015 – see Table A5.3). Taking into account the fact that the 2011 SP survey was conducted between 30 September and 3 November 2011 and that we expect the date of implementation of our proposals to be around June 2015, adjusting for inflation in the way suggested by [✂] would mean that an average SP outpayment of 1.5ppm in 2011 prices would correspond to approximately 1.7ppm in prices at the time of implementation (using inflation assumptions consistent with those used in our cost assessment above). [✂]'s argument implies that we should assume that the 1.5ppm average SP outpayment is constant in real terms and hence rising in nominal terms over time with inflation to 1.7ppm. In contrast, in the April 2013 policy position we assumed that the 1.5ppm average SP outpayment was constant in nominal terms and hence declining in real terms over time.

A5.282 Firstly, although [✂] draws a parallel with our analysis of origination costs, we assume such costs are declining in real terms over time, not constant. In both the April 2013 policy position and this statement, we have updated our assessment of origination costs by inflating these costs using actual or forecast inflation (to reflect any potential increase in the costs of the inputs used to provide origination) but also deflated them to account for efficiency improvements over time. Overall, as origination costs decrease by more than inflation, we assume that over time origination costs decrease in real terms (and also in nominal terms). In contrast, the average SP outpayment does not reflect a cost of providing a service and therefore we do not consider it is appropriate to adjust it to reflect input inflation or cost efficiency over time. However, as we do not adjust the average SP outpayment by inflation this implies we expect it to decrease in real terms over time, as for our assessment of the costs of origination.

A5.283 Secondly, we note that our conclusions on the appropriate SP outpayment were based on the willingness to exit question in the SP survey, which asked SPs about their likely responses to increases in their average outpayment of 0.5ppm increments. If we were to re-run the SP survey, it is likely that we would again use incremental steps of 0.5ppm when asking this question in order to avoid giving an impression of spurious accuracy. It is unclear whether re-running the survey in this

[442] Question 17 of the 2011 SP survey (i.e. the willingness to exit question) asked SPs: "*If your freephone number(s) were made completely free to all callers and the amount you currently pay per minute for those calls was increased, how likely would you be to get rid of your freephone number?*".

way would lead to any change in the appropriate increase in SP outpayment- even if the point at which SPs would exit had increased in nominal terms. For example, if the point at which a material proportion of SPs would exit 080 (over and above those who would exit the range for any increase) were to have increased from 1.5ppm to 1.7ppm, it would still generate exactly the same pattern of results as the 2011 survey- i.e. a 19% reduction in service availability for a 0.5ppm and 1ppm increase in average outpayment, and a 28% reduction for a 1.5ppm increase.

A5.284 Finally, we consider that inflating the appropriate SP outpayment would not be likely to result in mobile origination payments outside of the range we currently derive under Step 2. This would result in a maximum mobile origination payment of 2.5-2.8ppm, depending on the assumed fixed to mobile substitution and fixed origination payment in Step 1. However, even if we assumed the inflated level of average SP outpayment of 1.7ppm, it is likely that the consideration of the LRIC differential and asymmetric risk in Step 2 would imply that mobile origination payments should still be within our 1.5-2.4ppm base case scenario range, albeit possibly towards the upper 2.4ppm bound.

A5.285 As a result, we do not consider that our conclusions should be affected by [✂]'s argument that we should adjust the 2011 SP survey results for inflation.

A5.286 [✂] criticised our view that average SP outpayments should not be increased by more than 1ppm. We have explained our reasoning behind this decision in our updated assessment in Step 1 above. Contrary to [✂]'s view, we consider that the 2011 SP survey is the best available evidence to understand the likely response by SPs to changes in origination payments and for this reason we have placed significant weight on it. We also do not consider it appropriate to characterise the limit we have placed on the increase in average SP outpayment as our view of the upper bound on willingness to pay. Instead, it is the limit we consider strikes the appropriate balance for consumers between the impact on service availability and the TPE- despite the fact there are likely to be some SPs who would remain on 080 for increases of more than this amount.

A5.287 We disagree with [✂] that we should derive 080 SPs' willingness to exit from existing agreements between CPs and SPs such as those available to DWP. First, we consider that there are significant differences between SPs' willingness to *pay* and willingness to *exit*, as we discussed in Annex 27 of the April 2013 policy position. Second, we do not consider it appropriate to assume that one SP (e.g. DWP) is representative of other SPs' willingness to exit- particularly given we have information on a more representative sample of SPs from our SP survey. As an example, some charities and helplines have agreements with mobile CPs consisting of lower origination payments than those secured by DWP. Furthermore, it is plausible that SPs with specific arrangements with mobile CPs could be the SPs with a higher willingness to pay to secure free mobile calls and consequently could overestimate the true willingness to pay of SPs in the 080 range. Thus we disagree that we should use this evidence to derive 080 SPs' willingness to exit.

A5.288 We agree with [✂] that making the 080 range free-to-caller is likely to result in new SPs joining the number range (although it is not clear this is likely to result from the greater proportion of mobile originated calls per se, as implied by [✂], and instead we have emphasised that consumer confidence will be increased as a result of the greater clarity of the pricing message and SPs will be able to offer a genuinely free-to-caller number). Ideally we would have liked to have evidence on the net proportion of SPs (i.e. new SPs joining 080 minus current 080 SPs exiting) that would exit at different sizes of increases in origination charges. However, this information is intrinsically difficult to obtain and [✂] has not provided any evidence that would help us in assessing this. We do not consider that we should place less weight on the willingness to exit of SPs currently on 080 as a result of this unknown effect, and note that our concern is not so much about those SPs who do not support free-to-caller (and would exit for any increase in origination charge) but those who want a genuinely free-to-caller number and would be prepared to pay above the incremental cost of originating an 080 call to obtain one. Furthermore, we consider that the extent to which new SPs may be attracted to the 080 range will depend on the level of origination payments, and consider this effect as part of our assessment of the impact of higher origination charges on service availability on 080. Thus, we consider that taking this effect into account also supports limiting the increase in the average SP outpayment.

A5.289 [✂] argued that the cut off point should not be an average SP outpayment of 1.5ppm but somewhere between 1.5-2ppm (i.e. that we should not limit the increase in SP outpayment to 1ppm or less but instead should allow an increase of somewhere between 1 and 1.5ppm). Since the questions in the SP survey were in the form of 0.5ppm increments in SP outpayments we do not have evidence on the change in service availability for increases of less than 0.5ppm. We have therefore limited the increase in SP outpayment to 1ppm or less because we do not have an evidential basis for picking a point between 1 and 1.5ppm. In addition, such an approach is supported by the asymmetric risk of the level of payments (i.e. the difference in terms of the harm to consumers between setting the appropriate average SP outpayment at "too high" or "too low" a level, as described above).

A5.290 In relation to [✂]'s comments on SPs' willingness to pay and the weight we should place on the 19% of SPs that responded they would get rid of their number at any increase in origination payments, we responded to these comments in Annex 27 of the April 2013 policy position. As described above, when referring to the "steady decline in availability", we intended to capture the fact that increases in the average SP outpayments by more than 1ppm would be likely to result in greater levels of exit. We did not intend to detract from the discontinuity in service availability that our survey evidence suggests is likely to occur for increases in average SP payments of more than 1ppm, on which we placed most weight.

Conclusion on the asymmetric risk

A5.291 In light of the above, we remain of the view that it is relevant to consider the asymmetric risk of the level of payments, as we consider the harm to consumers from under-estimating the likely impact on service availability is potentially greater than over-estimating the impact on service availability (or under-estimating the TPE). The asymmetry arises from the different consequences for consumers of an error in mis-estimating the impact on service availability compared to the change in the TPE and so setting the average origination charge too high or too low (not any asymmetry in the risk of over- or under-estimating the effects). We therefore continue to believe that it would be appropriate to limit the increase in average SP outpayments to less than 1ppm to take account of this asymmetric risk. We explained however that we would assess how much lower the average SP outpayment should be to reflect this asymmetric risk when taking into account the LRIC differential. This is because although the two factors are motivated by different concerns, they are both addressed by reducing the level of the mobile origination payment.

Conclusion on Step 1

A5.292 In light of the available evidence discussed above, we consider that origination charges which result in an increase in SPs' average outpayments of more than 1ppm are likely to have a significant negative impact on consumers through the material reduction in service availability that they are likely to trigger over and above those SPs who would be likely to exit for any increase in their average outpayment. We consider that this negative impact on service availability is likely to outweigh the consumer benefits resulting from lower prices for other mobile services (via the tariff package effect), particularly because reductions in service availability of this magnitude could weaken some of the key benefits from making 080 free to caller.

A5.293 In addition, we consider that the asymmetric risk of the level of payments supports limiting the increase in SPs' average outpayments to less than 1ppm. We will assess how much lower the increase in average SP outpayment should be to reflect this asymmetric risk when taking into account the effect of the considerations regarding the LRIC differential on the appropriate level of origination payments.

A5.294 As set out in paragraph A5.131, we assume that SP outpayments currently include an average origination charge of 0.5ppm for all 080 calls. We therefore consider that our conclusion on the appropriate *increase* in the average SP outpayment implies that the appropriate *level* for the SP outpayment is no more than 1.5ppm and potentially less, depending on the weight we place on asymmetric risk and the LRIC differential. We use this appropriate level of SP outpayment to derive the relative level of fixed and mobile origination charges under Step 2.

Step 2: Assess the relative level of the fixed and mobile origination charges

A5.295 In the April 2013 policy position we explained that once we had determined the appropriate level of SPs' average outpayment under Step 1, we needed to look at the level of fixed and mobile origination charges that would be likely to result in an average SP outpayment of this amount given the relative volume of fixed and mobile calls. We noted that this involved:

- the extent of fixed to mobile substitution, as this would affect how different fixed and mobile origination charges translate into the average payments made by SPs; and
- the implications that different price-cost differentials between fixed and mobile OCPs will have on competition and the price signals to SPs.

A5.296 Although we only invited comments on the second of the issues described above, we received comments on both. We respond to stakeholder comments and explain our final decision in turn below.

Fixed to mobile substitution

<u>Summary of assessment in the April 2013 policy position</u>

A5.297 In the April 2013 policy position we explained that the share of fixed and mobile originated calls assumed would affect the relative strength of the impact of the fixed and mobile origination charge on SPs' average payments and, hence, on the extent of migration by SPs away from the 080 range. We said that in the April 2012 consultation we had assumed that the share of mobile originated calls to 080 would increase from about 5% to around 40-50% in the medium term. This was based on:

- evidence from DWP showing that the share of mobile originated calls to their 080 number had increased to around 40-45% following their agreement with mobile OCPs to make it free-to-caller; and

- evidence that the share of all voice calls originated from mobiles in 2011 was approximately 50%.[443]

A5.298 We noted that since the publication of the April 2012 consultation we had requested updated information from BT on the share of calls to DWP that were originated from mobiles. Based on this evidence we stated that, whereas in the April 2012 consultation we concluded that the share of calls originated from mobile had stabilised around 40-45%, the updated call data showed that the share had now slightly increased, stabilising at around 45-50%.[444]

A5.299 In addition, we considered that we should take into account a more forward-looking assumption regarding all voice call data. The share of all voice calls originated from mobiles was 52% in 2011, however, free-to-caller was likely to be implemented in late-2014 and, therefore, we expected that the share of calls originated from mobile would continue to increase until the implementation date (as has been the case in the past). We therefore believed it was appropriate to account for this when assessing the likely share of calls to 080 that would be originated from mobiles by late-2014. Using evidence on the share of all voice calls originated from fixed and mobile phones in the UK between 2006-2011, as well as the average annual percentage increase in mobile originated calls, we concluded that it was reasonable to assume that the share of calls originated from mobile would increase by 2 percentage points annually between 2011 and late 2014. Assuming this would result in a mobile share of all UK voice calls of approximately 58% by late 2014.[445]

A5.300 However, if we based our analysis on residential customers only, the evidence showed that the share of all UK residential voice calls originated from mobile in 2011 was 45%, significantly below the 52% for all voice calls. In addition, the annual average increase had also been slower for residential customers. Using this evidence we concluded that it was appropriate to assume an annual percentage point increase of around 0.5 percentage points. This would result in around 47% of all residential calls being originated from mobile by late 2014. We explained that we had been unable to determine whether callers of 080 numbers were more likely to behave as residential or business customers for the purposes of deciding the share of calls to 080 that were likely to be originated from mobile by late 2014.[446]

A5.301 We also reviewed some anecdotal evidence showing that the share of calls originated from mobile could significantly exceed a 60% share for some numbers. While we recognized that such SPs may not be representative, they did suggest that some SPs may receive a proportion of calls from mobile exceeding 60%.[447]

A5.302 In light of the evidence we had, we believed that there was significant uncertainty about the share of calls that were likely to be originated from mobile across all 080

[443] April 2013 policy position, paragraphs 12.118-12.119.
[444] April 2013 policy position, paragraphs 12.121-12.122
[445] April 2013 policy position, paragraphs 12.123-12.124.
[446] April 2013 policy position, paragraphs 12.124-12.125.
[447] April 2013 policy position, paragraph 12.126.

numbers on a free-to-caller range. For this reason we decided to assume a relatively wide range. We considered it was consistent with the evidence we had to assume that implementing a free-to-caller approach would increase the share of calls to 080 originated from mobile to somewhere between 45-60%. The lower bound represented a share of calls originated from mobile slightly below our estimate for residential calls by late 2014. The upper bound reflected a share slightly above our estimate for all voice calls by late 2014.

A5.303 We did not ask any consultation question on this issue but we received several comments from stakeholders on our assumptions regarding fixed to mobile substitution, which we summarise below. In addition to these comments, we now have more recent observations for some of the evidence presented in the April 2013 policy position which has caused us to revisit our assumptions about the likely extent of fixed-mobile substitution. We describe these updates and our resulting conclusions before responding to stakeholder comments in detail. . .

<u>Stakeholder comments</u>

A5.304 EE noted the changes in the assumed range of calls originated from mobile since the April 2012 consultation. Both EE and [✂] were concerned with our use of the evidence from the Department for Work and Pensions (DWP) and considered in particular that we were placing too much weight on the most recent DWP data. [✂] argued that the share of calls originated from mobile to 080 was unlikely to be above 50% as even in the case of DWP (a service whose provider was very concerned with ensuring that calls were free to caller) the share was below that level. [448] EE argued that it was unclear that the most recent observations in the DWP data could represent the long term average share of calls that would be originated from mobile (which in its view was clearly below this range). EE stated that the volatility of the DWP numbers could be shown by its own experience. It argued that Freephone traffic on EE's network [✂] after the DWP removed a particular service (a crisis loan helpline).[449]

A5.305 EE argued that Ofcom justified its assumed top end of the mobile share of calls originated to 080 numbers on anecdotal evidence from another jurisdiction that for some services calls from mobile had exceeded 60%. It considered that there was little justification for assuming that there would be a higher propensity to call 080 numbers from mobiles than the overall proportion of voice traffic represented by mobile. It argued that Ofcom's analysis suggested that the reverse may be true, as under a system where SPs pay origination charges they could actively limit the volume of calls from mobiles in various ways.

A5.306 EE disagreed with the other justification for increasing the top end of the range, that is, that the overall proportion of voice traffic carried over mobile had grown in recent years. It considered that even if this was taken into account, 60% was still far too high a top end given that Ofcom considered that mobile traffic was growing at a rate of 0.5 percentage points a year. It estimated that if this trend continued unabated, this would lead to a top end of the range for residential customers (in its view, the appropriate benchmark as these are the customer to whom the policy changes apply) of mobile originated calls of 47% by 2015 – well below Ofcom's arbitrary 60%. EE said we should consider the possibility of a lower propensity to call free to caller numbers from mobile, which suggested the bottom end of the range should be below 40%. It considered that there was no justification for assuming that mobile

[448] [✂]
[449] EE, April 2013 policy position response, pp. 41-42.

originated calls to 080/116 would be above mobile's share of residential voice calls: suggesting an upper end of the range around 47% at best.[450]

A5.307 Both EE and [✂][451] considered that we should allow for a transition period in reaching the level of fixed to mobile substitution which was being predicted. EE said the increase in the proportion of mobile originated 080 calls would take time as consumers become used to the change in the overall pricing structure and adapt their behaviour accordingly. EE argued that during the period when mobile originated volumes would be lower than Ofcom's assumed long term levels, origination charges would result in lower average SP out-payments, while the full impact of the reduction in OCPs' 080 revenues would have an adverse impact on consumers through the TPE. EE said that this asymmetric short term impact provided further justification to explicitly take into account the time that was likely to elapse before the share of mobile originated calls would increase to Ofcom's assumed long term levels in any guidelines for assessing fair and reasonable charges.[452]

A5.308 [✂] said Ofcom was clearly wrong to use the uncertainty of the actual mobile proportion of calls to set the acceptable range of mobile outcomes because the 1.5p to 2.5ppm base case range was not derived from Ofcom's review of costs but was a product of the risk of traffic variation subsequent to any dispute determination. It argued that this "*particular weakness of Ofcom's logic"* both allowed and forced it to vary its view of an acceptably fair and reasonable mobile origination payment within the restrictive 1.5ppm to 2.5ppm bounds. It said it emphatically rejected that viewpoint. [453]

Updated evidence on the fixed to mobile substitution

A5.309 We have updated the evidence we used to estimate the level of fixed to mobile substitution that was likely to result from making 080 free-to-caller in the April 2013 policy position, in particular making use of:

- more recent observations on the share of (i) all voice and (ii) residential call minutes originated from mobile; and
- more recent observations from the DWP on the share of minutes to their 080 numbers that originated from mobile after they were made free-to-caller.

A5.310 We discuss the updated evidence in turn below.

Evidence on all voice and residential call minutes originated from mobile

A5.311 In Table 12.3 of the April 2013 policy position we presented the share of all voice calls originated from fixed and mobile phones in the UK between 2006-2011, as well as the average annual percentage point increase in mobile originated minutes. We reproduce this information in Table A5.8 below.

[450] EE, April 2013 policy position response, p. 43.
[451] [✂]
[452] EE, April 2013 policy position response, pp. 43-44.
[453] [✂].

Table A5.8: Share of all voice calls originated from a mobile and fixed line in the UK, 2006-2011

	2006	2007	2008	2009	2010	2011
Fixed	64%	59%	55%	52%	51%	48%
Mobile	36%	41%	45%	48%	49%	52%
Average annual percentage point ('pp') increase[454]	3.0pp	2.6pp	2.2pp	1.9pp	2.4pp	N/a

Source: April 2013 policy position, Table 12.3.

A5.312 We considered that the evidence shown in the table above was consistent with assuming that the share of calls originated from mobile would increase by 2 percentage points between 2011 and late 2014. Using this assumption we estimated that the share of all UK voice calls that would be originated from mobile by late 2014 would be approximately 58%.

A5.313 Since the publication of the April 2013 policy position, on 29 April 2013 we revisited the volume of fixed voice call minutes. This revision followed the submissions from BT to the NMR team showing that BT's 'other indirect' call volumes (i.e. calls that CPs originate on other CPs' infrastructure, including indirect access (IDA) and carrier pre-selection (CPS) were lower than we had previously projected. We therefore revised our estimates of 'other indirect' calls originated by fixed telephony providers that do not provide regular quarterly data to Ofcom, resulting in an overall decline in the volumes of fixed voice.[455] We present the updated figures in Table A5.9 below.

Table A5.9: Share of all voice calls originated from a mobile and fixed line in the UK, 2007-2012

	2007	2008	2009	2010	2011	2012
Fixed	59%	55%	51%	50%	47%	46%
Mobile	41%	45%	49%	50%	53%	54%
Average annual percentage point ('pp') increase in mobile share[456]	2.6pp	2.3pp	1.9pp	1.9pp	1.5pp	N/a

Source: 2013 Communications Market Report, Figure 5.1 and Ofcom calculations.

A5.314 The latest evidence shows a slightly higher share of calls originated from mobile than the one we presented in April 2013 (e.g. 54% in 2012 compared to 52% in April 2013). On the other hand, in terms of the annual percentage change in volumes we consider that the above evidence is consistent with assuming that the share of calls originated from mobile will increase by between 1-2 percentage points between 2012 and 2014 (a slightly smaller change than we assumed in April 2013).

[454] The average annual percentage point increase is calculated as the average annual percentage point change between the year and 2011. For example, in the case of year 2006, the average annual percentage point increase is equal to (52%-36%)/(2011-2006) = 3.0%.
[455] See the Telecommunications Market Data Update Q4 2012, available at http://stakeholders.ofcom.org.uk/market-data-research/market-data/communications-market-reports/tables/q4-2012/.
[456] The average annual percentage point increase is calculated as the average annual percentage point change between the year and 2012. For example, in the case of year 2007, the average annual percentage point increase is equal to (54%-41%)/(2012-2007) = 2.6%.

Using these assumptions we estimate that the share of all UK voice calls originated from mobile is likely to be approximately 56-59% by mid 2015.[457]

A5.315 In the April 2013 policy position we then looked at the evidence from residential customers only. We reproduce Table 12.4 of the April 2013 policy position below in Table A5.10.

Table A5.10: Share of all residential voice calls originated from a mobile and fixed line in the UK, 2006-2011

	2006	2007	2008	2009	2010	2011
Fixed	65%	59%	57%	55%	56%	55%
Mobile	35%	41%	43%	45%	44%	45%
Average annual percentage point ('pp') increase[458]	2.0pp	1.1pp	0.7pp	0.3pp	1.0pp	N/a

Source: April 2013 policy position, Table 12.4.

A5.316 We considered that the above evidence was consistent with an annual percentage point increase of around 0.5 percentage points. This would result in around 47% of all residential calls being originated from mobile by late 2014.

A5.317 In line with our analysis in April 2013, we have similarly updated the evidence presented in Table A5.10 above. Since April 2013 we have revisited the split between business and residential volumes for both fixed and mobile telephony. In the case of fixed telephony, our restatement followed the revision of our estimates explained in paragraph A5.314 above. In the case of mobile telephony, our revision has resulted in significant changes to the split between business and residential customers compared to the one we presented in April 2013. These changes follow the submissions from mobile operators that we requested in the first quarter of 2013 (following a business as usual request from our Market Research team), which asked operators to provide volumes distinguishing between business and residential customers for the first time (our previous figures were based on projections). These submissions showed that we had overestimated the volumes of mobile business customers. The updated data corrects this and is based on the latest submissions from mobile CPs.

A5.318 We present the updated figures in Table A5.11 below.[459]

[457] Previously we had considered the likely proportion of all UK calls originated from a mobile in 2014 as this had been our assumed date for implementing free-to-caller. However, in recognition of the fact that implementation is now likely to be mid-2015, we have considered the likely proportion of mobile-originated calls in this period instead.

[458] The average annual point increase is calculated as the average annual percentage change between the year and 2011. For example, in the case of year 2006, the average annual increase is equal to (52%-36%)/(2011-2006) = 3.0%.

[459] We note that this data has not been published before. The information presented in Table A5.11 above is the latest available evidence by the date of publication of this statement (and may be slightly inconsistent with the earlier data in the 2013 CMR). We note that this table is not directly comparable with the information in the April 2013 policy position due to the update in the figures described in the previous paragraph.

Table A5.11: Fixed/Mobile telephony business and residential volumes of minutes (bn), 2007-2012

	2007	2008	2009	2010	2011	2012
Residential fixed	77.9	76.0	74.3	72.7	65.1	59.9
Residential mobile	72.8	79.9	83.7	86.8	91.6	97.2
Business fixed	40.6	36.5	29.9	28.6	26.3	24.2
Business mobile	32.1	35.2	36.8	38.1	32.0	25.2
Total	**223.4**	**227.6**	**224.7**	**226.2**	**215.0**	**206.5**

Source: Ofcom.

A5.319 Using the evidence from Table A5.11 above we can derive the share of residential calls originated from mobile and fixed telephones. We present this evidence in Table A5.12 below. The percentage of residential voice calls originated from mobile is significantly higher than in the evidence available at the time of the April 2013 policy position, e.g. 58% in 2011 compared to 45%.

Table A5.12: Share of all residential voice calls originated from a mobile and fixed line in the UK, 2007-2012

	2007	2008	2009	2010	2011	2012
Fixed	52%	49%	47%	46%	42%	38%
Mobile	48%	51%	53%	54%	58%	62%
Average annual percentage point ('pp') increase in mobile share[460]	2.7pp	2.7pp	3.0pp	3.7pp	3.4pp	

Source: Ofcom.

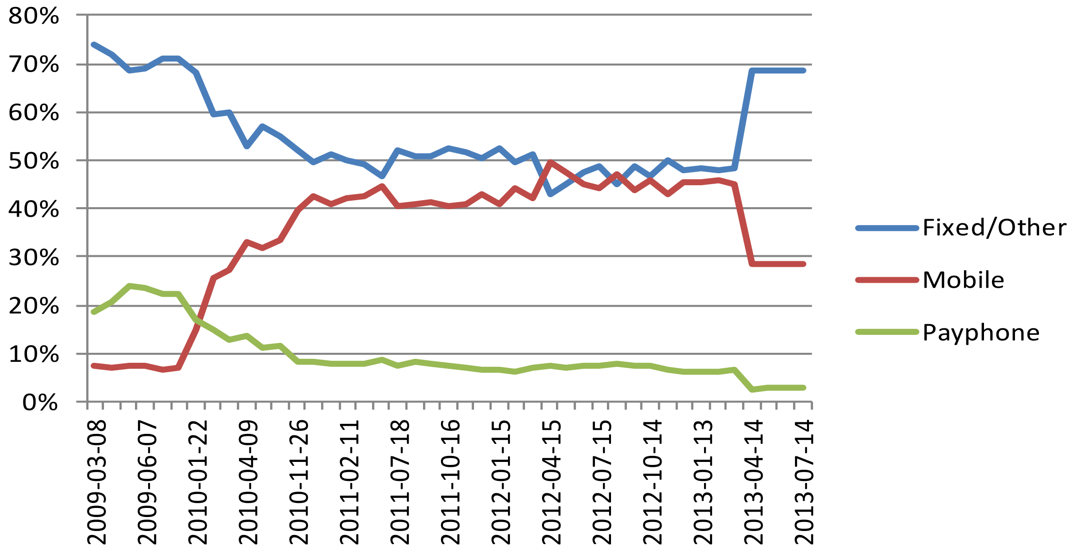
A5.320 Contrary to the evidence in the April 2013 policy position, which we said supported an annual 0.5 percentage points increase in the share of residential calls originated from mobile, the new evidence seems to be consistent with approximately a 2-3 percentage points annual increase. Using this assumption results in 66-69% of residential calls originated from mobile by mid 2015 (compared to 47% in late 2014 in the April 2013 policy position). However, as we noted in the April 2013 policy position we have been unable to determine whether callers of 080 numbers are more likely to behave as residential or business customers for the purposes of deciding the share of calls to 080 that are likely to be originated from mobile.

Evidence from the DWP 080 numbers

A5.321 We requested an update from BT of the minutes of calls to the DWP's 080 numbers that we presented in April 2013. The update included volumes for the period running from September 2012 to July 2013.[461] We present the minutes of calls to the DWP helplines by type of origination that we presented in April 2013, updated with the latest evidence from BT, in Figure A5.12 below.

[460] The average annual increase is calculated as the average annual percentage change between the year and 2012. For example, in the case of year 2009, the average annual increase is equal to (62%-53%)/(2012-2009) = 3.0%.
[461] BT submission to Ofcom of 5 August 2013.

Figure A5.12: Minutes of calls to the DWP helplines by type of origination



Source: BT submission to Ofcom of 5 August 2013.

A5.322 The evidence in Table A5.12 shows that there has been a significant reduction in the share of calls to the DWP originated from mobile (with a parallel increase in the share of calls originated from fixed telephony) since April 2013. Whereas the share of calls to DWP originated from mobile ranged between 40-50% in the months immediately before April 2013, this share dropped drastically and has remained at approximately 30% since that date.

A5.323 In light of the above, we decided to investigate in more detail the causes underlying this significant change in the share of calls originated from mobile. Our analysis shows that the fall in the share of calls to the DWP originated from mobile is mainly due to the closure of the line "Job Centre Plus New Claims Crisis Loans – Balham" in April 2013. Up to that date this line represented around 50% of the total of minutes to the DWP 080 numbers, with around 60-70% of these calls originated from mobile. The DWP indicated to us that this was the main line to make applications for a crisis loan[462] and that the label "Balham" was probably a hangover from a previous set-up.[463] The DWP considered that one of the reasons why this line may have had a higher share of calls originated from mobile was likely to be the nature of the services provided and the fact that applicants to a crisis loan were less likely to have access to a landline.[464] This is consistent with evidence from our Communications Market Report that show that households in the DE socio-economic group[465] have a higher propensity to be mobile-only (26%) than the average across all households (15%).[466]

[462] A crisis loan is granted when a person needs to meet expenses in an emergency or as a consequence of a disaster. The DWP indicated to us that a crisis loan was not payable unless it was the only means of preventing serious damage or serious risk to health and safety.
[463] Email from DWP to Ofcom on 8 August 2013.
[464] Email from DWP to Ofcom on 8 August 2013.
[465] For a definition of the DE socio-economic group see page 156 of the Consumer Experience Report, at http://stakeholders.ofcom.org.uk/binaries/research/consumer-experience/tce-12/Consumer_Experience_Researc1.pdf.
[466] Communications Market Report, 2013, p. 353, available at http://stakeholders.ofcom.org.uk/binaries/research/cmr/cmr13/2013_UK_CMR.pdf.

A5.324 The evidence from BT shows that since the closure of the Crisis Loan line in April 2013, calls to DWP lines have been dominated by three lines. These are described in Table A5.13 below.

Table A5.13: Main 080 lines of the DWP (by volume)

Name	Share DWP volumes	% fixed	% mobile	Type of service
JCP First Contact New Claims	70-77%	62-65%	32-34%	First point of contact for new unemployment claims
PDCS TPS State Pension New Claims	8-11%	92-93%	6-8%	Pension claims
Pension Credit Application Line	6-8%	86-87%	11-13%	Pension claims

Source: BT submission to Ofcom 5 August 2013.

A5.325 In relation to “JCP First Contact New Claims” the DWP indicated that the reason why this line could present a higher share of calls from fixed telephones than from mobiles was likely to be that callers to this number would be newly unemployed people and therefore less familiar with the zero-rating of calls from mobile to DWP’s 080 numbers.[467] In the case of the other two numbers shown in Table A5.13 above, their higher proportion of calls from fixed telephones than from mobiles was likely to be explained by the services offered (pension claims) and the fact that callers to these numbers (older people) were likely to use landlines to a larger extent than mobile phones.[468] This is consistent with the evidence from the Consumer Experience Report showing that older people (in the 65-74 and 75+ age brackets) tend to use mobile services less.[469] In relation to the remaining DWP numbers, these numbers represented each a much smaller proportion of total DWP minutes.

A5.326 We believe that the above evidence shows that it would be reasonable to expect the DWP calls to present a much higher share of minutes originated from fixed telephones than mobile, given that they are dominated mainly by (i) a “first contact” number whose callers are less likely to be aware that DWP’s 080 numbers are free from mobile and (ii) lines relating to pension claims, whose callers are less likely to use mobile telephones. We continue to believe that there may be some SPs which may share similar characteristics to the DWP (e.g. offering socially important services to callers) and present a similar split of calls between mobile and fixed telephones. However, in light of the points above and the divergence between the evidence on all voice calls (or residential calls) presented earlier and the DWP data, we do not consider that the DWP is likely to be representative of the average share of calls to 080 SPs that will originate from mobile telephones. We also note that we anticipate our planned consumer communication campaign after free-to-caller is implemented to contribute towards a greater proportion of calls being originated from mobile than currently are to DWP helplines.

[467] The DWP advised that newly unemployed people willing to make a claim to the DWP for the first time would call this 080 number. However, any further claims or enquiries would be referred to other DWP lines such as the DWP’s 0845 numbers.
[468] Email from DWP to Ofcom on 8 August 2013.
[469] See, for example, the Consumer Experience Report 2012, Figure 29, p. 40, available at http://stakeholders.ofcom.org.uk/binaries/research/consumer-experience/tce-12/Consumer_Experience_Researc1.pdf

Conclusion

A5.327 In light of the above evidence, we believe there remains some uncertainty about the share of calls that are likely to be originated from mobile across all 080 numbers on a free-to-caller range. The evidence on all voice calls suggests that it would be reasonable to assume a share of calls originated from mobile in the 56-59% range by mid 2015. Based on the evidence on residential voice calls this range could be up to 66-69%. The latest evidence from DWP shows a share of calls originated from mobile at about 30%. However, we have decided to place more weight on the evidence on all calls, as we have not been able to determine whether callers to 080 would be more likely to behave as business or residential customers; and based on the available evidence we do not consider that the latest DWP data is likely to be representative of the average share of calls from mobile to 080 SPs. We therefore consider it is consistent with the above evidence to assume that implementing a free-to-caller approach will increase the share of calls to 080 originated from mobile to somewhere between **55-60%**. The lower bound represents roughly the share of all voice calls originated from mobile currently. The upper bound reflects a share in line with our highest estimate for all voice calls by mid 2015.

A5.328 We now address the stakeholder comments summarised above in relation to fixed to mobile substitution.

<u>Ofcom's response to stakeholder comments and decision</u>

A5.329 In relation to the comments from EE and [✂] regarding the DWP data, we agree, in light of the latest analysis described above, that it is no longer appropriate to rely on this information to derive an assumption on the share of calls to 080/116 that are likely to be originated from mobile after these ranges are made free to caller.

A5.330 We disagree with EE that we justified the top end of the mobile share of calls (i.e. 60%) based on anecdotal evidence showing that for some services calls from mobile could exceed 60%. In contrast, we said in paragraph 12.127 of the April 2013 policy position that the upper bound of our range reflected a share slightly above our estimate of the share of all voice calls that are originated from mobile by late 2014. As discussed above, in our latest analysis the upper bound of our range (60%) is roughly based on the share of all voice calls that are likely to be originated from mobile by mid 2015. In response to EE's comment that the potential for SPs to reduce the volume of calls received from mobiles may result in the proportion of mobile originated 080 calls being lower than the proportion for all voice calls, we discuss our reasons for not taking this into account in response to a similar comment from EE in paragraph A5.425.

A5.331 We take note of EE's comments regarding our reliance on the all voice data (as opposed to the residential volumes data) in the April 2013 policy position. We continue to believe that it is preferable to rely on the all voice call data, as we are unable to determine whether callers to 080/116 free to caller ranges would be likely to behave more like current business or residential callers. We note that in the case of the latest available evidence, this results in a more conservative assumption regarding the extent of the fixed to mobile substation than if we relied more heavily on the data for residential calls only. In addition, we note that, as explained in Annex 6, the access condition will also apply to business calls to 080 as long as they are zero rated at the retail level.

A5.332 In relation to EE and [✂]'s comment that we should allow for a transition period, we continue to believe that this would not be appropriate. We note that the evidence from DWP prior to April 2013 showed that callers reacted relatively quickly after calls had been made free to caller (with the share of calls from mobile increasing from below 10% to 40-45% in less than a year). In addition, we consider that the communications campaign from both operators and Ofcom alerting callers that 080/116 numbers are free to caller is likely to increase awareness and will speed up the time to reach a more or less stable split between mobile and fixed. Moreover, we consider the TPE is unlikely to be immediate and that OCPs are therefore unlikely to pass through short term fluctuations in revenues to consumers. We also consider SPs are likely to make their decision regarding whether or not to remain on the range on the basis of the likely medium term impact on their payments, rather than just any changes in cost they may experience during a short transitional period. As a result, we consider it appropriate to assess the appropriate average SP out-payment in the medium term, when the fixed-mobile call split has stabilised around its new level and is therefore more relevant to the service availability/TPE trade-off.

A5.333 [✂] said it was wrong to set a range for the mobile origination charge to reflect uncertainty over the fixed-mobile call split because this was not based on an analysis of costs. We continue to consider it appropriate to allow for a range in the mobile origination charge, and note this range derives only in part from our uncertainty over the extent of substitution to mobile. In fact now we have narrowed our range of the likely substitution to mobile, the greater part of our uncertainty over the likely mobile origination charge arises from the appropriate SP outpayment we derive under Step 1 of Principle 2. As set out in paragraphs A5.194 to A5.197 above we do not consider we should assess the likely mobile origination charge with reference to an analysis of costs alone as this would not necessarily result in a charge which benefited consumers.

A5.334 In light of the above, we consider it is appropriate to assume that implementing a free-to-caller approach is likely to increase the share of calls to 080 originated from mobile to somewhere between **55-60%**.

The level of origination charges implied by the fixed to mobile substitution assumed

Summary of the assessment in the April 2013 policy position

A5.335 We applied the framework we had set out for assessing origination charges to the evidence available to us in the April 2013 policy position to derive a base case scenario and an impact assessment range ('IAR') for fixed and mobile origination payments to 080 and 116 numbers.

A5.336 We explained that we derived our base case scenario range by applying our framework for assessing origination charges to the evidence currently available to us. This resulted in a range of mobile origination payments between 1.3ppm and 3ppm, excluding any combinations of assumptions which were inconsistent with what we considered to be an appropriate average SP cost. We considered that mobile origination payments were most likely to fall within our base case scenario range. However, we also assumed a wider IAR of between 1.0ppm to 3.7ppm for mobile origination payments for the purposes of robustness. The IAR included those scenarios not considered within our base case scenario range.[470] We only adopted one IAR range for fixed origination charges, as we considered there to be less uncertainty about the likely range of these charges.

[470] See paragraphs 12.164 – 12.169 of the April 2013 policy position.

A5.337 Our assessment led us to adopt the following ranges:

- For fixed origination:
  - IAR: 0.3 to 0.6ppm;
- For mobile origination:
  - IAR: 1.0 to 3.7ppm;
  - Base case scenario range: 1.3 to 3.0ppm, although we placed more weight on mobile origination payments within the 1.5-2.5ppm range.[471]

A5.338 For 116, in the light of the evidence we considered under Principles 1 to 3, we considered it appropriate to assume that fixed and mobile origination charges for 116 would either both be maintained at existing levels or would be set at our estimates of pure LRIC.[472]

A5.339 We did not invite stakeholder comments on this issue but received some responses relating to our assessment of the level of fixed and mobile origination payments. We summarise these stakeholder comments below. However, the updated analysis on the likely extent of fixed to mobile substitution that we expect will follow our decision to make 080/116 free-to-caller discussed above has resulted in changes to the assumptions we make about likely fixed and mobile origination payments for the purposes of our impact assessment. For this reason, we describe our final assessment before addressing these stakeholder comments.

<u>Stakeholder comments</u>

A5.340 [✂] noted that it entirely agreed with the principle of using the outputs of the NMR for deriving the LRIC and LRIC+ network costs of fixed origination. It suggested, however, that quoting a single base case number for fixed network costs, using the base case range set out in the NMR consultation, would have been more helpful than a range and would have removed the potential for confusion about the range of fair and reasonable charges for fixed origination.[473] In particular, [✂] said it was only after drilling down into the supporting detail of Ofcom's reasoning that it became clear that the uncertainty about the level of the fixed origination charge of 0.3ppm to 0.6ppm was not based on an estimate of the range of what might be fair and reasonable for a fixed operator, but simply that that range arose from uncertainty about what the NMR Statement would determine as the correct level of recovery for LRIC and LRIC+ origination. It noted that a much narrower range, potentially of just 0.06ppm would emerge once that review was concluded but that that was only made clear in Table A26.4 of Annex 26. [✂] considered that the failure to explain that properly gave rise to the totally mistaken impression that any level of fixed origination outpayment between 0.3ppm and 0.6ppm was likely to be found fair and reasonable. It said that unless this was properly addressed, it would lead to enormous and pointless confusion in the commercial negotiations that were necessary prior to any dispute resolution.[474]

[471] See paragraphs 12.171 to 12.174 of the April 2013 policy position.
[472] See paragraphs 12.175 to 12.198 of the April 2013 policy position.
[473] [✂].
[474] [✂].

A5.341 [✂] said Ofcom had given too little weight in the evaluation to the importance of efficient recovery of their costs by all OCPs, and in particular by the mobile operators and thus the proposed outcome had too low a level of mobile origination outpayment. [475] It said it was possible to see the inequitable effect of Ofcom's approach to cost recovery by comparing the level of the outpayment used in the draft 080/116 Dispute Guidance with the level of the efficiently incurred origination costs developed by Ofcom for both fixed and mobile. It commented that Ofcom had failed to carry out that comparison and [✂] set out its own calculations to this effect in its response.[476] It noted that using those calculations, the 1.5ppm to 2.5ppm range (other than at the ceiling of that range) would not involve mobile operators recovering even what Ofcom saw as its lowest view of the acceptable LRIC+. It therefore argued that Ofcom was inhibiting mobile operators from recovering a considerable proportion of the common costs that it assessed were relevant to providing call origination.[477]

A5.342 [✂] said that for exactly the same reason that it was correct to impose a differential between mobile and fixed termination rates, it was equally important to ensure consistency of treatment between fixed and mobile origination outpayments with respect to cost recovery, using similar recovery principles and proportions but with differential levels.[478] It argued that that calculation clearly showed that the draft 080/116 Dispute Guidance allowed fixed operators to recover all of their origination costs, whilst restricting mobile operators to at best a recovery of only 75% of their origination costs (at 2.5ppm) and at the lower level of 1.5ppm, only a very small proportion of costs were being recovered. It argued that it was totally unreasonable to assume that any formulation that allowed full recovery of costs for fixed operators whilst restricting the recovery for mobile operators could possibly be considered to be a non-discriminatory approach. [479]

A5.343 [✂] argued that the evidence Ofcom had on SPs' willingness to pay for a free-to-caller number range and on the future traffic mix of 080 calls was somewhat equivocal and inherently of less evidentiary weight than the evidence it would have available on the conclusion of the NMR. It said that rather than working out backwards what the mobile origination could be, Ofcom should conduct the calculation by considering what varying levels of fixed and mobile origination recovery (when the two were considered simultaneously on a non-discriminatory basis) would imply for SP average outpayments in a range of traffic outcomes. Then as a subordinate step it said Ofcom could consider how reasonable such a range of average outpayments could be, given the less than fully reliable information on SPs' willingness to exist that Ofcom had been able to obtain. [480]

A5.344 [✂] said its own assessment of that evidence (based on an indicative rather than the final view of fixed origination costs) was that a mobile outpayment of approximately 3.05p would be consistent with a fixed origination outpayment of 0.26p and that these together, when evaluated against the likely range of the mobile origination traffic mix, would not result in an average SP outpayment that would put at risk the successful implementation of Ofcom's vision. [481] It said that it must be correct not to view the mobile rate as dependent on the fixed rate – rather to ensure

[475] [✂].
[476] [✂]
[477] [✂].
[478] [✂].
[479] [✂].
[480] [✂].
[481] [✂].

an equitable and non-discriminatory approach the mobile and fixed rates should be determined simultaneously inside the constraints of the calculation, not sequentially.[482]

A5.345 [✂] was concerned that under Ofcom's assessment therefore, the amount of the allowable mobile origination would be constrained, not to what was fair and reasonable for the mobile operator to recognise, but to what was judged to be fair and reasonable for the SP to pay. It also noted that no such restriction was to be applied to the fixed origination payment – a fixed operator would apparently be able to recover all its fixed and common costs. It highlighted Ofcom's specific calculations and said it was quite clear from the logic of those calculations that the determination of what might be fair and reasonable for the mobile operator to recover was being given subordinate priority to what it might be fair and reasonable for a fixed operator to recover and for an SP to pay. It argued that this could not be a non-discriminatory and technologically neutral approach, given that no such restriction was being applied on the fixed operator. [✂] said that was "*patently unfair and unreasonable*".[483]

Updated analysis on the origination charges implied by the fixed to mobile substitution assumed

A5.346 In light of our updated assessment of the likely extent of fixed to mobile substitution following our decision to make 080 free-to-caller and updates to our cost estimates, we have similarly revisited our analysis of the origination charges implied by the new fixed to mobile substitution assumed.

A5.347 We follow the same approach to determining the distribution of the average SP outpayment derived under Step 1 as set out in the April 2013 policy position, updated only to reflect our revised assumptions about the likely extent of fixed-mobile substitution and our updated estimates of the cost of originating fixed and mobile 080 calls.

A5.348 To do this, we first assume a given level of fixed to mobile substitution (e.g. 55% of calls originated from mobile). Then, we start from the pure LRIC of both fixed and mobile origination (i.e. the lower bound of the efficient cost ranges described above) and increase these in equal pence per minute proportions, say 0.1ppm. We do this in Table A5.14 below.

[482] [✂].
[483] [✂].

Table A5.14: Average outpayment for different fixed and mobile origination payments assuming 55% of calls originated from mobile

Fixed origination payment		0.03	0.10	0.20	0.30	0.40	0.50	0.53
Mobile origination payment	0.8	0.45[484]	-	-	-	-	-	-
	0.9	-	0.54	-	-	-	-	-
	1.0	-	-	0.64	-	-	-	-
	1.1	-	-	-	0.74	-	-	-
	1.2	-	-	-	-	0.84	-	-
	1.3	-	-	-	-	-	0.94	-
	1.4	-	-	-	-	-	-	1.01

A5.349 The Table shows that if we start from the pure LRIC of fixed and mobile origination and increase both by 0.1ppm steps, the average SP outpayment when we reach fixed origination payments of 0.532ppm (the upper bound derived under Principle 1- i.e. the LRIC+ with no A&R for fixed origination) is approximately 1.01ppm. This level of average outpayments is below 1.5ppm, the maximum level of average outpayments that we have derived in Step 1 (as discussed above).

A5.350 As discussed in Principle 1, we consider that the appropriate range for fixed origination payments is between 0.4-0.5ppm (i.e. slightly below 0.477-0.544ppm, which is our estimate of LRIC+ with no A&R costs, in order to account for the fact that fixed origination costs are likely to decrease below the level in 2015/16 after the date of implementation of our decision in mid-2015 due to efficiencies). As the level of SP outpayment is sufficient to allow full recovery of this range of fixed origination payments, we can then calculate the maximum mobile origination payments that result in an increase in average SP outpayments of exactly 1ppm (i.e. the range for the average SP outpayment, as derived under Step 1 of Principle 2 above). In doing so, we need to make an assumption about the share of calls originated from mobile as this will affect the average SP outpayment for a given fixed and mobile origination payment. As discussed above, we have assumed that the share of calls originated from mobile is likely to be between 55%-60%.

A5.351 In Tables A5.15 and A5.16 below we update the analysis we presented in paragraphs 12.128 to 12.140 of the April 2013 policy position using our new assumptions regarding the:

- efficient fixed origination costs that it is relevant to recover from fixed origination payments consistent with Principle 1 of our framework (i.e. the LRIC+ with no A&R): 0.4-0.5ppm (as discussed in paragraphs A5.105 to A5.111 above);
- share of calls that are likely to be originated from mobile, which we now assume to be between 55-60% (as described in paragraph A5.327 above).

A5.352 In line with our approach in the April 2013 policy position, we fix the fixed origination payment at the 0.4-0.5ppm level derived using Principle 1 and calculate the SP average outpayment resulting from different levels mobile origination payments and share of calls originated from mobile consistent with our assumptions (i.e. 55-60% share of mobile calls and payments above pure LRIC that result in average SP outpayments equal to or below 1.5ppm). In the tables below we highlight in red the

[484] Each figure is calculated as follows: mobile origination payment assumed x 55% + fixed origination payment assumed x (1-55%). For example, in this case: 0.45ppm = 0.8 x 55% + 0.03 x 45%.

scenarios where the average SP outpayment is below or equal to 1.5ppm (i.e. is consistent with Step 1).

Table A5.15: Average SP outpayment for different mobile origination payments and shares of mobile originated calls, keeping the fixed origination charge at 0.4ppm

Share of calls originated from mobile		55%	57%	58%	60%
Mobile origination payment (ppm)	2.5	1.56	1.60	1.62	1.66
	2.4	1.50	1.54	1.56	1.60
	2.3	1.45	1.48	1.50	1.54
	2.2	1.39	1.43	1.44	1.48
	2.0	1.28	1.31	1.33	1.36
	1.8	1.17	1.20	1.21	1.24
	1.5	1.01	1.03	1.04	1.06
	1.4	0.95	0.97	0.98	1.00

Table A5.16: Average SP outpayment for different mobile origination payments and shares of mobile originated calls, keeping the fixed origination charge at 0.5ppm

Share of calls originated from mobile		55%	57%	58%	60%
Mobile origination payment (ppm)	2.5	1.60	1.64	1.66	1.70
	2.4	1.55	1.58	1.60	1.64
	2.3	1.49	1.53	1.54	1.58
	2.2	1.44	1.47	1.49	1.52
	2.0	1.33	1.36	1.37	1.40
	1.8	1.22	1.24	1.25	1.28
	1.5	1.05	1.07	1.08	1.10
	1.4	1.00	1.01	1.02	1.04

A5.353 The evidence above supports mobile origination payments up to 2.4ppm in some scenarios. We do not consider that mobile origination payments above this level are likely to be fair and reasonable on the basis of the evidence currently available to us.

<u>Ofcom's response</u>

A5.354 We welcome [✂]'s support for the use of the estimates of BT's call origination costs from the NMR Statement to derive the LRIC and LRIC+ network costs of fixed origination. As described earlier in this Annex, we now assume a significantly narrower range for fixed origination payments (0.4-0.5ppm compared to 0.3-0.6ppm in April 2013) on the basis of the final NMR Statement.

A5.355 [✂] said that we place too little weight on the importance of efficient cost recovery by all OCPs, and that this results in a mobile origination charge that would prevent mobile OCPs from recovering a considerable proportion of the costs relevant to providing call origination. We agree with [✂] that recovery of efficient costs relevant to origination is important, and we therefore assess this under Principle 1 for both fixed and mobile calls. This results in a range of cost-based charges and, as noted above, we consider that any charge at or above the bottom end of the range (represented by pure LRIC) would provide an opportunity for OCPs to recover their efficient costs of origination. We then assess the levels within this range that we consider would maximise benefits to consumers to determine which of these costs it is appropriate to recover through the origination charge.

A5.356 We do not agree that the range for the mobile origination charge derived under Step 2 would prevent mobile OCPs from recovering a considerable proportion of the common costs we assessed as relevant. We did not conclude that LRIC+ with no A&R was necessarily the relevant level of cost for recovery but instead set out that the costs we considered relevant ranged from pure LRIC to this level.

A5.357 [✂] argued that our approach was discriminatory as it allowed fixed operators full cost recovery whilst restricting recovery for mobile operators. It suggested that instead of relying on the SP survey and future traffic mix to work out backwards what the mobile origination charge should be, we should instead assess what varying levels of fixed and mobile origination charges considered simultaneously on a non-discriminatory basis would imply for SP average outpayments in a range of traffic outcomes.

A5.358 In fact, we consider there are similarities between our assessment of relative fixed and mobile charges under Step 2 and the approach proposed by [✂]. Our methodology starts from the lower bound of pure LRIC, and then considers identical increases in the absolute contribution to fixed and common costs for each of fixed and mobile OCPs until such a point as the ceiling for relevant cost recovery is reached. This is the same as our understanding of [✂]'s proposed approach in all respects other than the increment used- we consider identical increases in absolute contributions whereas [✂] argues for identical increases in percentage contributions. Our emphasis on the absolute contribution to fixed and common costs over the percentage of these costs is based on a number of objective reasons:

5.358.1 First, our consideration of efficient pricing signals to SPs and the adverse effect of distorted price signals on consumers, which we discuss in relation to the LRIC differential below, suggests that there may be an excessive incentive for SPs to reduce the volume of calls received from mobiles when the difference in the cost of receiving fixed and mobile calls exceeds the difference in their incremental cost. This supports origination charges resulting in the same absolute contribution to fixed and common costs for fixed and mobile calls.

5.358.2 Second, 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), which supports SPs contributing the same absolute amount to the common costs of fixed and mobile 080 calls.

5.358.3 Third, we consider there is a sound theoretical basis for concluding that the same absolute ppm contributions to common cost in 080 origination charges would mean that mobile and fixed OCPs' charges for wider telecoms services reflect the relative costs of mobile and fixed networks and hence avoid distortions to competition between networks.[485] We note

[485] See paragraphs A23.133-A23.135 in the April 2012 consultation.

here that [✂] and the mobile OCPs making similar arguments have not provided any economic reasoning as to why we should consider the percentage rather than absolute contribution to common costs in our assessment. We continue to consider that our approach is valid, non-discriminatory, technologically neutral and avoids material distortions to competition.

A5.359 We note [✂]'s comments on our reliance on the evidence of SPs' willingness to pay and the future traffic mix of 080 calls, which it considers of less evidentiary weight than our assessment of the costs of origination. We recognise there may be more uncertainty surrounding the evidence relating to SPs' willingness to pay and the future traffic mix of 080 calls than there is our cost estimates but equally we derive a wide range for mobile origination costs under Principle 1. In any case we do not consider this a reason not to assess the consumer impact of the origination charge, or to give this assessment any less weight. Whilst the Principles are set out sequentially here and in our 080/116 Dispute Guidance, they are cumulative in the sense that all must be satisfied for a given charge to be considered fair and reasonable. We therefore consider that we give appropriate weight in our assessment to the effects on consumers from appropriate SP outpayments under Step 2 of Principle 2 and to efficient costs relevant for recovery under Principle 1. We do not consider it would be appropriate for our assessment of the effects on consumers of appropriate SP outpayments to be subordinate to our estimate of one particular measure of costs (i.e. LRIC+ no A&R) from within the range derived in our assessment under Principle 1 (as [✂] seems to argue it should be).

A5.360 We consider [✂]'s view that our framework is based on a judgment of what is fair and reasonable for SPs to pay and for fixed OCPs to recover does not accurately characterise our approach. It is true that we assess the appropriate level of average SP outpayments in Step 1 of Principle 2. However, this is purely in terms of assessing the level that maximises benefits to consumers. As described in that section above, our assessment considers the impact of higher origination charges on the likelihood of SP exit only insofar as a reduction in service availability on 080 affects consumers adversely, and weighs this effect against the positive change in the tariff package effect resulting from an increase in OCP revenues.

A5.361 Contrary to [✂]'s view, the fixed origination charge is determined with reference to the average SP outpayment. We recognise that this average outpayment will depend on the level of both the fixed origination charge and the mobile origination charge, and accordingly consider the combinations of these that would result in an appropriate SP outpayment for different assumptions about the traffic mix. As noted above, we begin from the pure LRIC for each of fixed and mobile, and increase each by the same absolute amount until the ceiling we consider relevant for efficient cost recovery is reached. We therefore do not consider that the level of costs it is efficient for mobile OCPs to recover is given subordinate priority to the level we consider fixed OCPs should recover.

LRIC differential and mitigation strategies

<u>Summary of assessment in the April 2013 policy position</u>

A5.362 In the April 2013 policy position we noted that the mobile origination charge that would make the same pence per minute contribution to mobile CPs' fixed and common costs as the assumed fixed origination payment (the 'LRIC differential' charge) would be in the range of 1.0-1.5ppm (depending on the assumptions we made regarding the pure LRIC of originating mobile and fixed 080 calls, as well as the assumption we made regarding the level of the fixed origination payment). We explained that since the publication of the April 2012 consultation we had received responses from some TCPs and SPs indicating the alternative methods that they could use to mitigate the increase in their SPs' mobile origination payments. In their responses, TCPs and SPs indicated that they could implement different alternatives, for example:

- **Different treatment of fixed and mobile calls.** The TCP could identify the origination of the call and provide this information to the SP who could then offer a differentiated service to each type of customer (e.g. try to shorten the length of the call if originated from a mobile) or route the call to different call centres depending on its origination.

- **Routing to an automated message.** The TCP could route the call to a short automated message indicating to the mobile caller that it should use a different number or that the caller will be called back by the SP.[486]

A5.363 We explained that we also had submissions from SPs indicating that they could resort to these or similar methods to limit the impact of an increase in mobile origination charges (e.g. CWW mentioned an SP requesting the possibility of re-directing mobile calls to an automated message and THA referred to other solutions such as offering callbacks or running parallel numbers for callers from mobiles). We considered it was difficult to determine how widely adopted these alternative methods could become if the 080 range was made free-to-caller and noted that the 2011 SP survey did not provide a reliable basis to ascertain this.[487]

A5.364 We considered that to assess the weight that should be given to the evidence from TCPs and SPs, we should first have regard to the context under which we had received these submissions from TCPs and SPs. Currently, SPs do not face differentiation in the prices they pay (through hosting charges) for calls originated from mobile and fixed lines and many SPs are still unaware of the impact that our approach to 080 may have on the hosting charges they pay. Additionally, several SPs had, without prompting from us or their TCPs, expressed an interest in using some of these alternative measures. Using an example[488] we estimated that SPs 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).[489]

A5.365 In light of our evidence we believed that if SPs faced an excessive incentive to use these types of measures it could cause significant consumer detriment in the form of lower quality of service when calling from a mobile phone or a reduction in service availability if the caller was requested to contact another number. Furthermore, we explained that many SPs were likely to derive the same benefit independently of whether the calls originated from a mobile or fixed line (even if there were exceptions as some stakeholders have suggested in their responses).

[486] April 2013 policy position, paragraphs 12.141-12.144.
[487] April 2013 policy position, paragraph 12.145-12.146.
[488] Our example assumed that the average duration of a call to a 080 number from mobile was likely to be 5.2 minutes once 080 is made free-to-caller (the average of the duration of calls to 080 from fixed – 6.5 minutes – and from mobile – 4.0 minutes – in 2009). We also assumed that the average duration of the recorded announcement was likely to be 1 minute (i.e. SPs would be charged for one minute when called from a mobile).
[489] April 2013 policy position, paragraphs 12.147-12.149.

For this reason, we considered it may be appropriate to ensure that SPs made the same contribution to the common costs of fixed and mobile CPs.[490]

A5.366 We therefore considered that there was potential for consumer detriment from differentials between fixed and mobile origination charges that exceeded the LRIC differential (which provided an efficient price signal to SPs in this respect). 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 concluded that the above reasoning supported a Base case scenario range for mobile origination payments below the top of the 1.3-3.0ppm range, to be closer to our estimated LRIC differential of 1.0-1.5ppm. We argued that the greater the weight that was 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 Base case scenario range.[491]

A5.367 We asked the following question:

Q12.5: Do you agree that SPs are likely to resort to alternative measures to mitigate the costs of calls from mobiles (e.g. routing the mobile calls to a recorded announcement) at higher mobile origination payments? Do you agree that this supports a base case scenario range towards the LRIC differential? If not, please explain why.

<u>Stakeholder comments</u>

A5.368 Magrathea said it already charged different rates to its SPs customers according to where the call originated as a result of the Payphone Access Charge ('PAC'). It said if there was to be a similar "mobile surcharge", it would charge SPs more for calls originating from mobile phones. It said it would not offer a "blended rate" to SPs and would provide mechanisms to allow SP customers to control the service they offered according to different origination types. It said that SPs would, to a greater or lesser extent, have some incentive to ensure that calls from mobile customers were kept short and its SP customers had indicated that they would apply different treatment to a call depending on its origination. It therefore supported Ofcom's conclusion that the base case scenario should be towards the LRIC differential.[492]

A5.369 [✂] said that if SPs were less concerned about customer service and more about their costs then they are likely to resort to alternative measures to mitigate the costs of calls from mobiles. It said that if the main concern was the bottom line rather than customer service they would need an incentive to stop them from resorting to a recorded announcement.[493]

A5.370 THP said it was unlikely that the mitigation measure of routing calls from vulnerable people to a pre-recorded message asking them to dial another number or use a landline would be appropriate. It noted any efforts to divert the caller seeking support through to another route might discourage the caller from seeking any help.[494]

[490] April 2013 policy position, paragraphs 12.150-12.151.
[491] April 2013 policy position, paragraphs 12.152-12.153.
[492] Magrathea, April 2013 policy position response, p.5.
[493] [✂].
[494] THP, April 2013 policy position, p.6.

A5.371 BT said its experience suggested that SPs were very likely to resort to alternative measures, even with mobile charges at the LRIC differential. It said there were technical solutions which could damage the whole industry, for example, it noted it was technically possible to play a message to mobile callers such as “this number does not receive calls from mobiles, please try from a fixed line”. It said this would allow costs to be incurred by both mobile OCP and TCP but without any mechanism for charging to occur. It said situations like this should be discouraged but as SPs would not incur any cost, they would be likely to resort to such measures.[495]

A5.372 O2 said it was far from clear that recorded messages would be played and that alternative approaches included SPs trying to keep conversations short or calling customers back would be adopted. O2 considered these approaches reasonable for an SP concerned about cost, and argued that suppressing mobile outpayments could lead to inefficient behaviour by SPs by masking the true cost of mobile calls. It also argued it may make mobile OCPs less inclined to enter into voluntary arrangements with “good causes” (e.g. THP members).[496]

A5.373 Three noted its view that SPs would be motivated to “sabre rattle” in order to leverage a lower mobile origination charge, even if their willingness to pay was at the higher end of Ofcom’s IAR. It also said that CPs that operated at all levels of the market (including hosting) would be motivated to drive down the mobile origination charge in an effort to ensure they could maximise the fixed origination and hosting profits while keeping SP average outpayments within the range preferred by Ofcom. Three said that, considering this aligned motivation of both SPs and hosting CPs to drive down the mobile origination charge, it believed Ofcom should be very careful about how they interpreted the information being submitted in this respect.[497]

A5.374 EE considered that the LRIC differential was an entirely arbitrary and invalid benchmark. It said that Ofcom accepted that higher mobile origination charges were acceptable from an overall net welfare perspective, even when these could incentivise some SPs to engage in mitigation strategies to avoid higher mobile costs, as long as the origination charges reflected efficient costs. Thus, it argued that if we accepted that recovery of LRIC+ costs (including CARS) costs by fixed operators was efficient, then recovery of this same level of costs by mobile operators should be considered to be equally efficient. Accordingly, EE concluded that the entire LRIC differential assessment was invalid. EE also disagreed with Ofcom’s view that origination payments exceeding the LRIC differential would place mobile operators at a competitive advantage compared to fixed operators as it disagreed that mobile operators would be recovering ‘more’ of their efficiently incurred costs.[498]

A5.375 EE said even if it was accepted that there was a benefit to reducing the incentives to adopt mitigation strategies, it considered that Ofcom’s proposed approach to addressing them was not appropriate. It said the LRIC differential was an arbitrary and illogical cost measure which constrained mobile originators to recoup only the absolute amount of common cost appropriate to fixed operators. To the extent that mobile OCPs were allowed to recover their own costs, EE said there would still be a differential between mobile and fixed origination costs, which would mean that the incentive on SPs to differentiate between fixed and mobile originated calls would still exist. It said this could put mobile operators in a situation which was negative

[495] BT, April 2013 policy position, p.18.
[496] O2, April 2013 policy position response, p.8.
[497] Three, April 2013 policy position, p.28.
[498] EE, April 2013 policy position response, pp. 45-46.

both from not being able to recover all of their efficiently incurred common costs as well as only recovering what common costs they could from a lower overall volume of calls. EE commented that it was in order to avoid such a discriminatory outcome that Oftel's original dispute determination allowed mobile OCPs to charge for 080 calls in order to cover their higher costs. It said Ofcom could not have it both ways; if it wanted to insist that mobile OCPs must provide calls free to the caller then it must accept that this entailed allowing mobile OCPs to recover their full costs of origination by way of charges imposed at the wholesale level.[499]

A5.376 EE argued that Ofcom had noted that SPs may be able to manage their costs using mitigation strategies such as, for example, playing pre-recorded announcements for mobile customers directing them to alternative means of communication. It considered that under some circumstances (for example, if this alternative means of communication is a zero rated mobile voice short code, a free to call Skype number or free to use web chat or online booking service), there may be essentially no loss in net benefit to the consumer (especially once awareness of these alternative means of communication is raised). Indeed, it considered it was entirely conceivable that the increasing use of functions such as online booking and purchase systems rather than 080 phone calls reduces costs and improves outcomes for both consumers and SPs, enhancing overall consumer welfare.[500]

A5.377 EE considered that the first part of the question was focused on the wrong issue. It said the most fundamental question Ofcom should be considering was the extent to which such behaviour was efficient. It said if SPs were not willing to cover the true costs of calling these numbers from mobiles then this did not represent an economically efficient way of accessing those services. EE said that if the argument was that there were external or social benefits from ensuring that those services could be accessed from mobiles (which SPs were not prepared to cover on the basis of their own private benefit) then Ofcom had not made the case why the cross subsidy which resulted from that approach should be borne by mobile operators and their subscribers. It said this was especially true in the context where such services might be more appropriately and efficiently accessed using other means (whether from a fixed line or from alternative access methods such as through internet based services). It said constraining recovery of mobile costs to the so-called LRIC differential level simply assumed that such behaviour was negative per se, which Ofcom had not demonstrated. [501]

A5.378 In EE's view the LRIC differential suffered from the same drawbacks described above for pure LRIC, as it was a measure below operators' LRIC+ costs. It considered that this approach was not technology neutral as it led to mobile originators recovering a lower proportion of their common costs than fixed operators.[502]

A5.379 EE said it was also notable that Ofcom took account of SPs' potential to reduce the calls they received from mobile when assessing mitigation strategies (and in relation to the TPE) but in contrast we had ignored that reduction when assessing the overall mobile originated volumes when considering the level of fixed to mobile substitution that could result from making Freephone free-to-caller.[503]

[499] EE, April 2013 policy position response, p.75.
[500] EE, April 2013 policy position response, p. 37.
[501] EE, April 2013 policy position response, pp.74-75.
[502] EE, April 2013 policy position response, p. 27.
[503] EE, April 2013 policy position response, p.75.

A5.380 [✂] noted that the smaller base case range was apparently being set in part through the concept of the LRIC differential and it noted this concept had been elevated from a minor consideration in the April 2012 consultation to a guiding principle in the present one. However, it argued that the LRIC differential concept was methodologically unsound, discriminatory and not technologically neutral, as it appeared to confound the expected principles of common cost recovery. It also argued that this concept was not actually being observed in the calculations because most of the solutions indicated by Ofcom, particularly when the fixed outpayment was 0.3ppm, showed a differential that was greater than the alleged LRIC differential. It therefore considered that the reason why Ofcom believed the narrower range of 1.5ppm to 2.5ppm should be applied was no more than simple pragmatism – recoveries outside of that range ran the risk of SPs paying more than 1.5ppm. Therefore the 1.5ppm to 2.5ppm range eliminated that risk, whilst significantly restricting the cost recovery opportunity of the mobile operator.[504]

A5.381 [✂] noted it had difficulties understanding the LRIC differential calculation Ofcom had used. It suspected that the level of the mobile LRIC of 0.85p was wrong and that it should not be the absolute mobile LRIC level, but rather the differential between the mobile and fixed LRICs. It also noted the ‘LRIC differential network’ was given as 0.2ppm to 0.6ppm where the lower end of the range appeared to consider the highest possible fixed LRIC of 0.1ppm and the lowest Ofcom view of fixed outpayment (i.e. 0.3p), and the highest end of the range was the lowest possible fixed LRIC of 0ppm and the highest possible fixed outpayment of 0.6ppm. It said those pairs of outcomes appeared in practice to be mutually incompatible. But it said that would make the LRIC differential to be dependent on the level of the fixed outpayment – for example, if the fixed outpayment was 0.3ppm, then the LRIC differential would be approximately 1-1.1ppm.[505]

A5.382 In practice however, [✂] said that in the draft 080/116 Dispute Guidance exactly the reverse applied – the lower the fixed outpayment, the larger the mobile outpayment and thus the higher the differential between fixed and mobile. It said the principle of the LRIC differential appeared to say that when considering two services of different cost structures and levels, it was economically efficient that the more costly service should only recover its own incremental costs plus the absolute level of fixed and common costs of the cheaper service. [✂] believed it was unclear why the absolute level of fixed and common costs recovered by one service provided any threshold to the costs that should be recovered by another. For example it noted that it was inconceivable that it might be considered appropriate to set a charge control for VULA with reference to the common costs of ADSL.[506]

A5.383 [✂] said, however, that it might be perfectly valid to suggest that for consistency, the level of fixed and common costs mark-up percentage (and not the absolute ppm) applied to the fixed outpayment be similar to that allowed for mobile. It noted it would tend to agree with such an interpretation of a cost recovery differential between different technologies. [✂] said the LRIC differential was therefore not being applied in the draft 080/116 Dispute Guidance, nor should it, as currently defined, have any bearing on any decision of the appropriate level of mobile origination payment.[507]

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504 [✂].
505 [✂].
506 [✂].
507 [✂].

A5.384 [✂] did not consider a linkage between the underlying basis of cost and the actions of SPs to be a valid consideration in the context of determining the level of appropriate cost recovery (as argued by Ofcom in paragraph 3.33 of the draft 080/116 Dispute Guidance). It argued that the alleged incentive on SPs to attempt to mitigate the costs of more expensive mobile origination calls arose not out of the difference in cost structure between fixed and mobile origination but simply out of the fact that the outpayment for mobile origination will be higher than the outpayment for fixed origination. [✂] considered that the suggestion that SPs would be influenced in this by underlying OCP incremental cost was wrong. It noted that in any case the decision as to whether to initiate the call from a fixed phone or a mobile phone would be made by the consumer, not the SP.[508]

A5.385 [✂] said it recognised the theoretical possibility that SPs might deliberately offer mobile callers a reduced service but it questioned whether such actions would really come from those 080 providers who actually valued their customers' calls or whether this was merely a response from those who wanted no change from the status quo. It said it had a different view from Ofcom of the likely use of such methods by a 080 operator that actually valued the service they provided given that they ran a significant risk of alienating up to 60% of their customer base. [✂] said that in any event, even if one was to place credence on those actions being invoked then there was considerable circularity in Ofcom's reasoning because if any or all of those measures were to be adopted then the practical impact of them would be to reduce the proportion of mobile originated calls, thereby allowing a larger mobile origination payment under Ofcom's calculations. [509]

<u>Updated analysis on the assessment of the LRIC differential and cost mitigation strategies</u>

A5.386 In light of our revised assessment of the level of origination charges implied by the extent of fixed to mobile substitution, we consider it appropriate to revise our assessment of the LRIC differential and cost mitigation strategies prior to addressing stakeholder comments below.

A5.387 In this sub-section we present our updated analysis in relation to:

- the LRIC differential and the use of mitigation strategies; and
- the implications of the differential between fixed and mobile origination charges on competition.

A5.388 In addition, we note that reductions in mobile origination payments address our concerns relating to both (i) mobile charges exceeding the LRIC differential and (ii) the asymmetric risk (which we argued in Step 1 above provided a further reason for an average SP outpayment below 1.5ppm).[510] Thus, below we also consider what the implications would be for the asymmetric risk if we reduce mobile origination payments to address our concerns relating to the LRIC differential.

[508] [✂].
[509] [✂].
[510] In principle, the asymmetric risk could also be addressed by reducing the fixed origination charge as well as the mobile origination charge, but this would fail to address the LRIC differential.

The LRIC differential and the use of mitigation strategies by SPs

A5.389 We remain of the view that the price signal for SPs regarding the extent to which they use cost mitigation measures will not be efficient when the difference between fixed and mobile origination payments is greater than the difference in the incremental costs of fixed and mobile origination. This is because SPs in this scenario 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) to a greater extent than is efficient given the relative cost of originating a mobile call. We refer to the mobile origination charge that avoids these inefficient price signals to SPs as the LRIC differential charge, which is the mobile origination charge that would make the same pence per minute contribution to mobile CPs' fixed and common costs as fixed CPs receive.

A5.390 The use of cost mitigation measures is one of the negative impacts on consumers from the reduction in service availability/quality that we described under our updated assessment of Step 1 above (although we said that we would only take this impact into account in this Step 2). We noted that the use of these measures may reduce the risk of SPs exiting the free-to-caller number ranges by allowing them to manage their costs, which would benefit consumers. However, we also noted that they may adversely affect the consumer experience of calling from a mobile phone and, if used to a large extent, could risk undermining some of the key benefits of our intervention.

A5.391 In light of the potential for consumer detriment to result from a difference between the fixed and mobile origination charges that exceeds the LRIC differential, we remain of the view 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. In reaching this view, we take into account consultation responses from some TCPs and SPs and additional unprompted submissions from SPs before the publication of our April 2013 policy position, 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 also note the comments received in response to our April 2013 policy position from Magrathea, [✂] and BT summarised above, which support our view that SPs would be likely to use cost mitigation measures.

A5.392 We note that it is difficult for us to determine how widely adopted these methods may become when the 080 range is made free-to-caller. We also recognise that it is unclear the extent to which the SPs we received submissions from are representative of the entire 080 range. However, we estimate that, under relatively conservative assumptions, an SP could avoid between 44%-49% of the increase in costs associated with higher mobile origination payments (depending on the share of calls originated from mobile: 55% and 60%, respectively) if it were to play a recorded announcement asking a mobile caller to redial another number.[511] We

[511] Our example assumes that the average duration of a call to a 080 number from mobile is likely to be 5.2 minutes (the average of the duration of calls to 080 from fixed – 6.5 minutes – and from mobile – 4.0 minutes – that we derived in the April 2013 policy position). We also assume that the average duration of the recorded announcement is likely to be 1 minute (i.e. SPs would be charged for one minute when called from a mobile). This implies a reduction in the cost of calls from mobile of 81% = 1/5.2 - 1. However, we need to take into account that we expect that mobile calls would only represent between 55% to 60% of total calls. Hence, the reduction in total costs would be between 44% (i.e. 81% x 55% = 44%) and 49% (i.e. 81% x 60% = 49%).

therefore consider there is potential for significant usage of these measures, particularly at higher levels of the mobile origination payment.

A5.393 In addition to the incentives for cost mitigation measures, a further argument for SPs making the same contribution to the common costs of fixed and mobile CPs is 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).

A5.394 In Table A5.3 above, we estimated the LRIC differential mobile origination charge to be in the range of **1.12 to 1.35ppm** (assuming a fixed origination charge of 0.4-0.5ppm and a differential in LRICs of mobile and fixed origination of 0.72-0.85ppm, depending on the assumed mobile origination LRIC). We consider that the above reasoning could support a mobile origination charge below 2.4ppm, to be closer to our estimated LRIC differential of 1.12-1.35ppm. We do not consider it would be appropriate to go as far as setting a lower bound of the range in line with the mobile LRIC differential charge of 1.12-1.35ppm, because reducing the distortion to the price signal for cost mitigation strategies (i.e. through reducing the differential between the mobile origination payment and the fixed origination payment closer to the LRIC differential) should be traded off against other relevant considerations (such as a larger negative change in the TPE from a lower mobile origination payment). Accordingly, while accepting the potential for a lower minimum for the range drawn from the LRIC differential we consider that fair and reasonable mobile origination payments are unlikely to be below 1.5ppm.

A5.395 We now discuss this trade-off in more detail.

The trade-off between price signals for exit and cost mitigation measures

A5.396 We consider it helpful to distinguish between two different decisions made by SPs, which both impact on consumer welfare and are therefore relevant to an assessment of the appropriate origination payment. The first of these is the exit decision, i.e. the decision by SPs regarding whether to stay on (or join) 080 when it is made free-to-caller, which affects overall service availability on 080. The second of these is the cost mitigation measures decision, i.e. the decision by SPs remaining on 080 regarding whether and to what extent to deploy cost mitigation measures.

A5.397 In practice, these decisions are not independent. An SP will only face a choice regarding the use of mitigation measures if it decides to remain on (or join) 080. At the same time, the scope for mitigation measures may make it more likely that the SP will remain on (or join) 080. This is because it reduces the cost of operating a service on 080 for a given set of fixed and mobile origination charges. However, we do not have any reliable information on the extent to which the potential for cost mitigating decisions is likely to impact the exit decision and so we consider the two decisions separately.

A5.398 Both decisions have implications for consumer welfare. The exit decision affects consumers because of its impact on the appropriate balance for consumers between service availability and the TPE, assessed under Step 1. The cost mitigation measures decision affects consumers in two different ways. On the one hand, it has a negative effect by causing a deterioration in the consumer experience of 080 calls. Widespread use of mitigation measures could undermine some of the benefits we are seeking to achieve by making 080 free to caller, which we consider would be likely to have a significant detrimental effect on callers if it were to occur. On the other hand, however, the use of cost mitigation measures is likely to reduce the extent of exit from 080 for a given set of origination charges by reducing the average cost to an SP of remaining on the range. This has a positive effect on consumers, because it mitigates the impact of making 080 free-to-caller on service availability on 080 for a given set of origination charges.

A5.399 In our discussion of Step 2 above, we set out that the appropriate level of the mobile origination charge for the exit decision is unlikely to be above 2.4ppm because we consider that payments above this level do not result in the right balance between service availability and the TPE. The analysis underlying this upper bound of 2.4ppm is based on assumptions regarding the traffic mix on 080 that do not take into account the potential for mitigation measures, which may lower the share of mobile-originated calls. We therefore recognise that the use of cost mitigating measures could reduce the cost to SPs of remaining on 080 and so reduce the loss in 080 service availability for consumers associated with a particular set of origination charges. Taking these measures into account may therefore, in principle, support levels of the mobile origination charge above 2.4ppm that achieve the right balance between service availability and TPE.

A5.400 The optimal level of the mobile origination charge in terms of price signals for the mitigation measures decision is the LRIC differential charge of 1.1-1.3ppm. In considering the fair and reasonable mobile origination charge, it is therefore appropriate to strike a trade-off between sending efficient price signals for cost mitigation measures on the one hand and striking the right balance between service availability and the TPE on the other, because of the impact of these effects on consumers. Our framework takes this trade-off into account by setting the lower bound for the mobile origination charge at 1.5ppm, which takes the need for efficient price signals regarding cost mitigation measures into account but is above the actual LRIC differential of 1.1 to 1.3ppm.

A5.401 The choice of mobile origination charge in this range between 1.5 and 2.4ppm then depends on the relative weight we place on the adverse effects for consumers of mitigation measures relative to the service availability and TPE balance. The more weight we place on the detriment from cost mitigation measures, the closer the mobile origination charge to 1.5ppm; the more weight we place on the service availability and TPE balance, the closer it may be to 2.4ppm.

A5.402 We recognise in theory that a mobile origination charge of above 2.4ppm could achieve a desirable balance between service availability and TPE. This is because higher mobile origination charges may encourage greater use of cost mitigation measures, reducing the proportion of mobile-originated calls. This may result in reducing the average SP outpayment to a level we consider strikes the right balance for consumers, but it would depend on the extent to which cost mitigation measures would be used at higher values of the mobile origination charge and the impact they would have on the share of mobile-originated calls- both of which we have no evidence on. In any event, we consider a mobile origination charge of this level is unlikely to be appropriate given the need to trade-off the balance between service availability and the TPE with the adverse effects of inefficient use of mitigation measures. As a result, we do not consider the potential for feedback between the cost mitigation measures and the proportion of mobile-originated calls should affect our upper bound for the mobile origination charge.

A5.403 We recognise the potential for more complex interactions than this, given the multiple feedback loops between the usage of cost mitigation measures, the extent of exit, the average SP outpayment and the mobile origination charge. However, we have no reliable basis for quantifying these effects, which makes it difficult to assess their implications. As a result, we consider it appropriate to assess the two effects separately on the basis of available evidence but taking into account the trade-off between them, which results in a range of 1.5ppm and 2.4ppm for the reasons set out above.

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

A5.404 In the April 2013 policy position, we stated 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.

A5.405 With respect to retail origination, we explained 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 we had already taken a similar consideration into account in our analysis of the differential between fixed and mobile origination charges.

A5.406 With respect to competition on wider telephony bundles, we stated in the April 2013 policy position 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. Our view remains unchanged in this respect.

The impact of the asymmetric risk on the level of payments on mobile origination charges

A5.407 In Step 1 we concluded that the asymmetric risk of the level of payments provided a further reason for limiting the increase in the average SP outpayment below 1ppm (i.e. an average SP outpayment of less than 1.5ppm). However, as shown in Table A5.15 and A5.16 above, a lower mobile origination payment to address the distortions of a mobile charge exceeding the LRIC differential would also imply an average SP outpayment below 1.5ppm, which would in turn mitigate the concern about asymmetric risk. A mobile origination payment at 1.5ppm, which we have suggested would be the lowest fair and reasonable mobile origination payment on the basis of the currently available evidence and taking account of the LRIC differential, implies an average SP outpayment of about 1.0-1.1ppm which we consider is likely to provide sufficient allowance for asymmetric risk even if we place significant weight on that consideration.

A5.408 In summary, we consider that, taking into account both the LRIC differential and asymmetric risk factors, a mobile origination payment below 1.5ppm is unlikely to be fair and reasonable on the basis of the currently available evidence. Thus, depending on the weight we place on the LRIC differential and asymmetric risk this would support a lower or higher average SP outpayment and consequently a higher or lower mobile origination payment within the **1.5-2.4ppm** range. However, we also note that there are some combinations of assumptions within this range where the average SP outpayment would be greater than 1.5ppm (see Table A5.15 and Table A5.16 above) - with consequent adverse effects on service availability. These combinations of assumptions are not consistent with the application of our principles to current evidence.

A5.409 Having described our updated analysis, we now respond to the stakeholder comments on the LRIC differential and cost mitigation strategies that were summarised above.

Ofcom's response

A5.410 The comments from several respondents (including Magrathea, [✂] and BT) seem to support our view that higher origination payments are likely to result in a greater number of SPs resorting to cost mitigation measures. On the other hand, the response from THP seems to suggest that in the case of some SPs dealing with vulnerable callers, they are unlikely to view these measures as appropriate. Overall, we consider that these comments suggest that (at least some) SPs are likely to use cost mitigation measures to mitigate the increase in the costs of calls from mobile, as we argued in the April 2013 policy position.

A5.411 We therefore disagree with O2's comment suggesting that recorded messages or other measures will not be implemented to limit mobile calls costs. We similarly disagree with O2 that mobile charges at the LRIC differential would incentivise inefficient behaviour by SPs. To the contrary, from the perspective of the SP, both mobile and fixed origination could be considered to be substitute services (i.e. they are both used by SPs to reach out to their potential callers). We consider that prices which reflect differences in their incremental costs will incentivise efficient behaviour by SPs, as they would signal to SPs the differences between the resource costs of each of the two services. In this sense, we do not consider the LRIC differential would "mask the true cost" of mobile calls, as argued by O2. Instead, we consider it would reveal to SPs the difference in incremental costs we consider provides the appropriate basis for efficient price signals.

A5.412 We do not consider that placing weight on the LRIC differential should make OCPs less inclined to enter voluntary arrangements with "good causes", such as offering reduced origination charges to a specified and limited set of SPs for reasons of corporate responsibility. We understand there may be a negative TPE resulting from lower origination charges, and have taken this into account in our assessment. However, it is not clear to us why a reduction in OCP revenues from 080 calls in general should cause them to reduce their corporate responsibility concerns or their propensity to enter into voluntary arrangements over the origination charge with specified SPs involved in good causes.

A5.413 We take note of Three's comment that SPs and TCPs will have an incentive to overstate the extent to which SPs may respond to higher origination payments through cost mitigation measures. While we agree with Three on this, we consider that the fact that some SPs have (unprompted) asked TCPs for these type of services well in advance of the implementation of our decision, as well as the scale of the savings that can be achieved using these measures (as described above), mean that it is likely that a significant share of SPs would resort to these measures if mobile origination payments exceeded the 1.5-2.4ppm range.

A5.414 We disagree that the LRIC differential is an arbitrary or invalid benchmark. We consider that the rationale for the LRIC differential (described in paragraph A5.411

above) is clear, well founded in economic theory and in regulatory practice.[512] We do not consider it an accurate characterisation of our approach to say that we recognise higher mobile origination charges are acceptable from an overall net welfare perspective, even when they incentivise SPs to engage in cost mitigation measures. Instead, we consider that the use of such measures by SPs could result in reductions in overall net welfare that should be taken into account in our assessment.

A5.415 It is also not correct to say that we included all CARS costs in our assessment of costs relevant to recovery through the fixed origination charge. To the contrary, we presented the same three measures of origination costs for fixed and mobile CPs in the April 2013 policy position (see Section 12 of that document). Namely, with: (i) none of these costs; (ii) a share of these costs; and (iii) all costs included. We therefore consider our approach is consistent between mobile and fixed CPs. We also disagree that the primary reason for the LRIC differential is to set a competitive level-playing field between fixed and mobile (although it is consistent with that). The main rationale for the LRIC differential responds instead to the objective of ensuring that price signals to SPs are efficient to the benefit of consumers (as discussed above).

A5.416 We recognise that a mobile origination charge at the LRIC differential would constrain mobile OCPs to recouping the absolute contribution towards common costs also received by fixed OCPs. We note that mobile OCPs would still be able to recoup these common costs through other charges for services that share those common costs with the origination of 080/116 numbers (and we take account of this effect through our analysis of the TPE).

A5.417 We recognise that cost-reflective origination charges will always result in a differential in the fixed origination charge and mobile origination charge, which may create an incentive for SPs to differentiate between fixed and mobile calls. However, we consider that if this differential were set equal to the differential in incremental cost between the two call types then it would be efficient as regards the price signals to SPs for mitigation measures (i.e. SPs would act to reduce the number of mobile calls where the value of receiving these calls was less than the difference in incremental cost). We also consider this behaviour would be less common at mobile origination charges closer to the LRIC differential than at higher levels of the mobile origination charge (i.e. even if – as we propose – the mobile origination charge were in excess of the LRIC differential, the distortion of price signals to SPs is smaller than at higher levels of the mobile origination charge).

A5.418 With regard to the impact that SPs employing cost-mitigating measures would have on the volume of calls received from mobiles, it is not clear to us why this should be an argument against the LRIC differential. Whilst there may always be some attempt to reduce the volume of calls from mobile (as SPs incur a higher cost to receive mobile calls than fixed calls), we consider SPs are likely to have a weaker incentive to do so at lower levels of mobile origination charges. As a result, it is not true to say that an origination charge set with regard to the LRIC differential would

[512] For example, it is an approach that we have used elsewhere in appropriate circumstances, such as in considering the regulated price differential between two alternative wholesale inputs for the same broadband and voice retail markets (MPF versus WLR+SMPF) – see paragraph 7.10 in our March 2012 Statement, Charge control review for LLU and WLR services, http://stakeholders.ofcom.org.uk/binaries/consultations/wlr-cc-2011/statement/statementMarch12.pdf; and paragraphs 6.28-6.30 in our November 2102 Call for Inputs, Fixed access market reviews: wholesale local access, wholesale fixed analogue exchange lines, ISDN2 and ISDN30, http://stakeholders.ofcom.org.uk/binaries/consultations/fixed-access-markets/summary/condoc.pdf.

negatively impact mobile OCPs through both the lower level of the mobile origination charge and a smaller volume of calls. Instead, we consider it plausible that the greater volume of calls mobile OCPs would receive at a charge reflecting the LRIC differential may somewhat mitigate the effect of the lower charge on their revenues. In any case, the impact on mobile OCP revenues and the consequential effect on consumers through the TPE is only one of the relevant considerations, alongside others such as the LRIC differential, when thinking about fair and reasonable origination charges.

A5.419 We recognise that Oftel allowed mobile CPs to charge for calls made to 080. We agree that mobile CPs will need to recover their efficient costs of origination from SPs (via their TCPs) once 080 is made free-to-caller, and note that our framework clearly sets out that mobile CPs should not be denied the opportunity for efficient cost recovery under Principle 1. However, we do not consider this necessarily implies that mobile OCPs should recover at least their LRIC+ costs through the origination charge (as suggested by EE). On the contrary, we consider that any origination charge above pure LRIC and below the level of LRIC+ (no A&R) would satisfy the requirement for efficient cost recovery under Principle 1 for the reasons set out in our discussion of Principle 1 above. We disagree that this approach involves any cross-subsidy, as the origination charges we are considering provide for recovery of the incremental costs plus a contribution to recovery of common costs.

A5.420 We disagree with EE's view that if SPs directed callers to alternative means of communications such as Skype or web chat this would not result in a loss of consumer benefit. In fact, there would be costs very similar to the ones EE has pointed out when responding to our impact assessment analysis, such as, for example, consumer time costs of redialling other numbers. In addition, we disagree that origination payments should be set at a level to incentivise SPs to re-direct callers to these other means of communication without regard to the efficiency of the price signals.

A5.421 We agree with EE that SPs should face the true costs of receiving calls from mobiles in order to incentivise efficient behaviour with regard to the use of cost mitigation measures. We disagree with EE regarding the relevant cost benchmark that achieves this efficient price signal. We consider that the appropriate price signal for the use of cost mitigation measures is given when differences in prices reflect differences in LRIC rather than LRIC+ as set out by EE. This argument does not rely on there being external benefits to callers being able to make 080 calls from their mobiles but rather from a consideration of the economic concepts of efficiency for the choice between substitutes (i.e. fixed and mobile originated calls).[513] However, we do not consider that encouraging efficient choices regarding cost mitigation measures to be the only relevant factor in determining the appropriate level of the origination charge, and so do not propose the mobile origination charge should be set at exactly the LRIC differential- rather that it should take this into account.

A5.422 We therefore do not agree with EE's implication (as well as other comments from mobile CPs) that our framework for assessing origination payments should be solely based on an analysis of the costs of originating calls to 080/116. Instead, our

[513] For example, in our March 2012 Statement, Charge control review for LLU and WLR services, the issue is set out in terms of productive efficiency ("We considered that these productive efficiency considerations point to differentials between products that reflect the absolute differences in LRIC", paragraph 7.10).

framework tries to derive the level of origination payments that would provide the greatest benefits to consumers through an assessment of the different effects of higher origination payments. These include, at a high level, an assessment of service availability against the tariff package effect; the LRIC differential and the asymmetric risk of the level of payments. Using this framework we have concluded that mobile payments falling outside of the 1.5-2.4ppm range are likely to result in lower benefits to consumers than when payments fall within that range.

A5.423 Both EE and [✂] argued that the LRIC differential was not technology neutral as it did not allow the same proportionate cost recovery for fixed and mobile operators. We continue to consider that allowing CPs the same absolute contribution to common costs is technology neutral for the reasons summarised in paragraph A5.359 above.

A5.424 In terms of EE's comment suggesting that we should reduce the assumption about the level of fixed to mobile substitution to account for SPs using cost mitigation strategies, we agree that the use of mitigation strategies is likely to reduce the share of minutes of calls originated from mobile by an amount that will depend on the level of the origination charge. We recognise above that the potential for cost mitigating measures to reduce the proportion of mobile-originated calls may in principle support a mobile origination charge of more then 2.4ppm as being consistent with an appropriate balance between service availability and the TPE. However, we conclude that it is not appropriate to increase the upper bound of the mobile origination charge because we do not have any evidence on how cost mitigation measures would be likely to affect the average SP outpayment and because payments of this level would not place sufficient weight on sending appropriate price signals to SPs over the use of cost mitigation measures. As a result, we do not consider the potential impact of cost mitigation measures on the level of fixed to mobile substitution should affect our upper bound for the mobile origination charge.

A5.425 We agree with [✂] that we placed more weight on the LRIC differential in the April 2013 policy position than we had previously. This followed our finding that SPs could resort to measures (other than call blocking) to mitigate the cost of calls from mobile and that such measures could result in consumer detriment. We disagree, for the reasons explained above when responding to EE, that the principles of common cost recovery support recovery of LRIC+ costs in each and every case as suggested by [✂]. We have responded to the comments on technology neutrality above.

A5.426 We recognise that the ranges for fixed and mobile origination charges set out above (i.e. 0.4-0.5ppm for fixed and 1.5-2.4ppm for mobile) do not result in the difference between the fixed and mobile charges exactly reflecting the difference in their incremental costs. We have explained the rationale for the LRIC differential above, where we are clear that we do not consider mobile origination payments should be equal to the LRIC differential because we consider there are other relevant factors to take into account. We therefore do not consider that our application of the LRIC differential principle is purely a pragmatic means of narrowing the range of likely payments, but rather is based on a consideration of relevant economic analysis and is one of the factors we take into account in our assessment.

A5.427 In terms of [✂]'s comments on the way we had estimated the LRIC differential charge, we note that its understanding of the calculation is correct. In our updated cost estimates above we have derived the LRIC differential charge as follows:

- Lower bound: uses the lowest LRIC estimate for mobile origination and subtracts from this the highest LRIC estimate for fixed origination to derive the "LRIC difference" (equal to 0.719ppm). Then adds to this the assumed lowest fixed origination payment (0.4ppm) to obtain the lower bound of the LRIC differential charge of 1.1ppm; and

- Upper bound: uses the highest LRIC estimate for mobile origination and subtracts from this the lowest LRIC estimate for fixed origination to derive the "LRIC difference" (equal to 0.849ppm). Then adds to this the assumed highest fixed origination payment (0.5ppm) to obtain the upper bound of the LRIC differential charge of 1.349ppm.

A5.428 In relation to [✂]'s comment about our estimation of the LRIC differential, we have described in more detail how we derive our estimates earlier in this Annex. We disagree however that it is mutually incompatible to assume the lowest estimate of pure LRIC for fixed and the highest fixed origination payment to derive the highest LRIC differential charge. This is because the level of the LRIC varies depending on the costs that are assumed to be incremental, which is independent from the fixed origination payment assumed. We recognise the apparent tension between the way we have derived the bounds for the LRIC differential and our assessment under Step 2, which results in a higher mobile origination charge when the fixed origination charge is lower and vice versa. This reflects the fact we were not considering the appropriate SP outpayment in assessing the LRIC differential but were merely trying to identify its widest possible bounds. We consider this is a reasonable approach, particularly given that we are not proposing the mobile origination charge should equal the LRIC differential.

A5.429 We are not seeking to make a general statement about the economically efficient level of cost recovery in the context of two services of different cost structures and levels, as suggested by [✂]. Instead, we consider one factor it is relevant to take into account in the specific context of origination charges for free-to-caller 080 calls is the price signal given to SPs regarding the extent to which they should engage in cost-mitigating measures. However, this is not the only factor in our assessment and as a result (as [✂] notes) some of the mobile origination charges within our range diverge considerably from the LRIC differential. For this reason, we do not consider the absolute level of fixed cost recovery acts as a ceiling on cost recovery by mobile OCPs either by design or in effect. Instead, we note there are many payment combinations within our ranges that would result in mobile OCPs recovering substantially more than fixed OCPs towards their common costs.

A5.430 We agree with [✂] that SPs' decisions regarding cost mitigating measures will be influenced by the relative prices they face for fixed and mobile calls, which may not reflect the underlying differences in cost structure. We consider the efficiency of this price signal is maximised when the relative price does reflect this underlying difference in resource cost- this is the reason we place weight on the LRIC differential. In doing so, we recognise the decision regarding whether or not to call from a mobile is made by the caller in the first instance, but nonetheless consider SPs have a degree of control over the volume of mobile calls through their ability to use the cost mitigating measures described above.

A5.431 We recognise the value SPs place on receiving calls from mobile callers will to some extent act as an incentive against reducing the volume of calls from mobile, but nonetheless have evidence to suggest these measures might be used by SPs to mitigate the increase in cost and therefore continue to place weight on our concern that they might be used to the detriment of callers.

A5.432 Finally, we disagree with [✂]'s comment that our reasoning is circular because of the potential relationship between the mobile origination charge and the share of mobile-originated calls. We recognise that we have not taken this potential feedback into account in deriving the bounds for the mobile origination charge but do not consider it would be appropriate to do so given the reasons set out in paragraph A5.131 above.

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

A5.433 In our 080/116 Dispute Guidance, we state that different fixed and mobile origination charges may have an impact on competition between fixed and mobile OCPs in relation to:

- retail 080 calls; and
- wider bundles of telephony services.

A5.434 With respect to retail 080 calls, we stated in the April 2013 policy position that mobile CPs could be disadvantaged by mobile origination payments that are too high when competing against fixed CPs. This is because we considered 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.

A5.435 With respect to competition on wider telephony bundles, we stated in the April 2013 policy position 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 generally operate in different retail markets and that revenues from origination payments are comparatively small, compared to overall mobile revenues.

A5.436 We received no stakeholder comments on this aspect of our analysis and so our assessment remains unchanged.

Step 3: Assess whether there is any impact of the proposed origination charge on competition

A5.437 We have considered whether the level of the origination charge may impact on competition in a way that affects consumers and that we have not considered in Step 2 in relation to the relative level of fixed and mobile origination payments (e.g. by distorting competition between different fixed OCPs, between different mobile OCPs, or between different TCPs, or by distorting OCPs' choice of transit provider). In our 080/116 guidance, we recognise the potential for this to occur if origination charges are differentiated by TCP or by fixed or mobile OCP. However, we do not need to conclude on whether more differentiated charges (e.g. by TCP or by OCP) would have an impact on competition for the purposes of deriving our IAR. This is because it does not matter for our Impact Assessment whether there are one or many charges, so long as they fall within the ranges we assume.

A5.438 Aside from the potential implications of multiple origination charges, we are not aware of any other competition effects, positive or negative, from origination charges within the ranges set out by our IARs.

Conclusion on Principle 2

A5.439 We have considered that the application of Step 1 suggests that the average SP outpayment should not exceed 1.5ppm and could be below this level depending on the weight placed on the asymmetric risk of the level of payments. In addition, we have concluded under Step 2 that the consideration of the inefficient price signals to SPs that are likely to result from mobile origination payments exceeding the LRIC differential charge supported mobile origination charges that reflect the absolute difference in incremental costs with fixed origination payments. Thus, this factor also provided a further reason for a lower mobile origination charge and hence also an average SP outpayment below 1.5ppm.

Mobile origination payments

A5.440 The level of mobile origination payment that generates an average SP outpayment consistent with our analysis in Step 1 and 2 depends on what we assume about the extent of fixed-mobile substitution and the level of the fixed origination payment. We have explained that, for assumptions we consider reasonable, a fair and reasonable mobile origination payment could range from **1.5ppm to 2.4ppm**. This range of mobile origination charges is our base case scenario range and results from the application of our principles to current available evidence. However, there are some combinations of assumptions within this range where the average SP cost would be greater than 1.5ppm - with consequent adverse effects on service availability. We would only consider origination charges fair and reasonable if in combination with the other assumptions they resulted in an average SP outpayment that does not exceed 1.5ppm. As a result, only those combinations of assumptions resulting in an average SP outpayment of 1.5ppm or less are included in our base case scenario range.

Fixed origination payments

A5.441 In the case of fixed origination, we do not consider that the evidence supports a different range from that derived as a result of considering the trade-off between the change in the TPE and the reduction in service availability. We recognise that the asymmetric risk of the level of payments could suggest that *both* the fixed and mobile ranges should be reduced from this level. However, we do not consider this appropriate as we consider 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 **0.40ppm to 0.50ppm** based on our modelling of the costs of fixed origination.

Wider IAR

A5.442 In the April 2013 policy position, we derived our base case scenario range by applying our principles to the evidence currently available. However, we considered that we should adopt a wider range of mobile origination charges than this for the purpose of assessing the impact of making the 080 range free-to-caller to take account of uncertainties in the available evidence and to improve the robustness of our decision-making.[514]

A5.443 We considered the evidence currently available to us supported a wider IAR for mobile origination charges of **1.0-3.7ppm**, based on:

- our estimate of lower bound of the LRIC differential; and
- the upper bound of the range estimated under Principle 1 above (i.e. 3.3ppm, based on the LRIC+ with no A&R costs) increased by 0.4ppm to take account of uncertainties and improve robustness.[515]

A5.444 We did not consider there was a need to adopt a wider IAR for fixed origination charges because there was less uncertainty about the likely range of fixed origination payments than there was for mobile.[516]

A5.445 In our analysis above, we have increased our estimate of the lower bound of the LRIC differential to 1.12ppm and have approximately maintained our estimate of the upper bound of the range derived under Principle 1 (3.33ppm). We consider that 0.37ppm above our estimate of LRIC+ with no A&R costs still provides sufficient headroom for uncertainties (e.g. over cost estimates) whilst also improving the robustness of our decision-making. As a result, we do not consider it necessary to adjust our wider IAR for mobile origination charges from that set out in the April 2013 policy position.

A5.446 We continue to consider there is no need to adopt a wider IAR for fixed origination charges than that which results from the application of our principles to current available evidence.

Principle 3: practicality

A5.447 In the 080/116 Dispute Guidance, 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 a different fair and reasonable charge for each of mobile and fixed originated calls. We also state that we would consider the practicality of more differentiated charges (e.g. charges that vary by OCP and/or TCP) from the perspective of all relevant parties under this Principle. Finally, we note there may be other issues relating to the practicality of a disputed origination payment which we have not identified yet but would take into account under this Principle.

A5.448 As discussed in the April 2013 policy position, our interpretation of Principle 3 in the context of deriving our impact assessment ranges relates to whether any fixed and mobile origination payment falling within these ranges would be practical to implement. We noted in the April 2013 policy position that Principle 3 had potential relevance in relation to the ability of TCPs to identify whether a call was originated from a fixed line or a mobile, because our IAR implied there would be a separate (non-overlapping) charge for fixed and mobile calls.[517] We believed this Principle was satisfied because we considered that TCPs will be able to identify if the party originating the call is a fixed or mobile CP using the CLI. In addition, we noted they

[514] See paragraph 12.167 of the April 2013 policy position.
[515] See paragraph 12.168 of the April 2013 policy position.
[516] See paragraph 12.169 of the April 2013 policy position.
[517] See paragraph 12.79 of the April 2013 policy position.

will have a commercial interest in ensuring that the OCP presents the information necessary for this purpose.[518] We have not received any stakeholder comments that would cause us to revise our position and therefore continue to consider the ranges identified above satisfy Principle 3.

A5.449 As set out above, we do not need to conclude on whether more differentiated charges would be practical to implement for the purposes of deriving our IAR. However, we recognise that the practicality or otherwise of differentiated charges may be something on which we would need to conclude in the event of a dispute.

Conclusion

A5.450 In light of the evidence considered under Principles 1 to 3 above, we believe that in the case of fixed origination it is appropriate to adopt the following:

- Impact Assessment Range: 0.4-0.5ppm.

A5.451 In the case of mobile origination we believe it is appropriate to adopt the following:

- Base case scenario range: 1.5-2.4ppm; and
- Impact Assessment Range: 1–3.7ppm.

A5.452 We note that there are some combinations of assumptions within our mobile base case scenario range where the average SP outpayment would be greater than 1.5ppm, with consequent adverse effects on service availability. We do not include these scenarios within our base case because we would not consider such an average SP outpayment to be fair and reasonable on the basis of currently available evidence. Instead, our base case includes only those combinations of assumptions that result in an average SP outpayment of 1.5ppm or less. We set these out in Tables A5.15 and A5.16 above.

A5.453 We note that all of the ranges set out above are either within, or identical to, the equivalent ranges we used in the April 2013 policy position for the purposes of our impact assessment.[519]

Application of the framework to 116 numbers using the evidence currently available

A5.454 In the April 2013 policy position we assessed the application of our framework to 116 numbers. We have not received any comments on our analysis of the likely origination charges for 116 calls and we are of the view that the analysis presented in April 2013 remains valid. The only changes we consider necessary are those needed to reflect our updated assessment of fixed and mobile LRICs, which we describe below.

A5.455 In light of the evidence we considered under Principle 1 to 3 in the April 2013 policy position (see paragraphs 12.174 to 12.198), we continue to consider it appropriate that fixed and mobile origination charges for 116 calls should either both be maintained at existing levels or be set at our estimates of pure LRIC.

[518] See paragraph 12.170 of the April 2013 policy position.
[519] Namely, an IAR for fixed origination of 0.3-0.6ppm, an IAR for mobile origination of 1-3.7ppm and a base case scenario range for mobile of 1.3-3ppm.

A5.456 For the purposes of clarity, we consider that there are two possible scenarios:

- origination payments reflect the current arrangements, whereby both the fixed and mobile origination payments are at 0.5ppm (below LRIC in the case of mobile and above pure LRIC in the case of fixed); or

- If any of the current arrangements are renegotiated, both the fixed and mobile origination payments reflect the pure LRIC costs in each case, namely:

  - 0.035-0.059ppm in the case of fixed origination; and

  - 0.778-0.884ppm in the case of mobile origination.

A5.457 We consider that our approach would ensure CPs' cost recovery of their costs of originating calls to 116 numbers. We note that the application of the three Principles of our framework to the evidence currently available to us would give mobile OCPs the opportunity to recover costs equal to our estimate of pure LRIC for 116, thereby allowing for efficient cost recovery. However, we also consider the current charging arrangements involving a mobile origination payment below pure LRIC to be consistent with our Principles because these arrangements were commercially agreed between OCPs and TCPs, and we noted under Principle 1 of our analysis in the April 2013 policy position that OCPs were free to choose a payment below pure LRIC if they wished. This does not mean that we would expect mobile OCPs to agree to a payment below pure LRIC, but rather that they may choose to do so.

Other comments

A5.458 We also received a number of stakeholder comments on other issues related to our proposal to make 080 and 116 free-to-caller but in relation to which we did not ask specific consultation questions. In particular we received comments on the impact of making 080 free-to-caller on:

- origination payments for business callers to 080 numbers;

- vulnerable consumers;

- OCPs' innovation incentives; and

- existing voluntary free-to-caller arrangements.

A5.459 Below we have set out the comments, and our response, on each issue in turn.

Business callers

Stakeholder comments

A5.460 BT said limiting the free-to-caller requirement to consumers only had implications for the recovery of origination costs from TCPs and SPs. The TCP was not able to tell whether the call originated from a consumer or business customer and would therefore pay origination for all calls. BT said that if OCPs were then free to charge business customers for 080 calls then this would equate to an "over recovery overall". It believed that this issue needs to be taken into account when setting the origination charges and that potentially the costs recovered from callers could be offset against a reduction in the overall the origination charge paid by TCPs/SPs.[520]

A5.461 BT also suggested that a voluntary industry agreement for 080 and 116 calls to be free-to-caller, regardless of whether calls originated from a consumer or a business line, could remove the risk of double recovery of costs for business calls.[521]

Ofcom's response

A5.462 BT suggested that charging business consumers for 080 calls may lead to "over recovery" by OCPs. We agree that SPs should not be required to pay the same origination charge for calls that are not zero rated at the retail level- our framework is only used to assess the appropriate origination charge for 080 calls that are free of charge to the caller. However, we do not think it appropriate to take revenues earned on non zero rated 080 calls into account when setting this origination charge because we do not consider these revenues to be relevant to our framework. We note that the access condition only applies to zero-rated calls, and we would therefore expect TCPs to monitor any published business tariffs to check they are not paying more for calls than they should be.[522]

A5.463 In any case, as noted in our April 2013 policy position, for the purposes of our impact assessment have assumed that, as an indirect effect of our decision, all types of 080 and 116 calls are likely to be made free-to-caller. This is because currently all fixed 080/116 calls are free-to-caller and this is likely to continue for business customers. In the case of mobile callers, we would expect that businesses would generally obtain more beneficial terms than residential contracts, particular if business customers value calls to 080/116.[523] Therefore we expect that differentiated retail charges based on whether the caller is residential or a business customer are unlikely.

Impact on vulnerable consumers

Stakeholder comments

A5.464 THP said it had some concerns about the impact that increased demand for 080 numbers could have generally on vulnerable consumers, if there was increased popularity of the 080 number range following the changes, including circumstances where a seemingly impartial helpline was actually a front for an expensive fee based system, as had been seen in the debt advice sector. It said that increased support for its 'Special Freephone tariff scheme' might help reduce that risk as a consumer could know that when they call a 08080 number they were genuinely calling a not for profit or charity helpline.[524]

A5.465 Vodafone also argued that the uncertainty about wholesale charging for 080 numbers could put at risk Ofcom's policy objectives in relation to socially important services. It said SPs might choose to migrate away from the 080 range because of that uncertainty but in fact the alternatives might not meet the needs of vulnerable

[520] BT's response to the April 2013 policy position, p.7.
[521] BT's response to the April 2013 policy position, p.7.
[522] Although we recognise many business packages will be negotiated off-list, we consider this would be to obtain a better deal- i.e. would be unlikely to result in paying a positive amount if the published tariff were zero-rated.
[523] See paragraph 12.115 and footnote 416 in Part C, Section 12 of the April 2013 policy position.
[524] THP, April 2013 policy position response, p.5.

groups accessing socially important services (for example it noted that 03 numbers could cost pre-pay customers more). It noted that SPs would be reluctant to incur a second set of migration costs subsequently if they wanted to move back to the range once wholesale charging was clearer.[525]

Ofcom's response

A5.466 THP's concern relates to the type of SP that can operate a 080 number, rather than the telephony charges associated with 080 calls. It has always been the case that commercial services have been provided using 080 numbers, rather than just helplines. As we noted in the April 2013 policy position, the choice of number range for any given service or organisation falls outside Ofcom's regulatory duties and is a matter for the organisation concerned.[526] The THP suggested that increased support for its Special Freephone Tariff Scheme on the 080 80 number range might allow consumers to recognise they are calling a not for profit or charity helpline. In our view, such a remedy is unlikely to be effective. In particular, we consider that consumers are unlikely to be able to recognise the particular category of SP that they are calling based on the first five digits that they dial.[527]

A5.467 We have responded to Vodafone's concerns about the potential for uncertainty over wholesale charging and its impact on the timing of SP migration decisions in Annex 6 (see paragraphs A6.81 to A6.90). We recognise there will be some uncertainty over this but consider that our 080/116 Dispute Guidance will help reduce this and enable TCPs to advise SPs, including those providing socially important services, of the likely changes in their hosting charges from an appropriately early point within the implementation period. This will assist SPs in making informed decisions about whether to migrate away from the 080 range as early as possible and reduce any unnecessary migration.

Impact on OCPs' innovation incentives

Stakeholder comments

A5.468 EE did not consider that Ofcom had applied the principles set out in its general duties under section 3 of the Act so as to ensure that the changes would not harm the investment and innovation incentives of OCPs. Specifically it considered that the origination charges selected by Ofcom were materially too low and they would therefore cause Ofcom to fail to meet its objectives of encouraging investment and innovation by UK mobile OCPs. It also noted that the Maximum Mobile Price option would allow OCPs to recover their A&R costs in full and it therefore did not require a trade off between the impact of the origination charges on the investment and innovation incentives of OCPs against those of SPs. For those reasons EE considered the MMP option better met Ofcom's statutory objectives than the free-to-caller option.[528]

[525] Vodafone, April 2013 policy position response, p.19.
[526] See paragraphs 8.33 in Part B of the April 2013 policy position.
[527] Our position is supported by evidence from our 2011 Consumer survey that consumers struggle to distinguish between calls to numbers such as 0870/0871 and 0844/0845 based on the fourth dialled digit. (Questions GL03A/GL04A of the 2011 Consumer survey).
[528] EE, April 2013 policy position response, pp.9-10.

Ofcom's response

A5.469 We have responded to EE's arguments about the inclusion of A&R costs in the origination charges in paragraphs A5.59 to A5.64 above. Because the range of origination charges we have used for our assessment would allow OCPs to recover their incremental costs, as well as a certain proportion of their common costs we do not consider that they would materially harm OCPs investment and innovation incentives. We have set out in Sections 4 and 7 how making the 080 range free-to-caller meets our statutory objectives and our reasoning for selecting this approach rather than setting a maximum mobile price ('MMP') was explained in detail in Section 13 of the April 2013 policy position.

A5.470 EE's comment seems to suggest that we are mandating a specified level of origination charge. We reiterate that we are not setting origination charges by way of this decision (although we are setting an access condition requiring them to be fair and reasonable). We need to make an assumption about the likely origination charges that will apply when the 080 and 116 ranges are made free-to-caller in order to conduct our impact assessment (as the costs and benefits of a free-to-caller approach depend on the level of origination charge assumed). Our analysis of origination payments in this Annex is therefore carried out in order to arrive at an appropriate assumption about the likely range of fair and reasonable origination payments that may arise once the ranges are made free-to-caller. However, origination charges will in practice be set through commercial negotiations or, where negotiations fail and the parties refer the matter to us, through a dispute determination (see Annex 6).

Impact on existing free-to-caller voluntary arrangements

Stakeholder comments

A5.471 BT also noted that some 080 numbers were already provided free-to-caller voluntarily by OCPs without any charge to the TCP. It said the proposed free-to-caller regulation threatened the goodwill under which those services were provided and it believed OCPs should voluntarily agree to maintain the existing situation as implementing an origination charge might result in those special, free access services being withdrawn to the detriment of consumers. [529]

Ofcom's response

A5.472 We have previously noted that making 080 free-to-caller should not prevent OCPs from continuing their current approach in relation to voluntarily waiving the origination charge for certain charity and not-for-profit services provided on 080. We also highlighted that the mobile OCPs have previously indicated that they supported the THP 'Special Freephone tariff scheme' as part of their commitment to social responsibility and we saw no reason for this to be affected by our changes.[530] We would therefore welcome a continuation of this approach and any voluntary commitment from OCPs to this effect.

[529] BT's response to the April 2013 policy position, p.7.
[530] See paragraph A29.129 of the April 2013 policy position.

Annex 6

Access condition for 080 and 116 – response to stakeholder comments

Introduction

A6.1 In this Annex we summarise what we said in the April 2013 policy position about our proposed access condition, the stakeholder comments we have received in relation to our access condition and our responses to these comments (including where we have modified the condition in light of particular comments). Our decision to impose the access condition is set out in Section 4.

A6.2 As noted in Section 4, on 22 October we notified the EC, BEREC and other NRAs of our proposed access condition, together with a draft statement which included the stakeholder comments and our responses set out in this Annex.[531] On 22 November 2013, the EC issued its decision letter. We received no other comments from the EU consultation. The EC did not object to our access condition but it included some specific comments. We have set out our response to these comments in Section 4.

Summary of position in the April 2013 policy position

A6.3 In our April 2013 policy position we set out our concerns that, if we proceeded to make the 080 and 116 ranges free-to-caller, then imbalances in negotiating power might give rise to interconnection delays or failures, the risk of an extended period of uncertainty, and origination payments that would not necessarily be in the interests of consumers. We considered that existing regulation would not adequately address these concerns. We were therefore of the view that (in line with our position in the April 2012 consultation), if we proceeded to make the ranges free-to-caller, then we should also intervene at the wholesale level by setting an access condition on TCPs (i.e. CPs that provide wholesale termination for calls to 080 or 116 numbers). We consulted on a draft access condition which required the TCP:

- from the 'Effective Date'[532] to purchase wholesale call origination for calls made by consumers to 080 and 116 numbers from any requesting OCP;
- to do so on fair and reasonable terms (including charges); and
- within one month of the access condition being set, to notify any OCP with whom it has an existing interconnection agreement of the (fair and reasonable) charges

[531] http://stakeholders.ofcom.org.uk/binaries/consultations/simplifying-non-geo-no/statement/statement.pdf

[532] The 'Effective Date' would be the date on which the 080 and 116 ranges are made free-to-caller, which would be 18 months after the access condition is set. This 18 month implementation period is intended to allow sufficient time for commercial negotiations between OCPs and TCPs about origination charges, communications between TCPs and SPs on the 080 and 116 ranges about changes to their hosting charges, SPs to make decisions about whether to remain on these ranges or migrate to an alternative range and updates to pricing information and the communication of retail price changes to consumers (see paragraphs 15.10 to 15.16 in Part C of the April 2013 policy position).

for wholesale origination which the TCP proposes to apply from the Effective Date.[533]

A6.4 Alongside the April 2013 policy position we also issued draft guidance as to how we would approach any future dispute that may be referred to us under section 185 of the Act about whether origination charges for calls to 080 and 116 numbers are fair and reasonable ('the 080/116 Dispute Guidance'). In the consultation document accompanying the draft 080/116 Dispute Guidance, we also set out an indicative range of fair and reasonable origination charges that we had derived by applying these principles to the evidence currently available to us (we referred to this as the "base case scenario range"). We considered that this range would provide TCPs and OCPs with a good starting point for their negotiations in relation to fair and reasonable origination charges.

Stakeholder comments and Ofcom's response

A6.5 We received a wide range of stakeholder comments on the draft access condition in response to the April 2013 policy position.[534] The comments related not just to the design and wording of the condition but also whether it was the optimal approach and the way in which it would operate in practice. In relation to the approach of using an access condition and its operation, stakeholders commented on:

- the role of transit operators and how the bilateral negotiation model will work in practice;
- role of vertically integrated operators;
- role of BT's Standard Interconnect Agreement ('SIA');
- the likelihood of a single origination charge;
- dispute resolution process and the impact on timescale for implementation; and
- the implications for wholesale charging for calls made by businesses.

A6.6 We set out and respond to stakeholder comments on each of these issues in turn below and then address stakeholder comments on the design of the access condition (on which we consulted), specifically on the proposed notice to be given by TCPs to OCPs. Stakeholder comments on the wording/drafting of the access condition are summarised and addressed in Annex 7, together with stakeholder comments on all of the other legal instruments that we proposed to make.

A6.7 Some stakeholders also commented on the likely increase in costs created by Ofcom's approach to the access condition.[535] These comments related primarily to the potential for additional costs arising from multiple origination charges, and from

[533] See Part C, Section 14, as well as Annex 30, of the April 2013 policy position.

[534] All the non-confidential responses are published on our website here: http://stakeholders.ofcom.org.uk/consultations/simplifying-non-geo-no/?showResponses=true

[535] For example EE noted that if a large range of origination charges was to emerge, the wholesale billing and related staff time costs could be material (EE, April 2013 policy position response, pp.23-24.). In addition Vodafone said that the prospect of supporting multiple bilateral commercial arrangements would result in higher transaction costs, as well as additional billing and settlement complexity in order to distinguish the identity of individual CPs and the category of caller (Vodafone, April 2013 policy position response, p.14.)

having differing charges for business callers. We consider that these comments are addressed by the responses in the sub-sections below related to the likelihood of a single origination charge and implications for business callers – see also Annex 1.

A6.8 In addition, Three and EE reiterated their arguments (previously made in response to both the December 2010 and April 2012 consultations) that we should instead conduct a wholesale review of the termination market for non-geographic calls, which in their view would lead to a finding that all TCPs had a monopoly on call termination to 080 and 116 numbers on their networks.[536] Vodafone and Three also commented on the regulation of retail pricing for calls to 080/116 origination charges and Vodafone commented on our legal powers to regulate wholesale origination services for calls to these number ranges. We have set out our response to these comments in Annex 7.

Background

A6.9 Before setting out the specific stakeholder comments we received, we first present some of the aspects of the market that are particularly relevant to the discussion below. These factors play a part in framing the market and interacting with the access condition we are imposing, therefore, they need to be factored into any consideration of how the access condition will work in practice.

A6.10 Those factors are:

- **BT's Standard Interconnect Agreement ('SIA') and Carrier Price List ('CPL'):** BT publishes various reference offers setting out the terms and conditions on which it provides certain services. The SIA is BT's reference offer for telephony.[537] It is a contractual agreement between BT and a CP, establishing the terms and conditions that enable providers of public electronic communication networks ('PECNs') to connect their network to BT's, allowing calls to pass between the different networks.[538] BT enters into a separate SIA with each CP wishing to interconnect its PECN with that of BT's. However, in each case the terms and conditions in the SIA are identical. These include paragraphs 12 and 13, which set out the mechanisms by which the charges for BT's and the CP's wholesale interconnect services, respectively, may be amended. Those same paragraphs specify that the charges payable by BT to the CP (and vice versa) will be those set out in the CPL which is available on BT's website. The CPL therefore provides a publicly available record of the interconnect charges in use by BT for calls originating, transiting, or terminating on the BT network; and[539]

- **Narrowband market review ('NMR') and removal of single transit regulation:** we recently published a statement on the NMR in which we confirmed the

[536] See pp.15-17 of EE's response to the April 2013 policy position, and p.17 of Three's response to the April 2013 policy position. These comments were set out in paragraphs A30.6 and A29.5 of the April 2013 policy position.
[537] Under SMP Condition 4 (see Annex 1, Schedule 1 of the NMR Statement) - BT is required to publish reference offers for call origination, call termination and interconnection circuits.
[538] The full title of the SIA is '*Network Charge Change Control Standard Interconnect Agreement (NCC SIA)*', available on BT Wholesale's website: https://www.btwholesale.com/pages/static/Library/Pricing_and_Contractual_Information/Telephony_Reference_Offer/index.htm.
[539] https://www.btwholesale.com/pages/static/Library/Pricing_and_Contractual_Information/carrier_price_list/index.htm

deregulation of single transit ('ST') services.[540] This means that BT is no longer subject to SMP conditions relating to its single transit services. A number of stakeholders indicated concerns about this approach as part of that review, particularly about the impact on non-geographic calls ('NGCs') (which we included in the category of 'thin' routes, i.e. routes which are less competitive) and the potential for BT to price discriminate between ST services for NGCs and other types of calls (or between different TCPs within the market for NGCs). We, however, noted the following in the NMR statement:

> *"The recent empirical evidence shows that BT does not have a strong incentive to increase the price of ST across all routes … BT's incentives to seek to increase profits on 'thin' routes and in relation to NGCS traffic are low as BT would have a limited ability to make significant profits from raising the price of such routes where traffic volumes are small. BT currently publishes a list price for ST. Adopting an approach of price discrimination on the basis of competitive conditions would require a strategy of either targeted increases or targeted discounts, which would constitute an additional cost. If BT were no longer to price on a uniform basis for thick and thin routes, or for different termination service providers active in the non-geographic market, purchasers of ST will quickly become aware of such practices and, to the extent that such conduct is anti-competitive, are able to bring this to Ofcom's attention in a timely manner."*

We therefore concluded in the NMR review that competition law was likely to be sufficient to address any potential competition concerns we had identified in the ST market. [541]

The role of transit operators and how the bilateral negotiation model will work in practice

<u>Stakeholder comments</u>

A6.11 A number of stakeholders questioned how the access condition would work in practice. Vodafone, for example, said there were major practical questions about how a model of bilateral negotiation between each and every conceivable pair of TCPs and OCPs could work in practice.[542] EE noted similar concerns - it considered the process had been "*inadequately thought through*" and as a result was likely to be unduly duplicative, costly, slow, inefficient and susceptible to creating competitive distortions and outcomes which were not in the best interests of consumers.[543]

A6.12 Vodafone and EE raised concerns about how the access condition would work where OCPs and TCPs were not directly interconnected. EE noted that it was imperative that the access condition functioned effectively and efficiently in situations where the TCP and OCPs were only indirectly interconnected via a transit operator but, in its view, this did not appear to be the case.

[540] See Section 7, paragraphs 7.19 to 7.79 of the NMR statement, available at: http://stakeholders.ofcom.org.uk/consultations/nmr-13/statement
[541] See paragraphs 7.70 and 7.71 of the NMR statement.
[542] Vodafone, April 2013 policy position response, p.13.
[543] EE, April 2013 policy position response, p.18.

A6.13 EE said it appeared the draft access condition was not intended to apply to TCPs and OCPs when acting in their capacity as transit providers. On that basis, it said OCPs and TCPs who were not directly interconnected would have absolutely no legal certainty that the rates that they have negotiated with their transit provider in its capacity as an OCP or TCP would apply when their traffic was passed by the transit provider to other OCPs and TCPs. It highlighted the problems with that uncertainty for both OCPs (in considering whether it was economically viable to originate the traffic) and TCPs (in managing their relationships with SPs hosted on the range).[544]

A6.14 Vodafone, however, noted that Ofcom appeared to suggest that individual bilateral negotiations between all pairs of operators might not be necessary because smaller operators could rely on larger operators to negotiate on their behalf, but it considered there were major problems with that suggestion. It noted that Ofcom had not created any obligation for third party negotiation on behalf of others and, more worryingly, was actually proposing to relax the remaining regulatory safeguards on BT as a transit operator. Vodafone noted that a key aim of the NGCS policy review was to move away from a model of regulation where the world revolved around BT yet Ofcom was in danger of ushering in a new model where the same issue applied, but an essentially unregulated BT that was free to pursue its own commercial interests at the expense of its competitors.[545] It said even if the regulation on transit was retained Ofcom's model of the TCP negotiating was problematic because many OCPs did not have the capability to differentially charge for individual TCPs and TCPs typically did not have the ability to validate OCP bills without a reliable means of knowing where the call originated. It said Ofcom had to consider carefully a mechanism for ensuring that TCP negotiations could be conducted fairly.[546]

A6.15 Vodafone went on to say that the potential removal of a regulated single transit service was one of its key concerns about the wholesale arrangements. In particular it considered that deregulation increased the potential for problems, because Vodafone would be unable to separate what it was being charged for origination from what it was being charged for transit and it considered that BT would be able to leverage market power in transit to gain wider competitive advantage, particularly in the NGCS hosting market. In respect of 080, it noted that BT would have a unique place in negotiations for the mobile origination charge and would be able to act in a way which favoured its own hosting business - for example it said that if BT were to increase its price for transiting traffic to Vodafone's 080 ranges to a similar level as BT's price for transit portability (which Vodafone said was indicative of the pricing level BT adopted in an unregulated environment), then Vodafone would be faced with a cost of origination some 16% higher than that faced by BT's 080 hosting business and said it would be impossible to maintain a competitive service in such circumstances. It said other TCPs like Vodafone would never be in contention as the default transit provider[547] and would be powerless to act as a significant proportion of its 080 costs would be set by its largest rival in termination. It noted that when 080 became genuinely free-to-caller it was expecting a significant increase in volumes and a fourfold increase in volumes could increase the number of transit minutes by [✂] making it a very significant issue in

[544] EE, April 2013 policy position response, pp.19-20.
[545] Vodafone, April 2013 policy position response, p.13.
[546] Vodafone, April 2013 policy position response, p.13.
[547] Because only BT has direct interconnects with all OCPs/TCPs and there are costs in managing multiple routing plans.

the overall workings of the market and a vital issue for TCPs trying to compete against BT in the 080 hosting market.[548]

A6.16 EE said, even if the access condition was amended so as to require TCPs to pay fair and reasonable origination charges for any 080 and 116 traffic terminated on their network whether received directly or via a transit operator, it considered it was unclear whether/how the transit operator would negotiate those origination charges for its transit customers. It said that a transit operator who only operated a fixed network could not, for example, be expected to have a full understanding of the costs of origination for its mobile transit customers, nor indeed for its fixed transit customers.[549]

A6.17 EE also noted similar concerns to Vodafone that all vertically integrated TCP transit providers would have an interest in increasing the costs of their rival TCPs by increasing the origination charges billed to them above the level which the vertically integrated operator pays on its own terminated traffic.[550] In addition it argued that TCP transit providers would have an interest in reducing the origination charges payable to OCPs for transited traffic below the level payable for their own traffic - presumably with a view to retaining the difference rather than passing it on. It disagreed with Ofcom's view that competition for transit business would address those concerns, because for example all of the current major transit providers had a substantial 080 hosting business and therefore it said they would have a common interest in pushing the charges payable for mobile origination down as low as possible, creating a substantial risk that mobile OCPs would be unable to create any significant transit competition.[551]

A6.18 Three also noted similar concerns, in particular highlighting BT's role in the process, as not only an OCP and TCP but also a provider of transit. Three said the very low starting point of Ofcom's wide range of mobile origination charges in its base case scenario, together with BT's power to introduce new charges under paragraph 12 of the SIA would likely result in BT proposing the lowest possible mobile origination charge it thought it could justify on the basis of the 080/116 Dispute Guidance.[552] Three said it was concerned that, given BT's position as both TCP and transit operator, that problem would extend to all charges for BT services covered by the SIA, including for transit traffic that would ultimately terminate on other TCPs' networks.[553]

A6.19 BT, on the other hand, requested that Ofcom make clear that the responsibility for negotiating origination charges lies with the TCP and the OCP, including where the traffic is carried by a transit operator. It said it should not be the responsibility of the transit operator to ensure that origination rates are fair and reasonable.[554]

[548] Vodafone, April 2013 policy position response, pp.21-22.
[549] EE, April 2013 policy position response, pp.19-20.
[550] EE noted Ofcom had acknowledged that risk at paragraph A30.90 of the April 2013 policy position.
[551] EE, April 2013 policy position response, pp.19-20.
[552] Three noted that it and the other mobile OCPs were in dispute with BT with regard to the way in which paragraph 12 of the SIA operated. Ofcom issued its final determination of this dispute on 15 August 2013 - see: http://stakeholders.ofcom.org.uk/enforcement/competition-bulletins/closed-cases/all-closed-cases/cw_01083/
[553] Three, April 2013 policy position response, p.18.
[554] BT, April 2013 policy position response, p.18.

Ofcom's response

A6.20 It is clear from stakeholder responses that there is significant concern about how the access condition will operate in practice and in particular a concern about how it will apply where a transit operator is involved in the chain. We have therefore below set out in more detail how we consider the negotiation process will work, as well as addressing the comments about the incentives of different parties within that negotiation, including in particular the role of BT.

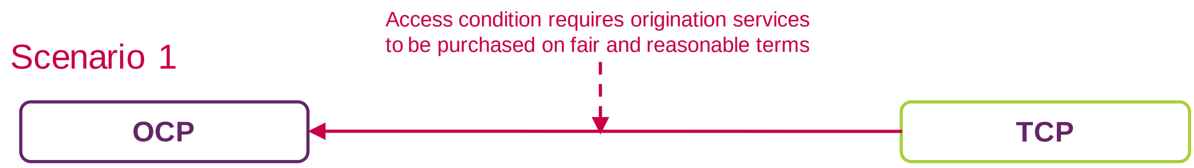
A6.21 We have set out a summary of how the access condition will operate in Section 4. At a high level, we note that the access condition gives OCPs and TCPs an opportunity to reach a negotiated solution regarding the level of fixed and mobile origination charges. We recognise there are practical obstacles to reaching such a solution, including the potential difficulties highlighted by stakeholders in their responses. However, we consider that the situation is likely to be simpler in practice and that the potential issues raised by stakeholders are unlikely to occur for the reasons set out in paragraphs 4.102 to 4.108 in Section 4. We also consider that, should these issues arise, there are regulatory backstops in place that would result in them being addressed in a timely manner for the reasons set out in paragraph 4.108.

A6.22 We now discuss in more detail two scenarios: one in which an OCP and TCP are directly interconnected and one in which a transit operator (in particular BT) is involved.

Operation of the access condition in a direct interconnect scenario

A6.23 The diagram below indicates how the condition operates in this scenario.

Figure A6.1: Access condition for direct interconnection scenario



A6.24 From the Effective Date, a TCP must purchase origination services from an OCP (i.e. enter into a <u>new</u> direct interconnect relationship) upon reasonable request, as soon as reasonably practicable and on fair and reasonable terms.

A6.25 With respect to <u>existing</u> direct interconnect relationships, the access condition requires TCPs to purchase origination services from OCPs on fair and reasonable terms from the Effective Date, and to provide advance notice to OCPs of their proposed (fair and reasonable) origination charges within one month after the access condition is set.

A6.26 This will result in all TCPs with an existing direct interconnect being required to notify the relevant OCP of their proposed origination charges. We do not anticipate the notification process itself imposing significant costs on industry. In the first instance this is because, as we have previously noted, the majority of smaller TCPs will only need to notify BT of their revised origination charges (as smaller TCPs tend to directly interconnect only with BT).[555] Although larger OCPs and TCPs are likely to have more direct interconnect relationships, we still would not expect the notification process itself to constitute a significant burden because OCPs and TCPs with a direct interconnection in place are already likely to be in regular communication and so the burden of notification is likely to be small. We also note that our 080/116 Dispute Guidance will provide a detailed framework which all TCPs can use as the basis of their initial notification.

A6.27 We recognise that there are likely to be some costs involved in any actual negotiations, although we consider these are likely be relatively low given that our 080/116 Dispute Guidance has narrowed the terms of negotiation.[556] As noted in Section 4, we consider it relatively likely that commercial agreement will be reached between fixed OCPs and TCPs. With respect to mobile origination charges, we consider it likely that a major mobile OCP will not begin negotiations with most TCPs in earnest until its negotiations with BT have either been concluded or have resulted in a dispute. This is because we are aware that the major mobile OCPs have expressed a strong desire for there to be a single origination charge (rather than one which is differentiated by TCP) and we consider they are most likely to focus on the payment made to them by BT in the first instance, given BT's relative position in the market. We also consider that BT is likely to agree to pay the same origination charge to each of the major mobile OCPs, due to the obligation for the charge to be fair and reasonable and the threat of a dispute being brought if BT agrees a more favourable rate with one of the major mobile operators than with its competitors. Other players in the industry will be aware that the resulting payment by BT is likely to become the standard, and so will have little incentive to incur the costs of negotiation. As a result, whilst we recognise Vodafone's concern that the access condition might create a model of bilateral negotiation between a very large number of TCPs and OCPs, we do not consider this situation likely to arise in practice. For the same reason, we do not consider the process will be duplicative in practice, contrary to EE's concern, and therefore will not be unduly costly, slow and inefficient.

A6.28 EE was also concerned that the operation of the access condition could result in outcomes which distorted competition or did not result in the best outcomes for consumers. Our 080/116 Dispute Guidance makes clear that we would only consider charges fair and reasonable if they provided benefits to consumers, taking into account the effect on competition.[557] As a result, we consider that any outcome which was either distorting competition or not maximising benefits to consumers would be liable to being disputed by whichever party stood to gain from an appropriate revision of the charge.

A6.29 Three raised a concern that the combination of the low starting point of Ofcom's base case scenario range and paragraph 12 of the SIA would likely result in BT proposing the lowest mobile origination charge it thinks it can justify. The access condition will require BT (as TCP) to purchase origination services from OCPs on fair and reasonable terms, including charges. We acknowledge that TCPs, including

[555] For example see paragraph A3.51 of the December 2010 consultation (available at: http://stakeholders.ofcom.org.uk/consultations/simplifying-non-geo-numbers/). Similarly, the majority of smaller OCPs will only receive a notification from BT, as this will be their only direct interconnection relationship.
[556] Available at: http://stakeholders.ofcom.org.uk/consultations/080-116-ranges/. Specifically, in the explanatory statement accompanying the 080/116 Dispute Guidance, we set out a base case scenario range of 1.5-2.4ppm, which is narrower than the range set out in the consultation document that accompanied the draft 080/116 Dispute Guidance.
[557] http://stakeholders.ofcom.org.uk/consultations/080-116-ranges/final-statement

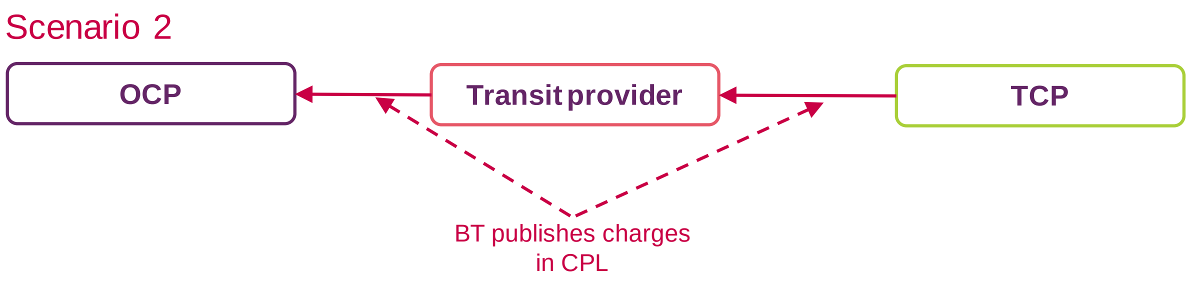
BT, may notify a proposed origination charge towards the lower end of the base case scenario range. However, it will be open to OCPs to refuse this initial offer if they do not consider it fair and reasonable on the basis of available evidence, and to raise a dispute if they cannot agree on an appropriate payment.

Operation of the access condition where a transit provider is involved

A6.30 As noted above, OCPs and TCPs may not be directly interconnected. Several stakeholders have questioned, or raised concerns about, how the access condition will operate where a transit provider, specifically BT (as the main transit operator for NGCs) is involved in the chain, as illustrated in the figure below.

A6.31 In this scenario, the rate which BT (as a transit provider) charges the TCP will cover both the origination and transit elements of the call. BT will, in turn, pay an origination charge to the OCP.

Figure A6.2: purchase of 080/116 origination where BT involved as transit provider



A6.32 The access condition does not apply between the TCP and OCP because the TCP is not purchasing any service from the OCP in this scenario (as it is not directly interconnected with the OCP).[558] We also stated in the April 2013 policy position that the access condition would not apply as between the TCP and the transit provider.[559] As a result, the access condition does not apply to indirectly routed calls. We recognise that indirectly routed calls account for a significant proportion of mobile originated calls to the 080 range and are therefore likely to account for a material proportion of 080 calls when it is made free-to-caller.

A6.33 In the April 2013 policy position, we noted that TCPs could use the origination rate agreed between their transit provider and an OCP as the basis of their own negotiations with the transit provider.[560] However, EE, Vodafone and Three have all raised concerns about the role of BT, as the largest transit provider, in negotiating wholesale charges for calls to 080/116 numbers and whether this will lead to competitive distortions. On the other hand, BT has explicitly asked for clarification that transit providers will not be obligated to negotiate on behalf of other TCPs. We begin by responding to concerns about the main ways identified by stakeholders that BT could exploit its position by outlining why we consider it likely that BT, along with other vertically integrated transit providers, will charge TCPs the

[558] However, it would be open to the OCP to request that the TCP purchases origination services from it (i.e. enter into a new direct interconnect relationship) under paragraph 1.1 of the access condition.
[559] See paragraph A30.88 in the Part C Annexes of the April 2013 policy position. EE considered that the drafting of the access condition was ambiguous in this respect. We have clarified the wording of the condition in response to this comment – see paragraphs [A7.154 to A7.157] in Annex 7.
[560] Paragraph A30.89 in the Part C Annexes of the April 2013 policy position.

same origination rate for transited traffic as it pays for its own terminated traffic. We then respond to comments in relation to negotiation by transit providers on behalf of smaller TCPs and the implications of removal of regulation of BT's single transit services. Finally, we set out a summary of the operation of the access condition in direct interconnect and transit scenarios.

Likely charges for transited traffic

A6.34 Stakeholders have expressed concern about three main ways in which BT, as a vertically integrated provider, could potentially exploit its position when acting as transit provider for calls to 080 and 116 numbers;

- BT could pay an origination charge below the fair and reasonable level to OCPs for transited traffic (and not pass this lower price onto TCPs, thereby increasing its profits as a transit provider) because there is no obligation to purchase origination for these calls on a fair and reasonable basis;

- BT could increase the origination charge for transited calls above the level agreed for its own traffic in order to raise rival TCPs' costs; and

- BT could increase charges for single transit services for these calls in order to increase its profits as a transit provider as a result of the removal of regulation in this market.

A6.35 In each case, whilst we recognise the potential for these problems to arise, we do not think they are likely to do so in practice. This is because we consider it likely that BT (and other vertically integrated transit providers) will charge TCPs the same origination rate for its transited traffic as it pays for its own terminated traffic for the following reasons:

- there are costs associated with billing differentiated charges;

- pricing transparency means TCPs will be able to raise a dispute in the event they are charged a higher amount than the rate paid on BT's own terminated traffic; and

- OCPs can threaten to switch transit provider if they are offered a lower origination payment for transited traffic than the rate they receive for BT terminated traffic.

A6.36 We now consider these reasons in more detail before summarising our overall position on likely charges for transited traffic.

Billing costs

A6.37 All large transit providers are themselves TCPs, and as such will be required to notify OCPs of their revised origination charges for their own terminated traffic. Once these revised origination payments have either been agreed or determined via the process outlined above, we anticipate each transit provider will then notify its OCP and TCP customers of an increase in origination payments and transit charges.

A6.38 In both cases, we consider the revised charges are likely to reflect the increase in origination payments the transit provider has agreed for its own terminated traffic. In the first instance, this is because we consider the costs associated with introducing additional billing complexity by paying/charging different origination charges for transited traffic are unlikely to be worthwhile. Differentiated origination charges could create billing complexity for BT because it would have to reconcile the different amounts for its transit and terminated traffic and would need to make that reconciliation clear to OCPs (who would demand transparency and validation for the call traffic for which they were receiving a lower origination payment). This differentiated billing and reconciliation is likely to not only be more complex for BT, but also lead to additional transparency and validation costs. Those costs would need to be justified by the additional amount BT would be able to generate from such behaviour. In this respect, we consider it relevant that BT has, in its response, acknowledged the complexity of maintaining multiple origination rates and suggested that they would be unwieldy for OCPs, TCPs and SPs.[561]

Threat of dispute from TCPs

A6.39 Clearly, there comes a point at which the gains from differentiated pricing outweigh these billing costs. However, we consider there are additional factors which will constrain BT from pricing either above or below the rate paid for its own terminated traffic. In the first instance, we consider the threat of a dispute will constrain BT from charging TCPs above this rate. This is because we expect the origination charges agreed or determined for BT to pay for its own terminated traffic to be transparent across industry. We consider these charges are likely to be published in BT's CPL if agreed commercially and will be published in our final determination if resolved via a dispute. As a result of this transparency, TCPs using indirect routing will be able to look at the increase in the charges they pay to receive 080/116 calls and see whether this is equal to the increase in the origination charges that BT (or another TCP/transit provider) pays for its own terminated traffic.[562] If this is not the case, the TCP concerned will be able to raise a dispute with us over the level of charges.

A6.40 Although we would not be required to resolve such a dispute as it would not relate to rights or obligations imposed under a condition (i.e. section 185(1A) or (2) of the Act), we would nonetheless have the discretion to resolve it as it is a dispute between CPs relating to the terms of network access (i.e. section 185(1) of the Act). We would be highly likely to consider that it is appropriate for us to handle such a dispute, given our awareness of the potential for problems to arise and our commitment to the successful implementation of our free-to-caller remedy. We consider it would be in TCPs' interests to monitor pricing information and raise a dispute with us if there are grounds to do so. Therefore, whilst we recognise EE's concern that TCPs will have no legal certainty they are being charged the "correct" origination payment, we consider they will be able to monitor whether they are and raise a dispute if they find evidence they are not.

Threat of switching by OCPs

A6.41 We also consider OCPs are unlikely to accept any origination charge for transited traffic below that which BT pays to OCPs for its own terminated traffic because of the threat of switching to an alternative transit provider. If this situation arose

[561] BT, April 2013 policy position response, p.6.

[562] For the reasons set out in paragraph [A6.35], we consider the origination charges paid by other vertically integrated transit providers are likely to be very similar, if not exactly the same, as the origination charges paid by BT for its own terminated traffic. For this reason, we consider TCPs using other vertically integrated transit providers can compare the increase in their combined origination/transit charges to the increase in the origination charge paid by BT for its own terminated traffic.

because BT was paying a lower origination charge to the OCP when it was the relevant transit provider (compared to the charge when it was the directly-connected TCP), it is likely there would be a profitable opportunity for a competing transit provider to win the business of the OCP by offering to pay a higher origination charge. We recognise that implementing different routing rules would have cost implications for OCPs (as highlighted in Vodafone's response), but these would be weighed against the revenues that the OCP could achieve from higher origination charges. We recognise EE's concern that all transit providers would have an interest to agree lower origination charges to benefit their own hosting businesses, and that this could limit the potential for switching between transit providers. However, we consider this incentive applies only to transit providers' own traffic as agreeing lower origination charges for transited traffic would not benefit their own hosting businesses. As the access condition applies to transit providers' own traffic, they will be required to purchase this on a fair and reasonable basis from OCPs.

A6.42 We consider BT would only have a commercial interest to offer OCPs lower charges if it did not pass these cost savings on to its TCP transit customers - passing lower charges on would directly reduce the costs of its rival TCPs in the market for 080/116 hosting, which would clearly be disadvantageous to BT. We consider that if BT were to pay a lower rate to OCPs for originating transited traffic than it was charging TCPs, its TCP customers would become aware of this. As noted above, it is our expectation that BT will continue to publish rates for its wholesale services in its CPL, including the rates it pays to other CPs for their services provided to BT. TCPs would be able to use this information to identify the fact that BT was charging them a different rate for origination than it was paying to OCPs, and would be able to raise a dispute in this scenario. Again, whilst we would not be required to resolve this dispute, we would have the discretion to do so and would be highly likely to, given our commitment to the successful implementation of making 080/116 free-to-caller. To the extent that there is a difference between the origination charge that a transit provider pays an OCP for transit traffic and the origination charge that the transit provider levies on its TCP customers (i.e. the transit provider adds a mark-up to the origination charge), then we would consider the difference to be a transit charge.

Conclusions on likely charges for transited traffic

A6.43 We recognise there are further nuances to the scenarios outlined above. For example, there are different means by which BT could increase the cost of its rival TCPs including:

- adding a mark-up to the origination charge it has agreed with OCPs for its own traffic; and
- agreeing a higher origination charge with OCPs for transited traffic.

A6.44 However, we consider the same principles apply in each of these scenarios - namely that TCPs will have visibility of the relevant wholesale charges, and will be incentivised to raise a dispute should they believe there to be evidence of differential pricing.

A6.45 On balance, we consider that the additional cost and complexity of differentiated origination charges along with the risk of commercial disputes is likely to constrain BT's (and other vertically integrated transit providers') behaviour. We have therefore decided not to apply the access condition in the transit scenario at present. However, we recognise the risk of market distortion exists and we will monitor market developments. If we consider that origination charges paid or levied by vertically integrated transit providers/TCPs are not fair and reasonable, then we will consider whether there is a need to extend the access condition to cover the transit scenario (subject to statutory consultation requirements). Alternatively we may consider whether BT's behaviour amounts to the exploitation of a position of market power in single transit which requires a competition based ex post intervention.

A6.46 We consider the possibility of extending the access condition to transit providers, along with the other factors listed above, will reduce the likelihood of problems arising in the first place.

Negotiation by transit providers on behalf of smaller TCPs

A6.47 In response to BT's comment, there will be no formal responsibility for the OCP and TCP to negotiate origination charges where calls are indirectly routed as the access condition will not apply to these calls. However, it will have to negotiate with OCPs over an appropriate origination charge for its own terminated traffic. We expect it will then charge transited traffic at the same rate for the reasons set out above. Accordingly, we recognise that our view of how the process is likely to work suggests that, in effect, TCP customers will benefit from transit providers', and in particular BT's, negotiation of origination charges. Although TCPs using BT's transit services will therefore benefit from BT's negotiations with OCPs over its own traffic, it will not impose any extra cost on BT as BT would need to conduct this negotiation anyway in its role as TCP. As a result, we are not unduly concerned about this outcome.

A6.48 We acknowledge Vodafone's concerns about BT negotiating on behalf of others given the relaxation of regulatory safeguards on single transit and the difficulties for OCPs and TCPs in managing differentiated origination charges. However, as outlined above, we do not consider that BT will negotiate on behalf of others - rather it will negotiate for itself in the first instance (as it is required to under the access condition) and the various factors we have outlined above are then likely to lead to it applying the same rate to transited traffic. As a result, we do not consider the practical difficulties of managing differentiated origination charges are likely to arise.

Implications of removal of regulation of BT's single transit

A6.49 We recognise that the arguments outlined above rely on TCPs (and other industry players) having visibility of the relevant wholesale charges, and that some stakeholders (notably Vodafone) were concerned that the removal of regulation of single transit will mean this is not the case. We consider that the deregulation of BT's single transit services is unlikely to lead to BT no longer publishing the wholesale charges for services it provides as a transit provider (and other services it provides to or purchases from other CPs). In order for BT to cease publishing these charges, it would need to amend its agreements with CPs (currently, the SIA) to remove the reference to charges being set out in the CPL and to otherwise incorporate the applicable charges into each agreement. This is likely to result in some degree of bespoke contracts / price lists with individual CPs, which would create significant additional costs for BT and would require CPs to agree to the contractual variations. We consider that the incentive for BT to cease publishing these charges is therefore low. We also note that BT has continued to publish charges for services that use inter-tandem conveyance/transit and local-tandem conveyance/transit despite these services being deregulated since 2005 and 2009 respectively.

A6.50 Vodafone also raised concerns that the deregulation of single transit will mean BT is able to increase its single transit charge on smaller, thinner routes where there is less competition - including 080/116 calls. Vodafone argues that TCPs would have no visibility of how much of the charge they pay to BT is passed through to the OCP to pay for call origination, and how much is retained by BT and attributable to the transit element of the service. However, as noted above, BT currently publishes the rates for its wholesale services in the CPL, including the rates it pays to other CPs for their services provided to BT. As such, for transited calls to 080 and 116 numbers, BT currently publishes the amount that it pays OCPs for origination of the transited traffic and the amount that it charges TCPs for the transit leg.

A6.51 These concerns regarding smaller, thinner routes were also raised in the context of the NMR and we responded to these comments in the NMR statement (see paragraph A6.10 above). We consider that CPs are likely to purchase transit services from BT for other services, for example to terminate geographic calls and/or calls to mobile numbers. CPs would therefore be able to take account of the transit rates they are charged for these other services in assessing the rate BT seeks to charge them for transited NGCs and this could form the basis of a CP approaching Ofcom if it considered BT was seeking to abuse its position in the ST market (as discussed in the NMR statement).

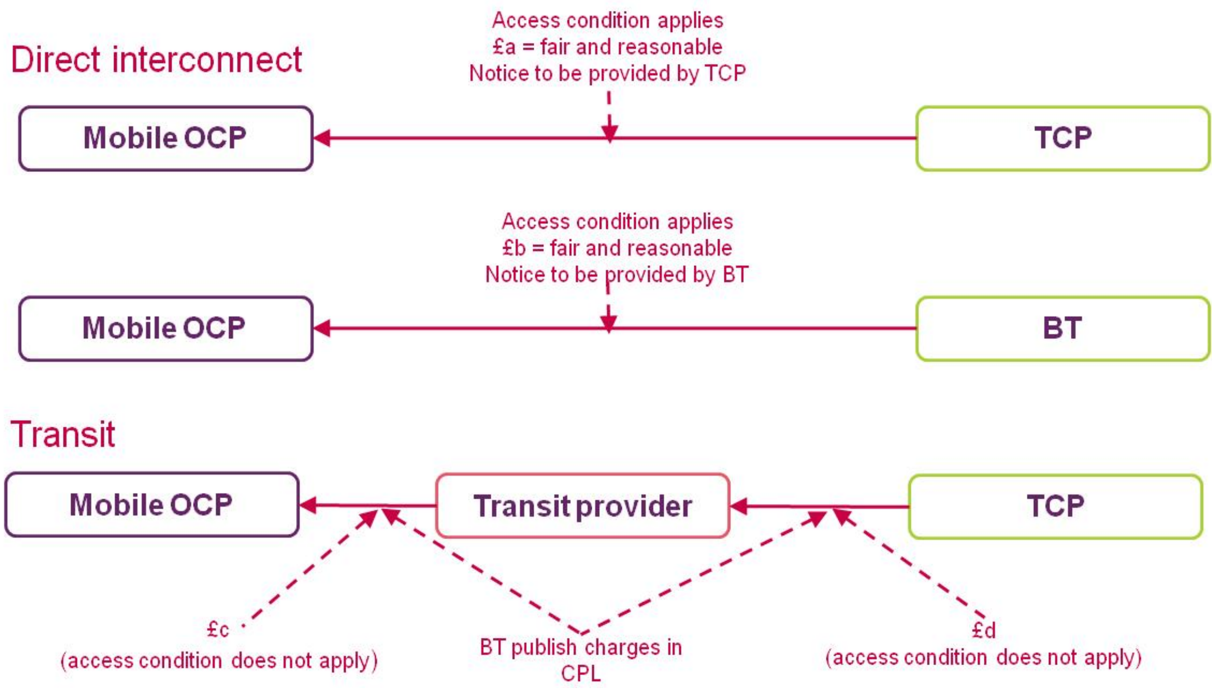
A6.52 We consider that the practical constraints on BT in relation to its charges for single transit services will, in turn, restrict the commercial freedom of other transit providers competing with BT.

Summary of the operation of the access condition in direct interconnect and transit scenarios

A6.53 In summary, the access condition will apply as set out in Figure A6.4. We have identified four charges, which we refer to as £a, £b, £c and £d. We have focussed on a mobile originated call as this is where stakeholders have identified most concerns. We have used BT's position as a TCP with direct interconnect to a mobile OCP and as a transit provider to illustrate the role we envisage it playing in this context:

- £a is the origination payment made by a TCP with a direct interconnect to a mobile OCP;
- £b is the origination payment made by a vertically integrated transit provider to a mobile OCP for its own terminated traffic (using BT as an example in Figure A6.4);
- £c is the origination payment made by a transit provider to a mobile OCP for transited traffic; and
- £d is the charge the transit provider bills TCPs for transited mobile calls, which includes the transit cost and mobile origination payment. As noted in paragraph A6.42, we would consider the difference between £c and £d to be a transit charge.

Figure A6.4: charges for 080/116 origination in direct interconnect and transit scenarios



A6.54 In practice, we consider it likely that £a and £b will be within a small range, if not the same rate. This is for the reasons set out in paragraphs 4.102 to 4.108 in Section 4, in summary because we expect the rate either agreed or determined between BT and the mobile OCPs will form a standard for the rest of industry.

A6.55 We consider it likely that BT will pay the same rate for its transited traffic as it will for its own traffic, i.e. that £c will be equal to £b, because of the billing costs associated with differentiated charging and the potential for OCPs to switch transit provider in the event that £c is lower than this. We consider that £d is likely to be equal to £c, the rate BT pays on transited traffic, plus the single transit rate for geographic calls. This is because of the potential for TCPs to raise a dispute about £d if the amount they are charged for receiving 080/116 calls increases by more than the increase in £c. We expect similar considerations to apply when other vertically integrated transit providers are involved.

Role of vertically integrated operators

<u>Stakeholder comments</u>

A6.56 Three was concerned that Ofcom's approach to the access condition meant that vertically integrated CPs (e.g. BT) would be conferred a significant ongoing advantage in setting future origination charges. In particular it noted that Ofcom would conclude a dispute by reference to an average SP payment that was contingent on a number of variable factors (such as the levels of fixed and mobile origination charges and the spilt of 080 traffic between network types). Three said that operators who were integrated across the whole market, as host, TCP, transit partner and OCP (such as BT) would have visibility of all the information needed to leverage the 080 origination wholesale environment to their benefit as they would be able to formulate a market level view of origination charges and hosting costs. It was concerned that there were a number of risks which Ofcom needed to consider, in particular that that combination of information might enable vertically integrated operators to:

a) draw upon unequalled market intelligence and use this in negotiations with OCPs (particularly smaller ones) to drive down mobile origination charges - presumably (although Three did not specify) by misrepresenting the variable factors determining the appropriate SP outpayment (e.g. over-stating the extent of fixed to mobile substitution);

b) manipulate the average market origination charge for 080 such that it maximised the fixed origination charge while potentially artificially reducing the origination charge for mobile operators (although it did not clarify how a vertically integrated operator would do this); and

c) persistently prevail in disputes against other operators because their access to superior market information would enable a far more robust assessment of the merits of any case they might bring.[563]

A6.57 EE similarly noted concern that Ofcom's anticipated closed bilateral negotiation process created significant scope for competitive distortion to be created by large vertically integrated OCP/TCPs, especially those who were also converged fixed and mobile operators such as Vodafone. For example it noted those operators could agree on a blended fixed and mobile origination charge which involved a relatively higher mobile origination charge and relatively lower fixed origination charge which would still keep average charges to Vodafone's customers at acceptable levels, but it could insist on a lower mobile origination charge in relation to third party originated traffic. EE did not consider that the proposed limitation (in the draft access condition) on the notification obligation to OCPs with whom a TCP is already directly interconnected would make any material difference to that situation, given the multiple OCP/TCP/transit provider roles performed by each of the largest TCPs.[564]

A6.58 EE suggested that one way to reduce these concerns would be to amend the draft access condition so that TCPs were obliged to notify Ofcom of their proposed origination charges, rather than the OCPs with whom they had an existing agreement to purchase origination services. It said that notification could include the TCPs' "reference" fixed and mobile origination charge proposals, as well as any proposals in respect of specific OCPs which differed from the "reference" proposals. EE said Ofcom could then publish that information on its website and then there could be an option for OCPs to simply notify Ofcom that they wished to sell their origination services to all 080/116 TCPs listed in Schedule 1 of the access condition (and those subsequently entering the market) and Ofcom could publish that notification and pass it on to TCPs. EE said it imagined this would be a popular option for OCPs albeit it noted that it would still be open to them to individually request purchases from a more limited sub-set of TCPs if they so chose. Following this EE said it would then be expected that OCPs would seek to enter into bilateral negotiation with a number of 'lead' TCPs and whilst any agreement would not necessarily bind other TCPs, it might be hoped that such agreements would at least set a compelling precedent.[565]

[563] Three, April 2013 policy position response, pp.19-20.
[564] EE, April 2013 policy position response, pp.20-21.
[565] EE, April 2013 policy position response, pp.21-22.

Ofcom's response

A6.59 We consider that many of the concerns underlying these stakeholder comments are covered by the points we have set out in paragraphs A6.20 to A6.55 above. Three, however, also raised a specific concern that BT in particular would be able to draw on "unequalled market intelligence" in negotiations and to prevail in disputes. Three is concerned that BT will have more information on the average SP outpayment than an OCP that is not also a TCP. However, we do not consider this is likely to be the case because, as already noted above, all CPs will have visibility of BT's charges through the CPL. We recognise that BT's hosting charges will not be published in the CPL, and that OCPs who are not vertically integrated will not have awareness of these charges. However, we do not consider this a concern because these are not relevant to the assessment of a fair and reasonable origination charge.[566] As a result, this information would not confer any advantage on BT.

A6.60 In addition, in terms of the proportion of fixed/mobile calls made to 080 numbers, each OCP will be able to monitor their own call volumes and can use this information to establish whether there have any been any significant changes which would impact the appropriate level of origination charges. We recognise that changes to the overall volume of calls and material changes in market shares would also be relevant, but we nonetheless consider that, for the larger OCPs at least, monitoring of their own call volumes should provide a useful guide to estimating the market as a whole.

A6.61 Both EE and Three also comment on the potential for the manipulation of the fixed origination charge relative to the mobile origination charge and resulting competitive distortions. We note in our 080/116 Dispute Guidance that, in determining a dispute about fair and reasonable origination charges, we will consider the extent to which a proposed origination charge may give rise to a distortion of competition between fixed and mobile operators.[567] Therefore, given that guidance, we consider that the risk of this kind of competitive distortion is limited, but CPs will be able to bring a dispute if they are concerned that this is occurring.

A6.62 With respect to EE's proposal for charges to be notified to Ofcom in the first instance, we do not consider that this is appropriate. We consider that the 080/116 Dispute Guidance will be sufficient as a starting point for commercial negotiations. It is not appropriate for Ofcom to be in the middle of commercial negotiations, particularly in the event that the negotiations lead to a dispute being brought to Ofcom.

Role of the SIA

Stakeholder comments

A6.63 Three said the mechanisms for introducing price changes under paragraphs 12 and 13 of the SIA had important commercial and legal implications for the way in which origination charges for 080 calls would be set under the access condition. It said further confusion was added by the fact that, under Ofcom's proposals, the origination charge to be proposed by BT (and the other TCPs) could also be categorised as a negative termination charge to be paid by operators to BT, similar to the charges that were previously set by BT under NCCN 911. It noted that the

[566] Our assessment of the appropriate average SP outpayment in our 080/116 Dispute Guidance relates only to origination charges paid by SPs and excludes hosting charges.
[567] [See paragraph A1.53 of the 080/116 Dispute Guidance].

difficulties of accurately categorising such a charge were discussed in detail in Three's submission in a recent dispute relating to the terms of BT's SIA ('the SIA Dispute') and in the judgment of the Competition Appeal Tribunal ('CAT') in relation to appeals against Ofcom's dispute determinations in relation to calls to 080, 0845 and 0870 numbers ('the CAT's 08X Judgment').[568] Three said determining whether the mobile origination charge was a 'BT service or facility' under paragraph 12 or an 'operator service or facility' under paragraph 13 was far from clear.[569]

A6.64 Three said it was particularly concerned that BT's power under paragraph 12 of the SIA to unilaterally introduce changes to charges for BT services even if such charges were not agreed by the counter-party CP would result in:

- BT introducing mobile origination charges that were not fair and reasonable;
- deadlock between the parties; and
- dispute referrals to Ofcom with the consequent uncertainty that such delay would bring.

Ofcom's response

A6.65 We have already discussed above why we consider that the access condition and our dispute resolution powers, alongside other factors in the market, are likely to provide sufficient protection against the potential for BT to exploit any differences in bargaining power.

A6.66 In relation to the definition of the origination charge under the SIA, we note that the CAT (and the Court of Appeal) commented on this confusion as part of their comments in the 08X Judgment.[570] However, we consider that the confusion was compounded by the nature of ladder charges (i.e. where the OCP could either receive a payment from the TCP or be required to make a payment to the TCP, depending on the level of the OCP's charge to its customers at the retail level) whereas under the new regime origination charges should generally be positive (unless an OCP chooses to waive the origination charge, for example for charity services). As stated in the April 2012 consultation and the April 2013 policy position, we consider that the relevant service provided is wholesale origination.[571]

Likelihood of a single origination charge

Stakeholder comments

A6.67 [✂].[572]

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[568] *British Telecommunications and Everything Everywhere Limited v Ofcom* [2011] CAT 24, at 68 and 69– http://www.catribunal.org.uk/238-6086/1151-3-3-10-British-Telecommunications-Plc-Termination-Charges-080-calls.html

[569] Three's response to the April 2013 policy position, p.18.

[570] For example see paragraph 69 of the CAT 08X Judgment

[571] We discussed this issue in the April 2013 policy position (see footnote 580 at paragraph 14.41 and paragraph 14.65). We noted that, in the absence of ex ante regulation, the characterisation of the service may fall to be determined by the parties' existing contractual arrangements but we noted our view that the relevant service provided is wholesale origination and we therefore considered it appropriate to frame the access condition as an obligation to purchase wholesale call origination.

[572] [✂]

A6.68 BT believed that the free-to-caller origination charge had to be agreed for the industry rather than differ for individual operators. It said it was possible to implement one origination charge for fixed and another for mobile CLIs but any attempt to make it more granular than that was doomed to fail from the outset. It noted this was because:

- TCPs would not know from which OCP the call originated (and so could not verify the amount they were being billed under differentiated charges);
- SPs needed confidence to estimate the cost of offering a free-to-caller service based on approximate call volumes rather than who their client took telephone services with; and
- the origination charge should not be unwieldy to implement and manage. It said that differentiated origination payments suggested those could easily be changed and no mechanism was in place to manage that.[573]

A6.69 EE considered that the tiered termination rates that many fixed TCPs had sought to implement in relation to 080 calls invalidated Ofcom's assumption that 'menu costs' were likely to limit the concern about differentiated pricing. It said the fact that costs were incurred when prices needed to be changed would reduce the frequency with which operators tended to change prices but it said it did not imply that operators and SPs would prefer a smaller number of overall prices. It said the initial costs of setting appropriate prices were significant regardless of the overall number of prices involved and therefore menu costs might drive less frequent changing of those prices rather than any reduction in the overall initial number of prices. EE said Ofcom had not provided any evidence or argument that a smaller number of prices would lead to a significant reduction in costs compared to the potential revenue gains which could be made by greater pricing differentiation.[574]

A6.70 [✂], in its response to our draft 080/116 Dispute Guidance, said it hoped that Ofcom's expectations of the economic forces at work would produce a single origination charge quickly without substantial regulatory intervention. It underlined the importance, however, of the industry working groups in enabling industry to reach a consensus on what might be considered fair and reasonable in terms of the practicalities of interconnect billing as well as Ofcom's role in setting out in greater detail its position in this respect. It also added that it believed General Condition 2.3 could be interpreted as giving Ofcom power of direction in this context and it that Ofcom could also use its powers through General Condition 11 and the Metering and Billing Direction.[575]

Ofcom's response

A6.71 We have explained at paragraph 4.106 in Section 4 why we consider that origination charges will converge towards a small number of charges (if not a single charge) for each of fixed and mobile originated calls.[576] We consider that the factors we outline there, relating to the characteristics of the market and the design of the access condition, will minimise the range of origination charges in the market.

[573] BT's response to the April 2013 policy position, p.6.
[574] EE, April 2013 consultation response, pp.19-20.
[575] [✂]
[576] See also paragraph A30.51 of the April 2013 policy position.

A6.72 There is clearly large scale support from industry for having a limited number of origination charges. Several stakeholders have highlighted the increased cost and complexity created by having multiple (i.e. more than two – one for fixed and one for mobile) origination charges in their responses to the April 2013 policy position.[577] This includes EE who note in their response that differentiated origination charges will give rise to material billing and associated staff time costs.[578] Similarly Verizon and [✂] made similar comments about the potential transaction and billing costs because of differentiated origination charges in response to the April 2012 consultation.[579] BT's arguments set out above also all suggest that TCPs are likely to face incentives not to set differentiated payments.

A6.73 In response to [✂] comment, we do not consider it appropriate to make any direction under General Conditions 2 or 11 in relation to CPs' billing systems. In the April 2013 policy position, we stated that the access condition would be unlikely to result in a significant increase in billing complexity for most CPs or significant additional billing costs.[580]

Dispute resolution process and impact on timescale

<u>Stakeholder comments</u>

A6.74 A number of stakeholders raised concerns about the reliance on dispute resolution powers (in the absence of commercial agreement on wholesale origination charges) and how that would impact on the implementation timescale for making the 080 and 116 ranges free-to-caller. Vodafone said the prospects for spontaneous agreement about the terms of interconnection between parties with fundamentally divergent commercial objectives appeared remote yet Ofcom was continuing to leave open the opportunity for unproductive and time-consuming commercial negotiations.[581]

A6.75 Vodafone noted that any legal dispute resolution could only bind the parties to the dispute and whilst Ofcom might have an expectation that industry would follow any precedent, the ladder charging disputes had shown there was ample scope for individual operators to maintain positions outside of the dispute resolution based upon their unique situation. In order to avoid the potential for delay Vodafone suggested Ofcom should consider:

- framing and preparing for an industry-standard dispute now. It suggested Ofcom should confirm that all disputes it handled would be assessed and determined together to the same timeframe to avoid a multiplicity of outcomes over a staggered timeframe. In addition, it said Ofcom should seek to resolve the dispute in a period shorter than four months given that much of the preparatory work should have already been undertaken;

- agreeing with the industry that the usual standard of exhaustive commercial negotiations between parties was not required to get to the point at which parties were able to agree that they were in dispute. In particular Vodafone suggested that Ofcom should indicate the circumstances in which it would consider a dispute to exist - it proposed that if a TCP and OCP were unable to agree within 8

[577] For example Vodafone's response to the April 2013 policy position, p.14.
[578] EE, April 2013 policy position response, p. 24.
[579] See paragraph A30.49 of the April 2013 policy position.
[580] See paragraphs A10.51 – A10.62, Annex 10 of the April 2013 policy position.
[581] Vodafone, April 2013 policy position response, Annex 2 paragraph 4.7.

weeks of Ofcom's final statement, the 'absence of an agreement' must be deemed to exist for the purposes of the dispute resolution procedure –; and

- convincing other parties to join a 'super-dispute' and agree that they would be bound by the outcome.[582]

A6.76 BT similarly suggested that it would simplify the implementation process if the benchmark rate, set as a result of any dispute on origination rates, could be used as the 'default rate' such that any CP wanting to charge a higher rate would have to prove its case, and the 'default rate' would be legally binding until a different rate were determined by Ofcom.[583]

A6.77 Vodafone also considered that the implementation timetable for making the 080 and 116 ranges free-to-caller meant that, in practice, once OCPs/TCPs had been through the negotiation and dispute process, the point at which CPs were in a position to convey to SPs accurate pricing information would leave only six months for SPs to decide on their commercial response. It noted that six months might be acceptable for an SP which decided to remain on the range but it was wholly inadequate for anyone deciding to leave the range. It said those SPs would also face an inflated cost of change because a truncated implementation period would force them to change marketing literature outside of their typical publication cycles which were normally much longer than six months.[584]

A6.78 Vodafone also noted that dispute resolution for 080 could not be concluded until Ofcom published its NMR statement and in particular that if Ofcom were to implement a glidepath on the introduction of pure-LRIC for geographic termination rates then the LRIC+ for fixed origination could evolve over time hence implying that the balancing mobile origination fee must similarly do so. It said the methodology Ofcom had set out to determine a fair and reasonable rate meant that a TCP could not determine the fair and reasonable mobile origination charge that satisfied the guidelines until the fixed origination charge was determined because there was a different result depending on where in the 0.3-0.6ppm range the charge lay. It said therefore, that the whole dispute timescale would have to move back until after the NMR statement and Ofcom revising its guidelines in light of the conclusion. It said Ofcom should look to conclude any dispute resolution as soon as possible after the publication of a final statement.[585]

A6.79 EE said Ofcom should give further thought to the timetable according to which the negotiation/dispute resolution process was expected to take place. It noted that the experience with BT's 080 tiered termination rates had demonstrated that such matters can take an extensive amount of time and effort to resolve. It considered it would be helpful for Ofcom to supplement the access condition with some guidance as to the timetable according to which Ofcom would hope to see the negotiations / dispute resolution / notification to SPs unfold within the proposed 18 month implementation period (even if that timetable was not legally binding). EE also added that it would be helpful to have guidance on what Ofcom expected OCPs to do in the event that no legally binding decision was in place by the time the 18 month implementation period expired. It considered that the only fair and

[582] Vodafone, April 2013 policy position response, p.11 and Annex 2, paragraph 5.3.
[583] BT's response to the April 2013 policy position, p.18.
[584] Vodafone, April 2013 policy position response, pp.10-11.
[585] Vodafone, April 2013 policy position response, p.12.

reasonable solution would be to allow OCPs to carry on charging its retail customers until the necessary origination charge was agreed/determined.[586]

A6.80 Three said Ofcom was being overly optimistic in assuming that TCPs and OCPs would reach agreement regarding the fair and reasonable origination charge to apply bilaterally between them. It feared that they were unlikely to reach agreement, not least because of the wide range of potentially fair and reasonable mobile origination charges Ofcom had set out in its draft 080/116 Dispute Guidance. It was concerned that in the longer term this approach would put Ofcom in the position whereby it would need to use dispute resolution to determine numerous OCP origination charges, all within the confines of the four month dispute resolution timetable. [587]

Ofcom's response

A6.81 We recognise stakeholders' concerns about potential difficulties in agreements being reached in relation to origination payments and the potential for protracted negotiations given the different positions and incentives of the parties involved. As we noted in the April 2013 policy position, we rejected the option of reliance on dispute resolution alone because we recognised there was a significant risk that, absent some form of ex-ante regulation, origination payments for calls to 080 numbers would not be agreed (or set by us in a dispute resolution) in a timely manner, leading to a risk of interconnection failures, call blocking and other outcomes not beneficial for consumers. In addition we noted the significant risk that TCPs would be unable to provide their 080 SP customers with certainty about the level of their origination charges at a sufficiently early point in the implementation process to allow them to make informed decisions about whether to remain on the number range.[588] We considered that the access condition (and our 080/116 Dispute Guidance) would address these concerns by requiring origination charges to be fair and reasonable, because stakeholders could use our 080/116 Dispute Guidance as a starting point for their negotiations and SPs would be provided with appropriate signals as to whether to remain on the 080 range.[589] In addition, to ensure that the negotiation process starts early we are requiring TCPs to notify OCPs of their proposed revisions to origination charges within one month after the access condition is set.[590]

A6.82 The comments from stakeholders above, however, indicate that concerns remain about how quickly negotiations will progress and the uncertainty that this could generate for SPs. Vodafone, for example, considers that SPs may only have six months to consider whether to remain on the 080 number range. In particular it has assumed in reaching this conclusion that negotiations between OCPs and TCPs will

586 EE, April 2013 policy position response, pp.21-22.
587 Three, April 2013 policy position response, p.17.
588 See paragraph 14.42 of the April 2013 policy position.
589 See paragraphs 14.51 to 14.53 of the April 2013 policy position. Also see paragraph A30.15 where we set out the reasons we considered that the access condition offers greater certainty than reliance on dispute resolution alone.
590 See paragraph 14.75 of the April 2013 policy position. We consider that this will prompt negotiations about origination charges to commence at an early stage of the 18 month implementation period. Without this obligation, TCPs and OCPs might defer this negotiation until the latter part of this 18 month negotiation period (we consider that typical contractual terms may mean that this negotiation could be deferred until 16 months or more into the 18 month period). An earlier start to negotiations will help to ensure that, if a TCP and OCP are unable to reach commercial agreement, the matter can be referred to us for dispute at an early stage (see paragraph A30.15 of the April 2013 policy position).

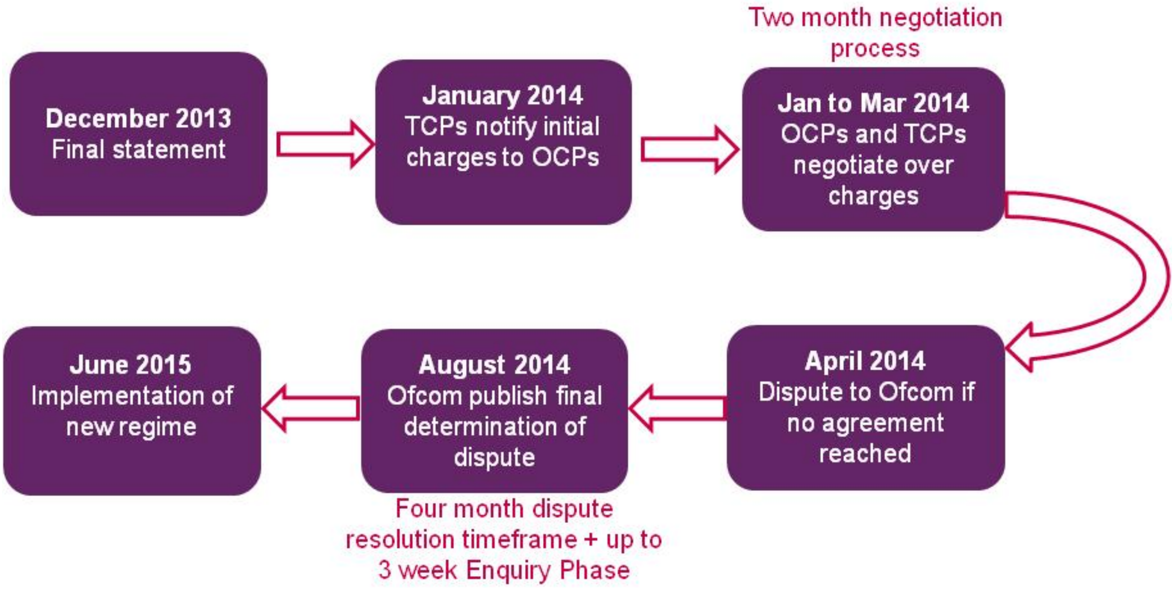
take three months before a dispute is brought to Ofcom (for example because the OCP counter-offer will take 30 days after the initial notification is received). Vodafone also assumes that the translation of any dispute resolution into a commercial offering which is communicated to the SP will take a further three months after Ofcom publishes its final determination.[591]

A6.83 We agree that minimising uncertainty for SPs and allowing them sufficient time to make informed decisions is very important in ensuring effective implementation of the new regime, and for ensuring that consumers and SPs receive the full benefit of the changes (e.g. avoiding any unnecessary migration by SPs that are concerned about high costs which in practice turn out to be lower than their expectations). This was, as noted above, an important factor in our reasoning for imposing the access condition and for requiring early notification of charges. TCPs can provide guidance to SPs from the point at which they notify their initial charges to OCPs and SPs can start considering their options at that point, or they can choose to wait until there is certainty about origination charges following negotiations between OCPs and TCPs and, if relevant, dispute resolution.

A6.84 In terms of the overall implementation timetable, we have set out below a high level indication of how we consider the process is likely to develop over the 18 month implementation period if parties are unable to reach commercial agreement on fair and reasonable origination charges (in accordance with the access condition) and a dispute is referred to us for resolution. First, in response to Vodafone's comment about the timing of the NMR, that statement has now been published[592] and we have taken the changes to the fixed origination charge arising from that decision into account in our final base case scenario range. As noted above this therefore removes some of the uncertainty about the range of origination charges which we are likely to consider fair and reasonable in the event of a dispute about compliance with the access condition.

[591] See the diagram on p.10 of Vodafone's April 2013 policy position response.
[592] http://stakeholders.ofcom.org.uk/consultations/nmr-13/statement/

Figure A6.5: Indicative timetable for implementation if access condition set and dispute resolution subsequently required



A6.85 The diagram above therefore indicates that there could be a period of at least 10 months between the issuing of any dispute determination and the implementation of the requirement for 080 and 116 numbers to be charged at zero at the retail level. We note Vodafone has suggested that it would take three months for the findings of any dispute determination to be translated by TCPs into a commercial offering to SPs, and that if that is the case that would reduce the time SPs would have for considering migration away from the range to only 7 months. However, as noted above we consider that TCPs should be in a position to notify SPs of the likely changes in their origination charges from a much earlier stage using our 080/116 Dispute Guidance, and the analysis in this statement (and the April 2013 policy position).

A6.86 In terms of the dispute resolution process, we note stakeholder requests for shortening the negotiation period leading up to the dispute. We resolve disputes under section 185 of the Act (Article 20 of the Framework Directive) according to the process set out in our published dispute resolution guidelines ('Dispute Resolution Guidelines').[593] As set out in those guidelines, in order to accept a dispute, Ofcom expects to see evidence that parties have made reasonable endeavours to enter into good faith negotiations in order to seek to resolve matters before referring the matter to Ofcom.[594] In this respect we would highlight that we expect any TCPs and OCPs to draw on our 080/116 Dispute Guidance in any negotiations on revised origination charges, and for that guidance to provide an indication to the parties of what is likely to be considered fair and reasonable.

A6.87 Therefore the negotiation process is not necessarily likely to be as protracted as in normal circumstances where parties are operating without any guidance to assist the negotiations. In particular where a party is seeking to revise their origination charge to an amount which is outside the base case scenario range (which we have derived by applying the principles set out in our 080/116 Dispute Guidance to the

[593] Dispute Resolution Guidelines: Ofcom's guidelines for the handling of regulatory disputes, 7 June 2011: http://stakeholders.ofcom.org.uk/binaries/consultations/dispute-resolution-guidelines/statement/guidelines.pdf
[594] Ibid, paragraph 4.6.

evidence currently available to us) that party would need to be able to justify why its charge is nevertheless fair and reasonable. It should be clear relatively quickly to all parties whether there is scope for further negotiation or the matter would need to be raised with us. We will take account of this starting position when considering whether to accept a dispute in terms of whether sufficient effort has been made to negotiate.

A6.88 In addition, in determining any dispute as to whether origination charges are fair and reasonable, we are likely to draw on existing evidence that we have gathered or work we have undertaken in other regulatory contexts (for example, the analysis set out in the April 2013 policy position and in this statement).

A6.89 Vodafone, EE and BT all highlight that the outcome of any dispute is only binding on the parties to that dispute. BT and Vodafone in particular suggest Ofcom should impose some kind of requirement that ensures that the outcome of any dispute is binding across the industry. However, any determination of a dispute which Ofcom issues is based upon the specific facts and circumstances of that dispute and Ofcom cannot fetter its discretion as to any future dispute which might be brought. Nevertheless, as we highlight in our 080/116 Dispute Guidance[595] a subsequent dispute with similar facts is likely to result in a similar decision and we would expect dispute determinations to be read across and followed in situations where a third party is facing similar questions to those of the parties to the dispute that has been determined (see also paragraph 4.105 in Section 4). Similarly, where more than one dispute is brought by separate stakeholders who are unable to reach commercial agreement on fair and reasonable origination charges, Ofcom can consider those disputes together (so long as they meet the criteria set out in our Dispute Resolution Guidelines) and therefore any determination would be binding on all parties to those disputes.[596]

A6.90 A number of stakeholders highlight the previous tiered termination rate disputes as evidence that similar ongoing, lengthy disputes are likely to occur in relation to origination charges for free-to-call 080/116 numbers. However, in the context of those disputes we had not set out specific guidance to provide a framework for commercial negotiations, nor had we set out the detailed analysis of origination charges which is discussed in the April 2013 policy position and in this statement. In addition, there are other examples where a dispute determination in relation to wholesale charges on some number ranges has led to an adoption of that charging method as a standard across industry – for example, our determination of the 03 wholesale termination rate was adopted across the industry, despite it only involving two stakeholders.[597]

A6.91 Finally EE commented on its ability to continue charging customers at the retail level if no "legally binding" decision on the origination charges is in place by the Effective Date. It is not clear what EE means by a "legally binding" decision. The access condition will be legally binding on TCPs with immediate effect from the date on which it enters into force. As already discussed above, the requirement for the revised origination charges to be notified within one month will mean negotiations over the charges should start quickly and ensure that any disputes are triggered, and resolved, as soon as possible within the 18 month implementation period. Where commercial negotiations fail and a dispute is referred to us, then our

[595] See paragraph 1.14 in our 080/116 Dispute Guidance
[596] See paragraphs 5.7 to 5.17 of the Dispute Resolution Guidelines
[597] http://stakeholders.ofcom.org.uk/enforcement/competition-bulletins/closed-cases/all-closed-cases/cw_01058/

determination would also constitute a legally binding decision in relation to origination charges for the parties to that dispute. As indicated in Figure A6.5, we anticipate that this will occur well before the Effective Date. Nevertheless, we acknowledge that there is a lot of work to be undertaken during the implementation period and therefore Ofcom will be closely engaged throughout that period and we will take a decision six months ahead of the Effective Date on whether the planned timetable for the implementation of the free-to-caller regime remains appropriate.[598]

Business callers

Stakeholder comments

A6.92 Several stakeholders raised concerns about the restriction of the scope of the draft access condition to 080/116 calls made by consumers. EE, for example, noted particular concern that the definition of "Origination Services" in the draft access condition was so narrow as to be essentially unworkable in practice as, in many cases, it would not be possible for either the OCP or TCP to know whether or not a call had been originated by a consumer. EE therefore considered it would be in violation of section 47 of the Act for Ofcom to set an access condition which would only legally apply on a call by call basis (depending on whether or not the caller was making the call for purposes which were outside of his or her trade, business or profession).[599] It said the access condition should not be limited to consumer calls for the following reasons:

- whether calls were made by businesses or consumers made no relevant difference to the need for the access condition or the interpretation of the obligations imposed by the access condition;
- the working assumption behind Ofcom's free-to-caller proposals was that all types of 080/116 calls would, in practice, be made free-to-caller. It noted that currently a very material proportion of 080 calls were made by business customers ([✂]). To the extent that Ofcom's working assumption of the voluntary extension of free-to-caller arrangements to those customers proved accurate, it said it would be equally important for Ofcom to minimise regulatory uncertainty, unnecessary blocking of calls and disputes by setting an access condition on all 080/116 calls;
- there was no legal reason why Ofcom could not set the access condition on both calls made by businesses and consumers - it noted that unlike the maximum tariff principles that Ofcom was proposing to implement via amendments to the General Conditions and Numbering Plan, Ofcom's powers to set access conditions under section 73 of the Act were not limited to those designated for the protection of consumers;
- without the extension of the access condition to calls by customers on business tariffs it considered there was a very high risk that difficulties in reaching agreement on origination charges for those calls would pose a barrier to the implementation of free-to-caller arrangement for those customers. EE did not

[598] If we consider that implementation cannot proceed on the 'Effective Date' as planned, we would need to amend the relevant legal instruments (subject to statutory consultation procedures) to reflect any delay to the implementation timetable.
[599] EE, April 2013 policy position response, pp.17-18.

consider that such an outcome would be consistent with Ofcom's statutory duties to maximise benefits for all citizens and consumers.[600]

A6.93 [✂], in its response on the draft 080/116 Dispute Guidance, noted that the TCP would have no visibility of the type of customer calling a 080/116 number and without either voluntary agreement by the mobile OCPs in relation to business customers or a requirement on them to provide information about their customers, the result could be over-charging and a continuation of consumer harm on the range. It noted concern that this would inevitably lead to disputes.[601] FCS similarly noted that the difference between the regulation of consumer and business calls would make the negotiation of commercial terms within the supply chain more difficult as it would not be possible to determine whether the caller was a business or residential client.[602]

A6.94 Vodafone said experience had shown that any hint of a regulatory lacuna, such as in relation to business callers, might be exploited to impose wholly unjustified complex charging arrangements that could not be shown to promote competition or consumer interests. It said that given that one of the key drivers of the present reform was to break the cycle of litigation around novel NGCS charging structures, Ofcom needed to ensure that this objective was successfully achieved. Vodafone said it was concerned that if the scope of any dispute on origination charges was confined to wholesale calls that were within the scope of Ofcom's retail intervention, Ofcom could not guarantee the simple, uniform wholesale commercial model needed to support its retail transparency objective at a proportionate cost. Vodafone also specifically commented on the likely increase in billing costs created if there was a requirement to categorise call records by the type of caller (i.e. whether a consumer or business). It said this unneeded complexity risked undermining all previous cost estimates.[603]

A6.95 [✂].[604]

Ofcom's response

A6.96 As we explained in the April 2013 policy position, the access condition is intended to secure end-to-end connectivity for end-users of 080 and 116 services, by avoiding delays and failures in interconnection which might otherwise arise as a result of the 080 and 116 number ranges being made free-to-caller and the consequential renegotiation of wholesale origination charges. In addition we noted that it will prevent call blocking by TCPs/SPs that might otherwise occur, ensuring that all OCPs can obtain connectivity to 080 and 116 numbers in a timely manner.[605] However, the draft access condition on which we consulted applied only in respect of consumer calls to 080/116 numbers. This was because we were only proposing to make consumer calls to 080/116 numbers free at the retail level. Calls made by business callers to 080/116 numbers would therefore be unregulated at both the retail and wholesale level. Nevertheless, as highlighted in EE's comments, we assumed for the purposes of our impact assessment that all types of calls to 080 and 116 numbers - both consumer and business calls - would in practice be made

[600] EE, April 2013 policy position response, pp.17-18.
[601] [✂].
[602] FCS, April 2013 policy position response, p.2.
[603] Vodafone, April 2013 policy position response, pp.14-15.
[604] [✂].
[605] See paragraph 6.69 of the April 2013 policy position.

free-to-caller at the retail level (i.e. that OCPs would voluntarily zero-rate business calls to 080/116 numbers).[606]

A6.97 It is clear from stakeholder comments that there is significant concern about wholesale arrangements for business calls to 080/116 numbers where these have been voluntarily zero-rated by OCPs at the retail level. On reflection, we recognise that there is likely to be a substantial risk, as outlined by stakeholders, that the interconnection problems that we have already identified for consumer calls would materialise in respect of voluntarily zero-rated business calls to 080 and 116 numbers.[607]

A6.98 In particular this includes the same potential for imbalances in negotiating power (in favour of either OCPs or TCPs) to lead to delays in interconnection or interconnect failures, due to OCPs or TCPs using their bargaining power to seek to drive origination payments for these calls to a particularly high or low level. Commercial agreement over these charges may also be delayed if there is no clear starting point for negotiations (because our 080/116 Dispute Guidance would not apply to those calls). The previous history of interconnection problems on the 080 range, evidenced by the lengthy and extensive disputes[608], have been related to all call types (i.e. both residential and business calls) and therefore it seems likely that the potential for connectivity problems to occur is equally likely in relation to zero-rated business calls and consumer calls to the same 080/116 numbers.

A6.99 In addition, and as highlighted by EE, we recognise there is also a risk of OCPs/TCPs employing tactics that fall short of refusals to interconnect in response to origination payments they find unacceptable (e.g. call blocking). For example OCPs might seek to block calls from customers on particular business tariffs to particular 080/116 number blocks if they consider the origination payment offered by the host TCP to be unacceptable.

A6.100 Even if there is no breakdown in connectivity, the potential would remain for a period of prolonged uncertainty for SPs in relation to wholesale charges for zero-rated business calls to 080/116 numbers, which could in turn result in an extended period of uncertainty in relation to SPs' overall outpayments to TCPs.[609] This could have an adverse affect on service availability, investment and innovation on these number ranges (regardless of the level of outpayments ultimately agreed) as SPs seek to make decisions about whether to remain on the 080/116 ranges or to migrate to another range as quickly as possible (and may therefore act on the basis

[606] See paragraph 12.115 of the April 2013 policy position. We based this assumption on the fact that calls from fixed OCPs to 080/116 numbers are already free to both consumers and business callers and, in the case of mobile, we expected that business contracts would generally provide more beneficial terms than residential contracts, particularly if business customers valued calls to 080 (which appeared consistent with the evidence we had received on call volumes).
[607] See paragraphs 14.8 to 14.32 of the April 2013 policy position
[608] See paragraph 14.16 of the April 2013 policy position.
[609] With differentiated wholesale origination payments for consumer and business calls, SPs' overall outpayments to TCPs would likely depend on the rate agreed for receiving 080/116 business calls, the rate for receiving consumer calls and the mix of those call types to their service (assuming that SPs receive both types of calls, which given the information on call volumes appears likely to be the case) – see footnotes 415 and 416 to paragraphs 12.114 and 12.115 in Section 12, Part C of the April 2013 policy position.

of an overly pessimistic view of the likely level of origination payments they would incur for receiving zero-rated business calls).[610]

A6.101 As noted above, some OCPs and TCPs with a particularly strong negotiating position may seek to drive origination payments for zero-rated business calls to a particularly high or low level. In addition to the risk of delays and breakdowns in connectivity, the risk of charges being levied that are not fair and reasonable (at least initially) could harm service provision and innovation on the 080/116 ranges or prevent OCPs from recovering their efficiently incurred costs. We could not therefore be confident that SPs currently active on these number ranges would receive appropriate signals as to whether they should remain on the range or migrate when it is made free-to-caller (and the same would apply to SPs considering offering new services on these ranges when they are made free-to-caller).

A6.102 Consequently, given the points stakeholders have raised, we have decided to amend the access condition so that it will apply to all 080/116 calls which are zero-rated at the retail level, whether as a result of our regulation of consumer calls to these number ranges or because of a voluntary decision by the OCP to zero-rate business calls to these ranges. We consider that this will minimise the risk of interconnection problems and call blocking for zero-rated business calls to 080 and 116 numbers and avoid the risk that the origination payments agreed through commercial negotiation would not necessarily be fair and reasonable, at least initially.

Other comments

A6.103 EE said, depending on the level of the origination charges recommended by Ofcom in its final 080/116 Dispute Guidance, it considered that the access condition could fall foul of the legal obligation requiring that an access condition did not unduly discriminate (section 47(2) of the Act). In particular it considered this would be the case if Ofcom maintained its current position that fixed OCPs would be able to recover their full LRIC+ costs but mobile OCPs would only permitted to recover a portion of those costs.[611]

Ofcom's response

A6.104 Our access condition requires both mobile and fixed origination charges to be fair and reasonable. It therefore does not discriminate unduly between fixed and mobile operators. EE has referred to our 080/116 Dispute Guidance. However, this does not form part of the access condition imposed under section 73(2) and 74(1) of the Act (Article 5 of the Access Directive). Rather, it constitutes guidance as to how we would exercise our powers under section 185 of the Act (Article 20 of the Framework Directive) to resolve any future dispute about whether a CP has complied with its legal obligations.

A6.105 In any event, we disagree with EE's argument about undue discrimination. As we have set out in this statement, the relevance in our 080/116 Dispute Guidance of the absolute contribution to common costs (compared to the percentage of these

[610] This may be further complicated by a change in the current mix of consumer and business calls being received by the SP. It seems plausible that the proportion of consumer calls might increase once mobile calls to 080/116 are zero-rated at the retail level as individuals may currently be using their work phone to make 080/116 calls to avoid retail call charges from their mobile.
[611] EE's response to the April 2013 policy position, p.25.

costs) is based on a number of objective reasons: efficient pricing signals to SPs for their decision on cost mitigation measures; the likelihood that many SPs derive the same benefit independently of whether the call originates from a mobile or fixed line (even if there are some exceptions to this); and avoiding distortions to competition between networks. See, for example, paragraphs 4.50 to 4.51 in Section 4 and also paragraph A5.359 in Annex 5. As a result, we do not consider our 080/116 Dispute Guidance to be unduly discriminatory.

Design of the access condition

Notification of initial revision to charges

Approach in the April 2013 policy position

A6.106 We invited consultation responses in relation to our proposal that TCPs provide a notification of their revised (fair and reasonable) origination charges. In the April 2012 consultation we proposed that TCPs be required to notify their SP customers of revisions to their origination charges within two months. However, after considering stakeholder comments, we recognised in the April 2013 policy position that it was likely to be impracticable for TCPs to provide initial notice to SPs at a time when they may not yet have concluded negotiations about their origination charges with OCPs. We therefore proposed that a requirement for TCPs to notify OCPs (instead of SPs) of their proposed origination charges would be more appropriate. We also considered that more advance notice for industry of any initial revision to origination charges could be helpful and we therefore proposed to reduce the notification period to one month from when the access condition is set (rather than the two months proposed in the April 2012 consultation).[612]

A6.107 We asked the following question regarding this proposed change:

Question 14.1: Do you agree that the notice to be given by TCPs of initial revisions to origination charges (as set out in the draft access condition): (i) should be given to OCPs and (ii) should be given within one month of the condition being set? If you do not agree, please explain why.

Stakeholder comments

A6.108 Three and EE agreed that TCPs should give notice of their proposed origination charges to OCPs within one month of the access condition being set – Three noted that the earlier the notice was served the sooner any dispute processes could begin and this might reduce the likelihood of delays to Ofcom's preferred implementation timetable.[613] Similarly, one SP [✂] believed that a one month time limit would result in a more efficient implementation and should result in SPs being made aware of the changes.[614]

A6.109 EE agreed with Ofcom's approach of imposing the access condition on TCPs only and it also supported the decision to remove the obligation upon TCPs to notify SPs.[615] BT also agreed that notice should be given to OCPs rather than to SPs. However, given the logistical problems often experienced in the past with contacting all CPs, it said it would prefer Ofcom to maintain the previous proposal for two

[612] See paragraphs 14.68 to 14.75 of the April 2013 policy position in particular.
[613] Three, April 2013 policy position response, p.29. EE, April 2013 policy position response, p.18.
[614] [✂].
[615] EE, April 2013 policy position response, p.18.

months notice. It said that, whilst it recognised the need to notify, it did not consider that TCPs could take full responsibility for ensuring that notification reached the intended or appropriate parties. It said it was a shared responsibility to maintain accurate contact and distribution lists and the contacted party would hold all the information if those changed. It therefore believed that, in addition to notification, TCPs should also publish revisions so that the publication acted as a central information repository should any notification fail to reach the intended party.[616]

Ofcom's response

A6.110 Respondents broadly agreed with our revised approach of requiring the TCP to notify the OCP of any initial revision to its origination charges. Based on the reasoning previously set out in the April 2013 policy position, we have therefore maintained this requirement in the access condition set out in Annex 11.

A6.111 We do not consider it is necessary to impose a requirement for revised origination charges to be published, as BT suggests, to act as a central repository in the event of a failed notification. A TCP is only required to notify OCPs with whom it has an existing direct interconnect relationship. We expect in these circumstances that the two parties will be in contact with respect to billing and settlement for interconnect traffic and therefore consider it highly unlikely that they would need to resort to a central information repository in order to liaise with each other in relation to amendments to interconnect charges. However, we agree with BT that a TCP's responsibility is to send a notice to the OCP in accordance with its contractual notice provisions (i.e. using the contact details provided in its interconnect agreement or subsequently updated under the notice provisions of that agreement) and it is the OCP's responsibility to ensure that any change in its contact details is properly notified to its contractual counterparties. We will consider that the TCP has complied with its obligations under the access condition where it has provided notice to OCPs in this manner.

A6.112 In terms of the length of the notice period, we note that with the exception of BT, other respondents agreed that a one month notice period was preferable because it would reduce the scope for delays in the implementation period. As set out earlier, several stakeholders have raised concerns about ensuring that wholesale charges are agreed in a reasonable timescale in order to provide SPs with sufficient notice to make decisions about whether to stay on their number range. Given these concerns we consider it is important to ensure that the negotiation process is started as soon as possible in order to minimise the period of uncertainty for SPs. We recognise that this may involve a logistical task for larger TCPs such as BT, but we note that (as indicated in the April 2013 policy position) these TCPs can have started to consider what their potential wholesale origination charges might look like (as well as planning the logistical process of notifying OCPs) since the publication of our April 2013 policy position.

A6.113 Therefore, whilst we recognise that a shorter notification period (i.e. one month rather than two) may concentrate the logistical task for some CPs into a shorter time period, we consider that the risks to the implementation timetable (as indicated in our discussion above – see paragraphs A6.81 to A6.91) of a longer notification period outweigh that potential logistical burden. In addition, we place greater weight on the importance of minimising the period of uncertainty for SPs and therefore we have decided to maintain the obligation for TCPs to notify initial revisions of origination charges to OCPs within one month of the access condition being set.

[616] BT, April 2013 policy position response, p.18.

The wording of the access condition

A6.114 As noted above, stakeholder comments on the drafting/wording of the access condition are summarised and addressed in Annex 7.

Annex 7

Legal instruments and powers – response to stakeholder comments

Introduction

A7.1 In the April 2013 policy position, we set out the modifications we proposed to make to five of the General Conditions (GCs12, 14, 17, 23 and 24) and the Numbering Plan in order to implement the unbundled tariff and to make the 080 and 116 ranges free to caller. We also proposed:

- to set a new condition under section 59 of the Act to impose transparency requirements on those advertising an unbundled tariff number who are not communications providers;
- modifications to the condition made under section 120 of the Act which sets out the premium rate services which are subject to regulation by PPP (‘the PRS Condition’);
- to set an access condition on CPs which terminate calls to 080 or 116 numbers.

A7.2 Our reasons for the proposed modifications were set out at Part A, Section 6 of the April 2013 policy position; the notifications of the draft modifications were at Annexes 14 to 18. We also included at Annex 13 a detailed discussion of the legal powers that we proposed to use to implement these modifications.

A7.3 In this Annex we set out first the general comments we received from stakeholders on the proposed modifications to the General Conditions and our response, and then specific comments on the proposed modifications to each of the relevant General Conditions and on each of the other notifications, followed by our response. We then set out, and respond to, stakeholder comments received on the legal powers we are using to make the changes to the regulation of non-geographic calls.

General comments

A7.4 [✂] said the proposed changes to the General Conditions left a certain ambiguity as to how CPs might interpret them when making the necessary changes to ensure compliance by the effective date. It suggested that Ofcom issue guidance in order to make certain that all CPs are fully compliant when the changes take place.[617] FCS also said that Ofcom should issue clearer guidance on which approaches to provision of additional information to customers met Ofcom’s requirements.[618]

A7.5 BT noted that Ofcom used the terms “Customer”, “Consumer”, “Subscriber”, “Caller” and “End-User” interchangeably. It said that, given the decision to apply the EU framework definition of ‘consumers’ to the implementation of both the unbundled tariff and free-to-caller 080/116, it considered that that term should be used wherever applicable in the amendments and the terms “Caller” and “End-User” in

[617] [✂]
[618] FCS, April 2013 policy position response, p.2.

particular should be avoided because both terms widened the interpretation of Ofcom's proposals and could not easily be implemented by the industry.[619] EE noted similar comments and said the range of definitions made it hard to identify where possible overlaps and gaps were and it asked Ofcom to harmonise the definitions as much as possible.[620]

A7.6 EE noted that the number of changes made to the GCs throughout the years had led to a decrease in transparency, a duplication of obligations, use of terms with different definitions and cross-referencing, leading to an unwieldy and complex set of regulations which impacted the understanding and therefore the ease of compliance. It noted it had asked Ofcom on several occasion to review the GCs but that review had not materialised (and it noted was no longer part of Ofcom's annual plan). EE believed that review was more than overdue.[621]

A7.7 EE considered that the definitions used throughout the legal instruments were confusing. It proposed that, for ease of compliance, each GC should have its own set of definitions which meant the GC could be read in isolation even if this led to duplication of definitions across all GCs.[622]

Ofcom response

A7.8 We have published guidance in this statement on the price points that emerge from our analysis of call volume data and a rationalisation by the application of a consistent methodology in order to address stakeholders' concerns as to how they might determine a set of price points in compliance with their new regulatory obligations (see Annex 3). We have also published alongside this statement guidance as to how we will approach any future dispute as to whether origination payments for calls to 080 and 116 numbers are fair and reasonable.[623] Furthermore, we have allowed an 18 month period from the date of this statement before the obligations take effect in part because we recognise the need to have on-going engagement with industry in relation to implementation issues (see Section 6 where we set out our approach to implementation). Accordingly, we do not consider that there is a case for issuing more general guidance to assist CPs and others to comply with the new obligations, as [✂] and FCS have proposed.

A7.9 We are aware that there a number of different terms which are used to refer to users and potential users of electronic communications services in the General Conditions. These terms derive from definitions in the Framework Directives and the Act. While there are overlaps in the definitions of these terms, they each have a precise meaning and cannot be harmonised without potentially changing the scope and application of a particular requirement. It is beyond the scope of this review to consider the extent to which the use of these terms could be simplified across the General Conditions. In terms of the modifications we have made to implement the unbundled tariff and to make the 080 and 116 ranges free to call, these clearly specify that the provisions apply only in relation to calls made by "Consumers" (as defined in GC17) and not more widely.

A7.10 We also recognise that a number of the General Conditions impose transparency obligations. However, they each address a need for transparency in different

[619] BT, April 2013 policy position response, p.4.
[620] EE, April 2013 policy position response, p.62.
[621] EE, April 2013 policy position response, pp.59-60.
[622] EE, April 2013 policy position response, p.60.
[623] http://stakeholders.ofcom.org.uk/consultations/080-116-ranges/

circumstances – GC12, for example, imposes requirements in relation to itemised bills, GC23 and GC24 set out information that is to be provided at point of sale. We therefore do not agree that the different GCs are duplicative and any simplification to the form of these provisions is outside the scope of this review. Our response to similar concerns which have been raised in relation to the transparency provisions of GC14 is set out at paragraph A7.43 below.

A7.11 We note EE's proposal in relation to the presentation of definitions in the General Conditions. To the extent that EE is suggesting that we should carry out a rationalisation of the definitions used across all of the General Conditions, then this would be outside the scope of this review. In any event, we do not consider it confusing for definitions to be included once and then cross-referenced in other places where the term is used, provided that it is clear where the definition can be found.

General Conditions

General Condition 12

Our proposed modification

A7.12 In the April 2013 policy position, we set out our proposed modifications to GC12 to require a communications provider to include in an itemised bill provided to a consumer, the AC charged to that consumer, i.e. the rate that the consumer is charged for calling unbundled tariff numbers. The proposed modification provided for the obligation to take effect from the "Effective Date", the date on which the unbundled tariff regime takes effect.[624]

Stakeholder comments

A7.13 Some stakeholders said that the current drafting suggested, contrary to Ofcom's intention, that there was an obligation to provide the AC, and the SC, on a per call basis and suggested drafting to remedy this.

A7.14 Conversely, TNUK contended that the new obligation introduced by the proposed modification was "*clearly inadequate*" because it could be met simply by including in a consumer's bill the wording "Your access charge is XXp per minute". It suggested that the requirement should be more prescriptive in order to ensure that consumers are given an explanation of the connection between the itemised call charges for non-geographic numbers and the separate wording about their particular AC – it set out some proposed wording to achieve this effect. TNUK also said that this information needed to be provided with a reasonable amount of prominence on the bill and OCPs must not be allowed to simply hide the information in the small print. It noted that in the proposed changes to GC14 there was a requirement to display the AC "with equal prominence" and said a similar requirement should be applied in the case of customer's bills.[625]

A7.15 BT suggested that the definition "Subscriber's Access Charge" is changed to "Consumer's Access Charge" given that the requirement is intended to only apply to consumers.[626]

[624] See paragraphs 6.20 to 6.22 and Annex 14 in Part A of the April 2013 policy position.
[625] TNUK, April 2013 policy position response, pp.15-16.
[626] BT, April 2013 policy position response, p.13.

Ofcom response

A7.16 Other than changing a defined term (see paragraph A7.17 below), we have not amended the modification to GC12 which we proposed in the April 2013 policy position. We consider the requirement as drafted is clear. As TNUK have correctly identified, it is to include in such bills the pence per minute ('ppm') rate that the consumer is charged by the CP for retailing and originating a call to an unbundled tariff number, not the total amount that the consumer is charged in respect of the AC for each such call. We consider the provision of the ppm rate will be sufficient to enable the consumer to verify and control the charges s/he incurs in calling unbundled tariff numbers and to monitor such expenditure, as required by GC12.1. We do not consider that it is necessary to prescribe in more detail how CPs should communicate this information to their customers. TNUK's suggested wording is a helpful model of the type of explanation that CPs may wish to provide, particularly at the outset of implementation, but we consider that each communications provider should be able to determine how to tailor the required information – the AC rate – to their retail customer base.

A7.17 In response to BT's observation about the potential confusion which may be caused by the defined term "Subscriber's Access Charge", we have changed this to "Applicable Access Charge". We have also made minor modifications to the meaning of this term to align it with changes we have made to the definition of "Access Charge" in GC17, in response to comments from a stakeholder (see paragraph A7.77 below).

General Condition 14

Our proposed modification

A7.18 The modifications to GC14 that we proposed in the April 2013 policy position set out the new transparency requirements that CPs will have to meet from the Effective Date in relation to their retail charges to consumers for calls to unbundled tariff numbers. In order to avoid duplication with existing transparency requirements in GC14, the proposed modifications included a provision to the effect that the new transparency requirements replace the existing obligations insofar as they require the provision of information to consumers about charges for calls to unbundled tariff numbers.[627]

Stakeholder comments

A7.19 As well as general comments on our overall approach to modifying GC14 we also received specific comments on several of the proposed paragraphs. We have set these out in turn below.

General comments

A7.20 Sky said as a general comment its view remained that the existing price disclosure obligations that applied to other call charges (including the Consumer Protection from Unfair Trading Regulations 2008 – the CPRs) and the UK Advertising Codes applied equally to the AC and were sufficient to ensure that the necessary pricing information was provided in respect of non-geographic numbers. Given those powers it did not consider that further powers were required and it noted concern

[627] See paragraphs 6.23 to 6.39 and Annex 14 in Part A of the April 2013 policy position.

that further overlapping powers would create regulatory uncertainty in what was a fast paced environment.[628]

A7.21 O2 said that changing the structure of NGCS prices presented Ofcom with an opportunity not only to simplify non-geographic numbers, but also to simplify the consumer information that had build up around them. It considered that the proposed amendments to GC14 did not take full advantage of that opportunity to communicate the changes effectively to customers. O2 said that it had not had sight of the guidelines in Annex 1 to GC14 and the amendments to those and it said it was therefore unclear whether Ofcom required providers to produce and publish several separate Codes and whether the costs of doing so were properly considered.[629]

A7.22 O2 recommended that Ofcom could simplify GC14 to better reflect the new NGCS regime by consolidating the information requirements for PRS, NTS and 0870 to reflect the consolidation of the ranges under the proposed AC, requiring one code for all non-geographic numbers with one set of guidelines. It said if the proposed amendments were applied in their current form there was a potential for six or more Codes of Practice to be published. It noted that by creating a single Code for non-geographic numbers, Ofcom could ensure that 118 numbers were also included and clarified for consumers.[630]

A7.23 Similarly, EE suggested that the new proposed obligations under GC14 would sit better in GC10 (in particular the obligations in GCs14.8 to GC14.10 which it considered to be unnecessarily detailed and prescriptive). It noted this would remove the need for duplicating transparency requirements in two GCs and would ensure the transparency obligations remained transparent. EE did not believe that the AC was different from any other type of usage charge and therefore it did not consider that it warranted separate treatment. It said Ofcom's approach appeared to be adding more information to an already long list of information which customers were expected to absorb and process, rather than assessing which information was most relevant to the customer, what point in their contract they needed that information and the best way to provide that information.[631]

A7.24 EE considered that retaining the existing obligations regarding non-geographic numbers for business customers was disproportionately burdensome. It noted the GCs contained a number of existing obligations around information provision and transparency (e.g. GC9.2 and GC10) and it considered those obligations were sufficient for business customers.[632]

A7.25 BT noted that the proposed new GC14.9 and GC14.13 specifically mentioned Consumers and it was therefore clear they only related to Consumers. It said it was therefore unclear whether the other new parts of GC14 (such as 14.8) applied only to consumers or more widely. It requested that Ofcom provided additional clarification to avoid inconsistent interpretation and application of the regulation.[633]

[628] Sky, April 2013 policy position response, p.2.
[629] O2, April 2013 policy position response, p.2.
[630] O2, April 2013 policy position response, p.2.
[631] EE, April 2013 policy position response, pp.60-61.
[632] EE, April 2013 policy position response, p.60.
[633] BT, April 2013 policy position response, p.12.

GC14.2 and 14.3

A7.26 O2 suggested that Ofcom should revise GC14.2 and GC14.3 to clarify that they apply to 'consumers' to be consistent with the terminology used in the proposed GC17. It said the Code should include a note for small business customers with 10 or less employees which clarifies which matters relate to them and/or to explain that if they have taken out a consumer tariff those rules apply to them.

GC14.8

A7.27 Sky noted that Ofcom had proposed that CPs should give ACs equal prominence to "call packages, including bundles". It said it agreed that ACs should be transparent, but said the requirement that they were given the same level of prominence as the subscription charges for each talk package was a particularly onerous obligation and would require OCPs to set out their ACs in the body of their marketing alongside the subscription charges, even where telephony services were not the focus of such marketing. It believed that such a requirement would be disproportionate to the benefits realised to customers.[634]

A7.28 EE similarly argued that GC14.8 was overly prescriptive did not reflect customer's perception of the value of bundles and services. It said giving the same prominence to ACs as to bundles implied they had equal importance to consumers, whereas EE considered that customers would clearly attach more importance to the components and charge of an overall bundle compared to a standalone AC.[635]

GC14.9

A7.29 SSE said that GC14.9(b) appeared to use language that was associated with mobile telephony packages, for example "bundles of inclusive minutes". It noted that for fixed line voice packages, tariffs generally included calls made at particular times of the day or week rather than an absolute number of "included minutes". It suggested that Ofcom reviewed the wording here to ensure that it was clear on what the intended effect was for transparency in fixed line packages.[636]

A7.30 EE argued, however, that GC14.9 was unnecessary because it was clearly in OCPs interests to provide customers with accurate and comprehensive information about their price plans and tariffs. [637]

GC14.10 and GC14.11

A7.31 Three said it was concerned that the requirement set out in GC14.10 relating to ACs was not only an unnecessary and disproportionate duplication of regulation but might be unworkable and confusing for consumers in practice. It noted that existing regulation of advertising and promotional material already requires advertisers to ensure that consumers are given sufficient information to make an informed decision and to ensure that they do not make misleading omissions.[638] Moreover it said when applied in practice to advertising campaigns this requirement added yet another level of detail which had to be incorporated. It was concerned there was a

[634] Sky, April 2013 policy position response, p.2.
[635] EE, April 2013 policy position response, pp.61-62.
[636] SSE, April 2013 policy position response, Q6.1.
[637] EE, April 2013 policy position response, pp.61-62.
[638] For example the Consumer Protection from Unfair Trading Regulations and the CAP Advertising Code.

danger that the level of information that would have to be conveyed to a consumer would overshadow the advert and potentially overwhelm and confuse people trying to understand what was being offered, as well as being likely to detract from other, arguably more important terms or charges that might apply (for example monthly line rental).[639]

A7.32 EE also questioned how GC14.10, in particular the requirement to provide a weblink to call prices, could be implemented in practice. It noted that weblinks could be very long and take up significant amount of space, and more importantly it questioned the benefit to consumers. It believed it was sufficient to publish ACs alongside other usage charges and publish them with the same prominence.[640]

A7.33 EE noted Ofcom appeared to have included the proposed new obligation in GC14.11 because GC23 and GC24 do not cover all services. It believed this obligation was unwieldy, unnecessary and disproportionate. It said there were very good reasons why Ofcom had determined that the general point of sale information requirements in GC23 should not apply to prepay customers (who it noted could simply pick up a pre-pay phone off the shelf from a variety of different retail outlets). It said there was simply no logical reason for elevating the importance of the AC above the other key contractual information such that it was the only information a mobile OCP would have to ensure was provided to pre-pay customers at the point of sale.[641]

A7.34 Three questioned whether it was realistic for consumers on pre-pay tariffs to be given information at the point of sale on the ACs (as proposed under GC14.11) given that these were often unassisted sales which took place in a variety of (often non-mobile) retailers. It said it struggled to understand how in practice that information could be usefully communicated to a consumer along with the other (arguably more) important facts a customer needed before reaching a purchase decision. Three suggested Ofcom should delete the mobile element of GC14.11 on the basis of it being impractical to implement.[642]

A7.35 TNUK noted concerns with GC14.10 and GC14.11, in particular the wording which required OCPs to provide in advertising and promotional material “a clear reference as to where on websites and published price lists the AC for each tariff package which it makes available to Consumers can be found”. It noted that those price lists were invariably only available on OCPs websites which meant the practical effect of the wording was that the OCPs would include a link to the webpage where the AC would be found and it expected that would be included in the small price text at the bottom of print advertising in particular. TNUK said this would self-evidently be of no value whatsoever to consumers. It noted GC14.11 was more realistic in that consumers were likely to be sent a letter which contained the link but it said it was still problematic because in reality URL links only ever had value if they were provided in digital form which allowed consumers to click on them and access the page directly. TNUK suggested instead that the wording be amended to require that the AC itself was included. It noted that even if the AC varied between tariff packages that could be overcome by stating the maximum AC, or the range of ACs

[639] Three, April 2013 policy position response, p.23.
[640] EE, April 2013 policy position response, pp.61-62.
[641] EE, April 2013 policy position response, pp.61-62.
[642] Three, April 2013 policy position response, p.23.

available. It believed either of those options would be clearer and of more value than the inclusion of a long weblink.[643]

A7.36 TNUK also considered that, for the same reasons it argued in relation to GC12, GC23 and GC24, the wording in GC14.11 should be amended to require OCPs to provide an explanation of the AC rather than simply stating its level.[644]

GC14.12 and 14.13

A7.37 [✂] believed that the insertion of GC14.13 was "heavy handed". It considered it was unreasonable to expect a reseller to be potentially liable for a GC breach for failing to procure the compliance of another entity; especially when there were direct backstop powers from the ASA and OFT. It said the administrative effort required for a network and/or reseller to protect themselves from that liability contractually was disproportionate and instead the same outcome could be achieved through informal education and training of SPs.[645]

A7.38 [✂] also noted there was no such obligation to ensure those conditions were met with an end-user in excess of 10 employees which it noted was near impossible. It considered that GC17.4(a) provided Ofcom with a variant of the proposed obligation in GC14.13 and it said it would prefer the Numbering Plan to be updated in such a way that an allocatee of the numbers involved should only sub-allocate or adopt Unbundled Tariff Numbers if they had engaged in reasonable endeavours to ensure the counter party to the transaction is aware of the relevant regulations they were required to adhere to.[646]

A7.39 Sky said that Ofcom's proposed amendments to GC14.12 and GC14.13, which required the provision of information on the SC in advertising materials, should be removed, because CPs were already subject to prescriptive rules, under the Advertising Codes on how it described its prices in its advertising. It noted that those rules already required it to make clear on non-optional charges and fees (such as the SC) which customers were required to pay in order to receive a service. In addition it considered that the CPRs already sufficiently addressed Ofcom's proposed requirements in GC14.12 and GC14.13 to ensure that relevant information was clearly available to consumers where necessary.[647]

GC14.14

A7.40 Three said it was concerned that where an SC changed, the customer might not be immediately aware of that change given there was no requirement on SPs to proactively notify them of such an event. It said this should be rectified and a relevant obligation should be imposed on SPs. Three in particular suggested that given the burden currently rested with CPs to handle complaints even where the cause of the issue was beyond their control (e.g. the SC), Ofcom should clearly specify the requirements in GC14.14 to reflect the fact that in the case of complaints about SCs, CPs were likely to only be able to direct customers to either the SP or the centralised list of SCs being managed by Ofcom.[648] Three said that it believed its proposal of ensuring SPs were obligated to proactively notify customers of SC

[643] TNUK, April 2013 policy position response, pp.17-18.
[644] TNUK, April 2013 policy position response, p.18.
[645] [✂]
[646] [✂]
[647] Sky, April 2013 policy position response, p.2.
[648] Three, April 2013 policy position response, p.23.

changes, combined with the centralised (customer friendly) publication of information was a fairer distribution of effort and cost than OCPs having to introduce potentially costly and operationally burdensome mechanisms to ensure customers were informed about changes in SCs (which it believed OCPs might decide to do under the current proposals).[649]

Annex 1 - Requirements on OCPs to notify the SC

A7.41 EE believed obligation 3.3(ii) in Annex 1 to GC14 should be amended because Ofcom would hold the information on SCs for each number range and therefore OCPs should simply be able to refer customers to that information.[650]

Ofcom response

General comments

A7.42 In relation to the general objection raised by Sky that the new transparency requirements are unnecessary, our position remains that the effectiveness of the unbundled tariff will rely on consumer understanding of the new charging structure and awareness of the AC they will be charged. Therefore it is important to ensure that CPs provide clear and readily available information to consumers about NGC prices. We remain satisfied that the specific obligations contained in the modifications to GC14 are required to achieve this.

A7.43 In relation to the observation that requirements of GC14 could be further rationalised, we acknowledged in the April 2013 policy position that the modifications we are making overlapped with some of the existing transparency requirements of GC14 and have taken steps to address this as far as is possible.[651] We explained that the existing requirements have to be retained to provide pricing information for consumers and small businesses in relation to non-geographic calls during the 18 month implementation period and, thereafter, for small businesses and for those numbers (such as 070 numbers) which are outside the scope of the modifications implementing the unbundled tariff. While a single code has obvious presentational attractions, these do not, of themselves, provide a sufficient justification for making such a change. We could only do so after assessing whether there is a substantive case for amending requirements which are outside the scope of this review. This is a matter that we are intending to examine more closely during the implementation period. As set out below (see paragraphs A7.47 to A7.51), we have amended the proposed modifications to GC14 in response to stakeholders' comments to further simplify the transparency obligations that CPs will be required to meet.

A7.44 BT's comment in respect of references to a Consumer has been addressed by our modification to GC14.8, which is explained below.

A7.45 In relation to the responses directed at specific provisions of the modifications, we respond in turn below.

[649] Three, April 2013 policy position response, pp.23-24.
[650] EE, April 2013 policy position response, pp.61-62.
[651] See paragraph 6.30 *et seq* in Part A of the April 2013 policy position.

GC14.2 and 14.3

A7.46 It would not be appropriate to amend these paragraphs as O2 suggests since it is not the case that they are intended to only benefit consumers. The requirements were introduced for the protection of domestic and small business customers, as defined in GC14.13. As explained, they will continue to be required during the 18 month implementation period. We are not currently in a position to remove the requirements in respect of small business customers once the unbundled tariff is implemented. However, we will be keeping the operation of these provisions under review, so that we are able to propose further modifications to streamline the requirements, once there is sufficient evidence before us to suggest that would be appropriate.

GC14.8

A7.47 We want to ensure that consumers are provided with accessible information by their CP about the AC and that the AC is promoted in a way that is equivalent to the promotion of charges for bundles and geographic and mobile calls. These measures will contribute to consumer understanding of the new pricing structure and awareness of the amount they will be charged by their CP for making such calls. This, in turn, will enable consumers to take into account the cost of these calls when deciding which CP and which bundle of services to select. We therefore disagree that it is disproportionate to require CPs to give the AC the same level of prominence as is given to the subscription price for a bundle. We consider this is also the case where calls are bundled with other services.

A7.48 In response to stakeholder comments, the modifications to GC14 we are making no longer include the requirements to identify the location of the AC on websites and price lists (GC14.10 and GC14.11 of the proposed modification). Instead, GC14.8 imposes a general obligation on CPs to ensure that their ACs are readily accessible to consumers, and specifies that the AC must be given equal prominence as charges for call bundles and/or geographic and mobile calls on the website, published price lists and advertising and promotional material which refer to call pricing.

GC14.9

A7.49 In response to the comment from SSE, we have clarified the description of a bundle in paragraph 14.9(b) so that it is clear that it applies both to bundles of inclusive minutes and bundles of calls made at particular times. We have also added the words “if relevant” to paragraphs 14.9(b)(ii) and (iii), so that it is clear that these requirements do not apply if they are not applicable to the bundle in question.

A7.50 In view of our decision, in response to stakeholder comments, to allow the CP to choose which unbundled tariff numbers it wishes to include in a bundle (see Section 3), we have added a new requirement at paragraph 14.9(i) to identify the numbers to which the terms of the bundle apply.

GC14.10 and 14.11

A7.51 We accept that the requirements in GC14.8 are sufficient to ensure that the AC is made available and appropriately promoted to consumers and further requirements to identify the location of AC information are unnecessary. We have therefore deleted these paragraphs from the modification to GC14.

GC14.12 and 14.13

A7.52 These modifications (now GC14.10 to 14.11) are the mirror requirements to those we are imposing on service providers in the telephone numbering condition binding non-providers. It only applies where the CP provides a service to consumers by means of an unbundled tariff number (for example a helpline). The comment from [✂] suggests that some stakeholders may be under the misapprehension that the provision is intended to apply more widely. This is not the case and we have amended the wording of GC14.10 to make the scope of the requirement clearer.

A7.53 The purpose of these modifications (and the numbering condition binding non-providers) is to ensure that consumers, as far as possible, have access to the amount of the SC that applies to the unbundled tariff number used by the CP to provide a service to its customers. We explained in the April 2013 policy position[652] that we considered that this was crucial to the effectiveness of the unbundled tariff. This remains our position.

GC14.14

A7.54 In relation to Three's comment about the potential burden for OCPs in responding to complaints about the SC by virtue of its obligations under GC14.14 (now GC14.12),[653] we note that this provision does not require OCPs to notify their customers about changes in SCs. Instead, the regulatory requirement is to have procedures in place to enable its staff to respond to consumer complaints and questions about calls to unbundled tariff numbers. This provision is aimed at ensuring that OCPs provide their staff with sufficient training about the unbundled tariff price structure and the numbers to which it applies to provide an appropriate response to a consumer complaint or enquiry; it does not regulate the substance of the responses that are given to consumers, which remains at the discretion of the OCPs. As Three says, in the case of a complaint or enquiry about the SC element of a call, it may well be appropriate to refer the consumer to the SP operating the unbundled tariff number. We therefore do not consider that this modification, which is aligned with existing provisions in the Annexes places an undue burden on CPs so as to necessitate further amendment.[654]

Annex 1

A7.55 We did not propose a modification to this Annex – the current version of this Annex is publicly available on the Ofcom website. In response to observations of EE and Three about the application of this Annex to the SC, we made it clear at paragraph 6.32 of the April 2013 policy position that the fulfilment of the obligations could be achieved by the publication of the *maximum* SC applicable to the unbundled tariff number range. We do not consider that the provision of information in relation to these maxima, which are set by Ofcom, not SPs, will be burdensome in practice.

[652] See, for example, paragraphs 10.20 to 10.21 in Part B of the April 2013 policy position.
[653] Three, April 2013 policy position response, pp.23-24.
[654] See paragraph 4.1 of Annex 1 and paragraph 5.1 of Annex 2 of GC14.

General Condition 17

Our proposed modification

A7.56 The proposed modifications to GC17 set out in the April 2013 policy position introduced the tariff principles and other requirements necessary for the implementation of the unbundled tariff.[655]

Stakeholder comments

Definitions

A7.57 [✂], argued that the definition of 'Unbundled Tariff Number' in GC17 would be improved by referring to the '09' range as a whole, rather than the specific sub-ranges currently available for allocation. It considered it was highly unlikely that other digits within the 09 range would be opened up for the provision of services that were not to be unbundled and it considered that for future simplicity (i.e. avoiding modifications to the GCs as well as the Numbering Plan), it might make sense to structure it in that way now.[656]

A7.58 SSE noted there was a difference in the definitions of "Unbundled Tariff Number" between GC17.33(x) (which was consistent with the proposed definition in the Numbering Plan) and the new numbering condition binding non-providers and it questioned whether this was intended.[657] BT said it was unclear what was meant by the term 'Numbering Condition' in GC17.33(q).[658]

A7.59 SSE also noted that the term "non-providers" was used in GC17 and the numbering condition binding non-providers and it queried whether it needed to be a defined term in both locations.[659]

A7.60 EE queried whether the definitions of "Access Charge" and "Service Charge" would be applicable to non-network CPs or resellers. It also suggested that the words "for the purpose of calculating the amount payable by a Consumer for making such a call" at the end of the definition of "Access Charge" may be superfluous.

A7.61 TNUK said it would be extremely helpful for GC17 to indicate a carefully delineated clear definition of SC price points, specifying precisely what was included and what was not. It said it remained unclear whether per minute, per call and call set-up/per minute combinations would count as single or multiple price points. TNUK believed that only one price point should be required in order to cover any of those possibilities but at most two price points might be required, i.e. one per minute and one per call and per call/set-up charges did not need to have a different charging mechanism. TNUK said this issue had been raised in the NGCS focus group but no clarity had been provided but whatever the answer it would have a significant impact on the utilisation of the 100 available price points. It therefore believed it was imperative that clarity was provided in GC17 in order to avoid inevitable

[655] See paragraphs 6.40 – 6.49 and Annex 14 in Part A of the April 2013 policy position.
[656] [✂].
[657] SSE, April 2013 policy position response, Q6.1.
[658] BT, April 2013 policy position response, pp.12-14.
[659] SSE, April 2013 policy position response, Q6.1.

disagreements on this point and the simplest way to achieve this was to include a definition of price points within GC17. [660]

GC17.20

A7.62 Three said it was concerned that the addition of the phrase “as Ofcom may direct” under GC17.20 empowered Ofcom to make onerous demands and requests of CPs during the implementation phase. It said it would like Ofcom to understand that this project would be among many other critical projects (some also initiated by regulatory changes) which had to be managed using limited resource. It said it was concerned that the proposed wording meant Ofcom would set interim deadlines and make demands which suited their own purpose but that subsequently cause disruption or changes to an individual CP’s resourcing and sequencing of this and other programmes. It said Ofcom should allow CPs to manage implementation that suited them best and therefore the wording it had highlighted should be deleted.[661]

A7.63 FCS said the new powers granted to Ofcom in the redrafted GC17.20 were extremely widely drawn. It believed that the new drafting should include an explicit sunset clause causing those powers to fall away progressively following implementation.[662]

GC17.23

A7.64 BT said the current wording of GC17.23 meant it was not clear how to treat calls from outside the UK and greater clarity was needed to ensure consistency of application.[663]

GC17.26

A7.65 TNUK did not believe the proposed wording of GC17.26(e) accurately reflected Ofcom’s intention because the start of the clause referred to “The Service Charge” but it was not the individual service charge which would require the OCP to accommodate more than 80 or 100 price points, but rather it was the sum total of all service charges collectively. It said no individual SP setting its own SC could be held responsible for going above the 80 or 100 price point limit.[664]

A7.66 BT said GC17.31(a) [sic] (SC must not vary by CP) appeared to be contradicted by GC17.24(b) as the latter seemed to imply that the SC could be varied, allowing discounts, bundling and special offers. It said if Ofcom did intend to allow flexibility on how SCs applied to consumers, the wording needed to be reworded to remove the current ambiguity.[665]

A7.67 BT also said there needed to be rules around how a range holder might change the price point of a number block because otherwise customers could be deceived into thinking a call was cheaper than it really was. It recommended that Ofcom should implement an explicit prohibition on changing (and in particular on increasing) the SC price point once it had been allocated.[666]

[660] TNUK, April 2013 policy position response, p.11.
[661] Three, April 2013 policy position response, p.24.
[662] FCS, April 2013 policy position response, p.3.
[663] BT, April 2013 policy position response, pp.12-14.
[664] TNUK, April 2013 policy position response, p.12.
[665] Three, April 2013 policy position response, pp.24-25.
[666] Three, April 2013 policy position response, pp.24-25.

GC17.29 – call bundling

A7.68 Stakeholders' comments on the policy proposal to require inclusive call bundles to apply to all unbundled tariff numbers (or to apply to none) are set out in Annex 3; our decision to allow CPs to select which unbundled tariff numbers they wish to include in call bundles is at Section 3. The wording of GC17.29 has been amended to reflect this change, as described in paragraphs A7.88 to A7.89 below.

A7.69 Notwithstanding the refinement of GC17.29, the following comments from stakeholders on the modification we originally proposed are of relevance to the revised provision.

A7.70 TNUK noted concerns that the proposed wording of GC17.29 did not achieve Ofcom's intention because it did not actually include a prohibition on OCPs only including the AC for some non-geographic number ranges within the bundle. Instead it noted the wording appeared to assume that "the terms and conditions" of the bundle state that the AC "will be waived in respect of any call to an unbundled tariff number, regardless of the unbundled tariff number which was called" but it did not actually require OCPs to do so. TNUK proposed the wording needed to be tightened to achieve Ofcom's intention.[667]

A7.71 EE questioned the rationale of describing in a very detailed way the mechanism of bundle charging. It said bundle charging was well known in the market and OCPs were best placed to explain the workings to customers. It noted there was no such detailed specification on other services that were included in a bundle. It believed the obligation was unnecessary, disproportionate and confusing and it suggested it was removed.[668]

A7.72 BT said it was confused as to how GC17.29 and GC17.30 applied. It assumed that for GC17.30 to apply, all the criteria at 17.29 must be met but it considered this was not clear in the current wording. It said inserting the word "all" in GC17.29 would remove any opportunity for misinterpretation. Additionally it did not consider that a call bundle including unbundled tariff numbers automatically had an AC of zero and rather it was more accurate the consumer had paid for minutes of which an element is attributed to the recovery of the OCPs costs for providing access. It considered it was more important that consumers understood what was included and how much they would pay for calls outside their inclusive bundle. BT therefore provided some suggesting wording for amending GC17.29 and GC17.30 to reflect this approach.[669]

GC17.31

A7.73 BT believed that, with the exception of 118 numbers, and for the purposes of ensuring consumers were protected, the rules should be clearer to ensure that specific Service Charges (price points) applied to each number block. It recommended the following revisions to secure this:

- the term 'price point' should be capitalised and defined;
- 'price points' should be listed in the National Numbering Scheme, which should be defined and referred to in GC17 and/or the Numbering Plan; and

[667] TNUK, April 2013 policy position response, p.12.
[668] EE, April 2013 policy position response, p.62.
[669] BT, April 2013 policy position response, pp.12-14.

- there should be a clear requirement for all CPs then to adhere to the correct and exact SC price point.

BT believed that this was the intention of the wording at GC17.31(a) but it considered that that wording was insufficient without the additional clarifications it had listed. [670]

GC17.32 – SC price points

A7.74 TNUK and EE both commented on the drafting of GC17.32 in conjunction with the concerns that they raised about the process set out in the April 2013 policy position for CPs to determine their SC price points in accordance with this provision. These comments and our responses to them are set out at Annex 3.

<u>Ofcom response</u>

Definitions

A7.75 We have not amended the definition of "Unbundled Tariff Number" as [✂] suggested. We have opted to identify the ranges falling within the definition in a consistent manner, by reference to their first three digits. While other approaches could have been taken, our definition enables the relevant ranges to be identified with certainty, which is the key consideration. In response to [✂]'s suggestion to adopt a more forward-looking approach for 09, we note that there are no plans to open up further 09 sub-ranges or any current expectation that we may do so in the next two to three years. Accordingly, we see no particular advantage in extending this definition beyond the 09 sub-ranges listed in the Numbering Plan. In response to SSE's comment, we have adjusted the definition of "Unbundled Tariff Number" in the numbering condition for non-providers so that it matches the definition in GC17.

A7.76 We agree that the defined term "Numbering Condition" is unclear because that term has a different statutory meaning under section 60 of the Act (namely a general condition made under section 57 or 58 of the Act as well as a condition binding non-providers under section 59 of the Act). Accordingly, we have amended the defined term to "Non-provider Numbering Condition" so that it is clearer that the term does not catch GC17 nor any other general condition made under section 57 or 58 of the Act. We also agree that the use of the word "non-provider" in the definition of "Non-provider Numbering Condition" may be unclear. We have therefore reworded the definition so that, in line with section 59 of the Act (the legal basis for the condition), "Non-provider Numbering Condition" is now defined as "the condition...that applies to persons other than communications providers...". This obviates the need for a separate definition of "non-provider".

A7.77 We have made minor revisions to the wording of the definitions of "Access Charge" and "Service Charge" in response to EE's comments (as shown at Annex 8). We consider these changes make it clearer that the provisions apply to non-network CPs and resellers, which do not originate and convey calls themselves. We have retained the words "for the purpose of calculating the amount payable by a Consumer for making such a call" at the end of the definition of "Access Charge". We consider these words are needed to confine the scope of the obligations relating to the AC to consumer calls to unbundled tariff numbers.

[670] BT, April 2013 policy position response, p.13.

A7.78 We have added a definition of "Price Point" so that it is clear that it equates to a rate that is set as an SC. In response to TNUK's query, we understand from CPs that where the same monetary amount is used for different methods of charging (i.e. £3 per minute and £3 per call), a different price point is required for each rate for billing purposes. Thus, for the purposes of the definition, a ppm rate, a pence per call rate and a rate which combines the two elements will each be a separate price point even where the monetary amount of the rates is the same.

A7.79 The definition of "Effective Date" specifies the date on which the unbundled tariff and free-to-caller regimes will take effect. This is 18 months after the modifications to the conditions enter into force.[671]

GC17.20

A7.80 We remain of the view that in order to ensure effective implementation of the unbundled tariff, Ofcom requires a power to direct CPs to take necessary steps so that they are able to fulfil their regulatory obligations in 18 months' time. We have said already that successful implementation of the unbundled tariff requires careful and detailed planning by OCPs, TCPs and SPs and we fully expect and are prepared to be involved in key aspects of this process to facilitate this – see Section 6 where we set out our approach to implementation in more detail.[672] The changes we are making affect all industry players and require a joined-up approach to implementation in order to ensure that the new measures take effect across the UK's communications network simultaneously and thereby give consumers a clear and coherent message of the pricing changes for calls to non-geographic numbers. The power of direction in GC17.20 is the enforcement tool we consider necessary to secure that outcome.

A7.81 In response to the concerns expressed by Three, a power of direction contained in the General Conditions is subject to the same procedural safeguards and legal tests as the setting of a general condition set under section 45 of the Act. Any direction made under GC17.20 is likely to require a consultation on both its terms and the reasons for it;[673] having considered the responses, we could only make the direction if we were satisfied that it was proportionate, not unduly discriminatory and transparent.[674] This would not allow for a direction made for our "own purpose" and without regard to the impact and burden it would have on those subject to it, as Three appear to suggest.

A7.82 In line with the comment from FCS, Ofcom's power to direct is time-limited in that it only applies during the 18 month period prior to implementation of the unbundled tariff. We therefore do not consider that any further modification is required.

GC17.23

A7.83 We do not understand BT's observation that it is unclear from GC17.23 how to treat calls from outside the UK and that clarity is needed to ensure consistency of application. GC17.23(b) says that the requirement for a CP to comply with the tariff principles set out in GC17.24 to 17.30 and any applicable maximum prices specified

[671] See paragraph [A7.164] below.
[672] See paragraphs 5.13 – 5.33, April 2013 policy position.
[673] Section 48A of the Act requires a domestic consultation of at least 1 month for a direction made for the purposes of a general condition which, in Ofcom's opinion, would have a significant impact on a market in relation to which Ofcom has functions.
[674] See section 49(2) and (2A) of the Act.

in the Numbering Plan do not apply to "calls originating outside of the United Kingdom to an Unbundled Tariff Number". We consider this is unambiguous – the OCP, if it is charging a retail price for such a call, is not required to ensure that price comprises the caller's Access Charge plus the applicable Service Charge; the TCP is not constrained to charge the Service Charge applicable to that number. Accordingly, in the absence of any explanation from BT as to why it is confused by this provision, we consider it to be clear how overseas calls to Unbundled Tariff Numbers should be treated and have not made any amendment.

GC17.26

A7.84 We disagree with TNUK's comment that a single SC cannot, on its own, require a CP to accommodate more than the applicable maximum number of price points in its billing systems. While we expect requests from TCPs/SPs for SC price points collectively to inform the assessment by OCPs of the optimum price points for their respective billing systems, as required by paragraph 17.32(a),[675] the selection of an SC which does not match one of the price points selected by an OCP in accordance with the requirements of GC17.31 to 17.32, does not comply with paragraph 17.26(e) (unless the OCP agrees to increase the number of SC price points for which it can bill). In the absence of agreement, the TCP/SP have two choices: i) to select another SC so that it matches one of the OCP's billing price points; or ii) maintain the SC price point but accept that retail customers from that OCP (and in all likelihood others) will not be able to access its number.

A7.85 In conclusion we are satisfied that paragraph 17.26(e) does accurately reflect its intended purpose and does not require amendment.

A7.86 In relation to BT's comment, we do not consider that paragraph 17.26(a) and paragraph 17.24(b) are contradictory. The former is a tariff principle that applies to the setting of the SC by the TCP/SP and requires that the rate selected should not vary according to the identity of the CP retailing or originating a call to the unbundled tariff number in question. Paragraph 17.24(b) is a tariff principle that applies to the OCP in calculating the amount that the retail customer is charged for a call to an unbundled tariff number. This provides that the total amount of the call is the "Access Charge Element" plus the "Service Charge Element", as each of those terms is defined in GC17.33. The proviso to this under paragraph 17.24(b) is that the Service Charge Element may be displaced by a special offer, discount or call bundling arrangement which the OCP has made available to the customer in respect of a call to that particular unbundled tariff number. It is not intended that this proviso should apply to the calculation of the Access Charge Element (contrary to BT's suggestion) and therefore is correctly drafted in this regard. We consider that on careful reading (taking account, in particular, of the distinction between the defined terms "Service Charge" and "Service Charge Element"), the interaction between paragraph 17.26(a) and 17.24(b) is sufficiently clear and further refinement is not required.

A7.87 Finally, we do not agree with BT's suggestion that we should prevent TCP/SPs being able to change or increase SC price points. Because of the transparency measures which will apply to the SP and the maximum caps that apply on the 084, 087 and 09 ranges, we see no reason in principle why we should prohibit a change in the level of the SC.

[675] See Annex 3, paragraphs [A3.36 to A3.58] where we set out our views as to how this process can be facilitated.

GC17.29 and 17.30

A7.88 In order to give effect to the decision to allow CPs to select which unbundled tariff numbers are included within the terms of inclusive call packages, we have amended GC17.29 as follows:

- the condition at paragraph 17.29(a) now refers to an inclusive call bundle which "includes call minutes (or calls) to one or more Unbundled Tariff Numbers";
- the condition at paragraph 17.29(b) has been deleted;
- the condition at paragraph 17.29(c) (now paragraph 17.29(b)) refers to a call "to an Unbundled Tariff Number which counts towards remaining minutes (or calls) in the bundle...".[676]

A7.89 In response to the comments made by stakeholders about the drafting of this provision:

- we have specified that both the conditions in GC17.29 must be satisfied if GC17.30 is to apply;
- in the light of TNUK's comments about the shortcomings of paragraph (b) of GC17.29 (as originally drafted), we have decided that this provision is not required and have deleted it;
- we have not accepted BT's suggested amendments to GC17.30, since they do not meet the intended purpose of the provision. The purpose of GC17.30 is to remove the obligation that would otherwise apply under GC17.24 to charge the Access Charge Element for calls to an unbundled tariff number which count towards a bundle of inclusive minutes. BT's suggested changes would replace this with a transparency requirement, which is already imposed by virtue of the modifications to GC14;
- similar reasoning applies to EE's suggestion that GC17.29 and GC17.30 should be removed. These provisions are not intended to specify in detail how call bundles should be charged, as EE has argued, but rather to ensure that calls to unbundled tariff numbers that are included within an inclusive bundle are exempt from the AC tariff principles that would otherwise apply.

GC17.31

A7.90 As explained at paragraph A7.78, we have added a definition of "Price Point" to GC17.33, as suggested by BT (and TNUK). We do not think that the other changes proposed by BT are required, however. We have explained at paragraph A7.86 above how the CP must calculate the Service Charge Element of a call to an unbundled tariff number under paragraph (b) of GC17.24. In the absence of any discount, special offer or call bundling arrangement applicable to the call, the Service Charge Element is calculated from the SC set by the TCP/SP for the unbundled tariff number in question in accordance with the tariff principles at GC17.26. As explained, the Service Charge for a given unbundled tariff number cannot vary by CP and therefore in retailing a call to that number, the CP must adhere to the "correct and exact" SC in calculating the Service Charge Element.

[676] The references to bundles of inclusive calls in these paragraphs have been inserted to match the change to GC14.9, as set out at paragraph [A7.49] above.

Likewise, the CP has no discretion to calculate that amount by reference to the maximum amount permitted for a SC on the range in question, rather than the SC set for the particular number called. We consider this is the intent and effect of GC17.24 and GC17.26 (not GC17.31 as BT appears to suggest) and no further refinement is required.[677]

GC17.32

A7.91 Our response to the issues raised by stakeholders about this provision are set out at paragraphs A3.37 to A3.58 in Annex 3 where we discuss the process for setting SC price points in compliance with this condition. At Annex 4 we have also provided guidance on an initial set of 67 SC price points, based on current outpayments and call volumes. We consider that this guidance and our views as to how new SC price points could be determined provide practical solutions to the concerns raised by stakeholders and a route map for enabling OCPs to discharge their obligations under this provision. We therefore have not made any refinements to the wording of GC17.32.

General Conditions 23 and 24

Our proposed modifications

A7.92 In the April 2013 policy position, we proposed to modify GC23 and GC24 to specify that the AC is a key charge that is included in the information provided to a consumer, prior to that consumer entering into a contract for mobile or fixed line telephone services.[678]

Stakeholder comments

A7.93 Three questioned whether it was necessary for Ofcom to explicitly require that the AC was provided in detail at the point of sale (under GC23.5) in addition to the other key charges that operators provided. It argued that regulatory changes in recent years had resulted in an ever increasing level of detail that had to be given to consumers at the point of sale which often had the effect of overwhelming them. It said adding the AC to that information could in the end become unhelpful and counterproductive. Furthermore it said the points it had raised about GC14.14 (see paragraph A7.40 above) were also applicable here because the variable nature of the SC could cause customer dissatisfaction and MNOs had no control over that element of the customer's cost. It therefore believed Ofcom should delete the specific reference to ACs from GC23.[679]

A7.94 EE similarly questioned the need for the proposed amendments to GC23.5. It said it seemed disproportionate to single out the AC, whereas other charges had been grouped under 'key charges'. It said Ofcom could just have updated the guidance on this GC by specifying that the AC is considered to be a key charge customers take into account when entering into a contract (although it noted doubts that there was any evidence to support that assumption). It said the same applied to the proposed GC24 modification.[680]

[677] See also our response to EE's comment that SC price points should be reflected in the Numbering Plan at Annex 3, paragraph [A3.59].
[678] See paragraphs 6.50 to 6.55 and Annex 14 in Part A of the April 2013 policy position.
[679] Three, April 2013 policy position response, p.25.
[680] EE, April 2013 policy position response, p.62.

A7.95 TNUK, however, argued that the obligation set out in the proposed amendments was "*wholly inadequate*". It noted that, despite the complexity and significance of the proposed changes, Ofcom was proposing no more than a simple requirement that the level of the AC be included in point of sale material and it believed that this would be largely meaningless to the vast majority of consumers. It said most consumers would be unlikely to know what an AC was or that it had anything to do with non-geographic calls. TNUK therefore believed there needed to be some form of description of what an AC was, alongside at least a limited explanation of the unbundled tariff in order that it was meaningful. It said this was needed to ensure customer understanding as well as to fulfil Ofcom's objective of increased competition on the AC. It suggested that an additional clause was inserted into GC23 and GC24 to give effect to this intention.[681]

Ofcom response

A7.96 As we have said, we consider the effectiveness of the unbundled tariff will rely on consumer understanding of the new charging structure and awareness of the AC they will be charged. In addition to the transparency measures in GC14, we remain of the view that including the AC as a key charge to be notified to consumers before they enter into a contract for mobile or fixed line services will help to bring the new charging structure to their attention and reinforce their understanding of what the AC is and when it will be charged. As noted in the April 2013 policy position, we also consider that the publication of the AC will also be important for encouraging competition.[682] Accordingly, Three's comment about the potential for customer dissatisfaction about the level of the SC misunderstands the purpose of these provisions.

A7.97 We acknowledge that the type of explanation of the AC which TNUK has proposed would also contribute to consumer understanding of the charge, particularly during the first few months of implementation. However, noting the obligation under GC14.14 for a CP to have procedures in place to enable its staff to respond to enquiries about ACs, we do not consider that it is necessary to impose a further regulatory obligation, as suggested by TNUK. In addition, as we set out in Section 6, we are intending to undertake a communications campaign to promote the changes – this will help to ensure consumers are made aware of the new price structure and understand what it means for them.

A7.98 In conclusion, we remain of the view that these modifications to GC23 and GC24 are justified and do not require further amendment.

Numbering Plan

Our proposed modifications

A7.99 In the April 2013 policy position, we proposed two sets of modifications to the Numbering Plan, the first to take effect immediately and the second to take effect on the Effective Date. Each of these sets of modification are described at paragraphs 6.73 and 6.74 to 6.78 respectively of the April 2013 policy position.

[681] Specifically TNUK suggested the following wording "an explanation that retail charges for calls to numbers beginning 084, 087, 09 or 118 are made up of an access charge set by the OCP, which can vary between tariffs, and a service charge set by the service provider. This information must be provided with a reasonable degree of prominence". TNUK, April 2013 policy position response, pp.12-14.

[682] April 2013 policy position, paragraph 10.18 (Part B).

Stakeholder comments

A7.100 [✂] noted that elsewhere in the Numbering Plan the issue of VAT was addressed by the condition stating “£x plus VAT”, it suggested that, purely for consistency with the rest of the Numbering Plan the condition for free to caller might be better as “zero plus VAT”. [683]

A7.101 BT said the tables proposed in the Numbering Plan should be aligned to the text in the main body, for example changing the heading of the last column from “Applicable tariff principles and maximum prices” to “Applicable tariff principles and maximum prices for calls originated from a consumer line”.[684]

A7.102 BT noted the term ‘Premium rate’ had been deleted but Ofcom had not replaced it with another term. It said that for the Numbering Plan to be self-standing it needed a replacement definition given that the term was used at a number of points in the Numbering Plan, e.g. in the definition of Sexual Entertainment Services. It suggested that, for consistency, the definition could mirror that in the Premium Rate Condition. Similarly BT noted Ofcom had deleted the term ‘Special Service’ but it was still using the term in the definition of ‘Corporate Number’.[685]

A7.103 BT noted that Ofcom had not committed to a periodic review of the 09 SC caps and reiterated its concerns that the caps could again become fossilised. To avoid this it suggested adding a third bullet point to table A1 in the Numbering Plan saying the caps “alternatively, must not exceed the rates set by the Competition Group Director of Ofcom from time to time and which will likely be more frequently updated in a way that is more in tine with the developments in this market”. It said this would allow Ofcom to update the rates in a separate Ofcom letter to industry to allow swift changes in line with market conditions and it would avoid repeating the current 16+ year delay in increasing the rates.[686]

A7.104 EE reiterated its view that the finally agreed SC price points should be reflected in the Numbering Plan.[687]

Ofcom’s response

A7.105 With respect to [✂]’s proposed amendment, the term “Free to caller” will be defined in the Numbering Plan to mean, in relation to a non-geographic number, one that can be accessed by a consumer at a retail price of zero and, in the case of public payphones, without having to use coins and cards. We do not consider it necessary to specify “zero plus VAT”.

A7.106 We have not adopted the amendment suggested by BT in the first comment set out above. We have headed the last column of Parts A1 and C5 “Applicable tariff principles and maximum prices” in order to reflect the wording of section 56(1)(ba) of the Act and the revised ‘Introduction’ section of the Numbering Plan (paragraphs 3(ii) and 4(ii)). We do not consider it necessary to include a reference to consumer calls in these headings, as the limitation to consumer calls is clear from the entries in these columns in respect of free-to-caller and unbundled tariff numbers and the obligations in sections B4 and C6 of the Plan.

[683] [✂].
[684] BT, April 2013 policy position response, p.4.
[685] BT, April 2013 policy position response, p.15.
[686] BT, April 2013 policy position response, p.15.
[687] EE, April 2013 policy position response, p.69.

A7.107 With respect to BT's second comment, we had proposed to delete the definition of 'Premium Rate' from the Numbering Plan as our proposed modifications resulted in the deletion of this term from Parts A1 and C5. Having considered BT's comment in relation to the definition of a Sexual Entertainment Service, we consider that the reference to a Premium Rate Service in that definition is also redundant and have therefore removed this reference.

A7.108 We agree with BT that the definition of a 'Corporate Number' continued to refer to 'Special Services' when this definition had been deleted. We have amended the definition of a 'Corporate Number' to remove this reference.

A7.109 With respect to BT's final comment, we do not consider it appropriate for the Numbering Plan to cross-refer to alternate caps for the 09 SC that may be set by Ofcom's Competition Group Director from time to time. In our view, this would lead to confusion as to which caps were applicable at any time. BT also appears to suggest that these caps could be amended at Ofcom's discretion and the revised cap notified to industry. Given that we are required by section 60 of the Act to consult on modifications to the Numbering Plan and to be satisfied that our proposed modifications meet certain statutory tests, we do not consider it appropriate for us to seek to circumvent the statutory consultation process in this manner.

A7.110 We do not agree with EE's comment that SC price points should be reflected in the Numbering Plan. Our reasoning is set out in Annex 3, together with our response to other comments regarding the SC.[688]

A7.111 Finally, in response to a comment made by PPP in relation to the definition of "Service Charge" in the PRS Condition (see paragraphs A7.133 below), we have amended the definitions of "Access Charge" and "Service Charge" in the Numbering Plan. Our drafting preference is for definitions in the Numbering Plan not to cross-refer to GC17 for their meaning. However, we have taken a different approach on this occasion. The comment from PPP indicated that the definitions of "Access Charge" and "Service Charge" in the Numbering Plan should match exactly the definitions of those terms in GC17. This would necessitate the inclusion in the Numbering Plan of other defined terms even though they are not directly referenced in the designations of unbundled tariff numbers. Accordingly, in the interests of simplicity and clarity, we have decided it preferable to define these particular terms in the Numbering Plan by reference to their definitions in GC17.

PRS Condition

Our proposed modification

A7.112 In the April 2013 policy position, we proposed certain consequential amendments to the PRS Condition to reflect the introduction of the unbundled tariff price structure for calls to unbundled tariff numbers. One of the changes we proposed would bring 0870 numbers within the scope of the PRS Condition if the applicable SC were to be set above the threshold of 5.833 ppm/ppc (ex VAT).[689]

[688] EE, April 2013 policy position response, p.69.
[689] See paragraphs 6.58 – 6.63 and Annex 16 in Part A of the April 2013 policy position.

Stakeholder comments

A7.113 [✂] noted that Ofcom had changed the use of the term “Special Services” in the Numbering Plan to “non-geographic numbers” but the equivalent update had not been made in the PRS Condition. [690]

A7.114 BT said it was concerned by Ofcom’s proposals to bring the entire 0870 number range in to the regulatory remit of PPP given the lack of evidence of consumer harm and the fact that regulation does not meet the tests within Ofcom’s own analytical framework for PRS regulation. BT said this was an important policy shift and Ofcom had not explicitly consulted on it.

A7.115 Specifically BT said that extending PPP regulation to 0870 numbers would be a disproportionate regulatory action leading to migration away from 087 numbers and damage to the 087 market as a whole (it said that when Ofcom moved 0871 under PPP’s remit in 2009, this resulted in a reduction in take-up of the 0871 range). It also said the low cost of calls to 0870 numbers means the potential for consumer harm is minimal and it was concerned that branding this number range as similar to PRS could cause unnecessary concern in consumers’ minds and damage the effectiveness of Ofcom’s proposals.[691]

A7.116 BT proposed instead that Ofcom should set the level for ‘premium rate services’ at the proposed price cap for 087 numbers of 10.83 pence. It said that would create a much simpler regime where consumers could easily understand that while greater transparency was provided for any non-geographic number through the unbundled tariff structure, only 09 or 118 were subject to additional PPP obligations as they are charged above a certain threshold. Alternatively, should Ofcom have sufficient evidence to justify a lower price at which PRS obligations should apply, BT suggested setting the threshold at a more moderate level, for example BT’s current 8.51 pence cap for 0871/2/3 numbers.[692]

A7.117 BT also recommended that there should only be light touch PPP regulation necessary if the current PRS level was maintained at 5.833 pence, in line with those in place for 0871 services today. [693]

A7.118 BT said that putting an SC price point in the regulation would mean the regime would soon become out of date as the amount became eroded by inflation and Ofcom would have to consult on a revised PRS Condition each time that rate needed increasing. It suggested that to make it more future-proofed the rate should be put instead in PPP’s Code of Practice which could likely be more frequently updated in a way that was more in tune with the developments in this market.[694]

A7.119 BT noted that the wording in paragraph 2(e)(i) of the existing PRS Condition did not mirror that of PPP’s current Code of Practice:

- Specifically, it noted paragraph 2(e)(i) said:

  “the service is obtained through a Special Services Number (except an 0843/4 number)..”

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[690] [✂].
[691] BT, April 2013 policy position response, p.9.
[692] BT, April 2013 policy position response, p.10.
[693] BT, April 2013 policy position response, p.10.
[694] BT, April 2013 policy position response, p.12.

- whereas the PPP Code of Practice said:

  "the service is obtained through a Special Services Number (except on an 0870 number)."

- BT proposed that the inconsistency was addressed by adopting the following wording:

  "the service is obtained through a Special Services Number (except an 0843/4 number or an 0870 number).[695]

A7.120 BT also said it was not clear what paragraph 2(e)(iii) was designed to capture given the way it was drafted. It said if it was designated to capture calls to 098/Sexual Entertainment services then it omitted a reference to 'Service Charge' – specifically is said the word 'charge' in the sentence "the service is obtained other than through a Special Service number, or a PRS number, and the charge for the call" should be replaced with 'Service Charge'. Otherwise it said it was unclear what the paragraph was designed to capture or if it was needed.[696]

A7.121 PPP noted that the definition of "Service Charge" referred to the definition in the Numbering Plan and that this differed from the definition of the same term in GC17. It asked whether there was any reason for this difference and whether this was intended to have any implications for the premium rate service value chain.

Ofcom's response

A7.122 We have considered carefully the comments we have received from stakeholders on the PRS Condition but, other than a change to the definition of "Service Charge", the modification we have made is the same as the modification we proposed in the April 2013 policy position.

A7.123 In response to [✂]'s observation, we have not deleted the term "Special Services Number" from paragraph 2(v) since that term remains relevant under paragraph 2(e)(i) during the 18 month period leading up to the implementation of the unbundled tariff.

A7.124 As regards BT's objection that 0870 numbers have been brought within the regulatory remit of PPP, we consider that this is not a wholly accurate representation of the effect of the modification we are making. An 0870 number will only fall within the scope of PPP's regulation if the amount of the SC set for that number is above the threshold of 5.833ppm/ppc (ex VAT). Where the SC is below that level, the use of the 0870 number will not be subject to oversight by PPP. Existing users of 0870 will therefore not be subject to PPP oversight provided they set the SC at or near the termination rates they currently receive.

A7.125 We note BT's comment about the drop in 0871 call volumes after the range was brought within PPP's regulation in 2009. However, at that time SPs on the 0871 range had (and still have) no control over the retail price of calls to their numbers and therefore no control over the application of the PPP Code to their services. As we have explained, one of the purposes of the unbundled tariff is to give SPs much more control over the prices that are charged for access to their services. We therefore consider that 0870 SPs will be in a materially different position to 0871

[695] BT, April 2013 policy position response, p.11.
[696] BT, April 2013 policy position response, pp.11-12.

SPs in 2009 and, rather than having to migrate to another range in order to fall outside the PPP Code, they will be able to select an SC that is below the relevant price threshold. We therefore do not expect that this modification will reduce SP demand for 0870 numbers, as BT suggests.

A7.126 Further, we disagree that the potential application of PPP regulation to numbers within the range will give rise to concern amongst consumers about 0870 numbers. We have no objective evidence to support that proposition, which runs counter to the consumer protection purpose of the PPP Code.

A7.127 With the enhanced transparency about the level of the SC that our modifications to the General Conditions should bring, we consider it is appropriate to make the application of the PPP Code conditional on an SC price threshold, rather than the number range called. Contrary to BT's submission, this is consistent with the Ofcom's analytical framework for judging whether PPP regulation is appropriate (which included level of expenditure on the premium rate service). Having decided an appropriate threshold, we consider it would be illogical to have different rules applying to numbers within different ranges, when calls to both are charged at the same SC.

A7.128 In terms of the appropriate level of the threshold, the alternatives put forward by BT would raise the price thresholds at which PPP regulation currently applies, bearing in mind that they would only apply to the amount of the SC, rather than the whole retail call charge, as at present. We consider that the threshold we have set is appropriate but will be reviewing whether that continues to be the case after the unbundled tariff comes into effect.

A7.129 We do not consider it would be appropriate to specify the SC threshold in the PPP Code, rather than the PRS Condition, as BT suggests. The PRS Condition determines PPP's jurisdiction and therefore the threshold is properly a matter dealt with in that condition, not the code that PPP makes in exercise of its jurisdiction. We note BT's observation that the threshold will need to be adjusted in future to reflect the effect of inflation. As noted the April 2013 policy position, we will be reviewing the SC threshold after implementation of the unbundled tariff[697]; if modification then or at some future date is required, s.120A of the Act provides the means for doing so.

A7.130 In response to BT's suggestion that 0870 services should only be subject to light touch regulation if they remain within PPP's remit, this is a matter for PPP to determine. It is a requirement, however, under section 121(2)(f) of the Act that the regulatory provisions imposed by the PPP are proportionate to what they are intended to achieve and we note, as BT has commented, that 0871 services are currently subject to light touch regulation by PPP for this reason.

A7.131 BT has also commented that the wording of paragraph 2(e)(i) does not tally with the PPP Code of Practice. We do not agree with this. The PPP Code of Practice defines a "controlled premium rate service" as having the meaning set out in the PRS Condition effective from time to time.[698] In our view, this means that there can be no discrepancy between the definition of a "Controlled Premium Rate Service" in the PRS Condition (i.e. paragraph 2(e)) and that set out in the Code. The language to which BT refers is also set out in the definition in the Code, but is explicitly referenced as being the meaning that was set out in the PRS Condition as at the

[697] See paragraph 5.56 in Part A of the April 2013 policy position.
[698] PPP Code of Practice, paragraph 5.3.2.

date of entry into force of the Code.[699] We therefore do not consider that the modification proposed by BT is necessary or appropriate.

A7.132 In relation to BT's query about paragraph 2(e)(iii), it is intended to capture mobile voice short codes and services using "Payforit" as a payment mechanism.[700] These services are outside of the scope of the unbundled tariff requirements and hence will not have a service charge as defined in paragraph 2(t).

A7.133 Finally, in response to PPP's query, the definition of "Service Charge" in the Numbering Plan (incorporated by reference in the draft modification to the PRS Condition) was an abbreviated version of the definition of that term in GC17 in order to simplify, as far as possible, the list of definitions in the Numbering Plan. The alternative approach of incorporating the full definition from GC17 would have necessitated the inclusion of other defined terms (such as "Transit Network" and "Assumed Handover Point"). We recognise, however, that the two versions may suggest that the terms are intended to have different meanings. That is not the case and in order to avoid this impression, we have amended the definition of "Service Charge" in both the Numbering Plan and the PRS Condition so that they refer to the definition of that term in GC17.

Non-provider Numbering Condition

Our proposed condition

A7.134 In the April 2013 policy position, we proposed to set a new condition under section 59 of the Act which would apply to persons other than communications providers. The proposed condition would require a person using an unbundled tariff number to provide a service to include in any advertising or promotion of that number the SC applicable to that number.[701]

Stakeholder comments

A7.135 EE commented that the phrase "advertises, promotes or procures the advertisement or promotion of any Unbundled Tariff Number" in the proposed condition was relatively undefined and asked whether there were any circumstances in which an SP might publish its number without triggering its obligations under this provision.

A7.136 It also said that the condition should say expressly that the same advertising and promotion services would be regulated as those under the CAP Code for non-broadcast advertising, sales promotion and direct marketing.[702]

A7.137 Fair Telecoms noted that an important principle of the call cost declaration requirement for SPs was that it was not specific to particular call providers. It said, however, if SCs were treated as inclusive by particular CPs, SPs might be tempted to imply that callers would not pay any charge to call them. It said it was imperative

[699] Since the publication of the Code, the definition in the PRS Condition has been modified to specifically exclude 0843/4 numbers from the scope of PPP regulation and to reflect modifications to the Numbering Plan whereby 0870 numbers were designated as Non-Geographic Numbers, rather than Special Services Numbers.
[700] See Ofcom's statement, Review of Premium Rate Services - http://stakeholders.ofcom.org.uk/binaries/consultations/review-prs/statement/statement.pdf
[701] See paragraphs 6.56 – 6.57 and Annex 18 in Part A of the April 2013 policy position.
[702] EE, April 2013 policy position response, p.64.

that the regulations covering the SC pricing message ensured that such a situation was prevented.[703]

Ofcom's response

A7.138 We do not consider that the meaning of the phrase identified by EE is unclear – the language used comprises words in every day usage and are to be given their ordinary meaning. We consider the obligation should apply whenever the SP publishes or procures the publication of its unbundled tariff number with a view to it being seen and potentially used by consumers.

A7.139 The scope of the CAP advertising code administered by the ASA (i.e. what it considers to be advertising and promotional material) is set out on its website.[704] We agree that whatever material is captured by the remit of the CAP (and BCAP) Codes should also be considered as advertising and promotional material for the purposes of the non-provider numbering condition – this means that any material within the scope of the Code which includes an unbundled tariff number for a service provided to consumers should also include the service charge for that number. We will be working with SPs throughout the implementation period to ensure they are aware of their obligations under the non-provider numbering condition and do not consider it is necessary to expressly link the requirements in the condition to the scope of the CAP Code (or other applicable industry codes of practice such as the BCAP and PPP Codes).

A7.140 In response to the comments from Fair Telecoms, the wording of the condition does not include any exceptions for where an SC is included in call bundles therefore we would expect SPs to include the SC in their advertising regardless of how that SC might be treated by individual OCPs.

A7.141 In light of the minor amendments to GC14.12 in response to comments from [✂] (see paragraphs A7.37 and A7.52 above), we have made the same amendments to this condition in order to secure that the obligations imposed continue to correspond to the obligations to which CPs are subject under GC14.12 and GC14.13.

A7.142 As set out in paragraph A7.75 above, we have also amended the definition of an "Unbundled Tariff Number" in response to SSE's comment to match that set out in GC17.

Access condition

Our proposed condition

A7.143 In the April 2013 policy position, we proposed to set an access condition under sections 73(2) and 74(1) of the Act on TCPs (i.e. CPs that terminate calls to 080 or 116 numbers). The proposed condition would require a TCP to purchase wholesale origination services for calls made by consumers to 080 and 116 numbers on fair and reasonable terms (including charges). We also proposed that, within one month of the condition being set, the TCP should notify any OCP with whom it has an

[703] Fair Telecoms, April 2013 policy position response, p.2.
[704] www.cap.org.uk/Advertising-Codes/Non-broadcast-HTML/Scope-of-the-non-broadcast-CAP-code.aspx

existing interconnection agreement of the (fair and reasonable) charges for wholesale origination which the TCP proposes to apply from the Effective Date.[705]

Stakeholder comments

A7.144 As discussed in Annex 6, several stakeholders raised concerns about the policy proposal to restrict the scope of the draft access condition to 080/116 calls made by consumers. We have decided, in light of these comments, to remove this proposed restriction. The access condition will therefore apply to all calls to 080/116 numbers that have been zero-rated at the retail level (see Annex 6 and Section 4). The wording of the access condition has been amended to reflect this change, as described in paragraph A7.153 below.

A7.145 [✂] noted that Ofcom had defined OCPs as PECNs in the draft access condition but it had not provided a list of those OCPs. It argued that this meant, in one sense, it was almost impossible to reasonably comply with that condition as the general authorisation regime did not require a licence anymore and only Ofcom knew all the OCPs that came under that category.[706]

A7.146 [✂] noted Ofcom had compiled a list of PECNs hosting 080 numbers (i.e. TCPs), however, it said it was unclear as to how it intended to ensure the condition applied to new PECNs that might emerge in the future.[707] Similarly EE noted there was a risk that the list of TCPs to whom the access condition applied could become rapidly out of date, unless Ofcom kept it constantly updated with all new 080 and 116 TCPs, and deleted any TCPs that exited the market. It also noted that the current drafting meant that condition 1 was binding upon any subsidiary, holding company or subsidiary of a holding company of any of the companies listed as a TCP, even if the business of those companies had nothing to do with the telecoms industry or the UK. EE did not consider that such companies should be obliged to even receive and consider such requests. To address these concerns, EE said the definition of "Terminating Communications Provider" should be amended so that it read something like "*A communications Provider who conveys a call to a free-to-caller number from an assumed handover point to the point of termination*". It said for clarity, the access condition could continue to list those providers that Ofcom considered to be TCPs as at the date on which the access condition takes effect but it would be the definition rather than the list that would be definitive in the event of any discrepancy.[708]

A7.147 EE made a number of other comments in relation to the draft access condition on which we consulted.

A7.148 First, it submitted that the drafting was highly ambiguous as to whether the access condition applied to TCPs and OCPs when acting in their capacity as transit providers.[709]

A7.149 Second, it said that the draft access condition required each OCP to request in writing from each TCP (whether or not the OCP was directly interconnected with that TCP) the purchase of 080 and 116 origination services from the OCP before the TCP's obligation to purchase those services on fair and reasonable terms

705 April 2013 policy position, Part C Section 14 and Annex 30.
706 [✂].
707 [✂].
708 EE, April 2013 policy position response, pp.24-25.
709 EE, April 2013 policy position response, p.19.

became effective. EE said this meant that each OCP would potentially have to separately write to some 120 TCPs listed in the access condition, plus continuously monitor whether any new such TCPs had come into the market and separately write to them as well. In turn it said each TCP would have to individually respond to each OCP from whom it received such a written request. EE considered that that process was unduly administratively burdensome and definitely not proportionate.[710]

A7.150 Third, it also noted that the draft access condition only required TCPs to notify OCPs with which they were directly interconnected (which it noted only applied in a few cases). It said that meant that in the vast majority of cases OCPs would need to request access under the draft access condition without the benefit of having the notification from the TCP of their initial revision to charges. It also noted it created a risk that, depending on the TCP's individual circumstances, the obligation to purchase those services "as soon as reasonably practicable" might still mean that the information about the proposed charges was not provided for a considerably longer time period than the one month applicable where the parties had a pre-existing agreement. EE noted this created a great deal of commercial uncertainty for OCPs, significant market distortion and the potential for significant delays in reaching any final agreement on charges.[711]

A7.151 Fourth, EE said it was unclear what would constitute a 'reasonable request' in writing under draft condition 1. In particular EE said it would like to understand when an OCP request might be considered unreasonable and said it would helpful for Ofcom to at least give some elaboration on this otherwise there was a risk of TCPs abusing the wording to reject requests.[712]

A7.152 Finally, EE said it was slightly unclear at what date the phase "has an agreement" in paragraph 2.1 of the draft access condition is to be assessed. It noted that this was explained in footnote 475 in Annex 30 of the April 2013 policy position but it considered it would be better clarified in the wording of the access condition itself.[713]

Ofcom's response

A7.153 As noted at paragraph A7.144 above, we have also decided to amend the access condition so that it applies to all zero-rated calls to 080/116 numbers, whether those calls are made by consumers or business callers. We have therefore amended the definition of "Origination Services" accordingly and have deleted the definition of a "Consumer", as this is no longer required.

A7.154 In response to EE's first comment regarding OCPs acting in their capacity as transit providers, we have amended the definition of an "Originating Communications Provider" to clarify that this means a provider of a PECN insofar as it provides origination services (as defined in the condition). This definition will therefore not cover an OCP when acting in its capacity as transit provider.

A7.155 In response to [✂] comment that we did not provide a list of OCPs, the access condition requires the TCP to purchase origination services from an OCP in response to a reasonable request in writing. Therefore if the TCP receives a

[710] EE, April 2013 policy position response, pp.18-19.
[711] EE, April 2013 policy position response, p.19.
[712] EE, April 2013 policy position response, p.24.
[713] EE, April 2013 policy position response, p.24.

request it will be up to the TCP to verify through its own means whether or not the requesting party is a provider of a PECN and originates calls to an 080 or 116 number, for example it might request certain information from the OCP to confirm its PECN status. We consider it unlikely that the absence of a list of all OCPs would create significant difficulties in complying with the terms of the access condition, particularly given the likelihood of existing relationships between OCPs and TCPs more generally and a TCP's experience (as a PECN provider itself) in entering into interconnection arrangements. Similarly worded obligations have been used for a number of years in SMP conditions applying to TCPs in the fixed and mobile markets[714] and we are not aware of any difficulties arising as a result of this.

A7.156 With respect to the list of TCPs set out in Schedule 1 of the access condition, we are unable to adopt EE's suggestion of instead applying the access conditions to a category of persons, as defined in the condition. This is because an access condition (unlike a general condition) may only be applied to a particular person specified in the condition.[715] We recognise the potential for the list of TCPs in Schedule 1 to the access condition to become out of date in future. It would be open to us to modify the list of TCPs in Schedule 1 from time to time, subject to statutory consultation requirements, if we consider it necessary to do so in order to address issues arising in the market. In addition, where a new 080 or 116 TCP enters the market and an OCP is having difficulties obtaining interconnection or agreeing terms, then the OCP may refer a dispute to us in the normal manner (regardless of whether the access condition applies). In considering any such dispute, we are likely to have regard to our 080/116 Dispute Guidance in considering origination charges for calls to these number ranges.

A7.157 We have, however, amended the definition of a "Terminating Communications Provider" in response to EE's comments that the access condition could be binding on group companies which have no connection with the telecoms industry or the UK and that the previous drafting was ambiguous with respect to a TCP acting in its capacity as a transit provider. Our amendment clarifies that the conditions apply to each person listed in Schedule 1 (and its group companies) insofar as it terminates calls to a 080 or 116 number.

A7.158 EE's second comment suggests that the requirement for fair and reasonable terms in paragraph 1.2(b) of the draft access condition was dependent on a request for the purchase of origination services first having been made under paragraph 1. This was not our intention and we have separated condition 1 of the draft access condition into two separate conditions in order to make this clearer. In summary, a request for the purchase of origination services under condition 1 (as amended) only needs to be made where an OCP is seeking to enter into a new direct interconnect relationship with a TCP for 080 or 116 calls. If an OCP has an existing interconnect agreement with a TCP in respect of these calls, then no request under condition 1 is necessary as the TCP will already be purchasing wholesale origination services from the OCP in question. Condition 2 (as amended) requires

[714] All mobile communications providers that have been designated as having SMP are required to provide network access in response to a reasonable request in writing from a person operating a PECN (see Condition 1.1 in Schedule 2 of the Notification at Annex 1 of Ofcom's 2011 MCT Statement: http://stakeholders.ofcom.org.uk/consultations/mtr/statement). Similarly, all fixed communications providers that have been designated as having SMP are required to provide network access in response to a reasonable request in writing from a person who provides a PECN or a person who provides a public electronic communications service (see Condition 1.1 in Schedule 3 of the Notification at Annex 1 of the NMR statement: http://stakeholders.ofcom.org.uk/consultations/nmr-13/statement).
[715] Section 46(3) of the Act.

origination services to be purchased on fair and reasonable terms from the Effective Date and applies both to direct interconnect relationships that were already in existence prior to this date and new direct interconnect relationships entered into after this date. For pre-existing direct interconnect relationships, the obligation for fair and reasonable terms applies from the Effective Date under condition 2 and is therefore not dependent on a request for the purchase of origination services having first been made under condition 1.

A7.159 With respect to EE's second and third comments, the access condition does not require an OCP to request the purchase of origination services from each TCP, resulting in 120+ requests. As noted in Annex 6 at paragraphs A6.24 and A6.25, the access condition only applies where an OCP and TCP are directly interconnected, or where an OCP wishes to commence a new direct interconnect relationship with a particular TCP for 080/116 calls. As noted in paragraph A7.155 above, an OCP does not need to request the purchase of origination services from a TCP with whom it has an existing direct interconnection relationship. If an OCP is content with its existing routing arrangements for 080/116 calls, then it will not need to submit any requests under condition 1.

A7.160 EE's third comment compares the one month notification period in condition 3.2 (as renumbered following the amendments referred to above) and the phrase "as soon as reasonably practicable" in condition 1.2. However, condition 3.2 stipulates a one month period within which advance notice of revised origination charges must be given by TCPs to OCPs in existing direct interconnect relationships. Condition 1.2 provides that, where an OCP requests a new direct interconnection relationship with a TCP in respect of 080/116 calls, then the TCP must establish that relationship (i.e. purchase "Origination Services") as soon as reasonably practicable. The two time periods therefore apply to different activities. We do not consider it appropriate to specify the precise time period within which a TCP must establish a new direct interconnection relationship in response to an OCP's reasonable request, as the speed within which this can be achieved may depend on technical matters such as network architecture and may differ depending on the TCP and OCP involved. In these circumstances, we consider that an obligation to provide connectivity "as soon as reasonably practicable" is more appropriate.

A7.161 In EE's fourth comment, it requested clarification of what would constitute a 'reasonable request' for the purchase of origination services under condition 1. This wording is commonly used in SMP conditions relating to interconnection and access and is derived from Article 12 of the Access Directive (and, before that, from the ONP Directive).[716] The question as to whether a request to purchase origination services is 'reasonable' will be determined on the facts of each case. However, some guidance may be derived from Recital 19 to the Access Directive and Oftel's guidelines in relation to access obligations.[717] In particular, Oftel's guidelines set out the principles that are relevant in deciding whether a request is 'reasonable' such as technical feasibility, the need to maintain network integrity and whether the request would require the operator to provide something which is not within its power to provide.[718] Whilst the guidelines (and Recital 19 to the Access Directive) apply specifically to SMP conditions, rather than access conditions, we nevertheless consider that this should provide stakeholders with an indication of the

[716] Directive 97/33/EC
[717] Oftel, *Imposing access obligations under the new EU Directives*, 13 September 2002: http://www.ofcom.org.uk/static/archive/oftel/publications/ind_guidelines/acce0902.htm
[718] *Ibid*., paragraphs 2.18 – 2.28.

type of principles we would have regard to when considering whether a request for origination is 'reasonable' under the access condition set out in Annex 11.[719]

A7.162 EE's final comment was that it was slightly unclear at what date the phase "has an agreement" in condition 3.1 (as renumbered) is to be assessed. We have amended condition 3.1 to clarify that this is to be assessed as at the date the condition enters into force.

A7.163 In addition to addressing stakeholder comments, we have also reviewed the list of TCPs in Schedule 1 prior to issuing this statement. We have deleted four companies from the list because they have entered into liquidation since April 2013, are otherwise in the process of being dissolved, or have informed us that they do not provide wholesale call termination for 080 or 116 numbers. We have also reflected changes in name since April 2013 for several other companies.

A7.164 Finally, in light of the date of publication of this statement, we were cognisant of the fact that the one month notification period in condition 3.2 (within which a TCP must provide notice of its proposed charges for wholesale origination) would straddle the Christmas holiday period. We were concerned that this may result in TCPs struggling to meet the one month deadline (particularly where they have a large number of notifications to make). The one month notification period runs from the date on which the access condition enters into force. We have therefore decided to delay the entry into force of the access condition until two weeks after the date of publication of this statement. We consider that this will give TCPs two additional weeks in which to prepare and dispatch their notifications, and will make up for any office closures, etc. over the Christmas period. In order to ensure consistency, we are also delaying the entry into force of our modifications to the other conditions (General Conditions and PRS Condition) by two weeks. The 'Effective Date' across all of the legal instruments falls 18 months after the modifications to the General Conditions enter into force.

Legal powers

Stakeholder comments

Wholesale market review

A7.165 Three and EE reiterated their arguments (previously made in response to both the December 2010 and April 2012 consultations) that we should conduct a wholesale review of the termination market for non-geographic calls, instead of imposing an access condition at the wholesale level. In their view, an SMP review would lead to

[719] Oftel and Ofcom have also considered issues related to "reasonable requests" for access/interconnection in previous disputes - see, for example, *Direction in respect of two disputes relating to Vodafone's credit vetting clause*, 17 July 2003: http://www.ofcom.org.uk/static/archive/oftel/publications/licensing/2003/credvet0703.htm; *Determination to resolve a dispute between Energis and BT regarding the provision of short haul data services and dense wave division multiplexed services*, 3 September 2004: http://stakeholders.ofcom.org.uk/binaries/consultations/752496/summary/statement.pdf; *Draft Determination to resolve a Dispute between Cable & Wireless Access Limited and BT Group plc relating to BT's charges for connecting new customers to fully unbundled local loops*, 4 April 2007: http://stakeholders.ofcom.org.uk/consultations/bt_determination/ (this dispute was withdrawn prior to a final determination being issued).

a finding that all TCPs had a monopoly on call termination to 080 and 116 numbers on their networks.[720]

Alternative legal approach

A7.166 Three reiterated its reservations about Ofcom's approach to regulating retail pricing. It said it accepted Ofcom had consumer protection powers and that it could regulate via the Numbering Plan. However, it said that, given the draconian nature of regulating retail pricing in an otherwise competitive market, Ofcom should be more explicit about the limits it set on itself to impose retail regulation absent an SMP finding. It said that failure to do this jeopardised Ofcom's overall policy programme by unnecessarily inviting an appeal by a party concerned at Ofcom's erosion of the fundamental principle that price regulation is a measure of last resort, contingent on a finding of SMP. In particular Three suggested it would be helpful if Ofcom could provide some further guidance on how and when it proposed to use its s58(1)(aa) and/or its SMP-based powers to regulate pricing going forward.[721]

A7.167 Vodafone also reiterated its view that Ofcom has no power of direct retail price regulation under the EU regulatory framework, except where the undertaking concerned has been found to have SMP, and summarised its reasons for holding this view. Vodafone stated that Ofcom's proposed approach and legal framework remains an unlawful exercise of Ofcom's powers and that Vodafone's alternative regulatory approach (which it had put forward in response to the April 2012 consultation) should be adopted in preference to Ofcom's proposed regulatory approach.[722]

A7.168 In this respect, Vodafone reiterated its view that the number range holder has the primary right of use of a number and that any right of use secured by an originating operator is consequential upon the interconnection arrangements that it must enter into with the terminating operator. Vodafone also repeated its view that regulatory obligations should first be attached to the number range holder with supplementary conditions being attached to the originating operator. In this respect, Vodafone stated that the originating operator has, de facto, been sub-allocated the right to use the number range by the NRA, whether directly or indirectly via the primary number range holder.[723]

A7.169 Vodafone went on to consider the position if, contrary to its view, Ofcom is empowered to regulate retail origination charges outside of the SMP framework. Vodafone submitted that Ofcom had nonetheless erred in law by concluding that it was empowered to control retail origination charges in the interests of consumer protection, but was not able to impose regulation at the wholesale termination level in order to support retail regulation.[724] Vodafone submitted that Ofcom should mandate a single outpayment for each of mobile and fixed origination on an ex ante basis (instead of imposing a requirement that these charges be fair and reasonable).

A7.170 Vodafone repeated its view (previously set out in response to the April 2012 consultation) that this could be achieved by setting the wholesale origination charge

[720] See pp.15-17 of EE's April 2013 policy position response, and p.17 of Three's April 2013 policy position response. EE's and Three's earlier comments were summarised at paragraphs A30.6 and A29.5 of the April 2013 policy position.
[721] Three, April 2013 policy position response, p.21.
[722] Vodafone, April 2013 policy position response, Annex 2, pp.4-6.
[723] Vodafone, April 2013 policy position response, Annex 2, pp.8-9.
[724] Vodafone, April 2013 policy position response, Annex 2, pp.6-7.

as a condition of TCPs' rights of use of an 080 or 116 number under section 58(1)(aa) of the Act / paragraph 1 of Part C of the Annex to the Authorisation Directive ('Annex C(1)'). Vodafone disagreed with Ofcom's view (expressed in the April 2013 policy position) that Annex C(1) would only empower it to set a maximum price, and not a fixed price. Vodafone considered that, if this were correct, Ofcom would be unable to set SC price points for the various unbundled number ranges as this would constitute a fixed price, and zero-rating at the retail level would be unlawful since this would also be a fixed price. However, Vodafone considered that each of these fixed prices is clearly compatible with the broad concept of a "tariff principle" that can attach to the use of the number range.[725]

A7.171 Vodafone also stated that conditions of the type it was proposing could easily be incorporated into Ofcom's proposed access condition.[726] Vodafone submitted that there was an apparent inconsistency in Ofcom's position given its simultaneous reliance on Article 28 of the Universal Service Directive ('USD') to set OCPs' retail charges by virtue of a claimed 'right of use', but denial that it could set wholesale charges (except in the context of a dispute). Vodafone stated that Article 28 USD enables Ofcom to regulate all stakeholders in the value chain whose involvement is necessary to enable the provision of such services using non-geographic numbers to consumers.[727] Vodafone stated that Article 28 USD should be read together with the Access Directive, given that its purpose is to enable NRAs to adopt a wide range of measures facilitating interconnection arrangements that enable the diffusion of services so as to benefit consumers. Vodafone therefore considered that Ofcom is empowered to set the level of the wholesale origination charge. Vodafone stated that Ofcom appears to acknowledge this through the proposed imposition of an access condition, but falls short of attaining the objective of the Community legislature by finding that it can only set the terms of interconnection through a dispute resolution process.[728]

A7.172 Vodafone submitted that its view was supported by BEREC, which contemplates the regulation of the wholesale rate at cost or at another reasonable level in situations where the caller pays no fee. Vodafone also noted that, according to BEREC's report, the regulation of wholesale interconnection arrangements has been proposed by other NRAs.[729] Vodafone stated that, in failing to mandate the level of the wholesale origination charge, Ofcom has failed to take account of all relevant facts and evidence and that, if it proceeds on the basis of its consultation, then this would give rise to a breach of sections 3 and 63 of the Act.[730]

A7.173 Vodafone also set out a number of arguments as to why it considered that Ofcom's proposed regulatory approach would give rise to undesirable consequences. These are set out and responded to in Annex 6.[731]

[725] Vodafone, April 2013 policy position response, Annex 2, pp.9-10.
[726] Vodafone, April 2013 policy position response, Annex 2, pp.9 and 19.
[727] Article 28 USD provides that NRAs must take "all necessary steps" to ensure that end-users are able to access and use services using non-geographic numbers.
[728] Vodafone, April 2013 policy position response, Annex 2, pp.10-11.
[729] Vodafone, April 2013 policy position response, Annex 2, p.11.
[730] Vodafone, April 2013 policy position response, Annex 2, pp.12-13.
[731] Vodafone, April 2013 policy position response, Annex 2, pp.13-21.

Ofcom's response

Wholesale market review

A7.174 We already set out our reasons for not adopting this approach in the April 2013 policy position and in earlier consultations and we therefore do not deal with these points in detail again here.[732]

A7.175 In summary, if we proceed to make the 080 and 116 ranges free-to-caller at the retail level, then we consider that the concerns that we have identified at the wholesale level can be addressed in a more appropriate, proportionate and timely manner by the imposition of an access condition than by a wholesale market review. This is because we consider that there are likely to be wide variations in the positions of OCPs and TCPs and we do not consider that one side (i.e. either OCPs or TCPs) would consistently be in a strong position in negotiations. Rather, the relative strength of bargaining power in any particular negotiation would depend upon the identity of the particular OCP and TCP involved. As such, we may not be able to impose SMP remedies on a consistent basis across the market.

A7.176 We also recently explained in our NMR statement that the termination of calls to non-geographic numbers did not form part of the relevant fixed call termination market considered in that review (as the conditions of competition for the provision of call termination to non-geographic numbers are not sufficiently homogenous with those present in call termination to geographic numbers). We stated that it would be inappropriate to conduct a review of the market for call termination to non-geographic numbers at the present time because of the very significant changes to the market likely to result from our proposals for NGCs within the period of that review.[733] However, we would consider whether any further review of the market for call termination to non-geographic numbers is necessary once the NGCS review is completed and any resulting proposals have been implemented.[734]

Alternative legal approach

A7.177 We remain of the view, as set out in the April 2013 policy position, that we have the power to regulate retail prices insofar as necessary to introduce the unbundled tariff and free-to-caller regimes for the purpose of consumer protection under section 58(1)(aa) of the Act and Annex C(1) to the Authorisation Directive. We also remain unpersuaded that the alternative regulatory approach proposed by Vodafone would be proportionate.[735]

A7.178 In the April 2013 policy position, we set out the pre-conditions that would apply to the exercise of the power under section 58(1)(aa) in future and our view that, in

[732] For example, see paragraphs 14.54 to 14.58 and A30.9 of the April 2013 policy position and paragraph 16.44 in Part C of the April 2012 consultation.

[733] In addition to our proposals for the 080/116 ranges, we also announced in the April 2013 policy position that we are minded (subject to some remaining points of consultation) to introduce a new unbundled tariff structure for calls to the 084, 087, 09 and 118 ranges. We are also separately consulting on our proposal to withdrawal the 0500 range and we plan to consult separately on issues related to the 070/076. See paragraphs [2.9 to 2.13] in Section 2.

[734] Ofcom, *Review of the fixed narrowband services markets*, 26 September 2013, http://stakeholders.ofcom.org.uk/consultations/nmr-13/statement/ - see paragraphs 6.41 to 6.47. This analysis was notified to the EC, BEREC and other NRAs in accordance with Article 7 of the Framework Directive and this particular aspect of the analysis attracted no comment from those bodies.

[735] See April 2013 policy position, Annex 13, paragraphs 13.45-13.105.

principle, we would only expect to use it in limited circumstances and where clearly necessary to protect consumers. We also explained that it could not be used as an alternative to imposing appropriate remedies (from those set out in Article 8 of the Access Directive or Article 17 of the Universal Service Directive) on an undertaking that has been identified as having SMP on a relevant market.[736] In response to Three's comment, we are unable to provide any further guidance about how and when we propose to use section 58(1)(aa) in future without fettering our discretion.[737]

A7.179 With respect to Vodafone's comments regarding wholesale regulation, we set out in the April 2013 policy position our detailed reasons for not favouring the use of Annex C(1) of the Authorisation Directive to regulate wholesale origination charges and we therefore do not deal with these points in detail again here. In summary, we noted in the April 2013 policy position that:

- section 58(1)(aa) of the Act / Annex C(1) of the Authorisation Directive provides a power to set "*tariff principles and maximum prices*", but that TCPs in a relatively strong negotiating position might seek to set origination charges below any maximum level that we might specify;
- our wholesale concerns relate to breakdowns/delays in connectivity, a period of uncertainty for SPs and potential distortions of competition and we do not consider that a power to set a maximum charge would address these concerns to the same extent as our proposed access condition; and
- although these concerns would ultimately have detrimental effects on consumers, the nature of the concerns means that they are more appropriately addressed through an access condition (which is intended to secure end-to-end connectivity, resulting in sustainable competition, interoperability and consumer benefits), rather than our powers under the power under Annex C(1) of the Authorisation Directive (which are intended for consumer protection purposes).[738]

A7.180 As noted above, Vodafone has submitted that the first of these points is irrelevant as we have the power to set a fixed price under the broad concept of a "tariff principle". We disagree with this view and consider that the reference to "tariff principle" in Annex C(1) would not encompass the imposition of a fixed price. In particular, if Vodafone's interpretation were correct, then the reference to "maximum prices" in that provision would be redundant.[739]

A7.181 Vodafone also suggested that we should use Article 28 of the USD as a guide to the interpretation of the extent of our powers to regulate wholesale charges under Article 5 of the Access Directive. With respect to wholesale charges, we continue to believe that it is inappropriate to mandate a single origination charge for each of fixed and mobile calls under our proposed access condition. In particular, obligations imposed under Article 5 must be "*necessary to secure end-to-end*

[736] April 2013 policy position, Annex 13, paragraphs 13.97-13.103.
[737] Three, April 2013 policy position response, p.21.
[738] See paragraphs A13.87 – A13.88, Annex 13 (Part A) of the April 2013 policy position.
[739] Vodafone also stated that, if we were not empowered to set a fixed price, then we would be unable to set SC price points for the various unbundled number ranges and impose zero-rating at the retail level. However, Vodafone is mistaken in its suggestion that we are setting fixed SC price points. We are instead setting maximum caps on the SCs that may be charged in each of the unbundled tariff ranges (except for the 118 range), relying on our power to set "maximum prices" under section 58(1)(aa) of the Act / Annex C(1) to the Authorisation Directive. Similarly, we are imposing a maximum price of zero for calls to 080 and 116 numbers.

connectivity" and we consider that connectivity between OCPs and TCPs can be secured by the imposition of a requirement for TCPs to purchase wholesale origination on fair and reasonable terms (backed up by the use of our dispute resolution powers under section 185 of the Act / Article 20 of the Framework Directive in the event that a dispute arises as to whether the terms offered by a particular TCP are fair and reasonable).[740] Similarly, the objective of Article 28 USD is that NRAs take "*all necessary steps*" to ensure that end-users are able to access non-geographic numbers, but we consider that General Condition 20[741] (in combination with our access condition at the wholesale level) is sufficient to ensure this objective is met.

A7.182 We also have a duty under section 3(3)(a) of the Act to have regard to the principle that regulatory action should be targeted only at cases in which action is needed. We consider it appropriate to give OCPs and TCPs an opportunity to reach a commercially negotiated solution regarding the level of origination charges.

A7.183 In light of these considerations, we also do not consider there to be any inconsistency between our regulatory intervention at the wholesale level and our regulatory approach at the retail level. Vodafone specifically commented on an apparent inconsistency arising from our reliance on Article 28 USD. We have previously stated that the requirements of Article 28 USD are consistent with our view that "rights of use" should be interpreted broadly.[742] However, we do not base our legal power to regulate retail prices upon Article 28 USD. Rather, we are relying on sections 56(1)(ba) and 58(1)(aa) of the Act / Annex C(1) of the Authorisation Directive to set a maximum price of zero for calls to 080/116 numbers. We therefore do not consider there to be any such inconsistency.

A7.184 Whilst we therefore remain of the view that our wholesale regulatory intervention is appropriate, we recognise that stakeholders continue to have concerns about the lack of a mandated wholesale origination charge across industry – we discuss this in Annex 6 at paragraphs A6.71 to A6.73.

[740] Vodafone characterised us as leaving the terms of interconnection to be regulated through a dispute resolution process. However, we are not relying solely on our ex post dispute resolution powers, but are regulating the terms of interconnection on an ex ante basis, by requiring that these terms (including charges) are fair and reasonable.
[741] General Condition 20 implements the requirements of Article 28 USD.
[742] See paragraph 5.57 in Part A of the April 2012 consultation and paragraphs A13.51 – A13.54 in Annex 13 to the April 2013 policy position.

Annex 8

Notification of modifications to the General Conditions under section 48(1) of the Act

Modifications of General Conditions 12, 14, 17, 23 and 24

WHEREAS

A. On 15 April 2013, Ofcom published a notification (the "First Notification") setting out their proposals for modifying General Conditions 12, 14, 17, 23 and 24 of the General Conditions of Entitlement.

B. Ofcom stated in the First Notification that they considered the proposals were not of EU significance pursuant to section 150A(2) of the Act.

C. In the First Notification and the accompanying consultation, Ofcom invited representations about any of the proposals set out therein by 28 May 2013.

D. By virtue of section 48A(6) and (7) of the Act, Ofcom may give effect to the proposal set out in the First Notification, with or without modification, only if—

(i) they have considered every representation about the proposal that is made to them within the period specified in the First Notification; and

(ii) they have had regard to every international obligation of the United Kingdom (if any) which has been notified to them for this purpose by the Secretary of State.

E. Ofcom received ten responses to the First Notification and have considered every representation made to them in respect of the proposed modifications.

F. The Secretary of State did not notify to Ofcom any international obligation of the United Kingdom for the purpose of section 48A(6) of the Act**.**

THEREFORE

1. In accordance with sections 48(1) and 48A(7) of the Act, Ofcom are modifying General Conditions 12, 14, 17, 23 and 24 of the General Conditions of Entitlement as set out in the Schedules to this Notification.

2. Ofcom's reasons for making these modifications, and the effect of the modifications, are set out in the explanatory statement accompanying this Notification.

3. Ofcom consider that the modifications comply with the requirements of sections 45 to 49C of the Act, insofar as they are applicable.

4. In making these modifications, Ofcom have considered and acted in accordance with their general duty as to telephone numbering functions under section 63 of the Act, their general duties under section 3 of the Act and the six Community requirements set out in section 4 of the Act.

5. The modifications shall enter into force on 26 December 2013.

6. A copy of this Notification and the accompanying explanatory statement have been sent to the Secretary of State in accordance with section 48C(1) of the Act.

7. In this Notification:

   a. “the Act” means the Communications Act 2003;

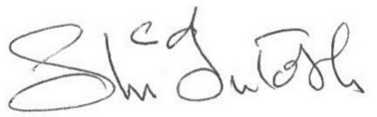
   b. “General Conditions of Entitlement” means the general conditions set under section 45 of the Act by the Director General of Telecommunications on 22 July 2003, as amended from time to time;

   c. “Ofcom” means the Office of Communications.

8. Words or expressions shall have the meaning assigned to them in this Notification, and otherwise any word or expression shall have the same meaning as it has in the Act.

9. For the purposes of interpreting this Notification: (a) headings and titles shall be disregarded; and (b) the Interpretation Act 1978 shall apply as if this Notification were an Act of Parliament.

10. The Schedules to this Notification shall form part of this Notification.



Stuart McIntosh
Competition Group Director

12 December 2013

A person authorised by Ofcom under paragraph 18 of the Schedule to the Office of Communications Act 2002.

SCHEDULE 1

The modifications to General Condition 12 are made by the insertions and deletions marked in bold and highlighted in yellow in the following text.

12. ITEMISED BILLS

12.1 The Communications Provider shall provide to each of its Subscribers, on request, and either at no extra charge or for a reasonable fee, a basic level of itemised billing. The Communications Provider shall ensure that each itemised bill shows a sufficient level of detail to allow the Subscriber to:

(a) verify and control the charges incurred by the Subscriber in using a Public Communications Network and/or related Publicly Available Telephone Services; and

(b) adequately monitor the Subscriber's usage and expenditure and thereby exercise a reasonable degree of control over their bills.

12.2 In carrying out the obligations under paragraphs 12.1(a) and (b) on or after the Effective Date in relation to any Subscriber who is a Consumer, the Communications Provider shall ensure that the detail provided in an itemised bill includes the Applicable Access Charge.

12.**3** Ofcom may from time to time direct the minimum level of itemisation to be provided by the Communications Provider under paragraph 12.1.

12**.4** The Communications Provider shall ensure that calls which are made from a Subscriber's telephone which are free of charge to that Subscriber, including calls to helplines, shall not be identified in the Subscriber's itemised bill.

12.**5** The Communications Provider shall not be subject to this Condition in respect of any Subscriber where:

(a) it provides Publicly Available Telephone Services to the Subscriber on a pre-paid basis; and

(b) the Subscriber has an alternative means, free of charge, of adequately monitoring the Subscriber's usage and expenditure.

12.**6** For the purposes of this Condition:

(a) "Applicable Access Charge" means the rate charged by the Communications Provider to the Subscriber in respect of the retail and origination of a call to an Unbundled Tariff Number in accordance with General Condition 17;

(b) "Communications Provider" means a person who provides Publicly Available Telephone Services;

(c) "Consumer" has the meaning given to that term in General Condition 17;

(d) **“Effective Date” has the meaning given to that term in General Condition 17;**

(e) “Subscriber” means an End-User who is party to a contract with the Communications Provider for the provision of Publicly Available Telephone Services~~.~~**; and**

(f) **“Unbundled Tariff Number” has the meaning given to that term in General Condition 17.**

SCHEDULE 2

The modifications to General Condition 14 are made by the insertions and deletions marked in bold and highlighted in yellow in the following text.

14. **PRICE TRANSPARENCY FOR NON-GEOGRAPHIC CALLS,** CODES OF PRACTICE AND DISPUTE RESOLUTION

Basic Code of Practice regarding provision of Public Electronic Communications Services

14.1 The Communications Provider shall produce a basic Code of Practice for its Domestic and Small Business Customers which sets out at least where such customers may avail themselves of the information required to be published under Condition 10.2, as relevant to the provision of Public Electronic Communications Services. The Code of Practice shall be drafted in plain English which is easy to understand, and copies of the Code of Practice shall be provided on request and free of charge to any Domestic and Small Business Customer.

Codes of Practice for Premium Rate Services, NTS Calls, calls to 0870 numbers and calls to Personal Numbers

14.2 **~~Within two months of this Condition entering into force, all~~ Subject to paragraph 14.7, an** Originating Communications Provider**~~s~~** who provide**s** Premium Rate Services, NTS calls, calls to 0870 numbers or calls to Personal Numbers, as appropriate shall:

(a) establish and thereafter maintain a Code of Practice for the provision of information relating to Premium Rate Services for its Domestic and Small Business Customers, which conforms with the Guidelines set out in Annex 1 to this Condition;

(b) establish and thereafter maintain a Code of Practice for NTS Calls, calls to 0870 calls and calls to Personal Numbers for its Domestic and Small Business Customers, which conforms with the Guidelines set out in Annex 2 to this Condition; and

(c) comply with the provisions of the Codes of Practice referred to at 14.2 (a) and (b) above.

14.3 The codes of practice referred to in Condition 14.2 shall be drafted in plain English which is easy to understand, and copies of the codes of practice shall be provided on request and free of charge to any Domestic and Small Business Customer.

Codes of Practice for Complaints

14.4 The Communications Provider shall have and comply with procedures that conform to the Ofcom Approved Code of Practice for Complaints Handling when handling Complaints made by Domestic and Small Business Customers about its Public Electronic Communications Services.

Dispute Resolution

14.5 The Communications Provider shall implement and comply with a Dispute Resolution Scheme, including any final decision of the Dispute Resolution Body made in accordance with that Scheme, for the resolution of disputes between the Communications Provider and its Domestic and Small Business Customers in relation to the provision of Public Electronic Communications Services.

Code on the provision by Service Providers of consumer protection information for the provision of Services

14.6 **~~Within two months of this Condition entering into force, all~~** Service Providers shall:

(a) comply with the requirements set out in the Code at Annex **4** **3**.

Transparency obligations in relation to calls to Unbundled Tariff Numbers

14.7 **From (and including) the Effective Date, the obligations in paragraphs 14.8 – 14.12 take effect and, to the extent that these obligations overlap with the requirements of paragraph 14.2 and Annex 2 to this Condition as they apply to the publication in price lists, websites, advertising or advertising material, of information and advice to Consumers on usage charges for calls to Unbundled Tariff Numbers, they supersede those requirements.**

14.8 **The Communications Provider shall publish the Access Charges that it sets in a way that:**

(a) **ensures the Access Charges are readily accessible to Consumers; and**

(b) **gives those charges the same prominence in terms of location and format as is given to charges for geographic calls, calls to mobiles and call packages, including bundles, on the Communications Provider's website, in its published price lists and in advertising and promotional material which refer to call pricing.**

14.9 **Without prejudice to the generality of paragraph 14.8, the Communications Provider shall give prominence to the following, in particular:**

(a) **the Access Charge that is payable for each package of tariffs that the Communications Provider makes available to Consumers;**

(b) **whether calls to Unbundled Tariff Numbers are included within bundles of inclusive calls or inclusive call minutes purchased by Consumers from the Communications Provider, specifying in particular:**

(i) **the Unbundled Tariff Numbers to which the terms of the bundle apply;**

(ii) **if relevant, the number of call minutes to Unbundled Tariff Numbers that are so included;**

(iii) **if relevant, whether the inclusion of calls to Unbundled Tariff Numbers is conditional upon the time or day of the call; and**

(iv) **whether any special offers, discount schemes or call bundling arrangements apply to the Service Charges payable in respect of the call minutes or calls to Unbundled Tariff Numbers that are so included.**

14.10 **The provisions of paragraph 14.11 apply where a Communications Provider advertises, promotes or procures the advertisement or promotion of any Unbundled Tariff Number in connection with the provision by the Communications Provider of a service to Consumers by means of that Unbundled Tariff Number.**

14.11 **The Communications Provider shall—**

(a) **include or procure the inclusion in any advertising and promotion of the Unbundled Tariff Number the Service Charge which applies in respect of a call by a Consumer to that number; and**

(b) **ensure that the Service Charge is displayed in a prominent position and in close proximity to the Unbundled Tariff Number in any such advertising or promotion of the Unbundled Tariff Number.**

14.12 **The Communications Provider shall put in place procedures to enable enquiry and helpdesk staff to respond to complaints and enquiries about Access Charges and calls to Unbundled Tariff Numbers and to monitor their compliance with the obligations in paragraphs 14.8 – 14.11.**

14.**13** In this Condition:

(a) **"Access Charge" has the meaning given to that term in General Condition 17;**

(b) "**Communications Provider**" means a person who provides Public Electronic Communication Services to Domestic and Small Business Customers;

(c) "**Complaint**" means

a) an expression of dissatisfaction made by a customer to a Communications Provider related to either:

i) the Communications Provider's provision of Public Electronic Communications Services to that customer; or

ii) the complaint-handling process itself; and

b) where a response or resolution is explicitly or implicitly expected;

(d) **"Consumer" has the meaning given to that term in General Condition 17;**

(e) "**Dispute Resolution Body**" means the body of persons responsible for administering a relevant Dispute Resolution Scheme;

(f) "**Dispute Resolution Scheme**" means procedures approved or established from time to time by Ofcom for the purpose of this Condition in accordance with sections 52, 54 or 55 of the Act;

(g) "**Domestic and Small Business Customer**" means, in relation to a Communications Provider, a Customer of that Provider who is neither-

(i) himself a Communications Provider; nor

(ii) a person who is such a Customer in respect of an undertaking carried on by him for which more than ten individuals work (whether as employees or volunteers or otherwise);

(h) "Effective Date" has the meaning given to that term in General Condition 17;

(i) "**Guidelines**" mean the guidelines as set out in either Annex 1, 2 or 3 to this Condition;

~~(g) "Mobile Number" means a Telephone Number, from a range of numbers in the National Telephone Numbering Plan, that is Adopted or otherwise used to identify Apparatus designed or adapted to be capable of being used while in motion;~~

(j) "**NTS Calls**" means:

(i) **until (and including) the day prior to the Effective Date,** calls to numbers identified in the National Telephone Numbering Plan as Special Services operating on the 08 number range and including calls to 0500 freephone numbers, but excluding calls to 0844 04 numbers for Surftime internet access services, calls to 0808 99 numbers for flat rate internet access call origination and calls to 0870 numbers;

(ii) from (and including) the Effective Date, calls to numbers identified in the National Telephone Numbering Plan as Non-Geographic Numbers operating on the 08 number range (but excluding calls to 0844 04 numbers for Surftime internet access services, calls to 0808 99 numbers for flat rate internet access call origination and calls to 0870 numbers) and calls to 0500 numbers;

(k) "Non-Geographic Number" has the meaning given to that term in the National Telephone Numbering Plan;

(l) "**Ofcom Approved Code of Practice for Complaints Handling**" means the code of practice set out in Annex 4 to this General Condition 14;

(m) "**Originating Communications Provider**" means any Communications Provider that provides call origination services to Domestic and Small Business Customers but excluding Payphone Service Providers;

(n) "Payphone Service Provider" means a provider of a Public Pay Telephone;

(o) **"Personal Number" has the meaning given to that term ~~means a Telephone Number, from a range of numbers~~** in the National Telephone Numbering Plan~~, assigned by a Personal Numbering Service Provider,~~

~~**which allows a Subscriber to receive calls or other communications at almost any Telephone Number, including a Mobile Number**~~;

~~**(l)**~~ ~~"**Personal Numbering Service" means a service based on number translation that enables End-Users to be called or otherwise contacted, using a single Personal Number, and to receive those calls or other communications at almost any Telephone Number, including Mobile Numbers;**~~

~~**(m)**~~ ~~"**Personal Numbering Service Provider" means a provider of Personal Numbering Services;**~~

(p) "**Publicly Available Telephone Services**" means a service available to the public for originating and receiving national and international calls and access to Emergency Organisations through a number or numbers in a national or international telephone numbering plan, and in addition may, where relevant, include one or more of the following services: the provision of operator assistance services, Directory Enquiry Facilities, Directories, provision of Public Pay Telephones, provision of service under special terms, provision of specific facilities for End-Users with disabilities or with special social needs and/or the provision of non-geographic services;

(q) "**Service**" means a Public Electronic Communication Service, but only to the extent it comprises the conveyance of speech, music or sounds;

(r) **"Service Charge" has the meaning given to that term in General Condition 17;**

(s) "**Service Provider**" means a provider of a Service~~.~~**;**

(t) **"Terminating Communications Provider" or "TCP" means the Communications Provider which provides the electronic communications network on which a call terminates; and**

(u) **"Unbundled Tariff Number" has the meaning given to that term in General Condition 17.**

[*The Annexes* to *General Condition 14 have not been reproduced for the purposes of this Notification*]

SCHEDULE 3

The modifications to General Condition 17 are made by the insertions and deletions marked in bold and highlighted in yellow in the following text.

17. ALLOCATION, ADOPTION AND USE OF TELEPHONE NUMBERS

General Prohibitions on Adoption and Use

17.1 A Communications Provider shall not Adopt Telephone Numbers from Part A of the National Telephone Numbering Plan unless:

(a) the Telephone Numbers have been Allocated to the Communications Provider; or

(b) the Communications Provider has been authorised (either directly or indirectly) to Adopt those Telephone Numbers by the person Allocated those Telephone Numbers**.**

17.2 The Communications Provider may only use a Telephone Number from Part A of the National Telephone Numbering Plan where that Telephone Number has been Allocated to a person, unless the use in question is for the purposes of indicating that the Telephone Number has not been Allocated.

17.3 The Communications Provider may only use (or, where specified, Adopt) a Telephone Number listed in Part C of the National Telephone Numbering Plan where such use or Adoption is in accordance with the designation attributed to that Telephone Number therein.

Requirements in Connection with the Adoption of Telephone Numbers

17.4 In providing an Electronic Communications Network or an Electronic Communications Service, the Communications Provider shall comply with:

(a) all applicable restrictions and requirements as are set out in the National Telephone Numbering Plan; and

(b) any restrictions or requirements set out in a notification issued by Ofcom to that Communications Provider recording the Allocation of specific Telephone Numbers to it.

17.5 Where Telephone Numbers have been Allocated to the Communications Provider, that provider shall secure that such Telephone Numbers are Adopted or otherwise used effectively and efficiently.

17.6 The Communications Provider shall not unduly discriminate against another Communications Provider in relation to its Adoption or use of Telephone Numbers for purposes connected with the use by that other Communications Provider, or its Customers, of any Electronic Communications Network or Electronic Communications Service.

17.7 The Communications Provider shall take all reasonably practicable steps to secure that its Customers, in using Telephone Numbers, comply **(where applicable)** with the provisions of this Condition, ~~**where applicable, and**~~ the provisions of the National Telephone Numbering Plan **and the Non-provider Numbering Condition**.

Requirements in Connection with the transfer of use of Allocated Telephone Numbers

17.8 The Communications Provider shall not transfer use of Telephone Numbers from the National Telephone Numbering Plan unless:

(a) the Telephone Numbers have been Allocated to the Communications Provider; or the Communications Provider has been authorised (either directly or indirectly) to Adopt those Telephone Numbers by the person Allocated those Telephone Numbers;

(b) the telephone numbers are used in accordance with the National Telephone Numbering Plan; and

(c) the Telephone Numbers are Adopted or otherwise used effectively and efficiently.

Application for Allocation or Reservation of Telephone Numbers

17.9 When applying for an Allocation or reservation of Telephone Numbers, the Communications Provider shall:

(a) use an appropriate application form as directed by Ofcom from time to time as it thinks fit;

(b) provide such information as is required by such application form; and

(c) provide to Ofcom, on request, any other information considered by Ofcom to be relevant to the application, and the supply of which does not place an undue burden on the Communications Provider.

17.10 Ofcom will determine, taking into account the provisions of the National Telephone Numbering Plan, any application for Telephone Numbers by the end of the period of three weeks after the date of the receipt by it of the completed application form. Where Ofcom has required any additional information under paragraph 17.9(c) in relation to any application, Ofcom will determine the application by the end of the period of three weeks after the date of the receipt by it of that additional information.

Allocation of Telephone Numbers for a limited period

17.11 Ofcom may Allocate Telephone Numbers to the Communications Provider for a limited period only if the duration is appropriate for the service concerned in view of the objective pursued and taking due account of the need to allow for an appropriate period for investment amortisation.

17.12 Where Telephone Numbers are Allocated to the Communications Provider by Ofcom for a limited period of time, Ofcom may withdraw any such Allocated numbers at the end of the set period.

Charging for Specified Geographic Numbers

17.13 The Communications Provider shall pay to Ofcom any applicable Annual Number Charge within 14 days of receipt of an invoice from Ofcom.

17.14 The Annual Number Charge will be billed annually in arrears following the end of each Charging Year.

17.15 The Annual Number Charge for a Communications Provider shall be:

(a) the charges applicable to that Communications Provider calculated in accordance with paragraph 17.16; less

(b) any reduction applicable to that Communications Provider calculated in accordance with paragraph 17.17.

17.16 In respect of each Specified Geographic Number the Communications Provider must pay £0.1/365 for every day within the Charging Year for which that Specified Geographic Number is Allocated to it. Such amounts are payable irrespective of whether or not a Specified Geographic Number has been Adopted or is in use.

17.17 If relevant, the amount of any reduction for a Communications Provider in respect of a Charging Year shall be:

(a) (the total number of the Communications Provider's Ported Numbers) x £0.1 ÷ (the Average Industry Utilisation Rate); plus

(b) (the total number of the Communications Provider's WLR Numbers) x £0.1 ÷ (the BT Average Utilisation Rate); plus

(c) (the total number of the Communications Provider's Public Payphone Numbers) x £0.1 ÷ (the Communications Provider Average Utilisation Rate).

17.18 If any reduction calculated pursuant to paragraph 17.17 exceeds the charges applicable to that Communications Provider calculated in accordance with paragraph 17.16, the Annual Number Charge shall be zero.

Withdrawal of a Number Allocation

17.19 It is hereby declared that Ofcom may withdraw an Allocation of Telephone Numbers from a Communications Provider where:

(a) the Communications Provider has not Adopted those Telephone Numbers within six months, or such other period as Ofcom may from time to time direct, from the date on which the Telephone Numbers were Allocated, or

(b) in relation to an Allocation of a series of Telephone Numbers
the Communications Provider has not Adopted those Telephone Numbers to any significant extent within six months, or such other period as Ofcom may from time to time direct, from the date on which the series of Telephone Numbers was Allocated.

Requirements in connection with the use of telephone numbers

17.20 In preparation for the fulfilment of its obligations under paragraphs 17.22 to 17.32 from (and including) the Effective Date, the Communications Provider must take all steps it considers necessary and as Ofcom may direct prior to the Effective Date.

17.**21** **Before the Effective Date, w**~~W~~here Customers of a Communications Provider are making calls to Non-Geographic Numbers starting 03, Harmonised numbers for harmonised services of social value (116XXX numbers) or Non-Geographic Numbers starting 0870, the Communications Provider shall comply with the designations for those numbers in Part A of the National Telephone Numbering Plan.

17.22 When providing an Electronic Communications Service by means of an Unbundled Tariff Number on or after the Effective Date, the Communications Provider must comply with the tariff principles set out in paragraphs 17.24 – 17.30 and any applicable maximum price specified in the National Telephone Numbering Plan.

17.23 Paragraph 17.22 does not apply in respect of—

(a) calls to an Unbundled Tariff Number from a Public Pay Telephone;

(b) calls originating outside of the United Kingdom to an Unbundled Tariff Number.

17.24 The retail price for a call to an Unbundled Tariff Number which is charged to a Consumer is the sum of—

(a) the Access Charge Element; and

(b) the Service Charge Element, subject to any special offers, discounts or call bundling arrangements which the Communications Provider offers to that Consumer.

17.25 The Access Charge must—

(a) not vary within a Consumer's tariff package by reference to:

(i) the Unbundled Tariff Number that is called; or
(ii) the time or day of the call;

(b) be set at a pence per minute rate.

17.26 The Service Charge—

(a) must not vary according to the Communications Provider that retails or originates the call;

(b) must not vary by the time or day of the call;

(c) must be no greater than any applicable maximum price specified in the National Telephone Numbering Plan;

(d) may be set at a pence per minute, a pence per call rate, or a rate which combines a pence per minute rate and a pence per call rate;

(e) must not require another Communications Provider to have systems able to accommodate more Price Points than are required under paragraph 17.31, unless that Communications Provider agrees otherwise.

17.27 For the purpose of calculating an Access Charge Element, the Communications Provider:

(a) may round up the length of the call to 1 minute for a call lasting less than 1 minute; and

(b) for a call lasting more than 1 minute but less than a whole number of minutes, must treat that call in accordance with the rounding principles it would apply to a geographic call of an equivalent length for the purpose of billing a Consumer.

17.28 For the purpose of calculating the Service Charge Element where the Service Charge comprises or includes a pence per minute rate, the Communications Provider must round up the length of the call to the next nearest whole second for a call lasting less than a whole number of seconds (so that, for example, a call lasting 3 minutes 14.5 seconds would be charged in respect of the Service Charge Element, at the applicable Service Charge multiplied by 3.25).

17.29 Paragraph 17.30 applies if both the following conditions in respect of a call to an Unbundled Tariff Number are satisfied —

(a) the Consumer has purchased a bundle of inclusive call minutes or inclusive calls from the Communications Provider, which includes call minutes (or calls) to one or more Unbundled Tariff Numbers; and

(b) the call is to an Unbundled Tariff Number which counts towards remaining minutes (or calls) in the bundle of inclusive minutes (or calls) purchased by the Consumer.

17.30 Where this paragraph applies, the Access Charge Element shall be deemed to be zero.

17.31 For the purpose of calculating and billing the Service Charge Element of the retail price for calls to Unbundled Tariff Numbers on or after the Effective Date, the Communications Provider must ensure that:

(a) with effect for the period of 12 months beginning on the Effective Date, it has systems able to accommodate up to eighty (80) different Price Points; and

(b) with effect from the expiry of the period referred to in paragraph 17.31(a), it has systems able to accommodate up to one hundred (100) different Price Points.

17.32 In relation to the obligations under paragraph 17.31, the Price Points accommodated by the systems of the Communications Provider must:

(a) **reflect on a fair and reasonable basis the rates proposed to the Communications Provider by other providers in respect of their Service Charges, taking account of the volume and range of such proposals; and**

(b) **be set in increments of no less than £0.01.**

17.**33** For the purposes of this Condition:

(a) **"Access Charge" means a rate set by a Communications Provider in accordance with paragraph 17.25 in respect of the retail and origination of a call to an Unbundled Tariff Number and its conveyance up to and including the Assumed Handover Point for the purpose of calculating the amount payable by a Consumer for making such a call;**

(b) **"Access Charge Element" means, in respect of a call to an Unbundled Tariff Number retailed to a Consumer:**

(i) **the amount produced by multiplying the Access Charge applicable to that Consumer by the length of the call, in accordance with paragraph 17.27; or**

(ii) **where paragraph 17.30 applies, zero.**

(c) **"**Affiliated Company" means any subsidiary or holding company of the Communications Provider, or any subsidiary of a holding company of the Communications Provider, all as defined in section 1159 of the Companies Act 2006;

(d) "Annual Number Charge" is a charge invoiced by Ofcom to a Communications Provider in respect of a Charging Year and is calculated in accordance with paragraph 17.15;

(e) **"Assumed Handover Point" means the point of interconnection nearest to the origination of a call to an Unbundled Tariff Number at which the call may be handed over to the Electronic Communications Network of another Communications Provider for conveyance. For these purposes, where the call is routed via a Transit Network, the Assumed Handover Point is deemed to be the nearest point of ingress from the Electronic Communications Network on which the call originates to that Transit Network;**

(f) "Average Industry Utilisation Rate" means the weighted average utilisation rate of Specified Geographic Numbers for the industry as calculated by Ofcom and notified to Communications Providers prior to the first Charging Year;

(g) "BT" means BT Group plc.;

(h) "BT Average Utilisation Rate" means the average utilisation rate of Specified Geographic Numbers Allocated to BT as calculated by Ofcom and notified to BT prior to the first Charging Year;

(i) "Charging Year" means the 12 month period beginning on 1 April and ending on 31 March (excluding 29 February in any leap year), and the first Charging Year shall be 1 April 2013 to 31 March 2014;

(j) "Communications Provider" means a person who provides an Electronic Communications Network or an Electronic Communications Service;

(k) "Communications Provider Average Utilisation Rate" means the average utilisation rate of Specified Geographic Numbers Allocated to the relevant Communications Provider as calculated by Ofcom and notified to the Communications Provider prior to the first Charging Year;

(l) **"Consumer" means any natural person who uses or requests a Public Electronic Communications Service for purposes which are outside his or her trade, business or profession;**

(m) **"Effective Date" means 26 June 2015;**

(n) "Geographic Area Code" has the meaning given to it in the National Telephone Numbering Plan;

(o) "Geographic Number" has the meaning given to it in the National Telephone Numbering Plan;

(p) "Non-Geographic Number" has the meaning given to it in the National Telephone Numbering Plan;

(q) **"Non-provider Numbering Condition" means the condition that applies to persons other than communications providers relating to the use of Unbundled Tariff Numbers and made on 12 December 2013 under section 59 of the Act;**

(r) "Ported Number" means a Specified Geographic Number Allocated to the Communications Provider which Ofcom is satisfied (pursuant to information received from the Communications Provider by 1 December of the Charging Year (or such other date as Ofcom notifies prior to the start of the Charging Year)) was on a particular day (as specified by the Communications Provider) between 1 September and 31 October of the Charging Year (or such other time period as Ofcom notifies prior to the start of the Charging Year) subject to an arrangement under which that Communications Provider had ported, in accordance with GC 18, that Specified Geographic Number to a person who was not an Affiliated Company;

(s) **"Price Point" means a rate which may be set as a Service Charge and is used for calculating or billing the Service Charge Element of the retail price for a call to an Unbundled Tariff Number which is charged to a Consumer;**

(t) "Public Payphone Number" means a Specified Geographic Number Allocated to the Communications Provider which Ofcom is satisfied (pursuant to information received from the Communications Provider by 1 December of the Charging Year (or such other date as Ofcom notifies prior to the start of the Charging Year)) was on a particular day (as specified by the Communications Provider) between 1 September and 31 October of the Charging Year (or such other time period as Ofcom notifies prior to the start of the Charging Year) in use in respect of a Public Pay Telephone service provided under a Universal Service Obligation;

(u) **"Service Charge" means the rate set by a Communications Provider in accordance with paragraph 17.26 in respect of the conveyance of a call to an Unbundled Tariff Number from the Assumed Handover Point to the point of termination and the enabling of a Consumer to use an Unbundled Tariff Number to access any service provided by means of that number;**

(v) **"Service Charge Element" means, in respect of a call to an Unbundled Tariff Number retailed to a Consumer—**

(i) **the amount produced by multiplying the Service Charge for that Unbundled Tariff Number by the length of the call in accordance with paragraph 17.28, where the Service Charge is charged at a pence per minute rate;**

(ii) **an amount equal to the Service Charge for that Unbundled Tariff Number, where the Service Charge is charged at a pence per call rate;**

(iii) **an amount equal to sum of the amounts calculated under paragraphs (i) and (ii) of this definition, where the Service Charge is charged at a rate which combines a pence per minute rate and a pence per call rate;**

(w) "Specified Geographic Number" means a Geographic Number (identified by the Geographic Area Code) set out in the Annex;

(x) **"Transit Network" means the Electronic Communications Network of a Communications Provider used to convey a call from the Electronic Communications Network of another Communications Provider to the Electronic Communications Network of a third Communications Provider;**

(y) **"Unbundled Tariff Number" means a Non-Geographic Number starting 084, 087, 090, 091, 098 or 118;**

(z) "WLR" means Wholesale Line Rental, a regulated wholesale service sold by BT, which is used by the Communications Provider to provide retail customers with exchange lines and, in turn, access to other narrowband telephony services (for example, telephone calls, facsimile and dial-up internet access);

(za) "WLR Number" means a Specified Geographic Number Allocated to the Communications Provider which Ofcom is satisfied (pursuant to information received from the Communications Provider by 1 December of the Charging Year (or such other date as Ofcom notifies prior to the start of the Charging Year)) was on a particular day (as specified by the Communications Provider) between 1 September and 31 October of the Charging Year (or such other time period as Ofcom notifies prior to the start of the Charging Year) subject to an arrangement under which that Communications Provider was providing WLR to a person who was not an Affiliated Company.

[*The Annex to General Condition 17 has not been reproduced for the purposes of this Notification*]

SCHEDULE 4

The modifications to General Condition 23 are made by the insertions and deletions marked in bold and highlighted in yellow in the following text.

23. SALES AND MARKETING OF MOBILE TELEPHONY SERVICES

[*Paragraphs 23.1 – 23.4 to General Condition 23 have not been reproduced for the purposes of this Notification*]

Mobile Service – Information at Point of Sale

23.5 The Mobile Service Provider must use reasonable endeavours to ensure that before entering into or amending a contract for a Mobile Telephony Service the customer:

(a) is authorised to do so;

(b) intends to enter into this contract; and

(c) is provided with the information set out below in a clear, comprehensible and accurate manner in paper or another Durable Medium which is available or accessible to the Customer or, where the Customer enters into or amends the contract during a sales call, by telephone:

(i) the identity of the legal entity the Customer is contracting with; its address and telephone, fax and/or e-mail contact details;

(ii) a description of the Mobile Telephony Service; the key charges (including minimum contract charges**,** **~~and~~** any early termination charges, if applicable **and, from (and including) the Effective Date and if the Customer is a Consumer, the Access Charge**); payment terms; the existence of any termination right, including termination procedures; the likely date the Mobile Telephony Service will be provided, in case the provision of the Mobile Telephony Service is not immediate; and any minimum period of contract.

Where the Customer enters into a contract during a sales call, in addition to the oral provision of this information the Mobile Service Provider must use reasonable endeavours to ensure that this information is sent to the Customer in good time following the call in paper or another Durable Medium.

[*Paragraphs 23.6 – 23.10 to General Condition 23 have not been reproduced for the purposes of this Notification*]

Definitions

23.11 For the purpose of this Condition:

(a) **"Access Charge" means the rate to be charged by the Mobile Service Provider to the Customer in respect of the retail and origination of a call to an Unbundled Tariff Number in accordance with General Condition 17;**

(b) **"Consumer" has the meaning given to that term in General Condition 17;**

(c) "Customer" means Domestic and Small Business Customer as defined in section 52 (6) of the Act;

(d) "Durable Medium" means a medium on which a Customer can store and retrieve unaltered information for a period of time adequate for the purposes of the information;

(e) **"Effective Date" has the meaning given to that term in General Condition 17;**

(f) "Mobile Service" means a service consisting in the conveyance of signals, by means of a mobile Public Electronic Communications Network, through the agency of Wireless Telegraphy to or from Apparatus designed or adapted to be capable of being used while in motion;

(g) "Mobile Telephony Service" means a Publicly Available Telephone Service that is a Mobile Service (and includes any SMS service sold as part of the package);

(h) "Prepaid Mobile Telephony Service" means a Mobile Telephony Service for which the Customer pays charges in advance of the service being provided;

(i) "Mobile Service Provider" means the provider of a Mobile Telephony Service;

(j) "Mobile Service Retailer" means any person who sells or markets a Mobile Telephony Service directly to a Domestic or Small Business Customer; ~~**and**~~

(k) "SIM Only Contract" means a contract for a Mobile Telephony Service where the Customer only obtains a Subscriber Identity Module ('SIM') card from the Mobile Service Provider and the notice period for cancelling this contract does not exceed one calendar month~~.~~**; and**

(l) **"Unbundled Tariff Number" has the meaning given to that term in General Condition 17.**

SCHEDULE 5

The modifications to General Condition 24 are made by the insertions and deletions marked in bold and highlighted in yellow in the following text.

24. SALES AND MARKETING OF FIXED-LINE TELECOMMUNICATIONS SERVICES

[*Paragraphs 24.1 – 24.5 to General Condition 24 have not been reproduced for the purposes of this Notification*]

Information at Point of sale

24.6 The Gaining Communications Provider must take all reasonable steps to ensure that before entering into a contract for a Fixed-Line Telecommunications Service the Customer who is transferring the line:

(a) is authorised to do so;

(b) intends to enter into the contract; and

(c) is provided with the information set out below in a clear, comprehensible, prominent and accurate manner, in paper or another Durable Medium which is available or accessible to the Customer or, where the Customer enters into the contract during a sales call, by telephone:

(i) the identity of the legal entity the Customer is contracting with and its telephone, website and/or e-mail contact details;

(ii) a description of the Fixed-Line Telecommunications Service requested; the key charges, including minimum contract charges, **~~and~~** any early termination charges, if applicable **and, from (and including) the Effective Date and if the Customer is a Consumer, the Access Charge**; payment terms; the existence of any termination right, termination procedures and the Customer's right to cancel at no cost from the point of sale to the completion of the Transfer Period; the arrangements for provision of the service, including the order process and, as accurately as possible, the likely date of provision of the service and any minimum period of contract.

[*Paragraphs 24.7 – 24.18 to General Condition 24 have not been reproduced for the purposes of this Notification*]

Definitions

24.19 For the purpose of this Condition:

(a) "**Access Charge**" **means the rate to be charged by the Gaining Communications Provider to the Customer in respect of the retail and origination of a call to an Unbundled Tariff Number in accordance with General Condition 17;**

(b) “**Cable Network**” means a hybrid fibre-coax Electronic Communications Network that uses a combination of optical fibres and coaxial cable;

(c) “**Cancel Other**” means the industry term for a functionality that enables the Losing Communications Provider to cancel wholesale orders (during the Transfer Period) placed by the Gaining Communications Provider which can only be used in the circumstances set out in 24.14;

(d) “**Communications Provider**” means the provider of an Electronic Communications Network and/or Electronic Communications Service, both as defined in section 32 of the Act;

(e) “**Consumer” has the meaning given to that term in General Condition 17;**

(f) “**CPS**” means Carrier Pre-Selection, a facility which allows a customer of a Publicly Available Telephone Service to select a provider designated in advance to apply on every occasion where no other providers have been pre-selected for the use of a telephone number;

(g) “**Domestic and Small Business Customer**” has the meaning set out in section 52 (6) of the Act;

(h) ”**Durable Medium**” means any instrument which enables the Customer to store information addressed personally to him in a way accessible for future reference for a period of time adequate for the purposes of the information and which allows the unchanged reproduction of the information stored;

(i) “**Effective Date” has the meaning given to that term in General Condition 17;**

(j) “**Failure to Cancel**” means where the Gaining Communications Provider has not cancelled a transfer, after a request from the Customer during the Transfer Period;

(k) “**Fixed-Line Telecommunications Services**” means Narrowband call and/or line rental services provided to Domestic and Small Business Customer;

(l) “**Gaining Communications Provider**” means the Communications Provider to whom the customer is transferring;

(m) “**LLU**” means Local Loop Unbundling, the process by which a dominant provider’s local loops are physically disconnected from its network and connected to a competing provider’s network.

(n) “**Losing Communications Provider**” means the Communications Provider from whom the customer is transferring;

(o) “**Narrowband**” means services provided over a traditional Public Communications Network, excluding services provided over a Cable Network;

(p) **“Slamming”** means where a request for CPS, WLR and/or LLU has been made without the Customer’s express knowledge and/or consent; that is in the following circumstances:

(i) where the Customer has never been contacted by the Gaining Communications Provider;

(ii) where the Customer has been contacted by the Gaining Communications Provider, but has not given the Gaining Communications Provider authorisation to transfer some or all of their telephone calls and/or line rental to the Gaining Communications Provider;

(iii) where the Customer has agreed to purchase a product or service from the Gaining Communications Provider and the Gaining Communications Provider has submitted a request for a different product or service which the Customer has not agreed to purchase; or

(iv) where the Customer has agreed to transfer some or all of their telephone calls and/or line rental to the Gaining Communications Provider having understood, as a result of a deliberate attempt by the Gaining Communications Provider to mislead, that they are making an agreement with a different Communications Provider;

(q) "**Transfer Period**" means the period of 10 Working Days from before a customer's order can be activated;

(r) "**Unbundled Tariff Number**" **has the meaning given to that term in General Condition 17;**

(s) "**WLR**" means Wholesale Line Rental, a facility which BT provides other CPs with the ability to offer monthly line rental and associated services (such as fault repair) on the BT line; and

(t) "**Working Days**" means the hours between 09.00 – 17.00 on Monday to Friday with the exception of bank holidays.

Annex 9

Notification of modifications to the provisions of the Numbering Plan under section 56(2) and section 60(5) of the Act

WHEREAS

A. General Condition 17 of the General Conditions of Entitlement has effect by reference to the provisions of the Numbering Plan.

B. Section 56(2) of the Act provides that it shall be Ofcom's duty from time to time to review the Numbering Plan and make such revisions that they think fit, provided such revisions are made, so far as applicable, in accordance with section 60 of the Act.

C. On 15 April 2013, Ofcom published a notification (the "First Notification") of their proposal to modify the provisions of the Numbering Plan, in accordance with section 60(3) of the Act.

D. In the First Notification and the accompanying consultation document, Ofcom invited representations about any of the proposals therein by 28 May 2013.

E. By virtue of section 60(5) of the Act, Ofcom may give effect to the proposal set out in the First Notification, with or without modification, only if -

   (i) they have considered every representation about the proposal that is made to them within the period specified in the First Notification; and

   (ii) they have had regard to every international obligation of the United Kingdom (if any) which has been notified to them for this purpose by the Secretary of State.

F. Ofcom received three responses to the First Notification and have considered every such representation made to them in respect of the proposal set out in the First Notification and the accompanying consultation document.

G. The Secretary of State has not notified Ofcom of any international obligation of the UK for the purposes of section 60(5) of the Act.

THEREFORE

1. In accordance with sections 56(2) and 60(5) of the Act, Ofcom are modifying the provisions of the Numbering Plan as set out in the Schedules to this Notification.

2. Ofcom's reasons for making these modifications, and the effect of the modifications, are set out in the explanatory statement accompanying this Notification.

3. Ofcom are satisfied that the modifications comply with the requirements of section 60(2) of the Act.

4. In making these modifications, Ofcom have considered and acted in accordance with their general duty as to telephone numbering functions under section 63 of the Act, their general duties under section 3 of the Act and the six Community requirements set out in section 4 of the Act.

5. The modifications:

   a. in Schedule 1 shall enter into force immediately; and

   b. in Schedule 2 shall enter into force on 26 June 2015.

6. In this Notification:

   a. "the Act" means the Communications Act 2003;

   b. "the General Conditions of Entitlement" means the general conditions set under section 45 of the Act by the Director General of Telecommunications on 22 July 2003, as amended from time to time;

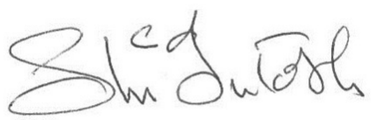
   c. "Ofcom" means the Office of Communications; and

   d. "Numbering Plan" means the National Telephone Numbering Plan published by Ofcom pursuant to section 56(1) of the Act, and amended from time to time.

7. Words or expressions shall have the meaning assigned to them in this Notification, and otherwise any word or expression shall have the same meaning as it has in the Act.

8. For the purposes of interpreting this Notification: (a) headings and titles shall be disregarded; and (b) the Interpretation Act 1978 shall apply as if this Notification were an Act of Parliament.

9. The Schedules to this Notification shall form part of this Notification.



Stuart McIntosh
Competition Group Director

12 December 2013

A person authorised by Ofcom under paragraph 18 of the Schedule to the Office of Communications Act 2002.

SCHEDULE 1

1. In Part A Section A1 'Public Telephone Network Numbers', the modification marked in bold text and highlighted in yellow shall be made to the entry for the number 116006:

116006	6-digit ~~**Freephone**~~ **Free to caller** Number used to access 'Helpline for victims of crime' service ('Type B Access Code')

2. In paragraph 1 of the 'Definitions and Interpretation' section, the following deletion marked in bold text and highlighted in yellow shall be made to the definition of 'Sexual Entertainment Services':

   'Sexual Entertainment Service' means a Premium Rate Service, ~~**other than services operating on mobile short codes,**~~ which is an entertainment service of a clearly sexual nature, or any service for which the associated promotional material is of a clearly sexual nature, or indicates directly, or implies, that the service is of a sexual nature;

SCHEDULE 2

The modifications to the Numbering Plan are marked in bold and highlighted in yellow in the following text, save for Table A1 (Part A) and Table C5 (Part C) which have been replaced in their entirety with the modifications shown highlighted in yellow. These modifications shall enter into force on 26 June 2015.

The National Telephone Numbering Plan

[*The contents page has not been reproduced for the purposes of this Notification*]

Definitions and Interpretation

1. For the purpose of interpreting these conditions the following definitions shall apply:

'100-Number Block Area' means a geographic area in which 100-number blocks have been made available for Allocation, as indicated in Appendix A of this Plan;

'1471 Erasure' means a facility that enables the record of the last call received (where accessible through dialling 1471) to be removed so as to no longer be available on dialling 1471;

'Access Charge' shall have the meaning ascribed to that term in General Condition 17 of the General Conditions of Entitlement;

'Access Code' means a short Non-Geographic Number, usually beginning with '1', that allows End-Users to access a wide range of services;

'**Act'** means the Communications Act 2003;

'Administrative Code' means a Telephone Number that is Adopted or otherwise used for administrative purposes only;

'Automatic Call Trace' means a facility that can, where practicable, trace the origin of an incoming call;

'BT' means British Telecommunications plc, whose registered company number is 1800000, and any of its subsidiaries or holding companies, or any subsidiary of such holding companies, all as defined in section 1159 of the Companies Act 2006;

~~**'BT's Standard Local Call Retail Price' means the retail price for a Local Call made by BT customers which operates as the standard retail price before the application of calling packages and discounts as shown on BT's retail price list;**~~

'C7' refers to a standard for common channel signalling in Electronic Communications Networks (also known as 'SS7');

'Called Party' means the person being contacted by means of a telephone call;

'Calling Line Identification' means a facility that enables identification of the number from which a call is being made or to which a return call could be made;

'Calling Parties' means persons making contact by means of a telephone call;

'Call Return' means a facility, based on the accessibility of Calling Line Identification, which enables identification of the number from which a call is being made or to which a return call could be made;

'Carrier Pre-Selection' means a facility which allows a Subscriber to whom a Publicly Available Telephone Service is provided by means of a Public Communications Network to select which Pre-selected Provider of such Services provided wholly or partly by means of that Network is the Pre-Selected Provider he wishes to use to carry his calls by designating in advance the selection that is to apply on every occasion when there has been no selection of Provider by use of a Telephone Number;

'Carrier Pre-Selection Code' means a non-diallable four (4) digit Network Code commencing with the digit eight (8) (i.e. 8XXX), that is Adopted or otherwise used in connection with the provision of Carrier Pre-Selection;

'Communications Provider' means a person who provides an Electronic Communications Network or an Electronic Communications Service;

'Communications Provider Identification Code' means an Administrative Code Allocated to Communications Providers that is Adopted or otherwise used to identify other Communications Providers;

'Conservation Area' means a geographic area indicated as such in Appendix A of this Plan;

'Consumer' means any natural person who uses or requests a Public Electronic Communications Service for purposes which are outside his or her trade, business or profession;

'Corporate Number' means a Non-Geographic Number Allocated to a Communications Provider where the number is to be assigned by that Communications Provider to a specific Customer and in this definition 'Customer' shall only refer to a customer which is a body corporate. The cost of a call to a Corporate Number is paid for through the telephone bill of the Subscriber ~~**and charged at Special Service Rates**~~;

'Default Reseller Identification Code' means the Reseller Identification Code ('RID') 'AAA' which can be used on any network where no individual Reseller Identification Code is selected;

'Dominant Provider' has the same meaning as in any SMP Condition in force concerning Carrier Pre-Selection that is imposed on a person by Ofcom under section 90 of the Act;

~~**'Freephone Number' means a number that is reached free of charge to the Customer except where a charge is notified to the End-User at the start of the call;**~~

~~**'Free to caller Number' means a number that is accessed at no charge to the Customer and, in the case of a Public Pay Telephone, without having to use coins and cards;**~~

'Free to caller' means, in relation to a Non-Geographic Number, one that can be accessed by a Consumer at a retail price of zero and, in the case of a Public Pay Telephone, without having to use coins and cards;

'General Conditions of Entitlement' means those conditions set by the Director General of Telecommunications on 22 July 2003 by way of a Notification published pursuant to section 48(1) of the Act, and modified by Ofcom from time to time;

'Geographic Area Code' means a Public Communications Network Number identified with a particular geographic area;

'Geographic Number' means a Public Communications Network Number:

(i) that is Adopted or otherwise used for routing calls to the physical location of the Network Termination Point of the Subscriber to whom the Telephone Number has been assigned; and

(ii) the initial digits of which comprise a Geographic Area Code from Appendix A of this Plan;

'Geographic Number Portability Code' means a Network Code used for the Portability of Geographic Numbers;

'Harmonised number for harmonised services of social value (116XXX numbers)' means a Type B Access Code used to provide a service meeting a common description on the same 116XXX number throughout European Union Member States;

'Inbound Routing Code' means a Network Code Adopted or otherwise used for routing purposes and which may be used to identify Electronic Communication Services, carriers and End-Users;

'Indirect Access' means a facility which allows a Subscriber to whom a Publicly Available Telephone Service is provided by means of a Public Communications Network to select which such Service provided wholly or partly by means of that Network is the service he wishes to use by the use of a Telephone Number on each separate occasion on which a selection is made;

'Indirect Access Provider' means a provider of Indirect Access services;

'International Mobile Station Identity' means a string of decimal digits up to a maximum length of 15 digits which identifies a unique subscription to a Mobile Service in accordance with International Telecommunication Union (ITU)-T Recommendation E.212;

'Integrated Services Digital Network' means a Network based on the existing digital Public Communications Network which provides digital links to Customers and end to end digital connectivity between them;

'Internal Network Portability Code' means a Network Code which is used to ensure that Portability is effective within a Network;

'Internal Routing Code' means a Network Code which is used for routing purposes within an Electronic Communications Network;

'International Signalling Point Code' means a Signalling Point Code that constitutes an independent address for international purposes, in accordance with ITU-T Recommendation Q.708;

~~**'Local Call' means a call made from one Geographic Number to another Geographic Number within a limited geographic area;**~~

'Local Dialling' means the ability for a Calling Party to contact a Called Party within the same Geographic Area Code area by dialling only the Local Number;

'Local Number' means a Geographic Number excluding the Geographic Area Code;

'Location Independent Electronic Communications Service' means a service that includes the assignment of a Non-Geographic Number to a Customer but where:
(i) the location of the Customer's Apparatus identified by that number at the time of use is not necessarily permanently associated with a particular Network Termination Point;
(ii) number translation from that number to a Geographic Number is not provided as part of the service; and
(iii) the service is not a Mobile Service;

'Mobile Network Code' means a Network Code that is part of the International Mobile Station Identity and identifies the home network of a unique subscription to a Mobile Service;

'Mobile Number' means a Non-Geographic Number that is Adopted or otherwise used as part of a Mobile Service to identify Apparatus designed or adapted to be capable of being used while in motion;

'Mobile Number Portability Code' means a Network Code used for the Portability of Mobile Numbers;

'Mobile Service' means a service consisting in the conveyance of Signals, by means of an Electronic Communications Network, where every Signal that is conveyed thereby has been, or is to be, conveyed through the agency of Wireless Telegraphy to or from Apparatus designed or adapted to be capable of being used while in motion;

'National-Dialling-Only Number' means a Geographic Number that is indicated to be 'Free for National Dialling Only' in the National Numbering Scheme;

'National Numbering Scheme' means the detailed data published by Ofcom and updated from time to time in relation to the Allocation and availability of Telephone Numbers;

'National Signalling Point Code' means a Signalling Point Code that constitutes an independent address for national purposes, in accordance with ITU-T Recommendations Q.704 and Q.705;

'Network Code' means a Telephone Number that is Adopted or otherwise used for network purposes only;

'Network Specific Signalling Point Codes' means a Signalling Point Code that identifies separate points within a network;

'Non-Geographic Number' means any Public Communications Network Number other than a Geographic Number;

'Non-Geographic Number Portability Code' means a Network Code used for the Portability of Non-Geographic Numbers (other than Personal Numbers or Mobile Numbers);

'Non-Geographic Number Portability Transit Code' means a Network Code used for the Portability and transit routing of Non-Geographic Numbers (other than Personal Numbers or Mobile Numbers);

'Number Portability Code' means any of the following: a Geographic Number Portability Code; a Mobile Number Portability Code; a Non-Geographic Number Portability Code; a Non-Geographic Number Portability Transit Code; a Personal Number Portability Code; a Personal Number Portability Transit Code;

~~**'Originating Communications Provider' means the Communications Provider from whose Electronic Communications Network the call originates**~~;

'Payphone Service Provider' means a provider of a Public Pay Telephone;

'Parallel Running' means a facility provided by a Communications Provider when any range of Telephone Numbers is in the process of being changed whereby, in order to assist End-Users of the Public Communications Network to adjust to such a change, an End-User may for a limited period of time dial a Telephone Number which has been superseded by another Telephone Number and still be connected to the Network Termination Point of the Called Party;

'Partial Calling Line Identity' means a facility which enables identification of the Public Communications Provider and the Switch Number from which the call is being made, and which is typically generated either where analogue systems are connected to a digital network, or on international gateways where a switch receives ingress traffic only, or other situations where a full Calling Line Identification cannot be provided;

'Partial Calling Line Identity Code' means a Network Code that is Adopted or otherwise used in connection with the identification of the Public Communications Provider and the Switch Number e.g. for malicious call identification;

'Per Call Release of CLI' means the ability to release the identity of the Caller in accordance with normal Calling Line Identification;

'Personal Number' means a Non-Geographic Number, from a range of numbers in Part A of this Plan, assigned to a Subscriber by a Personal Numbering Service Provider and used to provide a Personal Numbering Service;

'Personal Number Portability Code' means a Network Code used for the Portability and transit routing of Personal Numbers;

'Personal Number Portability Transit Code' means a Network Code used for the Portability and transit routing of Personal Numbers;

'Personal Numbering Service' means a service based on number translation that enables an End-User to be called or otherwise contacted at a single Personal Number, and to receive those calls or other communications at almost any Telephone Number, including a Mobile Number;

'**Personal Numbering Service Provider'** means a provider of Personal Numbering Services;

'Portability' shall have the meaning ascribed to that term in General Condition 18 of the General Conditions of Entitlement;

~~**'Premium Rate' shall have the meaning ascribed to that term in Part A1 of this Plan;**~~

'Pre-selected Provider' means a provider of a Public Communications Network who has notified the Dominant Provider that it is able and willing to provide Carrier Pre-Selection to Subscribers to whom the Dominant Provider provides Publicly Available Telephone Services;

'Public Communications Network' means an Electronic Communications Network used wholly or mainly for the provision of Public Electronic Communications Services which support the transfer of information between Network Termination Points. For the purposes of this Plan the term 'Public Communications Network' shall include Integrated Services Digital Networks;

'Public Communications Network Number' means a Telephone Number that is **available for Allocation,** Adopted or otherwise used on a Public Communications Network and is not a Network Code, an Administrative Code, a Telex Service Number or an X.25 Data Network Number;

'Radiopaging Service' means Electronic Communications Services consisting in the conveyance of Signals by means of Wireless Telegraphy where every Signal, apart from simple acknowledgement, is ultimately transmitted from a station for Wireless Telegraphy comprised in the Communications Provider's Electronic Communications Network to a station for Wireless Telegraphy or Wireless Telegraphy Apparatus that is not comprised in that network;

'Reseller Identification Code' means a three-character alphabetic Administrative Code (e.g. 'AAB') that is Adopted or otherwise used to identify a reseller of BT's wholesale services;

'Service Charge' shall have the meaning ascribed to that term in General Condition 17 of the General Conditions of Entitlement;

'Sexual Entertainment Service' means ~~**a Premium Rate Service, which is**~~ an entertainment service of a clearly sexual nature, or any service for which the associated promotional material is of a clearly sexual nature, or indicates directly, or implies, that the service is of a sexual nature;

'Signalling Point Code' means a Network Code Adopted or otherwise used in Public Communications Networks using C7 that identifies the originating or terminating node of each C7 message. A node may have more than one Signalling Point Code Allocated to enable the node to be partitioned into logically separate entities to identify various functions;

~~**'Special Service' means a service paid for through the telephone bill of a Subscriber;**~~

'Standard Area' means a geographic area indicated as such in Appendix A of this Plan (see footnote 1 to Appendix A);

'Subscriber Number' means a Telephone Number allocated to a Subscriber;

'Switch' means Apparatus within an Electronic Communications Network that performs the function of switching or routing calls;

'Switch Number' means a number or code that identifies an individual Switch;

'Targeted Transit Code' means a Network Code that is Adopted or otherwise used to route calls relating to particular Electronic Communications Services between two points of Interconnection on an Electronic Communications Network;

'Telex Service' means a real-time switched service for the delivery of text via a direct or indirect connection to a discrete telex network;

'Telex Service Number' means a Telephone Number that is Adopted or otherwise used in connection with Telex Services;

~~**'Terminating Communications Provider' means a Communications Provider on whose Electronic Communications Network a call terminates;**~~

'Type A Access Code' means a type of Access Code that is available for use by all providers of a Public Communications Network and is used in such a way as to enable End-Users to access designated services across all Public Communications Networks;

'Type B Access Code' is a type of Access Code that is Allocated individually by Ofcom and is Adopted in such a way as to either (i) enable End-Users to access services provided by their Communications Provider or (ii) enable End-Users to access services provided by other Communications Providers (eg, Indirect Access, Directory Enquiry Facilities and Harmonised numbers for harmonised services of social value);

'Type C Access Code' is a type of Access Code that is available for use for service provision within a Communications Provider's own Electronic Communications Network;

'Unbundled Tariff Number' means a Non-Geographic Number starting 084, 087, 090, 091, 098 or 118;

'Withhold CLI' means an ability to not supply the identity of the Calling Party in accordance with normal Calling Line Identification;

'X.25 Data Network' means an Electronic Communications Network that supports the X.25 low speed packet switched data service;

'X.25 Data Network Identification Code' means a four (4) digit Network Code that identifies a particular X.25 Data Network; and

'X.25 Data Network Number' means a ten (10) digit Telephone Number that is added to an X.25 Data Network Identification Code to form the End-User's address on an X.25 Data Network.

2. Any word or expression not defined in paragraph 1 shall have the same meaning as it has-

(i) in paragraph 1 (*Definitions*) of Part 1 of the Schedule to the Notification published by the Director General of Telecommunications on 22 July 2003 under section 48(1) of the Act and modified by Ofcom from time to time;

(ii) if it has no meaning ascribed as mentioned in (i) above, in the Act.

3. The Interpretation Act 1978 shall apply as if this Plan were an Act of Parliament.

Introduction

1. This Plan is divided into three Parts.

2. Part A of the Plan sets out the numbers that Ofcom has determined are available for Allocation as Telephone Numbers in accordance with Section 56(1)(a) of the Act.

3. Part**s A and** B of the Plan set**s** out:

(i) such restrictions as Ofcom considers appropriate on the Adoption and other uses of the numbers listed in Part A in accordance with Section 56(1)(b) and (c) of the Act**; and**

(ii) such requirements as Ofcom considers appropriate, for the purposes of protecting consumers, in relation to the tariff principles and maximum prices applicable to numbers listed in Part A in accordance with Section 56(1)(ba) of the Act.

4. Part C of the Plan sets out other Telephone Numbers that are administered by Ofcom but are not available for Allocation, together with:

(i) the designation attributed to those Telephone Numbers**; and**

(ii) such requirements as Ofcom considers appropriate, for the purposes of protecting consumers, in relation to the tariff principles and maximum prices applicable to those numbers in accordance with Section 56(1)(ba) of the Act.

Part C should be read in conjunction with paragraph 17.3 of General Condition 17 of the General Conditions of Entitlement.

Part A: Telephone Numbers Available for Allocation

A1: Public Communications Network Numbers		
Number(s) beginning (unless otherwise stated)	**Designation**	**Applicable tariff principles and maximum prices**
01 and 02	Geographic Numbers – see Appendix A for full detail of appropriate Geographic Area Codes available	Not applicable
030	Non-Geographic Numbers: used by public sector bodies and not-for-profit bodies	Calls charged at a geographic rate: calls charged at up to the same rate the customer would pay to call a UK Geographic Number, with calls to 03 numbers counting towards inclusive call minutes if the customer has remaining inclusive minutes to UK Geographic Numbers, and included in any discount structures that apply to UK Geographic Numbers
033	Non-Geographic Numbers	
034	Non-Geographic Numbers: used for migrating numbers from matching 084 numbers	
037	Non-Geographic Numbers: used for migrating numbers from matching 087 numbers	
055	Corporate Numbers	Not applicable
056	Location Independent Electronic Communications Service	
070	Personal Numbers	
076 **(except 07624 – see Part C5)**	Radiopaging Service	
071 to 075 inclusive and 077 to 079 inclusive	Mobile Services	
080 **(except 0800 plus 6 digits – see Part C5)**	Non-Geographic Numbers	Free to caller
082	Non-Geographic Numbers: Internet for schools	Not applicable

A1: Public Communications Network Numbers		
Number(s) beginning (unless otherwise stated)	**Designation**	**Applicable tariff principles and maximum prices**
0843, 0844 and 0845	Non-Geographic Numbers	Retail charge to a Consumer of a call calculated by reference to the applicable Access Charge and Service Charge and in accordance with the tariff principles in paragraphs 17.24 – 17.30 of the General Conditions of Entitlement. The applicable Service Charge must not exceed: • 5.833 pence per minute, exclusive of VAT, where the Service Charge comprises or includes a pence per minute rate; or • 5.833 pence per call, exclusive of VAT, where the Service Charge is set exclusively at a pence per call rate.
0870, 0871, 0872 and 0873	Non-Geographic Numbers	Retail charge to a Consumer of a call calculated by reference to the applicable Access Charge and Service Charge and in accordance with the tariff principles in paragraphs 17.24 – 17.30 of the General Conditions of Entitlement. The applicable Service Charge must not exceed: • 10.83 pence per minute, exclusive of VAT, where the Service Charge comprises or includes a pence per minute rate; or • 10.83 pence per call, exclusive of VAT, where the Service Charge is set exclusively at a pence per call rate.

<table>
<tr><th colspan="3">A1: Public Communications Network Numbers</th></tr>
<tr><th>Number(s) beginning (unless otherwise stated)</th><th>Designation</th><th>Applicable tariff principles and maximum prices</th></tr>
<tr><td>090 and 091

(except 0908 and 0909 – see Part C5)</td><td>Non-Geographic Numbers</td><td rowspan="2">Retail charge to a Consumer of a call calculated by reference to the applicable Access Charge and Service Charge and in accordance with the tariff principles in paragraphs 17.24 – 17.30 of the General Conditions of Entitlement.

The applicable Service Charge must not exceed:
• 300 pence per minute, exclusive of VAT, where the Service Charge comprises or includes a pence per minute rate; or
• 500 pence per call, exclusive of VAT, where the Service Charge is set exclusively at a pence per call rate.</td></tr>
<tr><td>098</td><td>Non-Geographic Numbers: used to provide Sexual Entertainment Services</td></tr>
<tr><td>116000</td><td>6-digit Non-Geographic Number: used to access ‘Hotline for missing children’ service (‘Type B Access Code’)</td><td rowspan="5">Free to caller</td></tr>
<tr><td>116006</td><td>6-digit Non-Geographic Number: used to access ‘Helpline for victims of crime’ service (‘Type B Access Code’)</td></tr>
<tr><td>116111</td><td>6-digit Non-Geographic Number: used to access ‘Child helplines’ service (‘Type B Access Code’)</td></tr>
<tr><td>116117</td><td>6-digit Non-Geographic Number used to access ‘Non-emergency medical on-call service’ (‘Type B Access Code’)</td></tr>
<tr><td>116123</td><td>6-digit Non-Geographic Number used to access ‘Emotional Support Helplines’ service (‘Type B Access Code’)</td></tr>
</table>

118XXX	6-digit Non-Geographic Numbers used to access a Directory Enquiry Facility ('Type B Access Codes')	Retail charge to a Consumer of a call calculated by reference to the applicable Access Charge and Service Charge and in accordance with the tariff principles in paragraphs 17.24 – 17.30 of the General Conditions of Entitlement.
124 to 140, 143 to 146, 148 to 149, 160 to 169, and 181 to 189 inclusive	Non-Geographic Numbers of up to 5-digits used to access an Indirect Access Provider ('Type B Access Codes')	Not applicable

A2: Telex Service Numbers **(up to 10-digits long)**	
Number(s)	**Designation**
Numbers beginning 2 to 9	Telex Service Numbers – see Appendix B for detail of appropriate initial Geographic Area Codes

A3: Network Codes	
Number(s)	**Designation**
Number Portability Codes	
504000 to 504799 inclusive	6-digit Non-Geographic Number Portability Codes
504800 to 504899 inclusive	6-digit Personal Number Portability Codes
505000 to 505799 inclusive	6-digit Non-Geographic Number Portability Transit Codes
505800 to 505899 inclusive	6-digit Personal Number Portability Transit Codes
510000 to 599999 inclusive	6-digit Geographic Number Portability Codes
7603 to 7622 inclusive **7630 to 7639 inclusive** **7650 to 7653 inclusive** **7655 to 7658 inclusive** **7680** **7682 to 7692 inclusive** **7694 to 7698 inclusive** **7991 to 7998 inclusive**	4-digit Mobile Number Portability Codes
Signalling Point Codes and Mobile Network Codes	
00000 to 01023 inclusive and 12288 to 16383 inclusive	5-digit National Signalling Point Codes
X-XXX-Z (where Z is in the range 0 to 7)	5-digit International Signalling Point Codes designated by Ofcom
234-00 to 234-99 and 235-00 to 235-99 inclusive	5-digit Mobile Network Codes
Other Network Codes	
001 - 999 Public Communications Provider Identity (inclusive) **000 – 999 Switch Number (inclusive)**	3-digit plus 3-digit Partial Calling Line Identity Codes
7000 to 7089 inclusive	4-digit Targeted Transit Codes
8000 to 8889 inclusive and 8900 to 8999 inclusive	4-digit Carrier Pre-Selection Codes
089930 to 089999 inclusive	10-digit Inbound Routing Codes
4-digit numbers	X25 Data Network Identification Codes

A4: Administrative Codes	
Number(s)	**Designation**
000 to 999 inclusive	Communications Provider Identification Codes
AAB to ZZZ inclusive	Reseller Identification Codes

Part B: Restrictions ~~on the Adoption and use of~~ and requirements in relation to Telephone Numbers in Part A

B1: General restriction on the Adoption and use of Telephone Numbers in Part A

B1 Those to whom Ofcom has Allocated any Telephone Number listed in Part A of the Plan shall not Adopt or otherwise use it, except in accordance with the applicable designation given in Part A for that number range.

B2: General restrictions on the Adoption and use of Telephone Numbers in Part A1

B2.1 Public Communications Network Numbers in Part A1 shall comprise ten (10) digits (excluding the national prefix code '0') unless otherwise indicated in that Part or in the National Numbering Scheme.

B2.2 The digit structure for Public Communications Network Numbers (other than Access Codes) is referred to in the National Numbering Scheme as follows: 'SABCDEFGHI' where 'S' equates to the first digit after the '0' (for example S is 1 or 2 for Geographic Numbers).

B3: Specific Restrictions on the Adoption and use of Telephone Numbers

B3.1 Geographic Numbers

Out of Area use of Geographic Numbers

B3.1.1 A Geographic Number shall be assigned only to a Subscriber whose Network Termination Point is physically located within the geographic area associated with that number (having regard to the relevant Geographic Area Code), unless:

a. the Subscriber has requested a Geographic Number that includes the relevant Geographic Area Code; and
b. charges for calls to that Geographic Number remain consistent with charges for calls to other Geographic Numbers that include the same Geographic Area Code.

Local Dialling

B3.1.2 Geographic Numbers shall not be Adopted or otherwise used other than where Calling Parties with Geographic Numbers with the same Geographic Area Code as the Called Party are able to dial using only the Local Number except where:

a. those numbers are National-Dialling-Only Numbers – see B3.1.5 below; or
b. Calling Parties are dialling from Geographic Numbers with a Geographic Area Code in respect of which Local Dialling has been closed – see B3.1.3 below.

B3.1.3 Local Dialling shall not be provided from Geographic Numbers with a Geographic Area Code listed in the table below, with effect from the date specified.

Geographic Area Code	Effective Date
01202	1 November 2012
01224	1 October 2014
01273	1 October 2014
01274	1 October 2014
01642	1 October 2014
01908	1 October 2014

Numbering Reorganisations

B3.1.4 Where a numbering reorganisation makes provision for a replacement Allocation of Telephone Numbers pursuant to Section 62(3) of the Act, the person to whom a replacement Telephone Number is Allocated shall ensure that there is:

a. an adequate period of advance notification and publicity to End-Users prior to the replacement Telephone Number being Adopted or otherwise used;
b. upon Adoption of the replacement Telephone Number, a period of Parallel Running when dialling to the original and replacement Telephone Numbers is available wherever technically possible; and
c. immediately following the period of Parallel Running and for a further period of time specified by Ofcom, a changed number announcement played to a Calling Party who dials the original Telephone Number.

'National-Dialling-Only' Numbers

B3.1.5 A National-Dialling-Only Number shall not be Adopted or otherwise used, except:

a. as a full Geographic Number (including its Geographic Area Code); and
b. in circumstances where that number will not be visible to, or capable of dialling by, End-Users.

Where a National-Dialling-Only Number is Adopted or used for outgoing call services a presentation number that is either a Non-Geographic Number or that permits Local Dialling shall appear to the Called Party for Calling-Line Identification purposes. In the event of a code change to eight-digit numbering in a geographic area, those who have Adopted or used National-Dialling-Only Numbers shall migrate to the appropriate new range by the end of Parallel Running.

Standard Areas

B3.1.6 Geographic Numbers that relate to a Standard Area are Allocated in blocks of 10,000 but shall be treated as ten (10) units of 1,000 for the purposes of assigning numbers to Subscribers. Where a Communications Provider has assigned a number from a particular 1,000 number unit to a Subscriber, it may not assign a number from a different unit until all numbers in the first unit have been assigned.

Conservation Areas

B3.1.7 Subject to paragraph 3.1.8, Geographic Numbers that relate to a Conservation Area shall only be Adopted in units of 1,000 numbers at a time.

B3.1.8 Where a block of 10,000 Geographic Numbers has been Allocated in relation to a Standard Area, but the area has subsequently been designated as a Conservation Area, then:

a. paragraph 3.1.7 does not apply in relation to that particular number block; but
b. paragraph 3.1.6 shall continue to apply in relation to that particular number block.

100-Number Block Areas

B3.1.9 One hundred blocks of 100 numbers in each 100-Number Block Area have been specified in the National Numbering Scheme. These blocks shall only be Adopted in units of 100 numbers at a time.

B3.2 Non-Geographic Numbers starting 03

B3.2.1 Those who Adopt or otherwise use Non-Geographic Numbers starting 03 shall not share with any End-User any revenue obtained from providing a service on those numbers.

B3.2.2 Those who are Allocated Non-Geographic Numbers starting 030 shall assign those numbers only to Subscribers that are-public sector bodies or not-for-profit bodies.

B3.2.3 Those Communications Providers who Adopt or otherwise use Non-Geographic Numbers starting 034 or 037 shall only do so for the purpose of providing a service to a Customer who is migrating from a Non-Geographic Number starting 084 or 087 which is exactly identical to the 034 or 037 number except for the second digit (a “matching 084 or 087 number”). A Non-Geographic Number starting 034 or 037 shall not be Adopted or otherwise used by a Communications Provider where no matching 084 or 087 number is in use by a Customer.

B3.3 Location Independent Electronic Communications Services

B3.3.1 Those who Adopt or otherwise use Non-Geographic Numbers starting 056 shall not share with any End-User any revenue obtained from providing a service on those numbers.

B3.4 Personal Numbers

B3.4.1 Those Adopting Personal Numbers shall not share with any End-User any revenue obtained from providing a Personal Numbering Service.

B3.5 Harmonised numbers for harmonised services of social value (116XXX numbers)

B3.5.1 The following general conditions are attached to the right of use of 116XXX numbers:

a. the service provides information, or assistance, or a reporting tool to citizens, or any combination thereof;

b. the service is open to all citizens without any requirement of prior registration;

c. the service is not time-limited;

d. there is no payment, or payment commitment as a pre-requisite to use the service; and

e. the following activities are excluded during a call: advertisement; entertainment; marketing and selling; using the call for the future selling of commercial services.

B3.5.2 The following specific conditions are attached to the right of use of individual 116XXX numbers:

Number	Service for which this number is reserved	Specific conditions attached to the right of use for this number
116000	*Name of service*: Hotline for missing children *Description*: The service (a) takes calls reporting missing children and passes them on to the Police; (b) offers guidance to and supports the persons responsible for the missing child; (c) supports the investigation.	Service continuously available (i.e. 24 hours a day, 7 days a week, nation-wide).
116006	*Name of service*: Helpline for victims of crime *Description:* The service enables victims of crime to get emotional support in such circumstances, to be informed about their rights and about ways to claim their rights, and to be referred to the relevant organisation. In particular, it provides information about (a) local police and criminal justice proceedings, (b) possibilities of compensation and insurance matters. It also provides support in finding other sources of help relevant to the victims of crimes.	Where the service is not continuously available (i.e. 24 hours a day, 7 days a week, nation-wide), the service provider must ensure that information about availability is made publicly available in an easily accessible form, and that, during periods of unavailability, callers to the service are advised when the service will next become available.
116111	*Name of service*: Child helplines *Description*: The service helps children in need of care and protection and links them to services	Where the service is not continuously available (i.e. 24 hours a day, 7 days a week, nation-wide), the service provider must ensure that information about availability is made

	and resources; it provides children with an opportunity to express their concerns, talk about issues directly affecting them and contact someone in an emergency situation.	publicly available in an easily accessible form, and that, during periods of unavailability, callers to the service are advised when the service will next become available.
116117	*Name of service:* Non-emergency medical on-call service *Description:* The service directs callers to the medical assistance appropriate to their needs, which are urgent but non-life threatening, especially, but not exclusively, outside normal office hours, over the weekend and on public holidays. It connects the caller to a skilled and supported call-handler, or connects the caller directly to a qualified medical practitioner or clinician	Where the service is not continuously available (i.e. 24 hours a day, 7 days a week, nation-wide), the service provider must ensure that information about availability is made publicly available in an easily accessible form, and that, during periods of unavailability, callers to the service are advised when the service will next become available.
116123	*Name of service*: Emotional support helplines *Description*: The service enables the caller to benefit from a genuine human relationship based on non-judgemental listening. It offers emotional support to callers suffering from loneliness, in a state of psychological crisis, or contemplating suicide.	Where the service is not continuously available (i.e. 24 hours a day, 7 days a week, nation-wide), the service provider must ensure that information about availability is made publicly available in an easily accessible form, and that, during periods of unavailability, callers to the service are advised when the service will next become available.

B3.5.3 The person to whom a 116XXX number has been Allocated shall only use that number in conjunction with the sub-allocatee(s) named in the National Numbering Scheme. A 116XXX number shall not be sub-allocated without prior agreement from Ofcom.

B3.6 Telex Service Numbers

B3.6.1 Telex Service Numbers shall not be Adopted or otherwise used other than as full national numbers, i.e. including the Geographic Area Code and, where relevant, an Adoptees’ identifying digit.

B3.7 Number Portability Codes

B3.7.1 In addition to the general restriction at B1, Number Portability Codes shall only be Adopted or otherwise used in accordance with the applicable designation given for that number range in Part A. For the avoidance of doubt, the Portability of Telephone Numbers need not be enabled by the use of Number Portability Codes.

B4: Requirements in relation to the tariff principles and maximum prices applicable to Telephone Numbers in Part A1

B4.1 **Subject to paragraph B4.2, where a Consumer makes a call to a Non-Geographic Number, the Communications Provider shall comply with the tariff principles and maximum prices (if any) set out or referred to in Part A1, in the column headed "Applicable tariff principles and maximum prices".**

B4.2 **The tariff principles and maximum prices set out or referred to in Part A1 in the column headed "Applicable tariff principles and maximum prices" do not apply to Payphone Service Providers in respect of calls to Unbundled Tariff Numbers.**

Part C: Telephone Numbers not available for Allocation

The Telephone Numbers in this Part C are not available for Allocation, because:

(i) the Telephone Number is made available for use without Allocation to an individual Communications Provider; or

(ii) the Telephone Number is part of a numbering range that has previously been, but which is no longer, available for Allocation.

C1: Public Communications Network Numbers not individually Allocated	
Numbers beginning or in entirety where marked *	**Designation**
0 (unless specified elsewhere in this Part C OR in Part A)	Access to a number unobtainable tone or equivalent message
1 (unless specified elsewhere in this Part C OR in Part A)	Access to a number unobtainable tone or equivalent message
00	Access to international Telephone Numbers
100*	Access to operator assistance (Type A Access Code)
101*	Access to non-emergency service (Type A Access Code)
111*	Access to NHS non-emergency healthcare services (Type A Access Code)
112*	Access to emergency services (Type A Access Code)
123*	Access to speaking clock (Type A Access Code)
141*	Access to Withhold Calling Line Identification (Type A Access Code)
1470*	Access to Per Call Release of CLI (Type A Access Code)
1471*	Access to Call Return (Type A Access Code)
1472* to 1474*, 1476*, 1478*, and 1479*	Access to Calling Line Identification services (Type A Access Code)
1475*	Access to 1471 Erasure (Type A Access Code)
1477*	Access to Automatic Call Trace (Type A Access Code)
155*	Access to international assistance operator (Type A Access Code)
18000* to 18009*	Access to voice text services for the deaf (Type A Access Codes)
195*	Access to blind and disabled Directory Enquiry Facilities (Type A Access Code)
999*	Access to emergency services
120 to 122, 142, 150 to 152, 154, 156 to 159, 170 to 179, 190, 191, 193, 194, and 196 to 198	Access to network services (Type C Access Codes)

C2: X25 Data Network Numbers	
Number(s)	**Designation**
Any ten (10) digit number	X25 Data Network Numbers

C3: Network Codes	
Number(s)	**Designation**
01024 to 12287 inclusive	5-digit National Signalling Point Codes for routing within networks
504900 to 504999 and 505900 to 505999	6-digit Internal Network Portability Codes
8890 to 8899 inclusive	4-digit Carrier Pre-Selection Codes for routing within networks
08990 to 08992	10-digit Internal Routing Codes

C4: Administrative Codes	
Number(s)	**Designation**
AAA	Default Reseller Identification Code

C5: Public Communications Network Numbers which have been individually Allocated		
Numbers beginning (unless otherwise stated in this Part or in the National Numbering Scheme)	**Designation**	**Applicable tariff principles and maximum prices**
07624	Radiopaging Service and Mobile Services (Isle of Man Communications Commission). These numbers are no longer available for Allocation, but numbers which have been Allocated may be Adopted or otherwise used.	Not applicable
0908 and 0909	Non-Geographic Numbers used to provide Sexual Entertainment Services. These numbers are no longer available for Allocation, but numbers which have been Allocated may be Adopted or otherwise used.	Retail charge to a Consumer of a call calculated by reference to the applicable Access Charge and Service Charge and in accordance with the tariff principles in paragraphs 17.24 – 17.30 of the General Conditions of Entitlement. The applicable Service Charge must not exceed: • 300 pence per minute, exclusive of VAT, where the Service Charge comprises or includes a pence per minute rate; or • 500 pence per call, exclusive of VAT, where the Service Charge is set exclusively at a pence per call rate.
0500	Non-Geographic Numbers. These numbers are no longer available for Allocation. A number within this range may not be Adopted or otherwise used, unless that number was Allocated and assigned to a Subscriber prior to this number range being closed, in which case that particular number may continue to be used for the purpose of serving that Subscriber.	No charge to caller (except where charges shall be notified to callers at the start of the call)

C5: Public Communications Network Numbers which have been individually Allocated		
Numbers beginning (unless otherwise stated in this Part or in the National Numbering Scheme)	**Designation**	**Applicable tariff principles and maximum prices**
0800 (plus 6-digit)	Non-Geographic Numbers. These numbers are no longer available for Allocation. A number within this range may not be Adopted or otherwise used, unless that number was Allocated and assigned to a Subscriber prior to this number range being closed, in which case that particular number may continue to be used for the purposes of serving that Subscriber.	Free to caller

C6: Requirements in relation to the tariff principles and maximum prices applicable to Telephone Numbers in Part C5

C6.1 Subject to paragraph C6.2, where a Consumer makes a call to a Non-Geographic Number, the Communications Provider shall comply with the tariff principles and maximum prices (if any) set out or referred to in Part C5, in the column headed "Applicable tariff principles and maximum prices".

C6.2 The tariff principles and maximum prices set out or referred to in Part C5, in the column headed "Applicable tariff principles and maximum prices" do not apply to Payphone Service Providers in respect of calls to Unbundled Tariff Numbers.

[Appendices A and B have not been reproduced for the purposes of this Notification]

Annex 10

Notification of modifications to the Premium Rate Services Condition under section 120A(1) of the Act

WHEREAS

A. On 15 April 2013, Ofcom published a notification (the "First Notification") setting out their proposals for modifying the PRS Condition.

B. In the First Notification and the accompanying explanatory document, Ofcom invited representations about the proposed modifications by 28 May 2013.

C. By virtue of section 120A(5) of the Act, OFCOM may give effect to the proposal to modify the PRS Condition as set out in the First Notification, with or without modification, after:

   (i) considering every representation about the proposal made to them within the period specified in the First Notification; and

   (ii) having regard to every international obligation of the United Kingdom (if any) notified to Ofcom for this purpose by the Secretary of State.

D. Ofcom received three responses to the First Notification and have considered every representation made to them in respect of the proposed modifications.

E. The Secretary of State has not notified Ofcom of any international obligations of the UK for the purposes of section 120A(5) of the Act.

THEREFORE

1. In accordance with the procedures in section 120A of the Act, Ofcom are modifying the PRS Condition as set out in the Schedule to this Notification.

2. Ofcom's reasons for making these modifications, and the effect of the modifications, are set out in the accompanying explanatory statement accompanying this Notification.

3. Ofcom are satisfied that the modifications comply with the requirements of sections 47, 120 and 120A of the Act, insofar as they are applicable.

4. In making these modifications, Ofcom have considered and acted in accordance with their general duties under section 3 of the Act and the six Community requirements set out in section 4 of the Act.

5. The modifications shall enter into force on 26 December 2013.

6. A copy of this Notification is being sent to the Secretary of State in accordance with section 120A(7) of the Act.

7. In this Notification:

   a. "the Act" means the Communications Act 2003;

b. “Ofcom” means the Office of Communications; and

c. “PRS Condition” means the condition set under section 120 of the Act by the Director General of Telecommunications on 23 December 2003, as amended from time to time.

8. Words or expressions shall have the meaning assigned to them in this Notification, and otherwise any word or expression shall have the same meaning as it has in the Act.

9. For the purposes of interpreting this Notification: (a) headings and titles shall be disregarded; and (b) the Interpretation Act 1978 shall apply as if this Notification were an Act of Parliament.

10. The Schedule to this Notification shall form part of this Notification.

Stuart McIntosh
Competition Group Director

12 December 2013

A person authorised by Ofcom under paragraph 18 of the Schedule to the Office of Communications Act 2002.

Schedule

The modifications to the PRS Condition are made by the insertions and deletions marked in bold and highlighted in yellow for ease of reference in the text below:

1. The Communications Provider and Controlled Premium Rate Service Provider shall comply with:

   (a) directions given in accordance with an Approved Code by the Enforcement Authority and for the purposes of enforcing the provisions of the Approved Code; and

   (b) if there is no Approved Code, the provisions of the order for the time being in force under section 122 of the Act.

2. In this Condition,

   (a) "Act" means the Communications Act 2003;

   (b) "Approved Code" means a code approved for the time being under section 121 of the Act;

   (c) "Communications Provider" means either:

      (i) a person who:

         (A) is the provider of an Electronic Communications Service or an Electronic Communications Network used for the provision of a Controlled Premium Rate Service; and

         (B) is a Controlled Premium Rate Service Provider in respect of that Controlled Premium Rate Service;

      (ii) a person who:

         (A) is the provider of an Electronic Communications Service used for the provision of a Controlled Premium Rate Service; and

         (B) under arrangements made with a Controlled Premium Rate Service Provider, is entitled to retain some or all of the charges received by him in respect of the provision of the Controlled Premium Rate Service or of the use of his Electronic Communications Service for the purposes of the Controlled Premium Rate Service; or

      (iii) a person who:

         (A) is the provider of an Electronic Communications Network used for the provision of a Controlled Premium Rate Service; and

         (B) has concluded an agreement relating to the use of the Electronic Communications Network for the provision of that Controlled Premium Rate Service with a Controlled Premium Rate Service Provider;

(d) "Chatline Service" means a service which consists of or includes the enabling of more than two persons (the participants) to simultaneously conduct a telephone conversation with one another without either:

(i) each of them having agreed with each other; or

(ii) one or more of them having agreed with the person enabling such a telephone conversation to be conducted, in advance of making the call enabling them to engage in the conversation, the respective identities of the other intended participants or the telephone numbers on which they can be called. For the avoidance of any doubt, a service by which one or more additional persons who are known (by name or telephone number) to one or more of the parties conducting an established telephone conversation can be added to that conversation by means of being called by one or more of such parties is not on that account a Chatline Service, if it would not otherwise be regarded as such a service;

(e) "Controlled Premium Rate Service" means a Premium Rate Service (other than a service which is only accessed via an International Call or a service which is delivered by means of an Electronic Communications Service and is provided by the person who is also the provider of the Electronic Communications Service) ~~in respect of~~ which **falls within one or more of the following categories**:

(i) **until the Effective Date,** the service is obtained through a Special Services Number (except an 0843/4 number), and the charge for the call by means of which the service is obtained or the rate according to which such call is charged is a charge or rate which exceeds 5 pence per minute for BT customers inclusive of value added tax; ~~or~~

(ii) **from and including the Effective Date, the service is obtained through a PRS Number and the Service Charge for the call by means of which the service is obtained is a rate which exceeds 5.833 pence per minute or 5.833 pence per call, exclusive of value added tax;**

(iii) the service is obtained other than through a Special Services Number~~,~~ **or a PRS Number,** and the charge for the call by means of which the service is obtained or the rate according to which such call is charged is a charge or rate which exceeds 10 pence per minute inclusive of value added tax (and which also includes, for the avoidance of any doubt, a service delivered by means of an Electronic Communications Service which is charged by means of a Payment Mechanism and for which the charge exceeds 10 pence inclusive of value added tax); ~~or~~

(iv) the service is a Chatline Service; ~~or~~

(v) the service is Internet Dialler Software operated; ~~or~~

(vi) the service is a Sexual Entertainment Service;

(f) "BT" means British Telecommunications plc, whose registered company number is 1800000, and any of its subsidiaries or holding companies, or any subsidiary of such holding companies, all as defined by section 736 of the Companies Act 1985, as amended by the Companies Act 1989 and the Companies Act 2006;

(g) “Controlled Premium Rate Service Provider” means a person who:

(i) provides the contents of a Controlled Premium Rate Service;

(ii) exercises editorial control over the contents of a Controlled Premium Rate Service;

(iii) packages together the contents of a Controlled Premium Rate Service for the purpose of facilitating its provision; or

(iv) makes available a facility comprised in a Controlled Premium Rate Service;

(h) “Dial-up Telephone Number” means the telephone number used by an end user's computer that connects it to the Internet;

(i) “Effective Date” means 26 June 2015;

(j) “Enforcement Authority” means, in relation to an Approved Code, the person who under the code has the function of enforcing it;

(k) “Facility” includes reference to those things set out in section 120(14) of the Act;

(l) “International Call” means a call which terminates on an Electronic Communications Network outside the United Kingdom;

(m) “Internet Dialler Software” is software that replaces a Dial-up Telephone Number with a different Dial-up Telephone Number; other than where it is used so that:

(i) an end-user's existing Internet Service Provider replaces the Dial-up Telephone Number; or

(ii) an end-user moves from his existing Internet Service Provider to another Internet Service Provider or is so moved with his consent;

(n) “Internet Service Provider” means a person who provides end-users, by means of a Dial-up Telephone Number, with connection to the Internet in the ordinary course of its business;

(o) “National Telephone Numbering Plan” means a document published by Ofcom from time to time pursuant to sections 56 and 60 of the Act;

(p) “Non-Geographic Number” shall have the meaning ascribed to it in the National Telephone Numbering Plan;

(q) “Premium Rate Service” shall have the meaning ascribed to it by section 120(7) of the Act;

(r) “Payment Mechanism” is a mechanism whereby the charge for a service delivered by means of an Electronic Communications Service is paid to the Communications Provider providing the Electronic Communications Service;

(s) “PRS Number” means a Non-Geographic Number starting 087, 090, 091 or 118;

(t) **"Service Charge" shall have the meaning ascribed to that term in General Condition 17 of the general conditions set by the Director General of Telecommunications on 22 July 2003 by way of a Notification published pursuant to section 48(1) of the Act, and modified by Ofcom from time to time;**

(u) "Sexual Entertainment Service" means an entertainment service of a clearly sexual nature, or any service for which the associated promotional material is of a clearly sexual nature, or indicates directly, or implies, that the service is of a sexual nature; and

(v) "Special Services Number" means a telephone number designated by Ofcom in the National Telephone Numbering Plan as Special Services basic rate, Special Services higher rate or Special Services at a Premium Rate.

3. For the purposes of interpreting this Condition, except in so far as the context otherwise requires, words or expressions shall have the same meaning as ascribed to them in paragraph 2 above and otherwise any word or expression shall have the same meaning as it has been ascribed in the Act.

Annex 11

Notification of access-related conditions under section 48(1) of the Communications Act 2003

WHEREAS

A. On 15 April 2013, Ofcom published for domestic consultation a notification (the "First Notification") of their proposal to set access-related conditions in accordance with section 48A(3) of the Act.

B. Ofcom invited representations to be made to them about the proposal set out in the First Notification by 28 May 2013.

C. A copy of the First Notification was also sent to the Secretary of State in accordance with section 48C(1) of the Act.

D. Ofcom received seven responses to the First Notification and considered every representation made to them in respect of the proposal set out therein.

E. The Secretary of State did not notify Ofcom of any international obligation of the United Kingdom for the purpose of section 48A(6) of the Act.

F. The proposed access-related conditions set out in the First Notification are a proposal of EU significance within the meaning of section 150A of the Act.

G. Ofcom made such modifications to the proposed access-related conditions set out in the First Notification as appeared to them to be appropriate and, on 22 October 2013, sent a copy of the proposal, and of a statement setting out the reasons for it, to the European Commission, BEREC and the regulatory authorities in every other member State.

H. No notification has been given to Ofcom by the European Commission as referenced in section 48B(3) of the Act.

I. Ofcom has considered any comments made by the European Commission, BEREC and the regulatory authorities in any other member State in accordance with section 48B(4) of the Act.

THEREFORE

1. In accordance with sections 48(1) and 73(2) of the Act, Ofcom are setting the access-related conditions set out in the Annex to this Notification. The conditions are to apply to the persons specified in Schedule 1 to that Annex.

2. Ofcom's reasons for setting the conditions, and the effect of the conditions, are set out in the explanatory statement accompanying this Notification.

3. Ofcom considers that the conditions comply with the requirements of sections 45 to 49C and sections 73 to 74 of the Act, insofar as they are applicable.

4. In setting these conditions, Ofcom has considered and acted in accordance with their general duties under section 3 of the Act and the six Community requirements set out in section 4 of the Act.

5. The conditions shall enter into force on 26 December 2013.

6. A copy of this Notification and the accompanying explanatory statement is being sent to the Secretary of State, the European Commission and BEREC in accordance with section 48C of the Act.

7. In this Notification:

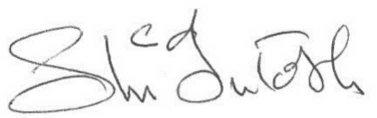
   a. “the Act” means the Communications Act 2003;

   b. “Ofcom” means the Office of Communications.

8. Words or expressions shall have the meaning assigned to them in this Notification, and otherwise any word or expression shall have the same meaning as it has in the Act.

9. For the purposes of interpreting this Notification: (a) headings and titles shall be disregarded; and (b) the Interpretation Act 1978 shall apply as if this Notification were an Act of Parliament.

10. The Annex to this Notification shall form part of this Notification.



Stuart McIntosh
Group Director, Competition

12 December 2013

A person authorised by Ofcom under paragraph 18 of the Schedule to the Office of Communications Act 2002.

ANNEX

Access-related conditions

Part 1: Definitions and interpretation

1. In this Annex:

"**Act**" means the Communications Act 2003;

"**Assumed Handover Point**" means the point of interconnection nearest to the origination of a call to a Free-to-caller Number at which the call may be handed over to the electronic communications network of another communications provider for conveyance. For these purposes, where the call is routed via a Transit Network, the Assumed Handover Point is deemed to be the nearest point of ingress from the electronic communications network on which the call originates to that Transit Network;

"**Effective Date**" means 26 June 2015;

"**Free-to-caller Number**" means:

(i) a Non-Geographic Number starting 080; or
(ii) a Non-Geographic Number in the format 116XXX;

"**Originating Communications Provider**" means a provider of a public electronic communications network, insofar as it provides Origination Services;

"**Origination Services**" means the origination of calls for which a retail price of zero is charged to Free-to-caller Numbers (but excluding calls originated from a Public Pay Telephone) and the conveyance of those calls to the Assumed Handover Point;

"**Non-Geographic Number**" has the meaning ascribed to that term in the National Telephone Numbering Plan;

"**Public Pay Telephone**" has the meaning ascribed to that term in paragraph 1 (*Definitions*) of Part 1 of the Schedule to the Notification published by the Director General of Telecommunications on 22 July 2003 under section 48(1) of the Act and modified by Ofcom from time to time;

"**Terminating Communications Provider**" means each person specified in Schedule 1 (and, in respect of each person, any of its subsidiaries or holding companies, or any subsidiary of such holding companies, all as defined by section 1159 of the Companies Act 2006) insofar as it terminates calls to a Free-to-caller Number; and

"**Transit Network**" means the electronic communications network of a communications provider used to convey a call from the electronic communications network of another communications provider to the electronic communications network of a third communications provider.

2. For the purpose of interpreting this Part and the conditions set out in Part 2:
   (a) words or expressions shall have the meaning ascribed to them in this Part 1 and otherwise any word or expression shall have the same meaning as it has in the Act;

   (b) the Interpretation Act 1978 shall apply as if each of the conditions were an Act of Parliament; and

   (c) headings and titles shall be disregarded.

Part 2: The Conditions

Condition 1 – Requirement to purchase Origination Services

1.1 From (and including) the Effective Date, the Terminating Communications Provider shall purchase Origination Services from an Originating Communications Provider in response to a reasonable request in writing.

1.2 The purchase of Origination Services shall occur as soon as reasonably practicable.

Condition 2 – Requirement for fair and reasonable terms

From (and including) the Effective Date, the Terminating Communications Provider shall purchase Origination Services from an Originating Communications Provider on fair and reasonable terms (including charges).

Condition 3 – Requirement to notify revised charges for Origination Services

3.1 This condition applies if, as at the date of its entry into force, the Terminating Communications Provider has an agreement to purchase Origination Services from an Originating Communications Provider.

3.2 By 26 January 2014 the Terminating Communications Provider shall notify the Originating Communications Provider in writing of the charges for Origination Services which the Terminating Communications Provider proposes to apply to that Originating Communications Provider from (and including) the Effective Date in accordance with Condition 2.

SCHEDULE 1

List of Terminating Communications Providers

Name of Communications Provider	Company Number
24 Seven Communications Ltd	04468566
4D Interactive Ltd	02676756
Admiral Telecom Ltd	05841130
Affiniti Integrated Solutions Ltd	02817039
Aggregated Telecom Ltd	03882936
Aloha Telecommunications Ltd	07210905
API Telecom Ltd	07945651
Bellingham Telecommunications Ltd	07038166
Bicom Systems Ltd	05529411
Bluecom (UK) Ltd	04483434
British Telecommunications Plc	01800000
Budget Numbers Ltd	05006466
Business Broadcast Communications Ltd	06949556
Buzz Networks Ltd	03260342
Cable & Wireless UK	01541957
Callagenix Ltd	03963819
Cheers International Sales Ltd	06288825
Citrus Telecommunications Ltd	03517870
Cloud9 Communications Ltd	07153956
Colt Technology Services	02452736
Connect Telecom UK Ltd	04198443
Content Guru Ltd	05653869
Core Telecom Ltd	05332008
Eclipse Tel Ltd	06718575
Edge Telecom Ltd	03101247
EE Ltd	02382161
Eircom UK Ltd	03478971
Elephant Talk Communications PRS UK Ltd	05890632
Equiinet Technologies Ltd (trading as SwitchConnect)	06840452
Firstsound Ltd	02845928
FleXtel Ltd	02772380
Floren Ltd	05602047
Gamma Telecom Holdings Ltd	04287779
Globecom International Ltd	003650V (Isle of Man)
iHub UK Ltd	SC213090
In Call Solutions Ltd	05799390
i-Net Communications Group Plc	04036526
Instant Communications Ltd	07435377
InTechnology Plc	03916586

Invoco Ltd	04465219
Invomo Ltd	06267056
Iovox Ltd	06057954
IPV6 Ltd	06711525
JT (Jersey) Ltd	83487 (Jersey)
Lanonyx Telecom Ltd	07658086
Level 3 Communications Ltd	03514850
Level 3 Communications UK Ltd	02495998
Localphone Ltd	06085990
Magrathea Telecommunications Ltd	04260485
Manx Telecom	005629V (Isle of Man)
Marathon Telecom Ltd	93007 (Jersey)
MDNX Enterprise Services Ltd	04287100
Media Telecom Ltd	07126854
Mintaka Ltd	07064805
Nationwide Telephone Assistance Ltd	04315226
Net Solutions Europe Ltd	03203624
Nexbridge Communications Ltd	07179973
Nexus Telecommunications Ltd	03895766
Nodemax Ltd	06127089
Number Solutions Ltd	05053505
Numbergroup Network Ltd	07390438
Orange Business Holdings UK Ltd	03051335
Orbtalk Ltd	05382664
OVH Ltd	05519821
Phone Buddy Ltd	04171159
Planet Numbers Ltd	03823269
Premier Voicemail Ltd	03172426
Premium O Ltd	06762329
Proton Telecom Ltd	05570915
QX Telecom Ltd	03820728
Rabco Telecommunications	n/a
Reality Network Services Ltd	04267969
Relax Telecom Plc	06777698
Resilient Networks Plc	01403177
Rhema Telecom Ltd	03795952
Served Up Ltd (trading as Voxhub)	04555918
Simwood eSMS Ltd	03379831
Six Degrees Unified Comms Ltd	04335920
Skycom Ltd	04101655
Spitfire Network Services Ltd	02657590
Spoke (Interactive) Ltd	02372101
Stardex (UK) Ltd	SC192625
Storacall Technology Ltd (trading as X-ON)	02578478
Swiftnet Ltd	02469394

Syntec Ltd	03529985
TalkTalk Communications Ltd	03849133
Telappliant Ltd	04632756
Telecom2 Ltd	06926334
Teledesign Ltd	03254784
Telephone Box Ltd	07198723
Telephony Services Ltd	05134355
Telsis Systems Ltd	02312314
TelXL Ltd	04249562
TG Support Ltd	05370731
Titanium Ltd	06952284
Tuxtel Ltd	06774113
Verizon UK Ltd	02776038
Via-Vox Ltd	04646978
Virgin Media Ltd	02591237
Virgin Media Wholesale Ltd	02514287
Virtual Universe Ltd	03064568
Vodafone Business Solutions Ltd	02186565
Vodafone Ltd	01471587
VoIP-Un Ltd	05225497
Vortex Telecom Ltd	06107494
Voxbone SA	BE 0478.928.788 (Belgium)
Wavecrest (UK) Ltd	03042254
Wavenet Ltd	03919664
Wightfibre Ltd	05470659
Windsor Telecom Plc	03752620
Zamir Telecom Ltd	05286517
Zimo Communications Ltd	05374218
Ziron (UK) Ltd	07597853

Annex 12

Notification of telephone numbering condition binding non-providers under section 48(1) of the Act

WHEREAS

A. On 15 April 2013, Ofcom published a notification (the “First Notification”) setting out their proposal to set the Numbering Condition.

B. In the First Notification and the accompanying explanatory document, Ofcom invited representations about the proposal to set the Numbering Condition by 28 May 2013.

C. Ofcom received three responses to the First Notification and have considered every representation made to them in respect of the proposed Numbering Condition.

D. The Secretary of State has not notified Ofcom of any international obligation of the United Kingdom for the purposes of section 48A(6) of the Act.

THEREFORE

11. In accordance with sections 48(1) and 59 of the Act, Ofcom are setting the condition set out in the Schedule to this Notification.

12. Ofcom’s reasons for setting the condition, and the effect of the condition, are set out in the explanatory statement accompanying this Notification.

13. Ofcom consider that the condition complies with the requirements of sections 47 to 49 and section 59 of the Act, insofar as they are applicable.

14. In setting the condition, Ofcom have considered and acted in accordance with their general duty as to telephone numbering functions under section 63 of the Act, their general duties under section 3 of the Act and the six Community requirements set out in section 4 of the Act.

15. The condition shall enter into force on 26 June 2015.

16. A copy of this Notification and the accompanying explanatory statement is being sent to the Secretary of State in accordance with section 48C(1) of the Act.

17. In this Notification:

    a. “the Act” means the Communications Act 2003;

    b. “Ofcom” means the Office of Communications.

18. Words or expressions shall have the meaning assigned to them in this Notification, and otherwise any word or expression shall have the same meaning as it has in the Act.

19. For the purposes of interpreting this Notification: (i) headings and titles shall be disregarded; and (ii) the Interpretation Act 1978 shall apply as if this Notification were an Act of Parliament.

20. The Schedule to this Notification shall form part of this Notification.

Stuart McIntosh
Group Director, Competition

12 December 2013

A person authorised by Ofcom under paragraph 18 of the Schedule to the Office of Communications Act 2002.

SCHEDULE

Numbering condition binding non-providers

Part 1: Definitions and interpretation

1. In this Schedule:

   "**Act**" means the Communications Act 2003;

   "**Consumer**" means any natural person who uses or requests a Public Electronic Communications Service for purposes which are outside his or her trade, business or profession;

   "**General Conditions of Entitlement**" means those conditions set by the Director General of Telecommunications on 22 July 2003 by way of a Notification published pursuant to section 48(1) of the Act, and modified by Ofcom from time to time;

   "**Facility**" shall be interpreted in accordance with section 120(14) of the Act;

   "**National Telephone Numbering Plan**" means a document published by Ofcom from time to time pursuant to sections 56 and 60 of the Act;

   "**Non-Geographic Number**" has the meaning given to it in the National Telephone Numbering Plan;

   "**Relevant Service**" means a service which consists in—

   (a) the provision of the contents of communications transmitted by means of an electronic communications network; or

   (b) allowing a Consumer of an electronic communications service to make use, by the making of a transmission by means of that service, of a Facility made available to Consumers of the electronic communications service;

   "**Service Charge**" means the rate set by a Communications Provider in accordance with General Condition 17 of the General Conditions of Entitlement in respect of the conveyance of a call to an Unbundled Tariff Number to the point of termination and the enabling of a Consumer to use an Unbundled Tariff Number to access a Relevant Service provided by means of that number;

   "**Service Provider**" means a person other than a Communications Provider who is allocated or makes use of an Unbundled Tariff Number for the purpose of enabling Consumers to access a Relevant Service; and

   "**Unbundled Tariff Number**" means a Non-Geographic Number starting 084, 087, 090, 091, 098 or 118.

2. For the purpose of interpreting the condition set out in Part 2 of this Schedule:

(a) words or expressions shall have the meaning ascribed to them in this Part 1 and otherwise any word or expression shall have the same meaning as it has in the Act;

(b) the Interpretation Act 1978 shall apply as if the condition were an Act of Parliament; and

(c) headings and titles shall be disregarded.

Part 2: The Condition

Condition 1 – Advertising requirements in relation to the use of a telephone number

1.1 This condition applies where a Service Provider advertises, promotes or procures the advertisement or promotion of any Unbundled Tariff Number in connection with the provision by the Service Provider of a Relevant Service to Consumers by means of that Unbundled Tariff Number.

1.2 The Service Provider shall include or procure the inclusion in any advertising and promotion of the Unbundled Tariff Number the Service Charge which applies in respect of a call by a Consumer to that number.

1.3 The Service Provider shall ensure that the Service Charge is displayed in a prominent position and in close proximity to the Unbundled Tariff Number in any such advertising or promotion of the Unbundled Tariff Number.

Annex 13

Glossary

116 EC Decision: Decision 2007/116/EC on reserving the national numbering range beginning with '116' for harmonised numbers for harmonised services of social value (as amended by Decisions 2007/698/EC and 2009/884/EC).

Access Charge ('AC'): This will be the charge levied by the Originating Communications Providers on its customers for a non-geographic call under the unbundled tariff.

Access Directive: Directive 2002/19/EC on access to, and interconnection of, electronic communications networks and associated facilities (as amended by Directive 2009/140/EC).

Assumed Handover Point ('AHP'): The location where a call is handed over from the OCP to the TCP for the purposes of connecting the call to the end-user.

Authorisation Directive: Directive 2002/20/EC on the authorisation of electronic communications networks and services (as amended by Directive 2009/140/EC).

BEREC: Body of European Regulators for Electronic Communications.

Call set-up fee: A fee charged to callers by Originating Communications Providers to connect their call to the number being called. This fee is a fixed amount, i.e. it is not dependent on the duration of the call, and is chargeable once the call is connected. It is separate from and in addition to any pence per minute rate charged for the call.

Call termination: The service provided by a Terminating Communications Provider to allow an Originating Communications Provider to connect a call with the intended recipient on that Terminating Communications Provider's network.

Calling Line Identification ('CLI'): This means a facility that enables identification of the number from which a call is being made or to which a return call could be made.

Carrier Price List ('CPL'): BT's published list of wholesale prices which it charges/pays to other CPs, including termination rates for non-geographic calls.

CAT: Competition Appeal Tribunal.

CC: Competition Commission.

Communications Act 2003 ('the Act'): The Act of Parliament that (amongst other things) sets out Ofcom's duties in relation to electronic communications, and the powers which Ofcom has to discharge those duties.

Communications Provider ('CP'):
This is a person who provides an electronic communications network or provides an electronic communications service.

Common Regulatory Framework ('CRF'):
This is the package of Directives which harmonises the framework for the regulation of electronic communications across the EU. This includes the Access Directive, the Authorisation Directive, the Framework Directive and the Universal Service Directive.

Dial-up internet access:
This is internet access that uses a dial-up connection over an analogue or ISDN telephone line.

Digital Local Exchange ('DLE'):
The telephone exchange to which customers are directly connected, often via a remote concentrator unit.

Directory Enquires ('DQ'):
A phone service used to find a specific telephone number and/or address for an individual, residence, business or government entity, which are accessed through the number range 118XXX.

EC:
European Commission.

ECN:
Electronic communications network.

ECS:
Electronic communications service.

End-to-end Connectivity:
Connection across a group of networks which enables users on those networks to make calls and send data to each other across those networks.

Framework Directive:
Directive 2002/21 on a common regulatory framework for electronic communications networks and services (as amended by Directive 2009/140/EC).

Freephone:
A number that is reached free of charge to the caller, except where charges are notified to the caller at the start of the call. Freephone numbers begin with 080 (e.g. 0800 and 0808) and also include the legacy 0500 range. 116XXX, (see Harmonised European Numbers for services of social value below) are also required to be Freephone or Free-to-Caller.

Free-to-caller:
A number that is reached at no charge to the caller and, if the call is made from a Payphone, without having to use coins or cards.

General Conditions ('GC'):
Obligations on all Communications Providers imposed by Ofcom under the Act.

Geographic number or geographic call:
A telephone number, or call to a telephone number, where part of the digit structure (beginning with 01 or 02) contains a geographic area code that is used for routing calls to the physical location of the subscriber to whom the number has been assigned.

Harmonised European numbers for services of social value:
This means a number in the 116xxx range which is used to provide a service meeting a common description on the same 116xxx number throughout EU Member States. The use of these numbers is harmonised by the 116 EC Decision.

Long Run Incremental Cost ('LRIC')
The long run additional cost caused by the provision of a defined additional increment of output.

Mobile Virtual Network Operator ('MVNO'):
A provider of mobile communications services which does not own a national network themselves, but instead provides all or part of their mobile phone services over network infrastructure owned by an MNO. For example: Tesco Mobile or Asda.

National Numbering Scheme ('the Scheme'):
The day to day record of telephone numbers allocated by Ofcom in accordance with the National Telephone Numbering Plan, and as provided for in section 56(3) of the Act.

National Regulatory Authority ('NRA'):
The relevant communications regulatory body for each EU Member State.

National Telephone Numbering Plan ('the Numbering Plan'):
This is a document setting out telephone numbers available for allocation and restrictions on the adoption and other uses of those numbers, and as provided for in section 56(1) of the Act.

Network Charge Change Notice ('NCCN'):
This is a document issued by BT to notify the industry of changes to BT's charges.

Non-geographic call ('NGC') or non-geographic number:
A telephone number, or call to that telephone number, which are used to identify a type of service rather than a geographic location. These services include NTS and PRS numbers. Mobile and Personal Numbers are also non-geographic numbers.

Non-geographic call services ('NGCS'):
A service that is provided through a non-geographic number.

NTS Call Origination Condition:
SMP Condition 13 set out in the Schedule to the Notification in Annex 3 of the Regulatory Statement completing the *Review of the fixed narrowband services markets* published by Ofcom on 26 September 2013.

Number Portability:
A facility where a subscriber can retain their telephone number when they switch communications providers.

Number range-holder:
A Communications Provider that has been allocated a particular block of numbers by Ofcom.

Number Translation Services ('NTS'):
Telephone services using the following numbers: Special Service numbers (including Freephone, special basic rate and special higher rate) and Premium Rate Services numbers ('PRS') (services currently provided under 090 and 091 number ranges). Within these ranges calls to 0844 04 numbers for Surftime internet access services and calls to 0808 99 for FRIACO ('Flat Rate Internet Access Call Origination') are excluded.

Originating Communications Provider ('OCP'):
This is the Communications Provider on whose network a call originates; in other words the caller's Communications Provider. There can be fixed OCPs or mobile OCPs.

PayphonePlus ('PPP'):
The premium rate services regulator in the UK, formerly ICTSIS (www.phonepayplus.org.uk)

Payphone:
A telephone available to the general public which, to be used, requires either coins or a card payment.

Personal Numbers:
A telephone number in the 070 range which allows a subscriber to receive calls or other communications at almost any telephone number, including a mobile number.

POLO:
Payment to Other Licensed Operator. This is a BT term for the termination rates it pays to other TCPs for numbers it originates.

Post-pay:
A type of mobile contract where the consumer receives a monthly bill, also known as 'pay-monthly' contract.

ppc: pence per call.

ppm: pence per minute.

Pre-call announcement ('PCA'):
This is a pre recorded message played to the caller before the call is connected setting out how the call will be charged for.

Pre-pay:
A type of mobile contract where the consumer pays up front for calls by pre-loading credit on to the phone. Also known as 'pay as you go' contracts.

Premium rate service ('PRS'):
These are a particular type of service provided on the 090, 091, 098 and 0871/2/3 number ranges. Calls are generally charged above 10p a minute from a BT landline.

Reseller:
A Communications Provider that resells non-geographic call services directly to Service Providers on behalf of Terminating Communications Providers.

Service Charge ('SC'):
The charge levied by the Terminating Communications Provider for a non-geographic call under the unbundled tariff.

Service Provider ('SP'):
This is a provider of voice or data services to third parties using non-geographic numbers.

Significant Market Power ('SMP'):
The Significant Market Power test is set out in European case law, the Common Regulatory Framework and the EC's SMP Guidelines. It is used by National Regulatory Authorities such as Ofcom to identify those CPs who must comply with additional obligations under the Access Directive or the Universal Service Directive.

Short Messaging Service ('SMS'):
This is a means by which short text-based messages can be sent to and from digital mobile phones and other devices.

Tariff Package Effect ('TPE'):
This is the term used to refer to how prices for different call, subscription or other services could change (either by increasing or decreasing) as a result of changes (increases or decreases) in CPs' incremental profits from non-geographic calls (i.e. the excess of revenue over LRIC).

Terminating Communications Provider ('TCP'):
This is the Communications Provider on whose network a call terminates.

Termination rate:
The wholesale charge levied by Terminating Communications Providers for call termination either on a fixed or mobile network.

Unbundled tariff:
The type of tariff structure which we consider should apply to the 08X (excluding 080), 09 and 118 number ranges. Under this structure the call charge will be divided into an Access Charge and a Service Charge.

Universal Service Directive ('USD'):
Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services (as amended by Directive 2009/136).

Universal Service Obligation ('USO'):
Conditions imposed on the designated Universal Service Providers, BT and, in Hull, KCom, requiring them to ensure that a basic level of telephony service is made available upon request.