Part B Annexes

Contents

Part B - Annex 19

Overall approach for the 084, 087, 09 and 118 number ranges

Introduction

A19.1 This Annex sets out a summary of the responses to the April 2012 consultation in respect of the remedies we proposed to address the market failures we identified, as well as which of these remedies should apply to the 0845 and 0870 ranges specifically. Our decision (subject to the issues on which we are consulting) to adopt the unbundled tariff for the 084, 087, 09 and 118 ranges, which takes account of these responses, is set out in Section 8.

A19.2 This Annex also sets out our response to each of the points raised by stakeholders. Where our response to the points raised is set out elsewhere in this statement, we cross-reference the relevant part where the issue has been addressed.

A19.3 We have divided the responses into the following areas:

i) wholesale intervention;

ii) maximum prices;

iii) unbundled tariff, where, as well as general comments, we have also summarised comments from stakeholders on each of our assessment criteria;

- o consumer price awareness;
- o efficient prices;
- o service availability;
- o access to socially important services; and
- o regulatory burden.

iv) treatment of the 0845 and 0870 number ranges.

Wholesale intervention

Summary of position in the April 2012 consultation

A19.4 We concluded that, in line with our provisional view in the December 2010 consultation, wholesale-only remedies would not sufficiently address the concerns we had identified. We discussed two specific options, either linking termination rates to retail prices or regulating termination rates. We noted that our primary concerns stemmed from the consumer experience of the retail level and those concerns would not be addressed by wholesale-only intervention.[1]

[1] See paragraphs 9.36 to 9.40 and Annex 17 in Part B of the April 2012 consultation.

Stakeholder comments

A19.5 Everything Everywhere ('EE') said it fundamentally did not believe that there was any form of retail regulation that could effectively and efficiently act as a substitute for proper wholesale regulation imposed and reviewed on a regular basis. EE reiterated its view that all CPs who terminated calls to non-geographic numbers had SMP in the wholesale market for termination of those calls. EE noted that Ofcom had determined it appropriate to impose SMP conditions to address the relevant market failings in the markets for wholesale call termination of geographic and mobile numbers, and it urged Ofcom to take the same approach in relation to non-geographic numbers.[2]

A19.6 EE considered that Ofcom's proposals must take into account the existence of SMP in relation to non-geographic call termination. It noted that Ofcom would need to consider this issue in its upcoming narrowband market review and it said that failure at the very least to consider this issue would be a failure of Ofcom's duties under the Act and European regulatory Framework.[3]

A19.7 EE noted Ofcom's stated preference was for using its competition powers and this was enshrined in statute. It remained of the view that this was an example of a problem which should be dealt with utilising such powers.[4] EE disagreed with Ofcom's reasoning as to why wholesale intervention was not a viable option (set out in Annex 17 of the April 2012 consultation). It highlighted comments from the European Commission on the definition of Market 3 (call termination on individual public telephone networks provided at a fixed location) which stated that "call termination to non-geographic numbers is not per se excluded from the market definition".[5]

A19.8 EE said it could not reconcile Ofcom's conclusion that it "was not confident that termination rates that would arise commercially are likely to lead to desirable outcomes for consumers" with Ofcom's apparent view that it would not benefit consumers for Ofcom to remove/address these wholesale market imbalances with appropriate SMP remedies. It noted that Ofcom might determine (whether before or after taking such action) that it did not address all of the consumer concerns. However, it argued that that was no excuse for Ofcom not acting to bring about the consumer benefits that would be able to be delivered through the correction of the relevant wholesale market distortions.[6]

A19.9 Virgin Media said it continued to believe, as it argued in response to the December 2010 consultation, that Ofcom should approach regulatory intervention first by addressing the wholesale layer, and only if the outcomes realised as a result of that intervention did not cause an abatement of the problems, should intervention at the retail level be considered. It believed such an approach was the one required by the Common Regulatory Framework and reflected in the Act. Specifically, it said a more targeted approach to intervention at the wholesale layer, including a review of the NTS call termination market with the imposition of appropriate remedies, in conjunction with the instigation of a comprehensive consumer education campaign (in which Ofcom would play a leading role) was the appropriate and required course

[2] EE, April 2012 consultation response, pp.3, 5-6.
[3] EE, April 2012 consultation response, p.18.
[4] EE, April 2012 consultation response, p.3.
[5] EE, April 2012 consultation response, p.17. EC comments pursuant to Article 7(3) of Directive 2002/21/EC dated 15 September (SG-Greffe (2005) D/205049).
[6] EE, April 2012 consultation response, pp.5-6.

of action. It believed that such a review would result in BT and all other TCPs being found to have SMP in the market and that the resulting constraints on termination charges would have a significant positive impact on both the wholesale and retail markets.[7]

Ofcom's response

A19.10 Stakeholders' arguments on this point are largely the same as those made in response to the December 2010 consultation and we set out our response to those points in the April 2012 consultation. In particular in Annex 17 of the April 2012 consultation we set out our view that regulating termination rates was unlikely to address our concerns relating to poor price awareness and the horizontal and vertical externalities (see Annex 8).[8] This remains our view and stakeholders have not provided any new reasoning or analysis to challenge that. The recent history of non-geographic calls shows that regulation of termination rates is unlikely to address the retail concerns because until recently (that is, until BT begun to set differentiated termination rates), there was, in practice, greater regulatory influence over termination rates (through the NTS Call Origination on BT and because other CPs tended to reciprocate those arrangements), yet the concerns we have identified at the retail level still arose in that environment.

A19.11 We therefore continue to conclude, as we did in the April 2012 consultation, that a remedy at the wholesale level is not appropriate to address the market failures we have identified. The appropriate forum to consider whether the non-geographic call termination should be included within the fixed call termination market, as suggested by EE, is the fixed narrowband market review ('the NMR'). EE made similar points as part of its response to our Call for Inputs as part of the NMR and we have responded to these points in our recently published consultation.[9] We set out our view in that consultation that the market for call termination to non-geographic numbers is a distinct service subject to different competitive constraints and we therefore do not consider it to be part of the same market as call termination to geographic numbers. We did not consider it was the appropriate time to define a separate market for non-geographic calls and conduct a competitive assessment of that market as part of the narrowband MR because the changes being considered as part of the NGCs review implied significant changes to the operation of the NGCs market.[10] We have also responded to some of EE's more specific comments about the wholesale concerns in the non-geographic market in Annex 9.

Maximum retail prices

Summary of position in the April 2012 consultation

A19.12 Overall we considered that setting maximum prices would be better than the status quo, and could protect consumers from the harm we had identified, particularly in terms of price awareness.

[7] Virgin Media, April 2012 consultation response, p.1. It also noted that it had elaborated further on the need for this review in its response to Ofcom's Call for Inputs on the Fixed Narrowband Market Review.
[8] See paragraphs 9.36 to 9.40 and Annex 17 of the April 2012 consultation.
[9] *Review of the Fixed Narrowband services markets*, 5 February 2013 ('the NMR consultation'), available here: http://stakeholders.ofcom.org.uk/consultations/nmr-13/
[10] See paragraphs 6.24 to 6.27 and 6.43 of the NMR consultation.

A19.13 We agreed with several stakeholders that maximum retail prices would be clear and easy for consumers to understand, aiding price transparency. We indicated, however, that for maximum prices to improve price transparency it was necessary that they provided an accurate guide to consumers as to the price they should expect to pay for a call. For this reason we said that actual retail prices would need to be at, or close to that maximum, which meant the amount of 'headroom' between wholesale termination rates and the maximum prices would need to be low.

A19.14 However, we also considered that imposing maximum retail prices had significant drawbacks. We noted that due to the difficulties involved for the regulator in setting prices that reflected consumers' and SPs' preferences and addressed the externalities identified, there was a significant risk of regulatory failure. For example, we argued that the prices we set might not reflect the preferences of SPs and the limits we set on prices could impact negatively on future innovation and service availability. We also noted that this option would not address the issues we had identified at the wholesale level and was likely to result in ongoing disputes and significant costs and uncertainty for stakeholders.

A19.15 We therefore rejected the option of imposing maximum retail prices in favour of the unbundled tariff approach. [11]

Stakeholder comments

A19.16 Some stakeholders, including some individual respondents, believed that setting maximum prices was the best option for addressing the consumer harm. Action4 said it was concerned that, unless a 'recommended retail price' was set out for all calls, consumer confusion would continue.[12] It considered that a maximum price was the best solution for consumers. Magrathea also said that imposing maximum retail pricing was the best way to protect consumers from excessive retail charges. It argued that the structure of NGCs did not lend itself to competitive pressures and that Ofcom's main focus of concern should be the excessive retail charges for NGCs. Based on that concern, it believed maximum prices were a better option than the unbundled tariff.[13] The Internet Telephony Service Providers Association ('ITSPA') also said it preferred the maximum prices approach, particularly given the levels of the access charge ('AC') which Ofcom had indicated could apply.[14]

A19.17 On the other hand, several other respondents agreed with Ofcom's assessment of the maximum prices option. Three noted that maximum prices had a high risk of regulatory failure and would impose a significant regulatory burden and, thus, Ofcom was correct in rejecting this option. [15] EE also welcomed Ofcom's "confirmation" (i.e. our preliminary view in the consultation) that the imposition of mandatory price caps for all calls to non-geographic numbers was not an appropriate means of addressing Ofcom's concerns in view of the high risk of regulatory failure.[16] BT noted the higher risk of regulatory failure associated with the maximum prices option.[17]

[11] April 2012 consultation, Part B, Section 9, in particular paragraphs 9.183 to 9.185.
[12] Action4, April 2012 consultation response, p.1
[13] Magrathea, April 2012 consultation response, p.2.
[14] ITSPA, April 2012 consultation response, p.1
[15] Three, April 2012 consultation response, p.9.
[16] EE, April 2012 consultation response, p.3.
[17] BT, April 2012 consultation response, pp.8-9.

Ofcom's response

A19.18 We agree with stakeholders' comments suggesting that a maximum retail price is likely to improve price transparency. A clearly communicated maximum retail price that was close to actual retail prices would offer the greatest benefits to consumers in terms of price transparency. However, it is less clear that this is the case where the actual prices are not close to the maximum price. In particular the evidence from the 2011 Experimental research indicated that maximum price information was not as useful as providing actual call charge information (either full charges or an unbundled service charge), and that the positive impact of this type of maximum price on call choices was fairly small.[18]

A19.19 In addition, we continue to believe that there are significant risks associated with maximum retail prices. In particular, there would be a significant risk of regulatory failure with this approach because it would require us to:

- determine the level of headroom between the termination rate set by TCPs and the maximum retail price set by OCPs;
- assess the adequacy of different price maxima for fixed and mobile operators; and
- periodically review the maximum retail price/s set to try to ensure that any negative impact on innovation was removed or mitigated (although this could be difficult to identify).

A19.20 Respondents did not provide any evidence to challenge the existence of these risks nor attempted to demonstrate that the benefits of greater price transparency would outweigh their impact. We therefore continue to believe the risk of regulatory failure is likely to outweigh the benefits of greater price transparency under a maximum retail price. We note that in the April 2012 consultation we specifically asked for stakeholders' views on the new evidence (gathered since the December 2010 consultation) which we had used to support our assessment of the unbundled tariff. Respondents above, who favour the maximum prices option, have not commented directly on that evidence or provided new arguments or evidence which would lead us to change the assessment we presented in the April 2012 consultation. We have therefore decided to reject the maximum prices option (see also Section 8 where we set out this provisional decision).

A19.21 In response to Magrathea's comments about competition in the market, we recognise that because consumers call non-geographic numbers less often than other calls, the competitive constraints may be reduced. We also agree that because of the existing market failures, in particular the poor consumer price awareness, the current structure of calls means that competition has been weak. But we disagree that this means that price competition cannot develop under an alternative structure. In particular we consider that the unbundled tariff will enable an environment in which competition can develop on the two separate charges. See below where we discuss this in more detail, in particular under the 'efficient prices' heading.

[18] London Economics, *Experimental Work in relation to NGCs,* 6 September 2011 ('the 2011 Experimental Research'), p.vii, available at: http://stakeholders.ofcom.org.uk/market-data-research/other/telecoms-research/interventions-non-geographic/

Summary of position in the April 2012 consultation

A19.22 We said the unbundled tariff had the advantage of allowing competition to shape prices, rather than regulation. We recognised that the maximum retail prices option might be perceived as simpler by consumers, and in some cases might offer a clearer pricing message. But we considered that the unbundled tariff would also offer improved pricing awareness compared to the status quo.

A19.23 We said that the unbundled tariff was more likely to result in efficient prices and improvements in service quality, variety and innovation compared to the maximum prices model, where we considered there was a greater risk that prices would be set that did not reflect callers' and SPs' preferences.

A19.24 We also highlighted our view that the unbundled tariff offered a clear benefit in addressing the wholesale concerns, in particular by removing the need for negotiations between TCPs and OCPs over termination rates and the potential for disputes, which the maximum prices option failed to do. We said that the potential implementation costs of the unbundled approach could be mitigated through an appropriate design of this tariff and that the benefits would outweigh those costs.

A19.25 We considered that the regulatory burden and risk of regulatory failure of the maximum retail prices option (discussed in paragraphs A19.18 to A19.21 above) was significantly lower under the unbundled tariff option.

A19.26 Our provisional conclusion in the April 2012 consultation was therefore that the unbundled tariff was the best option for addressing the consumer harm we had identified and should be applied to the 084, 087, 09 and 118 number ranges.[19]

General Stakeholder comments on the unbundled tariff approach

A19.27 The majority of stakeholders that responded (i.e. 20 respondents) indicated broad support for the unbundled tariff over the maximum retail prices option.[20] BT agreed that the unbundled tariff was the most effective remedy of those presented by Ofcom and noted it carried a lower risk of regulatory failure than the maximum retail prices option, as well as being less interventionist. It agreed that the unbundled tariff would address the areas of concern that Ofcom had identified.[21] Three made similar comments.[22] The UK Competitive Telecommunications Association ('UKCTA') agreed that OCPs, TCPs and SPs would potentially benefit from the transparency of setting ACs and SCs and giving SPs greater control over the prices its customers were charged for calling their numbers.[23]

A19.28 The Consumer Panel for Communications agreed that the unbundled tariff would make pricing structures clearer and said that removing the current confusing inconsistencies between number ranges would be beneficial to consumers and citizens.[24] Citizens Advice ('CAB') said that it recognised that the unbundled tariff

[19] April 2012 consultation, Part B, Section 9, in particular paragraphs 9.347 to 9.352.
[20] Including the ASA, BT, CWW, CAB, Consumer Focus, the Communications Consumer Panel, the Fair Telecoms Campaign, Scottish and Southern Energy, Sky, Surgery Line, Three, the Number UK, UKCTA, Verizon, Vodafone and five individual respondents.
[21] BT, April 2012 consultation response, pp.8-9.
[22] Three, April 2012 consultation response, p.9.
[23] UKCTA, April 2012 consultation response, p.3.
[24] CCP, April 2012 consultation response.

would be an improvement, although it was concerned that this approach did not go far enough to address the issue of clarity about the cost of a call.[25]

A19.29 The Advertising Standards Authority ('ASA') said it welcomed the proposal to create structure where the SC applied to all consumers regardless of its OCP, because it allowed for more meaningful pricing information to consumers.[26]

A19.30 Cable & Wireless Worldwide ('CWW') said the unbundled tariff represented an effective consumer and wholesale model which would resolve many of the current market failings Ofcom had identified. It said that the additional evidence and analysis carried out by Ofcom since the December 2010 consultation led CWW to confirm its support for the unbundled tariff, noting that it offered the advantage of allowing competition, rather than regulation, to shape prices as well as providing certainty in the wholesale market, which made it preferable to the status quo or the maximum retail prices option.[27]

A19.31 Sky said it was in broad agreement with the unbundled tariff, albeit that it had some concerns about the structure.[28] Scottish and Southern Energy ('SSE'), similarly, supported the proposals for the unbundled tariff, although it did have some concerns on the details, including having a single AC per tariff bundle and including the AC on every customer bill. The Number UK ('TNUK') also said it was, in principle, strongly in favour of the implementation of the unbundled tariff on the 118 number range, although this was subject to a number of caveats (primarily related to the possibility of maximum and pre-defined SC price points which are discussed in Section 9).[29]

A19.32 Surgery Line said it supported the unbundled tariff, albeit only on the basis that 0844 numbers remained available at rates equal to or below, the local rate charge maximum while still allowing revenue sharing with GPs.[30]

A19.33 Vodafone said that in light of the further work Ofcom had undertaken since the December 2010 consultation (including the facilitation of industry working groups, information on costs of billing systems development and the behavioural economics study by London Economics), it was persuaded that the unbundled tariff was worth pursuing as long as OCPs were free to determine their own ACs. It preferred the unbundled tariff to maximum retail prices, given the associated high risk of regulatory failure. It also believed Ofcom had made "enough of a case" to show how the unbundled tariff could be expected to address lack of awareness and contribute to better price perception and consumer confidence. It noted, nevertheless, that it was not persuaded by every aspect of Ofcom's analysis and that moving to the unbundled tariff would be a major change and the eventual outcomes were therefore uncertain.[31]

A19.34 The Fair Telecoms Campaign ('FTC') also noted the unbundled tariff was a new concept that would require time to establish itself but said it should provide for much more effective competition than any of the alternatives.[32]

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[25] CAB, April 2012 consultation response, p.2.
[26] ASA, April 2012 consultation response, Q12.7.
[27] Ibid, p.5.
[28] Sky, April 2012 consultation response, pp.1-2.
[29] TNUK, April 2012 consultation response, p.20.
[30] Surgery Line, April 2012 consultation response, p.3.
[31] Vodafone, April 2012 consultation response, p.15.
[32] FTC, April 2012 consultation response, p.11.

A19.35 However, there were some stakeholders who were opposed to the unbundled tariff option.[33] EE said it was simply not warranted to impose the costs associated with implementing the unbundled tariff. It believed that the "drastic" form of retail pricing intervention which Ofcom was proposing appeared to be highly disproportionate given limited evidence of harm. EE noted that in no market had Ofcom yet taken the extreme and novel step of exercising its new powers under the Act to 'impose tariff principles and maximum prices for the purposes of protecting consumers". It said that these 'highly interventionist powers' were not ones to be exercised lightly.[34] It did not believe Ofcom had demonstrated that its proposals were necessary or proportionate for the protection of consumers to an extent necessary to legally empower Ofcom to implement them.[35]

A19.36 O2 did not believe that Ofcom had taken sufficient account of recent market developments relating to mobile voice shortcodes which it believed had the capability to address the problems identified by Ofcom and would be more efficient than a centrally planned solution like the unbundled tariff.[36] In addition, it argued that implementing the unbundled tariff could not be argued to be 'objectively justifiable' and could be contrary to Ofcom's principal duty to 'further the interests of consumers', because by removing the benefits that consumers derived from the common, simple pricing generated by mobile voice shortcodes (in particular being able to link the mobile shortcode price to the price from a BT fixed line), the separation of retail charges would be detrimental to consumers' interests and would stifle innovation.[37]

A19.37 Virgin Media was also opposed to the unbundled tariff, in particular because of the restrictions it imposed on OCPs (discussed further below).[38]

A19.38 TalkTalk also expressed some scepticism as to whether a fundamental overhaul of the regulatory regime for NGCs was justified on the basis of available evidence of consumer harm. It said it was not entirely convinced about Ofcom's conclusions that price awareness among consumers for NGCs was so poor as to require the introduction of the unbundled tariff regime. It considered there were other options that Ofcom could, and should, explore first. For example, it said there was in principle nothing that would prevent Ofcom from reducing and simplifying the number of NGC price points under the current regime, or indeed from imposing more targeted and clever transparency requirements at the point of sale, or even from tackling excessive retail prices. In short it said there were less intrusive regulatory options that might well meet many of Ofcom's concerns and so avoid costlier changes necessary to implement the unbundled tariff option.[39]

A19.39 The Direct Marketing Association ('DMA') said it did not believe that the unbundled tariff model would work in practice.[40] Magrathea, the Federation of Communication Services ('FCS') and the Helplines Association ('THA') also indicated concerns about the level of prices that would materialise under the unbundled tariff and

[33] These stakeholders included, Action4, the Direct Marketing Association, Everything Everywhere, the Federation of Communication Services ('FCS'), ITSPA, Magrathea, O2, TalkTalk, the Helplines Association, Virgin Media and six individual respondents.
[34] EE, April 2012 consultation response, p.3.
[35] EE, April 2012 consultation response, p.15.
[36] O2, April 2012 consultation response, pp.9,13-15.
[37] O2, April 2012 consultation response, p.4.
[38] Virgin Media, April 2012 consultation response, p.1.
[39] TalkTalk, April 2012 consultation response, p.1.
[40] DMA, April 2012 consultation response, p.3.

whether consumers would actually understand the structure of prices (set out in more detail under the consumer price awareness criterion below).

Ofcom's response

A19.40 We have set out our response to the concerns raised in relation to the structure of the unbundled tariff (e.g. the single AC noted by SSE, as well as the minimum number of SC price points and SC maxima noted by TNUK) in the relevant sections (Section 9 and Annexes 21 and 22).

A19.41 Some stakeholders (including CAB, FCS, Magrathea and THA) have challenged whether the unbundled tariff will sufficiently improve consumer price awareness to merit this intervention. We have responded to these concerns under the relevant subheading below.

A19.42 In relation to Surgery Line's comment about confirming that there will be a 0844 range that can be charged at, or below, local call rates while allowing revenue sharing, there is no certainty about this under the current system. For example, mobile providers currently charge between 25ppm and 40ppm for these numbers.[41] Under the unbundled tariff the price may vary by OCP and there will be no requirement for OCPs to charge at a particular rate. Numbers in the 084 range will be charged an AC, plus an SC of up to 7p (see Section 9 for details of the SC caps by number range). Based on current revenue share levels for the 0844 number range it is likely that the SC will be at the lower end of the range (potentially as little as 1-2p), however, the actual SC will depend on what SC is applied to the number block by the TCP. In addition, the AC will vary by OCP. Therefore, it will not be possible to guarantee that a 084 number will be charged at the same rate as a geographic call. Nevertheless, an SP would be able to choose to migrate to a number range with geographic rating (i.e. 03), a lower SC, or even a zero-rated SC, if it finds that the SC for its number block is not suitable for its purposes.

A19.43 A number of stakeholders have raised concerns about the proportionality of the unbundled tariff. Proportionality is an important yardstick for regulatory intervention, and a test that Ofcom is required to satisfy in order to make changes to General Conditions and the Numbering Plan (see Section 6 for further details). The challenges we have received from stakeholders can be classified into the following issues, in particular, whether:

- our objective is legitimate – specifically whether the level of consumer harm justifies our intervention in the market;
- the intervention will achieve our objective (that is, that the unbundled tariff will address the consumer harm we have identified);
- the unbundled tariff is the least intrusive way of achieving that objective (that is, there is not another, better, way of meeting that objective); and
- the action is a reasonable one to take in light of the impact it would have – including that the implementation costs of the unbundled tariff are justified.

A19.44 In relation to the first issue, EE and O2 in particular have challenged our assessment of the consumer harm. We have responded to these comments in Annex 8 and set out our overall position on the consumer harm in Section 4. We

[41] See Part A, Section 2, Tables 2.2 and 2.3 for examples of current retail prices.

have considered their submissions. Our view remains that there is sufficient evidence of market failures and resultant harm to consumers so as to warrant taking regulatory action to protect consumers and further their interests in line with our duties under section 3 of the Act.

A19.45 Secondly, there are concerns from stakeholders about whether the unbundled tariff will be effective in addressing the consumer harm we have identified. Some stakeholders, for example the DMA, FCS and others argue that the unbundled tariff is too complex and therefore will not improve consumer price awareness. They consider that the level of prices will remain unchanged as a result. We have responded to the concerns about consumer price awareness below under the relevant sub-heading. Although we recognise that there are some uncertainties, we are satisfied that there is sufficient evidence to indicate that the unbundled tariff is likely to lead to improved consumer price awareness, which in turn will ameliorate many of the other negative impacts we have identified in Section 4.

A19.46 Thirdly, there is the question about whether less interventionist options would also meet our objectives. We set out our rejection of the maximum prices and wholesale only remedies approaches above (see paragraphs A19.18 to A19.22), where we concluded that no stakeholders have provided us with comments that would cause us to revise the assessment of these options we presented in the April 2012 consultation.

A19.47 Some stakeholders, O2 and TalkTalk, suggested alternatives to the unbundled tariff which we did not include in our detailed evaluation of options. In particular, O2 referred to the current Mobile Voice Shortcode ('MVSC') market as offering a solution to the concerns we identified in the market for NGCs. We have addressed these comments in Annex 8, where we concluded we could not be confident that MVSCs would provide an adequate remedy to our concerns, given the current scale of consumer detriment we have identified.

A19.48 O2 also argue that the unbundled tariff would undermine the benefits created by MVSCs and would stifle innovation, because it would remove the potential for SPs to select an MVSC price point which exactly corresponds to a single BT retail price point. We set out the reasons why we considered the benefits of MVSCs were likely to be limited and why take-up of MVSCs was likely to remain low in Annex 8 (see paragraph A8.119). Moreover we note that removing the link between the MVSC price point and the BT retail call price does not prevent MVSCs from offering a single price point which is matched to the level of the advertised SC for a non-geographic number under the unbundled tariff if they wish to do so.[42] We therefore do not consider that this is likely to be a material detriment either to innovation or consumers more broadly, particularly when considered in the context of the consumer detriment arising from the current pricing structure which we have set out in Section 4. In addition, for the reasons set out in Section 8, we consider there are a number of benefits to the unbundled tariff, including the promotion of innovation on these number ranges, and we therefore disagree with O2's arguments. We have

[42] We acknowledge that the MVSC price will be cheaper than price of a call to the equivalent non-geographic number from a fixed line by an amount equal to the fixed AC. As such, a single uniform price point cannot be given. However, the difference in price is unlikely to be significant because we estimate that the fixed AC will be relatively small (see Section 9 where we set out our estimates of fixed ACs based on current revenues). Moreover, we note in Annex 8 (paragraph A8.119) that there is no guarantee of a single uniform price point through the use of MVSCs under the status quo, as not all fixed OCPs follow BT's pricing structure (nor is there any obligation on them to do so). We also note that consumers have very poor awareness of the price of MVSCs at present and lack confidence in them.

set out in Section 6 how we consider the implementation of the unbundled tariff is consistent with our statutory duties and the necessary legal tests.

A19.49 TalkTalk suggested three alternative options: (i) a “simplification of pricing”; (ii) “more targeted transparency measures”; or (iii) “tackling excessive prices”. However, TalkTalk did not provide details on how these measures should be put in place nor how our objectives could be achieved under these options in practice.

A19.50 In terms of reducing the number of price points, whilst we recognise this could go some way towards improving consumer price awareness by reducing the number and therefore the complexity of tariffs available, we do not consider it would address the most significant issues we have identified in relation to consumer price awareness. In particular, we note that SPs would still not be able to advertise a specific price that was applicable from all OCPs, which would significantly reduce consumers’ price awareness at the point of making the call relative to the unbundled tariff. We also note it would require consumers to have an awareness of a far greater number of tariffs than the simplified AC, albeit a smaller number than under the status quo. Accordingly, we think the unbundled tariff likely to offer significantly greater benefits for price transparency than this option.

A19.51 Regarding TalkTalk’s proposal for targeted transparency measures, we set out in the April 2012 consultation[43] why we consider that information remedies on their own would not meet our objectives and note that TalkTalk has not challenged the reasoning and evidence we relied upon in reaching this conclusion. In relation to the proposal that we could “tackle excessive prices”, in the absence of further detail we consider this is a similar approach to the maximum retail prices option we have already considered and rejected. In summary, we disagree with TalkTalk’s view that we have not considered other, less intrusive options. We have considered such options but have found they are unlikely to address the consumer harm we have identified to a degree we consider sufficient given the scale of this harm.

A19.52 Finally, some stakeholders, particularly EE and O2, question whether the costs of implementing the unbundled tariff are justifiable. We set out the estimated costs of the unbundled tariff in Section 8 (and in more detail in Annex 10). Additionally, our quantified assessment of the benefits of the unbundled tariff in Section 8 shows that relatively small reductions in consumer price over-estimation, or shifts in demand for the 084/087 number ranges, would be required for the benefits to be likely to exceed the estimated costs. We have also conducted a separate quantified assessment of the 09 range which we consider indicates that the impact of the unbundled tariff is likely to be positive overall.

A19.53 In conclusion, the analysis above (as well as in the relevant Sections and Annexes to which we have referred) leads us to the view that the unbundled tariff is the most appropriate approach for addressing the concerns we have identified in the current market for NGCs.

Consumer price awareness

Summary of position in the April 2012 consultation

A19.54 We recognised that the unbundled tariff was more complex than the maximum retail prices model in terms of the message it conveyed to consumers, and that, because it was a new type of pricing structure, there was uncertainty about how consumers

[43] See Part B, Section 9, paragraphs 9.10 to 9.35.

would react to it (although we noted the 2011 Experimental research gave some positive indications).[44]

A19.55 We considered that a benefit of the approach relative to the status quo was that it enabled SPs to tell consumers the SC element of the call. In addition, by having a single, simple AC for all NGCs, it would be easier for consumers to recall it and compare it across OCPs when selecting their tariff package. We therefore considered that the unbundled tariff would offer benefits in terms of consumer price awareness. Although we acknowledged that price transparency was greater under the maximum retail prices option (largely because the prices are simpler – one element rather than two), we considered that the additional benefits provided by the unbundled tariff (discussed below) were greater than those for the maximum retail prices.[45]

Stakeholder comments

A19.56 Magrathea noted concerns that consumers would not consider ACs when selecting call packages; as this consideration would be outweighed by other factors such as number of in-bundle minutes, etc. It said that it was therefore important that the AC was included in bundles and that the AC for pre-pay mobile packages was capped at the mobile termination rate plus a reasonable uplift. CAB noted similar concerns that a significant number of consumers would not choose their CP on the basis of NGC costs.[46]

A19.57 Magrathea was also sceptical about the effectiveness of the SC publication requirements on SPs. It said it predicted large-scale non-compliance for the lower rated rates (084) and therefore it disagreed with Ofcom's conclusions about the potential for improved price transparency under the unbundled tariff.[47] O2, on the other hand, considered that the proposal to require SPs to advertise the exact SC seemed to contradict the basic principle of the NGCS review, simplification of NGCs for the benefit of consumers. It disagreed that advertising the exact rate would encourage consumer awareness of SC prices, and considered it would in fact make calculations of aggregated call charges more difficult for the consumer.[48] It argued that disaggregation would be detrimental to consumers, because it would remove the possibility of BT charging a single, simple price for revenue share arrangements, which it said service providers used to anchor mobile voice shortcode pricing.[49]

A19.58 THA also said it was not convinced that the unbundled tariff would necessarily lead to improved transparency for callers, because not all callers would be aware of their AC at the point of call. In particular it argued that if the AC was not lower than Ofcom's estimate of 16ppm, the advertising requirements on the SC could be misleading, as they would detract from the real cost of the call. THA was also concerned that the unbundled tariff could lead to the perception that charities were exploiting callers even if they were not gaining any revenue from the call (for

[44] 2011 Experimental research, pp.vii to viii. In particular that research found that price information at the point of call did not have to be complete (i.e. the full charge) in order to be useful.
[45] April 2012 consultation, Part B, Section 9, paragraphs 9.222 to 9.250.
[46] CAB, April 2012 consultation response, p.3.
[47] Magrathea, April 2012 consultation response, p.2.
[48] O2, April 2012 consultation response, p.17.
[49] O2, April 2012 consultation response, pp.9 & 13.

example because the SC only covered their hosting and termination costs and did not include any profit for the SP).[50]

A19.59 On the other hand, FTC considered that the unbundled tariff would make some SPs aware that they were responsible for part of the charge to callers. It said that a key element of the improved transparency would be the publication of the SC as this would make it clear that some of the call costs went to the SP. [51]

A19.60 The FCS also noted that the SC could be dwarfed by the AC on the 084 and 087 ranges and, because only the SC would be advertised in marketing, it was cautious as to whether industry would demonstrate adequate transparency of the AC to build confidence in these number ranges. It was also not convinced that consumers would understand the concept that an additional charge would be added to the SC and it was therefore concerned that Ofcom could make the situation worse.[52] CAB was similarly concerned that the proposed format for providing call cost information might give the impression that calls were cheaper than they were, which could potentially lead to bill shock i.e. a number which currently cost 6ppm from a BT landline would in future be advertised as 2ppm plus your access charge and that could appear to some customers to present a price cut or that it cost less than it actually did. [53]

A19.61 DMA considered that the wording proposed was overly prescriptive and the separation of the AC and SC would cause confusion to consumers. DMA said consumers would see a wide variety of potential charge combinations and this would only serve to create further confusion rather than the clarity required.[54]

A19.62 EE said Ofcom had to accept that the unbundled tariff was untested and that there was no evidence that it would succeed in improving customer price awareness. It argued that where the SC was not apparent at the point of call consumers would still (as today) either have to look up the information or hazard a guess. Furthermore, it said there was a real risk (which it believed was substantiated by the 2011 Experimental research) that customers would be confused by the separation of the AC and SC, and that current levels of price misperception would worsen. It highlighted particular statements from the 2011 Experimental research[55] and said those results gave cause for concern that adding further complexity to billing through the unbundled tariff could have unintended negative consequences for customers choice and welfare, rather than benefits.[56]

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[50] THA, April 2012 consultation response, pp.5-6.
[51] FTC, April 2012 consultation response, p.2-3, 11.
[52] FCS, April 2012 consultation response, p.2.
[53] Citizens Advice, April 2012 consultation response, pp.3-4.
[54] DMA, April 2012 consultation response, p.3.
[55] It highlighted the following quote from the Experimental research "Where participants were provided with call charge information, they did slightly worse where prices were unbundled. Scenario 2 (bundled charges) performed better than scenarios 4 and 5 (unbundled charges) and whilst this difference is small, it is statistically significant", as well as the following "A downside of unbundled ACs and SC compared to full price information is that subjects make more errors in call decisions. This effect is small but significant in our data. The requirement to add two separate charges makes the choice to make a call, or not, more difficult…". EE, April 2012 consultation response, pp.11-12.
[56] EE, April 2012 consultation response, pp.11-12.

Ofcom's response

A19.63 The challenges raised by stakeholders in relation to whether the unbundled tariff will improve consumer price awareness can be broken down into the following concerns:

- **awareness and understanding of the AC**: in particular, whether:
    - consumers will consider ACs at the point of subscription when choosing their telephone packages;
    - CPs will promote the AC sufficiently; and
    - ACs will be transparent enough to callers given that they will not be presented at the point of call.
- **awareness and understanding of the SC**: in particular whether–
    - consumers will understand the SC advertising message
    - the SC will in practice be advertised to consumers; and
    - the advertising of the SC could be misinterpreted by callers (particularly for the lower rated ranges).
- **consumer understanding of the unbundled tariff model as a whole** (in particular the disaggregation of charges)**.**

A19.64 We address each of these points in turn below.

Awareness and understanding of the AC

A19.65 Magrathea and CAB are concerned that consumers will not pay attention to the AC element when signing up to their telephone provider. Magrathea made a number of suggestions for ensuring that the level of the charge is reasonable, such as inclusion of non geographic calls in bundles. We have responded to these suggestions in our assessment of the structure of the AC (see Section 9 and Annex 20). We accept that it is likely that because consumers call non-geographic numbers less often than other number ranges (e.g. fixed lines and mobiles) the AC element will be less of a priority for them when signing up to a new package. However, part of the reason why consumers do not pay attention to these charges currently is the difficulty under the current system of obtaining information about NGC costs, as shown by the evidence we presented in the April 2012 consultation.[57] Unlike under the current system where consumers would need to obtain information on a very large number of charges in order to compare providers, under the unbundled tariff the AC will be a single, ppm amount that relates to all of the 084, 087, 09 and 118 ranges. It will therefore be simpler, and easier for consumers to remember and to take account of when considering their tariff package options, even where this is less of a priority for them than other call types. Given that the current difficulty in obtaining information on NGC charges at the point of subscription is one of the reasons consumers do not consider these charges when making subscription decisions, we consider that this simplification is likely to

[57] See paragraphs 9.244 to 9.245 of the April 2012 consultation.

have a significant effect on the number of customers who do take these charges into account.

A19.66 In terms of FCS' comments that industry may not promote the AC sufficiently, we set out in Section 10 the obligations that will apply to OCPs for publishing their AC. As a result of these obligations OCPs will have to make the AC for a particular tariff package clear at the point of sale, in their advertising and promotional material, as well as in their general tariff information. The fact that the AC will be a single number for each tariff package and will not vary by number range will make it easier for OCPs to meet these requirements (and easier for consumers to absorb the advertising message) compared to the present regime where charges vary greatly by number range, and even within number ranges.

A19.67 We acknowledge, as noted by THA and CAB, that the AC will not be available at the point of call. We also recognise it is likely that for some number ranges (particularly the 084 ranges) the SC element is likely to be lower than the AC element, which (as CAB observes) could give rise to bill shock if consumers have no awareness of the AC charged by their provider. However, as already explained, we consider that by limiting OCPs' charges to a single AC for each tariff package, the simpler advertising message, will allow consumers' ability to recall the AC to improve. Information about the AC will not only be promoted by OCPs, but more generally as part of the communications activities involved with the implementation of the unbundled tariff (see Section 5). Therefore, even where consumers do not recall the exact level of their AC at the point of call, we consider they are likely to develop some sense of its broad structure, and an understanding that it will be charged in addition to the SC element specified in the advertising message. We therefore disagree that the absence of an indication of the level of the AC in the advertising message will lead to widespread bill shock, particularly once consumers have had some experience with the new structure.

A19.68 Consumers' ability to recall a single AC will also be far greater than their ability to recall the price of calls to all non-geographic numbers under the current system. In the first instance, this is because they will only need to remember a single charge - in contrast to the current system, where they would need to recall a very large number of tariffs varying across number range, time of day and sometimes even across number blocks within the same number range. Secondly, their experience of the cost of the AC will be based on all calls made to the unbundled tariff number ranges (i.e. the 084, 087, 09 and 118 ranges), rather than on the smaller volume of calls made to an individual number range (or number block within a range) at a particular time of day. Even if consumers are unable to recall the level of their AC, which we recognise may be the case especially in the early stages of the unbundled tariff, we still consider price transparency at the point of call will be enhanced relative to the current system. This is because it will be far easier for consumers to access information about the AC at the point of call if they wish to than it is for most consumers to access information about NGC costs under the current system, given that they will only need to look up one number in their tariff package rather than incur the significant search costs we documented in the April 2012 consultation.[58]

A19.69 We note that the 2011 Experimental research found evidence that consumers performed better when presented with price information at the point of call.[59] However, the experiment also showed that price information did not need to be

[58] See paragraphs A8.39 to A8.49 in Annex 8 of the April 2012 consultation.
[59] 2011 Experimental research, page vii, point 1.

complete (i.e. the total charge) in order for it to be useful.[60] We recognise that price transparency could be greater if the AC was also available at the point of call (as this would provide a complete price to consumers at the point of call) but we do not consider this is practical under the unbundled tariff structure. We rejected the maximum prices option above, albeit that we acknowledged it could offer greater transparency, because of the significant regulatory burden it could create.

Awareness and understanding of the SC

A19.70 Some stakeholders, e.g. FCS, raised concerns about whether consumers would understand the SC advertising message. We consider consumers will understand that they will be charged the SC that has been advertised to them given the simplicity and clarity of this message. Where a choice of similar SPs is possible, we also consider consumers will be able to use the advertised SCs in order to determine relative charges. The AC element will then have been made clear to them separately by their telephone provider and through the various communication activities outlined in Section 5. We consider that, particularly given that the AC will be a single charge per tariff package, which it will be easier for consumers to look-up, the fact that the AC is not stated in the advertising message will not undermine consumer understanding of that message.

A19.71 The DMA notes concerns that the advertising message we have proposed is too prescriptive. Our position is that the precise nature of the message used will be down to individual SPs, so long as they make clear the SC and that an AC will apply. We discuss the enforcement of the advertising requirements on SPs in Section 10. The Advertising Standards Authority ('ASA') will be responsible for ensuring compliance with the requirement for SPs to state the SC in their advertising for the 084 and 0870 number ranges, and PhonepayPlus ('PPP') will be responsible for the 0871/2/3, 09 and 118 number ranges. While there is always a risk that some SPs may not comply with the requirement to advertise the SC, as suggested by Magrathea, we see no reason to believe there will be wide-scale non-compliance, given PPP's and the ASA's enforcement powers and reach across the industry. Such issues are properly dealt with through the normal processes of enforcement.

A19.72 We note THA's concerns about the risk of callers perceiving that charities were exploiting callers. The objective of the unbundled tariff is to provide clarity about the charges for non-geographic calls. The advertising of the SC element will make clear that this is the amount that the SP is responsible for (and will remove the misperception that can occur currently, where consumers sometimes assume that higher call costs for some of these calls are wholly the responsibility of the SP, rather than the both the OCP and SP). It will be up to SPs to decide whether the number range they are operating on, and the level of the SC being charged to customers as a result, is appropriate for their purposes. It will be open to SPs to make clear, when promoting the number, what the SC element of the call is used for if they so wish (for example, if it is for covering telephony costs rather than revenue-sharing per se).

Understanding of the unbundled tariff concept as a whole

A19.73 We disagree with O2's comment that the separation between the AC and the SC will increase the complexity of the advertising messages (compared to the situation today) and make it harder for consumers to assess aggregate call charges.

[60] 2011 Experimental research, page vii, point 1.

Currently the only pricing message SPs can provide is a reference to the specific BT retail tariff and then an indication that other providers are likely to charge differently and mobiles may charge more. This is a more complex message containing significantly less information for most consumers than the one that is likely to be available under the unbundled tariff regime. With the unbundled tariff the SC element will remain the same regardless of the device or the provider the consumer is using to make the call. In addition, SPs can be certain that consumers will be charged a single AC by their provider. This will simplify the advertising messages available to SPs. As set out above, we consider that over time consumers will learn the broad magnitude of their AC and will be able to combine this with the advertised SC to gauge the level of overall charge to a significantly greater degree of accuracy than they are under the status quo. In particular we note that the 2011 Experimental research found that providing accurate information at the point of call significantly improved decision making, and that price information did not need to be complete (i.e. the total charge) in order for it to be useful.[61] That research also found that the unbundled tariff structure made call decisions a little more complex, in line with O2's concern.[62] However, the research also found that where subjects were provided with the SC at the point of call, the unbundled tariff model performed better than the status quo.[63] We respond to O2's comments about the mobile voice shortcode market in more detail in Annex 8.

A19.74 EE and the DMA argue that the unbundled tariff concept is too complex for consumers and could make transparency worse. EE, in particular, argued that where consumers had no information on the SC, they would still need to look up this information. We recognise that not all callers to non-geographic numbers will have information on the SC at the point of call. However, our consumer survey evidence suggests that around two-thirds of callers will have the SC in front of them when they call a non-geographic number.[64] For these callers, we consider there will be an immediate improvement in price transparency because all SPs will be required to state the SC in their advertising, and as we discussed above, we expect that SPs' advertising messages will be simpler and, hence, more effective in improving consumer price awareness.

A19.75 We also consider that the unbundled tariff will improve transparency over time even for those callers who do not have the SC in front of them when making a call. This is partly because they will be exposed to the clear message SPs will advertise about their SC, even if they do not have this information in front of them when making a call, and are likely to gain awareness through this exposure. In addition, we are setting maximum SC caps for the 084, 087 and 09 number ranges and these will be promoted as part of the communications activities outlined in Section 5, and could also be included as part of the general tariff information which OCPs provide (see Section 10 where we discuss the price publication obligations on OCPs). We therefore we expect that over time, consumers may be able to learn the maximum SC they will be charged for a particular number.

A19.76 We accept that the unbundled tariff is untested in the UK and we therefore cannot know with certainty whether consumers will understand the structure. Nonetheless

[61] 2011 Experimental Research, page vii, point 1.
[62] 2011 Experimental Research, page vii, point 3.
[63] 2011 Experimental Research, page vii, point 1 and Table 2. In particular subjects made significantly better call decisions under treatments 4 and 5 (the unbundled tariff with the SC provided at the point of call) than under treatment 1 (the status quo).
[64] The 2011 Consumer survey indicated that 65% of customers were likely to have the number in front of them when they make a call.

the evidence we have seen suggests the unbundled tariff is likely to lead to significant improvements in consumer understanding compared to the status quo. The evidence we reviewed in detail in the April 2012 consultation suggests that the current lack of price awareness is driven to a large extent by the complexity of tariffs, which make it difficult for consumers to obtain information on NGC costs or to remember them with any degree of accuracy. The unbundled tariff will significantly reduce the costs of obtaining information by increasing the quality of information available at the point of call and will reduce the number of tariffs consumers need to remember to a single AC, thus addressing these sources of current lack of awareness. The evidence we have seen on consumers' ability to understand the unbundled tariff from the 2011 Experimental research, described above, provides support for our view that it will offer improvements over the status quo.

A19.77 We note that EE and other objectors have not provided any specific examples of further evidence or assessments to test our proposals beyond that which we have already done (nor have we identified any that could be undertaken with a reasonable investment of time and resources). The novelty of the proposals is not, by itself, an argument not to adopt them, if they further the interests of citizens and consumers and meet the other statutory tests for Ofcom to act. In relation to NGCs specifically, we have highlighted in Section 2 (see paragraphs 2.41 to 2.42) that similar structures are being considered, or implemented, in other countries to address the same consumer transparency issues. This provides further reinforcement to our view that this is a viable structure for addressing the market failures.

A19.78 EE made a number of specific points about the 2011 Experimental research that we presented in the April 2012 consultation, namely, that:

- where participants were provided with call charge information, they did slightly worse where prices were unbundled than where they were bundled; and
- subjects made more errors in call decisions when presented with unbundled ACs and SCs compared to full price information.

A19.79 We agree that the 2011 Experimental research provided evidence that presenting a bundled access and service charges at the point of call resulted in consumers making better decisions than under unbundled price information, although the difference between the two scenarios was small.[65] As discussed in the April 2012 consultation, in practice consumers generally obtain price information at the point of call from SPs' advertisements. This means that, due to the variation of ACs by OCPs, SPs' advertisements can only provide information on the SC – not the total price. Therefore, although we agree with EE that a regime where full price information is available to consumers at the point of call is preferable, we do not see how this could be achieved in practice (we note also our arguments set out above for rejecting the maximum prices option). Instead, we believe that the unbundled tariff with SC information at the point of call is a more appropriate approach and the 2011 Experimental Research shows that it can result in outcomes only a little less

[65] For example, under Scenario 2 (bundled AC and SC) the percentage of consumers making the optimal call decisions was 96.6%, whereas it was 94.3% under Scenario 5 (unbundled AC and SC, with information on the SC only) – see page 13. The number of optimal call decisions raised by 12.2 percentage points under Scenario 2 (relative to the status quo), whereas 9.8 percentage points under Scenario 5 – see page 17-18. The overall performance indicators also showed some small differences in favour of Scenario 2 than Scenario 5 – see pages 22 and 23.

desirable than those of full price disclosure. In addition, the same research found the unbundled tariff performed better than the status quo.[66]

A19.80 We disagree with DMA's suggestion that there will be a wide variety of potential charge combinations, particularly from the perspective of an individual customer. Instead a non-geographic call made by a customer will either be in bundle, or will be charged a uniform AC, regardless of the unbundled number range called. Only the SC will change on a call by call basis, and many consumers will have access to this information at point of call. Of those that do not, as noted above, we expect many to be able to learn the maximum SC associated with a given number range over time as a result of exposure to SP adverts (albeit not at point of call) and through the caps that will apply to certain number ranges. Together we consider this will result in a much more standardised structure than today, where call charges vary widely, both between OCPs, and within ranges.

Efficient prices

Summary of position in the April 2012 consultation

A19.81 We considered that the unbundled tariff would lead to more efficient prices than the status quo because it was likely to increase the competitive pressure on the AC, as well as create some additional competitive pressure on the SC in some number ranges. We also set out our view that the unbundled tariff had the advantage of potentially allowing competition to shape prices rather than regulation, and this was more likely to lead to prices that reflected consumer preferences. Accordingly, we considered that the unbundled tariff was more likely to result in efficient prices compared to the maximum retail prices model, given that in the case of the latter there was a greater regulatory risk that prices would be set that did not reflect callers' preferences.[67]

Stakeholder comments

A19.82 Virgin Media said it remained of the view that, as expressed in its response to the December 2010 consultation, the unbundled tariff imposed too many restrictions on OCPs and would stifle innovation and ultimately competition at the retail level. It said that the limitation of only being able to apply a pence per minute charge and a common AC across all number ranges would very likely lead to a dilution of package offerings in the market and could exacerbate any tariff package effect.[68]

A19.83 TNUK agreed with us that the unbundled tariff would increase the efficiency of prices by partially addressing the vertical externality. However, it said it remained to be convinced of Ofcom's view that increased competition on the AC would materially develop in any way which would lead to prices that better reflected consumer preferences.

A19.84 EE remained of the view that overall levels of retail mobile pricing in the UK were highly competitive and did reflect efficient and appropriate pricing levels. It said it was clear that Ofcom in essence believed that the prices were set too high, but even assuming that Ofcom had a legitimate objective of reducing current NGC pricing through the unbundled tariff, there were at least doubts that it would actually achieve that. EE argued that prices charged to consumers could in fact increase. It

[66] 2011 Experimental Research, page vii, point 1 and Table 2.
[67] April 2012 consultation, Part B, Section 9, paragraphs 9.268 to 9.293.
[68] Virgin Media, April 2012 consultation response, Q10.1.

noted that, to begin with, all additional costs of implementing the unbundled tariff would need to be recovered from call prices, which it said was likely to motivate price increases rather than decreases. In addition, it argued that the existing competitive constraints on the SC for locked in calls could be removed, because other SPs would not constrain the level of the SC for these calls whereas, under the existing pricing model, competition between OCPs meant there was still some competitive pressure on the level of charges for these calls. Finally it said that if Ofcom insisted on mandating a single AC rather than separate ACs for 08x and 09/118 calls, then this was also almost certain to result in an increase in current 08x pricing. [69]

A19.85 EE also argued that the potential for higher call costs would impact vulnerable customers more than other customers, particularly where socially important services continued to be operated on the 084 number ranges. It therefore believed there was a high risk that vulnerable consumers would be negatively impacted to a disproportionate degree by the impact of the tariff package effect and other price rises.[70]

A19.86 THA was similarly concerned that the AC would not result in more affordable prices for consumers. It said that in the case of helplines, the AC for 084 and 087 numbers would be the most important part of the cost of calls to these numbers and helplines would have no control over it. It said that consumers would end up paying more for calls under the unbundled tariff. It noted that the combined cost for calling an 084 number could be from 9.9ppm (from landlines) up to 23.1ppm (from mobiles), with costs for 087 rising to up to 14.9ppm from landlines and 27.1ppm from mobiles. THA said consumers should not have to pay this much for calls to access services. THA said it was of the opinion that in the absence of any new changes the cost of these calls would be likely to fall below levels that Ofcom had estimated for the AC and SC levels under the unbundled tariff. It highlighted that some mobile operators had already taken steps to reduce the costs of calling 08 numbers and as telephony costs were continuing to fall it was likely that under the status quo call costs would continue to reduce. THA therefore said it feared that under the unbundled tariff callers would continue to pay more than they should.[71]

A19.87 O2 similarly argued that the proposed changes could be to consumers' detriment by driving up the cost of these calls (because, for example, OCPs would no longer be able to provide bespoke discounts or bundles of NGCs).[72]

A19.88 BT, however, said that clear advertising of the AC would encourage competition and would put downward pressure on prices.[73]

Ofcom's response

A19.89 We set out a response to Virgin Media's comments as part of the April 2012 consultation.[74] Our view remains that the unbundled tariff is likely to promote competition, rather than restricting it. In Section 4 we set out our concern that currently competition in most NGC markets is weak. We consider that having a simplified structure for the AC will encourage competition between OCPs in respect

[69] EE, April 2012 consultation response, pp.3-6, & 15-16.
[70] EE, April 2012 consultation response, pp.19-20.
[71] THA, April 2012 consultation response, pp.9-10.
[72] O2, April 2012 consultation response, pp.14-15.
[73] BT, April 2012 consultation response, p.8.
[74] In particular see paragraph 9.275 in Part B of the April 2012 consultation.

of NGCs. OCPs will still be able to offer a variety of tariff packages to consumers, with different levels of AC, in order to enable the customer to choose a package which meets their needs.

A19.90 TNUK questioned whether competition will actually develop on the AC. Again, we discussed this issue in detail as part of the April 2012 consultation.[75] We acknowledged there that, particularly because consumers do not claim to call NGCs often,[76] competitive constraints on the AC may not be as strong as they are on other elements of a call package. However, under the unbundled tariff, the AC will be much simpler to communicate and for consumers to recall. Simplicity assists the exercise of consumer choice (and hence, the process of competition). Simplicity is lacking today (with a multitude of NGC prices) but will be significantly improved with the introduction of the unbundled tariff, which should enhance the scope for competition at the point of subscription. It is also likely to facilitate competition at the point of call between fixed and mobile CPs. This is because, as we argued in the April 2012 consultation, the unbundled tariff is likely to improve consumers' ability to recall the broad magnitude of the AC and therefore the relative fixed and mobile prices of NGCs. We have also designed the structure of the AC to be as simple as possible, in order to encourage competition – see Section 9.

A19.91 A number of stakeholders argue that prices will increase under the unbundled tariff. This claim merits attention. If prices did rise on average on a sustained basis, it would be a significant problem – it would indicate, amongst other things, that the unbundled tariff may have made some of the problems in these markets worse, not better. No stakeholder (nor Ofcom) knows with certainty what will occur after the implementation of the unbundled tariff, and so it is impossible to exclude, definitively, the risk that our analysis of the likely way the market and consumers will react to the unbundled tariff is not correct. That said, we disagree with the views of the respondents about whether price rises are *likely* to occur for a number of reasons.

A19.92 As a precursor to considering those reasons in more detail, we emphasise the objective of this review, which is to address the consumer harm arising from the market failures that we have identified (set out in Section 4). One of these market failures is the lack of consumer price awareness, which, in turn, leads to prices which do not reflect consumer preferences. The impact of this approach on specific number ranges may vary. Specifically, it is possible that the cost of calls to *some* numbers will increase. The overall impact on consumers will depend on how both SPs and consumers react to the improved price transparency, including SPs moving services to new number ranges that better reflect their commercial preferences.

A19.93 EE argued that the costs of implementing the unbundled tariff will have to be recovered from prices charged to consumers. We recognise this may be true, at least with respect to any ongoing annual costs of implementation. We have set out in detail our estimates of the cost of implementing the unbundled tariff in Annex 10 and our approach to weighing the likely benefits to consumers against these costs in Annex 11. We have conducted our impact assessment by estimating the total costs to all stakeholders of implementing the unbundled tariff, and weighing these against our estimates of consumer benefits under various scenarios. This approach allows for all costs to be passed on in full to consumers, assuming there is no

[75] See paragraphs 9.269 to 9.283 in Part B of the April 2012 consultation.
[76] For example, only 6% of consumers claim to call 0845 and 0870 numbers regularly from a fixed, and only 2% from a mobile – 2010 Consumer survey, Q21 (fixed line) and Q25 (mobile).

demand response to any resulting change in the price of NGCs or of other telecoms services. In addition, as a result of EE's comments we have considered in more detail how implementation costs may affect the prices paid by consumers, and now incorporate this effect into our quantification of benefits.

A19.94 In Annex 11, we note that the mechanism through which the one-off costs of implementation would lead to an increase in the price of NGCs or of other telecoms services is unclear. In particular, one-off costs should not affect the profitability of an incremental call or subscriber, and therefore should not affect the incentives of SPs and OCPs to compete for these callers and/or subscribers once the unbundled tariff is implemented. We do not include these costs in the quantification of the TPE (but we still weigh them against our estimates of benefits, as noted above).

A19.95 We recognise there is a clearer mechanism for any annual costs of implementation to be passed onto consumers, as these costs will affect the ongoing profitability of NGCs. In A16.24 of the April 2012 consultation (Part B, Annex 16), we considered how the unbundled tariff may affect the incremental profitability of NGCs and, via the TPE, the price of other telecoms services. In particular, we expected the unbundled tariff to increase the incremental profits that OCPs make on NGCs by alleviating suppressed demand for NGCs. As a result, we considered the prices of other telecoms services were likely to fall overall and included an estimate of this benefit to consumers in our overall quantification of benefits.

A19.96 As set out in Annex 11, our estimate of the TPE assumes the only impact of the unbundled tariff on the incremental profitability of non-geographic calls is positive, via an increase in demand for NGCs. We recognise that the unbundled tariff may also have a negative impact on the incremental profitability of these calls as a result of any annual implementation costs (which, as set out in Table A10.27 in Annex 10, are incurred entirely by OCPs). As a matter of principle, we recognise that the TPE should be calculated on the basis of the net impact of the unbundled tariff on the incremental profitability of NGCs (i.e. the positive impact of increased NGC volumes less the negative impact of annual implementation costs). However, we explain in Annex 11 why the way in which our model is set up means that adjusting it in this way would not affect our results. In summary, this is because we have already accounted for the full value of implementation costs in our calculation of the minimum required thresholds. To the extent these costs are passed through to consumers, the total cost to industry would fall by the same amount as the benefits to consumers- leaving our overall result unchanged.

A19.97 We do not estimate the demand response to the TPE because we do not know which services it would apply to and therefore how to model the resulting change in demand. However, we note this is a conservative approach as the net effect of the TPE, even after accounting for annual implementation costs, would be for consumers to benefit from a reduction in the price of other telecoms services. Modelling the demand response to this price reduction would increase the benefits to consumers of this effect.

A19.98 We have not modelled the net effect of the unbundled tariff on the prices of NGCs. Overall, we consider that these are likely to fall as a result of increased competition between OCPs and between SPs.[77] However, we noted in the April 2012 consultation that we did not model the impact of a change in actual NGC prices on consumers because these prices are interrelated with the price of other telecoms services, which made the welfare effects of a price change difficult to quantify. We

[77] See paragraph A16.16 of the April 2012 consultation.

also note that allowing the annual implementation costs to affect the price of NGCs would be double-counting the impact of these costs on consumers, as we have assessed the impact of these costs on consumers via our analysis of the TPE above.

A19.99 EE also argued that competitive constraints on the SC would be removed, or reduced for locked-in calls.[78] We disagree. We have set out elsewhere our view that competitive constraints on NGC prices are currently weak (particularly because of lack of consumer price awareness) and therefore we do not accept that competition between OCPs acting as a constraint on SP prices is a material factor under the current system. Under the unbundled tariff model, we believe the competitive constraints on the SC, even for locked-in calls, could in fact be strengthened, at least to some degree. While we accept that the scope for competition on the SC for some calls is likely to be more limited (compared to, for example, 09 numbers), we do not accept that competitive constraints on the SC will be non-existent, even when customers have limited or no choice of SP and/or whether to make a call. This is because, as noted in the April 2012 consultation, we do not believe many calls are truly 'locked-in'.[79] Instead, we consider customers of these SPs will be able to respond to more transparent charges by adjusting the frequency and/or duration of their calls. We consider these consumer reactions would be likely to increase the competitive pressures on the SP with regards to the level of its SC relative to the status quo, particularly given how weak we consider the current competitive constraints to be. We also note that because these SPs will now be required to advertise their SC, there will be more pressure on them to choose a number range with an SC that is appropriate to the nature of their service (i.e. they may avoid number ranges with a higher SC because of the threat of adverse publicity and this will act as an additional constraint on SPs' behaviour).

A19.100 A number of respondents have referred to the requirement for a single AC leading to increased prices, with EE in particular noting the impact of this on vulnerable consumers. O2 also specifically raises concerns about the ability of OCPs to offer bespoke discounts. We have responded to these arguments in Annex 20 (see paragraphs A20.139 to A20.140).

A19.101 THA refers to the fact that some prices for NGCs have fallen recently, and if that trend were to continue, prices could be lower under the status quo than the unbundled tariff. We highlighted in the April 2012 consultation our view that the mobile OCPs' retail prices were in a state of flux and did not reflect the prices that would be set in normal market conditions and we have maintained the same position in this document (see Section 3, paragraphs 3.44 to 3.45). In particular, we have noted that current mobile prices are likely to be affected by on-going litigation and disputes in relation to termination rates charged by BT for these calls.[80]

[78] This is calls where the consumer can not select a different SP for a particular service, e.g. calling a bank, or government department, and therefore they are 'locked-in' to calling that service on the particular non-geographic number they use.
[79] See Part A, Annex 8, paragraphs A8.101 to A8.103.
[80] See paragraphs 3.85 to 3.92 in Part A of the April 2012 consultation. On 25 July 2012, the Court of Appeal upheld an appeal against the judgment of the Competition Appeal Tribunal, and thereby reinstated determinations by Ofcom that these termination rates were not fair and reasonable – see *Telefonica O2 UK Ltd and others v BT* [2012] EWCA Civ 1002. BT was recently granted permission to bring an appeal against the Court of Appeal 08x Judgment to the Supreme Court. Separately, Ofcom has just determined a dispute brought by mobile operators against a revised set of termination rates for 080, 0844/3, 0871/2/3 and 09 calls proposed by BT (see: http://stakeholders.ofcom.org.uk/binaries/consultations/provisional-conclusions/statement/040413.pdf)

A19.102 We therefore do not accept that the current trend in pricing referred to by THA provide a reliable guide to future prices nor demonstrates that prices are likely to be lower under the status quo. As already highlighted, competition on these ranges is weak because of poor consumer price awareness and therefore we do not expect there to be a material downward pressure on prices as matters stand.

A19.103 Further, the appropriate weight to give to THA's assessment needs to reflect the fact that (as we understand it) it is based on the ACs that we estimated in the April 2012 consultation, which assumed that current retention levels would remain unchanged after the introduction of the unbundled tariff. Consequently, the ACs quoted by THA reflect the current price levels, rather than, as THA seems to be assuming, a potential increase in prices after the implementation of unbundling. However, we consider that enhanced competition between CPs in relation to the AC may well result in customers paying a lower AC than our estimate. In addition, the SC levels THA has used are the maximum that will be permitted under the caps. In practice, the SC could be lower, and particularly for the 0845 and 0870 ranges where, based on current revenues, they are likely to be in the range of 1-2p.

A19.104 Based on the assessment above, we do not believe that the unbundled tariff will necessarily lead to higher prices than a reasonable counterfactual (the status quo). Instead, by encouraging competition on both the AC and SC elements of the call, prices may fall and, in any event, are overall more likely to reflect consumer preferences.

A19.105 We also disagree with EE's view that vulnerable consumers will be particularly disadvantaged by the unbundled tariff charging requirements. We have set out our assessment of the impact of vulnerable consumers' access to socially important services under the relevant criterion below. As indicated above, we have also responded to the comments about the potential for higher prices created by the single AC requirement, and the impact of this on vulnerable consumers, in Annex 20.

Service availability

Summary of position in the April 2012 consultation

A19.106 We considered that the unbundled tariff was likely to improve consumers' price awareness, making consumers more confident about prices, and that this would stimulate demand for services. We also noted that the unbundled tariff would limit the scope for the vertical and horizontal externality to arise, and that this would promote service availability and innovation. Our view was therefore that, overall, the unbundled tariff would promote service availability and innovation. We also said that the unbundled tariff would help to create/facilitate the right incentives for SPs to offer innovative services.[81]

Stakeholder comments

A19.107 TNUK said there could be significant constraints on service availability, quality and innovation as a result of the existence of an unrestricted AC and the fact that the SC would be limited to a predefined number of price points. It acknowledged that the unbundled tariff meant that it, as an SP, would be able to differentiate services on price, which would lead to some increased investment and innovation. However, it also said that the existence of the AC would always create an effective minimum

[81] April 2012 consultation, Part B, Section 9, paragraphs 9.297 to 9.307

call charge and the limitation of price points would inevitably restrict pricing freedom and therefore the types of innovative services that could be offered. [82]

A19.108 EE said Ofcom had admitted that there was minimal evidence upon which to base its predications that there would be an improvement in service provision as a result of its proposals, due to the inherent uncertainty of predicting whether such benefits would materialise, and if so to what extent. It considered that Ofcom should heed the warnings given by the CAT in the 08X Judgment and place very little weight on such benefits in its analysis.[83]

A19.109 FTC noted that for some of the lower rated 084 numbers, the SC would be very low compared to the AC and this might lead some SPs to migrate to alternative number ranges to avoid advertising a very small SC.[84] It considered that these SPs would either take the step of migrating to 03 and therefore not imposing an SC on its callers, or alternatively they would migrate to a higher-rated PRS number which could enable them to impose an SC that was proportionate to the cost of the service which the caller was accessing. It also highlighted the potential impact of the Consumer Rights Directive on these lower-rated ranges (which is going to require that certain consumer contact numbers are charged at a 'basic rate' only).

A19.110 BT said that if consumer confidence was improved through greater transparency then increased demand should incentivise SP innovation and investment.[85]

Ofcom's response

A19.111 In response to TNUK's point, under the unbundled tariff it will be made clear that the TCP and SP are responsible for the SC element of the call and the OCP is responsible for the AC element of the call. We expect the AC to be subject to competition and have decided to impose a number of tariff principles in relation to its structure in order to ensure that it is simple and easy to understand by consumers. We therefore do not consider that an uncapped AC will act as a barrier to service availability.

A19.112 We accept TNUK's point that the AC can act as a minimum call charge. However, we note that for some customers it may be included within their call bundles, thereby minimising, or reducing, the impact of the AC on consumers' calling decisions. This also seems unlikely to be a practical concern in the number range where TNUK is active (118), where the implied SC, based on today's wholesale termination charges, is much higher than likely estimates for the range of ACs.

A19.113 With respect to the number of SC price points, we discuss this issue in more detail in Section 9 and Annex 21. We consider it necessary to specify that OCPs are only required to provide a minimum number of SC price points (while remaining free to provide more) in order to ensure that the billing costs they incur to implement the unbundled tariff are not unduly burdensome. However, as discussed in that section, we consider that the minimum number of SC price points we have decided on will still enable a broad range of price points on which SPs can compete, invest and innovate.

[82] TNUK, April 2012 consultation response, p.20.
[83] EE, April 2012 consultation response, p.16. EE highlighted the following paragraphs of the 08X CAT Judgment, paragraphs 347, 375-77 and 445.
[84] FTC, April 2012 consultation response, pp.2-3, 11 &14.
[85] BT, April 2012 consultation response, p.9.

A19.114 We note that for some lower-rated 084 numbers the SC could be lower than the AC element of the call, particularly for calls from mobiles. This is effectively the case now with the OCPs keeping the greater part of the revenue from a call (though this is not transparent to consumers). It will be for SPs to decide whether they consider that the benefit of using a 084 number outweighs any additional cost, or the reputational impact from the requirement to advertise the SC for that number. This requirement may mean that some SPs choose to migrate away from the 084 range. We have taken account of the costs of some of this potential migration for the 0845 and 0870 ranges, as part of our impact assessment of the unbundled tariff (see Annex 10 where we set out these costs and our reasoning for not including migration costs for the other number ranges). In addition, we expect that greater consumer awareness of the high share of OCP retention will, in turn, lead to greater competitive pressure on the AC.

A19.115 We set out the evidence of suppressed demand for NGCs in Annex 8 of the April 2012 consultation and we have also responded to EE's arguments on this point in Annex 8 (see paragraphs A8.66 to A8.89). We recognise that the extent of any increased demand, and its impact in terms of service improvements, is uncertain. However, given the evidence of suppressed demand we consider it is a reasonable assumption that improvements in consumer price awareness will encourage consumers to make more, and longer NGCs (see for example paragraphs 8.25 to 8.27 in Section 8).

A19.116 With respect to the impact of the Consumer Rights Directive, we note this is not directly relevant to our assessment under this criterion given that its requirements will be implemented in the UK regardless of whether or not we implement the unbundled tariff. Nevertheless, we acknowledge that there may be a particular impact on SPs as a result of the requirements in the Directive, with some SPs potentially needing to migrate, or use alternative number ranges for particular aspects of their service. In particular this 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.[86] The Department for Business, Innovation and Skills ('BIS') issued a consultation on the implementation of this Directive in the UK in August this year.[87] Its position in that consultation was that the definition of 'basic rate' would exclude any revenue sharing arrangements, even on the lower rated ranges where that revenue sharing was used to cover costs rather than passed through directly to the SP. The Directive is required to be transposed into UK law by 13 December 2013 and it will apply to all contracts concluded after June 2014.[88] However, as indicated, this requirement only applies to communication after contracts have been concluded. Therefore this may not necessarily mean that SPs which have numbers that do not meet the 'basic rate' requirement have to migrate away from that number range, but instead they will need to ensure that they have at least one number range which meets that requirement for after-sales queries.

[86] Directive 2011/83/EU, Article 21 http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:304:0064:0088:EN:PDF
[87] http://www.bis.gov.uk/Consultations/consultation-implementation-consumer-rights-directive?cat=open
[88] http://ec.europa.eu/justice/consumer-marketing/rights-contracts/directive/index_en.htm

Access to socially important services

Summary of the April 2012 consultation position

A19.117 We said that the unbundled tariff was likely to improve access to socially important services by increasing price awareness and ensuring that vulnerable consumers were not deterred from accessing those services. In addition we said that a particular advantage of the unbundled tariff was that by calling consumers' attention to the amount of the call charge for which the SP was responsible, this might help to ensure that socially important SPs choose number ranges which matched more closely the preferences of their customers. Nevertheless, we noted that this criterion was primarily relevant for the 084 ranges (because we had no evidence on the extent to which socially important services were being provided on the other number ranges) and therefore we gave it less weight than the other criteria in our analysis.[89]

Stakeholder comments

A19.118 BT noted that many vulnerable consumers only had access to a mobile phone and it considered they would benefit from the improved pricing transparency created by the unbundled tariff as well as access to socially important services at a more reasonable price.[90]

A19.119 EE believed Ofcom had overstated the potential for improvements, and understated the potential for harm, to access to socially important services. It considered that the unbundled tariff would increase the costs of OCPs and SPs and as a result risked reducing investment in socially important services and/or increasing the price of accessing socially important services on these number ranges.

A19.120 In addition, EE also had concerns that the proposal might result in a worse outcome for vulnerable consumers, in particular those with a disability and the over 55s. It said the difficulties of adding together two different prices could particularly impact vulnerable consumers and deter them from making calls. EE believed there was a very high risk that they would be adversely affected to a disproportionate degree by a move to a charging structure that was more complicated than the current system. It highlighted that the 2011 Experimental research found that the unbundled tariff resulted in an increase in error in the making of call decisions and as this effect was observed in a university subject pool and a simplified environment it suggested that it could lead to a greater number of misinformed choices at point of use and this could particularly impact vulnerable consumers and deter them from making calls.[91]

A19.121 EE also reiterated its argument that the unbundled tariff, in particular the requirement for a single AC across 084/087 and 09/118 calls, could mean that the cost of calling 08 numbers could be higher than today and logically would not reflect the preferences of consumers of 084/087 calls. In support of this position, it cited the risk that a single AC would decrease competitive pressure on 'locked-in' calls (including socially important services). It considered that these higher costs would almost certainly impact vulnerable consumers more than other customers, particular where socially important services continued to operate on these ranges.[92]

[89] April 2012 consultation, Part B, pp.86-87, paragraphs 9.313 to 9.322.
[90] BT, April 2012 consultation response, p.8.
[91] EE, April 2012 consultation response, p.18.
[92] EE, April 2012 consultation response, p.19.

A19.122 EE also noted that numbering regulation would not in itself necessarily improve access to the socially important services if the SPs choose to use more expensive numbers. It said access to services of public importance was a much wider social issue over which Ofcom did not have jurisdiction outside of the communications space.[93]

A19.123 O2 said it was a pity that Ofcom did not evaluate its proposal for the 0845 number range separately given that this was the main range which provided socially important services. In its view, providers using the 0845 range were easily able to migrate their services to 0345 numbers. It was not persuaded that migration costs were significant (given that several 0870 providers migrated away from the range after the removal of regulatory support for revenue sharing). It noted that several energy providers had already adopted this approach.[94]

A19.124 O2 also argued that the development of the mobile voice shortcode proposition to include lower charged price points was capable of being used by providers of "socially important" services that wished to continue earning a small revenue share on received calls.[95]

Ofcom's response

A19.125 Firstly, we disagree that SPs' direct costs will be increased as a result of the unbundled tariff. The most significant area of potential costs for SPs is migration costs, which will only be incurred if the SP chooses to migrate away from its existing number range as a result of the implementation of the unbundled tariff structure. This is most likely to occur on the 0845 and 0870 ranges, as set out in more detail in Annex 10.

A19.126 We have responded to EE's arguments about the impact on the disability and over 55 groups in the EIA (Annex 12). This argument, like EE's previous points, rests on the premise that the unbundled tariff is a structure that is more complicated than the current regime (where there are a large range of possible costs for a given call and therefore a high cost of determining which cost will apply in a specific circumstance from a given OCP). For the reasons already stated, we do not agree with that assessment. We have set out why the existing structure has a particular negative impact on vulnerable consumers in Section 4. In this section, we presented evidence that all consumers, including the vulnerable, will benefit from having far clearer pricing information at the point of call[96], both on a call-by-call basis (reducing under-consumption and 'irrational' call substitution activity) and at the point of the subscription decision (allowing the selection of an AC which best fits the consumer's requirements).

A19.127 We have responded to EE's arguments about the potential for increased prices on the 08 range above (paragraphs A19.91 to A19.105) and in Annex 20 (see paragraphs A20.85 to A20.89). In summary we do not consider that any price increases are likely on average, and we consider that the benefits of improved price transparency outweigh any risks associated with increased prices. Vulnerable consumers will equally benefit from this increased price awareness.

[93] EE, April 2012 consultation response, p.20.
[94] O2 highlighted EON's use of a 0370 number for its customer service line as an example.
[95] O2, April 2012 consultation response, p.12.
[96] For example, the 2011 Experimental Research found that consumers performed better when provided with information at the point of call, page vii, point 1.

A19.128 With respect to EE's point that access to such services depends on the SPs' choice of number, we responded to the same point made by EE in the April 2012 consultation.[97] As we set out then, we accept that SPs' choice of number is relevant, however, we noted that some SPs might take advantage of the possibility of hiding the revenue share they currently obtain from certain number ranges and this might exacerbate the problem of access to services. We consider that any changes to the current system that made an SP's choice to opt for higher priced non-geographic numbers clear and visible to callers should reduce this type of behaviour by SPs. We set out our view on SPs' use of particular number ranges in more detail in Section 8 under the 'access to socially important services heading.

A19.129 O2 have also argued that we should have assessed our proposals separately for the 0845 range. We set out in the April 2012 consultation that our assessment under this criterion was focussed on the 084 number range, because we were only aware of socially important services being provided on this range. In addition, we did assess separate options for the 0845 and 0870 number ranges (in Section 11 of the April 2012 consultation), and this separate assessment took into account the particular nature of services provided on the 0845 number range. Nevertheless, we do not believe that the fact that it is possible for providers of socially important services to migrate to 03 is a reason not to address the concerns that exist currently in relation to socially important services provided on the range. In addition (as noted in Section 8) there are other benefits from applying a common structure across all non-geographic number ranges. We would also highlight that there still remain a number of SPs on the 0870 range, despite the removal of revenue-sharing in 2009 and this suggests that for those SPs the costs of migrating are significant enough to outweigh the lost revenue following the regulatory changes in 2009.

A19.130 Finally, we have considered O2's point about mobile voice shortcodes and set out our position on these in Annex 8. We do not consider MVSCs would adequately resolve all of the problems currently faced by consumers in the market for NGCs but agree they may offer an alternative to certain SPs (in addition to migration to another number range).

Regulatory burden

Summary of April 2012 consultation position

A19.131 We said there were a number of regulatory costs associated with the unbundled tariff. Firstly, we noted there were a number of technical costs associated with making changes to billing systems to reflect the new price structure (which we said were influenced by issues such as the number of SC price points and the way in which pricing information is presented in consumers' bills). Second, we noted that there were likely to be a number of transition costs, because both callers and SPs would need to be fully informed about the new regime. We also said, however, that the unbundled tariff might reduce the regulatory costs for both Ofcom and stakeholders by reducing the number of disputes that we received about termination rates for NGCs. In addition we highlighted that it was a less interventionist approach than maximum prices and it retained some pricing flexibility for OCPs and SPs.[98]

[97] See paragraphs A8.408 to A8.409 in Part A, Annex 8 of the April 2012 consultation.
[98] April 2012 consultation, Part B, Section 9, paragraphs 9.332 to 9.342.

Stakeholder comments

A19.132 UKCTA noted that there would be significant cost and resource implications associated with implementing the unbundled tariff, which the industry would be expected to absorb. It said it appreciated the steps that Ofcom had taken in terms of its current preferred approach to ensure that the proposed measures were effective and proportionate. Nevertheless, UKCTA still believed that further analysis and feasibility studies were likely to be required to fully understand the costs and benefits of implementing the unbundled tariff. It highlighted that many of the implementation issues had been left open for industry discussion and noted that the impact on costs, benefits and timescales of these detailed issues needed to be fully appreciated and understood by Ofcom. It said that at all times Ofcom should be seeking to mitigate the cost and resource burden on industry where possible. It also said Ofcom should make clear when, and how, it proposed to step in to ensure that its described policy outcomes were achieved, in the absence of industry agreement on any particular issue.[99]

A19.133 Verizon made similar points to UKCTA in its response, noting that the key to success would be in effective implementation and this would be driven largely through Ofcom's willingness to listen to and heed industry concerns. It said Ofcom should recognise that need for an ongoing cost benefit analysis as more granular information became available as CPs looked in detail at system changes. It said Ofcom should be prepared to look again at its proposals if the costs or complexities involved outweighed the benefits.[100] CWW also similarly noted that Ofcom should be prepared to do all that it could to facilitate commercial and implementation measures in order to guarantee that the unbundled tariff was a success.[101]

A19.134 O2 argued that the unbundled tariff was an entirely new call type that did not follow established pricing structures and so would add significant complexity to pricing and billing systems.[102] EE said it was simply not warranted to impose the costs associated with implementing the unbundled tariff. It said that whilst the true costs could not yet be known, it was clear that they would be material and highly significant, involving both an encourage raft of one-off changes and high ongoing implementation and monitoring costs [103]

A19.135 Furthermore, EE had significant doubts that the unbundled tariff would address the wholesale market imbalances as Ofcom appeared to hope. It expressed concern that BT had indicated that ladder style termination rates could continue to exist under the unbundled tariff, and it said Ofcom had not yet adequately considered how it expected wholesale arrangements regarding the SC to work between TCPs and OCPs. It also believed there was a large and undesirable risk for further wholesale disputes and/or subversion of Ofcom's intentions to occur under the unbundled tariff.[104]

A19.136 Three also said that, although the unbundled tariff was its preferred option, it believed Ofcom had not directly addressed the wholesale market more generally and the issues that arose there specifically. It therefore considered that a full wholesale market review was still required in order to ensure that wider wholesale

[99] UKCTA, April 2012 consultation response, p.3.
[100] Verizon, April 2012 consultation response, p.1.
[101] CWW, April 2012 consultation response, p.29.
[102] O2, April 2012 consultation response, pp.14-15.
[103] EE, April 2012 consultation response, pp.3-6.
[104] EE, April 2012 consultation response, p.6

competition issues were addressed.[105] BT, however, said that the unbundled tariff would clearly set rules for wholesale charges and would lessen the potential for termination rate disputes. It said that the unbundled tariff, coupled with a bar on bespoke termination arrangements and the SC caps, should ensure that consumer needs were protected without the need for specific wholesale remedies.[106]

A19.137 TNUK said it was less convinced of Ofcom's arguments in relation to regulatory burden. Specifically, it did not necessarily believe that the unbundled tariff was less interventionist than maximum prices. This was predicated on three aspects: (i) the level at which any SC maximum cap was set, (ii) the level at which any pre-call announcement obligation was set and (iii) the restrictions imposed by a pre-defined list of price points. It said that, unfortunately, the combination of these aspects could lead to the unbundled tariff turning out to be a very harmful approach for DQ services. TNUK also noted that implementation costs could be significant for it if pre-call announcements were required for DQ services.[107]

Ofcom's response

A19.138 We have set out our assessment of the costs and benefits of implementing the unbundled tariff in Section 8 (and in more detail in Annexes 10 to 11). In Annex 10 we set out our response to some of the specific stakeholder comments we received about our cost estimates for implementing the unbundled tariff. We have made some adjustments to our cost estimates as a result of stakeholder comments and we have deliberately adopted relatively wide ranges for our cost estimates in order to take into account any potential uncertainties about precise implementation and how it affects billing systems. Our assessment of the costs and benefits of implementing the unbundled tariff on the 084/087 number ranges indicates that, even with these conservatively high cost estimates, the quantified benefits of each of reduced price overestimation or increased demand in these number ranges on its own is likely to outweigh these costs. In practice, we expect consumers to benefit from both reduced price overestimation and increased demand, and so we consider it likely that the benefits of implementing the unbundled tariff in these number ranges will substantially exceed the associated costs. In the case of 09, our assessment indicates that the direct benefits to consumers of improved price awareness in 09, along with the wider benefits to NGC price awareness generally from applying a consistent remedy across the 084/087/09 number ranges, are likely to exceed the incremental costs of implementing the unbundled tariff in this number range. Overall, we therefore consider it likely that the benefits of the unbundled tariff will significantly outweigh the costs.

A19.139 UKCTA have argued that further feasibility studies are required to understand the costs and benefits of the unbundled tariff. However, it did not expand on which particular areas it considered required such studies. Following the December 2010 consultation we undertook a widespread evidence gathering programme in order to understand the costs and benefits of our proposals. This included consumer research, behavioural economic experiments, research with SPs, industry working groups and bilateral discussions with CPs. The April 2012 consultation set out in some detail our revised proposals and stakeholders were invited to comment on those proposals. We have considered stakeholder responses to the April 2012 consultation in detail before coming to the position set out in this document. We consider therefore that we have sufficient information to make reasonable

[105] Three, April 2012 consultation response, p.9.
[106] BT, April 2012 consultation response, pp. 6 &.8.
[107] TNUK, April 2012 consultation response, p.20.

assumptions about the costs and benefits that are likely to result from the implementation of the unbundled tariff, although as set out in Annex 10 we asking for stakeholder comments on the revisions we have made to our billing cost estimates.

A19.140 In Section 10 we have provided further details on how we expect the unbundled tariff should be implemented. This is largely in line with the proposals we presented in the April 2012 consultation albeit we have made some modifications to reflect stakeholder comments and the engagement with industry we have undertaken since that consultation. In line with the comments from Verizon and UKCTA, our focus has been to try to reduce the potential impact on CPs, particularly in terms of costs, provided it will not negatively impact the effectiveness of the unbundled tariff (particularly in terms of transparency to consumers and ensuring simplicity of prices wherever possible). During the course of our review, we have refined our proposals with the aim of reducing the potential impact on industry - for example we are not requiring CPs to present the AC and SC separately on customers' bills because of the significant costs that CPs told us this would entail.

A19.141 Undoubtedly, there will be some issues which may only become apparent during the implementation period when OCPs start to make technical changes to their billing systems. However, we have engaged with industry throughout this process to ensure that we have, as far as possible, taken into account all technical details which may affect final implementation and therefore final costs. Any remaining issues we therefore believe are more likely to be points of smaller detail whose potential impact is likely to have already been captured through the relatively wide cost estimates we have used . In Section 10 we have set out the steps we expect to be involved in implementation, as well as the role we expect to take in that process. In line with CWW comments, we expect to be closely involved throughout implementation in order to ensure that it is successful.

A19.142 Therefore, while we accept there is some uncertainty about the level of costs, we consider that the estimates set out in Section 8 and Annex 10 take account of that uncertainty. The costs are likely to be significant (our estimates indicate a range of £25.6m to £73m in terms of up-front costs across industry). However, our analysis indicates that they are likely to be significantly outweighed by the benefits to consumers of greater price awareness and confidence in NGCs, as set out above. We therefore disagree with EE's view that the implementation of the unbundled tariff is not warranted.

A19.143 In terms of the concerns raised about how the unbundled tariff will address issues in the wholesale market, the unbundled tariff will resolve many of the current issues by separating out the charges for origination services from those for termination and the services called. This should reduce the scope for disputes between OCPs and TCPs as they will individually determine the charges for origination and termination services respectively. OCPs will be responsible for their own ACs and will be able to control this element of the call charge according to their own needs. The TCP will set the SC for a given number range block and this will not vary according to the identity of the OCP. We have not identified any wholesale issues that might arise under the new structure, and stakeholders have not identified any specifically to us (other than tiered termination rates). We nevertheless cannot exclude the possibility that new wholesale issues might emerge. However, we do not consider that there is scope for tiered termination rates to continue, as was suggested in response to the December 2010 consultation, for the reasons set out above. We also note that the narrowband market review process is in place to consider any issues relating to wholesale competition – including the need to include non-geographic calls within that market review process as suggested by Three.[108]

A19.144 Finally, in response to TNUK, as set out in Section 9 we are not requiring the imposition of PCAs for DQ calls and we have now decided against imposing a maximum SC cap for 118 numbers (see Annex 22). In respect of the minimum number of SC price points and whether this will impact pricing flexibility, we have decided to require OCPs to bill a minimum of 100 SC price points (with 80 being made available upon implementation of the unbundled tariff and a further 20 twelve months later). It will be open to CPs to negotiate the opening up of further SC price points if these are required. In any case, our analysis indicates that the 100 minimum should still allow a significant level of pricing flexibility for SPs (see Annex 21).

The 0845 and 0870 number ranges

Position in the April 2012 consultation

A19.145 We consulted on the following two options for the 0845 and 0870 number ranges in the April 2012 consultation:

- **Option 1:** re-affirming the link to geographic calls; or
- **Option 2:** applying the unbundled tariff and thereby aligning them with other 084 and 087 ranges.

A19.146 Overall, we considered that there was a significant risk under Option 1 of enduring consumer confusion between the price and treatment of 0845/0870 and other 084 and 087 numbers, which could undermine consumer confidence and understanding in both these number ranges, and other unbundled tariff number ranges. We recognised that Option 2 came with higher transition costs for the industry, and potentially greater migration costs for some SPs. We considered that given the sheer size of the 084 and 087 number ranges, it seemed likely that the ongoing benefits of reduced consumer confusion under Option 2 were likely to outweigh the additional migration costs.

A19.147 Our provisional view, therefore, was that on balance and in the long term, the argument for applying the unbundled tariff to the 0845 and 0870 number ranges was stronger. We said it was likely to lead to a more intuitive Numbering Plan, clearly defining differences in number ranges and reinforcing the benefits of our proposed changes overall.[109]

Stakeholder comments

A19.148 A majority of respondents agreed with Ofcom's assessment in the April 2012 consultation that the unbundled tariff should also apply to the 0845 and 0870 number ranges.

[108] We respond to stakeholder arguments about the inclusion of non-geographic calls within the fixed call termination market in our February consultation on the Narrowband MR review, available here http://stakeholders.ofcom.org.uk/consultations/nmr-13/ (see paragraphs 6.24 to 6.27 and 6.43 in particular).

[109] April 2012 consultation, Part B, Section 11, pages 174 to 190.

A19.149 BT said that applying the unbundled tariff across the full 08 range would achieve consistency and improve consumer confidence.[110] Sky, Verizon, Vodafone and SSE agreed that the unbundled tariff for 084 and 087 should also apply to the 0845 and 0870 ranges.[111] Three said that aligning 0845 and 0870 with the other 084 and 087 ranges would improve transparency and customer understanding of the unbundled tariff concept.[112] [✂] also agreed with Ofcom saying that separating 0845 and 0870 from the unbundled tariff for 08x would lead to consumer confusion.[113] CWW argued that the unbundled tariff was the best option for these ranges in the long term and that it represented an opportunity to reinvent the ranges "within a coherent framework".[114]

A19.150 EE also agreed that the unbundled tariff was the most appropriate option for 0845 and 0870. It said de-linking 0845 and 0870 from geographic rates and aligning them with the other 084 and 087 ranges would help avoid consumer price confusion and improve awareness by promoting closer price alignment among the 08 ranges.[115] However, it added that it would be concerned if the implementation of the unbundled tariff resulted in an increase in charges for 0845 and 0870 calls, for example for those calls that were currently included in bundles. Citizens Advice ('CAB') also supported the application of the unbundled tariff to 0845 and 0870 on grounds of clarity and uniformity, saying that, though this approach was not ideal, it would be an improvement on the current situation.[116]

A19.151 FTC noted that the Consumer Rights Directive could have a significant bearing on this issue, in particular the requirement for SPs to have a 'basic rate' phone number for post-contract sales enquiries. FTC said that without an assessment of the impact of the Directive, it was difficult to establish whether the majority of SPs using the 0845 range would need to be on a range where they would not apply an SC.[117] If so, FTC said, there would be a strong case for geographically rating the 0845 range to prevent a high volume of number changes. However, it acknowledged that, at present, there was little evidence to support such a proposal and it said that a very strong argument would have to be presented to justify the harm to clarity caused by treating this number range differently from other similar ranges.[118]

A19.152 THA also agreed that the unbundled tariff should apply to the 0845 and 0870 ranges, noting that it would provide consistency. It said however, that its support was predicated on the assumption that the 03 range would be designated a geographically-rated range and calls to 03 numbers would be included appropriately in call bundles.[119] Noting a "long history of confusion" over the 0845 number range, THA said that, because 03 numbers were currently available only to socially important services, it followed that with the current proposals no geographic equivalent would be available to organisations that did not meet the relevant criteria.

[110] BT, April 2012 consultation response, p.17.
[111] Sky, April 2012 consultation response, p.2; Verizon, April 2012 consultation response, p.11; Verizon, April 2012 consultation response, p.29, SSE, April 2012 consultation response, p.6.
[112] Three, April 2012 consultation response, p.14.
[113] [✂]
[114] CWW, April 2012 consultation response, p.20.
[115] EE, April 2012 consultation response, p.28.
[116] CAB, April 2012 consultation response, p.4.
[117] The Department for Business Innovation and Skills recently issued a consultation on the implementation of the CRD into UK law: http://www.bis.gov.uk/assets/biscore/consumer-issues/docs/c/12-999-consultation-implementation-of-consumer-rights-directive.pdf, pp.37-38.
[118] FTC, April 2012 consultation response, p.6.
[119] THA, April 2012 consultation response, p.14.

A19.153 TNUK said that though it was only directly interested in the 118 range, it had an indirect interest in the unbundled tariff being applied across all number ranges in order to help develop customer understanding of the unbundled tariff concept and to disincentivise OCPs from setting a higher AC if that AC applied only to 118 and 09 numbers.[120]

A19.154 UKCTA broadly welcomed the pricing certainty for 0845 and 0870 that it said Ofcom's proposal would bring. But it advised Ofcom to be certain it could achieve the predicted outcome, and that the effects on consumers were, in the round, beneficial.[121] It noted that the proposed changes brought 0870 at least, full circle, in a period of around three years. UKCTA also made number of comments about the SC price point for these ranges, which we set out and respond to in Annex 21.

A19.155 There were some stakeholders, however, who disagreed with Ofcom's proposal that the unbundled tariff should apply to the 0845 and 0870 ranges.

A19.156 The Department for Work and Pensions ('DWP'), expressed a preference for geographically rating the 0845 range rather than applying the unbundled tariff.[122] It gave two reasons. Firstly, although it said it could potentially accommodate the unbundled tariff by zero rating its SC, it was concerned that 0845 would maintain the association with a revenue-sharing range which would perpetuate the myth that DWP received a share of 0845 call costs. Secondly, it noted that there would be costs to the taxpayer in meeting the requirement to advertise its SC. DWP noted that the alternative – of migrating its 0845 numbers to the 03 range – would create significant costs to the taxpayer, and, based on current tariffs, would adversely affect a large proportion of DWP customers. It suggested that if Ofcom were to go ahead with applying the unbundled tariff to 0845, then the descriptor adopted to advertise the range should make clear that the organisation receiving the call would not receive a charge in all cases. Otherwise, it said, callers would assume that a call to a 0845 number would always result in part of the cost of the call being passed to the organisation they were calling.

A19.157 THA said that 0870 was a confusing range and should be closed altogether. Noting that the range had been through many changes in tariff over the years, THA said that unbundling 0870 and removing price restrictions would confuse consumers. Also, the branding of this range was "inextricably linked" with the 'Say no to 0870' campaign in consumers' minds, it said; this confusion was not likely to be mitigated by Ofcom's proposals.[123]

A19.158 Magrathea also argued the 0870 range should be excluded from the unbundled tariff if it was implemented; otherwise, the move would reverse the consumer gains that resulted from Ofcom's 2010 decision to require OCPs to bring 0870 rates in line with geographic rates and include them in call packages. Magrathea suggested instead that Ofcom renumber all 0870 numbers 0370 – in such a way that callers of 0870 numbers would hear a recorded message asking them to redial using the 0370 prefix. Following the end of these recorded announcements it said, the 0870 range should be quarantined for a period of time before reopening it to new

[120] TNUK, April 2012 consultation response, Q11.1, p.39.
[121] UKCTA, April 2012 consultation response, p.8-9.
[122] DWP, April 2012 consultation response, Q11.1.
[123] THA, April 2012 consultation response, Q10.6, p.10-11.

allocations. It added that such an approach for 0870 would not have a significant tariff package effect on mobile OCPs.[124]

Ofcom's response

A19.159 The majority of respondents agreed with our proposal. Nevertheless some specific objections were raised, which we respond to below.

A19.160 In respect of THA's comment about the 03 range, it is only the 030 sub-range rather than the entire 03 range which is restricted to not-for-profit organisations. Therefore the wider 03 range will continue to be available for those commercial organisations that want a non-geographic number where calls are priced at the same rates as geographic numbers (and which is included in call bundles where applicable).

A19.161 We note THA's observation that 0870 has become a confusing range for callers. However, we do not agree that aligning this range with other 087 ranges (by unbundling its tariff structure) would be more confusing and/or harmful than THA's suggestion, which is to close it down altogether. Although we put this forward as an option in the December 2010 consultation, we decided to reject it in the April 2012 consultation, noting that there was strong stakeholder opposition and a concern about the costs to SPs of such a forced closure. We remain of the view that these costs mean that closure of the range is unlikely to be a proportionate approach.

A19.162 We consider there is a risk that having to explain the closure of the 0870 range would dilute the proposed message to consumers about unbundled tariff across the 084/087 ranges. Our consumer survey evidence suggests that consumers do not distinguish clearly between number ranges at the third and fourth digits, and may therefore struggle with the notion that 0870 was closed but, for example, 0871 was still open.[125] We consider that consumer confusion associated with 0870 at present would be better addressed by aligning the range with other 087 ranges while presenting consumers with a single tariff structure applying to all revenue-sharing non-geographic numbers. A consistent approach to all 087 number ranges will provide greater transparency and consumer confidence, as well as reinforcing consumer understanding of the unbundled tariff concept.

A19.163 For the same reasons we reject the approach suggested by Magrathea, i.e. to either exclude 0870 from the changes proposed for 084/7 or to renumber all 0870 numbers as 0370. The former approach, i.e. excluding 0870, would complicate the message to consumers about our simplification and rationalisation of the 084/7 ranges. In particular, they would need to understand and recall 0870 as an exception to the unbundled tariff structure for all other NGCs (including the similar-looking 0871/2/3 ranges). This runs counter to our objective of simplification. Furthermore, renumbering all 0870 numbers as 0370 effectively amounts to the same as closing the range, and as discussed in response to the THA's comment, we consider that the costs to SPs of forced migration are unlikely to be justified or proportionate.

A19.164 We would also add that SPs on 0870 for whom the unbundled tariff approach does not meet their needs would still have the option to migrate to an alternative range, e.g. 03, or to a range with a zero-rated SC if they wish to do so. This outcome,

[124] Magrathea, April 2012 consultation response, Q11.1, p.7.

[125] Evidence from the 2011 Consumer survey shows that consumers currently struggle to distinguish between closely aligned prefixed, i.e. between 0845 and 0844/3 and between 0870 and 0871. See paragraphs 11.109 to 11.113 of the April 2012 consultation where we discuss this evidence in detail.

where SPs themselves choose the appropriate number range according to their needs and affordability, is less intrusive and less disruptive than forcing a number change upon all SPs on the range.

A19.165 We note the DWP's concern that continuing the association between the 0845 range and revenue-sharing may lead some callers to believe that the DWP receives a share of the cost of 0845 calls. For a range like 0845 the level of the SC will be low, given the maximum cap of 7p and assuming the price point for this range is maintained at existing levels, it is likely to be in the range of 1-2p (see Annex 21 paragraphs A21.193 to A21.195 for further discussion of the SC price point for the 0845 range). While it may be the case that SPs on this range do not necessarily receive a share of the cost of the call, i.e. they do not profit from the call, the revenue-sharing element of this range does mean that their telephony costs are lower than they would be for other numbers (for example 03, which does not support revenue-sharing). Our primary objective is to ensure that prices are made transparent to consumers, and that it is clear who they are paying and for what.

A19.166 DWP suggests that a large proportion of their customers could be adversely impacted if it were to adopt 03 numbers. By this we understand the DWP to be inferring that, under current tariffs, call costs for 03 numbers can sometimes be higher than 0845 numbers. We recognise that some customers will not have inclusive bundles of minutes as part of their tariff packages and therefore they will incur a charge for calling 03 numbers (which will be the same as their charges for 01 and 02 numbers). However, call costs for 03 numbers are not routinely higher than 0845 numbers under the current structure. In particular we are aware of only a few examples where the costs for calling 0845 numbers are lower than the charges for 03 numbers, including those consumers that are on pre-pay tariff packages.[126]

A19.167 With regard to the DWP's concern that there would be costs to taxpayers in meeting the requirement to advertise its SC, we note that advertising costs have been factored into our impact assessment (see Annex 10). In addition, we discuss how the price publication obligations on the SC will be enforced in Section 10. As long as the DWP ensures that their SC is made clear, there would be nothing to stop them adding an additional message that this SC is used to cover their telephony costs rather than received as direct revenue.

A19.168 We set out the potential impact of the Consumer Rights Directive on these number ranges earlier in this Annex (see under the 'service availability' sub-heading, paragraph A19.116).

[126] For example, on its pre-pay packages Vodafone charges 14p a minute for 0845 calls but 03 calls are charged at 25p. See Section 2, Tables 2.2 to 2.3 where we include a table of current NGC charges. We also note in Section 3 that we do not consider the current mobile retail charges to reflect prices that would be set in normal market conditions, see paragraphs 3.44 to 3.45.

Part B - Annex 20

The Access Charge

Introduction

A20.1 This Annex summarises the issues raised in responses to our April 2012 consultation in respect of the Access Charge ('AC') element of the unbundled tariff, and our comments in response. The tariff principles we consider should apply to the AC, and our reasoning for that position, are set out in Section 9.

A20.2 There were a variety of issues raised about our proposed structure of the AC. Following the structure of our April 2012 consultation document, we have divided stakeholder responses on the AC into the following broad areas:

i) varying the AC between tariff packages;

ii) varying the AC within a tariff package;

iii) pricing structure of the AC;

iv) time of day variation on the AC;

v) including the AC in call bundles/packages;

vi) cap on the AC; and

vii) changes to the AC.

Varying the AC between tariff packages

Summary of position in the April 2012 consultation

A20.3 We favoured allowing OCPs to vary the AC by tariff package in the April 2012 consultation.

A20.4 We acknowledged that limiting OCPs pricing freedom to a single AC per OCP could strengthen consumer price awareness and could facilitate access to socially important services.[127] However, we also noted that consumers were familiar with charges varying by tariff package and so the impact on consumer price awareness was likely to be low. We saw allowing OCPs flexibility to offer tariff packages that met consumers' preferences as offering greater efficiency.[128]

[127] We noted that compared to the current situation, a single AC per OCP was likely to result in a slightly lower AC for pre-pay subscriptions (and a slightly higher for post pay), and that this would favour vulnerable consumers, who tended to be more heavy users of pre-pay subscriptions. We said, however, that the impact of a single AC per OCP on access to socially important services was likely to be small and unclear, as it would depend on the sensitivity of different groups of customers to the more explicit charges.

[128] See paragraphs 10.4 to 10.25 in Part B, Section 10 of the April 2012 consultation.

Stakeholder comments

A20.5 Most respondents agreed that the AC should be allowed to vary between tariff packages.

A20.6 BT noted that this would allow OCPs to treat geographic and non-geographic calls in a similar manner, i.e. consumers will make a purchasing decision based on the main calls package without having to look for information on specific NGC prices. It said that the ability to vary the AC across packages would allow OCPs to set an AC that covered their costs for individual consumer groups.[129]

A20.7 CWW saw no reason to prevent the AC varying between tariff packages. CWW noted that as long as the AC was transparent, easy to understand and relevant to the consumers of the particular bundle, it would allow customers to differentiate and make informed distinctions between the different retail tariff packages offered by CPs.[130]

A20.8 FTC noted that consumers should appreciate that call rates varied between tariff packages and that, consequently, ACs should not be treated differently. [131]

A20.9 Magrathea said that varying ACs between tariff packages would provide additional consumer choice and would not limit consumers' ability to recall the AC once they had selected a tariff package.[132]

A20.10 SSE[133], Sky[134] and Three[135] also supported Ofcom's approach, noting that OCPs should have the flexibility to offer a wide range of packages that reflected customers' preferences. Vodafone[136] agreed with this and noted that some customers might prefer lower ACs in return for slightly higher charges elsewhere, whilst for other customers the reverse might be true. It said that the charges set by OCPs should be determined by competition rather than by artificial restrictions on one particular aspect of the overall tariff package. It argued that any restrictions on the AC should not go beyond what was strictly necessary to achieve the basic objective of transparency, which clearly did not require identical ACs across all tariff packages.

A20.11 However, some respondents raised concerns about allowing the AC to vary between tariff packages. Both Consumer Focus[137] and TNUK[138] considered that allowing the AC to vary between tariff packages would inhibit consumers' price awareness. TNUK said that if an OCP was allowed to set a different AC for each of its multiple tariff packages, in reality the level of the charge would become almost entirely opaque and therefore would not feature as part of the consumers' purchasing decision. It considered that a single AC across all of an OCP's tariff packages could become a headline charge on which consumers could focus their attention - as well as being easy to promote, it would be easy for consumers to compare. TNUK argued that multiple ACs across multiple tariffs could simply

[129] BT, April 2012 consultation response, p.9.
[130] CWW, April 2012 consultation response, pp.5-6.
[131] FTC, April 2012 consultation response, p.3.
[132] Magrathea, April 2012 consultation response, Q10.1.
[133] SSE, April 2012 consultation response, Q10.1
[134] Sky, April 2012 consultation response, p.3.
[135] Three, April 2012 consultation response, p.10.
[136] Vodafone, April 2012 consultation response, p.16.
[137] Consumer Focus, April 2012 consultation response, p.2.
[138] TNUK, April 2012 consultation response, p.21.

feature in the small print of a lengthy price guide which would not be remembered by anyone nor form part of a consumer's purchasing decision.

A20.12 Surgery Line, argued for a separate AC to be set for socially valuable services, and it considered that this AC should not be allowed to vary between tariff packages.[139]

Ofcom's response

A20.13 There is broad support for allowing the AC to vary between tariff packages. We recognise that this will somewhat reduce consumer price awareness relative to a single AC, as highlighted by Consumer Focus and TNUK. However, we consider that the impact of this is likely to be small, because consumers are already familiar with prices varying between tariff packages. Therefore, as discussed in paragraphs 10.14 to 10.17 of our April 2012 consultation, we believe any benefit in terms of price awareness of restricting OCPs to a single AC across all tariff packages is likely to be limited.

A20.14 We disagree with TNUK's view that the AC will simply feature "in the small print of a lengthy price guide". As discussed further in Section 10, we are proposing to amend the existing price publication requirements applying to non-geographic calls to specify that the AC should be treated similarly to other calls when promoted by OCPs. For example, our proposed amendments to General Condition 14 ('GC14') will require OCPs to publish ACs with equal prominence in terms of location and format as that applying to geographic calls, calls to mobiles and call packages, including bundles. In addition the proposed amendments will require OCPs to present the AC in any advertising and promotional material which refers to pricing. We consider that these obligations should ensure that the AC is clear and available at the point of sale, facilitating comparison between packages, and over time will be remembered by consumers.

A20.15 In relation to Surgery Line's proposition that we should set a different AC for socially important services, as discussed in paragraph 10.185 of the April 2012 consultation we consider that the incentives on OCPs will be to set ACs which would not exclude consumers from access to socially important services provided on these number ranges. Nonetheless, we are aware of the risk and would be open to intervention if there was evidence of ongoing consumer harm. We also note that under the new regime, SPs willing to ensure that their customers have access to their services at lower call prices will have the possibility of migrating to the 03 range (geographically rated) or to the 080/116 free-to-caller range.

Varying the AC within a tariff package

A20.16 In the April 2012 consultation we took two main factors into account when considering the case for permitting different ACs within a tariff package:

- bad debt and other costs associated with specific number ranges; and
- differences in consumers' preferences for different number ranges.[140]

A20.17 We applied the assessment criteria relevant to each of these factors, namely (i) consumer price awareness and (ii) efficient pricing, to decide whether different ACs should be allowed within a tariff package. Each is dealt with separately below.

[139] Surgery Line, April 2012 consultation response, p.4.
[140] See paragraph 10.45 of the April 2012 consultation.

A20.18 Some responses referred to the impact that limiting the AC by tariff package would have on the rebalancing between 084/087 and 09/118 charges, which we did not address explicitly in the April 2012 consultation. We also refer to these responses under a separate heading below.

A20.19 Finally, some stakeholder responses did not relate to any of the above issues and we have addressed these separately at the end.

A20.20 Before we set out these comments, it is worth highlighting that as a result of stakeholder comments we have revised our assessment of price awareness on the 09 range since the April 2012 consultation. This is set out in detail in Annex 11. We no longer consider that price awareness on the 09 range is necessarily poor for those customers who actually call 09 numbers and instead there may be some reasons why these 09 callers may be relatively price aware. We have reflected this revised position in our response to stakeholder comments below.

Bad debt

A20.21 In the April 2012 consultation we used two assessment criteria to decide whether we should allow different ACs by tariff package to reflect differences in bad debt between number ranges:

- consumer price awareness; and
- efficient pricing.

Consumer price awareness

Summary of our position in the April 2012 consultation

A20.22 We saw some evidence that consumers recognised that calls to 09 were more expensive than calls to other non-geographic number ranges. Although we did not have evidence on the 118 range, we thought it plausible that consumers were also capable of distinguishing the prices of 118 calls from that of 084/087 calls.[141]

A20.23 Despite this, we considered that allowing OCPs to differentiate ACs by number range could reduce price awareness, compared to a single AC. Because consumers call 09 and 118 numbers infrequently, we observed that even if consumers were aware that the AC to these numbers was higher, they might find it difficult to recall how much higher it was.[142] We also noted that consumers' difficulties in relation to NGCs made us cautious of introducing too much complexity for consumers. We therefore thought that allowing the AC to vary between number ranges would be less effective in terms of price awareness than having a single AC for all number ranges.

Stakeholder comments

A20.24 Several stakeholders, including BT and [✂], argued that a single AC was necessary to ensure consumer price awareness and the success of the unbundled tariff. BT argued that Ofcom's proposal would allow OCPs to treat the AC in a similar manner to geographic calls. It considered that this would let consumers

[141] See the April 2012 consultation, Part B, Section 10, paragraphs 10.55 to 10.56.
[142] See the April 2012 consultation, Part B, Section 10, paragraphs 10.57 to 10.59.

make a competitive decision based on the main calls package without having to look for specific information on NGCs.[143]

A20.25 [✂] said reducing consumer harm by minimising the opportunities for OCPs to obfuscate their charges was paramount for the success of the unbundled tariff. [144]

A20.26 Some respondents, including TalkTalk[145], UKCTA[146], Virgin Media[147] and EE[148] opposed our proposal to prohibit ACs varying by number range, arguing that consumers could distinguish between 084/087 and 09/118 numbers. They considered that consumers are clear on the fact that there are different retail charges for the different number ranges. UKCTA[149] and Virgin Media[150] argued that consumers are already able to distinguish between different categories of call, e.g. calls to geographic numbers, calls to mobiles etc.

A20.27 EE argued that Ofcom's own research showed that consumers were able to distinguish and understand differences in call purpose and cost up to the second digit of the dialled number - suggesting that there was no need to necessarily use the same AC across separate types of calls.[151]

A20.28 In addition, UKCTA[152] and EE[153] considered that, contrary to Ofcom's view, our 2010 consumer survey showed that customers had similar calling patterns for 09/118 and 084/087 numbers. They argued that, whilst it was true that a higher proportion of customers never made calls to 09 numbers compared to 084/087 numbers, of those that did call 09, the vast majority said they made 09 calls either sometimes or rarely. This was also true of the equivalent proportion for 084/087 callers. Less than 10% of 09 callers making these calls regularly (every week), which EE said was the same proportion as for 084/087 calls. Given these similarities, UKCTA and EE said they did not believe that those customers were any less likely to remember a 09/118 AC than they were a 084/087 AC. They did not agree that there was any justification for Ofcom's concerns that competitive pressure in respect of a separate AC for 09/118 calls being weakened by low consumer price awareness of that AC.

A20.29 UKCTA[154], Virgin Media[155] and TalkTalk[156] also referred to Ofcom's proposed Numbering guide (see Section 5 where this is set out) and argued that this would surely improve consumer understanding of the fact that these ranges sat in very different chargebands. EE also noted that the guide already had three distinct categories of call which would be subject to an AC (08, 09 and 118 numbers).[157]

143 BT, April 2012 consultation response, p. 9.
144 [✂]
145 TalkTalk, April 2012 consultation response, pp. 1-2.
146 UKCTA, April 2012 consultation response, pp. 3-4.
147 Virgin Media, April 2012 consultation response, p.2.
148 EE, April 2012 consultation response, pp. 19-21.
149 UKCTA, April 2012 consultation response, pp. 3-4
150 Virgin Media, April 2012 consultation response, p.2
151 EE, April 2012 consultation response, p. 21.
152 UKCTA, April 2012 consultation response, p. 5.
153 EE, April 2012 consultation response, p. 22.
154 UKCTA, April 2012 consultation response, p. 4.
155 Virgin Media, April 2012 consultation response, p.2
156 TalkTalk, April 2012 consultation response, p. 2.
157 EE, April 2012 consultation response, p.21.

TalkTalk said that the differentiation could also be made clear to consumers as part of the envisaged awareness campaigns.[158]

Ofcom's response

A20.30 We acknowledged in the April 2012 consultation that there is evidence that consumers recognise that calls to 09 numbers are more expensive than calls to 084/087 numbers and that confusion between numbers at the two digit level (e.g. 08 and 09) was less likely.[159]

A20.31 However one of the objectives of the unbundled tariff is to reduce consumers' misperceptions of the prices of non-geographic numbers more generally. Although our survey evidence shows that consumers tend to realise that there is a difference between the prices of 084/087 and 09 numbers, it also shows that they significantly overestimate the prices of 084/087 and that there is confusion about the cost of calls to non-geographic numbers more generally. Under the unbundled tariff structure, even if consumers did recognise that there was a price difference between 084/087 numbers and 09 numbers, they might assume this applied only to the SC element of the call (because this price would have been specified to them in the SP's advertising) whereas they might not recognise that the AC component could be higher as well.

A20.32 Whilst we consider that two ACs would still improve price awareness relative to the status quo, we believe that a single AC is likely to be more effective in reducing the extent to which consumers misperceive the actual prices of calls to these number ranges. This is because a single AC is likely to be more memorable to consumers, particularly given that consumers make NGCs relatively infrequently compared to other numbers (e.g. geographic and mobile). We also consider there is a risk the additional complexity introduced by having separate ACs for different number ranges could undermine consumers' capacity to recall any AC clearly - even on the number ranges they call more frequently.

A20.33 In response to UKCTA and EE's comments on the pattern of calls to 084/087 and 09 numbers being similar, we recognise that the proportion of consumers claiming to call either 084/087 or 09 numbers 'regularly' in the 2010 consumer survey was relatively small.[160] However, comparing the sample of those consumers that actually call 09 numbers against those that actually call 084/087 numbers (i.e. excluding those that claim to 'never' call these numbers) indicates that a small, but significant, proportion claim to call 084/087 numbers 'sometimes' or 'regularly' (particularly for the 0845/0870 ranges) more than the 09 range.[161] We therefore disagree that calling patterns are necessarily similar amongst those that actually call 09 numbers. In any case, even if calling patterns were similar, this does not override our concern about the impact on price transparency from having two ACs rather than one.

[158] TalkTalk, April 2012 consultation response, p.2.
[159] See for example paragraphs 8.29 and 10.56 of the April 2012 consultation.
[160] Q21 and Q25 of the 2010 Consumer survey. See pp.13-14 of the published report (http://stakeholders.ofcom.org.uk/binaries/consultations/simplifying-non-geo-numbers/annexes/nts.pdf).
[161] 42% of fixed and 39% of mobile callers call 0845/70 numbers regularly or sometimes (including 9% of each fixed and mobile callers that call regularly); and 30% of fixed and 27% of mobile callers call 0844/71 numbers regularly or sometimes (including 5% of each fixed and mobile callers that call regularly). In contrast, only 20% of fixed and 13% of mobile callers call 09 numbers sometimes (and fewer than 1% of fixed and mobile callers call these numbers regularly).

A20.34 Not only would it be more difficult for consumers to remember the AC for a particular call, but it would also complicate the SP's advertising message about the cost to call their number. In particular, in order to provide clarity to the customer about the total cost of the call, the SP would need to specify which particular AC would apply to that number, e.g. "This call costs £1 plus your phone company's 09 access charge" or "this call costs £1 plus your phone provider's premium rate access charge". Without specifying which AC applied, there would be a risk that consumers could become confused about the relevant AC and might assume the AC was lower (for example if their 084/087 AC was charged at a lower rate than the 09/118 AC) and this could create a risk of bill shock.

A20.35 We agree that our Numbering guide and any communications campaign that we run in parallel to the implementation of our decision is likely to increase consumers' price awareness. Bearing in mind the infrequency with which consumers call all of the unbundled tariff number ranges, this activity will be significantly more effective if the message we convey to consumers is kept simple. That is more likely to be the case if there is a single AC across these ranges than if we have to explain that there will be two or more ACs, applying to different ranges.

A20.36 In light of the above, we conclude that that allowing the AC to vary by number range, whilst still offering improvements relative to the status quo, would be likely to lead to materially lower consumer price awareness than a single AC.

Efficient prices

Summary of position in the April 2012 consultation

A20.37 In line with our position in the December 2010 consultation, we recognised that the NTS Retail Uplift Statement[162] had identified bad debt as a cost that was materially different between 084/087 and 09 numbers. We considered that in principle reflecting any higher costs associated with certain call types (e.g. 09 numbers) might send more efficient price signals to consumers.[163]

A20.38 To gauge the importance of this effect, we considered the potential price increases that bad debt would imply. We indicated that BT's PRS Bad Debt Surcharge[164] (which allows BT to recover bad debt costs associated with calls to 09 numbers) estimated BT's bad debt costs at 5.2% of its retail revenue. This is likely to be an overestimate for mobile OCPs' bad debt costs, given the lower credit risk of mobile callers (due to the use of pre-pay contracts), the more extensive credit checking for new accounts and the lack of USO requirements on mobile CPs.[165]

A20.39 We then estimated the potential difference between the AC for 09/118 under the scenario of a single AC and a scenario where we allowed two different ACs (assuming that the current retention on NGCs did not change). Our calculations showed that, assuming that bad debt on these calls accounted for around 5.2% of their retail price (a figure equivalent to BT's bad debt surcharge, described above), bad debt was likely to represent only around 30% of the difference in ACs. We

[162] http://stakeholders.ofcom.org.uk/binaries/consultations/nts-retail-uplift/statement/NTSRU_statement.pdf
[163] See the April 2012 consultation, Part B, Section 10, paragraphs 10.60 to 10.61.
[164] This is the charge control that was set as part of the NTS Call Origination Condition. See the NTS Retail Uplift Statement for further details.
[165] See the April 2012 consultation, Part B, Section 10 paragraph 10.61.

therefore concluded that whilst bad debt was a material cost, the difference in the estimated ACs could not be solely due to differences in bad debt.[166]

A20.40 We considered that this difference in estimated ACs which could not be explained by bad debt suggested that allowing OCPs to reflect cost differences in their ACs might not result in more efficient prices than imposing a single AC. In particular, we were concerned that the fact consumers make relatively few calls to 09/118 numbers would mean consumer awareness of a separate AC would be low. This low awareness could:

- be exploited by OCPs to set the AC at an inefficient level – above that required for the recovery of bad debt costs; and
- reduce the level of competitive pressure on the charge, reducing the incentives for effective credit management.[167]

A20.41 We also argued that our proposal to allow variation of ACs between tariff packages would allow OCPs to adjust their tariff package offerings to reflect consumers' individual credit risk.[168]

A20.42 We considered that our approach was consistent with the regulation of BT's NTS Retail Uplift Statement, which allows BT to retain 5.2% of retail revenues from PRS calls to reflect the costs of managing bad debt on these calls. We argued that the reason for the different treatment was that there were key considerations that did not apply to other OCPs, such as the additional regulatory constraints to which BT is subject. This meant that compared to other CPs, BT had constraints on its credit management and its ability to adjust prices and revenues to recover bad debt or invest in techniques to manage it.[169]

Stakeholder comments

A20.43 A number of stakeholders, including [✂], Vodafone, CWW, TNUK, FCS and FTC agreed with Ofcom that the existence of higher bad debt costs on certain number ranges did not justify allowing for a separate AC.

A20.44 CWW said it had now changed its position and supported Ofcom's proposals because it felt the danger of a separate AC for premium rate services ('PRS') being at a very high level outstripped the other concerns. It considered that to achieve its aim of having the AC included within bundles it was preferable to have a single AC rather than to allow separate ACs for PRS.[170]

A20.45 In addition, CWW believed that the increased consumer awareness of prices resulting from the unbundled tariff would limit the incidence of bad debt, as it would reduce the number of instances where callers refuse to pay charges because they are unclear. [171]

[166] See the April 2012 consultation, Part B, Section 10 paragraphs 10.62 to 10.65.
[167] See the April 2012 consultation, Part B, Section 10 paragraphs 10.66 to 10.68.
[168] See the April 2012 consultation, Part B, Section 10 paragraph 10.69.
[169] See the April 2012 consultation, Part B, Section 10 paragraphs 10.70 to 10.71.
[170] CWW, April 2012 consultation response, pp.6-7.
[171] CWW, April 2012 consultation response, pp.6-7.

A20.46 Both [✂] [172] and CWW[173] argued that a single AC would encourage OCPs to improve their credit management as at present OCPs had no incentive to tackle bad debt in PRS numbers because the cost was passed on to TCPs.

A20.47 FTC said that in order for the unbundled tariff to be effective the AC should be the same for all 084, 087, 09 and 118 numbers on any particular package. It saw the suggestion that OCPs should cover themselves against ‘bad debts’ by imposing additional charges on those who did pay their bills as fundamentally unsound and unfair. Therefore it considered that an inflated AC across a wider range of services was not a proportionate approach. It said that if any specific provision needed to be made to cover particular ‘bad debt risks’ with certain types of number then that could only fairly be achieved by an imposition on the revenue obtainable from those numbers. It said that if that caused the relevant specific SCs to increase to compensate for clawback by the OCP, then so be it. [174]

A20.48 FCS said its members generally supported the principle that there should be a single AC across the number ranges, noting that a uniform charging structure would be simpler and could encourage competition. It noted, however, that some members were concerned that a single AC per tariff package would limit their ability to vary their charges and that OCPs could inflate their AC for calls to low value numbers due to the need to cover bad debt for the higher rate PRS numbers.[175]

A20.49 TNUK said it strongly agreed with Ofcom’s view that OCPs must be required to set a single AC applying to all number ranges within a tariff package. It said the most fundamental issue was whether or not any separate AC, that applied specifically to 09 and 118 calls, would in fact be set on a legitimate basis (i.e. set to reflect true levels of bad debt and consumer preferences) or whether it would be set at a level which exploited consumers’ poor price awareness and/or expectation that certain calls would be more expensive. TNUK strongly believed it would be the latter and provided examples showing that mobile OCPs in particular tended to apply high charges to directory enquiry services. In fact, it said it was concerned that there was a risk that the current situation would worsen as OCPs could seek to exploit consumer unfamiliarity with the new charging regime to maximise profits. It said that historical evidence provided a very strong reason to believe that if a higher rate AC were to be permitted it was very likely to be set at a level without any economic regulatory justification.[176]

A20.50 In addition, TNUK said it entirely agreed with Ofcom’s assessment of bad debt. TNUK questioned in particular OCPs’ assumption that higher levels of bad debt provided a basis for including 118 in any premium rate AC. It argued that of the three factors that had been identified in Ofcom’s NTS Retail Uplift Statement as contributing to bad debt ((i) higher prices, (ii) calls being made without the bill payer’s consent and (iii) the risk of undetected fraud), there was no evidence that the last two affected the 118 range.[177]

A20.51 TNUK considered that the mobile OCPs had failed to provide any evidence showing that the higher levels of bad debt on 09 and 118 justified the likely level of the differential between ACs that Ofcom had identified in the April 2012 consultation. In

[172] [✂]
[173] CWW, April 2012 consultation response, pp.6-7.
[174] FTC, April 2012 consultation response, p.3.
[175] FCS, April 2012 consultation response, p.3.
[176] TNUK, April 2012 consultation response, p.22.
[177] TNUK, April 2012 consultation response, p.23.

fact, it considered that Ofcom had understated the extent to which BT's 5.2% bad debt surcharge (that we used to estimate mobile OCPs' likely bad debt on 09/118 calls in the April 2012 consultation) was likely to be an overestimate. TNUK noted that pre-pay customers accounted for over 50% of mobile subscriptions and therefore should be entirely discounted from any consideration of bad debt. It suggested that the far more rigorous credit checking employed by mobile OCPs was likely to mean that consumers with any credit risk were much more likely to be pre-pay customers in any case, which would reduce bad debt even further. TNUK therefore concluded that BT's 5.2% bad debt surcharge was an inaccurate basis for Ofcom's calculations of the likely bad debt on mobile calls to 09/118 and consequently should not form any part of Ofcom's analysis.[178]

A20.52 Vodafone said this issue was finely balanced. It noted that a single AC removed the flexibility to reflect the different costs or demand conditions; however, it also accepted that allowing multiple ACs on the same tariff package might detract from the simplicity of a uniform AC that applied across all NGC ranges in scope and risked undermining the transparency objective. On balance it considered that a simpler approach was better.[179]

A20.53 A number of other respondents were strongly opposed to Ofcom's proposed approach. Sky[180], Three[181], UKCTA[182], Virgin Media[183] and EE[184] said that setting different ACs would lead to more efficient prices because it would enable OCPs to more accurately reflect their underlying costs when setting the AC. They believed that it was both efficient and appropriate to allow OCPs to reflect the different potential bad debt costs, administrative and network costs associated with those different categories of NGCs when setting the AC.

A20.54 UKCTA[185], Virgin Media[186] and EE[187] said that calls to 09 numbers (and potentially also to DQ services) were expected to continue to cost considerably more to the caller than calls to 084/087 numbers. They also noted that the materially higher risk of bad debt in relation to these calls was acknowledged by Ofcom in permitting the PRS Bad Debt Surcharge of 5.2% afforded to BT in relation to premium rate calls. EE also noted that the costs to mobile OCPs of call origination were higher than the costs to fixed OCPs such as BT.[188]

A20.55 EE[189] and UKCTA[190] noted that for some premium rate calls there was a mandatory pre-call announcement ('PCA') offering the caller the option to terminate the call at no charge to the caller, and that such aborted calls generated costs for the OCP. UKCTA and EE said the fact that BT had not sought to recover these costs under the current PRS Bad Debt Surcharge did not negate their existence.

[178] TNUK, April 2012 consultation response, p.23.
[179] Vodafone, April 2012 consultation response, pp.16-17 & p.25.
[180] Sky, April 2012 consultation response, p.2.
[181] Three, April 2012 consultation response, p.10.
[182] UKCTA, April 2012 consultation response, pp.3-5.
[183] Virgin Media, April 2012 consultation response, Q10.1.
[184] EE, April 2012 consultation response, pp.19-21.
[185] UKCTA, April 2012 consultation response, pp.3-5.
[186] Virgin Media, April 2012 consultation response, Q10.1.
[187] EE, April 2012 consultation response, pp.19-21.
[188] EE, April 2012 consultation response, p.21 and footnote 52.
[189] EE, April 2012 consultation response, p. 20.
[190] UKCTA, April 2012 consultation response, p. 4.

A20.56 EE said it was also quite surprised at Ofcom's suggestion (in paragraph 10.81 of the April 2012 consultation) that an element of Ofcom's intention in setting a single AC was to curtail the ability of OCPs to set economically efficient retail prices, on the basis that such efficient pricing could be 'socially undesirable'. It said it trusted that this was not actually a motivation for Ofcom's preferences in relation to the setting of the AC, and should be disregarded. It considered that to the extent that it was a driver of Ofcom's policy, then we should articulate very clearly and carefully exactly which 'social concerns' we considered should outweigh the setting of economically efficient prices and invite further submissions from industry on the matter. [191]

A20.57 Finally, EE noted that Ofcom had recognised in the April 2012 consultation that the majority of OCPs had been opposed to Ofcom's proposal for a single AC. It said as a matter of general principle, Ofcom should exercise extreme caution when proposing to go against the majority opinion of industry regarding the merits of commercial proposals where there was a very high risk of regulatory failure.[192]

A20.58 In a separate submission made some months after the closure of the April 2012 consultation, EE provided evidence of the potential financial impact of the proposal to have a single AC.[193] [✂]. EE noted that Ofcom was well aware of the negative welfare outcomes for mobile customers likely to be caused by the tariff package effect where mobile OCPs were forced to recover such losses from services other than NGCs. It urged Ofcom to take full account of the overall welfare impact on consumers when deciding whether or not to allow a separate AC to be set for 09 and 118 services.

Ofcom's response

A20.59 Whilst a number of respondents agreed with our proposed approach, there were three main points of disagreement:

- reflecting higher bad debt costs in a separate AC for 09/118 would improve efficiency (the 'efficiency point');
- PCAs increase the costs of 09/118 relative to 084/087 and should be reflected in a separate AC for 09/118 (the 'PCA cost point'); and
- widespread opposition from industry to our proposal means the risk of regulatory failure is high (the 'industry resistance point').

A20.60 In relation to the efficiency point, several stakeholders argued that a separate AC for 09/118 would increase the efficiency of the prices of NGCs, as this would allow OCPs to reflect the higher bad debt costs associated with these numbers.

A20.61 While there are higher bad debt costs associated with calls to 09 numbers in BT's PRS Bad Debt surcharge, we note that:

- bad debt costs are likely to be lower for mobile CPs than for fixed CPs[194], and the 5.2% bad debt costs (over retail prices) used for BT is also likely to be an

[191] EE, April 2012 consultation response, footnote 51, p.21.
[192] EE, April 2012 consultation response, p.22.
[193] EE, submission to Ofcom by email dated 30 January 2013.
[194] As discussed in Part B, Section 10 paragraph 10.61 of the April 2012 consultation.

overestimate of fixed CPs' bad debt costs due to BT's particular position in the market;[195]

- the impact on pricing efficiency for these calls depends on the extent to which a single AC leads to higher prices of 084/087. If a single AC were set, we estimated in our April 2012 consultation that it would be 17% (0.5ppm) higher than a separate AC for 084/087 fixed calls; in relation to the AC for mobile calls, we estimated it would be 8% (1.3ppm) higher than a separate AC for 084/087 calls.[196] We do not consider that stakeholders responding to the April 2012 consultation have provided any evidence to invalidate the relative levels of these AC estimates (we comment on EE's separate submission relating to the level of a single AC below);

- these estimates are likely to reflect the maximum potential difference because they are based on an assumption that OCPs existing retention does not change, whereas, as highlighted in paragraph A20.86 we expect the unbundled tariff model to lead to greater competition on the level of the AC and therefore to a reduction in retention;

- it is important to put efficiency in proper context. Efficient prices are desirable in part because they provide the right signals for consumers when making their purchasing decisions. If consumers are not able to act on this information (because they do not know the price paid), the benefit of more efficient pricing is reduced. Given this, we place less weight on any improvement in efficiency that is achieved at the expense of price awareness, as seems likely to be the case if there were a separate AC for 09/118 rather than a single AC across all number ranges; and

- efficient prices are also dependent on competition. Whilst allowing two separate ACs may offer the potential for more efficient prices, it may also reduce the incentives for OCPs to price at the efficient level given the adverse impact we expect it would have on consumer price awareness (and therefore on competition between OCPs).

A20.62 In relation to the PCA cost point, we acknowledge that some calls to premium rate numbers require a PCA that may incite callers to terminate the call, with a cost to the OCP (assuming they do not charge the consumer for those terminated calls). Stakeholders have not provided any evidence of the costs of this and we have reasons to believe that the actual costs may be small, in particular because:

- the obligation only applies to a small share of 09 numbers, which already represent a small share of all NGCs;

- the duration of these calls is likely to be relatively short; and

- we expect the instance of such call termination to be reduced relative to the status quo because the SC for a particular 09 number will be published in the SPs advertising and promotional material.

A20.63 We therefore do not consider that the costs of these calls, alone, would justify a separate AC for 09/118 calls. This is consistent with the current practice by BT, who

[195] As discussed in Part B, Section 10 paragraphs 10.70 to 10.71 of the April 2012 consultation.
[196] Table 10.2, Part B of the April 2012 consultation.

has never sought special allowance for origination costs arising out of PCAs, as highlighted in paragraph 10.53 of the April 2012 consultation.

A20.64 In relation to the ‘industry resistance’ point, industry concern about a proposal is of course relevant to our considerations but not necessarily determinative of our decision to proceed (or, as the case may be, withdraw). In this case, although the majority of stakeholders who responded to the December 2010 consultation opposed our proposal to limit the AC to one per tariff package, opposition to the proposal was much less widespread following the April 2012 consultation. A significant number of responses across industry favour a single AC (with some stakeholders explicitly acknowledging their change of view, e.g. CWW). We therefore consider that, EE’s submission overstates the extent of opposition by industry. In any event, for the reasons set out in this Annex, we consider that the imposition of an AC is justified, notwithstanding the opposition to it by certain industry players.

A20.65 Finally, we agree with CWW and the confidential respondent that a single AC is likely to provide incentives for OCPs to improve their credit management practices.

A20.66 We therefore consider the available evidence suggests that a separate AC for 09/118 calls would not necessarily result in a more efficient outcome than a single AC across the other non-geographic ranges. Even if there were efficiency benefits from a separate AC, we consider it likely they would be more than offset by the lower consumer price awareness (and resultant reduction in competitive constraints) that would result from having two ACs rather than one. We consider that prices will tend to be more efficient when price awareness is greater and competitive constraints are therefore stronger.

A20.67 In relation to 118, we note TNUK’s submission that there is no evidence from OCPs on the level of bad debt associated with calls to 118 numbers and there is no evidence of the range being used for fraud. In addition, in its response to the July 2012 consultation on SC caps for the 09 and 118 ranges, BT provided evidence that bad debt in relation to 118 numbers is lower than average for non-geographic calls and across all calls.[197] Whilst we might expect higher levels of bad debt given the higher call charges, we agree that this is not supported by the evidence. TNUK also argues that consumer demand provides incentives on 118 SPs to keep calls short, and this is consistent with the nature of the service. This also weighs in favour of lower concern about the risk of bad debt on the range. Taking these points together, it is not clear that bad debt is a more significant driver of OCP costs on 118 than on any other range. We therefore consider it even less likely that setting a different AC for 118 would result in a more efficient outcome.

A20.68 Taking our conclusions on the two criteria together, we find that price awareness would be adversely affected by separate ACs compared with a situation where a single AC applied to all number ranges and that any improvements in efficiency which may result from having separate ACs would not be sufficient to offset this effect. For that reason we consider there should not be different ACs for different non-geographic ranges but rather one AC applying to calls to all non-geographic number ranges within a tariff package.

A20.69 In relation to EE’s comment about ‘social desirability’ being a factor in our assessment, we did not intend to suggest that we placed less weight on potential improvements to price efficiency in our assessment of the structure of the AC

[197] See Annex 22, paragraphs A22.89 and A22.98 where we discuss this evidence.

because we thought efficient prices could be socially undesirable. As we have set out above, our view in favour of a single AC per tariff package is based on the fact we consider a separate AC may not necessarily lead to more efficient prices. Further, we consider it likely any efficiency improvements would be more than offset by the reduction in price awareness that would result relative to a situation in which a single AC applied to all number ranges.

A20.70 Finally, in response to EE's separate submission we received in January 2013 on the overall welfare impact resulting from the potential margin loss for OCPs from requiring a single AC across all call types, we consider that the assumptions it was based on were flawed (notably its focus on [✂], not the overall impact on margins from all 084, 087, 09 and 118 calls taken together).[198] Nor do we consider it raised any material or reasoning which undermined our analysis in relation to the impact of a single AC and therefore we do not consider it further.[199]

A20.71 We recognise that, over time, the improvement in price awareness resulting from the unbundled tariff will increase competitive pressures on the price of NGCs, and place downward pressure on the level of the AC. This will result in a rebalancing of tariffs between NGCs and other mobile services which we consider will bring benefits for consumers as it will address the current inefficient level of prices (see paragraphs 4.50 in Section 4 where we discuss our concerns about efficient prices on these number ranges). The improvement in price awareness and therefore the increase in competitive constraint is likely to be greater under a single AC than two separate ACs for the reasons set out above. This is likely to place greater downward pressure on margins in the single AC scenario, resulting in a greater rebalancing of tariffs. However, we consider this TPE, which results from an increase in competition, to be beneficial to consumers.

Consumer preferences

Summary of our position in the April 2012 consultation

A20.72 We considered whether OCPs should be able to set different ACs to reflect differences in consumer preferences for different number ranges with reference to our price awareness and efficient pricing assessment criteria. In terms of price awareness, we considered that more than one AC risked consumer confusion as to which numbers a given AC would apply. In terms of efficiency, we recognised in principle that it was likely to be more efficient to recover a greater share of fixed and common costs from the proportionally more price inelastic services (so-called Ramsey pricing) and that there could be differences in consumers' elasticities across non-geographic numbers.

A20.73 We noted that efficiency arguments assumed consumers have good price information that allows them to make informed decisions. However, we were concerned that this was not the case, and that the evidence of consumer price

[198] We also note that the assumptions underlying the calculations were not clear and therefore may not have been appropriate. However, we did not consider there was any merit in clarifying them given the fundamental shortcomings of this approach set out above.

[199] Our calculations of the level of a single AC (see paragraph A20.85 above and 10.62 of the April 2012 consultation) were based on the assumption that overall margins would be maintained - not necessarily the margins earned on each individual call type. We note that the submission did not challenge the assumptions behind our calculations, nor did any submissions by other stakeholders, and so we continue to consider them a valid guide. In the absence of evidence to the contrary we see no reason not to assume that mobile OCPs would be able to set a single AC 1.3ppm above the level of a separate AC for 084/087 calls to preserve their overall margins (at least initially). [✂].

confusion meant that consumers were not able to make informed subscription and/or calling decisions. Consequently, we considered that it was possible that any difference between the AC of 084/087 and 09/118 numbers would not reflect consumer preferences but would instead be set to exploit consumers' lack of price awareness of, for example, the numbers they called less frequently.[200]

Stakeholder comments

A20.74 TNUK said it agreed with Ofcom's analysis that a lack of consumer awareness undermined any argument that it was more efficient for a lower price to be charged for calls which consumers make more often (because they would not know what price was being charged for calls made less often). TNUK noted that whilst there might be a greater volume of calls on the 0845 and 0870 ranges, it believed that simply comparing volumes by number range took no account of the services which sat behind each number range and the relative importance to consumers of those services. It said that although 118 might be less 'popular' than 0845 as a number range, as an individual service it was not necessarily less popular than some of the individual services being provided on the 0845 range, e.g. carpenters. Therefore it argued that if Ofcom were to permit OCPs to set higher ACs for less popular number ranges, it would be discriminating against DQ services (and providers) purely because they had their own dedicated number range, which had no bearing whatsoever on consumers' actual demand for the service which sat behind it. TNUK also noted that OCPs had a universal service obligation to provide access to a DQ service, which was a clear indication of its relative importance and which undermined the argument that it was a less 'popular' number range.[201]

A20.75 EE argued that because the cost of calling 084/087 numbers might be higher (to account for the 09 element under a single AC) it would logically not reflect the preferences of consumers of 084/087 calls.[202]

Ofcom's response

A20.76 We consider that prices which reflect consumer preferences would reflect differences in elasticities, not just volumes. It is possible to have greater elasticity of demand on number range with lower volumes, and this may be true of ranges such as 09 and 118 where customers have more discretion over whether or not to make a call. The key point in our assessment is that we do not consider that having two ACs would fully reflect these elasticities because of the reduced price awareness they would create. Our assessment in relation to consumer preferences therefore remains as set out in paragraph A20.73 above.

A20.77 We have responded to EE's arguments about the potential for call costs to be higher with a single AC in paragraphs A20.85 to A20.89 below.

Impact of our proposals on the level of the AC

Summary of our position in the April 2012 consultation

A20.78 In the April 2012 consultation we did not explicitly investigate the potential impact of our tariff principles on the level of the AC. We nonetheless looked at this issue indirectly when assessing the impact of our proposal to have a single AC per tariff

[200] April 2012 consultation, Part B, Section 10, pp.108 to 109.
[201] TNUK, April 2012 consultation response, p.24.
[202] EE, April 2012 consultation response, p.18.

package on the efficiency of prices (as described in paragraphs A20.60 – A20.63). In particular, we calculated the AC for 084/087 and 09/118 numbers under the scenario where we allowed a single AC and under the situation where two ACs were allowed. We then assessed if the differences in the ACs between the two scenarios were likely to be aligned with our estimate of bad debt costs in relation to calls to 09/118 numbers.

A20.79 Our calculation assumed, for modelling simplicity, that both the volume of calls and OCPs' average retention on these numbers would not change with the introduction of the unbundled remedy. Our estimates are set out in the Table below.

Table A20.1: Estimated impact of specifying separate ACs for 09 and 118 calls

	Estimated fixed AC	Estimated mobile AC
Single AC for 084, 087, 09 and 118 numbers	2.9ppm	16.1ppm
Different ACs for 084 and 087 compared to 09 and 118	2.4ppm for 084/087 calls 18.3ppm for 09/118 calls	14.8ppm for 084/087 calls 34.1ppm for 09/118 calls

A20.80 As noted above, the difference between the 084/087 and 09/118 ACs (under the scenario were two ACs were allowed) was more than three times our estimate of bad debt costs in relation to the 09/118 range.[203]

Stakeholder comments

A20.81 Several stakeholders, including Virgin Media[204], Verizon[205], TalkTalk[206], Sky[207], EE[208] and UKCTA[209] argued that a single ppm rate for all NGCs was likely to force OCPs to set an average AC higher than that which would otherwise be set for calls to the 084 and 087 numbers.

A20.82 EE[210] and UKCTA[211] said this would not be a favourable outcome for consumers, especially when 08 numbers were some of the most popular in the entire NGC range, used to contact a wider range of both socially important and commercially significant SPs. Specifically they noted that enforcing a single AC was likely to result in callers to 084/087 numbers paying 0.5ppm more from fixed lines, and 1.3ppm more from mobiles compared to if multiple ACs were permitted.

A20.83 EE considered that in addition to this effect, a single AC could change customers' relative calling patterns and that this could result in higher commercial risks for OCPs (e.g. blended call origination costs would increase if relatively more 09 calls were made in the future). It said that, in response to this, OCPs might seek a further

[203] See the April 2012 consultation, Part B, Section 10, paragraphs 10.62-10.70.
[204] Virgin Media, April 2012 consultation, p.2.
[205] Verizon, April 2012 consultation response, p.8.
[206] TalkTalk, April 2012 consultation response, p.2.
[207] Sky, April 2012 consultation response, p.2
[208] EE, April 2012 consultation response, p.20.
[209] UKCTA, April 2012 consultation response, p.5.
[210] EE, April 2012 consultation response, p.20.
[211] UKCTA, April 2012 consultation response, p.5.

overall increase in the blended AC to attempt to compensate for that additional commercial risk.[212]

A20.84 EE acknowledged that managing bad debt and other risks associated with 09 calls might to some extent be possible through setting a different AC for different tariff packages, e.g. setting a higher AC for higher credit risk customers. However, it said that given that the overwhelming majority of callers did not make calls to 09 numbers at all, it remained of the view that this would be an inefficient 'blunt instrument' for managing those risks. It noted that few customers called 09 numbers and therefore it failed to see how the risk that these few customers might not fully recall/underestimate the AC for calls to 09 numbers could be considered to outweigh the risk that the many callers to 084/087 numbers would be overcharged if Ofcom mandated a single AC.[213]

Ofcom's response

A20.85 In the April 2012 consultation we accepted that setting the same AC for calls attracting a higher bad debt risk (e.g. 09 calls) as for other calls where this risk was smaller (such as 08 calls) was likely to decrease the OCPs' margin on the 'high bad debt risk' calls but increase the OCPs' margin on the 'low bad debt risk' calls.[214] However, this effect (and the potential increase in the AC under a single AC approach compared to having separate ACs) will depend on the relative volume of calls to 084/087 and 09/118 numbers and corresponding relative retentions from these calls. Volumes and retention from 09/118 NGCS are currently a relatively small fraction of the total volumes and retention from NGCs.[215] Accordingly, this is reflected in our estimates of the potential increase, relative to a separate AC for 084/087 numbers, of 0.5ppm from fixed lines and 1.3ppm from mobiles, quoted by EE and UKCTA in their responses.[216]

A20.86 These estimates are likely to overstate the impact on callers of 084/087. This is because our estimates in the April 2012 consultation assumed that OCPs' average retention did not change as a result of the unbundled tariff. It is likely that the increase in consumer price awareness resulting from the unbundled tariff structure will encourage competition on the AC and is therefore likely to reduce the average retention across all non-geographic numbers, leading to a lower AC. To the extent that price awareness is greater under a single AC (compared to several ACs), the downward pressure on margins may also be greater. The greater transparency of SC prices (for example through the requirement for SPs to advertise their SC) may lead some SPs to choose number ranges which attract a lower SC, or no SC at all (e.g. the 03 range) in order to reduce the amount they are seen to be charging their customers. Taken together, these effects will limit any rebalancing of charges and mitigate the impact on consumers.

A20.87 As regards EE's view on the change in consumers' calling pattern, this depends on the changes between today's prices and the AC and also the other part of the call price paid by callers, i.e. the SC - as well as the changes we expect as a consequence of improved price awareness under the unbundled tariff. For 09/118 calls the AC is a smaller proportion of the call price paid by the caller than the SC.

[212] EE, April 2012 consultation response, pp.21-22.
[213] EE, April 2012 consultation response, p.20.
[214] See the April 2012 consultation, paragraph 10.31.
[215] 09/118 currently represents approximately 15% of total non-geographic call retention.
[216] Total OCP retention on non-geographic calls in 2009 was £907m, with 09/118 calls accounting for £104m of this. Ofcom calculations based on the 2010 Flow of Funds study.

Accordingly the actual price of a call to a 09 number will fall by a smaller percentage than the estimated percentage reduction in the AC, which is likely to result in a relatively smaller increase in the volume of 09 calls compared to the volume of 084/087 calls. In addition, we set out in Annex 11 that our consumer survey evidence suggests consumers as a whole tend to underestimate 09 call prices, although we consider that consumers who actually call 09 numbers may be relatively price aware. To the extent that consumers currently underestimate the prices of 09, improved price awareness might lead to fewer 09 calls, not more.[217] In contrast, consumers tend to overestimate the prices of 084/087 calls, so improved awareness is likely to increase volumes of these calls. (These reasons are in addition to the point explained above that we do not expect the rebalancing of charges to be considerable). We therefore expect any impact on OCPs' commercial risk to be correspondingly small.

A20.88 In response to EE's comment that the risk of the few customers that call 09 numbers not being able to recall an 09 specific AC does not outweigh the risk that all 084/087 callers would be overcharged, we consider that the fact that few customers call 09 also means the impact on the price of 084/087 calls is limited (as set out in paragraphs A20.85 above). We also consider that, in any event, the level of any overcharging will be mitigated by the expected encouragement of competition. Furthermore, the risk is not just that 09 callers will not remember the AC for these calls, but the clarity of the AC message as a whole could be damaged, including the clarity of the 084/087 AC, leading to consumers not remembering either AC.

A20.89 For the reasons set out above, the benefit (in terms of transparency) of a single AC is likely to outweigh the cost of a rebalancing of prices between the charges for 084/087 and 09 numbers.

Other comments

Stakeholder comments

A20.90 SSE said it would like more flexibility on the AC. Whilst it said it understood Ofcom's wish to have a single message for ACs that consumers would readily remember, it said that as a way of controlling its risk exposure for customers making NGCs it would like to be able to set its AC as a fixed percentage of the SC per tariff package. For example, if 10% was chosen, a customer would pay an additional 1p on a call with a SC of 10p and an additional 10p on a call with a SC of £1. It said this reflected how it set retail charges currently and it suggested that the variation could be accommodated within the policy of having a simple charging message for customers about the additional AC element of the NGC. It indicated that if such an approach was not possible, then it would like to have the ability to set two ACs per package to differentiate between low cost/low risk calls and ones of higher cost/risk, although it noted that this would involve more complex judgements on how to set the two levels than the percentage approach.[218]

Ofcom's response

A20.91 We note that SSE's suggestion that it set its AC as a fixed percentage of the SC per tariff package would in effect result in many different ACs in each tariff package SSE suggest. Consumers would need to be able to calculate the percentage of the

[217] See Annex 11 where we discuss the evidence relating to consumer perceptions of the 09 range.
[218] SSE, April 2012 consultation response, Q10.1.

SC each time they made a call. As discussed in Annex 19 there is already concern from stakeholders about the ability of consumers to add together two separate prices. Requiring consumers to carry out a percentage calculation risks creating significant confusion. It is likely to reduce the usefulness of the AC at the point of sale, because the percentage amount would carry little meaning for consumers, since their total charge would vary depending on what type of non-geographic numbers they needed to call each month (which they are likely to find difficult to predict at the point of sale). Therefore we consider this proposal would run counter to our objectives of improving price transparency and consumer price awareness.

Price structure of the AC

Summary of position in the April 2012 consultation

A20.92 In the April 2012 consultation we explained that retail call charges for NGCs were expressed in many different ways, including price per minute ('ppm'), price per call ('ppc') or a combination of both. We considered that allowing ACs to vary in structure between OCPs would undermine price awareness, as consumers were unlikely to be able to recall and compare such ACs across packages and OCPs. We explained that the different treatment of ACs compared to SCs (where we proposed to allow different charging structures) was justified because we were proposing to impose price transparency obligations on SPs.

A20.93 We did not consider that there was an efficiency rationale for the AC and SC price structure to match, as under the unbundled tariff both charges would be set separately. Furthermore, allowing for the alignment of the pricing structure between the AC and the SC was likely to require variability in the AC between different numbers and this was likely to add complexity for consumers.

A20.94 We considered that there was merit in allowing OCPs to specify a minimum call charge option that was linked to the ppm charge, recognising stakeholders' concerns that where the call is short, a ppm charge may not cover the costs of origination.

A20.95 We therefore provisionally concluded in the April 2012 consultation that the AC should be structured on a uniform basis by OCPs and that a minimum call charge equivalent to the price of a one minute call was appropriate.[219]

Stakeholder comments

A20.96 There was disparity between the responses from stakeholders on this issue. Several respondents, including Three[220], Vodafone[221], CWW[222], TNUK[223], [✂][224], FCS[225] and FTC[226] broadly supported Ofcom's proposal, noting the benefits to consumer transparency of having a simple and standardised charging structure.

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[219] See paragraphs 10.86 to 10.113 in Part B, Section 10 of the April 2012 consultation for our position on the pricing structure of the AC.
[220] Three, April 2012 consultation response, p.10.
[221] Vodafone, April 2012 consultation response, p. 25.
[222] CWW, April 2012 consultation response, p.7.
[223] TNUK, April 2012 consultation response, 25.
[224] [✂]
[225] FCS, April 2012 consultation response, p. 3.
[226] FTC, April 2012 consultation response, p.4.

A20.97 CWW said it could see no compelling reason why any OCP should require an additional form of charging, such as a call set up fee or a connection charge. It considered, however, that a minimum one minute call charge might be appropriate to cover the costs incurred by OCPs on certain calls to 09 numbers (that had a higher proportion of short duration calls charged on a pence per call basis), which may otherwise not be covered by the AC. It said it was much harder to make such a case on the lower rated 084/087 ranges, although it conceded that under the unbundled tariff regime it would be easier for callers to understand which party was causing these charges. In its view, there was no reason for the AC to require a longer period than one minute, as this would dilute pricing clarity. [227]

A20.98 FTC considered that simplification was the vital issue and therefore a mixed pence per call (as in a call connection or set-up fee) and pence per minute ACs should not be permitted.[228]

A20.99 FCS noted that some of its members suggested that a one minute minimum charge was much longer than was needed to cover any connection costs or risk of fraud, whereas other members suggested that ppm charging did not provide adequate cost recovery for number ranges charged on a per call basis where the call was only of short duration.[229]

A20.100 TNUK said it was not necessary for the AC to be charged on a similar basis as the SC, because more flexibility was required for the SC to reflect the variety and extent of different services provided (as well as the differing costs incurred and ways in which revenue was generated). Instead, the provision of access did not vary according to the service to which access was being provided (and the OCP would not necessarily even know the nature of that service).[230]

A20.101 Other respondents disagreed with Ofcom's proposal for different, and opposing, reasons. TNUK considered that a one minute minimum call was too long. It said that a 5 or 10 second minimum call charge would easily suffice and that there was a risk that every AC would be subject to a one minimum call charge.[231]

A20.102 [✂] said that a minimum call charge was not necessary as OCPs could amortise the cost of the call set up across the average duration of the call. It considered this was something OCPs and TCPs were used to doing in competitive markets.[232]

A20.103 In contrast, TalkTalk[233] and BT[234] considered that one minute was likely to be insufficient and that more flexibility should be provided to OCPs. TalkTalk argued that a minute was not enough to cover the current legitimate industry practice to levy a call connection charge to recover the costs of short duration calls.

A20.104 Virgin Media[235], Sky[236], UKCTA[237] and BT[238] said that Ofcom should allow call set up fees where the OCP charged these for other types of calls. Virgin Media, Sky

[227] CWW, April 2012 consultation response, p.7.
[228] FTC, April 2012 consultation response, p.4.
[229] FCS, April 2012 consultation response, p.3.
[230] TNUK, April 2012 consultation response, p.25.
[231] TNUK, April 2012 consultation response, p.25.
[232] [✂]
[233] TalkTalk, April 2012 consultation response, p.2.
[234] BT, April 2012 consultation response, p.9.
[235] Virgin Media, April 2012 consultation response, Q10.1
[236] Sky, April 2012 consultation response, p. 3.
[237] UKCTA, April 2012 consultation response, pp. 5-6.

and UKCTA considered that Ofcom's goal of simplicity was better achieved by all calls being charged in the same way. In addition, Virgin Media argued that prohibiting set up fees would unduly penalise callers who made longer calls. BT considered that there was a case for keeping existing set up fees on relevant calls. This would ensure that the pricing structure was consistent across different types of calls. In addition it said a ppc AC was needed to ensure that certain types of calls (e.g. votes, competitions) were treated consistently across both the AC and SC.

A20.105 EE said that the consumer benefit of a ppc charge over a ppm charge was certainty of price regardless of call duration, for example for calls where the duration of a call was uncertain (e.g. if a customer risked being placed on hold for a long period of time). It said for those calls, some customers might prefer to be able to control their costs with a ppc AC. It said that a ppm only AC could potentially motivate the setting of a higher overall ppm AC, particularly in the face of uncertain and potentially very short call durations. Consequently, EE was not convinced that the restrictions on the form of the AC being proposed by Ofcom were necessary or appropriate for the purposes of protecting consumers.[239]

Ofcom's response

A20.106 The comments from stakeholders on this issue reflected a variety of opinions. Some respondents oppose allowing a one minute minimum call charge. They considered that it was longer than needed to cover OCPs' connection costs or that OCPs could amortise these costs over the average duration of a call (i.e. through the pence per minute charges). In contrast, other stakeholders were also against our proposals but for the opposite reasons, namely, they considered a one minute minimum call charge:

- was insufficient to cover connection costs;
- would unduly penalise callers who made longer calls; and
- that call set up fees should be allowed where the OCP used them for other type of calls.

A20.107 We acknowledge that there are arguments in favour of either of the options. As discussed in paragraphs 10.111 to 10.112 of the April 2012 consultation (Part B), we consider that OCPs should be allowed to recover the costs of setting up calls. The relevant consideration is therefore determining the most appropriate mechanism to recover these costs. We consider a one minute minimum call charge strikes the right balance between the two assessment criteria that we used in the April 2012 consultation to analyse this issue, namely, consumer price awareness and efficiency of prices.

A20.108 We recognise that a call set-up fee may be more efficient because it may better reflect the underlying cost of connecting the call than a minimum call charge. However, as set up fees necessarily involve two (rather than one) price points, we consider that they are likely to be harder for callers to remember, particularly given that call-set up fees can often be significantly higher than the headline ppm call charges. For example:

[238] BT, April 2012 consultation response, p.9.
[239] EE, April 2012 consultation response, p.23.

- BT's Unlimited Weekend Plan out of bundle 0845 call charges are: 2.042ppm (daytime), 0.51ppm (evenings) and 0ppm (weekends), but the call set-up fee for these calls is 13.87p for each call; and

- Sky's Anytime Talk package 0845 call charges are 6.63ppm but the call set-up fee is 13.87p.[240]

A20.109 We recognise that the existence of such call set-up fees already in the market suggests that consumers may already be familiar with their concept and we have no specific evidence to indicate that consumers are not aware of these charges. However, with the introduction of the unbundled tariff consumers will be receiving a number of new messages about changes to call charges and this is against a background of significant confusion and poor awareness currently, as well as relatively low usage. Taking into account this context, along with the fact that simplicity is an important objective for the AC particularly to encourage consumers to make their purchase decisions taking the AC into account, we consider that allowing call-set up fees would reduce transparency and consumer price awareness compared to a single ppm figure for the AC.

A20.110 In terms of the most appropriate minimum duration for the call, that is, whether it should be less than a minute or more, we consider that stakeholders have failed to provide any evidence in support of their submissions either that one minute will be excessive or that it will be insufficient to cover call set up costs. The current practice by mobile CPs of setting one minute minimum call charges, as discussed in paragraph 10.99 of the April 2012 consultation, is consistent with the view that this minimum duration should be sufficient to recover these costs.

A20.111 We would be reluctant to allow minimum call charges exceeding one minute (as suggested by TalkTalk) because we consider consumers are unlikely to be familiar with minimum call charges exceeding one minute. In addition, they involve a more complex charging structure, which is likely to be less memorable to consumers. We therefore consider that longer minimum call charges are likely to compromise our objective of increasing consumers' price awareness.

A20.112 We do not consider that [✂]'s proposal that the call set up costs should be amortised over the length of the call is sufficient, as short calls on certain numbers (e.g. 09 number ranges) may not allow for the recovery of connection costs. In addition, prohibiting minimum call charges could result in OCPs rebalancing their ppm charges upwards, which could result in higher charges for longer calls. We disagree with Virgin Media that preventing call set up charges will necessarily result in higher charges for longer calls. As long as call set up costs are recovered through minimum call charges, and stakeholders have not provided any evidence suggesting that this unlikely to be the case, we do not consider our decision will unduly penalise callers who make longer calls.

A20.113 We similarly disagree that the use by some OCPs of set-up fees for geographic calls implies that we should necessarily adopt the same approach for NGCs. Whilst we acknowledge that their use for geographic calls may mean some consumers are familiar with the concept, we have set out above our concerns that they could lead to reduced price transparency. In addition, we reiterate that the objective of our regulatory intervention in the non-geographic calls market is to address the specific market failures identified in this market (as discussed in Section 4). We therefore

[240] Table 2.2 in Section 2 (Part A) sets out these BT and Sky call prices as well as other examples.

disagree that our treatment of non-geographic charges should be equivalent to that of other charges where we have not identified these concerns.

A20.114 We recognise that our proposal in the April 2012 consultation would not allow OCPs to set an AC which does not vary according to the length of the call (i.e. an AC of a price per call), as highlighted by EE. We agree with EE that there are benefits from these type of charges, such as price certainty regardless of duration. At least some OCPs currently use fixed prices per call for some 118 and 09 numbers.[241] However, the use of this structure is much less common than ppm charges - for example in terms of wholesale charges, all of the top twenty chargebands for 0844/3 and 0871/2/3 numbers were ppm rates, and three quarters of the top twenty 09 chargebands were ppm rates.[242]

A20.115 We have, nevertheless, considered allowing a price per call AC for some numbers. This could be done in three ways, namely, allowing OCPs (in addition to a ppm AC):

- as many per call ACs as they wished;
- one per call AC within each tariff package; and
- one per call AC and only for those tariffs where the SC is similarly per call.

A20.116 We reject all three of these options, in light of the policy objectives of this decision. The first option would increase the complexity of the AC and is likely to undermine consumers' price awareness. The second option could be used by OCPs to vary ACs within tariff packages, which would be a problem for the reasons set out in paragraphs 9.16 to 9.26 in Section 9. For example, OCPs could set the AC per call for specific number ranges, e.g. a ppc AC for 09/118 but a ppm AC for 084/087. The last option is less likely to allow this type of behaviour, and could present some benefits if consumers were capable of remembering the rule. However, it seems unlikely that the majority of consumers would remember the rule, given the evidence of the current lack of price awareness and the significant changes we are proposing. As a result, we consider any benefits likely to be limited. There is a trade off between the benefits to transparency of a single AC and benefits arising from allowing ppc charges such as caller certainty. Given the weight we place on improving consumer price awareness, we have concluded that we should restrict the AC to a ppm charge.

Time of day variation

Summary of position in the April 2012 consultation

A20.117 In the April 2012 consultation we said that introducing time of day ('ToD') variations could increase significantly the number of prices that consumers would need to remember and that this was likely to undermine consumer price awareness.

[241] See, for example, BT charges for 118 numbers (p.12, http://www.productsandservices.bt.com/consumer/consumerProducts/pdf/SpecialisedNos.pdf) or TalkTalk Essentials (https://sales.talktalk.co.uk/pricing/package/essentials); Virgin Media (http://store.virginmedia.com/content/dam/eSales/Downloads/280812-Residential-Cable-V1.pdf) or O2 for some 09 numbers (http://www.vodafone.co.uk/personal/price-plans/pay-monthly/call-charges/index.htm?ssSourceSiteId).

[242] Based on information provided informally by several TCPs and OCPs for the period May-July 2011 following discussion at the NGCS Commercial Working group on 14 July 2011.

A20.118 In terms of efficient pricing, we considered that due to the low volumes of NGCs, limiting ToD variations was unlikely to have any significant impact on peak traffic management. We did not think that ToD variations should be allowed to match differences in consumer elasticity by time of day, as we had no evidence that ToD variations in elasticity were significant. We also did not consider that allowing ToD variations in the SC implied that ACs should also be allowed to vary by ToD.

A20.119 We therefore considered in the April 2012 consultation that price awareness considerations outweighed any efficiency benefits of ToD variations and that the AC should be charged on a uniform basis at all times of the day.[243]

Stakeholder comments

A20.120 Virtually all respondents on this issue agreed that ToD variations should not be permitted on the AC, including the mobile OCPs[244], CWW[245], Magrathea[246], Sky[247], SSE[248] THA[249] and FCS[250], amongst others. Magrathea and THA said it was vital to keep the AC element of the call as simple as possible and reduce the number of possible variants and permutations.

A20.121 FTC[251] and TNUK[252] said that ToD variations were becoming an increasingly outmoded method of charging and that this trend seemed likely to continue. CWW noted that network demand for NGCs was not driven by any ToD imperative but rather by specific events generating traffic on the network. It recognised that there might be reasons why some ToD variations might be sensible, but it did not believe they were compelling when considered against the advantages of ensuring the prices were clear and easily understood. CWW said this position was consistent with Ofcom's previous decision on the Mobile Termination Rate ('MTR') charge control, which limited rates to a single maximum charge applicable at all times of day.[253]

A20.122 However, [✂] and said it was therefore imperative that this move on the AC did not send a signal into other markets, notably the Narrowband Market Review, of any form of tacit acceptance of the removal of ToD differentials. In particular, it noted that as part of recent consultations, statements and disputes, it had been acknowledged that mobile network tariff gradients were generally flat. It said it was imperative that Ofcom did not consider the impact of that simply on a binary basis across the industry, but recognised that the technology and markets serviced by the OCP could have an impact.[254]

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243 See paragraphs 10.114 to 10.129 in Part B, Section 10 of the April 2012 consultation for our position on time of day variations of the AC.
244 Three, April 2012 consultation response, p.10, EE, April 2012 consultation response, p.23.
245 CWW, April 2012 consultation response, p.8.
246 Magrathea, April 2012 consultation response, Q10.2.
247 Sky, April 2012 consultation response, p.3,
248 SSE, April 2012 consultation response, Q10.2.
249 THA, April 2012 consultation response, p.6.
250 FCS, April 2012 consultation response, p.3.
251 FTC, April 2012 consultation response, p.4.
252 TNUK, April 2012 consultation response, pp.25-26.
253 CWW, April 2012 consultation response, p.8.
254 [✂].

A20.123 BT, however, disagreed with our proposal. It said that the AC should be allowed to vary by ToD and day of the week. It said this was standard industry practice and would allow it to treat the AC in the same way as charges for other call types.[255]

Ofcom's response

A20.124 We welcome the broad support for our proposal to prevent the AC from varying by time of day. In relation to BT's comments, we recognise that ToD variation is standard industry practice among fixed CPs, although note this is not the case for mobile CPs.[256] However, allowing ToD variations would result in a multiplicity of price points for the AC, which would be likely in itself to reduce price awareness. It would also result in an additional complexity for consumers, as when signing up to a new tariff package, in order to understand what level of AC they might be charged for particular calls they would need to foresee the times at which they would be likely to those calls in advance. This is likely to be particularly difficult due to the relative infrequency with which customers call these numbers. We consider that these factors would undermine consumer price awareness.

A20.125 In addition, as discussed in paragraphs 10.124 to 10.128 of the April 2012 consultation, we believe that ToD variations are unlikely to be justified in terms of efficient pricing, as the low volumes of NGCs means their impact on traffic management is not significant. On this point, we note that BT has not provided any compelling reasons or evidence as to why ToD variations should be required for non-geographic numbers.

A20.126 In light of the above, we continue to believe that ToD variations in the AC should not be allowed. For the avoidance of doubt, this view derives from the application of the assessment criteria which we consider relevant to NGCs. We have not considered the appropriateness of ToD variations in the pricing of other call types and services in this review, nor taken any view as to whether similar considerations might or might not apply to such calls or services.

A20.127 We also note this tariff principle will not prevent OCPs from including their ACs within bundles, where the inclusion within a bundle varies depending on the time of day. For example, several fixed OCPs do not charge for certain NGCs during evening and weekends. A similar approach could be applied to the AC, provided this was applied to the AC for all calls (regardless of the number range), as discussed below.

Call bundles

Summary of position in the April 2012 consultation

A20.128 In the April 2012 consultation we considered that inclusion of the AC in an OCP's bundles of inclusive call minutes ('call bundle') did not cause significant concerns about pricing complexity, as consumers had experience of this type of pricing and they increasingly purchased call bundles. We were nonetheless concerned that if

[255] BT, April 2012 consultation response, p.9.
[256] See for example Vodafone (http://www.vodafone.co.uk/personal/price-plans/pay-monthly/call-charges/index.htm?ssSourceSiteId), O2 (http://www.o2.co.uk/support/generalhelp/howdoi/specialnumbers) or Three (http://support.three.co.uk/SRVS/CGI-BIN/WEBISAPI.DLL?Command=New,Kb=Mobile,Ts=Mobile,T=OnlinePortlet,varset_cat=callsemails,varset_subcat=3788,Case=obj(4570)))

the inclusion of the AC in a call bundle was confined only to some number ranges it would undermine consumer price awareness, and would be very similar to having separate AC for different number ranges. We therefore considered that consumer price awareness was unlikely to be materially harmed by inclusion of the AC in a call bundle provided that there was no differentiation by number range. Additionally, we said that allowing for the inclusion of ACs in call bundles would improve the efficiency of prices as it would better reflect consumers' preferences.

A20.129 We therefore provisionally concluded in the April 2012 consultation that we should allow OCPs to include ACs in call bundles provided they did not differentiate by number range.[257]

Stakeholder comments

A20.130 Several respondents agreed with our proposal to allow ACs to be included in call bundles as long as OCPs did not differentiate by number range. FTC[258] and THA[259] agreed that ACs should be allowed to be included in bundles and just as ACs should not vary by number range, their inclusiveness should not be allowed to vary by range to ensure consumer transparency and avoid confusion.

A20.131 TNUK considered that the requirement not to differentiate any inclusive AC by number range could reduce the number of OCPs that chose the option of including ACs in bundles. However, it said it supported the prohibition of varying the inclusion by range as it believed it was a fundamental requirement, without which, it would create a means by which OCPs could get around the obligation to have a single AC for all number ranges.[260]

A20.132 However, a number of responses disagreed with our proposals for different, and in some cases opposing, reasons.

A20.133 Magrathea[261] and TNUK[262] argued that Ofcom should have considered making inclusion within bundles a requirement of the AC, rather than an option. Magrathea did not believe that consumers would select a fixed or mobile telephone service based on NGC prices. Hence, it considered that inclusion within bundles should have been a requirement to ensure sufficient competitive pressure on the AC. TNUK noted that this approach was commented on favourably in the BEREC Report on Special Rate Services[263] and that the French NRA ('ARCEP') had recently adopted that model.

A20.134 Three argued that OCPs should be able to offer tariffs with the AC for 08 ranges included, but the AC for 09/118 ranges excluded from the bundle. It said this differentiation was needed because of different levels of risk associated with 09/118 ranges.[264] EE and UKCTA considered that our proposal was likely to be unduly detrimental to retail pricing flexibility and innovation, and not in consumers' best interests.[265] In particular EE envisaged that there might be OCPs who would, for

[257] See paragraphs 10.130 to 10.145 in Part B, Section 10 of the April 2012 consultation for our position on inclusion of ACs in bundles.
[258] FTC, April 2012 consultation response, p.4.
[259] THA, April 2012 consultation response, p.6.
[260] TNUK, April 2012 consultation response, pp.26-27.
[261] Magrathea, April 2012 consultation response, Q10.2.
[262] TNUK, April 2012 consultation response, p.26-27.
[263] http://erg.eu.int/doc/consult/bor_12_55_report_on_srs_final.pdf
[264] Three, April 2012 consultation response, p.10.
[265] EE, April 2012 consultation response, p.23.

example, look to include calls to 084/087 numbers in their bundles of calls, but who may not also wish to include the lesser used and generally more expensive 09 numbers. It highlighted that many of T-Mobile's existing pay monthly tariffs, all 08 calls were included in bundle but 09 calls were not.

A20.135 O2 noted that all major home phone providers included specific non-geographic numbers within call bundles, in particular 0845 and 0870 (which were the most popular). It considered that the changes Ofcom was proposing were quite fundamental and likely to be to the consumer's detriment by driving up the costs for those types of calls. It considered that OCPs would lose the ability to provide discounts on certain specific non-geographic number ranges, as it did currently. It also argued that OCPs would lose the ability to bundle specific non-geographic numbers to offer customers greater value for the most commonly used number ranges and that OCPs would lose the ability to bundle charges at specific times of the day to match the current proposition structures. O2 considered that achieving price awareness through an overly complex regime that might result in widespread consumer detriment was contradictory to the purpose of the proposals, and, more broadly, Ofcom's regulatory objectives.[266]

A20.136 The issue of the inclusion of the SC in bundles was also raised by a couple of respondents, particularly in relation to how the proposals on the bundling of the AC would impact the inclusion of the SC in bundles. BT considered that OCPs should be able to choose which AC to include, as per the proposal for SCs. It said that this would also mean that CPs could, if they wanted to, match up AC and SC discounts for individual number ranges.[267] EE[268] and UKCTA[269] suspected that in practice it was unlikely that OCPs would include just the AC for NGCs, because leaving the SC outside of the bundle would expose the customer to overall call charge uncertainty, and it was certainty and simplicity of pricing that tended to make bundled pricing so attractive to consumers.

Ofcom's response

A20.137 Requiring OCPs to include the AC within bundles would restrict OCPs' pricing flexibility to an extent not necessary to secure our policy objectives. It would limit OCPs' ability to tailor packages to different consumer preferences regarding relative prices of NGCs and other types of calls. For example, there may be consumers who prefer to purchase a bundle with a higher number of minutes than one that includes non-geographic numbers and a lower number of minutes to other types of calls. We consider that we should set less restrictive requirements on OCPs in the first instance (in the event that our assessment turns out to be wrong, it may be open to us to consider more restrictive requirements if the introduction of the unbundled tariff is not sufficient to address the issues set out in this decision).

A20.138 In terms of Three's comment that we should allow for differentiated ACs by number range, we have replied to these arguments in the section on varying the AC within tariff packages in paragraphs A20.21 to A20.89 above. On O2's point about bundles applying at specific times of the day, we have noted in paragraph A20.127 above that the inclusion of the AC in a bundle could still vary by the time of day/day of the week.

[266] O2, April 2012 consultation response, pp.14-15.
[267] BT, April 2012 consultation response, pp.9-10.
[268] EE, April 2012 consultation response, p.23.
[269] UKCTA, April 2012 consultation response, p.6.

A20.139 We acknowledge O2's point that our restrictions on the differentiation of the AC may result in some OCPs no longer including calls to 0845 and 0870 numbers in bundles, as some currently do. However, other OCPs may include additional NGC ranges alongside those they currently include in bundles such as 0845 and 0870. Overall, we do not consider the unbundled tariff structure will result in consumers paying more for calls to non-geographic numbers. Instead, we consider that it is likely to result in changes in the relative prices of calls to these number ranges, as OCPs amend their current range of charges for NGCs to a single AC for all NGCs. In addition, we expect some SPs are likely to respond to the new regime, for example by choosing number ranges which enable them to advertise a cheaper, or no, SC to the customers using their services. Overall, we expect that the increased consumer price awareness will strengthen competition and consumers will benefit from lower prices of calls to non-geographic numbers.

A20.140 In relation to the inclusion of both the SC and AC within bundles, we note that our tariff principles will allow OCPs to include both charges within call bundles, as long as they do not differentiate the inclusion of the AC by number range. If we allowed differentiation by number range this could be used to circumvent our restriction on the variations of ACs by tariff package. In contrast, OCPs will able to differentiate the inclusion of the SC by number range - we discuss the reasons why we consider this is appropriate in the context of the SC in Annex 21 (in particular paragraph 21.28). For example, OCPs may choose to include SCs for the 084 or 087 ranges, but not the SCs for the 09 or 118 ranges. Therefore there will still be some flexibility for OCPs in tailoring their bundled call packages to meet consumer preferences.

Cap on the AC

Summary of position in the April 2012 consultation

A20.141 In the April 2012 consultation we said that capping the AC could improve consumer price awareness. We considered that a cap based on some measure of OCPs' costs, geographic rates or a safeguard cap would provide additional information to consumers on the likely costs of calls to non-geographic numbers. We noted, however, that it was unclear how useful the extra information provided by a cap on the ACs would be to consumers.

A20.142 We explored the impact of three different types of caps on the efficiency of prices: a cap based on (i) the cost of call origination; (ii) geographic rates; and (ii) a safeguard cap. We considered that there were risks of regulatory failure associated with setting a cap and that these were likely to outweigh the benefits of setting a cap. In particular, we were concerned that consumer preferences in price differentials between NGCs and geographic calls might not be represented appropriately and that the cap could operate as a "focal point", with OCPs choosing to price at or close to the maximum. We therefore expressed our preference for not setting a cap but monitoring the AC levels to consider whether further intervention may be required in future.

A20.143 In terms of access to socially important services, we considered that the incentives on OCPs would be to set ACs which did not prevent consumers from accessing these services but noted that we would be open to future intervention if there was evidence of ongoing consumer harm.

A20.144 In terms of regulatory burden, we said that there were significant risks of regulatory failure associated with the imposition of a cap on ACs such as failing to determine the appropriate level of the cap and misaligning charges with consumer preferences.

A20.145 We therefore provisionally concluded in the April 2012 consultation that we should not set a cap on the AC but that we would remain open to revisiting the need for a cap if evidence of consumer confusion in relation to the AC was to emerge.[270]

Stakeholder comments

A20.146 Responses on this issue were divided. Several respondents agreed with Ofcom's preference that the AC should not be capped, including the majority of OCPs (fixed and mobile).

A20.147 UKCTA,[271] Verizon[272] and O2[273] considered that the transparency achieved through the unbundled tariff would ensure that the AC would be effectively constrained by competition between OCPs. BT argued that the retail narrowband market was deregulated because it was fully competitive and competition should act to keep prices in check.[274] FTC said the unbundled tariff should be given time to establish itself and there should be no limit on the AC in the first instance. It said a cap should only be introduced if the market was not working effectively and where a better remedy was not available.[275]

A20.148 Three[276] and EE[277] considered that Ofcom did not have the legal powers to regulate prices at the retail level absent an SMP finding. Three said that imposing a cap on the AC would be too intrusive, unnecessary and should be avoided unless an SMP finding was made. It believed that the unbundled tariff would improve transparency and ensure that customers were well aware of charges for NGCs.

A20.149 Some stakeholders, including Vodafone[278], Virgin Media[279] and EE[280], considered that there were significant risks of regulatory failure associated with capping the AC. Vodafone argued that a cap would be inappropriate and disproportionate, because Ofcom should always seek the least onerous means of achieving its stated objective. Virgin Media said that imposing a cap on the AC would be a very intrusive and overly prescriptive move in circumstances where a market failure had not been demonstrated. EE argued that regulation was likely to have distortionary effects which would in fact reduce competition (e.g. as has to a large extent been seen with EU roaming caps), as well as forcing operators to recover costs inefficiently from other services.

A20.150 However, a number of other respondents believed that Ofcom should impose a cap on the AC from the outset.

[270] See paragraphs 10.146 to 10.193 in Part B, Section 10 of the April 2012 consultation for our position on setting a cap on ACs.
[271] UKCTA, April 2012 consultation response, p.6.
[272] Verizon, April 2012 consultation response, p.8.
[273] O2, April 2012 consultation response, p.15.
[274] BT, April 2012 consultation response, p.10.
[275] FTC, April 2012 consultation response, p. 4.
[276] Three, April 2012 consultation response, pp.10-11.
[277] EE, April 2012 consultation response, p.24.
[278] Vodafone, April 2012 consultation response, p.15.
[279] Virgin Media, April 2012 consultation response, Q10.3.
[280] EE, April 2012 consultation response, p.24.

A20.151 Citizens Advice[281], TNUK[282], CWW[283], FCS[284], [✂][285] and Magrathea[286] argued that competition over the level of the AC would not emerge between OCPs because it seemed unlikely that a significant number of consumers would choose their CP on the basis of NGC costs.

A20.152 Citizens Advice[287] and FCS[288] considered that capping the AC would improve consumers' price awareness and allow them to make a more accurate estimate of how much their AC was likely to be. FCS drew a parallel with the recent 0870 changes where it said Ofcom's objectives had clearly not been achieved and had in fact led to untold industry disputes. In addition, FCS said some of its TCP members had also argued that applying a cap to the SC and not to the AC was inconsistent and potentially discriminatory.

A20.153 TNUK[289] said that the competitive constraints on the AC were significantly lower than those on the SC because in the case of the latter a consumer was considering which SP to call, making an isolated decision to make a single call on the basis of the cost of the SC. TNUK considered that the evidence of consumer confusion should not be the only grounds for prompting further Ofcom intervention: if competition was seen to be ineffective Ofcom should intervene to cap it.[290]

A20.154 In addition, both TNUK and [✂][291] considered that the market failure was predominantly in the mobile sector where, despite the loss of call volumes, mobile CPs still chose to maintain significant higher NGC prices. TNUK considered it unconvincing that we had rejected imposing a cap on the basis that none of the three options for capping the AC were easy to implement, rather than because we believed that the AC would be subject to competition.

A20.155 CWW argued that under the current circumstances it was preferable to ensure that the AC was temporarily constrained to geographic rate levels rather than risk that the unbundled tariff was a £90m regulatory and commercial failure. It noted that the US 1-900 calls market worked on this basis.[292]

A20.156 [✂] said the only viable way to restore consumer confidence was for Ofcom to demonstrate its commitment to reducing consumer harm by radically and aggressively intervening in the market. It said that whilst the unbundled tariff exposed the charges to consumer scrutiny and choice, it did not in itself address the consumer harm absent a cap. It considered that if Ofcom was satisfied that the competitive effects would play as expected then it should set an interim cap at the range of potential ACs that it presented in the consultation. It said the legal powers existed and already had suitable precedent and demonstrable efficacy in their use to avoid harm (notably in roaming).[293]

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281 Citizens Advice, April 2012 consultation response, pp.3-4.
282 TNUK, April 2012 consultation response, pp.27-28.
283 CWW, April 2012 consultation response, pp.8-9.
284 FCS, April 2012 consultation response, p. 3.
285 [✂].
286 Magrathea, April 2012 consultation response, Q10.3
287 Citizens Advice, April 2012 consultation response, pp.3-4.
288 FCS, April 2012 consultation response, p. 3.
289 TNUK, April 2012 consultation response, pp.27-28.
290 TNUK, April 2012 consultation response, p.29.
291 [✂].
292 CWW, April 2012 consultation response, pp.8-9.
293 [✂].

A20.157 Magrathea thought the cap for the mobile AC should be set at whichever was lower of:

i) the mobile termination rate plus a reasonable uplift for customer acquisition, retention and service costs; or

ii) the geographic termination rate.

A20.158 Magrathea argued that the AC should be set at the same level as the mobile origination charge for Freephone numbers (see Section 12). It argued that the level of the cap on the AC should also reflect whether the OCP or the TCP was responsible for the costs of transit. It said that if the TCP was required to pay the transit charge and the OCP was deemed to hand over the call at the DLE level, then it expected the OCP's network costs and therefore its AC to be minimal (see Annex 23 for further details of Magrathea's arguments on transit payments).[294]

A20.159 Magrathea considered that the rebalancing of tariffs between non-geographic charges and charges to other types of calls to reflect actual costs was helpful rather than unhelpful. It considered that CPs should be encouraged not to make excessive margins on a small number of calls in order to cross-subsidise other services. It noted that, in theory, overall the average customer would not pay more. Magrathea therefore did not agree that the potential rebalancing of tariffs was a reason not to impose a cap on the AC. It agreed with Ofcom's view expressed in relation to Freephone that the TPE was not necessarily undesirable and could in some cases be beneficial.[295]

A20.160 ITSPA[296] and TNUK[297] said that our proposals lacked transparency in terms of where Ofcom would intervene if competitive effects failed to deliver the desired outcome. TNUK considered that Ofcom should commit itself to a clear timetable, in particular to state when the level of the AC should be assessed, what criteria would be used to assess whether competition on the AC was effective, and establish in advance a clear process and roadmap to imposing an AC cap if it subsequently proved necessary. ITSPA said the lack of a roadmap, together with the failure to set a cap on the AC, would mean that neither consumer confidence nor consumer harm would be addressed, whilst the abuses of some OCPs would continue to affect its members' businesses. It said its members did not believe that an AC as high as the 15ppm envisaged by Ofcom would address consumer harm.

A20.161 SurgeryLine agreed with our market led approach in the mid to long term. However, it considered that an immediate cap on the ACs of 0844 numbers for socially valuable services at geographic rates or less was necessary. It considered that the cap should only apply to the 0844 ranges and this way it would prevent less costly 08 numbers being treated the same as the higher cost 08 numbers. SurgeryLine also suggested that Ofcom should mandate a zero rated AC for socially valuable numbers such as those used by NHS providers to avoid an increase in the cost to consumers of calling these numbers.[298]

[294] Magrathea, April 2012 consultation response, Q10.3
[295] Magrathea, April 2012 consultation response, Q10.3
[296] ITSPA, April 2012 consultation response, p.1.
[297] TNUK, April 2012 consultation response, pp.29-30.
[298] Surgery Line, April 2012 consultation response, p.4.

Ofcom's response

A20.162 Whilst stakeholders have made a variety of points, many of these repeat the arguments presented in response to the December 2010 consultation, and which we set out our comments on as part of the April 2012 consultation. Much of our response below therefore refers directly back to the assessment we presented in the April 2012 consultation.

A20.163 Stakeholder views on the cap for the AC can be summarised into the following groups:

- we do not have the legal powers to impose a maximum charge (cap) on the AC absent a finding of SMP;
- setting a cap carries risks of regulatory failure and may be disproportionate; and
- competition will not sufficiently constrain the AC and, therefore, we should either impose a temporary or a permanent cap to avoid consumer detriment. This, then, leads to three main types of recommendation:
    - o setting the cap based on some measure of OCPs' costs (i.e. call origination);
    - o setting the cap at geographic rates; and
    - o a safeguard cap at current retention levels.

A20.164 Several stakeholders also argued that we should commit to a clear timetable setting out when and under which circumstances we would intervene to cap the AC if the unbundled tariff remedy did not work.

A20.165 We respond to these comments in turn below.

We do not have the legal powers to impose a cap on the AC

A20.166 Several stakeholders agreed with our proposal not to cap the AC but for reasons different from those we presented in the April 2012 consultation. Three and Vodafone, in particular, consider that we do not have the legal powers to impose a cap on the AC absent an SMP finding. We disagree for the reasons set out in Section 6 and in more detail in Annex 13.

A cap risks regulatory failure

A20.167 There is a risk of regulatory failure associated with setting the cap at some measure of cost, such as call origination. As discussed in paragraphs 10.186 to 10.190 of the April 2012 consultation, some of this risk would be removed by alignment of the AC to geographic rates.

A20.168 The alignment of the AC with geographic rates is, in fact, the remedy adopted by the French NRA, as further discussed in Section 8, and we see some merits in this option. It could, for example, increase the immediate competitive pressures on the AC while ensuring that charges reasonably reflect differences in costs between OCPs. We also consider that there are some drawbacks associated with this option, as discussed in paragraphs 10.175 to 10.179 of the April 2012 consultation.

A20.169 We have therefore concluded that we should not impose a cap on the AC, because we expect the unbundled tariff structure as a whole to improve consumer price awareness of NGC charges. The evidence suggests that consumers will be able to understand and utilise the AC in a way that should contribute to competition constraining the AC.

A20.170 Not imposing a cap does not mean that Ofcom is indifferent to the level or trajectory of the AC paid by consumers. We could consider introducing a cap based on geographic rates, or some other measure, in future if there is evidence that consumers are not able to effectively understand the AC, thereby reducing the competitive pressure on its level. This would bring benefits in terms of price simplicity, at the cost of reduced flexibility and hence, efficiency. We will monitor consumer understanding and the levels of the AC and this will form one of the elements we will consider as part of our review after implementation of the unbundled tariff (see Section 5 for more details).

A cap is necessary because competition will not constrain the AC

A20.171 Several stakeholders argue that competition is unlikely to constrain prices and that we should act to immediately cap the AC to avoid consumer detriment. One stakeholder thought this was necessary as an interim measure.

A20.172 There are risks associated with imposing a cap based on the costs of call origination, as explained in paragraphs 10.166 to 10.172 of the April 2012 consultation. For these reasons, capping the AC at the level of the Freephone mobile origination charge (as suggested by Magrathea) is not appropriate. Moreover, as explained in Section 12 our framework for setting mobile origination payments is also influenced by SPs' preferences, which are not relevant for the assessment of the level of the AC.

A20.173 We do not agree that we should set a safeguard cap on the AC, for the reasons discussed in paragraphs 10.181 to 10.184 of the April 2012 consultation. In particular, we disagree with [✂] that we should cap the AC at current retention levels. We do not consider this would be necessary or proportionate, as we expect that the unbundled tariff is likely to constrain the level of the AC in the long term. There is also a risk that this could serve as a "focal point" for OCPs, effectively reducing competition.

A20.174 As discussed in paragraphs A20.168 to A20.170 above, we consider that a cap based on OCPs' geographic rates would reduce some of the risks of regulatory failure we identified in paragraphs 10.186 to 10.190 of the April 2012 consultation. A cap on these terms would, however, only be justified if there was evidence that the introduction of the unbundled tariff would not be sufficient to provide an adequate level of consumer protection. Our judgement is that, on balance, this is not the case.

A20.175 We disagree with FCS that our treatment of the AC is inconsistent with our position on SC caps for some non-geographic number ranges. As we discuss in Section 9, the purpose of our proposed caps on the SC, for the 084 and 087 ranges, is to enable consumers to differentiate between the number ranges, in particular to enable them to make reasonable estimates of the cost of calls to particular number ranges. For the 09 range, we are minded to impose caps on the SC for the initial period following implementation in order to enhance price awareness and to mitigate the increased risks of fraud, bill shock and bad debt that might otherwise emerge while consumers are becoming familiar with the new price structures and associated transparency measures. These arguments do not apply to the AC. Consumers will have greater exposure to the AC than currently exists for retail prices for NGCs both at the point of sale and on an ongoing basis (for example on customer bills and through OCP marketing material), and we are prohibiting a variation in the AC by number range. We consider these requirements will ensure that the AC is easier for consumers to remember, and are therefore more likely to act to constrain its level.

A20.176 We disagree with TNUK's argument that our decision not to cap the AC is only based on the difficulties of setting an appropriate level for the cap. We do think it appropriate to include a consideration of the difficulties and risks associated with each option in our assessment. However, as discussed above (paragraphs A20.169 to A20.170), the main reason for not setting a cap on the AC is that we do not consider it is proportionate at this stage given that we expect the unbundled tariff structure as a whole to lead to improve consumer price awareness of NGC charges. Nevertheless, as set out below and in Section 9, it would be necessary for us to reconsider this position should evidence emerge of consumer protection concerns relating to the level of the AC. We intend to monitor market developments closely, particularly during the early phases of implementation.

A20.177 We disagree with TNUK and ITSPA that it is necessary to set out a timetable for reviewing the impact of our decision for the AC be effective. We set out in Section 5 our intention to conduct a review after the implementation of the unbundled tariff to evaluate whether our remedies have been effective in addressing the market failures. As noted, we will monitor the non-geographic calls market and will intervene if we consider that our remedies are not being effective in addressing the market failures identified. However, we consider that, as highlighted by some stakeholders, the reforms involved with the implementation of the unbundled tariff will need time to become established practice and we do not want to judge their success or failure prematurely.

A20.178 We will, nevertheless, be monitoring ACs closely so that we are in a position to intervene if evidence emerges that OCPs are setting the AC at an exploitative level.

Changes to the AC

Stakeholder comments

A20.179 BT made a comment in relation to the frequency of changes to the AC, an issue we did not discuss explicitly in the April 2012 consultation. In particular, BT was concerned that some unscrupulous OCPs might change their AC prices too frequently, for example weekly, which would cause consumer confusion. It suggested that the AC rules addressed this possibility.[299]

Ofcom's response

A20.180 There is a risk that OCPs could change the AC frequently to create consumer confusion. This risk is likely to be small, as there are costs associated with changing prices (i.e. so-called 'menu costs') that are likely to limit OCPs' incentives to do this in practice. General Condition 9 includes several obligations relating to the notification of changes to contracts to consumers.[300] These are likely to provide

[299] BT, April 2012 consultation response, p.9.

[300] We recently published a consultation on proposals to amend the wording of GC9.6, which is available here: http://stakeholders.ofcom.org.uk/consultations/price-rises-fixed-contracts/.

sufficient protection to consumers against the risk of frequent changes to the AC by OCPs.

Part B - Annex 21

The Service Charge

Introduction

A21.1 This Annex sets out a summary of issues raised in responses to our April 2012 consultation in respect of the service charge ('SC') element of the unbundled tariff, in particular its structure and design. It also sets out our comments in response to the issues raised. Where appropriate it refers to Section 9 of the main document where we detail our view on the appropriate structure of the service charge.

A21.2 In general, respondents support our proposals regarding the structure of the SC. However, some suggested that further restrictions might be required (e.g. prohibiting time of day variations) and there were concerns raised about the process for deciding how the price points for the SC should be determined.

A21.3 We have divided the responses on the SC into the following broad areas:

i) bespoke SCs;

ii) pricing structure of SCs;

iii) inclusion of the SC in bundles;

iv) time of day variation on the SC;

v) 084 and 087 maximum SC caps;

vi) VAT;

vii) number of SC price points;

viii) approach to specifying SC price points;

ix) 0845/0870 price points; and

x) other SC comments.

Bespoke SCs

Summary of position in the April 2012 consultation

A21.4 In the April 2012 consultation we said that a decision on whether to allow SPs to negotiate bespoke tariffs or not came down to a trade off between allowing SPs pricing flexibility (e.g. to offer lower SCs to an OCP that offers the SP a benefit, such as marketing, in return) and ensuring consumer transparency. We therefore assessed this option against the criteria of consumer price awareness and efficient prices.

A21.5 We observed that bespoke tariffs would make the unbundled tariff system more complex. We noted it was unlikely to be practical for SPs to publish a range of SCs dependent on which OCP a particular customer was calling from. Even if it was possible, it would make the message more complex and risk consumer confusion.

We were therefore concerned that consumers would find it harder to calculate the total cost of a call if bespoke SCs were allowed. We noted that the majority of stakeholder responses to the December 2010 consultation supported this view.

A21.6 In terms of efficient prices, we noted that bespoke SCs might provide scope for SPs to set more efficient prices, because SPs could offer lower SCs to OCPs that offered something in return, e.g. greater marketing of the SPs service. However, we also noted it could allow TCPs to exploit relative power imbalances in commercial negotiations which would not necessarily lead to efficient prices for consumers.

A21.7 We therefore provisionally concluded in the April 2012 consultation that it would not be appropriate to allow bespoke pricing for SCs.[301]

Stakeholder comments

A21.8 All stakeholders who responded on this point agreed with our proposal to prohibit bespoke SCs, agreeing that it would make the unbundled tariff more confusing. For example, EE noted that bespoke SCs would undermine the 'universality' of the SC and O2 agreed that it would reduce how informative the AC was to consumers.[302] Three also highlighted the additional billing costs involved with implementing bespoke SCs.[303]

A21.9 Virgin Media believed Ofcom should have stated with greater clarity whether the prohibition of bespoke SCs also meant that the practice of ladder charging (also referred to as 'tiered termination rates') would also be prohibited (and it supported the prohibition of this practice).[304] EE noted it was possible to envisage a new type of variable termination charge under the unbundled tariff remedy whereby the termination charge varied according to the AC applied by the OCP. It noted it was therefore "imperative" that the relevant legal instruments expressly excluded this possibility.[305]

A21.10 The Number UK ('TNUK'), accepted that bespoke SCs should be prohibited, but noted a caveat which it believed could improve price efficiency and commercial flexibility, without adversely impacting consumer transparency: [✂].[306]

A21.11 In addition FCS said one of its members had suggested that there should be an exemption for subscription services.[307]

Ofcom's response

A21.12 Bespoke SCs will be prohibited under the unbundled tariff model. We have set out in the modifications to the relevant legal instruments how this restriction will be implemented (see Section 6). We do not consider that the implementation of these requirements will provide scope for TCPs to set variable termination rates, as EE appear to suggest.

A21.13 We have considered the suggestion from FCS that there should be an exemption for subscription services but have decided that such an exemption is not

301 See paragraphs 10.197 to 10.221 of the April 2012 consultation for our position on bespoke SCs.
302 EE, April 2012 consultation response, p.24, O2, April 2012 consultation response, p.15.
303 Three, April 2012 consultation response, p.11.
304 Virgin Media, April 2012 consultation response, Q10.4.
305 EE, April 2012 consultation response, p.24.
306 TNUK, April 2012 consultation response, p.30.
307 FCS, April 2012 consultation response, p.4.

appropriate. First, an exemption of this nature could prejudice transparency by increasing the complexity of the pricing message for calls to a particular number covered by the exemption.[308] Second, it is not necessary to have an exemption since SPs are not precluded by the requirements of the unbundled tariff from offering their services at lower prices to subscription customers, either independently, or in conjunction with OCPs. Provided they have separate numbers for each SC price point, SPs will be able to offer the same service at different prices to subscription and non-subscription customers in compliance with the SC obligations. Whilst we recognise that this may have disadvantages for SPs (notably 118 SPs whose brand identity may well be associated with a single number), we consider that these do not outweigh the material drawbacks that an exemption would have for price transparency. We also note that there is potential for TCPs to negotiate the inclusion by the OCPs of particular numbers in bundles, or other discount arrangements in relation to the SC. [✂].

Pricing structure of the SC

Introduction

A21.14 There are a number of different ways in which call charges can be structured. For clarity, when referring to ppc, ppm and set up fee below (and in later sections) we mean the following:

- a price per call ('ppc') tariff indicates the total price charged for a call to a number, regardless of the duration of the call. This is also known as a drop charge, fixed fee or one-off payment which does not change depending on the length of the call;

- a price per minute ('ppm') indicates the price charged for every minute of the call. A price per minute tariff does not reflect the total price of the call. The total price will depend on the duration of the call; and

- a call set-up fee is a one-off charge applied when a call is connected. A separate ppm charge is applied for each minute of the call, in line with the ppm description above.

Summary of our position in the April 2012 consultation

A21.15 We provisionally concluded in the April 2012 consultation that the benefits of allowing a range of different structures in the SC (i.e. ppm, ppc, call set-up fees etc), in terms of flexibility to SPs to support different business models and the efficiency of SPs' prices, were likely to outweigh any potential increase in tariff complexity and associated impact on consumer transparency and awareness.

A21.16 We recognised, however, that there might be billing system issues that would need to be resolved if both ppm and ppc SCs were allowed. We said we would look to industry to identify and seek to resolve these issues, in the same way as we had identified for time of day variations.

[308] Rather than the service in question being offered at a single SC regardless of the caller's OCP, the exemption would mean that the caller would be faced with at least two different prices, the application of which may be dependent on the status of the caller as a subscription or non-subscription customer and the identity of the OCP.

Stakeholder comments

A21.17 The vast majority of stakeholders agreed with the flexibility offered by having both ppm and ppc SCs (including BT, Action4, CWW and UKCTA). UCKTA noted that the need for both these pricing structures was real and it welcomed Ofcom's desire to support that flexibility.[309] The THA, however, was concerned that ppc models could be confusing to consumers.[310]

A21.18 BT reiterated its view that where the SC was ppc it was up to the TCP to ensure that the call was terminated within 60 seconds. Should a call exceed this, it said the OCP must be able to charge the TCP on a ppm basis in order to recover any costs to carry the call beyond the Assumed Handover Point ('AHP'), as these were not recovered via the AC.[311]

A21.19 EE said it did not object to allowing price points for the SC which covered both ppm and ppc charging options. It was concerned that any such options should not result in the OCP being potentially out of pocket. EE emphasised that regardless of the form of the SC, any risk of the SC not covering the TCP/SP costs should lie entirely with the TCP and not the OCP, because the OCP had no control over that element of the call charge. EE expected that Ofcom's legal instruments for the implementation of the unbundled tariff should appropriately protect OCPs in this regard.[312]

A21.20 TNUK welcomed the fact that there did not appear to be any serious opposition to the continuation of both ppm and ppc charging structures (and combinations thereof). It noted that these varied charging structures were a core element of DQ service provision and removing that flexibility would seriously impact service offerings. It noted that 118118 used these different charging structures and it had every intention to continuing to offer such a variety of differently priced services in the future. [313]

A21.21 TNUK said it disagreed with Ofcom's view that the issues of consumer price transparency were the same for unitisation as for time of day variation. It argued that unitisation created even less cause for concern, because whereas ToD variation meant the same number was charged at different rates (depending on the time of day), only one charge is set for a number regardless of the unitisation employed.[314]

Ofcom's response

A21.22 The majority of respondents on this point agreed with our view that no further restrictions on the charging structure of the SC were required, and this is the approach we have therefore adopted (see Section 9).

A21.23 We disagree with THA's view that a total ppc charging structure will be confusing to consumers. This type of charging exists currently, and as highlighted in TNUK's comment, this is not the same as having two different charging rates, the message to consumers could be as simple as "this call will cost you 10p per call plus your

[309] UKCTA, April 2012 consultation response, p.8.
[310] THA, April 2012 consultation response, p.8.
[311] BT, April 2012 consultation response, p.35.
[312] EE, April 2012 consultation response, pp.24-25.
[313] TNUK, April 2012 consultation response, p.32.
[314] TNUK, April 2012 consultation response, p.32.

provider's access charge". We recognise, however, that where calls have a set-up fee plus a different ppm amount (e.g. "calls cost 2p per minute with a 5p connection fee, plus your provider's access charge", the messaging will be more complex than a single amount and this could reduce consumer price awareness. However, given that this message about the SC would be presented to consumers alongside the number, we consider that the impact on consumer price awareness is likely to be more limited than in the case of the AC, for example, which consumers will need to remember at the point of call and therefore simplicity is of greater importance.

A21.24 We agree with the points made by BT and EE that it is for the TCP to set a ppc SC sufficient to cover its costs. As set out in our proposed modifications to the relevant legal instruments (see Section 6), the TCP is responsible for the call from the AHP and must set its SC on this basis. As BT notes, there is a requirement on the TCP to terminate a call after 60 seconds with a ppc SC. We understand that BT's concern about potential costs here relates to where the TCP does not pick up the call from the AHP but from a later point – in that situation the costs involved with that additional conveyancing will need to be recovered. We agree that the OCP should be able to recover any additional conveyancing costs resulting from such a situation. As set out in Annex 23 we expect CPs to agree between themselves how to bill these charges. However, where the call is picked up at the AHP then the OCP's costs should be covered by their AC.

Inclusion of the SC in call bundles

Summary of position in the April 2012 consultation

A21.25 We said in the April 2012 consultation that should an OCP wish to absorb some or all SCs within a bundle we did not consider that this had a bearing on the design of the SC itself, it would be a separate discount offered by an OCP to a customer.[315]

Stakeholder responses

A21.26 EE said it welcomed Ofcom's flexibility in allowing OCPs to absorb the cost of the SC and thus offer the full cost of calls to particular non-geographic number ranges in their bundles for certain number ranges.[316] It said it would severely limit retail pricing flexibility and competition to the detriment of the interests of consumers if OCPs were not given that flexibility. UKCTA also supported this view.[317] CWW stressed that in circumstances where both the AC and SC were included in call bundles, the OCP must still pass the full SC through to the TCP and ultimately SP.[318]

Ofcom's response

A21.27 In line with our proposal in the April 2012 consultation, we are not imposing any tariff principles regarding the inclusion (or not) of the SC in OCPs call bundles. OCPs will however be required to pass through the SC in full to the TCP regardless of whether they include it in bundles or not.

A21.28 This means that OCPs will have the flexibility to decide which, if any, SCs to include within their call bundles. For example they might choose to include the lower rated

[315] April 2012 consultation, Part B, Section 10, paragraph 10.388.
[316] EE, April 2012 consultation response, p.23.
[317] UKCTA, April 2012 consultation response, p.6.
[318] CWW, April 2012 consultation response, p.2.

084/087 SCs but exclude the 09/118 SCs. Unlike the AC, the SC will be made clear to the customer in the SPs advertising material for each non-geographic number and therefore the concern about price transparency which arises where the inclusion of the AC is differentiated by number range does not arise in the same way (see Section 9 where we discuss this issue in relation to the AC). The OCP will still, however, need to ensure that their pricing material clearly explains to the consumer which SCs are included in bundles and the terms of that bundle, in accordance with the transparency requirements under GC10 and GC14.

Time of day variation on the SC

Summary of position in the April 2012 consultation

A21.29 In the April 2012 consultation we said that the potential benefits of time of day variation, in terms of flexibility for TCPs/SPs and the potential for future competition and innovation, outweighed any concerns we had in relation to consumer price awareness. Therefore, we considered it was not appropriate to impose a rule prohibiting such variation in the SC. However, we noted that time of day variations would need to compete with other tariffs in terms of the limited number of price points that would be available for the SC. Therefore any time of day SC price points would need a degree of industry support and would need to be set up in a way which took account of any technical constraints identified as part of the discussions at the NGCS Technical Working Group.[319]

A21.30 We said we would look to industry to agree any time of day variations in the SC and to implement them in a way which avoided unnecessary costs. In other words, we did not consider that regulatory intervention on this matter was required so that CPs remained free to determine themselves whether or not to incorporate time of day variations in their SC pricing. [320]

Stakeholder comments

A21.31 Several stakeholders disagreed with our proposal not to prohibit ToD variations on the SC. The concerns related to two areas: first, a concern about consumer awareness of prices with ToD variations; and second, a concern about the impact of these variations on the minimum number of SC price points.

A21.32 In relation to consumer price awareness, several stakeholders felt that allowing ToD variations would add to consumer confusion (for example THA).[321] Vodafone and O2 considered that ToD variations could undermine, or were inconsistent with, Ofcom's goal of greater simplicity and clarity. In particular O2 noted that such variations would necessitate an additional level of research to be undertaken by consumers in order to make an informed calling decision.[322] BT and Vodafone also noted that there could be confusion because of different CPs having different ToD definitions. BT considered that prohibition of ToD variations would have the benefit of facilitating advertising and making it easier for consumers to understand. It also considered that prohibiting ToD variations would limit possible fraud issues (in

[319] These working groups were held during 2011 – see Annex 14 of the April 2012 consultation for a summary of their outputs.
[320] See paragraphs 10.222 to 10.247 in Part B, Section 10 of the April 2012 consultation for our position on time of day variation in the SC.
[321] THA, April 2012 consultation response, p.8.
[322] Vodafone, April 2012 consultation response, p.20. O2, April 2012 consultation response, p. 16.

particular consumers being charged the wrong rate).[323] Virgin Media were concerned that the structure of the SC was not being constrained for the purposes of simplicity in the same way as Ofcom was proposing for the AC. It considered that the burden of ensuring simplicity was therefore being cast disproportionately on OCPs.[324]

A21.33 In relation to the number of price points, Vodafone and Three noted that each ToD variation would need a price point in its own right, so an SC with a day, evening and weekend variant would use three price points rather than one. They questioned whether that was a good use of the limited number of SC price points and suggested Ofcom should reconsider whether it was really warranted.[325] BT similarly noted that prohibiting ToD variations would help reduce the number of SC price points needed. TNUK said that whilst it supported the service flexibility offered by ToD variations on the SC, it had concerns about the wider consequences of the introduction of ToD variations because it would affect the minimum number of price points. It highlighted that Ofcom had suggested that around 15 price points might be reserved for DQ services, and if ToD variation was permitted the effect could be to reduce choice of price points to just five. It said that as a basic principle, it was more concerned about maintaining a wider range of price points than it was about being able to introduce ToD variation.[326]

A21.34 EE said it was 'surprised' that Ofcom had ignored the recommendations of the Technical Working Group that ToD variations should be prohibited. It recommended that CP or SP requesting ToD variations should be required to first present for consultation a positive cost benefit analysis in support of the ToD variation prior to industry being obliged to consider it in any detail.[327]

A21.35 TNUK also outlined concerns about the complexity of reaching industry agreement on the introduction of ToD charging. It said it would not want industry discussion about agreeing consistent timings and related issues to become an onerous and time-consuming distraction from more important issues. It considered that this was a very real risk and it did not believe that the comparatively marginal benefits of permitting ToD variation would justify the risk of difficulties and delay.

A21.36 However, some stakeholders agreed with our proposal to allow ToD variations. Magrathea noted that ToD variations were important for SPs.[328] CWW also welcomed the flexibility offered by Ofcom's proposal to allow ToD variations. It said this reflected the diversity of needs within the SP community, which was not as relevant in relation to the AC.[329] It also noted its concern that this flexibility could be indirectly restricted by certain OCPs wanting to limit their potential billing costs. It said Ofcom should be careful not to undermine and constrain the needs of SPs, noting that ToD variation was beneficial for those SPs trying to drive volumes at a specific time of day.

A21.37 The Fair Telecoms Campaign agreed that ToD variations could be allowed, provided the SC could still be fully, and clearly, declared to consumers. It noted that consumers were familiar with ToD variation already, particularly on fixed line services, but said consideration needed to be given to what wording SPs will use,

[323] BT, April 2012 consultation response, p.10.
[324] Virgin Media, April 2012 consultation response, Q10.4.
[325] Vodafone, April 2012 consultation response, p.27, Three, April 2012 consultation response, p.11.
[326] TNUK, April 2012 consultation response, p.31.
[327] EE, April 2012 consultation response, p.24.
[328] Magrathea, April 2012 consultation response, p.4.
[329] CWW, April 2012 consultation response, p.10.

because the more different rates and charges applied, the more complex it became.[330]

Ofcom's response

A21.38 In the April 2012 consultation, our view was that the impact of SC ToD variations on consumer price awareness was likely to be limited, because it would be presented alongside the number in SP advertising. However, a number of respondents make the point that that advertising message would be more complex and lengthy where ToD variations are involved, e.g. the message would have to say something like "this call will cost you 10p during the day, and 5p in the evening, plus your phone company's access charge". A further risk of confusion arises because there is no standard definition of the different times of day that prices can vary by. For example, one SP might define 'evening' from 6pm, whereas another might start it from 7pm. This means the advertising message would need to be very specific about the times of day at which different prices applied. This is likely to make it more difficult for consumers to understand, as they will need to manage more information, and therefore it could reduce consumer price awareness. In addition, a further issue, which we did not refer to in the April 2012 consultation, is that this additional complexity in the advertising message could increase advertising costs for SPs, because the length of the message they will need to print alongside the number will be longer and take up more space.

A21.39 Only Magrathea and CWW indicated that ToD variations remain important to SPs. TNUK, an SP, noted that they offered 'marginal benefits'. We asked Magrathea and CWW to provide further information on their SP customers to whom ToD variations could be important. CWW said it believed that its SP customers who had expressed a preference for ToD variations were in a minority and that, considering the extent of the changes that would be introduced with the unbundled tariff it was not aware of any reason why a common migration away from ToD could not be achieved. Magrathea said ToD variation was needed because non-geographic numbers were translated into geographic numbers for termination[331], and termination rates for these ranges almost invariably had ToD variations.

A21.40 Although there has been some support for the view set out in the April 2012 consultation that ToD variations in the SC could bring benefits to SPs in terms of the flexibility of pricing, this has been limited. As noted above, evidence from one TCP suggests that only a minority of SPs would favour the option. The fact that only one SP - TNUK - endorsed the proposal in its response (and, furthermore, did so with significant reservations) appears consistent with this lack of support amongst SPs.

A21.41 Instead, the weight of opinion on this issue has been in relation to the harm that ToD variations may lead to, namely the negative impact on consumer price awareness. The costs for SPs of advertising prices including ToD variations and the likely difficulties of implementing ToD variations in practice have also been highlighted.

A21.42 We recognise, as noted by Magrathea, that in some cases, TCPs translate non-geographic numbers into a geographic number that is not located on their own

[330] Fair Telecoms Campaign, April 2012 consultation response, p.4.

[331] These numbers are sometimes referred to as 'Number Translation Services' or 'NTS' for this reason. The calls ultimately terminate at a geographic location and are therefore 'translated' onto geographic numbers.

network for termination. In these cases they will face different costs of termination according to ToD as a result of ToD variation in geographic termination rates, which they will not be able to reflect in their SC. However, we expect these TCPs to take account of traffic distribution over ToD, and therefore the likely average termination cost they will face, when bidding to host an SP on its network.

A21.43 Accordingly, we have concluded that allowing the SC to vary by ToD has drawbacks, which outweigh the potential benefits we identified, for which there has only been muted stakeholder support. Therefore, as set out in Section 6 we have included a tariff principle which prevents ToD variations on the SC in our proposed modifications to GC17.

Maximum SC caps for 084 and 087

A21.44 Where we refer to ppc/ppm or call set-up fees in the following discussion we are using the definitions set out in paragraph A21.14 above.

A21.45 This part of the Annex responds to the comments we received in response to our proposal in the April 2012 consultation to cap the maximum SC on the 084 and 087 number ranges. As regards our proposals for maximum SC caps for the 09 and 118 ranges, these formed part of a separate consultation which we published in July 2012 (and we deal with these separately in Annex 22).[332]

Summary of our position in the April 2012 consultation

A21.46 In the April 2012 consultation, we saw value in setting a maximum SC charge for the 084/087 ranges. However, we emphasised that the intention of this maximum would not be to restrict revenue and address weak competition, but instead to enable consumers (and SPs) to understand the likely price of calling services on a given non-geographic number range.

A21.47 We highlighted evidence from our consumer surveys which indicated that at least some consumers were aware of the differences between the costs for 084 and 087 calls. We considered that preserving that structure was useful, and aligned well with the consumer's capacity to remember those distinctions. We therefore proposed to set SC maxima for those number ranges.

A21.48 In terms of how to approach the level of the SC maxima for these ranges, we proposed to use, as a starting point, the current maximum termination rates paid by BT for calls originating on its network for the 084 and 087 ranges.[333]

A21.49 We noted that BT's current termination rates for ppm calls included revenues generated by call set-up fees which applied to these calls. However, those call-set up fees are not included in the pricing guidance on BT set out in the Numbering Plan. Therefore the maximum termination rates and total retail prices for, for example, 084 numbers are above the 5p pricing guidance applying to BT on that range in the Numbering Plan. The same does not apply to ppc rates, because BT do not charge a set-up fee on these calls, therefore the ppc termination rates are in line with the Numbering Plan guidance.

[332] The July 2012 consultation, http://stakeholders.ofcom.org.uk/consultations/service-charge-caps/

[333] This was the g6 5p chargeband for 084 and the g7 10p chargeband taken from BT's NTS Calculator which is regulated under the NTS Call Origination Condition. See Table 10.4 of the April 2012 consultation (Part B, p.152). Historically, the same termination rate has been paid by other call originators for the same call types.

A21.50 We noted that we wanted to limit negative impacts on TCP/SP revenue in setting these maximum caps, in order to limit potential disruption and migration away from number ranges. Therefore, we proposed to keep the caps in line with the current maximum BT termination rates, which would enable a revenue-neutral approach for TCPs/SPs.

A21.51 We also considered whether, given the difference in ppm and ppc termination rates, we should set different caps for the different call structures.[334] We considered, however, that it would be simpler to have a single standard maximum rate which applied to both ppm and ppc charging. We therefore proposed to round it up to the maximum ppm BT termination rate, rather than rounding it down to the ppc amount. We noted that there was a risk that this approach could lead to price inflation if SPs selected a higher price point on these ranges than they might otherwise have done. We considered, however, that the requirement for the SP to advertise their SC and the greater consumer awareness of prices would reduce the incentives for the SP to select a higher price point.

A21.52 On that basis we proposed the following SC caps (for both ppm and ppc charges):

- 5.833 pence (or 7 pence including VAT at 20%) for the 084 number range; and
- 10.83 pence (or 13 pence including VAT at 20%) for the 087 number range.

Stakeholder comments

A21.53 Virtually all stakeholders supported Ofcom's proposal to set maximum caps on the 084 and 087 ranges for the purposes of protecting the identity of the number ranges, including Action4, Magrathea, BT, the mobile OCPs, Virgin Media, UKCTA and CWW. EE said there was real value in maintaining tariff bands for the SCs based on number range to assist consumers in identifying the likely cost. It said that such tariff banding could lessen the risk of bill shock and enhance consumer confidence in NGCs.[335] O2 similarly noted that the caps would provide pricing consistency to consumers enabling them to better gauge the cost of an NGC whether or not they had direct access to actual price messages.[336]

A21.54 Vodafone also agreed that the proposed caps would help distinguish 084 and 087 from the generally higher SCs in the 09 and 118 ranges. It also agreed with the proposal to impose the caps on the second digit level (i.e. 084 and 087) because it said customers have a better understanding of that distinction rather than the third level (i.e. 0845 vs. 0844). The Fair Telecoms Campaign ('FTC') noted that without a cap on the SC, the 084 range could become a haven to high SCs.[337]

A21.55 These respondents also agreed with Ofcom's proposed approach of setting the levels based on current wholesale rates. UKCTA welcomed the clarity that the SCs would be set with current interconnect outpayments in mind.[338] FCS said it was imperative that SCs were set at the prevailing interconnect rates.[339] Magrathea also agreed with the approach of setting the caps using existing wholesale rates, it noted that this might lead to price inflation but noted it was the best way to avoid

[334] This is the approach that we have adopted for the 09 SC caps. See Annex 22.
[335] EE, April 2012 consultation response, p.25.
[336] O2, April 2012 consultation response, p.17.
[337] The Fair Telecoms Campaign, April 2012 consultation response, p.5.
[338] UKCTA, April 2012 consultation response, p.7.
[339] FCS, April 2012 consultation response, p.4.

wholesale migration by SPs.[340] CWW noted that Ofcom's conclusions on the appropriate caps reflected its own calculations and incorporated the price inflation and additional charging mechanisms that had occurred since the original BT-centric retail prices were introduced. It noted that its support for the unbundled tariff was based upon revenue neutrality to terminating SPs.[341]

A21.56 A number of respondents highlighted that the caps would need to be set at the rates that were current at the time of implementation, for example ITSPA noted that the SC caps should be the same as wholesale prices on the day of implementation in order to avoid additional complexity and hassle.[342] [✂] also said that conditions should be met that ensure it would not have to account for or adjust for any changes as a result of the BT Retail NTS Formula between Ofcom's statement and the final implementation date.[343]

A21.57 Some respondents also suggested that there would need to be a regular review of the caps. ITSPA said that the caps should have some form of periodic review or indexation to avoid their erosion by inflation.[344]

A21.58 Surgery Line said that, in principle, it supported the proposed maximum SC caps on the basis that they would provide transparency to the consumer. However, it noted that the proposed cap of 5.833ppm for 084 did not indicate how much would be passed on to the SP and so it could not determine whether the model for enhanced telephony in the NHS would continue to be viable.[345]

A21.59 There was concern from some respondents that the caps could appear to consumers to be an increase in prices and this could cause confusion. For example, FCS highlighted that the price of 0845 calls could rise considerably for some consumers. Surgery Line noted that in the event that an SC was set at 5.833ppm and an OCP had an AC of 5ppm, it would increase the cost of the call to the consumer well above current rates. THA said some of its members were concerned that the proposed cap for 087 was too high and others felt that 084 should be the same as geographic rates. In particular the THA was concerned that the caps were higher than what consumers were currently paying from landlines, and consumers would not therefore end up paying less. THA believed that further consideration should be given to the SC cap, in particular taking into account the combined cost of the AC and SC to ensure that the overall cost was competitive.[346]

A21.60 THA said it would be more appropriate to consider options for capping the 084 costs at a lower level, or to consider the 084 SC as costing 0-5ppm and 087 as costing 6-13ppm. It believed this would provide more distinction to the branding of the two ranges and allow consumers to associate 0845 (for example) as costing less than 087 numbers.[347]

Ofcom's response

A21.61 A number of stakeholders have suggested that we should ensure that the level of the cap reflects the termination rates at the time of implementation, rather than the

340 Magrathea, April 2012 consultation response, p.4.
341 CWW, April 2012 consultation response, p.11.
342 ITSPA, April 2012 consultation response, p.2.
343 [✂]
344 ITSPA, April 2012 consultation response, p.2.
345 Surgery Line, April 2012 consultation response, p.5.
346 THA, April 2012 consultation response, pp.9-10.
347 THA, April 2012 consultation response, p.11.

publication of the final statement. Whilst we note there is potential for termination rate changes during the implementation period, we consider these are most likely to affect the 0845 number range. In contrast to other ranges, calls to 0845 are usually included in BT's retail bundles and therefore the termination rates have historically been subject to greater changes (because of the link between BT's retail price and termination rates).[348] Whilst other 084/087 numbers are also subject to the NTS Call Origination Condition, BT's retail prices for these calls have remained relatively stable (at least in comparison to 0845 numbers). We note that calls to 0845 numbers are generally charged at the lower end of the range for 08 numbers. As a result we consider that, presuming SCs are set in line with current revenues, the SCs for the 0845 range are unlikely to be affected by the 7p cap on 084 numbers (because they are likely to use much lower SC price points). We therefore do not consider it likely that changes in the termination rate for 0845 calls during the implementation period would have any bearing on the appropriate level of the SC cap.

A21.62 Our recent consultation on the fixed narrowband market review ('the NMR consultation') included proposals for wholesale call origination rates which are likely to impact on the level of termination rates for these number ranges during the transitional period (before the implementation of the unbundled tariff).[349] However, our analysis indicates that the implications of this on the termination payment made by BT to other TCPs is likely to be a reduction of around 6% of the current payment amount for the 0845 range and 1-7% for the other non-geographic numbers within the NTS Call Origination Condition.[350]

A21.63 Therefore, we consider that any changes during the period between the final statement and implementation are likely to lead to a reduction in termination rates. Consequently, setting the level of the 084/087 SC caps at the time of the final statement is unlikely to have any negative impact on existing TCP/SP revenues at the time of implementation. To illustrate, if a TCP/SP on a 0845 range is currently receiving around 1.5ppm, at the time of implementation of the unbundled tariff this may have reduced to around 1ppm. If they want to maintain their current business model, they will therefore look to be on an SC price point of 1ppm. The fact that the SC cap is set at 7p will therefore not have an impact on these TCPs/SPs. Our purpose in setting the SC caps is not to control, or curtail TCP/SP revenue but rather to protect the identity of the number ranges to improve consumer price awareness.

A21.64 In any case, there are likely to be practical difficulties in leaving open the exact level of these SC caps until the final implementation date - in particular it could delay discussions between SPs and their TCPs about what SC will apply to their service. This process needs to happen as soon as possible to allow SPs to make decisions about whether they want to stay on their number ranges.

A21.65 For similar reasons, we are not setting a specific process for review of these caps. To achieve simplicity of prices, and allow consumers time to develop an understanding of the different number ranges, it is preferable to keep these prices

[348] This is due to the NTS Call Origination Condition and the formula which it sets for calculating the amount of BT's retail revenue from non-geographic calls that is passed to TCPs. 0870 numbers are also included in BT's call bundles but these numbers are not part of the NTS Call Origination Condition.

[349] Ofcom, *Review of the fixed narrowband services markets*, 5 February 2013, available at: http://stakeholders.ofcom.org.uk/binaries/consultations/nmr-2013/summary/NMR_Consultation.pdf

[350] See paragraph 11.61 on p.232 of the NMR consultation.

relatively stable. If we set a mechanism to periodically review the level of cap, consumers and SPs would find it more difficult to become familiar with the prices associated with specific number ranges. We recognise that inflation may erode the value of the SC caps, which, over time, may justify some form of periodical upwards review of the level of the cap. However, we also note that SPs' costs can frequently move downwards as well, justifying changes to the level of the cap in the opposite direction. Unlike the 09 range, where a case for a review of the cap may be stronger (see Annex 22 where we discuss this point), the 084 and 087 ranges are not generally used for direct revenue sharing to support non telephony services. Prices on the 084/087 ranges have historically been subject to fewer changes than the 09 and 118 ranges and SPs may be more reluctant to make changes to their SCs given that they will need to change their advertising material. Nevertheless, we accept that there might be a need to review the levels of these caps in the future.

A21.66 We note that it is incorrect to assume that the SC caps we have set will necessarily result in prices higher than those existing on landlines, as suggested by THA. Firstly, we are setting the maximum caps for SCs on the 084/087 number ranges based on the maximum existing termination rates. At present most termination rates to these numbers are below these maximum levels and therefore the SCs for 084/087 numbers are also likely to be lower than the maximum SC caps, because TCPs/SPs are likely to choose SC price points that reflect their existing revenue levels, rather than choosing the maximum SC available to them.

A21.67 Furthermore, we do not think the SC caps should lead to price increases, particularly not for those already charging the maximum termination rate. This is because the caps have been set on a revenue-neutral basis. This means that the revenues that TCPs currently obtain from hosting SPs on these numbers will remain unaltered by our cap and therefore should reduce the risk of disruption to SPs operating on these number ranges. Thus, as described above, the SC caps we are implementing take into account the additional call-set up fees that BT currently levies on non-geographic calls to these numbers (because the termination rates BT pays to TCPs include an allocation of revenue arising from the call set up fees).

A21.68 In contrast, if we were to set a cap below the existing maximum termination rates, then the reduction in revenue available to TCPs (and hence SPs) on these ranges may lead some SPs to migrate to a different number range, most likely one with a higher SC. This would generate additional migration costs and would be likely to have a negative impact on service availability. In addition, it would give greater flexibility for a price increase, with consumers ending up paying more to access that service.

A21.69 In respect of the potential for perceived price inflation, as described above we are not changing the maximum termination rates available to TCPs on these ranges now. The increase in price transparency that is likely to result from our changes (i.e. unbundling of the SC and the associated publication requirements we are imposing) is not likely to be perceived as price inflation by consumers. To the contrary, currently consumer price awareness of the prices of calls to these number ranges is poor, and we have evidence that in general consumers tend to overestimate prices of calls to 084 and 087 numbers (see Section 4). Instead, consumers will now be presented with a clear message about the exact SC they will pay for a particular call, regardless of which OCP they use to make that call. Our expectation is that, overall, this will lead consumers to discover that prices for calls to these ranges are cheaper than they believed rather than higher. We have addressed THA's comments about the overall level of prices in Annex 19.

A21.70 In relation to THA's proposal to set a lower bound (i.e. a minimum as well as a maximum) on the SC for each number range, we consider that this is not necessary to achieve the policy objective of reducing consumer confusion and carries with it a number of disadvantages (most obviously, by preventing an SP from offering access to its services on a given number at a lower price than the minimum, competition and the interests of consumers would be harmed).

A21.71 Finally, in response to Surgery Line's comment about the proportion of the SC which will be passed on the SP, the SC represents the amount retained by both the TCP and SP (with the AC being retained by the OCP). The question of how much of the SC will be passed on to the SP by their TCP will depend on the individual hosting contract to which the SP has signed up.

Inclusion of VAT

Summary of our position in the April 2012 consultation & July 2012 consultation

A21.72 In the April 2012 consultation we noted that the SC price advertised to the consumer was required to be inclusive of VAT in the vast majority of instances.[351] We noted that currently the caps on BT prices in the Numbering Plan were set exclusive of VAT, and applying the same approach to SC caps would allow TCPs/SPs the flexibility to decide how to implement a change in the VAT rate into their SC prices. We noted that whilst we would seek to set the SC caps at a level which, when VAT was included, allowed them to be expressed at round numbers, if the VAT rate were to change in future it might result in SCs that were not expressed as round numbers.

A21.73 We noted, however, that whilst setting the SC caps inclusive of VAT in the Numbering Plan would mean we could ensure they were set at round numbers, if the VAT rate were to change in future, it would either require Ofcom to adjust the level of the caps, or it would lead to arbitrary changes in revenue for SPs.

A21.74 We considered that it was not clear that round numbers were essential for clarity of price information for consumers. We therefore proposed to set the 084 and 087 SC maxima exclusive of VAT. We said this would remove the impact of VAT fluctuations on the levels of the SC and provide certainty to industry as to the maximum for a given number range.[352]

A21.75 In the July 2012 consultation we proposed that the 09 and 118 SC caps should be set exclusive of VAT for the same reasons.[353]

[351] For example, as part of the Advertising Code administered by the ASA, there is a requirement for all prices presented to consumers in advertising to be inclusive of VAT, http://www.cap.org.uk/Advertising-Codes/Non-broadcast-HTML/Section-3-Misleading-advertising.aspx . See clause 3.18. In addition, see the Department for Business Innovation and Skills, *Guidance for traders on good practice in giving information about prices*, paragraph 2.3.1, http://www.bis.gov.uk/files/file46254.pdf. These requirements do not apply, however, where an advertisement is aimed primarily at businesses.
[352] April 2012 consultation, Part B, Section 10, pp.148-151.
[353] July 2012 consultation, pp.38-39.

Summary of stakeholder responses to the April 2012 consultation

A21.76 Most respondents agreed that the caps should be specified in the Numbering Plan exclusive of VAT. CWW said that industry's experience of the last VAT change demonstrated that setting price maximums inclusive of VAT was problematic when the tax rate was amended, both in terms of the regulatory changes needed to amend the Numbering Plan in a timely fashion and also from the perspective of the impact upon SPs.[354] Magrathea similarly considered that TCPs should be allowed flexibility to decide how to reflect VAT in SC rates. [✂] said that SPs should be free to advertise inclusive or exclusive of VAT as they saw fit, subject to the applicable legislation.[355] FTC argued, however, that any VAT inclusive prices should be round numbers, regardless of the VAT rate.[356]

A21.77 Surgery Line said it would like to see a level playing field across providers, to ensure that number ranges such as 01, 02, 03 should be treated in the same fashion as revenue sharing numbers, i.e. all consumer facing services would be expected to use VAT inclusive values so as not to create a façade between different number ranges.[357]

A21.78 THA said that SC price points should be kept as whole number increments inclusive of VAT as these would be easier to remember. It noted concern that with VAT-exclusive prices, future changes to VAT could be used as an excuse to increase call costs above and beyond the amount of the VAT increase in order to ensure costs could be expressed as round numbers.[358]

Summary of stakeholder responses to the July 2012 consultation

A21.79 The CAB said it was unconvinced by some of the arguments Ofcom had put forward and felt the consultation was unclear. It said the reference to consumer awareness of retail prices seemed disingenuous when the majority of prices were presented to consumers inclusive of VAT. It noted that if the £3 cap was exclusive of VAT, then the actual amount paid by the consumer would be £3.60 and presenting a VAT exclusive cap could therefore lead to consumer bill shock. It said that clarity achieved for consumers would be improved by including VAT in all the costs and caps which applied to phone calls.[359]

A21.80 The majority of other respondents agreed that the caps should be set exclusive of VAT (including Telecom2, BT, Sky, TalkTalk, UKCTA, AIME and ITV).

Ofcom's response

A21.81 As set out in Section 9, we intend to set the SC caps exclusive of VAT in the Numbering Plan. As highlighted by stakeholder comments, this will avoid any confusion if VAT rates were to change as SPs can decide how to take into account that rate change.

A21.82 To be clear, SCs shall be advertised to consumers inclusive of VAT. This is a general requirement that follows from the UK Advertising Codes administered by

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[354] CWW, April 2012 consultation response, p.10.
[355] Magrathea, April 2012 consultation response, p.4.
[356] The Fair Telecoms Campaign, April 2012 consultation response, p.5.
[357] Surgery Line, April 2012 consultation response, p.5.
[358] THA, April 2012 consultation response, p.8.
[359] CAB, July 2012 consultation response, p.4.

the ASA. Only the caps that we are setting in the Numbering Plan (and which we do not expect consumers will routinely refer to) will be expressed exclusive of VAT.

A21.83 Our response to stakeholder comments about the level (and need for) 09 SC caps is set out in Annex 22. We accept, as observed by the CAB, that there was some ambiguity in the July 2012 consultation as to whether the proposed caps of £3pm and £5pc were inclusive or exclusive of VAT. Our intention was that the £3 and £5 caps were exclusive of VAT and this would therefore be the level set in the Numbering Plan. This means that once VAT is included, the maximum SC as advertised to the consumer would be £3.60 and £6 respectively.[360]

A21.84 For the reasons set out in Annex 22, our current position is that setting the caps at £3 and £5 exclusive of VAT remains appropriate. Nevertheless, we also recognise in that Annex that, given the ambiguity in the July 2012 consultation, some stakeholder responses on this issue may not have reflected a correct understanding about the actual level of the SC caps being proposed. Accordingly, if stakeholders consider that they would have responded differently if they had understood that the level of the caps excluded VAT, we are inviting them to comment specifically on the proposed level of the SC caps in response to our consultation on the modifications to the Numbering Plan (see Section 6).[361] We will take a final decision on the level of the 09 caps (i.e. whether they should be £3/£5 inc VAT or £3/£5 ex VAT) having considered any comments we receive on this issue when finalising the modifications to the General Conditions and the Numbering Plan in summer 2013.

A21.85 As indicated above, we are setting the level of these caps at rates which can be expressed as round numbers using the current rate of VAT. We note FTC and CAB have argued that prices should be presented to consumers as round numbers. Whilst we can see potential advantages, we are not aware, however, of any evidence that round numbers are essential for clarity of price information to consumers, and we note that existing prices for geographic calls can often be expressed to two decimal places.[362]

A21.86 THA notes a concern about potential price inflation in the event of a VAT rate change, because of SPs choosing to round up their SCs to a higher rate which is a round number. We accept that this is a potential risk. However, we believe that the benefits that VAT-exclusive caps provide in terms of revenue certainty to SPs, and reduced regulatory burden (i.e. it would not be necessary for SPs to be dependent on Ofcom to consult on changing the SC caps if VAT rates were to change), outweigh this potential risk.

Number of SC price points

Summary of position in the April 2012 consultation

A21.87 In reviewing the responses to the December 2010 consultation, it became clear that a significant driver of implementation costs was likely to be the costs of upgrading OCP billing systems to ensure that SCs were billed correctly. We found that a

[360] Based on the current rate of VAT at 20%.

[361] Note that we are no longer proposing an SC cap for the 118 number range. See Annex 22 where we set out our reasoning for this in detail.

[362] For example Virgin Media specifies retail geographic prices to two decimal places – it charges 9.94ppm for daytime calls - http://store.virginmedia.com/content/dam/eSales/Downloads/011112%20Residential%20Cable%20V1.pdf

significant factor affecting the level of those costs would be the number of SC price points. The greater the number of price points, the more sophisticated (and costly) the billing systems would need to be. We highlighted that there were currently more than 300 retail BT price points for non-geographic numbers. But while this led to a similar number of wholesale termination charges, many OCPs did not replicate BT prices or the diversity of price points in their retail pricing, instead they grouped them on to a smaller number of retail price points.

A21.88 However, under the unbundled tariff structure there would be a requirement for the OCPs to ensure consumers were billed the same SC for a particular number, therefore many OCPs would need to be able to bill a greater number of price points than at present. This change would require additional set-up and operational costs.

A21.89 In the April 2012 consultation we therefore proposed that it was appropriate to limit the minimum number of price points we would oblige OCPs to accept. There was consensus within the industry that some simplification of the existing large range of price points was appropriate. We described our proposal in terms of acting proportionately, i.e. to set a number of price points for which the costs were reasonable but which still enabled sufficient competition and innovation on price among SPs.

A21.90 In Annex 19 of the April 2012 consultation we set out more detail on the potential costs involved, particularly for mobile OCPs, in having to bill a larger number of price points. On the basis of this evidence, our provisional view was that a limit on the minimum number of price points of between 60 and 100 appeared reasonable. We considered that a restriction of the number of SC price points in this range balanced the desire for future growth, competition and innovation against the potential for additional OCP billing costs.[363]

Stakeholder comments

A21.91 Stakeholders raised a number of points on this issue and we have divided them into the following areas:

- appropriateness of a minimum obligation;
- impact on OCP billing systems;
- level of minimum number of SC price points; and
- transition to minimum level and process for future review.

A21.92 We have responded to stakeholder comments under each heading below.

Appropriateness of minimum obligation

A21.93 AIME disagreed with the proposal to have a minimum number of SC price points because it was concerned that it would restrict SPs pricing flexibility and innovation and would run counter to Ofcom's aims.[364] BT noted similar concerns that restricting the number of SC price points could limit SPs' ability to innovate, grow charitable services and encourage investment.[365] It said there was a need to balance

[363] April 2012 consultation, Part B, paragraphs 10.346 to 10.367, pages 153 to 156.
[364] AIME, April 2012 consultation response, p.2.
[365] BT, April 2012 consultation response, p.12.

competition and innovation on one hand and ability to administer the scheme, deliver it technically and avoid confusing consumers on the other. It was not fully convinced that a limit was needed.

A21.94 However, most other respondents agreed that there should be a restriction on the number of SC price points. The mobile OCPs, Verizon, and Virgin Media amongst others agreed that a limit on the number of SC price points was necessary.[366] EE and Vodafone in particular noted the operational and cost benefits of having a minimum number.[367] [✂] said that, assuming the most commonly used price points would remain in place, it welcomed the corresponding simplification in its origination business.[368]

A21.95 Several respondents said that reducing the number of price points could have benefits for consumer price transparency. Action4 said fewer price points would mean less confusion for consumers.[369] TalkTalk also said that reducing the number of price points could help consumer understanding of charges.[370] Surgery Line supported the rationalisation of price points, on the basis that it would improve price clarity for consumers. UCKTA, however, noted that with a clear and consistent pricing message, and the number ranges themselves providing an indication of the SC, the need to reduce the number of chargebands diminished.[371]

A21.96 A few respondents, whilst recognising that a minimum number of SC price points might be needed, noted similar concerns to BT and AIME about the impact on competition. CWW and UKCTA, for example, acknowledged that there was scope to rationalise the current plethora of price points based primarily upon traffic volumes to each price point. They said Ofcom should recognise, however, that reducing the number of prices points to too low a level would potentially have a detrimental impact on the availability of services and ultimately consumer choice.[372] CWW also added that too aggressive a limit would unduly limit the commercial freedom of SPs to innovate and could remove niche business models from the market.[373] TNUK similarly said Ofcom should bear in mind that one of its fundamental objectives of unbundling was to address the vertical externality and thereby give SPs a greater control over retail pricing. It said that objective could not be realised if SPs were materially constrained in the pricing that they could offer. [374]

Impact on OCP billing systems

A21.97 [✂]. EE said that the management of price points was a manual process and therefore the more price points there were, the more resource intensive it was to manage. It believed the restriction should be set at the lower end of the range, i.e. 60.[375]

A21.98 Vodafone similarly noted that the number of price points to be supported remained an important cost driver, in particular. It noted that ongoing maintenance costs could

[366] Verizon, April 2012 consultation response, Q10.7. O2, April 2012 consultation response, p.17.
[367] Vodafone, April 2012 consultation response, pp.26-27. EE, April 2012 consultation response, p.24.
[368] [✂]
[369] Action4, April 2012 consultation response, p.5.
[370] TalkTalk, April 2012 consultation response, p.2.
[371] UKCTA, April 2012 consultation response, pp.7-8.
[372] CWW, April 2012 consultation response, p.10.
[373] CWW, April 2012 consultation response, pp.11-12, UKCTA, April 2012 consultation response, pp.7-8.
[374] TNUK, April 2012 consultation, pp.36-37.
[375] EE, April 2012 consultation response, p.26.

double between the lower and upper bounds proposed, so any decision to expand the number of price points should not be taken lightly. [376]

A21.99 On the other hand, TNUK believed the impact of the complexity of price points on OCPs billing systems was fairly marginal. It questioned whether an additional 40 or 50 price points on top of the 100 already proposed by Ofcom was likely to make any difference to OCPs billing costs. Its view was the adverse impact on competition and consumers of restricting service provision by having too few price points was far greater than the negligible impact on OCPs of having to add a few more price points to their billing engines. It said that Ofcom's decision should be based primarily on the protecting the current and future needs of consumers, rather than minimising the marginal costs of OCPs.[377]

Level of minimum number of price points

A21.100 Verizon, Vodafone, O2 and Virgin Media agreed that a minimum number of SC price points of somewhere between 60 and 100 appeared reasonable.[378] FTC said the objective should be to keep the list of price points as short as possible.[379]

A21.101 Several CPs, including CWW, ITSPA and UKCTA noted that the vast majority of existing traffic was grouped into a small number of price points. [380] [✂] said it only commonly used 10 price points for its terminating business, plus 0845, 0870 and Freephone.[381] Three highlighted that 34 price points would currently serve more than 90% of all NGCS traffic, and therefore a limit of 60 would still provide SPs with 26 additional price points to use. [382] It argued that the number of SC price points should not therefore exceed 60; this would provide SPs with sufficient flexibility without overcomplicating the system and imposing disproportionate billing system costs on OCPs.[383] FCS, however, said some of its members had highlighted that the underused price points were due to market failures under the current regime where there was no incentive to select a number range at a price point which was significantly below the maximum, because mobile operators often charged above that maximum in any case.[384]

A21.102 Other respondents were concerned about the effect of too strict a limit on the number of price points on SPs. Magrathea accepted that the number of SCs could not be infinite, however, it expected the overall number to be at the upper end of Ofcom's estimate.[385] FCS also highlighted concerns from its members that the limited number of proposed price points for higher value PRS ranges would not provide any flexibility for a competitive environment, which could lead to further migration to mobile voice shortcodes.[386]

A21.103 TNUK said Ofcom should adopt a cautious approach, which would point towards the adoption of 100 price points rather than 60, possibly even 150, because it did not believe the increase would have a material impact on the OCPs. It highlighted

[376] Vodafone, April 2012 consultation response, pp.26-27.
[377] TNUK, April 2012 consultation, pp.36-37.
[378] Verizon, April 2012 consultation response, Q10.7. O2, April 2012 consultation response, p.17.
[379] FTC, April 2012 consultation response, p.5.
[380] CWW, April 2012 consultation response, pp.11-12.
[381] [✂]
[382] Three, April 2012 consultation response, p.12.
[383] Three, April 2012 consultation response, p.12.
[384] FCS, April 2012 consultation response, p.4.
[385] Magrathea, April 2012 consultation response, Q10.7.
[386] FCS, April 2012 consultation response, p.4.

that if Ofcom was to maintain 20p increments for charges above £1.50 (which it said it considered necessary as a minimum), it conservatively estimated that around 80 additional price points would be required for DQ and 09, covering ppc and ppm, in order to reach the higher cap level that Ofcom might be considering for these ranges. [387] TNUK also argued that 15 price points was not appropriate for DQ because it would be far too limited, even taking into account the fact that DQ could use all available price points. It highlighted that no-one could predict at this stage what services might be developed in the future and what charging structures they might require. It said it therefore could not say definitively whether 60-100 was an appropriate range of price points, because it did not know the commercial strategies and objectives of all other NGC SPs who would share those price points. [388]

Transition to minimum SC price points and future changes

A21.104 A number of stakeholders also commented on the transition to a smaller number of price points, as well as the question of how long the limit would apply. TalkTalk said it was important that the transition from the current larger set of price points was managed carefully whilst taking into account legitimate commercial interests from all stakeholders concerned. It noted that although most traffic would sit on a relatively small number of price points, there were valuable and popular services that were provided on more specific price points. It said that the migration to a reduced number of price points would need to take into account the impact on customers who currently valued those services and made sure that they could continue to access them at a reasonable and similar price.[389]

A21.105 TNUK said that, crucially, Ofcom gave no indication over what period of time it expected the price points would apply and how or in what way they would be reviewed. For example, it said that 60-100 price points might be sufficient for the next 2-3 years but it was unlikely to be sufficient over the next 10-15 years. TNUK said without further details on how the allocation and removal of price points no longer in use would work it could not state precisely how many price points were required.[390]

A21.106 [✂] said that there had to be a sufficiently well articulated process, governed by Ofcom, for creating new chargebands to allow for unforeseen future need.[391] ITSPA also said there needed to be a robust process, with the right governance, to ensure equivalence for the addition of new price points, to ensure competition and innovation were not reduced.[392]

A21.107 EE said the basis on which Ofcom would enforce the overall cap on the total number of SCs was not clear, which meant that any changes to the overall cap would potentially be taken on an opaque basis on request by TCPs. EE said that OCPs would need to undertake long term billing system capex in order to service the particular number of price points, and would potentially need notice of changes here over years rather than the usual NCCN/OCCN type timescales.[393]

[387] TNUK, April 2012 consultation, pp.36-37.
[388] TNUK, April 2012 consultation, pp.36-37.
[389] TalkTalk, April 2012 consultation response, p.2.
[390] TNUK, April 2012 consultation, pp.36-37.
[391] [✂]
[392] ITSPA, April 2012 consultation response, p.2.
[393] EE, April 2012 consultation response, p.26.

Ofcom's response

A21.108 As set out in Section 9 we consider that OCPs should be required to bill a minimum of 100 price points. We are proposing that OCPs should be ready to bill 80 price points when the unbundled tariff is implemented and a further 20 price points 12 months later. We have responded to the specific stakeholder comments under each of the topic headings below.

Appropriateness of a minimum requirement

A21.109 Under the existing NGCS framework, TCPs have been able to select any price point by approaching BT to get that price point set up on its network. BT has tended not to refuse these requests, which has resulted in a proliferation in price points (there are now more than 300). Some of these prices are very similar, with a difference of only half pence or less in some cases. Other than the stakeholder responses which expressed concerns about constraints on the number of SC price points (and which we discuss below), the available evidence suggests that such a wide range of different prices is not necessary for SP business cases nor contributes meaningfully to competition or consumer choice. Our analysis of call traffic on the existing chargebands for non-geographic calls in 2011 found that over 95% of call minutes were in the top ten chargebands for the 08 ranges, and over 90% of call minutes were in the top twenty chargebands for the 09 ranges. This suggests that competition (and consumer demand) currently focuses on a relatively narrow group of price points.[394]

A21.110 As noted, a number of stakeholders (including BT, AIME, CWW, TNUK and UKCTA) expressed concerns about SP pricing flexibility and competition. We recognise that having a minimum number of SC price points will reduce pricing flexibility. However, in practice we do not expect this to have any adverse effect on competition or consumer choice. First, as noted above, the extent to which SPs make use of the current wide range of prices is limited. Second, the effects of the SP's pricing flexibility, in terms of competition and consumer benefits, are muted under the current system. That is because the price point which an SP chooses is not actually the price which is charged to consumers (other than those calling from a BT line) and the SP cannot clearly advertise that price and compete on the basis of it. We also know from our research that consumers do not recall or understand the existing price differentiation offered. We expect both of these adverse effects to be ameliorated with the introduction of the unbundled tariff so that both competition and consumer choice should be improved, even though the range of SC price points is likely to be more limited than at present.

A21.111 In respect of this last point, we have carried out a further analysis of call volumes on different chargebands (set out in more detail in paragraphs A21.122 below) and are satisfied that 100 price points will provide sufficient variation in the system to allow SPs to differentiate their services as well as providing a range of revenue levels to meet existing and expected future service requirements. In response to TNUK's comments about the vertical externality, we accept that having a minimum number of price points means that that this externality is not completely removed. However, it is mitigated by the fact that SPs will be able to choose from a relatively large range of price points and that price point will reflect the charge that is paid by the consumer, regardless of which telephone provider they are using to make the call.

[394] Based on call volume information by chargeband gathered from OCPs and TCPs as part of Commercial working group discussions in July to September 2011.

A21.112 In addition, the following points are important to highlight:

i) the obligation to have a minimum of 100 price points does not represent a total limit on what SC prices can be used. We are requiring OCPs to bill a minimum of 100 SC price points and for those price points to be a fair reflection of the SC rates proposed by other providers, taking account of the volume and range of such proposals (see Section 6 for the proposed wording of the condition on OCPs). It will be open to TCPs/SPs to request further SC price points but they will need to negotiate with each OCP to provide that additional price point so that the service in question can be accessed by the OCP's customers. Furthermore, OCPs are free to offer more price points outside of that 100 minimum if they wish. As discussed further below, improvements in billing system capability may reduce the costs for OCPs in managing a greater number of price points and therefore this could increase OCPs' willingness to increase the number of SC price points they offer;

ii) as discussed in paragraphs A21.127 below, SPs will be able to change those price points (provided all users of the allocated number block agree to such a change). Annex 25 discusses the potential process for changes to SCs in more detail;

iii) the SC price points available within the 100 minimum will not be linked to specific number ranges, for example if there was a price point of £1 per minute, this could be used either for an 09 service or a 118 service; and

iv) our proposal to stagger the implementation of the price points requirement so as to encourage the efficient allocation of the 100 price points. As discussed below our view is that it is possible to accommodate current revenue demands within 80 price points and to allow some new price points above existing 09 limits. However, we consider more price points will be required to reflect new demand initiated by increasing the 09 limit. The 12 month deferral will encourage efficient allocation existing demand against price points, thereby giving more flexibility to the allocation to accommodate new services.

A21.113 Our analysis of call traffic shows that there is a significant level of under-utilisation of current price points, with over 90% of the existing chargebands being used for only 5 to 10% of traffic volumes. Most stakeholders recognised that consolidation of the existing range of price points was, therefore, practicable. For example [✂] noted that the majority of its traffic was on just 13 price points.

A21.114 Annex 10 sets out our analysis of OCP billing costs and how these are impacted by the number of SC price points. As indicated in that Annex, the cost of these reforms will be higher if there are more SC price points. It would be disproportionate to oblige OCPs to accept *any* potential SC price point that a TCP might request, given that the demand for that price point might not be sufficient to justify the costs to OCPs of maintaining it on their billing systems. Imposing a minimum number of SC price points is necessary in order to minimise the impact on OCPs billing systems. OCPs will, nonetheless, be required to ensure that the 100 minimum SC price points they offer are a fair reflection of SP demand for those price points, which means that they will need to reflect the range and volume of proposals for different price points from different providers. For example, an OCP would not be able to set up a particular price point which was not supported by industry demand, and then decline a price point which was requested by another CP because it had already met the requirement for 100 separate SC price points. We would equally expect price points to change over time in response to changes in demand.

A21.115 Some stakeholders have suggested that this simplification of the number of price points could also help consumer transparency. We noted in the April 2012 consultation that because the SC would be presented with the telephone number, we expected consumers to be able to manage a relatively high number of price points within a recognisable system.[395] However, in terms of consumers' ability to learn about the structure and charges of the SC, including the potential range of prices, we agree that a simplified system with fewer different types of SC price point could have benefits in helping consumers understand the system as a whole. This is particularly likely to be the case where the SC is not available to consumers at the point of call (for example if they are using a number they have saved in their phone). We consider, nevertheless, that this is a secondary benefit of having a reduced number of price points. The primary reason for requiring a minimum of 100 price points is to reduce the cost impact on OCPs billing systems while securing, for the reasons set out above, that there is no adverse effect on SP competition and consumer choice.

Impact on OCP billing systems

A21.116 We have set out our analysis of OCP billing costs in more detail in Annex 10. As part of our assessment we have requested information from a number of CPs to ensure we have as full an understanding as possible about the potential impacts of the number of SC price points on billing costs. We have taken into account both up-front (i.e. redesign of retail billing systems to cope with a greater number of price points) and ongoing costs (i.e. maintenance and administration of those price points) to OCPs of the impact of the number of SC price points in our total cost estimates and these have been included in our impact assessment.

A21.117 The upfront costs vary depending on the exact specifications of an OCP's billing system but we are satisfied that there are currently technical constraints on some billing systems which mean that there are greater costs associated with a larger number of SC price points. We therefore disagree with TNUK's comments in this respect and note that it has not provided any evidence to support its arguments. We acknowledge, however, that as billing platforms evolve, these technical restrictions are likely to be less significant. Nevertheless, there are additional ongoing costs associated with a greater number of SC price points, as highlighted in Vodafone and EE's comments.

A21.118 At this stage it is difficult to obtain a reliable estimate of the extent of ongoing costs and how they relate to the number of price points, because OCPs have indicated difficulties in providing robust estimates until they have seen how the unbundled tariff structure will operate in practice. Whilst we have used information from OCPs to develop the estimate set out in the impact assessment (see Annex 10), there may be scope for the level of these costs to be reduced as the system matures. For example, at the NGCS Focus group there have been discussions around a more standardised process for managing changes to SC price points, with an eight to ten week notification period and changes coming into effect on the first day of the month.[396] This type of system is likely to remove the need for OCPs to engage in day to day monitoring of potential SC price changes and may enable a more automated process to be used, thereby lowering the ongoing costs of the system. As set out in Section 5 we intend to review the implementation of the unbundled

[395] April 2012 consultation, Part B, Section 10, p.155.

[396] See for example, http://stakeholders.ofcom.org.uk/binaries/telecoms/groups/nts/NGCS_working_25july2012.pdf

tariff and we can assess as part of that review whether or not ongoing costs are significantly impacted by a greater number of price points.

A21.119 Based on the information available to us at the current time, however, we consider there is likely to be a material difference in billing costs created by having more than 100 price points. Having 100 price points rather than 60 increases the costs, and we have factored this higher cost into our impact assessment (see Annex 10). As set out below, we consider that these additional costs are justified by the increase in choice to SPs of having a larger number of SC price points.

Minimum number of SC price points

A21.120 We held further discussions at the NGCS Focus Group on the principles that could be applied in order to identify which SC price points should be included within the minimum.[397] The principles that were discussed included:

- minimum level of disruption for SPs in terms of revenue levels and positioning in the market
    - o maintaining price points with significant traffic volumes to reduce the number of SPs that will be subject to changes in their revenues; and
    - o Merging of similar price points (e.g. price points within a given value merged together and rounded to the nearest whole penny);
- meaningful increments between price points (e.g. 1p increments up to 10p, 20p increments after £1);
- price points available at the level of the SC caps (e.g. 7p and 13p);
- some price points to be reserved for future innovation (i.e. a certain number of price points reserved with no specific value assigned to them); and
- price points will not be number range specific (e.g. the same price point could be used for 09 and 118 numbers).

A21.121 We used these principles and developed a rationale for applying them to existing call volumes on the relevant number ranges.[398] In particular we applied the following methodology:

- removal of duplicate tariffs;
- removal of tariffs that have zero volumes;
- retain all price points that cover the top 90% of call volumes; and
- for the remainder of price points left over:
    - o round up price points to the nearest whole penny and merge rates that round to the same level;

[397] Meeting held on 25 July 2012 http://stakeholders.ofcom.org.uk/binaries/telecoms/groups/nts/NGCS_working_25july2012.pdf

[398] [✂]

- o remove price points with minimal call volumes (e.g. less than 500 minutes over a year); and
- o merge higher rated price points (e.g. for 09 numbers) up to the nearest 5p and 10p.

A21.122 Our analysis following the application of this methodology to existing call volume data suggested that around 50 to 55 SC price points could be required for the 084/087 and 09 number ranges. Using a slightly modified version of this approach for DQ numbers we found that there was likely to be a requirement for around 20-25 SC price points. We estimate that this would lead to around 50% of existing chargebands needing to be changed but it would affect only around 2% of call volumes. Around 40% of current 084/087 chargebands and around 85% of call volumes are within 5% of those 55 price points.

A21.123 This indicates that the lower end of our range, i.e. 60, could restrict SP pricing flexibility. We note Three's comments that 60 would capture the overwhelming majority of existing volumes as well as some spare price points; however, volumes are not the only measure we are using. Ofcom has a duty to promote competition and there is a risk that selecting a lower minimum for the number of SC price points will lead to greater restriction of SP's pricing choices.

A21.124 We consider that 80 price points is more than sufficient to meet existing SP demand and allow some price points for new higher charging services. However, taking into account the fact that additional price points will be needed to cater for the higher rated 09 numbers now that the cap has been raised (see Annex 22), we consider that 100 is the appropriate minimum number of price points that should be provided. As explained below, we are proposing that the additional 20 price points should be made available 12 months after implementation to increase the scope for SPs to negotiate new price points for new services that they develop. We have taken into account the additional OCP billing costs associated with having the minimum set at 100 rather than 60 (see Annex 10). These additional costs are justified by the increase in choice to SPs of having a larger number of SC price points.

A21.125 We accept FCS's argument that many SPs under the current system have tended to select the maximum rate for a particular number range (e.g. 5p for 0844 or 10p for 0871), because there is little incentive for them to receive less revenue for calls when customers are not clear on the prices anyway, and they can only advertise the price from a BT line. The fact that SPs will have to advertise their SCs may encourage greater use of the lower end of the ranges for the number ranges, e.g. 1p, 2p or 3p for 084, whereas current volumes on those ranges are very small. However, our assessment of the appropriate minimum number of SC price points is not only based on traffic volumes, and therefore allows for the continuation of a considerable number of price points which are currently not heavily utilised (as highlighted by Three's comment above). We therefore consider 100 price points should allow sufficient room for SC price points at the lower end of the ranges as well as the current 5p and 10p maximums.

A21.126 We consider that a minimum of 100 will not materially affect consumer choice while allowing a competitive pricing environment to develop on the SC. We disagree with the FCS that this minimum on the SC price points could lead to further migration to mobile shortcodes, because we understand that similar restrictions on price points exist for shortcodes.[399] In particular we understand that each mobile OCP only offers a fixed range of different price points on mobile shortcodes. In the same way as SC price points will be negotiated under the unbundled tariff, where an SP wants to obtain a new price point for a mobile shortcode, it, or an aggregator operating on its behalf, must negotiate individually with the mobile OCPs to obtain a particular price point.

A21.127 In response to TNUK's comment, we disagree that as many as 80 price points are needed for DQ and 09 services to reach the higher SC cap. TNUK's calculation of 80 assumed that there would be increments of 20p for charges above £1.50, and there would be both per call and per minute charges at each of these increments. However, it is not clear why TNUK considers that increments of 20p should be the minimum, particularly for charges at the upper end of the range where charges could potentially be spread out more, whilst still allowing meaningful differentiation and granularity of pricing. Nor is it clear that per call charges will be needed for each price point, currently per call price points are significantly fewer than the per minute price points, and there seems no reason to believe that trend would not continue.[400] In addition, the points highlighted in paragraph A21.112 are relevant here, in particular this minimum is not an absolute limit on SC price points (it will be open to TCPs/SPs to negotiate individually with OCPs to get additional price points opened up) and it will be open to SPs to change existing price points. This process will be more difficult on the 084/087 ranges because the price point will be associated with a block of 10,000 numbers so that all SPs operating on that block would need to agree to change the price point. However, for DQ services in particular the process for changing that SC price point will be more straightforward, because there are likely to be far fewer SPs using the same price point (and in some cases only one).

A21.128 We accept that it is difficult to predict currently what SC price points might be required in future. Since we expect that new services will emerge with the improvements in consumer confidence that the unbundled tariff should bring, we are proposing that the implementation of SC price points should be staggered with 80 being made available when the new requirements take effect and another 20 twelve months later. We consider this will give scope for SPs to negotiate new price points, particularly at the higher rates that will be permitted for 09 and 118 services without competing for price points with existing services. In addition, this is an issue which will form part of our evaluation after the implementation of the unbundled tariff and therefore we can assess whether the minimum of 100 is causing any material problems to SPs and market development.

A21.129 A similar requirement relating to the number of price points has been imposed by the French regulator (ARCEP) in its decision on implementing a model similar to the unbundled tariff in France.[401] ARCEP told us they expect around 25 to 30 price points to emerge under the new pricing structure.[402] ARCEP also decided that the price points should be required to be entire multiples of 0.01 euros. This therefore prohibits price differentiation of less than 1 cent.

[399] See also Annex 8 where we discuss other factors which are likely to limit migration to mobile shortcodes.
[400] For example, out of the 20 most popular price points on the 09 range in 2011, six were ppc price points (information gathered as part of Commercial working group discussions in July to September 2011)
[401] http://www.arcep.fr/uploads/tx_gsavis/12-0856.pdf.
[402] Note we have highlighted this comparison for information only, we have not relied on it in making our assessment of the appropriate minimum number of SC price points given that it relates to a market which may have very different characteristics.

A21.130 In order to aid the process of setting the SC, having a similar regulatory requirement for those price points to be at least in 1p increments could be beneficial. This would ensure a minimum level of difference between the SC price points and would reduce scope for unnecessary use of SC price points which are only half a pence or less different from each other. We are therefore proposing to include such a requirement in our proposed modifications to GC17 (see Section 6). We consider that the impact of this proposal on stakeholders is likely to be minimal, given the 100 overall minimum requirement on OCPs and the wider changes to prices that will be occurring with the implementation of the unbundled tariff. This approach is justifiable and proportionate, given the benefits it could offer in simplifying the process for establishing the SC price points.

Transition to new regime and future changes

A21.131 We set out below under the 'approach to determining SC price points' how we expect price points to be established (including both migration from the existing regime and setting up new price points) in a manner that does not entail nor require direct involvement from Ofcom.

A21.132 In terms of how long the overall 100 minimum requirement will apply if adopted, it will be a requirement in GC17 (see Section 6) and therefore any amendments to that will need to be consulted on as part of Ofcom's normal procedures. Therefore we would only make changes to that minimum requirement if evidence emerged to indicate that it needed to be reconsidered. However, as already explained, we intend to evaluate the effectiveness of the unbundled tariff after its implementation and we can therefore include this issue as part of that review. Our assessment of the impact of the 100 SC price point minimum is based on the information that is available currently, including our assessment of the billing costs associated with this number of price points.

Approach to determining SC price points

Summary of position in the April 2012 consultation

A21.133 We set out some provisional suggestions for price points on the different number ranges in Section 10 of the April 2012 consultation.[403] We said, however, that stakeholders were likely to be better placed to identify the price points for which there was substantial demand from SPs. The suggestions we provided were therefore intended to stimulate and focus discussion rather than being proposals to be implemented. We considered that the process for agreeing the actual price points should be led by industry, albeit perhaps with some facilitation from Ofcom.

A21.134 Our question in the April 2012 consultation asked for views on three specific areas:

- our proposal that industry should lead the discussion and make the decision on the specific SC price points;
- what criteria should be considered for determining those price points; and
- whether there were any specific price points which were necessary.

A21.135 We have summarised comments on each of these issues below.

[403] See paragraphs 10.368 to 10.387.

Industry to lead the process

A21.136 Under this issue, stakeholders raised a number of points, which we have summarised under the following headings:

- industry and Ofcom's role;
- inclusion of price points in the Numbering Plan;
- competition law concerns; and
- involvement of SPs.

Stakeholder comments

Industry and Ofcom's role

A21.137 Most respondents agreed that industry should lead the process for determining the SC price points. Magrathea said it was important for CPs to have the chance to make representations regarding any particular price points that should be retained.[404] Verizon, Virgin Media, Sky, O2 and BT also agreed that industry should lead on establishing the relevant price points.[405]

A21.138 Vodafone agreed that further industry discussion would be beneficial (within the bounds permitted by competition law). It noted, however, that the scope and limits of such discussion were not yet entirely clear and it was in any case uncertain what degree of consensus or otherwise, might emerge. It said therefore that Ofcom itself would have to play a role, perhaps confirming decisions only after transparent consultation with all potentially affected stakeholders.[406]

A21.139 In terms of the potential approach to these discussions, FTC said that Ofcom should set up its industry-led group with representatives from Ofcom and the consumer interest engaged, invite them to discuss and present initial proposals and then subject those to a brief public consultation before Ofcom granted its approach. It said that group should continue to maintain the list, with Ofcom approving changes, engaging in public consultation whenever anything radical is proposed.[407] SSE said that the process to agree, maintain and potentially vary the price points in future should be subject to transparent and inclusive industry governance.[408]

A21.140 FCS similarly said the process should be led by industry under a clear self-regulatory organisation that ensured all relevant participants in the industry could be informed and contribute to the work. It said that initially there needed to be agreement to the number of price points and the SC caps by number range, from there TCPs could choose the migration path of each number block to the SC price point. It said that the likely issue that would arise was the division of opinion among

[404] Magrathea, April 2012 consultation response, Q10.8.
[405] Verizon, April 2012 consultation response, Q10.8. Virgin Media, April 2012 consultation response, Q10.7. O2, April 2012 consultation response, p.17. BT, April 2012 consultation response, p.14. Sky, April 2012 consultation response, p.3.
[406] Vodafone, April 2012 consultation response, p.27.
[407] FTC, April 2012 consultation response, p.5.
[408] SSE, April 2012 consultation response, Q10.8.

TCPs customers as to where they felt the SC should be positioned, it said this would be particularly prominent with the 0845 and 0870 blocks.[409]

A21.141 CWW also anticipated that the final number of chargebands would need to be dictated by Ofcom. It noted there were a number of less popular ranges which were nonetheless carrying legitimate traffic and might be faced with migration to a different price point. It said it expected industry to be able to agree a mechanism for the most popular chargebands but said it was not appropriate for industry to discriminate between the less popular in a way which would lead to customer migration.[410] CWW said that Ofcom and industry must together acknowledge that the exercise industry needed to undertake in order to map existing price points to the new SC tariffing, must be an exercise to establish the mechanism for day one. It said it could not be perceived by SPs to be in any way a constraint upon competition nor could it represent the end state for NGCS tariffing. [411]

A21.142 EE said that the current proposed process for setting the individual price points remained opaque and subject to a number of important issues. It said that the exact nature of Ofcom's involvement was not clear, nor was the process for resolving disputes on such issues both between CPs and between CPs and SPs. It said Ofcom needed to explain what its role in the process would be. It said that Ofcom being merely an observer would not be appropriate. [412]

Inclusion of SC price points in the Numbering Plan

A21.143 [✂] said it would rather see the price points specified in the Numbering Plan as they would have more regulatory weight. However, it said that providing that Ofcom reserved the right to formally intervene and would do so quickly if industry could not agree, then it was supportive of industry trying in the first instance.[413]

A21.144 Three considered that once industry had established the appropriate price points, Ofcom should specify them as part of the Numbering Plan. It also suggested that Ofcom should also impose a deadline by which an agreement should be reached in order to ensure that the implementation of the unbundled tariff was not delayed.[414]

A21.145 EE said that as each price point would presumably need to be assigned a specific set of numbers it was not clear why the agreement process which Ofcom envisages could not be put into the Numbering Plan. It said this could be subject to, for example, annual review (which could take account of any need for inflationary changes). EE believed that approach would allow sufficient flexibility to SPs but also stability which would benefit customers, increase customer awareness and ensure that OCPs had sufficient certainty around which to build their billing systems. EE said this approach would also provide Ofcom with a method of enforcing its overall caps and ensuring that any criteria which were set for determining the price points were transparently applied and understood. [415]

Competition law concerns

[409] FCS, April 2012 consultation response, p.5.
[410] CWW, April 2012 consultation response, p.12.
[411] CWW, April 2012 consultation response, p.14.
[412] EE, April 2012 consultation response, p.26.
[413] [✂].
[414] Three, April 2012 consultation response, p.13.
[415] EE, April 2012 consultation response, p.26.

A21.146 [✂] said it was conscious of issues in relation to cartel behaviour and price fixing. It acknowledged that where such discussions had a clear consumer benefit and/or where the final judgement was reserved by a regulatory body, it could not be deemed as cartel behaviour. However, it recommended that Ofcom took steps to ensure that the conversations were properly monitored and could not be subject to such accusations.[416]

A21.147 EE also noted that there were potential competition law issues where prices were being set (albeit within specified ranges) by operators collectively in what Ofcom considered was an otherwise competitive market. It said it was not clear how these issues would be dealt with. [417]

Involvement of SPs

A21.148 TNUK said it had significant concerns in relation to Ofcom's proposed approach of allowing industry to 'agree' price points. It said it was less concerned about the mechanism of implementation but it believed that Ofcom's proposal risked undermining one of Ofcom's fundamental objectives of the review, i.e. addressing the vertical externality, because OCPs had no motivation to take account of the preferences of SPs or the impact on them. It also considered that TCPs would not necessarily be relied upon to represent the best interests of SPs in those discussions, because they are separate commercial entities and would have a wide range of SP customers, some of whom would be directly competing with each other or at the very least would have divergent commercial views.[418]

A21.149 TNUK said that the hallmark of Ofcom processes generally was that industry involvement and presentation is almost exclusively by OCPs and TCPs and rarely, if ever, included SPs. It said the current review would have the most profound impact on SPs, who were central to the changes being proposed, but they had been largely absent and excluded from the process in terms of the industry meetings which had taken place. It highlighted that it was the only SP involved in the working group meetings which took place last year. It said this situation should not be allowed to continue. It suggested that Ofcom should be closely involved through the discussions, direct them where necessary whilst setting clear parameters and objectives. It said DQ SPs should be permitted to set the actual DQ price points within the overall limit, as this was no different to any other provider being granted control over its own prices. It believed that passing the decision to SPs was the only way to avoid the inevitability of 'industry' discussions being dominated by OCPs and TCPs who would outvote/overrule the minority interests of SPs on every occasion.[419]

Ofcom's response

Industry and Ofcom's role

A21.150 There is a need for a common set of SC price points available from all OCPs, to ensure that:

[416] [✂].
[417] EE, April 2012 consultation response, p.26.
[418] TNUK, April 2012 consultation response, p.37.
[419] TNUK, April 2012 consultation response, p.12.

- TCPs are able to meet their obligation to provide access to each of their non-geographic numbers at the same SC, regardless of the OCP used to make the call; and
- retail consumers are able to access the services on the numbers in question.

A21.151 Most stakeholders agree that the provision of this common set of price points should be secured by industry players. As we set out in Section 10 the commercial needs of SPs and, ultimately, the interests of consumers are best met where industry participants, not Ofcom, form their own views about the individual price points needed. Decisions by communications providers which have commercial relationships with TCPs and SPs are most likely to provide the level of pricing flexibility needed by SPs and the choice that consumers want. Without these commercial relationships and the knowledge that they provide, Ofcom is less likely to set an optimum set of prices to the disadvantage of consumers and, potentially, competition.

A21.152 We disagree with TNUK that OCPs and TCPs should not determine price points for 118 services since these "have no impact on them". OCPs are responsible for billing their customers for both the AC and the SC on all the non-geographic ranges and therefore, because of the potential impact on their customer relationships and their risk of bad debt, they clearly have an interest in the level of SCs. The TCP also has a financial interest in the level of the SC since it will incorporate the costs it incurs for termination and conveyance from the assumed point of handover. Accordingly, we do not accept that SCs should be set by SPs independently of the OCP and TCP, as TNUK have suggested.

A21.153 Having said that, we consider it is important that both TCPs and OCPs have due regard to the pricing demands of SPs so as to ensure that, as far as is reasonable and practicable, the SC price points that are set are representative of SP demand. Since SPs are the customers of TCPs, we would expect TCPs to have a commercial incentive to seek price points that are in line with SP demand. For the reasons set out in paragraphs A21.120 to A24.128 above (and in Section 9), we consider that the minimum requirement for a 100 different SC price points provides sufficient scope for TCPs to represent fairly the diverging views of existing SPs in negotiations with OCPs and to accommodate requests for new price points.

A21.154 In relation to OCPs, the proposed modification of GC17, which will require them to be able to bill a minimum of 100 SC price points (with 80 from implementation and a further 20, 12 months later), specifies that the price points selected must be a fair representation of SP demand. This is intended to prevent OCPs selecting price points for which there is no or minimal SP demand. We also consider that the selected price points, in order to reflect fairly the spread of demand, should accommodate higher rate SCs, provided they do not make the risk of bad debt untenable. For the reasons set out in Annex 22, we consider that the bad debt risk in relation to SCs at least as high as the SC cap on 09 should be manageable for OCPs, given existing credit checks and the protections provided under the PPP Code. If there is demand for SCs above this level from SPs on the 118 range, OCPs may need to consider whether additional measures to mitigate bad debt risks are required and whether or not these are commercially viable given likely call volumes, when deciding whether or not they are able to accommodate such requests.

A21.155 In terms of how a common set of price points will be achieved, we make the following observations. In the first instance, TCPs will have to choose an SC for each non-geographic number block that they hold. In doing so, we would expect them to have regard to the current price points of those blocks, to the pricing needs of their SP customers providing services on those blocks and to the maximum price cap that will apply to the range in question. Having identified SCs they consider appropriate, they will then need to ascertain through negotiation with OCPs whether the SCs they have selected map across to price points within the OCPs' billing systems.

A21.156 We consider that this process of negotiation between TCPs and OCPs will result in a common set of price points which are offered by all OCPs. As noted at paragraph A21.113, the majority of NGC traffic on these non-geographic number ranges is currently provided on a limited set of price points. As a result, we consider that a core of common price points is likely to emerge naturally and relatively quickly since OCPs will have the same incentive to offer at the outset established price points which attract the most call volumes. Further, we consider that the principles set out at paragraph A21.120 above provide a framework for OCPs to identify these price points and facilitate their individual commercial negotiations with TCPs (representing the needs of SPs) in relation to the SC price points they are seeking. We would encourage further discussions by industry on these principles and we will continue to be involved with and facilitate those discussions.

A21.157 In addition, in our implementation of the unbundled tariff decision, we are proposing a modification to GC17 which will require the SC price points to be set in increments of at least one penny. With the exception of 118, SCs must also be set within the applicable cap for the range in question. We consider that these measures will also facilitate the emergence of a common set of SC price points.

A21.158 Outside of that common core, we acknowledge CWW's point that, there may be more difficulties in securing a common approach to price points which are not as widely used or recognised. Nonetheless, we expect that, over the course of the implementation period, the 100 SC price points that OCPs are required to provide should ultimately coalesce to a substantial degree because of the network benefits that will accrue to both SPs and OCPs as a result. SPs will want to select an SC for their particular number that maps to a price point available from all OCPS; OCPs in turn will have an incentive to select price points that are likely to attract the most demand from SPs since that is most likely to increase call volumes.

A21.159 This incentive is further reinforced by the proposed modification to GC17 described above which will require OCPs to ensure that the price points they select fairly represent SP demand. In addition, OCPs have an obligation under GC20 to offer access to non-geographic numbers where technically and economically feasible, which requires them to accept, subject to technical and economic feasibility, any reasonable request for interconnection.

A21.160 We have set out in Section 10 when we consider is appropriate for industry to have established the mapping of SC price points and this takes into account the fact that SPs will need time after being informed of their SC to decide whether to remain on their number ranges. We will continue to monitor the OCPs' development of their SC price points during the implementation period and will keep under review the extent to which Ofcom can provide any guidance or assistance to facilitate this process.

Inclusion of SC price points in the Numbering Plan

A21.161 We have considered the submissions suggesting Ofcom set the price points in the Numbering Plan. We see two problems with this approach. First, it would not be practical. Under the Communications Act, Ofcom is required to consult each time it makes changes to the Numbering Plan. Therefore each time a TCP/SP wanted to change an existing SC price point, or register a new SC price point, Ofcom would have to issue a consultation with a notification of the changes, review responses and then issue a final statement with the necessary modifications. Second, this impracticality means that this approach would unduly restrict SPs pricing flexibility. This would not offer sufficient flexibility to TCPs/SPs and risks restricting innovation and competition in the sector by not offering sufficient speed in responding to market developments.

A21.162 Ofcom will need to be informed of the relevant SC price point for each number range as part of the process of applying for numbers (as well as what the SC price point will be for each existing allocated number block) and we will keep a record of these allocations through our existing Numbering Scheme published on our website. Annex 25, where we discuss the SC database, contains further information on this approach. This will therefore provide us with sufficient information to keep track of how SC price points are being used to ensure it is within the bounds of the tariff principles we are proposing to set out in GC17 for these number ranges (see Section 6).

Competition law concerns

A21.163 As already set out above, we expect the final SC price points to be agreed on through a series of bilateral discussions between individual OCPs and TCPs (with TCPs representing the views of their customers). We expect these individual discussions to result in a large number of price points that coalesce around a common core based on a consideration of traffic volumes and the principles agreed in the NGCS Focus Group, without the need for any coordination of discussions. We recognise it may be more difficult to reach a common approach to price points outside of this core but still consider these price points should be determined through negotiations between individual TCPs and OCPs, noting that once an agreement with one OCP has been reached others will be likely also to agree as a result of network benefits, their obligations under GC20 and the proposed modification to GC17. Because we do not envisage a need for cross-industry discussions, we therefore do not think competition law concerns are likely to arise in mapping existing chargebands to new SC price points, provided an appropriate process is set up and followed.

A21.164 We note the submissions suggesting an industry self-regulatory approach (by which we understand that the various industry players opt to engage some third-party or independent process to assist them to reach an agreed position that is consistent with competition law and the policy principles described above more quickly, easily or cheaply than they could otherwise achieve). It is, of course, open to some or all industry players to explore such an option, provided they do so whilst remaining compliant with competition law.

Involvement of SPs

A21.165 In response to TNUK's concerns about the lack of involvement of SPs in the process, whilst the industry's NGCS Focus group is primarily a forum for OCPs and TCPs, the working groups which we carried out last year did not exclude SPs. Ofcom carried out a number of activities to encourage SP engagement on the potential changes which will affect them, and we continue to do so. There is, however, an inherent difficulty associated in trying to engage a group which is so large and disparate and which does not normally have a need to consider telephony issues, or engage with Ofcom, on a day to day basis. We have set out in Section 5 our planned approach to implementation and we expect this to involve direct engagement with SPs to ensure they are aware of how this issue could impact them. We will be encouraging SPs to have conversations with their TCPs to ensure that they make clear what their preferences are with regards to price points, so that TCPs can take this into account as much as possible during the negotiation of SC price points.

A21.166 No evidence we have seen contradicts our view that it is reasonable to expect TCPs to be able to broadly represent the best interests of their SP customers in the process of establishing price points. In the April 2012 consultation we concluded that the hosting market was broadly working well for SPs.[420] Therefore we would expect competition in that market to mean that TCPs are usually incentivised to ensure their SP customers are getting the SC price points they require to meet their commercial needs. We therefore consider that TNUK's comments are overstated in this respect, although we nonetheless recognise that there is a risk that SPs views may be underrepresented in the negotiation of SC price points, particularly where a TCP has a wide range of SP customers. However, it would not be practical for SPs to make the decision about the SC price points, given the large number of different SPs, particularly when a number of different SPs can be operating on the same number block (for example on the 084/087 number ranges). DQ providers are a slightly different case to other SPs. The larger DQ providers frequently are also TCPs in their own right. As such we would expect them to be directly involved in ensuring their requirements are best reflected in the new structure.

A21.167 TNUK also raised concerns about the role of OCPs in this process. We have responded to this point in paragraph A21.152 above.

Criteria for setting price points

Stakeholder comments

A21.168 Several respondents suggested that data on current usage of different price points should be a starting point for deciding on SC price points. Action4 said the price points should reflect current offerings and the value to the consumer.[421] BT said that one of the key criteria for setting the price points should be demand/current usage, for example ppm services by total number of minutes and ppc services by total number of calls.[422] CWW noted that Ofcom already had a general picture of where the majority of the traffic was grouped and that that should allow industry to at least identify those ranges were there was a consensus view that the chargeband should continue under the new regime.[423]

A21.169 Vodafone said the aim should be for a spread of distinctive price points that were different enough from one another for the difference to be meaningful for consumers.[424] EE said the criteria should be based on ensuring that there was sufficient variation in the SCs to fulfil SP needs and as such should be driven by the

[420] See Annex 12, Part A.
[421] Action4, April 2012 consultation response, p.5.
[422] BT, April 2012 consultation response, p.14.
[423] CWW, April 2012 consultation response, p.12.
[424] Vodafone, April 2012 consultation response, p.27.

need to ensure continuing competition in the provision of services to SPs and not by any requirements of TCPs.[425]

A21.170 TNUK said Ofcom should focus on granularity, regularity and choice:

i) Granularity: it said Ofcom should ensure that price points were in as small increments as reasonably possible and whilst that did not mean DQ providers required 1p increments, it did not mean that 50p increments were suitable either. It believed that smaller increments were in the best interests of consumers because they could be increased by a relatively smaller amount rather than requiring a bigger jump. It believed that 20p increments were likely to be appropriate for 118 (and possibly 09) number ranges.

ii) Regularity: whatever increments were chosen must be spaced equally apart, in order to avoid large jumps in price, as well as any perverse incentives to increase prices. It highlighted that in Austria, DQ providers were only able to set retail charges according to a pre-determined list, which had a significant gap between some of the prices. It argued this had the effect of creating artificially low prices for a period of time and then a sudden sharp price increase leading to bill shock. It noted this could have been avoided if there had been more granularity of price points.

iii) Choice: Ofcom must ensure that there was a sufficient variety and mix of price points to ensure that SPs were able to find a price point which matched whatever service they wanted to offer.[426]

A21.171 In approaching how to decide the overall limit, BT said that just enough price points should be set at the outset, to allow headroom for new price points to be introduced in future. It also noted that a clear process needed to be established for the introduction of price points and for ensuring that Ofcom never ran out of price points. It suggested this might mean Ofcom had to monitor usage of price points so that they could be withdrawn if they were not used.[427]

A21.172 BT suggested that once a number range had been allocated a particular SC it should not be allowed to change, in order to protect customers and minimise the risk of fraud. CWW, however, said there needed to be a clear mechanism in place by which SPs could apply to introduce or amend rates to reflect the innovation of their services and that guarantees the preservation of tariff clarity. It noted that in practice such changes were likely to be few and far between, the exception of DQ, however, it noted that the structure could not ultimately be constraints for any great period of time by the restrictions of legacy OCP billing systems.[428]

A21.173 EE said that since Ofcom was not proposing that the price points were specified in the Numbering Plan they would presumably be set on a contractual basis through the Carrier Price List ('CPL'). It said the process for changing such price points over time was therefore not clear because the existing NCCN/OCCN process would not seem to be appropriate or workable in that context.

A21.174 EE noted that the rationale for the price point points given the April 2012 consultation seemed to be based on ensuring that TCPs and SPs were broadly able

[425] EE, April 2012 consultation response, p.26.
[426] TNUK, April 2012 consultation response, p.39.
[427] BT, April 2012 consultation response, pp.12-13.
[428] CWW, April 2012 consultation response, p.14.

to replicate any existing charging arrangements, which it agreed was in principle sensible. However, it noted it was unclear how such an initial starting point could be maintained over time under Ofcom's proposed approach.[429]

Ofcom's response

A21.175 As highlighted in our response to the comments on the approach for setting the SC price points, we have held further discussions with the industry about the appropriate principles or criteria for establishing the SC price points. The principles we discussed are set out in paragraph A21.120 above. We agree with the comments above about the need for meaningful differences between price points and this is one of the reasons we have proposed a requirement for SC price points to be in at least 1p increments (see Section 6). The drafting of the proposed condition on OCPs in respect of the 100 SC price point minimum specifies that the price points selected must be a fair reflection of the SC rates proposed by other providers, taking account of the volume and range of such proposals.

A21.176 In terms of granularity of pricing, we consider that the 100 minimum should allow sufficient granularity to provide choice and flexibility to SPs and encourage competition on price. This is particularly the case given that we have now decided that ToD variations will not apply to the SC. As noted above, we are proposing that 80 price points should be made available on implementation, with a further 20 being made available 12 months later. We consider this will increase the scope for SPs to negotiate new price points for new services they may develop.

A21.177 We disagree with BT's suggestion that SC price points should not be allowed to change once allocated. We consider such changes are likely to be very infrequent for the 084 and 087 number ranges in particular, because these will be linked to the relevant 10k number block and every SP providing services on that range would need to be in agreement with the change. However, that does not mean that such changes should be prohibited and we note that changes are likely to be more frequent on the 118 ranges for example (as has historically been the case). We discuss this issue further in Annex 25 where we note the proposals that have been raised by stakeholders for a standardised process for managing such changes.

Need for particular price points

Stakeholder comments

A21.178 BT highlighted that in Ofcom's proposed range of price points there appeared to be a gap between the top end of 087x (13p) and the start of 09 (20ppm or 25ppc). It also highlighted that there might be a need for at least one 084 ppc price point. It considered that four price points for 084 and 087 might be sufficient, because it believed there would be very little demand for 0844 SCs below 5ppm [✂].[430] It also said it was not sure there was demand for a new 0ppm 084X range.

A21.179 Vodafone questioned whether there would really be demand for 1p increments within the 084 and 087 ranges for example.[431]

A21.180 For 09, BT said that more price points might be needed to allow continued innovation and incentive to invest. It said that if restrictions were needed they

[429] EE, April 2012 consultation response, p.27.
[430] BT, April 2012 consultation response, p.13.
[431] Vodafone, April 2012 consultation response, p.27.

should be driven by SP demand. It highlighted that some of the more popular price points were missing from Ofcom's proposal, for example 15ppm and 15ppc. It also said that the upper limit on PRS of £1.53 should be reflected in the price points.

A21.181 BT also suggested that spare price points should be set aside for higher rate PRS, VAT inclusive services and VAT free services for charitable donations.[432] BT suggested allocating one 09X range for VAT-exclusive services, for example 095.[433] Magrathea also commented that there might be a need for businesses to have 'round number' price points when expressed exclusive of VAT.[434]

A21.182 For 118, BT noted that DQ services currently offered a number of price combination models and it said those should be accommodated when setting the price points. It believed all pricing combinations should continue so SPs had the ability to price competitively (i.e. ppc, ppm, ppc+ppc, ppc for the first sixty seconds followed by ppm, as well as charging by the second, the minute or part-minute). BT nevertheless agreed that there was an opportunity to reduce the number of price points, because many of the current ones were not used (it highlighted that of the [✂] BT DQ chargebands available only [✂] were actually in use).[435]

A21.183 FTC said the option of a zero SC could not be acceptable. It said this could be exploited by suggesting or implying that calls to 084/087 numbers did not necessarily cause a premium to be incurred. It said there were currently many examples of exceptional cases being used to misrepresent the costs involved in calling these ranges and a zero SC would open a new opportunity for such misrepresentation. FTC said the ease of migration between 034 and 037 equivalent number ranges provided all the necessary support for those who wished to 'retain' their 084/087 numbers without levying an SC. FTC considered that, even though the AC would not necessarily equate with the rate for geographic calls, the option of a zero SC would essentially deny the clarity offered by the proposals to retain the existing status of the 03 range. It said that absolute confirmation of 03's unique role as the only non-geographic ranges which was cost-neutral in respect of the relationship between the caller and the SP was vital to ensure its (long overdue) public acceptance.[436]

A21.184 DWP said, however, that it was likely to want to be able to choose the option of a zero-rated SC under the unbundled tariff.[437]

Ofcom's response

A21.185 The question we asked in the April 2012 consultation about which particular price points were likely to be necessary was intended to stimulate discussion within the industry rather than being related to a specific regulatory proposal given that Ofcom is not setting the individual SC price points.

A21.186 The particular tariff principles which we are imposing for the SC are:

iv) bespoke SCs are prohibited;

v) time of day variations are prohibited;

[432] BT, April 2012 consultation response, p.13.
[433] BT, April 2012 consultation response, p.11.
[434] Magrathea, April 2012 consultation response, pQ10.7.
[435] BT, April 2012 consultation response, p.14.
[436] FTC, April 2012 consultation response, p.6.
[437] DWP, April 2012 consultation response, Q10.4.

vi) price points shall be in 1p increments; and

vii) the SC will be capped at:

- 5.833p for 084;
- 10.833p for 087; and
- £3 per minute / £5 per call for 09.

A21.187 Any other variations in the structure of the SC will therefore be permitted, provided such variations are within the levels of the SC maximum caps. This includes the availability of VAT-exclusive price points as well. It will be down to individual discussions between OCPs and TCPs as to whether there is capacity within the range of SC price points to include all the different pricing structures which BT has highlighted.

A21.188 We have no concerns with the existence of a zero-rated SC. The question of whether such a price point emerges will depend on SP demand and whether it can be accommodated within the 100 price point minimum. We note that the comments from DWP suggest that such demand may exist.

A21.189 We agree that there are benefits of having 03 as the only range which is linked explicitly to geographic rates. However, we consider that a 084 number, for example, which has a zero-rated SC will still be sufficiently different, and be understood differently by consumers, so as to avoid any potential confusion. 084 calls will always be charged the OCP's AC for a particular tariff package, rather than necessarily being linked directly to geographic rates. Our proposed Numbering guide will also make clear that the 03 range is in the same category as 01 and 02 numbers, whereas all 08 numbers will be in a separate category which is specifically structured with an AC. The fact that the SC might be zero should not detract from that message.

0845 and 0870 SC price points

Summary of stakeholder comments

A21.190 BT said that clarity was needed on a sensible migration of the 0845 and 0870 number ranges. It said it was particularly important in its view that all existing 0845 and 0870 number ranges migrated to a single tariff agreed by industry and/or Ofcom. It said that permitting CPs to migrate different 0845 and 0870 10k number blocks would conflict with Ofcom's objective of simplifying NGCS numbers, because it would lead to disorganised outcomes for SPs and for consumers calling them. It also noted that SPs tariffs would be at the whim of their TCP and there was a real danger that the tariff of a particular block would be set by the most influential SP in that block, with everyone else with numbers in that block having to follow suit. It said that how these numbers were treated was going to be central to how the success of the review is viewed by all stakeholders. BT also said it did not believe that Ofcom intended 0870 to be charged at the maximum 13p cap, thereby reintroducing revenue share on the range. It said a single SC should therefore be agreed for this range either by industry or Ofcom.[438]

[438] BT, April 2012 consultation response, p.12.

A21.191 CWW stressed that a transparent price point should be maintained for services on 0845 and 0870, which would help sustain existing services on these ranges and avoid the costs of large-scale migration.[439] Warning that "fragmented" SCs for 0845 and 0870 would fail to achieve the transparency wanted by consumers, CWW called for single universal price points for both 0845 and 0870, stressing that Ofcom should decide the levels of these SCs as it would be inappropriate for industry to do so.

A21.192 UKCTA also said it was unclear if Ofcom intended for 0845 and 0870 to be mapped to a single chargeband in the existing or future structure; it said its members supported an approach of Ofcom determining (after input from industry) a single price point for simplicity and certainty.[440] But it said that Ofcom may have to intervene on 0845 given the pricing differential created by BT in NCCN 908. It added that a migration plan would need to be established as soon as possible to allow CPs to engage with their value chain to minimise disruption caused by changes. In such migrations, it said that one objective should be to set a sustainable POLO for 0845 and 0870 that took into account the historic level of 0845/0870 to reduce the commercial impact on organisations using these popular ranges.

Ofcom's response

A21.193 We recognise there could be some consumer transparency benefits from having a single SC for the 0845 and 0870 ranges. However, this would also remove any flexibility for TCPs in meeting the needs of their SPs (albeit they will already be operating within the limits of the 10k number block allocations for these ranges). We have already set out why Ofcom is not setting the individual price points and this applies equally to the 0845 and 0870 number ranges. We also consider that over time the existing focus on 0845 and 0870 as distinct ranges from other 084 and 087 numbers will diminish and we did not see a public benefit in maintaining such a distinction.

A21.194 We agree, nevertheless, that it would be preferable to maintain SCs at levels which reflect the current revenues which SPs are receiving. This will limit the impact on SPs and prevent unnecessary migration to other number ranges which will create additional costs for SPs. We therefore would expect that existing number block allocations in these number ranges are more likely to have an SC in the range of 1-2p, rather than something closer to the SC cap of 13p for that range. Such a significant change in pricing for this range could also negatively impact consumers who would see a significant rise in the cost of calling this range. SPs will also need to bear in mind that our proposed amendments to the PRS Condition mean that if they select an SC which is above 5.833ppm (excluding VAT) on the 0870 range, they will be captured by the definition of a 'premium rate service' under that Condition and will therefore be subject to regulation by PPP.

A21.195 There have been fluctuations on the level of SPs' revenues on these ranges in the past, and this is linked to the NTS Call Origination Condition on BT. Assuming one of the principles that is adopted is of minimal disruption to SPs, we would expect the SC to be in the range 1-2p and therefore the scope for dispute on where in that range the price point should be is limited (especially with our proposed requirement that SC should only be in 1p increments). Nevertheless, where TCPs and OCPs are

[439] CWW, April 2012 consultation response, p.20.
[440] UKCTA, April 2012 consultation response, p.8-9.

not able to agree, then it remains open to any party to refer that matter to Ofcom for resolution, if it falls within the scope of our relevant powers.

Other comments on the SC

Stakeholder comment

A21.196 FCS said that applying SCs to 10k number blocks might be too inflexible because if SPs sought numbers for several SC price points for a just a few customers then most of the number block would be unused. It said that currently 10k blocks applied to a chosen price point on the 0844/43 ranges. It suggested that a provision for numbers to be allocated in 1k blocks be considered for new number applications.[441]

Ofcom's response

A21.197 There are technical implications which result from having smaller number range blocks and, of course, smaller allocation sizes are likely to lead to more scope for price point changes for a given number block – with consequent management costs. Accordingly a detailed assessment of the technical and commercial implications would be needed before we could adopt such a proposal. Given the scope of the changes that will need to be implemented we do not consider that such an approach is appropriate at the current time. However, we remain open to considering this option in the longer term if demand demonstrates that it is required.

[441] FCS, April 2012 consultation response, p.5.

Part B - Annex 22

Service charge caps for 09 and 118 services

Introduction

A22.1 On 25 July 2012 we published a consultation on service charge ('SC') caps for 09 and 118 services (the 'July 2012 consultation')[442] which considered the case for imposing caps on the maximum SCs for 09 and 118 numbers and the level at which any such caps should be set. It further considered whether there might be a need for additional consumer protection measures in relation to these ranges given their relatively high price levels.

A22.2 This Annex sets out the detailed responses to the July 2012 consultation, our responses to the comments made by stakeholders, and our provisional decisions on these issues. In summary, we are minded to set a maximum price for the SC for calls to the 09 range of £3 (ex VAT) where the SC is set on a per minute ('pm') basis (or includes a pm rate) and £5 (ex VAT) where the SC is set on a per call ('pc') basis. We are minded not to impose a cap on the SC for calls to the 118 range and, in respect of both 09 and 118, we do not consider that further consumer protection measures are required. Our reasons for these provisional decisions are set out in this Annex.

09 and 118 number ranges

A22.3 As set out in Section 7, the 09 and 118 number ranges are both used to provide services to customers that are paid for by the cost of the call. Calls to these number ranges are typically charged at higher rates than calls to other non-geographic numbers.

A22.4 The 09 number range is designated in the Numbering Plan for the provision of 'Premium Rate Services', namely services which are charged to BT's customers at rates "which are generally either a) higher than 8.51p per minute up to and including £1.27.66 per minute excluding VAT, or b) fixed fee calls costing over 8.51p, up to and including £1.27.66 excluding VAT". Services that typically use this range include entertainment, chat and adult services.[443] We refer to the services using the 09 range as 'PRS' in this Annex.

A22.5 As noted in Section 3 (Part A), the major fixed line OCPs currently charge up to £1.68pm for 09 calls and the major mobile OCPs charge up to £2.55 (including VAT). In comparison, the maximum charged for any 08 NGC is 15p per minute by the fixed line OCPs and up to 40p per minute by the major mobile OCPs. [444] Our 2010 Flow of Funds study estimated that in 2009 the average cost of calls to 09 numbers from a fixed line was 85.1ppm and 113pm from a mobile. This compares to average prices of 11.8ppm (from a fixed line) and 27.7ppm (from a mobile) for

[442] Available at http://stakeholders.ofcom.org.uk/binaries/consultations/prs-high-rate/summary/condoc.pdf
[443] Note that the 098 range has been specifically designated for sexual entertainment services. http://stakeholders.ofcom.org.uk/binaries/telecoms/numbering/numplan201210.pdf
[444] See Tables 2.2 and 2.3 in Section 2 of Part A.

calls to 0871/2/3, the next most expensive non-geographic numbers (aside from 118 calls discussed below).[445]

A22.6 Services on the 09 range are subject to the PRS Condition, which requires them to comply with any directions given by PhonepayPlus ('PPP') under its Code of Practice.[446] The PPP Code of Practice imposes certain controls in relation to the prices that may be charged for calls. These include a requirement to obtain PPP's prior permission before providing services charged above certain price thresholds.

A22.7 Outside of the PPP Code of Practice, and with the exception of BT, the price for calls to 09 numbers is not regulated. BT's wholesale charges for these calls are currently constrained by the application of the NTS Call Origination Condition[447], which restricts the amount of revenue that BT can retain from the retail price it charges for such calls. As a result, BT adheres to the retail charge limits that were set out in the Numbering Plan and, accordingly, it does not charge more than £1.53pm (including VAT) for calls to 09 numbers. Although not regulated, other fixed line OCPs have generally chosen not to retail 09 calls at prices much higher than those charged by BT.[448] Charges for calls to 09 numbers from mobiles can be materially higher than those charged by fixed providers but that has not been matched by higher termination rates – mobile OCPs typically pay the TCP no more than the maximum amount paid over by BT under the NTS Call Origination Condition.[449]

A22.8 The 118 number range is used for directory enquiry ('DQ') services. Like 09, charges for calls to these numbers are significantly higher than calls to other non-geographic number ranges and the charges can vary significantly both between different 118 numbers and between different OCPs for each 118 number. The Table below provides some examples of current call costs for the two most popular DQ numbers (118 118 and 118 500).

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[445] See Table 3.6 at pg 21 of Part A, April 2012 consultation. This was based on data from the 2010 Flow of Funds study, p.57. As explained in Section 3, for revenue estimates, the 2010 Flow of Funds study remains our main source of data, although we expect that revenues are likely to have declined in line with volumes.

[446] See http://code.phonepayplus.org.uk/pdf/PhonepayPlusCOP2011.pdf

[447] See Section 4 where we explain this condition in more detail.

[448] Although more recently there have been examples of fixed OCPs departing from this trend, for example: Orange Home Phone started charging prices for 09 numbers which are more in line with mobile prices (up to £2.69p per call plus £2.69 per minute), see: http://web.orange.co.uk/documents/ice/termsandconditions/home_voice_price_changes_19_september_2012.pdf

[449] The termination rates for calls to 09 are currently the subject of a dispute before Ofcom – see: http://stakeholders.ofcom.org.uk/enforcement/competition-bulletins/open-cases/all-open-cases/cw_01088/

Table A22.1: Current retail prices for 118118 and 118500

	BT[450]	TalkTalk[451]	Vodafone[452]	Orange[453]
118500	£1.99pc + 67ppm	£1.32pc + £2.29pm	£3pm	£1.80pc + £1.20pm
118118	£1.79pc + 79ppm	£4.79pm (first minute) then £1.96pm	£2pm	£1.80pc + £1.20pm

A22.9 The 2010 Flow of Funds study estimated that, in 2009, the average price for a call to a 118 number from a fixed line was 87ppm and £1.041pm from a mobile[454] although, as demonstrated in the Table above, individual prices can be much higher than this. Services on 118 are also subject to regulation under the PRS Condition and the PPP Code of Practice. Outside of the Code of Practice, retail charges for these calls are not regulated.

Structure of this Annex

A22.10 This Annex considers stakeholders' responses to our July 2012 consultation and sets out our analysis and conclusions. We will start by defining the set of criteria to use in deciding whether a maximum SC should apply to 09 and 118 numbers and if so, at what level. On this basis, we will then consider the need for SC caps for 09 and 118 services separately and where relevant, the appropriate level of the caps, and the need for other consumer protection remedies.

A22.11 Other aspects of our provisional findings in relation to the regulation of SCs – for example, our view as to whether the SC caps consulted on should remain exclusive of VAT – are addressed in Section 9 and Annex 21. Where relevant, the present annex makes reference to the corresponding parts those Sections and Annexes.

Assessment criteria

July 2012 consultation

A22.12 The July 2012 consultation set out the assessment criteria we proposed to use to determine whether a maximum cap should apply to the SCs for 09 and 118 numbers and, if so, its level.[455] These included the four criteria[456] summarised below, that were first set out in our December 2010 consultation:

[450] http://www.productsandservices.bt.com/consumerProducts/displayTopic.do?topicId=25502
[451] http://sales.talktalk.co.uk/pricing/info/pricing-notification
[452] Based on pay monthly charges: http://www.vodafone.co.uk/shop/pay-monthly/call-charges/
[453]
http://www2.orange.co.uk/servlet/Satellite?pagename=OUKPersonal&c=OUKService&t=Service&cid=1096023563750&tab=2&mid=1137070318927
[454] See Table 3.6 at p.21 of Part A, April 2012 consultation.
[455] July 2012 consultation, pp.19-23.
[456] For assessing the unbundled tariff as a whole we have used a fifth criterion of access to socially important services. In the July 2012 consultation we determined that this criterion did not apply for calls to 09 and 118 calls but that an additional criterion should be used for 118 services (discussed in paragraph A22.13).

- **consumer price awareness**: as our unbundling proposals are aimed at fostering greater transparency and improving consumer awareness, this criterion assesses the extent to which a cap on the level of the SC would further contribute to greater price awareness;

- **efficient prices**: it is important to ensure that our proposals are consistent with consumers' preferences and expectations on the prices for these number ranges;

- **service quality, variety and innovation**: our proposals need to ensure that OCPs and SPs have the right incentives to invest in the quality of their services and meet consumers' preferences; and

- **regulatory burden**: we need to consider the costs of implementation and the likely impact on consumers when determining whether to intervene and the most appropriate form of intervention.

A22.13 In addition to these four criteria, we proposed that we should consider two additional criteria in our assessment:

- **consumer exposure to fraud and bill shock:** because of consumers' infrequent use of NGCs and the lack of price transparency, we considered that consumers could potentially be more susceptible to bill shock. We also noted that the potential for higher revenues to be generated by calls to 09 and 118 numbers could make them a target for fraudulent users (albeit that fraud appeared in practice to be more prevalent on other ranges). We said our proposals for SC caps on the 09 and 118 number ranges should ensure that these risks are minimised while encouraging competition and innovation in service delivery; and

- **bad debt**: we noted that bad debt was a particular issue on these ranges, in part because of the higher prices for calls to these ranges. We said that the risk of bad debt could affect the level and efficiency of the OCP's AC.

A22.14 Finally, we defined one additional criterion for 118 services:

- **access to DQ services at an affordable price**: we recognised that DQ services may be particularly important for some consumers who have limited access to other sources of information.[457]

Stakeholder responses to the July 2012 consultation

A22.15 Thirteen respondents commented on the proposed assessment criteria and the majority of them agreed that these were appropriate for our assessment of the need for and level of any caps on the SCs for 09 and 118 services. However, a number of respondents commented on the application of specific criteria, including, how and when they should be applied and how Ofcom should weight them against each other. Some respondents also suggested additional criteria that should be considered.

A22.16 TalkTalk agreed with the proposed criteria and noted that it was important that the interests of consumers (with respect to protection from fraud and bill shock) were

[457] This criterion was also informed by our obligations under Articles 3 and 5, Universal Service Directive to ensure that directory enquiry services are made available to all end users in the UK at an affordable price.

balanced against those of the OCPs in relation to the risk of bad debt.[458] UKCTA also agreed with our proposed criteria, noting in particular that bad debt was an important consideration with respect to PRS.[459]

A22.17 O2 argued that it was impossible to provide a comprehensive response on the appropriateness of the proposals to impose caps on 09 and 118 services and the level of these caps without an understanding of the relative weight Ofcom had assigned to each criterion. It considered without this, it would be hard for Ofcom to demonstrate the thoroughness and logic we had used to design the proposed caps, which would increase the risk of regulatory failure, legal challenge and damage to the industry (if the price increases are met with resistance from consumer groups).[460]

A22.18 In addition, O2 also argued that the efficiency of pricing criterion did not take account of the complexity of consumer buying decisions and therefore should not carry significant weight. It noted, for example, that consumers have an on-going preference for calls to geographic numbers and this is reflected in cheaper prices for these calls, based on cross subsidies from services with less demand (such as non-geographic calls). O2 also considered consumer protection from exposure to fraud and bill shock should carry significant weight in the assessment of the level of the price cap and that a broad definition of fraud should be used (including, for example, persistent misleading advertising).[461] [✂], a SP, agreed with our criteria but considered that they overlapped in places, and suggested that the key criteria should be price transparency and protection from fraud.

A22.19 [✂], a CP, and FCS considered that we should include calls originating within other Member States and terminating in the UK in our assessment of fraud and bill shock. FCS also noted that facilitating growth in the premium rate calls market is not one of the criteria.[462]

A22.20 Several respondents considered that only a subset of our proposed criteria were necessary in assessing certain interventions. In particular, [✂] a SP, considered that only price transparency and fraud should be taken into account when setting price caps because the other criteria would be addressed by the market. AIME believed that pricing transparency and protection from fraud were the appropriate considerations for pricing regulation. It argued that free market principles should govern service quality and variety and that existing credit control mechanisms (by network providers) were the most effective way of minimising bad debt.[463]

A22.21 While agreeing with the criteria proposed, BT considered that they were unbalanced and tilted in favour of our conclusions because they did not take account of supply issues. It argued that they needed to be supplemented with additional supply-side criteria such as technological neutrality (which would include levelling the playing field between mobile and fixed players with respect to PRS micropayments) and the degree of competition. In particular, BT considered that the appropriate starting point for assessing the need for further regulation of 118 services should be the degree of competition in the market given that this is at the heart of the EU

[458] TalkTalk, July 2012 consultation response, p.1.
[459] UKCTA, July 2012 consultation response, p.3.
[460] O2, July 2012 consultation response, pp 3-4.
[461] O2, July 2012 consultation response, pp.4-5.
[462] FCS, July 2012 consultation response, p.3.
[463] AIME, July 2012 consultation response, p.2.

framework and that since it was liberalised the 118 market had become highly competitive.[464]

Our view

A22.22 We note that the majority of respondents agreed with our proposed assessment criteria.

A22.23 We do not consider that setting a specific weighting factor for each of the assessment criteria in the abstract would be meaningful or that it would deliver a more robust or scientific method for determining the need for and the level of any SC cap. In this respect, we note that all the assessment criteria are relevant to our objective of addressing the identified market failures (set out in Part A, Section 4) in order to protect consumers. The relevant weight of each criterion will depend on the specific issues that arise with respect to each number range.

A22.24 That said, we agree with O2's view that the consumer protection criteria are particularly important in our assessment of the options, given that our powers under section 58(1)(aa) of the Act to require the unbundled tariff structure can only be exercised for consumer protection purposes. We have not adopted any particular definition of fraud and note that the nature of O2's concern in this regard would also fall to be assessed under the consumer price awareness criterion.

A22.25 We acknowledge that there may be an overlap in the application of the criteria. For example, given the lack of consumer price awareness observed in these number ranges, a policy which improves price transparency may lead to more efficient pricing. However, this will not be true in all cases. For example, in the July 2012 consultation we considered whether a cap on the SC could improve price transparency on the one hand but reduce pricing freedom to a degree that it may lead to inefficient prices on the other. Overall, we therefore consider that whilst there may be overlap between some of the assessment criteria in some cases, there may be tension between them in others. For this reason, we maintain that these remain distinct criteria reflecting different concerns, and should be assessed individually as well as in the round.

A22.26 We acknowledge TNUK's concern about the assessment of the criterion of access to affordable DQ services given that we are only looking at a price cap on the SC rather than the total cost of the call. However, we consider that, for 118 numbers, the SC is likely to be the larger component in the cost of a call (i.e. it is likely to be higher than the level of the AC and in some cases materially so). Accordingly, we consider that this criterion is appropriate in relation to the assessment of a cap on the SC for 118 services.

A22.27 Two respondents considered that the fraud and bill shock criterion should take account of calls originating from EU member states and terminating within the UK. In this respect, we note that, as set out in Section 10 the unbundled tariff structure will not apply to international calls.

A22.28 We also note the concern expressed by a SP that apart from price transparency and protection from fraud, all the other criteria would be addressed by the market. AIME raised similar concerns with respect to the service quality and variety and minimising bad debt criteria. However, given the market failures that we identified in our December 2010 and April 2012 consultations, we do not agree that the market

[464] BT, July 2012 response to consultation, pp.6 & 14-15.

is currently addressing all of these concerns. In any case, it is also important to consider the impact of any interventions by reference to these considerations. For example, if the SC for calls to 09 and 118 were unconstrained, we need to consider whether this would have an impact on the level of bad debt and whether OCPs would respond to this by increasing the level of the AC.

A22.29 We do not consider it necessary to introduce separate and additional supply-side criteria such as technological neutrality and competition. These factors have been considered in our analysis of the market failures arising from the provision of NGCS and the harmful impacts that result and under our assessment criteria, in accordance with our general duties under sections 3 and 4 of the 2003 Communications Act.[465]

A22.30 In the light of the responses received to the July 2012 consultation and following our assessment of these, we consider that our assessment criteria remain appropriate.

Imposition of SC cap on 09 services

July 2012 consultation

A22.31 Based on our analysis against our assessment criteria, we considered it was appropriate to impose a maximum SC cap on 09 numbers as it would:

- improve consumer confidence and price awareness of 09 numbers by supporting the wider benefits associated with the introduction of the unbundled tariff, and would thus be likely to increase consumer demand and promote innovation by SPs;
- limit consumers' exposure to bill shock and risk of fraud;
- limit the extent of consumer bad debt, and therefore, the distorting effect that this could have on OCPs' ACs; and
- be unlikely to result in significant costs in terms of service availability and innovation, the efficiency of SCs and regulatory costs, if set appropriately.[466]

Responses to the July consultation

A22.32 In general, stakeholders agreed with our proposal to impose a cap on the SC for 09 services. A number of SPs [✂] however considered that the cap should be subject to regular review to ensure that innovation and service availability are not impeded.[467] This is discussed in more detail in the section on the review of the SC caps below.[468]

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[465] See for example, the discussion of competitive effects of the vertical externality (Part A, Section 4 paragraphs 4.12 and 4.56) and in relation to the harmful impacts of the market failures at paragraphs 4.22 and 4.24 – 4.28). Technological neutrality is promoted when prices reflect the costs of the different technologies and/or consumer preferences, as required by our efficiency of prices criterion. See also the discussion of MVSCs at paragraphs A8.116 – A8.123 (Annex 8) and at paragraphs A22.154 – A22.157 of this Annex.
[466] July 2012 consultation, pp.23-28.
[467] [✂].
[468] See paragraphs A22.175 – A22.187.

A22.33 Virgin Media agreed with the proposal but considered the main reason for imposing the cap was to avoid bill shock. It was also concerned that the incentives for fraud would increase both with the proposed caps (which represent a material increase on the current level of prices) and in the absence of a cap, but considered that overall their systems were likely to be sufficiently robust. Virgin Media also believed it was unlikely that a cap would improve price transparency or awareness.[469]

A22.34 One SP [✂], which did not object to a cap in principle, nonetheless noted the differences in calls charged on a per call and a per minute basis and considered that these should be reflected in the analysis of whether SC caps are required. It believed that per call charges are sufficiently regulated by the PPP Code with respect to transparency and awareness and while it agreed the risk of fraud and bad debt provided sufficient reasons to have a cap on per call SC, bill shock was only really applicable to the per minute services.[470]

A22.35 AIME was broadly supportive of some form of cap but considered the regulation of fixed line calls should be brought in line with mobile and other micropayment methods. This included de-regulation and self regulation where this was possible.[471] One CP [✂] also stressed that Ofcom must consider the 'competitive distortions and moral hazards' arising from different regulation for fixed and mobile PRS.[472] In addition, BT considered that 09 prices should be treated consistently with SMS shortcode tariffs and other micropayment methods for which there is a low level of complaints and risk to consumers and OCPs. It believed that the lower levels of constraint on other forms of micropayments pointed towards reduced constraints on 09 numbers (although it supported the imposition of a cap). BT also noted that Ofcom's proposals fell at the bottom end of PPP's definition of micropayments.[473]

A22.36 FCS strongly disagreed with the proposal to impose a maximum SC cap on 09 numbers. It argued that the way to address any lack of consumer awareness about pricing policy is to draw the consumer's attention to it in a consistent and transparent fashion, not to introduce resale price maintenance mechanisms. FCS also considered exposure to bad debt could be addressed through alternative means, namely pre-call announcements that required agreement from the caller, and by seeking insurance from commercial underwriters.[474]

Our view

A22.37 Having considered the responses to the July 2012 consultation on this issue, we remain of the view that the imposition of a cap on the SC for the 09 range is appropriate because of its benefits in relation to:

- improving consumer confidence in and price awareness of 09 numbers;
- limiting consumers' exposure to the risk of fraud and bill shock; and
- limiting the risk of bad debt.

[469] Virgin Media, July 2012 consultation response, p.1.
[470] [✂]
[471] AIME, July 2012 consultation response, pp.2-3.
[472] [✂]
[473] BT, July 2012 consultation response, p.7.
[474] FCS, July 2012 consultation response, pp.3-4.

A22.38 In reaching this provisional view, we have had regard to the characteristics of services on the 09 range and the extent to which these may impact on the risks of fraud, bill shock and bad debt, as set out in the following paragraphs.

Transparency/consumer price awareness

A22.39 A number of respondents questioned whether a cap would improve price transparency or awareness. As acknowledged in the July 2012 consultation,[475] we consider that price transparency will largely be achieved through the implementation of the unbundled tariff, including, in relation to the SC, by the requirement on SPs to clearly communicate the SC to consumers in all advertising and promotion of their 09 number. We also now consider it plausible that those callers who actually call 09 numbers are relatively price aware (see paragraphs A11.92 – A11.95 of Annex 11 in Part A) and recognise that low call volumes to 09 numbers may reflect the fact that many users simply do not need or want to call these numbers (paragraph A11.80). Nonetheless, we note that our consumer survey results suggest callers in general (including those who do not make 09 calls) are relatively unaware of 09 call prices, and tend to underestimate the price of these calls. Against this background, and as set out in the July 2012 consultation, we remain of the view that a cap will have value in assisting consumers to make a reasonable estimate of the likely price of calling a 09 number, particularly in the initial implementation period when consumers are less likely to be familiar with the new unbundled pricing structure.

A22.40 Finally, the comment from FCS that we are proposing the introduction of "resale price maintenance mechanisms" is a misrepresentation of the SC cap proposal. We emphasise that we are minded to impose a maximum cap on the level of the 09 SC. There will be no restriction on the price levels below that cap.

Consumer exposure to fraud and bill shock

A22.41 In the July 2012 consultation we noted that complaint levels in relation to services on 09 were low and said that they may have been limited by a combination of PPP regulation and some degree of consumer awareness of the relatively high price of calls to this range. Nevertheless, we said that the introduction of the new pricing structure may temporarily increase the risk of fraud and bill shock in relation to 09 calls, in the absence of a cap on the SC.[476]

A22.42 There were mixed views from respondents as to whether these concerns were justified. However, taking account of the history of fraud on this range, the characteristics of services on 09 and overall poor consumer awareness of the range, we continue to believe that there is a risk of fraud and bill shock in the initial implementation period, which a cap on the SC would help to mitigate.

A22.43 Overall, as stated above, the incidence of fraud on 09 is currently low and the level of complaints to PPP has decreased significantly from 2005-06 to 2011-12 (57% reduction).[477] However, there is a relatively recent history of fraudulent practices on these numbers. For example, PPP received over 57,000 complaints in 2004 about a scam using internet dial-up accounts to call 09 numbers[478], while Ofcom received

[475] July 2012 consultation, paragraph 4.35.
[476] July 2012 consultation, paragraphs 4.53 – 4.54.
[477] Source PPP, see Table 5.1, July 2012 consultation.
[478] See http://stakeholders.ofcom.org.uk/binaries/consultations/review-prs/statement/statement.pdf, paragraphs 6.77 – 6.78.

800 complaints on another case in 2006, approximately 25% of which were related to 09 numbers.[479] In 2009, Ofcom introduced new measures to refuse the allocation of certain numbers to individuals or companies where there was evidence that they had used these numbers to cause serious or repeated consumer harm in the past. One of the objectives of the measures was to protect consumers from scams, fraud and other forms of abuse involving these numbers.[480] The 09 range was one of the ranges subject to these protective measures.

A22.44 Taking account of this history, and the poor overall awareness of 09,[481] we remain of the view that if the SC on the 09 range is unconstrained, the incentives for fraudulent behaviour (and the risk of consumer harm that would result) might begin to rise again, particularly during the initial implementation period when consumers may not yet be familiar with the unbundled tariff structure and the new price transparency measures.

A22.45 Evidence of bill shock is also low in this range.[482] As noted above, the controls that already exist under the PPP Code of Practice in relation to the cost of calls are likely to be a relevant factor in this regard.[483] Nonetheless, if the SC is unconstrained, it is possible that the incidence of bill shock may rise, particularly given the type of services which typically use this range. In contrast to services on the 118 number range,[484] 09 services can result in long or repetitive calls (e.g. chat services, daily horoscopes) and therefore are more likely to incur high call costs.[485] Contrary to the view of the SP cited above, we consider that there is a risk of bill shock whether the SC is set on a pm or a pc basis.

A22.46 Accordingly, we remain of the view that the imposition of a cap on the SC for 09 calls would limit the scope for any increase in the risk of fraud and bill shock that might otherwise materialise while the unbundled tariff regime is bedding down.

Bad debt

A22.47 In the July 2012 consultation, we said that bad debt was a particular issue on the 09 and 118 ranges because of the higher charges on these ranges, the greater likelihood that calls were made without the bill payer's consent and the increased risk of fraud. We considered that this increased risk could affect the efficiency of the OCP's AC, given the requirement for a single AC across the 084, 087, 09 and 118 ranges. We therefore proposed that a cap on the 09 SC would limit the extent to which bad debt on the range could impact the AC.[486]

A22.48 Respondents to the July 2012 consultation endorsed this assessment. A number of CPs expressed concern about the level of bad debt in relation to 09 numbers in the absence of a cap (including, EE, TalkTalk, Virgin Media and UKCTA) and several of

[479] See http://stakeholders.ofcom.org.uk/binaries/consultations/review-prs/statement/statement.pdf, paragraphs 6.82 – 6.84.
[480] See http://stakeholders.ofcom.org.uk/consultations/numberingcpt/statement/.
[481] See the evidence from the 2009 consumer survey, discussed at paragraphs A11.69 – A11.81 of Annex 11 in Part A.
[482] July 2012 consultation, paragraphs 4.51-4.52.
[483] See paragraph 3.10, July 2012 consultation.
[484] See paragraphs 22.92 to 22.93 below.
[485] The extent of this risk is mitigated, nonetheless, by the fact that relatively few consumers currently call 09 numbers. As acknowledged in Annex 11 in Part A (see paragraphs A11.73, a small and statistically insignificant number of consumers call 09 numbers regularly (i.e. every week) and only 4% of fixed and 1% of mobile consumers call them sometimes (i.e. every month).
[486] July 2012 consultation, paragraphs 4.27 to 4.31 and 4.55 to 4.56.

these were also concerned about the potential impact that this could have on the level of the AC. BT provided information showing that the level of bad debt for the 09 range was significantly higher than geographic and 118 calls. Accordingly, we consider that the imposition of a cap to control the risk of bad debt on 09 and its potential impact on the level of the AC is justified.

A22.49 While we consider that a cap on the SC is appropriate, we nonetheless observe that the extent of the bad debt risk is mitigated by the current low level of calls to 09[487] and that bad debt costs are likely to be lower for mobile CPs compared to fixed.[488]

Other issues

A22.50 Several respondents were concerned about differences in the regulatory regime for PRS compared to other micropayment methods, such as premium rate SMS and mobile voice shortcodes, that are not subject to price regulation by Ofcom. We noted in the July 2012 consultation that these alternative micropayment systems appeared to be currently operating successfully without the need for regulatory intervention and, in particular, that there was a self-regulatory process in place for the allocation of mobile shortcodes.[489] However, we continue to believe that similar arrangements for self-regulation may be more difficult to replicate for 09 services due to the difficulty in coordinating the large number of OCPs, TCPs and SPs operating in this range. We have considered further the potential for competitive distortions with other micropayment mechanisms in our analysis on the level of the cap below.

Our provisional decision

A22.51 For the reasons set out in the July 2012 consultation and developed in paragraphs A22.39 to A22.50 above, we are minded to impose a price cap on the SC for calls to 09 numbers. We consider that this would offer price transparency benefits that are likely to be particularly material in the initial implementation period of the unbundled tariff. It would provide some protection during that initial period from any increase in the risks of fraud and bill shock that might otherwise materialise. A price cap would also limit the risk of bad debt and any potential it might have to distort OCPs' ACs, without resulting in significant regulatory costs.

A22.52 Our view on the appropriate level of the cap is set out in paragraphs A22.157 to A22.174 below.

Imposition of SC cap on 118 services

July 2012 consultation

A22.53 In the July 2012 consultation we considered that the key concerns which gave rise to our proposal to impose maximum SC caps on 09 numbers similarly applied to 118 DQ services. We considered that there was a need to apply a cap on the maximum SC for 118 numbers to:

- improve consumer confidence and price awareness of 118 numbers;

[487] See footnote 487 above.
[488] See Part B, Section 9 and Annex 20 in particular paragraph A20.61.
[489] July 2012 consultation, paragraphs 4.37 and 4.48. This is process is handled by the shortcode management group, www.short-codes.com.

- protect consumers against bill shock and the risk of fraud; and
- limit the extent of bad debt and its distortionary effects on the efficiency of ACs.

A22.54 We also noted that, as long as the maximum SC was set appropriately, we did not consider that it would act as a constraint on service availability or innovation, result in significant efficiency costs or increase regulatory burden.[490]

Stakeholder responses to the July 2012 consultation

A22.55 The majority of respondents to the July 2012 consultation commented on our proposals to impose a cap on the level of the maximum SC for 118 services. Most of these respondents (12) agreed that a SC cap should also apply to DQ services. However, the two main SPs for 118 services, BT and The Number UK ('TNUK'), strongly disagreed with this proposal. Their concerns are set out in more detail below.

A22.56 The Citizens Advice Bureau ('CAB') provided some qualitative evidence of the typical issues that its clients had in relation to the cost of calling 09 and 118 numbers. In particular, it noted that some unexpectedly large bills were due to misleading advertising or consumers being put through to another organisation by a DQ service provider, without explaining to the customer the high cost of such calls.

A22.57 CAB noted that it had seen many cases of consumer detriment involving 118 services charged at a per min rate below the current cap. It also considered enforcement action should be taken against DQ operators that did not prominently advertise the cost of calls and make the cost of transferred calls clear to consumers using this service. [491]

A22.58 Apart from BT, all the communication providers which responded to the July 2012 consultation (OCPs, TCPs, fixed and mobile providers) agreed with the proposal to set a maximum cap on 118 services. Virgin Media, considered that protection against bill shock and exposure to bad debt were the real benefits of a maximum cap on 118 numbers.[492] A confidential respondent [✂] agreed that a cap on 118 numbers was necessary to ensure Ofcom met its obligations under the Universal Service Directive and considered that DQ services should be treated in the same way as other non-geographic services operating in the same price range.[493]

A22.59 TalkTalk considered that, given the importance of DQ services to consumers, it was particularly important to impose a cap. It also believed there were arguments for a more stringent cap on 118 numbers than for 09 services to ensure consumers are adequately protected. TalkTalk noted that while there had been a significant increase in 118 termination rates over the years, there was little or no corresponding innovation in DQ services.[494]

A22.60 The mobile operators that responded to this consultation, EE and O2, also agreed with our proposal to cap the SC for 118 numbers. EE considered that caps set at the level of Option 1 in the July 2012 consultation would not discourage innovation from reputable and successful providers (particularly as the vast majority of 118

[490] July 2012 consultation, pp.28 to 31.
[491] CAB, July 2012 consultation response, pp.2-3, & 5.
[492] Virgin Media, July 2012 consultation response, p 1.
[493] [✂]
[494] TalkTalk, July 2012 consultation response, p.1.

calls currently have lower termination rates than even the caps proposed under Option 1).[495] O2 considered that a cap was an essential measure to protect consumers (at least in the short term), given there would be an increase in the cap at the same time as there is a disaggregation of pricing structures that consumers are currently familiar with.[496]

A22.61 UKCTA agreed that it was also appropriate to impose a maximum SC cap for 118 services consistent with the 09 cap. It noted that the proposed cap would not in any way constrain the pricing freedom of current DQ providers.[497] The Federation of Communication Services ('FCS') considered there was a strong public benefit argument to the provision of DQ services particularly for the sections of society that do not have ready access to the internet. It believed a firm price cap for the SC should be imposed to "give consumers confidence, avoid bill shock and to ensure the continued universal provision of the service" irrespective of whether the call originated from a fixed or mobile line.[498]

A22.62 BT, TNUK and AIME, however, believed that 09 and 118 services are in distinct markets that have different features and as such the need for and level of any cap should be considered separately. BT considered that the fundamental differences between the two markets would result in a different outcome of the assessment of the need for a cap. Specifically BT and TNUK believed there were key differences between the 09 and 118 markets in terms of the level of competition and demand characteristics.[499]

A22.63 The issues raised in BT and TNUK's responses are set out in more detail below, and we have separated them into the following topics:

- competiveness of the DQ market;
- demand characteristics;
- consumer price awareness;
- consumer exposure to fraud and bill shock/risk of bad debt;
- service availability and innovation;
- access to services at affordable prices; and
- inconsistent policy approach.

Competitiveness of the DQ market

A22.64 BT noted that since the 118 market was liberalised in 2002, it has become highly competitive with over 100 DQ SPs operating in the UK, offering more than 400 different services at a range of price points. It did not understand how imposing a price cap would increase the level of competition for DQ services.[500] TNUK also

[495] EE, July 2012 consultation response, p.8.
[496] O2, July 2012 consultation response, p.10.
[497] UKCTA, July 2012 consultation response, p.4.
[498] FCS, April 2012 consultation response, p.2.
[499] BT, July 2012 consultation response, p.3, TNUK, July 2012 consultation response, TNUK, July 2012 consultation response, p.2 and AIME, July 2012 consultation response, p.3.
[500] BT, July 2012 consultation response, pp.14-15.

noted that customers had a range of alternative sources for DQ information, including electronic alternatives such as the internet, and call volumes have been declining. It argued that given the extent of competition and the recent decline in DQ volumes, SPs were doing everything possible to retain existing customers by ensuring their needs are met.[501]

Demand characteristics

A22.65 TNUK noted that customers valued the fast and convenient aspects of using voice calls to get relevant directory enquiry information.[502] BT observed that a wide range of services are available on the 09 number range whereas the 118 number range was only for DQ services. Given this and the nature of customer requirements for DQ services, it considered there was little risk that calls to 118 numbers would be habit forming, addictive or result in long calls (unlike some 09 calls).[503]

A22.66 Given these competitive and demand characteristics, BT and TNUK considered that a SC cap was not needed to protect consumers in the DQ market. BT believed that the wide range of services and prices currently available demonstrated that consumer preferences were being met through the competitiveness of the market without the need for future regulatory intervention.[504]

Consumer price awareness

A22.67 Both BT and TNUK considered that price transparency would best be achieved by implementation of the unbundled tariff, alongside the existing PPP requirements to make pricing clear and prominent in all advertising and promotional material.

A22.68 BT argued that the major issue under the current regime is that other OCPs (particularly mobile operators) are able to charge considerably higher prices for calls to DQ numbers than it does. It believed that the structure of the unbundled tariff proposals and the additional transparency this will bring to OCPs ACs, will result in consumer price awareness and transparency being less of a problem.[505]

A22.69 TNUK considered that Ofcom had not provided any evidence on the current level of consumer price awareness for 118 calls. It noted in particular that consumer price awareness of the cost of 09 calls remained low despite the fact there had been a cap in place for the last 13 years. TNUK considered that a cap on 118 services would only positively influence price awareness if prices were clustered at or close to the level of the cap, and argued that this outcome would be unlikely to lead to consumers' being better off. It also believed there was no evidence to support Ofcom's view that unbundling would lead to DQ SPs increasing their prices.[506]

A22.70 In addition, TNUK strongly challenged Ofcom's view that the 118 SC should be capped to protect consumers but that a similar cap was not needed for the OCPs' ACs. It considered that OCPs were just as likely as 118 SPs to take advantage of consumer uncertainty from the introduction of unbundling, increasing the risk of higher ACs.[507]

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[501] TNUK, July 2012 consultation response, p.12.
[502] TNUK, July 2012 consultation response, Annex 2. [✂]
[503] BT, July 2012 consultation response, pp.15-16.
[504] BT, July 2012 consultation response, pp.13-14.
[505] BT, July 2012 consultation response, pp.14-15 & 20.
[506] TNUK, July 2012 consultation response, pp.13-15.
[507] TNUK, July 2012 consultation response, pp.14-15.

Consumer exposure to fraud and bill shock/the risk of bad debt

A22.71 Both BT and TNUK argued strongly that Ofcom had not provided sufficient evidence of existing or prospective consumer harm in order to justify setting a maximum SC cap on 118 services. As such they considered that Ofcom had not demonstrated that the cap was either proportionate or justifiable. TNUK was also concerned that Ofcom had not proposed any sunset provisions or timeframe for a re-assessment of the need for and/or level of the cap.[508]

A22.72 TNUK and BT commented that the number of complaints regarding 118 numbers were very small compared to the number of calls made. TNUK argued that in the limited complaint data provided by Ofcom regarding 118 calls there was no distinction between complaints from landlines versus mobiles. It postulated that the majority of any complaints were likely to be due to the far higher cost of mobile originated DQ calls.[509]

A22.73 In addition, BT argued that high bills in relation to 118 calls were rare. It noted that the potential risk area for bill shock related to onward connected calls (as the average length of a standard 118 call is under a minute) and consumers are protected from this risk by mandatory price-warnings required by the PPP regulations. BT also provided evidence that bad debt in relation to 118 numbers was lower than average for non-geographic calls and across all calls.[510]

A22.74 Both BT and TNUK noted that there was no evidence of fraud in relation to 118 services and that SPs are now required to register with PPP. TNUK considered that as the number range is so well recognised, it was unlikely to be a target for fraud and commented it had not come across an example of 118 fraud since it had been deregulated.[511]

A22.75 BT considered that the existing PPP regulation was effective in controlling consumer risk and Ofcom had not justified its assertion that, in the absence of a cap, prices could become exploitative or provided any evidence of current consumer detriment.[512] TNUK noted that Ofcom had not undertaken any analysis of the level of bad debt or the supposed distorting effect it may have on the OCPs AC. It noted that as 118 calls account for only about 1% of total NGC volumes and the level of bad debt for 118 is also low, any distortive effect would be minimal.[513]

A22.76 In addition, in its supplementary response TNUK noted that high DQ prices exist currently (although the low volumes for these services indicate there is very little consumer harm) and it therefore did not consider that there is any constraint on wholesale DQ prices from OCPs refusing to connect calls with high SCs. It believed the real issue is high retail prices from mobile operators which are a significant mark-up on the DQ SPs charges.[514]

A22.77 TNUK also argued that there is no evidence to support the view that DQ prices will increase to a level that will cause consumer harm (rather than simply increase) following the introduction of the unbundled tariff. It believed that consumers may be willing to pay higher prices for a DQ services in the future and SPs should be

[508] TNUK, July 2012 consultation response, p.24.
[509] TNUK, July 2012 consultation response, pp.16-19.
[510] BT, July 2012 consultation response, pp.14 & 16-17.
[511] TNUK, July 2012 consultation response, p.19.
[512] BT, July 2012 consultation response, p.14.
[513] TNUK, July 2012 consultation response, p. 4.
[514] TNUK, July 2012 additional consultation response, p.4.

entitled to determine the type of services they wish to offer and be able to set their prices accordingly.[515]

A22.78 In its supplementary response TNUK reiterated its concerns regarding any review of the need for and level of the SC cap. It was concerned that Ofcom had not provided any details of when or how such a review will be undertaken. TNUK commented that the lack of any detail as to the criteria Ofcom would apply in any review increased its concern that in reality Ofcom has no intention of reviewing the cap. TNUK also questioned how Ofcom would review the need for a cap after the transition period, in particular how we would assess whether the risk of higher prices existed in the absence of any cap, given that caps can become a focal point for prices and as such the variety of prices below the cap may be misleading.[516]

Service availability and innovation

A22.79 BT considered that a cap would limit SPs commercial freedom to price appropriately to their service proposition and therefore meet their customers' needs. It believed the level of the proposed cap would threaten a significant niche in the existing market (for example International DQ). BT noted that any future development of existing or new services is likely to be at the higher end of the market and any caps would reduce the likelihood of future investment and innovation in DQ services. Furthermore, it disagreed that a price cap would encourage innovation in an already declining market.[517]

A22.80 TNUK set out a similar view and noted that it was important to distinguish between demand for existing and new services. It believed that some new services would be likely to be more expensive to provide than the current generation DQ services and may therefore justify a higher price than the proposed cap of £3 per minute or £5 per call. It considered that all revenue would still need to be generated through the length of the call but higher costs would be generated outside the call, fundamentally changing the cost dynamics for these DQ services. TNUK confidentially provided some examples of possible future services in its response to support these arguments.[518]

A22.81 In addition, TNUK challenged the view that a cap will increase confidence, demand and innovation. It also considered that a cap would be likely to reduce price efficiency as it would reduce the commercial freedom of SPs to set their prices.[519]

Access to services at affordable prices

A22.82 BT and TNUK did not believe that maximum caps at the proposed levels of £3pm and £5pc would ensure that consumers had access to affordable DQ services. BT considered the best way to ensure affordability and choice in the DQ market would be through the implementation of the unbundled tariff and by requiring OCPs to offer access to all DQ services.[520]

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[515] TNUK, July 2012 additional consultation response, p.6.
[516] TNUK, July 2012 additional consultation response, pp.11-12.
[517] BT, July 2012 consultation response, p.14.
[518] TNUK, July 2012 consultation response, pp.5 & 28-30.
[519] TNUK, July 2012 consultation response, pp.15-16.
[520] BT, July 2012 consultation response, p.15.

A22.83 TNUK argued that as the maximum cap would only apply to a proportion of the call (the SC) under the unbundled tariff structure it would not ensure DQ services remain affordable.[521]

Inconsistent policy approach

A22.84 TNUK argued that Ofcom's proposal to impose a SC cap on 118 services conflicts with its regulatory principles. In particular:

- to operate with a bias against intervention, but with a willingness to intervene firmly, promptly and effectively when required – TNUK argued that to be consistent with this principle, regulation should only be put in place when it is demonstrably necessary and in this case, Ofcom has not provided sufficient evidence in support of this;

- to seek the least intrusive regulatory mechanisms to achieve policy objectives – TNUK considered the proposed caps on 118 are particularly intrusive as they will apply to all services, and therefore all revenues, that a DQ provider can generate with no scope for tariff rebalancing across other non-capped services; and

- to consult widely with all relevant stakeholders and assess the impact of regulatory action before imposing regulation – TNUK believed that the proposed caps were developed following conversations with the PRS industry with little consideration given to the views of, and impact on, the DQ industry.

A22.85 In addition, TNUK noted that Ofcom stated in its December 2010 consultation that it would not cap the 118 SC. It believed that this further consultation (the July 2012 consultation) provided no new evidence or arguments to justify reversing its position.[522]

Our view

A22.86 Given the information provided by respondents to the consultation and the evidence available to us, we have reviewed our assessment of the need for maximum SC cap for the 118 number range under our assessment criteria. In the light of the responses we have received, we have provisionally concluded that a cap on the SC for 118 services is not justified. Our reasons for this view and our responses to the issues raised by stakeholders in relation to those criteria which were key to our proposal to impose a cap on the 118 SC, are set out in the following paragraphs. As for the 09 number range, we have taken account of the particular characteristics of DQ services and their impact on the concerns which we identified in the July 2012 consultation.

Consumer price awareness

A22.87 In the July 2012 consultation, we said that, as for 09 numbers, improvements to consumer price awareness would largely be achieved through the price transparency benefits of the unbundled tariff. However, we proposed that a cap on the SC for 118 services would have a value in enabling consumers to make a reasonable estimate of the likely cost of calling a 118 number. We also considered that a cap would mitigate the risk of operators increasing prices while consumers are getting used to the unbundled tariff pricing structure.

[521] TNUK, July 2012 consultation response, pp. 6 & 10.
[522] TNUK, July 2012 consultation response, pp.8-12.

A22.88 However, as BT and TNUK have pointed out, marketing and brand promotion are particularly important in driving consumer interest in and recollection of 118 services.[523] Given the requirement for SPs to include the SC in any advertising and promotion of their non-geographic number, this is therefore likely to be particularly effective in raising consumer awareness of the price of calling 118 services. This feature of the 118 services market may therefore reduce the scope for a cap on the SC to secure the additional transparency benefits that we identified in the July 2012 consultation.

Consumer exposure to fraud and bill shock

A22.89 The concern we set out in the July 2012 consultation was that, at least in the initial stages of the introduction of the unbundled regime, consumers could be subject to very high initial SCs in the absence of a cap. We considered that, in line with our concerns on the 09 range, there could be a risk that some operators would take advantage of consumer uncertainty over the new pricing structure to increase prices. This, in turn, could increase the scope for bill shock and incentives for fraud.

A22.90 However, as argued by TNUK and BT, there is no history of fraud on the range (contrary to the position on 09) and little evidence of bill shock – as discussed in the July 2012 consultation, the overall level of complaints about 118 numbers is low in comparison to the volume of calls.[524]

A22.91 We accept that the low incidence of fraud and bill shock on 118 may be linked to the specific characteristics of this number range and the services that are provided on it. We consider that these same characteristics are likely to mitigate potential risks during the implementation of the unbundled tariff.

A22.92 In particular, we acknowledge BT's argument that the demand characteristics for DQ services mean they are unlikely to result in long calls (apart from onward connection) given that consumers especially value speed and convenience in the provision of these services. These services are also less likely to be addictive or habit forming, particularly in comparison to some 09 services. As such, there is low risk of bill shock in relation to the provision of telephone number information. While different considerations may apply to charges for onward connected calls, we note that these are already subject to mandatory price warnings under the PPP regulations.[525]

A22.93 In addition, as pointed out by TNUK[526], consumer recognition of 118 as the prefix for DQ services means they are likely to be less susceptible to fraudulent practices on this range, than is the case for 09 numbers (and other non-geographic ranges) which they may be on less familiar terms with.[527] Moreover, the relatively small

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[523] TNUK, July 2012 consultation response, p.7; BT, July 2012 consultation response, p.14.

[524] In the year ending June 2012, Ofcom only received 86 complaints in relation to charges for DQ services (see paragraph 4.52 of the July 2012 consultation).

[525] In particular, point 2.3 of PPP's Guidance note on DQ services states that "prior to any further connection being made by the provider, the consumer should be clearly informed of the cost, and have the opportunity to opt out of the connection, whether by hanging up before they are connected or otherwise. If the consumer declines this option, they should be provided with the requested number at no additional charge". See http://code.phonepayplus.org.uk/pdf/guidance-notes/directory-enquiry-services.pdf.

[526] TNUK, July 2012 consultation response, pp.4 & 19-20.

[527] For example, there has been a history of scams where consumers have been tricked into calling a 09 number where they frequently got a repeated call queuing message keeping them on hold with no answer. For example, this has included deceiving consumers into calling to win unclaimed cash from

number of 118 numbers available is likely to mean that the opportunity and incentive to use them for fraudulent purposes is likely to be much lower than on other ranges.[528]

Bad debt

A22.94 In the July 2012 consultation, we said that the level of the SC on 118 numbers could increase the risk of bad debt and the potential for this to distort the level of the AC.[529] However, we accept the evidence from BT that the level of bad debt in relation to calls to 118 is lower than average both for non-geographic calls and for all calls. Taking this into account and the very small proportion which 118 represents of total non-geographic call volumes, we consider it unlikely that bad debt on this range could have any material impact on the level of the AC.

Our provisional decision

A22.95 In the July 2012 consultation, we expressed concern that some SPs might take advantage of potential consumer confusion and set very high initial SC prices during the period after the implementation of the unbundled regime. If such a scenario were to occur, it could lead to the benefits of lower ACs not being passed on to consumers and higher incidences of bill shock, bad debt (including the resulting impact on the AC) and fraud.

A22.96 However, we recognise that, as noted by BT and TNUK, there is limited historical or current evidence of consumer harm in the 118 number range with respect to bill shock and fraud; likewise incidence of bad debt is lower than other ranges. Furthermore, we consider that the specific characteristics of the 118 range mean that the potential for bill shock, fraud and bad debt is less likely to materialise even during the transition period. We also note the importance of marketing and brand promotion of this sector and the beneficial impact this is likely to have on the SC transparency obligations we are minded to introduce.

A22.97 The other assessment criteria (service availability and innovation and access to affordable directory enquiry services) were not central to our proposal to impose a cap and none of the comments we have received in relation to these criteria provide us with a sufficient basis to change that view.

A22.98 We therefore accept that, on the basis of the available evidence and the reasoning set out above, the case for imposing a cap on the 118 SC does not appear to be justified at the current time. However, we will be closely monitoring the situation with the introduction of the new regime. Should new evidence emerge of consumer harm, we will reconsider the need for regulatory intervention.

A22.99 In view of the approach we are minded to take on this issue, we have not dealt with those comments which relate to the level of a cap on the SC for 118. Other issues, such as the case for a cap on the AC and access to non-geographic numbers

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prize draws (see http://www.phonepayplus.org.uk/News-And-Events/News/2007/12/~/media/Files/PhonepayPlus/News%202007/Call4CashSummary.pdf) and to re-arrange a 'missed parcel delivery' (see http://www.phonepayplus.org.uk/News-And-Events/News/2008/11/EMERGENCY-PROCEDURE-INVESTIGATION.aspx).

[528] Only 548 118 numbers have been allocated to date (out of a possible 963) and these numbers are allocated individually to DQ SPs; in comparison, 09 numbers are allocated in blocks of 10,000, making these numbers easier to come by and fraudsters using them harder to identify.

[529] July 2012 consultation, paragraph 4.74.

(including 118) are dealt with elsewhere in this document (Section 9 and Section 10 respectively).

Structure of higher rate Service Charges

July 2012 consultation

A22.100 In developing our proposals for the level of the SC we recognised that SPs currently offer a wide variety of services on the 09 and 118 number ranges and as such they would be likely to need both pc and pm pricing structures.[530] We also considered that based on evidence submitted by stakeholders, it was likely that the pc pricing structure would require a higher SC than the pm structure.[531]

A22.101 We therefore proposed to assess the level of the maximum SC cap separately for calls charged on a pc basis and a pm basis. We also noted that some services on the 118 and 09 number ranges were charged through a combination of a pm tariff and some form of one off set-up charge. We said that SPs wishing to choose this type of tariff structure would need to comply with the maximum pm SC cap that we adopted.[532]

Responses to the July 2012 consultation

A22.102 The significant majority of respondents agreed that it was appropriate to assess the level of the maximum SC for calls charged on a pc and a pm minute basis separately.

A22.103 TalkTalk considered this was necessary to enable the continuation of current service offers in the market.[533] AIME agreed that there were fundamental differences in the types of service that use pc pricing structures and these services needed higher pc price points.[534] The FCS agreed with the proposal but considered that these were issues for the industry to resolve, noting that the key was clear and consistent statements to the consumer not artificial price constraints.[535] Sky agreed with the proposed approach and argued that for the same pragmatic reasons OCPs should be able to set their AC as both pm and pc. It considered our approach to the structure of charges for SCs and ACs was inconsistent.[536]

A22.104 BT considered different pc and pm SCs would give CPs flexibility in how they structure charges, meet consumer needs and demands for different pricing structures from broadcasters, charities and other SPs. It also considered there was a greater potential for consumer harm from customers making repeat calls on a pc rate and running up large debts. BT believed that PPP should review its rules on the caps for PRS calls and this should also apply to pc rates. It noted that this could

530 A pc tariff indicates the total price charged for a call irrespective of the duration of the call (also called a drop charge or a one-off payment). A pm tariff sets out the price charged for every minute of a call and the total price of the call will depend on its duration. SPs can also charge a call set-up fee (a one-off charge applied to the first minute of the call which is then followed by a different price pm charge for the remainder of the call) as long as the total pm charge does not exceed the maximum level of the pm cap. See also paragraph A21.14 in Annex 21 where we define these different charging structures.
531 July 2012 consultation, paragraphs 4.85 – 4.87, 4.92 – 4.93.
532 July 2012 consultation, paragraphs 4.88 – 4.89.
533 TalkTalk, July 2012 consultation response, p.1.
534 AIME, July 2012 consultation response, p.2.
535 FCS, July 2012 consultation response, p.4.
536 Sky, July 2012 consultation response, p.1.

include a reasonable cap on call volumes for pc services per individual customer line per day to reduce the risk of bill shock and bad debt.[537]

A22.105 On the other hand a SP [✂] considered that pc charges were preferred by consumers and were less likely to result in bill shock. It therefore believed a higher cap should apply and this was key to it being able to maintain service availability and innovation (it said that given the current disadvantage between 09 services and SMS it was unable to use 09 PRS for higher rate interactive or drop call charitable donation services).[538]

A22.106 O2 noted that it appeared that SPs were satisfied with the price points and options currently offered by mobile shortcodes (a market driven solution) and Ofcom's concern that there needed to be a higher prices for pc services had not been realised. It believed that we should consider whether the levels of the cap were appropriate regardless of their unit of measurement.[539]

A22.107 In response to the April 2012 consultation, BT also commented that it was not clear if the SC caps would cover the total price of the call. It said an example of this was 0900001 which was designated within the Numbering Plan as a "Special Services, time charged calls up to and including 60ppm and the total call cost not greater than £5". BT said that under this designation the TCP was obligated to stop the call once the maximum call charge had been reached ('force release'). It said that if the TCP failed to activate a force release, the OCP should be able (as BT was able to currently) to recover any additional costs incurred as a result directly from the TCP. BT said that clarity was needed regarding that scenario.[540]

Our view and provisional decision

A22.108 We note that the significant majority of respondents agreed with our proposal and considered that SCs priced on a pc basis would need to have a higher cap. Although BT suggested that there was a greater potential for consumer harm in services priced on a pc basis rather than a pm basis, it did not disagree with the proposition that the caps for each charging methodology should be assessed separately. Further, it suggested that its concern in relation to 09 SCs set on a pc basis was a matter for PPP to address through its controls on call charges, and not one that required adjustment of the relative cap levels we had proposed.

A22.109 With regards to the point raised by Sky in relation to consistency with the structure of charges between the SC and the AC, we set out why we consider a pc structure is not appropriate for the AC in Section 9 and Annex 20 (in particular see paragraphs A20.106 to A20.116).[541]

A22.110 We have therefore provisionally decided that it is appropriate to assess the level of the maximum SC cap separately for calls charged on a pc basis and a pm basis and set the cap higher for pc type services. This reflects the demand from SPs for differing charging structures, as well as the fact that the potential for bill shock and fraud is greater under pm charging structures (because the price increases with the length of the call). In response to BT's comment, the £5 pc cap will cover the total

[537] BT, July 2012 consultation response, p.7.
[538] [✂].
[539] O2, July 2012 consultation response, pp.7-8.
[540] BT, April 2012 Consultation response, p.37.
[541] We also responded to arguments from stakeholders about the consistency of our position on pc charging for the AC and SC in the April 2012 consultation. See paragraph 10.103 in Part B, Section 10 of the April 2012 consultation.

cost of the SC for the call. We are not aware of any reason that current industry/commercial arrangements relating to 'forced release' and any necessary cost recovery should not be able to continue.

A22.111 No stakeholders commented on our proposal that any SCs with a structure combining pm and pc amounts (e.g. a call-set up fee followed by a pm rate) should be charged up to the maximum of the pm SC cap for each pm charge. We therefore intend to adopt this approach. To be clear, this means that, for example, an SP could have a £1 set-up fee followed by a £2pm rate (or any combination of prices up to a maximum of £3pm), but they could not have a £5 set-up fee followed by a £3pm rate. Our proposed modifications to GC17 set out the restrictions on the SC to this effect in Section 6.

Level of the maximum SC for 09 services

July 2012 consultation

A22.112 We did not consider it was appropriate to set the level of the SC cap at the current maximum retail price charged by BT as it was set in 1997 and since this time inflation has eroded its value.[542] We therefore identified three options for the level of the SC caps for services priced on a pc and a pm basis. These are set out in Table A22.2 below.

Table A22.2: Options for the level of the SCs

	Price per minute (excluding VAT)	Price per call (excluding VAT)
Option 1	Inflation increase (£2.29)	Inflation increase (£2.29)
Option 2	£3	£5
Option 3	£3 – £5	£5 – £10

A22.113 Our detailed assessment of these options is set out in paragraphs 4.125 to 4.158 of the July 2012 consultation. In light of our analysis we considered that Option 2 – a SC cap of £3pm and £5pc was our preferred option as this level was likely to:

- satisfy most SPs' demands for a higher cap on 09 services; and
- be sufficient to provide SPs with similar revenues to those existing on mobile shortcodes;

A22.114 In addition, in comparison to Option 3, we said it would:

- lead to a lower number of price points (improving consumer price awareness);
- better protect consumers against the risk of fraud and bill shock;
- constrain the impact of bad debt on the efficiency of OCPs' ACs; and

[542] July 2012 consultation, paragraphs 4.90 – 4.94.

- limit the scope for unintended consequences in the initial period of implementation of the unbundled tariff.

Responses to the July 2012 consultation

A22.115 Responses on this issue were split into three broad camps – consumers and mobile OCPs considered that our preferred option set the cap too high; most fixed OCPs generally agreed with the level proposed; and SPs argued that the proposed level was too low (at least if introduced at the same time as the unbundled tariff). In addition, the CAB considered we had been unclear about the level of cap being proposed and in particular whether this included or excluded VAT. We have divided respondents' comments under the relevant headings below.

Exclusion of VAT

A22.116 The CAB considered the consultation was very vague on the issue of whether the proposed caps of £3pm and £5pc included or excluded VAT. It noted that Ofcom had compared the £3 cap with the uprated BT retail price cap (which included VAT) and this could make the comparison meaningless, particularly in terms of consumer detriment. The CAB considered that this was an important issue as if the proposed prices excluded VAT, the actual prices consumers would be paying would be significantly higher at £3.60pm and £6pc. It also believed that this would increase the incentives for companies who wished to take advantage of consumers.[543]

Proposed SC caps are too high

A22.117 The CAB, Magrathea, EE, O2 and an individual considered that Ofcom's proposed level of the cap was too high.

A22.118 The CAB considered that if Ofcom was determined to increase the level of the pm SC then it was preferable to set it at the uprated BT retail price cap of £2.29 (i.e. Option 1). It noted that this was only 61p less than Ofcom's preferred option but would give an additional 76ppm for new and innovative services than the current cap of £1.53. However, the CAB expressed concern about consumer detriment at the current level of the cap noting that it sees incidences of bill shock, misleading practices and outright fraud and expected that this would only increase if the cap was increased. It provided case studies where clients had experienced fraud and bill shock but it was unable to provide disaggregated statistics to give a better understanding of the scale of the problem. The CAB did not object to the proposed £5pc cap as long as there were sufficient consumer protections in place (this is discussed further in the consumer protection section below).[544]

A22.119 While Magrathea agreed that our proposed cap of £5pc was the best option, it considered that the proposed £3pm cap was at the top end of what was appropriate. It suggested that a £2pm SC cap was more appropriate both to protect consumers and minimise fraud. It noted that it did not have any evidence that SPs using its service would require a rate higher than this for their services.[545]

A22.120 EE disagreed with Ofcom's analysis and argued that the approach that would maximise welfare outcomes for both competition and consumers, offered material additional headroom for service innovation and minimised the risks to consumer

[543] CAB, July 2012 consultation response, pp.3-4.
[544] CAB, July 2012 consultation response, pp.4-7.
[545] Magrathea, July 2012 consultation response, pp.1-3.

welfare was Option 1. It considered that Ofcom had overstated the aggregate benefit of value added entry by SPs, while understating the inherent risks of higher bad debt, fraud and bill shock. EE also believed that the proposals would risk diminishing price competition by creating incentives for SCs to cluster at the level of the cap (which it argued is not allocatively efficient) and increase the likelihood of higher ACs to compensate OCPs for the additional commercial exposure. It believed that the risks attached to the lower SC caps under Option 1 could be manageable but may result in additional resource costs and were not likely to entirely mitigate the risks of fraud, bad debt and bill shock.[546]

A22.121 EE did not agree that Ofcom could assess the impact that the range of 09 price points may have on price awareness for the different levels of the cap as these price points have not yet been agreed. However, it considered that based on theoretical possibilities, Option 1 would offer the strongest consumer benefits in terms of price awareness given it involves the least significant one-off increase in the level of the SC.[547]

A22.122 EE also noted that in its analysis of the efficiency of pricing Ofcom had relied on the availability of mobile shortcodes offering drop charges of up to £10 to show that there was demand for services charged at this level. However, EE disagreed that there were commercially oriented services available at this level, providing evidence that the maximum charge available on its networks was £2 which it understood to be the highest across the mobile networks (as otherwise it would have received requests from aggregators to provide higher prices).[548] EE considered that SPs using shortcodes typically based their service on lower upfront single payments to provide consumer confidence and certainty. It therefore believed that Ofcom's assertion that there was unmet demand for 09 services at retail prices of £5 to £10 was flawed since the mobile shortcodes in these price ranges primarily relate to a limited number of charity services.

A22.123 EE considered that mobile shortcode market was an example of how industry can develop innovative solutions that deliver real benefits to consumers and businesses. In addition, it argued that shortcodes are unique as they offer a single up front price for the customer whereas, even under the unbundling regime, 09 SPs will only be able to advertise the SC and not the total price of the call.

A22.124 EE was therefore concerned about any potential distortion between the 09 and mobile shortcodes markets due to changes in the regulation of 09 services. For example, EE noted that the outpayments for 09 services available under Option 2 would be higher than the current mobile shortcode outpayments for commercial services. It was therefore concerned that if the SC caps proposed in Options 2 or 3 were allowed, this may encourage inefficient migration to 09 numbers by SPs using mobile shortcodes.

A22.125 As discussed above, EE was also concerned that setting a higher maximum SC on the basis of unmet demand, will incentivise SPs to price up to this level regardless of the value added (it pointed to the recent introduction of maximum price caps for international roaming as evidence for this). EE did not agree that Ofcom's analysis showing that only a few SP's currently set their prices at the maximum level of the

[546] EE, July 2012 consultation response, pp.4-7.
[547] EE, July 2012 consultation response, p.4.
[548] EE stated that it does provide access to shortcodes for some charities (such as Comic Relief) with donations payable of £5 to £10pc but that these were not representative of retail prices for commercially operated services. EE, July 2012 response to consultation, p.5.

SC cap provided evidence that a focal point would not arise in the future. EE therefore considered that only Option 1 would support the criterion of pricing efficiency as it would generate the least allocatively inefficient outcome of all the options.[549]

A22.126 EE disagreed that an above inflation increase in the SC was required to facilitate innovation in the services offered over 09 numbers. It argued there was already a proliferation of services on 09 numbers and increasing the cap would not lead to more services being offered as these services now compete with a range of other services available over different technologies. EE instead believed that the most likely outcome of increasing the SC would be to make the existing 09 services more profitable and that Option 1 would therefore represent the best outcome for UK consumers.[550]

A22.127 EE was also concerned that Ofcom had ignored the impact of fraud on CPs who spend considerable time and resources detecting and preventing it. It was expecting a considerable increase in the level of such fraudulent activity even under the SC caps set out in Option 1, which would come at an increased cost to OCPs and ultimately the customer. EE also considered that Ofcom had not taken account of the cost to OCPs of bill shock as customers tended to contact their CP in the first instance. In addition, EE disagreed that the opportunity for SPs to exploit confusion during the transition to the new regulatory regime would be temporary. It was concerned that high prices (clustered at the top of the cap) and consequently fraud and bill shock would become a permanent feature of the proposed new regime. EE therefore concluded that Option 1 would also best meet the criterion of minimising exposure to fraud and bill shock.[551]

A22.128 Finally EE disagreed that Option 2 would sufficiently minimise the potential distortionary effect of bad debt in setting the AC (particularly given its argument that SPs will cluster SCs at the level of the cap which would be a significant increase for some services). It considered higher SCs on 09 calls could have externality effects where disconnected customers (due to their inability to pay bad debt related to 09 calls) are unable to make or receive ordinary voice calls or access the internet. EE considered that Option 1 would minimise bad debt risk to OCPs and also the potential negative flow on effects of this for consumers.[552]

A22.129 O2 considered that Ofcom should take a more scientific approach to determining the right level of the SC cap starting with uplifting the current BT retail price by inflation. It considered this could then be adjusted up and down to reflect the quantified values and weights assigned to the assessment criteria. O2 believed that efficient pricing and service quality and innovation (taking into account the capital investment and increase in demand expected from the unbundled tariff) would be likely to increase the level of the cap. On the other hand it considered consumer protection concerns relating to fraud, bill shock and bad debt (adjusting for any additional consumer protection measures) would be likely to decrease the level of the cap. O2 believed that this would give an optimal price for the level of the cap that more accurately reflects the relative weight of the assessment criteria.[553]

[549] EE, July 2012 consultation response, pp.5-6.
[550] EE, July 2012 consultation response, pp.7-8
[551] EE, July 2012 consultation response, pp.9-10.
[552] EE July 2012, consultation response, pp.10-11.
[553] O2, July 2012 consultation response, p.9.

A22.130 O2 also considered that in its view SCs would be charges for network access within the meaning of section 185 of the Act. It said it therefore followed that disputes about SCs would be capable of being considered under the dispute resolution mechanism. O2 believed that if a dispute was raised within Ofcom on the SC, we would be required to consider whether those charges were 'fair and reasonable'. It said in its view it was not clear that the proposed maximum SC caps would necessarily be fair and reasonable within the meaning of sections 185-191 of the Act in all circumstances.[554]

A22.131 O2 also considered that the fact that mobile shortcodes are offered on higher price points was only an indicator of the level that SPs and consumers might be happy to use. It also noted that comparisons with the mobile shortcodes would not give absolute parity as the total cost to the consumer of a mobile text service is £5 but the equivalent 09 cost would be the £5 SC plus VAT plus the AC (making the shortcode service more attractive in terms of simplicity and pricing clarity).[555]

A22.132 With respect to the AIME data relied on by Ofcom, O2 noted that it was not clear from the evidence provided in the consultation, whether these revenue calculations were based on current volumes or those expected under an unbundled tariff regime. It said that if the unbundled tariff regime resulted in higher demand, then revenue calculations and capital investment requirements might be satisfied by higher demand at a lower price point.[556]

A22.133 One individual [✂] also disagreed with the proposed level of the caps noting that 09 numbers were easily accessed (including by children) and may cause exceptional and unnecessary billing for consumers with no prior knowledge of the system.[557]

Support for the proposed level of the SC caps

A22.134 TalkTalk, Sky, UKCTA, Virgin Media and another CP [✂], agreed with our proposals on the appropriate level of the SC caps. UKCTA considered that the proposals struck the right balance between realigning prices to address inflationary pressures and adequately protecting consumers from the potential for fraud. However, it considered there might be a case for further increases in the future if inflation again places pressure on the SC caps. UKCTA also considered that the pc prices were likely to be used in any initial attempts to exploit the change in regulation (noting in particular past changes to the 0871 regulation was met by fraudulent activity) and believed operators and regulators needed to remain vigilant.[558]

A22.135 One confidential respondent [✂] was also concerned about the potential for fraud in relation to the higher pc rate. It commented on the potential for competitive distortions arising from the different regulation of fixed PRS and premium SMS and argued that Ofcom should include mobile shortcodes in the same regulatory regime.[559]

A22.136 Virgin Media considered that the level of the SC caps was largely arbitrary and that on balance, the levels proposed by Ofcom seemed to achieve a reasonable

[554] O2, July 2012 consultation response, p.10.
[555] O2, July 2012 consultation response, pp.8-9.
[556] O2, July 2012 consultation response, pp.8-9.
[557] [✂]
[558] UKCTA, July 2012 consultation response, pp.2 & 5.
[559] [✂].

balance between consumer bill shock and bad debt on the one hand and flexibility and limitation of innovation on the other.[560]

Ofcom should consider moving to higher caps in future

A22.137 Two SP's [✂], AIME and BT supported the increase in the level of the caps but considered that they could be increased further, either now or after the implementation of the unbundled tariff regime. Action4 argued the higher caps under Option 3 were more appropriate and should be implemented after a monitoring period.[561]

A22.138 BT considered the proposed levels would be a good start. It welcomed the proposal to bring rates to a more acceptable level given the change in the dynamics of competition since the maximum was last set 15 years ago. Its view was based on the following evidence:

- as a matter of technological neutrality 09 tariffs should be treated consistently with premium SMS shortcodes and other micropayment methods;
- the level of complaints for these services are low and less than 10% of total PRS complaints are in relation to fixed lines; and
- there should be reduced constraints on 09 given the significantly lower levels of regulation for other forms of micropayments. In particular, it noted that other micropayment mechanisms do not face maximum price constraints even though the level of the payments can be significantly higher than 09 numbers.[562]

A22.139 AIME also welcomed the increase in the level of the SC caps and broadly supported Option 2 as the most appropriate starting point for the realignment of the caps. It said that in a recent survey its members agreed £3pm would meet the current requirements of the market. However, as it cannot predict future needs, AIME considered a regular review of the level of the caps was essential.

A22.140 AIME also noted that there was support for a higher price pc cap with some SPs indicating there was demand for up to £10pc. It considered that this would be the appropriate level of the SC given current services and allowing for the efficient pricing of products. However, AIME's members supported an interim increase to £5pc provided Ofcom committed to reviewing this and further increasing the level of the per call cap if the review shows consumer protection measures remain effective.[563]

A22.141 A confidential SP respondent [✂] argued that PRS are currently at a disadvantage in comparison to the mobile industry and this created a barrier to service innovation. It noted this can be seen in current standard broadcast competition or charity donation service models where £2pc are available by SMS but not 09 numbers. It believed that this had effectively blocked the 09 model from higher rate services and prevents innovation (particularly as a higher rate drop call would be easy to use for consumers who prefer to use the phone rather than text). While it is possible to use a pm charge to provide an equivalent 09 service, the SP argued that prolonging calls to ensure a similar tariff is reached is inappropriate and likely to lead to price

[560] Virgin Media, July 2012 consultation response, p.2.
[561] Action4, July 2012 consultation response, Q4.8.
[562] BT, July 2012 consultation response, p.9.
[563] AIME, July 2012 consultation response, Q4.8

uncertainty. In addition, some customers could be forced to drop off the call part way through due to insufficient credit or user decision. The SP considered this leads to a bad experience for users and uncertainty around price and service provision. It therefore supported Option 2 but noted it would also support a higher cap of up to £10pc to ensure parity with the mobile industry.[564]

A22.142 Another SP respondent considered the increase was long overdue and an adequate starting point. It was concerned, however, that the proposed SC caps were significantly below other micropayment prices and that as a result businesses would suffer and innovation will be impeded. It considered these caps should be reviewed on an annual basis to support current business and further innovation.[565]

A22.143 Action4 considered that fixed line PRS should be allowed to charge the same as mobiles and argued that the level of the SC caps should be £5pm and £10pc (Option 3). It considered the £3pm cap would be a sensible starting point with a monitoring period (of around two years) linked to the level of complaints before the caps are raised to the levels set out in Option 3.[566]

Our view

<u>Exclusion of VAT</u>

A22.144 We note the issue raised by the CAB that we were not clear in the July 2012 consultation whether the proposed caps included or excluded VAT. Indeed, although we set out in the consultation our proposal that the levels of the cap should be £3pm and £5pc and that SC caps should be set exclusive of VAT in the Numbering Plan, we did not specifically state whether the £3 and £5 proposed caps were exclusive or inclusive of VAT.

A22.145 To be clear, the policy intention was for the £3 and £5 caps to be exclusive of VAT and this is therefore the level that we are proposing to set in the Numbering Plan. However, we accept there was some ambiguity in the consultation as to whether the proposed caps of £3pm and £5pc were inclusive or exclusive of VAT. Given this, we recognise that some stakeholder responses on the issue may not have reflected a correct understanding about the actual level of the SC caps being proposed.[567]

A22.146 Accordingly (and as also set out in Annex 21 where we set out our position on VAT with reference to all the SC caps), we invite stakeholders who consider that they would have responded differently if they had understood that the level of the caps excluded VAT, to comment specifically on the proposed level of the SC caps in response to our consultation on the modifications to the Numbering Plan (see Section 6 in Part A). Our provisional decision on the level of the 09 SC caps is set out below but we will take a final decision on the level of the 09 caps (i.e. whether they should be £3/£5 including VAT or £3/£5 excluding VAT) having considered any comments we receive on this issue when we finalise the modifications to the General Conditions and the Numbering Plan.

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[564] [✂]
[565] [✂]
[566] Action4, July 2012 consultation response, Q4.8.
[567] The significant majority of respondents did not comment on whether the £3 and £5 caps included or excluded VAT. However, we note that several respondents (including EE and O2) had assumed the level of the SCs excluded VAT.

Level of the caps

A22.147 In the July 2012 consultation we noted our preferred option was to set the level of the caps at £3pm and £5pc. Our assessment was based on information provided by stakeholders in response to the December 2010 consultation and in meetings with Ofcom (including a survey submitted by AIME on SP's views on the most appropriate charges for their services), as well as comparisons with tariffs for alternative payment mechanisms.

A22.148 Our preferred option was premised on the need for an increase in the current BT retail maximum price of £1.53 to account for inflation and to support innovation and service availability. We also took into account the requirement to provide some comparability with alternative micropayment mechanisms, such as premium rate SMS services that appear to appeal to consumers. These factors were then balanced against the need to ensure consumers were adequately protected against any potential adverse effects of an increase in the maximum SC cap, such as greater exposure to the risk of fraud and bill-shock, and any impact on the level of OCP's AC (which could apply to all non-geographic numbers) to take account of the increased risk of bad debt.

A22.149 We note the arguments about the lack of demand for higher rate PRS put forward by EE and Magrathea (in particular, EE provided evidence that it did not have a demand for commercially oriented services above £2 per call/text). However, as discussed above, our proposals for the appropriate level of the SCs were based, at least in part, on discussions with the industry. A number of SPs have also responded to this consultation suggesting that the level of the caps should be set (now or in the near future) higher than the proposed level (i.e. Option 3) to meet consumer demand and provide parity with mobile shortcodes.[568] One SP [✂] in particular, provided evidence of the impact that the current cap has on its ability to provide a 09 call option for its services. It also noted the desire to use 09 services for charity donation services (which are offered on mobiles at £5 and greater currently). We are therefore confident that there is demand for such services above the level of the current cap.

A22.150 The CAB, Magrathea, EE and O2 were among those concerned about the impact of the proposed £3pm and £5pc SC caps on the incidences of bill shock, misleading practices and fraud. Although we accept that there are some incidences of consumer harm from fraud or bill shock currently (as pointed out by the CAB), we do not consider there is a widespread problem, as the level of complaints is low (see paragraphs A22.41 – A22.43 above) and has decreased markedly over the last 5 to 6 years.

A22.151 We recognise that as the SCs increase, the incentives for fraud and potential for bill shock could also increase and we explicitly considered these issues in developing our proposals on both the need for a SC cap and the level of any such cap and looked to balance the benefits of higher SC caps against these concerns.[569] However, while we consider that these concerns make the imposition of a cap appropriate, it is important not to overstate the materiality of the issue. As noted above, current levels of fraud and bill shock are low and the risk is further mitigated

[568] See paragraphs 22.137 – 22.143 above.
[569] July 2012 consultation, paragraph 4.140.

by current low volume of calls to 09 numbers.[570] We therefore do not consider that the risk is such to justify a cap uplifted for inflation only.

A22.152 We consider the same analysis applies to EE's concern about the increased bad debt risk arising from caps at the levels we proposed and the potential for consumer disconnection as a result. As set out in paragraph A22.49 above, we observe that the extent of the bad debt risk is mitigated by the current low volume of calls to 09 numbers and the fact that bad debt costs are likely to be lower for mobile CPs compared to fixed. Beyond this, it is difficult to predict with any degree of accuracy the likely impact of higher SC caps on the incidence of bad debt and OCPs have not provided any evidence to enable us to quantify what impact it might have on their ACs.

A22.153 The CAB and EE considered that Option 1 would give sufficient headroom to allow for new and innovative services and EE believed we had overstated the benefits from new 09 services and not placed enough weight to the potential for consumer harm under higher SC caps. However, as set out above, SPs have provided evidence of demand not only for services priced at levels above the £2.29 set out in Option 1, but also priced above the £5pc set out in Option 2. In coming to a view as to the appropriate level of the caps we have balanced the needs of SPs to be able to offer higher rate 09 services against the potential for increased risk of fraud and bill shock at higher prices, particularly during the initial implementation phase. We continue to consider that setting the caps at £3 and £5 strikes the right balance between these considerations.

A22.154 We note O2's point that the price points used by mobile shortcodes do not necessarily correspond exactly to the 09 SC caps we have proposed, because the mobile shortcode price points include VAT and the equivalent AC. However, we have not assessed the appropriate level of the SC cap with a view to providing exact parity between the price of 09 calls and mobile shortcodes. As noted above, we recognise the need to provide some comparability between the price of 09 calls and alternative micropayment mechanisms and we consider that the caps we have proposed would achieve this. In terms of O2's comment about pricing clarity, the SC caps will be communicated to the consumer as inclusive of VAT and the consumer's AC (which will apply to all NGCs that they make) will be advertised to them separately by their OCP. Therefore whilst we recognise that the single price point offered by mobile shortcodes is simpler, we still consider that the price transparency and awareness benefits of the SC cap are likely to be significant.

A22.155 EE argued that if the SCs were increased to the levels proposed by Ofcom, SPs would be incentivised to price at the maximum allowed, resulting in adverse outcomes for consumers. We recognise that this is one of the risks of imposing an SC cap. However, as we noted in the July 2012 consultation, out of the 20 most used price points on the 09 range (representing approximately 95% of terminating traffic) only two were set at the current recognised maximum (applied to BT retail calls).[571] Therefore, existing pricing practices do not indicate that SPs are likely to cluster their prices at the maximum SC. There is also no evidence to suggest that such clustering is more likely to happen under the higher levels of the SC under Option 2 rather than Option 1 favoured by EE. In any case, we expect that the unbundled tariff regime is likely to encourage competition on the 09 range and thereby increase downward pressure on the level of the SC for competing services, as discussed in more detail in Section 8.

[570] See footnote 487 above.
[571] July 2012 consultation, paragraph 4.138.

A22.156 EE was also concerned that an increase in the level of the pc SC cap to the proposed £5 (or higher) may encourage inefficient migration to 09 numbers by SPs using mobile shortcodes. While we have not undertaken a detailed analysis of the relevant markets for the purposes of this consultation, we do not consider that SCs at the levels proposed would distort competition between 09 and mobile shortcode tariffs. It may well be the case that SPs choosing an SC at the level of our proposed cap would receive more revenue from calls than SPs using mobile shortcodes. We recognise that this may trigger migration by some SPs currently using mobile shortcodes if the gain from these higher outpayments were to offset the costs of migration. However, we consider that such migration could be efficient. We note there would be nothing to prevent OCPs and aggregators from responding to this pressure by passing more of the revenue they receive from mobile shortcodes onto SPs, or by creating higher price points that allow them to offer higher outpayments to SPs without reducing their own margins.

A22.157 As discussed above, some SPs considered the SC caps should be increased to the levels proposed under Option 3 either now or in the relatively near future. Respondents recalled in this respect that there are a number of alternative micropayment services that consumers appear to value and are charged at higher prices (e.g. premium rate SMS services). Indeed, the current maximum price per text for mobile shortcodes charged by mobile operators for some services is £10[572]. This compares to the maximum pc SC of £5 (ex VAT), which would lead to a total call cost of £6.16, for a one minute call, (based on our estimate of the potential mobile AC of 16ppm).[573] In this respect, for the reasons set out in the July 2012 consultation,[574] we consider that increasing the SC cap over our preferred option might not be necessary to provide parity for SPs with current mobile pc rates and that in any case, different maximum prices between PRS and mobile shortcodes may be justified by the inherent differences between fixed and mobile communications. In any case, we note that the available evidence suggests there is little demand for tariffs above our preferred option.

A22.158 With respect to O2's comment about whether a disagreement about the level of the SC could be subject to Ofcom’s dispute resolution powers under sections 185 – 191 of the Act, we agree that such an issue could fall within this jurisdiction. However, that would ultimately depend on the facts of the dispute in question. Were Ofcom to decide that it was appropriate for it to handle such a dispute, the assessment of whether the SC in issue was fair and reasonable would also depend on the particular facts of the dispute. We note, however, that in addition to the question of whether the SC had been set within any applicable cap, the extent to which the OCP had complied with its regulatory obligations in relation to SC price points would also be likely to be relevant.[575]

A22.159 We also note the suggestion by O2 to set the level of the caps through quantification of the assessment criteria. While this sounds like an attractive option in theory, in practice it would mean we would need to assign weights to the different criteria that take into account both the impact of the criteria (positive or negative) and the likelihood of the opportunity/risk happening. In practice, we consider that it would unlikely to be possible to establish a suitable basis for the assignment of these weights and there would be a substantial risk these would be set arbitrarily.

[572] See http://code.phonepayplus.org.uk/pdf/PhonepayPlusCOP2011Guidance.pdf, paragraph 2.2.
[573] See Annex 20, paragraphs A20.78 to A20.80 where we set out how this has been calculated.
[574] July 2012 consultation, paragraphs 4.135 – 4.137.
[575] See paragraphs 9.109 to 9.130 in Section 9 for the discussion of these obligations

A22.160 A number of respondents (in particular SPs) raised the issue of a review of the need for and level of the caps. This is discussed in more detail below.

Our provisional decision

A22.161 We have provisionally concluded that the level of the SC caps should be set at £3pm and £5pc (exclusive of VAT). We consider that these caps strike the right balance between the need to ensure service quality, variety and innovation while protecting consumers from fraud and bill shock and the consequences of bad debt.

Review of the SC caps and implementation period

July 2012 consultation

A22.162 In our July 2012 consultation we considered whether the SC caps should be uplifted annually to take account of inflation, taking into account that several respondents to the December 2010 consultation had commented that inflation had seriously eroded the maximum retail price set by BT. Any annual inflation uplift would limit this impact going forward. We proposed that any uplift would be made in line with RPI as the measure of inflation.

A22.163 We also considered that an uplift would be more appropriate for Option 1, than for Options 2 or 3. Given our proposed option for the level of the caps (Option 2), we did not propose to increase SC caps by inflation on an annual basis.[576] We did note, however, that a future review of any SC caps would be appropriate, though we didn't specify a time period for any further review.[577]

A22.164 As the options and proposals set out in the July 2012 consultation were predicated on the basis of the introduction of the unbundled tariff, we also proposed that the SC caps should be imposed at the same time as the unbundled tariff regime. This was expected to be 18 months after publication of our final decision on the unbundling regime and the SC caps for the 09 and 118 number ranges.[578]

Responses to the July 2012 consultation

A22.165 The majority of respondents agreed with the proposal not to require an annual uplift for inflation. Of those that responded, no stakeholder disagreed that RPI was an appropriate measure to calculate any uplift for inflation.

A22.166 Three respondents (AIME, [✂] and [✂]) considered that an inflation uplift was required. In its response AIME argued that the SC should be increased on annual basis, and it did not consider that a move to options 2 or 3 would negate this need. Allowing for an 'inflation cushion' on the level of the cap was not, in AIME's view, adequate justification for applying a system which prevents companies from adjusting prices in line with market demand.[579] One SP [✂] argued that a review was required to take account of both inflation and innovation.[580] Another SP [✂]

[576] July 2012 consultation, paragraphs 4.114 – 4.118.
[577] See paragraph 4.118 of the July 2012 consultation where we stated "We recognise however that this no annual uplift for inflation] may require us to review the SC caps in future to assess the need for adjustments to their level."
[578] July 2012 consultation, paragraphs 6.23 – 6.28.
[579] AIME, July 2012 consultation response, Q4.6
[580] [✂].

commented that an annual uplift for inflation was required if Option 1 was chosen.[581]

A22.167 However, several stakeholders, including BT, argued that a programme for future review of any caps was required rather than annual increases. BT considered that whist there was no need for any review to be annual, Ofcom should set out clear process for future reviews. In the absence of any commitment for review, it said the same situation as currently exists would occur in the future. BT argued that future reviews should happen no less frequently than every two years.[582]

A22.168 Sky, TalkTalk, UKCTA and [✂] also commented that future review, rather than yearly review, would be appropriate to ensure that any inflationary impact was addressed under Options 2 and 3.[583] UKCTA noted that an annual adjustment would be administratively inefficient and could cause SP and consumer pricing uncertainty ahead of each increase.[584] The CAB also acknowledged that periodic reviews would be appropriate.[585]

Our view

A22.169 We continue to believe that an annual uplift for inflation is not necessary, particularly given that our provisional decision on the level of the SC caps – Option 2 – gives SPs additional headroom over and above an inflationary increase to the existing maximum BT retail price. It therefore allows for increases in costs since that maximum price was set. We also believe that setting a requirement for an annual uplift would also be likely to impact on consumer awareness, and therefore undermine to some extent the benefits of increased pricing transparency.

A22.170 However, following from comments from stakeholders, we do consider it appropriate to review at appropriate points in the future the need for and level of a maximum SC cap for 09.

A22.171 As discussed above (see paragraphs A22.39 – A22.49), we consider that a cap on the level of the SC for 09 numbers will have value in assisting consumers to make a reasonable estimate of the likely price of calling an 09 number, particularly in the initial implementation period when consumers are less likely to be familiar with the new unbundled pricing structure. In addition, we are concerned that the incentives for fraudulent behaviour (and the risk of consumer harm that would result) and potentially the incidence of bill shock and bad debt, might begin to increase again during this period of uncertainty. As consumers and industry become familiar with the unbundled tariff these concerns may diminish. In time, it may be appropriate to remove the requirement of a maximum SC cap altogether, or adjust the level of the cap to reflect market developments.

A22.172 Given that introduction of the unbundled tariff is not due to take place until late 2014 at the earliest, we do not propose to set out at this stage when we would expect a future review of SC caps to take place. We consider it appropriate to wait until such time as the unbundled tariff takes effect and sufficient time has passed so that we can review how well the new tariff structure is working.

[581] [✂].
[582] BT, July 2012 consultation response, p.8.
[583] Sky, July 2012 consultation response, p.2 and TalkTalk, July 2012 consultation response, p.2.
[584] UKCTA, July 2012 consultation response, p.4.
[585] CAB, July 2012 consultation response, p.3.

A22.173 With respect to the argument raised by several SPs that the increases should be implemented earlier, as discussed above, we agree there is a need to increase the level of maximum SCs under the unbundled tariff. However, as set out in the July 2012 consultation (see paragraphs 6.25 to 6.28), introduction of the unbundled tariff will provide consumers with increased levels of tariff transparency and price awareness which is likely to provide the right level of consumer protection for any increase in the level of the cap. This may not be the case under the current market structure and therefore we do not consider it would be appropriate to raise prices under the current structure.[586]

A22.174 Therefore, for the reasons set out above, we remain of the view that it is necessary to implement the SC caps at the same time as the unbundled tariff structure.

Consumer protection measures

Summary of position in the July 2012 consultation

A22.175 The July 2012 consultation examined what, if any, other measures might be required, in addition to the caps on the SCs and the current PPP regulations, in order to address the additional risks for consumers that we had identified for the 09 and 118 number ranges. In particular, these risks included consumers' exposure to fraud and bill shock and CP's exposure to bad debt.

A22.176 We explained that section 120 of the Act gave Ofcom the power to set conditions which regulate PRS. Accordingly, Ofcom has set the PRS Condition[587] requiring those communications providers that fall within its scope to comply with directions given by PPP in accordance with its Code of Practice.

A22.177 The PPP Code of Practice[588], approved by Ofcom under section 121 of the Act, outlines wide-ranging rules to protect consumers as well as the processes that PPP applies when regulating the PRS industry. As a result, there are a number of measures available to protect consumers when calling 09 and 118 numbers:

- The PPP Code of Practice provides that PPP may require that some particular categories of service obtain prior written permission from PPP before they can be offered to consumers.[589]

- PPP may impose conditions to the granting of prior permission.[590] PPP could therefore make 09 and 118 services subject to obligations that are tailored to the nature of the risk posed by the particular category of PRS. For example, these may be in the form of a total call costs cap, spending alerts during a call, a text message of the cost of the service at the beginning of the transaction or a pre-call announcement.

[586] See Section 3 where we set out our concerns about the consumer harm and market failures present in the NGCS market currently.
[587] Condition under Section 120 of the Communications Act 2003 regulating Premium Rate Services.
[588] http://code.phonepayplus.org.uk/pdf/PhonepayPlusCOP2011.pdf
[589] Paragraph 3.10.1 of the PPP Code of Practice. The categories of services that are currently subject to the prior permission requirement are listed here: http://www.phonepayplus.org.uk/For-Business/Prior-permission.aspx. They include services charged at over 85ppm (plus VAT) and services charged at over £1.28pm (plus VAT).
[590] Paragraph 3.10.2 of the PPP Code of Practice.

- The Code of Practice also places certain requirements on PRS in relation to the treatment of consumers based on six key outcomes.[591] For example, PRS must be upfront about the service they offer and its cost, they must not cause harm or unreasonable offence to consumers and they must resolve consumer complaints quickly.

- In addition, the Code of Practice places certain requirements on CPs and SPs involved in the provision of PRS. For example these providers must register with PPP before providing a PRS (with some limited exceptions),[592] perform due diligence[593] and ensure consumers are not put at risk.[594]

- There are also discrete obligations imposed on different parties within the PRS value chain, including a requirement on the TCP to withhold service outpayments to SPs for 30 days after the call was made. This period can be extended at the direction of PPP.[595]

- PPP can undertake an investigation[596] and, depending on the severity of the compliance failure with its Code of Practice, it has a range of sanctions which it is able to impose.[597]

A22.178 In the July 2012 consultation, we considered whether additional consumer protection measures were required in order to provide a greater degree of protection for consumers,[598] including:

- **a pre-call announcement** (‘PCA’) informing the consumer of the SC prior to being connected to the service;

- **consumer opt-in to premium rate services** – consumers would need to contact their OCP to be able to connect to 09 and/or 118 numbers from their mobile or landline;

- **notification of call time elapsed** – alert to the caller when a certain time has elapsed;

- **dedicated number ranges for higher rate PRS calls;** and

- **extending the 30 day withhold period** for which the TCP is required (under the PPP Code) to withhold the outpayment to SPs to 6 – 8 weeks.

A22.179 We considered that, given the overall low level of complaints[599], the current consumer safeguards were effective in providing an appropriate degree of protection for consumers at current prices. We also considered that any additional measures were not likely to be justified if our preferred option of a cap of £5pc and a £3pm (Option 2) were to be adopted. We explained that, while the caps were

[591] Sections 2.1 to 2.6 of the PPP Code of Practice. This also includes requirements on the maximum cost of all sexual entertainment services and services aimed at children, notification requirements for live chat services and additional requirements for subscription services (paragraph 2.3.12).
[592] Paragraph 3.4.1 of the PPP Code of Practice.
[593] Paragraph 3.3.1 of the PPP Code of Practice.
[594] Paragraph 3.1.3 of the PPP Code of Practice.
[595] Paragraphs 3.5.1 to 3.5.2 of the PPP Code of Practice.
[596] Paragraphs 4.2.1 to 4.2.2 of the PPP Code of Practice
[597] Paragraph 4.8.2 of the PPP Code of Practice.
[598] July 2012 consultation, pp. 50-58.
[599] July 2012 consultation, Table 5.1 and Figure 4.1.

generally higher than the revenues that SPs could currently generate for these number ranges, the difference was sufficiently small and any increased risk of consumer harm was unlikely to be material.

A22.180 However, should the caps be set within the ranges proposed under Option 3, we considered that the increased risk of consumer harm might be sufficient to justify additional consumer protection measures and that PCAs would be likely to be the most effective means of achieving that additional protection.[600]

Responses to the July 2012 consultation

A22.181 The majority of respondents supported our view that the current measures (in particular the PPP requirements) were sufficient to protect consumers currently and no additional measures were needed under our proposed option for the level of the cap, although some disagreed and presented arguments in favour of additional consumer protection measures. Most respondents also generally supported our views on the efficacy of the different options for consumer protection measures. We have set out stakeholder comments below under the following three headings:

- consumer protection measures at the proposed cap levels;
- consumer protection measures at higher cap levels; and
- options for consumer protection measures.

<u>Consumer protection measures at the proposed level of the cap</u>

A22.182 A number of stakeholders including mobile CPs (such as O2 and EE), fixed CPs (such as Sky and TalkTalk) and some SPs and related associations (AIME, TNUK, [✂]) agreed that existing consumer protection measures were sufficient at the proposed level of the caps.[601] There were a number of reasons given for this, including:

- the current measures required by PPP have worked (reasonably) well (EE, BT); and
- the proposed unbundling regime is expected to have benefits in terms of additional price transparency and awareness which should lead to increased confidence in these services (BT, O2); consumers were already aware of the relatively high cost of charges for 09 and 118 calls (Virgin Media) and in any event SPs are required to make the pricing clear to the customer prior to them making the call (BT and Virgin Media).[602]

A22.183 EE and Virgin Media considered further consumer protection measures (in particular potentially costly PCAs) should only be considered if issues were identified under the proposed unbundled tariff regime.[603] AIME and a SP [✂] agreed that an increase in price caps did not necessitate additional consumer

[600] July 2012 consultation, paragraphs 5.48 – 5.55.
[601] O2, July 2012 consultation response, pp.9-10; EE, July 2012 consultation response, p.12; Sky, July 2012 consultation response, p.2; TalkTalk, July 2012 consultation response, Q5.9, AIME, July 2012 consultation response, Q5.1; TNUK, July 2012 consultation response, pp.35 & 41; [✂]; [✂]
[602] BT, July 2012 consultation response, p.9; O2, July 2012 consultation response, pp.9-10; Virgin Media, July 2012 consultation response, Q5.2; BT, July 2012 consultation response, p.10.
[603] EE, July 2012 consultation response, p.12; Virgin Media, July 2012 consultation response, Q5.2.

protection measures being implemented, but recognised the benefit in keeping consumer protection measures under review if the caps were to be increased over and above the rate of inflation in the future.[604]

A22.184 O2 considered that as long as the cap was set at the correct level, no additional consumer protection measures were needed. In addition, it argued that PPP is best placed to assess on an ongoing basis any increase in consumer harm and the appropriate measures to address this harm.[605] Magrathea agreed that additional consumer protection measures were not necessary, but noted that this was on the basis of adequate controls on the AC.[606]

A22.185 In contrast, the CAB believed that there was evidence of consumer harm at the current levels of £1.53 on 09 numbers and as such there was already a need for greater consumer protection, which would only increase if Ofcom introduced a higher SC cap for 09 numbers. The CAB stated that in the majority of cases, issues with 09 numbers occurred where consumers had no choice over whether to call them (e.g. debt management firms) or involved competitions. It believed that preventing these firms from using PRS would protect consumers and recommended working with OFT and Trading Standards to take enforcement action against unclear advertising and/or the cost of calls not being prominently advertised. In addition, the CAB considered enforcement action should be taken against 118 operators not making the cost of transferred calls clear. It also considered that short and clear PCAs could be an effective way of ensuring consumer price awareness, particularly for drop charge prices (price per call) as it believed they would create more opportunities for consumer detriment.[607]

A22.186 Similarly, Claire Milne, while welcoming a cap on 09 and 118 numbers, considered the evidence was not clear that consumer protection for the 09 number range did not need to be enhanced when the effective cap is raised. She considered that complaints for 09 numbers must be about 1,000 per year which is the same as for fixed line calls and noted that this was much higher than the 50 complaints received for 118 services. Ms Milne quoted PPP data broken down by tariff band which showed that since 2008, 62% of the complaints (for which tariff rates were known) related to tariffs of at least £1 per minute or call.[608] She therefore considered Ofcom should more clearly explain its grounds for believing that no further consumer protection is needed.

A22.187 Ms Milne argued that the complexity of the new unbundled pricing, the scope for higher 09 prices and the inherent difficulties in delivering call pricing information at the time of the call, combined to strengthen the case for the imposition of PCAs even at the proposed level of the caps. She considered that this would boost consumer empowerment which should benefit not just consumers but ultimately providers as well as reducing bad debt and increasing consumer confidence in the services. She argued that, at a minimum, PCAs should be recommended as best practice for calls charged above a threshold level.[609]

A22.188 A CP [✂] also disagreed that additional CP measures were not warranted above the current levels of the cap. It argued that the increase in the SC would take the

[604] AIME, July 2012 consultation response, Q5.1; [✂].
[605] O2, July 2012 consultation response, p.10.
[606] Magrathea, July 2012 consultation response, p.5.
[607] CAB, July 2012 consultation response, pp.6-8.
[608] Claire Milne specified that she relied on data provided by PPP.
[609] Claire Milne, July 2012 consultation response, pp.1-2.

market into unchartered territory and the evidence used in Ofcom's assessment was largely based on current market conditions. It considered that a more prudent approach would be to apply the consumer protection measures on all prices above the current levels, with a clear review period where measures could be relaxed if this was considered appropriate.[610] It considered that measures such as the opt-in regime, increasing the 30 day retention period to 60 days and some additional new measures (discussed below) should be implemented for any SCs above the level of the current prices.[611]

A22.189 FCS considered that the compulsory use of recorded announcements would provide a safeguard against the misdialling of drop charge calls and therefore recommended they should be mandated for services charged on a per call basis and the call should only proceed if the customer opts to do so. However, it believed that PCAs should not be required for calls charged on a per minute basis as the risk of bill shock is significantly lower than the drop charge model.[612] Action4 considered that there should be a prior permission requirement for SCs charged at £3 per minute and £5 per call and above. In addition, it considered all normal costing warnings (and preferably PCAs) should be made where possible.[613]

Consumer Protection measures at higher cap levels

A22.190 Respondents had mixed views on whether or not additional consumer protection measures were needed at levels of the SC cap that are higher than our proposed option of £3 pm and £5 pc. Aside from the respondents who considered that additional consumer protection measures would be necessary at our proposed cap, TalkTalk, AIME, EE, UKCTA agreed that additional measures may be required at higher rates.

A22.191 We will bear such concerns in mind in the future should higher caps be considered.

PCAs and other consumer protection measures

Pre-call announcements

A22.192 As discussed above, a number of respondents considered that PCAs should be imposed. In addition, some respondents commented on the use of PCAs, their form, operational feasibility and potential cost. These responses are discussed further below.

A22.193 A number of stakeholders were opposed to mandated PCAs as they believed they:

- provide limited benefit to consumers, particularly given the existing PPP price publication requirements and the expected price transparency benefits of the unbundled regime (EE, TNUK, Magrathea, UKCTA, BT, a SP);[614]
- may overburden consumers with information and/or be intrusive and annoying;[615]

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[610] [✂]
[611] [✂]
[612] FCS, July 2012 consultation response, Q5.2.
[613] Action4, July 2012 consultation response, Q5.1.
[614] EE, July 2012 consultation response, p.12; TNUK, July 2012 consultation response, Q5.2; Magrathea, July 2012 consultation response, pp.2-3; UKCTA, July 2012 consultation response, p.5; BT, July 2012 consultation response, Q5.2 and [✂]

- could impact perceptions of 09/118 numbers and therefore call volumes (TalkTalk, EE, a SP);[616]
- the incremental benefits of PCAs are likely to be outweighed by their costs (BT);[617] and
- are likely to increase SP costs and therefore potentially the SCs (SP).[618]

A22.194 Some stakeholders noted the differences between services provided on the 09 range and between the 09 and 118 ranges and considered that PCAs should be considered on a case by case basis where a clear requirement has been demonstrated.[619] In particular, TNUK strongly objected to any requirement for a PCA and noted the importance of the significant differences between DQ and premium rate services. It provided survey evidence showing that consumers value the speed and convenience from DQ services more than other aspects of the call (including knowing the cost at the time of the call).[620]

A22.195 BT noted that there was not an equivalent requirement for premium SMS shortcodes and it was not aware of any evidence of increased consumer harm using this micropayment method. In addition, it argued that for high volume, short duration calls (such as televoting), the imposition of a PCA would extend call length and cut the available national capacity.[621] TNUK was also concerned that a requirement for a PCA above a certain level of the SC would result in this becoming a defacto cap (and cited the example of the DQ market in Germany where this has been the case).[622]

A22.196 TNUK noted there were many complex issues related to the imposition of PCAs which Ofcom had not considered in the July 2012 consultation. It therefore noted that further consultation would be required prior to any decision to implement a PCA.[623]

A22.197 The CAB and Action4 considered that PCAs would be more effective if undertaken by the OCP so that the consumer can be informed of the AC as well as the SC.[624] However, Action4 recognised there were some issues with this and suggested that in the meantime that prior permissions and PCAs are required at the SP level (which it considered should incur no extra cost).[625]

A22.198 Magrathea and a CP [✂] highlighted potential operational issues with the TCP undertaking the PCA. The CP argued that a PCA played by the TCP would only work if the answer signal is generated once the consumer "presses 1" or stays on the line as otherwise SCs would be levied while the customer is listening to the

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615 BT noted that its data showed 42% of consumers would find a PCA annoying, July 2012 consultation response, p.10; AIME, July 2012 consultation response, Q5.2; EE, July 2012 consultation response, p.12.
616 TalkTalk, July 2012 consultation response, p.2; EE, July 2012 consultation response, p.12.
617 BT, July 2012 consultation response, p.10.
618 [✂]
619 AIME, July 2012 consultation response, Q5.2; [✂].
620 TNUK, July 2012 consultation response, Q5.2.
621 BT, July 2012 consultation response, p.10.
622 TNUK, July 2012 consultation response, Q5.2.
623 TNUK, July 2012 consultation response, p.6.
624 CAB, July 2012 consultation response, pp.6-7; Action4, July 2012 consultation response, Q5.2.
625 Action4, July 2012 consultation response, Q5.2 and Q5.3.

PCA. It noted that consumer harm would be likely to be greater for calls charged pc.[626]

A22.199 FCS and a CP [✂] noted that a blanket requirement to provide PCAs would render 09 numbers unavailable for automatic dial-up services (e.g. emergency response alarms). FCS considered it would be necessary to reserve a range for these types of calls (although it supported the imposition of PCAs).[627] The CP [✂] argued there would be need for Ofcom to be clear in the Numbering Plan that these ranges cannot be guaranteed to operate with machine to machine calls.[628]

A22.200 Claire Milne noted that as low cost 118 providers used PCAs the cost of their provision could not be very great.[629] TalkTalk considered the implementation of a PCA at the network level may be quite feasible and not too expensive. It noted that the cost will depend on the granularity of the messaging required (for example a general price warning at the start of the call will be less expensive than warnings that set out the level of the specific SC).[630]

A22.201 EE was unable to comment on the cost of PCAs for the TCP but considered that the costs were likely to have fallen as the SCs would not vary by OCP.[631] A CP [✂] provided evidence of the feasibility and potential cost of different types of PCAs (e.g. TCP and/or OCP with action to continue or stay on the line) and argued there was no way to guarantee that it would work under the scenarios where the TCP was responsible for the PCA. It also believed there could also be some significant investment costs for OCPs.[632]

Opt-in to premium rate services

A22.202 The CAB and FCS considered a consumer opt-in might be helpful and/or appropriate. The CAB believed that consumers who wished to use 09 and 118 services will in large part do so anyway but opt-in would highlight the costs to consumers who experience bill shock as well as those who are victims of fraud. However, it questioned whether requiring consumers to opt-in was tantamount to blocking access to numbers or services and considered at the very least a prominently advertised opt-out option should be investigated.[633] FCS, noted that to ensure compliance with the spirit of the Universal Service Directive ('USD'), 118 numbers should require an opt-out rather than opt-in.[634] Both BT and TNUK agreed that an opt-in system would not be consistent with Ofcom's duties under the USD and General Condition 8.[635]

A22.203 A number of respondents also noted the potential damage to the industry and possible technical difficulties if an opt-in requirement was implemented. This included:

[626] Magrathea, July 2012 consultation response, Q5.2; [✂].
[627] FCS, July 2012 consultation response, Q5.2
[628] [✂]
[629] Claire Milne, July 2012 consultation response, p2
[630] TalkTalk, July 2012 consultation response, Q5.3
[631] EE, July 2012, consultation response, Q5.2
[632] [✂]
[633] CAB, July 2012 consultation response, Q5.4.
[634] FCS, July 2012 consultation response, Q5.4
[635] BT, July 2012 consultation response, p.19 and TNUK, 2012 consultation response, Q5.4.

- the ability of some OCPs to bar calls to specific number ranges and therefore the potential implementation costs could be high;[636]

- it would be likely to reduce demand and therefore did not support Ofcom's objective to promote competition. This would be likely to have an impact on innovation and may threaten some providers viability in these markets (AIME, EE, BT, TNUK, TalkTalk, a SP)[637]

- there would be very few benefits (TNUK);[638] and

- it had been tried here and in various other countries and had not worked and generated a lot of complaints and was potentially anti-competitive (Action4, BT).[639]

A22.204 However, a number of respondents fully supported the voluntary provision of call barring facilities by CPs – a SP [✂] noted this approach had been used in other areas (e.g. parental controls for the internet). UKCTA considered that such measures were entirely within the power of the operator with the customer relationship to introduce and there was no need for an industry-wide solution.[640] TalkTalk noted that it already offered its customers tools to protect against high bills, such as call barring and even monthly credit caps.[641] BT similarly suggested that OCPs should be able to block calls from certain consumers with excessively high volumes of calls (to 09 numbers only), and considered the industry should agree measures to prevent problems with 'hyper-short' calls. [642]

A22.205 A CP [✂] noted there was a debate around whether Article 28 of the Universal Service Directive, as transposed into GC20.1 constituted an end-to-end connectivity obligation. It considered that given this ambiguity and the question of the level of PRS rates that would be "economically feasible", Ofcom should make a clear policy decision and appropriate amendment to GC20 to allow OCPs to block access to number ranges where there was potential for consumer harm and only open access on request from the customer. [643] The CP argued that charges above £1.50 could be considered 'economically infeasible' and it should be allowed to offer an 'opt-in' only service.[644] We have set out our view on access to non-geographic numbers and GC20 more generally in Annex 25 (see paragraphs A25.74 to A25.76).

Time related notifications

A22.206 The CAB noted that if the total call cap set by PPP was to increase then the need for time-related notifications would increase significantly given the increased potential for bill shock.[645] TNUK argued that time delay notifications would have the fewest potential adverse consequences of the measures Ofcom has discussed and

[636] UKCTA, July 2012 consultation response, p.6.
[637] AIME, July 2012 consultation response, Q5.4; EE, July 2012, consultation response, Q5.4; BT, July 2012 consultation response, Q5.4; TNUK, July 2012 consultation response, pp.39-40; TalkTalk, July 2012 consultation response, p.3.
[638] TNUK, July 2012 consultation response, pp.39-40.
[639] Action4, July 2012 consultation response, Q5.1; BT, July 2012 consultation response, p.19.
[640] UKCTA, July 2012 consultation response, p.6.
[641] TalkTalk, July 2012 consultation response, Q5.4
[642] BT, July 2012 consultation response, pp.9-10.
[643] [✂]
[644] [✂]
[645] CAB, July 2012 consultation response, Q5.5

noted it already voluntarily implements such notifications. However, it considered it was far from clear that consumers would find them helpful and further research was needed.[646]

A22.207 A number of respondents questioned the benefit of time related notifications for consumers. EE considered that time notifications would be likely to be intrusive, and annoying for consumers especially for shorter and higher rate calls. EE, UKCTA and AIME believed that sufficient protection was provided by the current PPP regulations requiring that certain calls either do not exceed £25.54 plus VAT (£30 including VAT) or a positive confirmation from the customer to continue is required.[647] BT considered time related notifications were unnecessary where clear pricing information exists and it would be costly to implement.[648] TalkTalk also considered the implementation costs were likely to be very high for little benefit to consumers.[649]

A22.208 Action4 also considered that cost warnings could disturb the caller's experience. It believed that forced disconnect alongside a PCA may be better and noted that the networks have early warning systems to protect themselves from bad debt and the consumer from over spending.[650] Magrathea and a SP [✂] agreed with Ofcom's analysis and the SP estimated that there would be a significant cost with implementing these notifications (approximately twice as expensive as PCAs). Magrathea considered if time related notifications are introduced they should be the responsibility of the TCP rather than the OCP.[651]

Dedicated number ranges for higher rate calls

A22.209 Action4 believed that dedicated number ranges could be an effective option and would give consumers choice if it was available for all PRS.[652] Magrathea also considered it could be useful to have separate number ranges for higher rated calls as consumers would be readily able to understand and remember the difference between these ranges. It noted there was evidence that such number range identification had been effective in the past (e.g. when 0898 was used for premium rate services).[653]

A22.210 As noted above, UKCTA did not consider that all networks have the ability to bar individual number blocks and it therefore considered there was little benefit in dedicated number ranges. It noted, however, that dedicated ranges would allow Ofcom and PPP to easily monitor who the higher rate numbers are being allocated to and more readily identify any fraudulent activity.[654]

A22.211 However, the significant majority of respondents did not consider there would be any benefit from dedicated number ranges. For example, the CAB understood that many consumers had a limited understanding of the cost of calling wider number ranges and it believed having sub-ranges might be confusing or difficult to

646 TNUK, July 2012 consultation response, Q5.5.
647 EE, July 2012 consultation response, Q5.5 and Q5.6, UKCTA, July 2012 consultation response, Q5.6 and AIME, July 2012 consultation response, Q5.5.
648 BT, July 2012 consultation response, Q5.5.
649 TalkTalk, July 2012 consultation response, Q5.5
650 Action4, July 2012 consultation response, Q5.5
651 Magrathea, July 2012 consultation response, Q5.5
652 Action4, July 2012 consultation response, Q5.7
653 Magrathea, July 2012 consultation response, p.3.
654 UKCTA, July 2012 consultation response, Q5.7

communicate.[655] The FCS also believed that unless consumers were habitual users of premium rate numbers, they would be unlikely to associate different broad tariff bands with different numbering configurations.[656]

A22.212 EE was concerned that price awareness might be harmed rather than improved if there were dedicated number ranges within the 09 and 118 ranges for higher rate calls. It also believed it was not clear that this would reduce bad debt, bill shock or the risk of fraud.[657] TalkTalk was concerned that educating customers about the cost of calling different dedicated number ranges would be a significant and costly effort and doubted it would offer a significant increase in consumer protection.[658]

A22.213 A SP [✂] considered it was unlikely to have a material effect as price transparency should be dealt with through the current requirements for clear promotional material. TNUK agreed with Ofcom this would not work on the 118 number range and noted that it would have a significantly detrimental effect given the importance of memorability for the 118 number range.[659]

Extension of the 30 day withhold period for the SC

A22.214 There were mixed views on the benefit of extending the withhold period for the SC to allow OCPs to be able to identify fraud. EE believed that an extension of the withhold period to 6-8 weeks would be positive and would give OCPs more time to manage the retention of payments to fraudulent operators.[660] In addition, FCS considered a 60 day period was preferable[661] and Magrathea considered there could be some merit to extending it for up to six weeks but no longer.[662]

A22.215 A CP [✂] considered that the 30 day retention period was insufficient, given the risks and potential sums involved, and considered this should be increased to at least 60 days and Ofcom or PPP should be able to increase this at their discretion on a case by case basis. It considered that Ofcom had materially understated the benefits of an increase in the retention period as its analysis was based on the current caps and made no allowance for the potential increase in fraud. It provided analysis that an increase in retention would only have a small impact on SPs underlying costs.

A22.216 TalkTalk noted that the 30-day withhold period had had a positive impact on its ability to recover money to compensate consumers. However, it considered it was unlikely that extending the withhold period would provide any significant benefit to consumers but would definitely harm the cash flow of legitimate SPs.[663] In addition, AIME considered that the current 30 days was sufficient to close down problem services before the SP was paid out and it noted that PPP has the ability to extend the withhold period in individual cases if it considered this was necessary.[664]Action4, UKCTA and a SP [✂] similarly agreed with Ofcom's assessment and did not believe there was any rationale for extending the withhold period and noted it would adversely affect SPs and CPs should be able to identify

[655] CAB, July 2012 consultation response, Q5.7
[656] FCS, July 2012 consultation response, Q5.7
[657] EE, July 2012 consultation response, Q5.7
[658] TalkTalk, July 2012 consultation response, Q5.7
[659] TNUK, July 2012 consultation response, Q5.7
[660] EE, July 2012 consultation response, Q5.8
[661] FCS, July 2012 consultation response, Q5.8.
[662] Magrathea, July 2012 consultation response, p.3.
[663] TalkTalk, July 2012 consultation response, Q5.8.
[664] AIME, July 2012 consultation response, Q5.8

fraud patterns in less than 30 days.[665] Another SP [✂] considered that as most fraud was detected early due to traffic patterns and customer complaints, extending the withhold period would not have an impact.

A22.217 BT agreed that this was unlikely to have a material benefit but considered it could still be useful for TCPs on an individual SP basis as a commercial tool or within the PPP regime.[666] TNUK reiterated its view that there was no evidence of current or future fraud in relation to 118 services and strongly objected to its revenues being unreasonably delayed or withheld.[667]

Other options for consumer protection measures

A22.218 BT considered that the ability to control who it provides PRS services to was key and it believed the following options should be considered by Ofcom:

- OCPs should be able to use PRS barring as a standard condition of service in certain segments of the market as a credit management strategy for high risk customer groups; and
- a cap on call volumes per CLI, per day, per service.

A22.219 BT also considered that the PPP limit on the maximum cost per call (for calls charged pm) needed to be reviewed as soon as possible so that timings and implementation could be aligned.

A22.220 A CP [✂] considered that PPP should require a bond payment (or similar financial instrument) which was sufficient to cover any potential fines, end user refunds and be a deterrent for all SPs wanting to offer services above £1.50 per minute (while not being a barrier to entry for innovators or new entrants). It did not consider that decent and honourable businesses would find it difficult to raise the capital needed for a bond in addition to the rest of their start up costs. The CP also considered that prior permissions should be required for any such services (above £1.50 per minute) regardless of the content. It believed that such ex ante scrutiny, coupled with the bond payment would minimise the risk of fraud as well as increasing consumer confidence.

Our view

A22.221 As set out above, we have provisionally decided that the level of the caps for the 09 number range should be £3pm and £5pc (excluding VAT) and that it is not appropriate at this point in time to impose a cap on the 118 number range. Given this, we have set out below our response to stakeholders' views as to whether additional consumer protection measures are required at our proposed option on the level of the caps for 09 numbers. We have additionally considered whether there is a need for further consumer protection measures on the 118 number range in light of our provisional decision not to cap the level of the SC.

A22.222 We note that the majority of respondents agreed with our view that the current PPP requirements alongside the additional transparency and price awareness expected under the unbundling regime are sufficient to protect consumers at the higher level of the SCs.

[665] Action4 and UKCTA, July 2012 consultation responses, Q5.8
[666] BT, July 2012 consultation response, Q5.8.
[667] TNUK, July 2012 consultation response, Q5.9.

A22.223 As set out above, we have limited evidence of consumer harm being experienced on the 09 number range at the current level of prices. We consider that this is likely to be due to the efforts of PPP and the effectiveness of its Code of Practice (including the requirement that prior permission is sought from PPP for all services charged at rates above 85ppm) and the limited extent to which consumers currently access services on 09.[668]

A22.224 Furthermore, we expect the improved price transparency and awareness that will result from the implementation of the unbundled tariff will provide additional protection to users. In conjunction with this, we are minded to impose a cap on the level of the 09 SC in part in order to address the scope for an increase in the risk of bill shock, and incentives for fraud in the initial implementation period.[669] Nonetheless, as we have noted, we consider the extent of these risks should not be overstated, given the current low consumer use of 09.

A22.225 Respondents had differing views as to whether additional measures were appropriate during the initial implementation period. A SP [✂] and an individual considered that it would be prudent for Ofcom to put additional consumer protection measures in place to guard against an increase in consumer harm. In particular, they considered that a PCA should be imposed. On the other hand, EE, Virgin Media and O2 considered that additional measures should only be imposed if harm has actually been identified after implementation of the unbundled tariff. O2 noted, in particular, that PPP was best placed to identify any increase in consumer harm and determine the most appropriate way to address this harm.

A22.226 Weighing the efficacy of the consumer protection measures under the PRS condition, the additional benefits expected from the implementation of the unbundling regime and the SC cap for 09 against the uncertainty about the extent of any adverse consequences arising from the increased level of the cap and the potential cost associated with imposing certain measures (in particular PCAs[670]), we do not consider it is appropriate to impose additional consumer protection measures at this point in time. However, as proposed by some mobile and fixed CPs, it will be important to monitor the market in cooperation with PPP and consider implementing additional measures if instances of bill shock and/or fraud significantly increase.

A22.227 We also note the concern from the CAB that the main issue in relation to 09 numbers is from consumers who have no choice but to call the 09 number. As CAB noted in its response to the consultation, however, the implementation of the Consumer Rights Directive[671] will preclude certain SPs from charging consumers any more than the basic call rate for their customer contact services in relation to a concluded contract.[672] This will prevent services, such as customer helplines for products or services that have been purchased, operating on a 09 number, though it is unclear at this stage whether it will apply to debt management firms – an area

[668] As noted in Part A, Section 5 (see paragraphs 5.37), PPP will be reviewing what changes may be required to its Code of Practice and Guidance prior to the implementation of the unbundled tariff to ensure that it remains appropriate and consistent with the new charging structure.
[669] See paragraph A22.51.
[670] Discussed further in paragraphs A22.193, A22.200 to A22.201.
[671] Directive 2011/83/EU, Article 21 http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:304:0064:0088:EN:PDF. The Directive is required to be transposed into UK law by 13 December 2013 and it will apply to all contracts concluded after 13 June 2014.
[672] The Department for Business Innovation and Skills issued a consultation on the implementation of the Directive in August 2012: http://www.bis.gov.uk/Consultations/consultation-implementation-consumer-rights-directive?cat=open

of concern specifically mentioned by the CAB.[673] We consider that action to address concerns over the use of such numbers by companies such as this is not a matter of numbering regulation but needs to be considered in the context of general rules on commercial behaviour.

Consumer protection measures for 118 calls

A22.228 As set out above, we have concluded against a cap on the SC for the 118 range. We have therefore also considered whether it is necessary to impose any additional measures to protect consumers on this number range. As we have discussed above in relation to the need for a cap on DQ services, there is currently no material evidence of consumer protection concerns relating to bill shock and fraud and bad debt in the 118 number range and we consider that that the specific characteristics of DQ calls mean that such harm is less likely to occur.[674]

A22.229 We consider that for the same reasons, no additional consumer protection measures are justified at this point in time. However, as with the imposition of a cap for this number range, we intend to monitor the situation and reconsider the need for additional consumer protection measures if necessary.

Options for consumer protection measures

A22.230 We note the concerns expressed by a number of stakeholders with respect to the feasibility and cost of imposing PCAs and the specific considerations that would need to be taken into account in its design. We also note consumer concerns and support for the other potential measures set out in the July 2012 consultation document. We agree with a number of stakeholders that we would need to undertake an assessment of the costs and benefits of imposing a PCA or any other consumer protection measure if so required. However, as we are not proposing to impose consumer protection measures for either the 09 or 118 number ranges in the context of this review, we have not responded to these points of detail in this document.

[673] CAB, July 2012 response to consultation, p.5.
[674] Paragraphs A22.89 – A22.94

Part B - Annex 23

Assumed Handover point and transit payments

Introduction

A23.1 This Annex sets out a summary of issues raised in the responses to our April 2012 consultation in respect of our proposals on the Assumed Handover Point ('AHP') where the unbundled tariff regime applies, including issues related to transit arrangements. It also sets out our comments in response to the issues raised. Section 9 of the main document sets out our overall position on the AHP and responsibility for transit payments.

Summary of our conclusions

A23.2 Based on our proposals in the April 2012 consultation, responses from stakeholders and the discussion above, we have concluded that:

- a NEHO model for non-geographic traffic is likely to provide the appropriate signals for efficient call routing;
- for BT originated calls, the AHP is currently considered to be the DLE;
- for BT terminated calls, the AHP is considered to be the originating switch in the OCP's network; and
- for calls where BT is neither the OCP or the TCP:
  - o the AHP is at the ingress to the transit provider so that the OCP pays the costs of the originating switch plus the interconnection circuit to the transit provider whilst the TCP pays for transit; and
  - o where direct routing is implemented, the two CPs may agree to vary the termination payments with reference to the SC that applies at the AHP in the model where a transit provider is used. The agreed termination payments would take account of the savings resulting from not using a transit provider and any other benefits that may accrue from having direct interconnection in place.

Location of the AHP

Position in the April 2012 consultation

A23.3 We noted that for NGCs, the terminating location of the call could not be ascertained from the examination of the dialled digits. Therefore, the OCP is in no position to efficiently route the call to the nearest point of handover to where the call terminates (we noted this point may in any event vary over the time). We said that only the TCP, which provided the non-geographic call service, was able to optimise routing by carrying out any number translation or analysis required to determine the actual point of termination of the call as close as possible to the point of origination of the call. We therefore said that routing mechanisms that led to the TCP receiving traffic as near to the point of origination as possible were most likely to deliver efficient outcomes and this was the 'near-end handover' ('NEHO') mechanism.

A23.4 We said that for calls originating on BT's network, a NEHO mechanism would mean that the Digital Local Exchange ('DLE') was the appropriate point to consider as the AHP. We noted that this was consistent with the current approach to the routing of BT originated calls.

A23.5 For calls that originated on networks other than BT, we noted that calls should still be handed over to the TCP as soon as possible. We said that the AHP should therefore be the CP equivalent of the DLE, which could be taken as being the originating switch in non-BT networks. We said for Next Generation Networks ('NGNs' - which we refer to in this document as IP networks to avoid confusion with the use of NGN to mean non-geographic number), the AHP should be considered to be at the point of interconnection that was closest to the origination of the call. Finally, we said that where a transit provider is used, the AHP is at the ingress point to the transit provider's network. [675]

Summary of stakeholder comments

A23.6 A number of respondents agreed with our proposed approach to determining the AHP, including Sky[676], Three,[677] Virgin Media,[678] Vodafone, CWW, BT and EE. Vodafone noted that the AHP should be at the near end in order to preserve incentives for efficient investment.[679] CWW noted its previous response on this issue had concluded that this was the only fair way to both encourage infrastructure investment and efficient routing.[680]

A23.7 BT agreed that the AHP should be at the near-end: because the call originator was unable to identify the final destination of an NGCS call, only the TCP could translate the NGCS number to a geographic number and onward route the call to its final destination. Consequently it said it was more efficient for the OCP to pass the call over from its network to the TCP's network as soon as possible. BT said near-end handover principles would drive the appropriate behaviours and efficiencies for NGCS calls. It would also allow CPs to maximise on any network build investment and reduce the cost of delivering the call.[681]

A23.8 EE continued to support the proposal that the AHP should reflect a NEHO regime on the grounds of efficient cost recovery. It agreed that it was most efficient for calls to be handed over at the closest point to the point of the origination of the call as this minimised end-to-end conveyance costs. For the avoidance of doubt it said that this would mean the following:

- For BT originated traffic, the AHP is the DLE;
- For BT terminated calls, the AHP will be the point of interconnection closest to the origination of the call, e.g. the originating switch in the OCP's network;

[675] April 2012 consultation response, Part B, Annex 18, pp.70-74.
[676] Sky, April 2012 consultation response, p.4.
[677] Three, April 2012 consultation response, p.13.
[678] Virgin Media, April 2012 consultation response, Q10.9.
[679] Vodafone, April 2012 consultation response, pp.16 & 28.
[680] CWW, April 2012 consultation response, p.14.
[681] BT, April 2012 consultation response, p.27.

- Where a transit provider is used, the AHP is at the ingress point to the transit provider's network; and

- In contrast to Ofcom's suggestion, it did not see any reason to depart from the NEHO principle when there was direct routing between two CPs other than BT.[682]

A23.9 [✂], however, disagreed with Ofcom's proposed approach. It said it was a widely recognised approach within industry that when two networks were directly interconnected and they bypassed BT for transit, the OCP and TCP reached a bilaterally agreed mutual arrangement for the sharing of the benefit of the direct interconnect (i.e. a pre-agreed sharing of the saving of excluding transit fees from BT). It said it therefore believed there was adequate incentive in the fixed network operators to build out to each other and avoid call tromboning where it was economically viable to do so.

A23.10 Magrathea said in its view, Ofcom's analysis of the AHP and transit arrangements was somewhat backward looking and did not reflect the way in which the relationships between, and interconnection of, CP networks was developing. It said Ofcom's analysis assumed there was one large network, BT, and a multitude of new entrants who should be encouraged to build out to BT's local exchanges. However, it said that this ignored the fact that there were now many large OCPs and the cost of conveying calls around CPs national networks had reduced dramatically and was now very low (except for BT's regulated conveyance/transit rates). It said that incentivising CPs to build out to BT's DLEs was no longer legitimate, not only because of the much lower transport costs, but also because BT was largely closing its DLEs and replacing them with a much smaller number of 'metronodes' (which were, in reality, tandem nodes). It said it was not realistic to expect the high number of TCPs to interconnect at 5,000 DLE sites. Magrathea therefore believed that the OCP should be responsible for the cost of carrying the call as far as the tandem layer.[683]

Ofcom's response

A23.11 Whilst a number of respondents agreed with our proposed approach, there were three main points of disagreement. In response to EE's argument that there is no reason to depart from the NEHO principle where direct routing occurs between two CPs other than BT, we consider this point in relation to our analysis of transit payments and the relationship of transit to direct interconnection, which we discuss below.

A23.12 Similarly, whilst [✂] did not agree with Ofcom's proposals on the location of the AHP, its arguments were largely made in relation to interconnection between two CPs other than BT and the responsibility for transit payments.

A23.13 In response to Magrathea's argument, we make the following points:

- Magrathea argued that our analysis was based on the presence of one large network and a multitude of new entrants that should be encouraged to build out to the DLEs. This is not the case. Our analysis is based on our assessment of the market at present, which is characterised by a number of CPs of varying scale, some of which are already heavily interconnected to BT's DLEs. We also took account of the responses to the December 2010 consultation which indicated

[682] EE, April 2012 consultation response, p.27.
[683] Magrathea, April 2012 consultation response, Q10.9.

some agreement to the AHP being at the BT DLE, given that this was likely to result in efficient call routing.

- In response to the argument that the cost of conveyance has reduced dramatically, we do not consider this would change our analysis. Rather, it would simply suggest that CPs that have not built out to DLEs already may have weaker incentives to do so in the future than if conveyance costs were higher, which we consider to be a rational response to the changing balance of the costs and benefits of interconnection. Shifting the AHP from the DLE to the tandem exchanges would reduce the net benefits of interconnection at the DLE below the level implied by the balance of conveyance savings and interconnection costs, and may deter some efficient interconnection as a result. We therefore continue to believe the most appropriate signals about whether to build out to DLEs or to purchase transit services from another CP are given when the AHP is at the DLE.

- In relation to the points to which a CP must build out, in 2009 BT announced it was putting on hold its plans to migrate voice traffic off its Time Division Multiplex ('TDM') network and onto an IP network which it referred to as 21CN. Because of this, we are not aware of BT closing its DLEs and replacing them with metronodes. Further, we would note that BT does not have 5,000 DLE sites, but rather has around 670 DLEs located in just under 300 buildings.

A23.14 BT has previously considered such a migration, and agreed with CPs that "27+2"[684] points of interconnection ('PoIs') should be provided. We note that on this occasion BT did not migrate voice traffic onto an IP network as planned. However, if BT does migrate to an IP network in the future, our approach to AHPs for IP networks would also apply to BT's IP network – the AHP would be at the point of interconnection closest to the origination of the call once the location of these PoIs has been decided.

A23.15 Based on the above discussion, we conclude that the location of the AHP should be as set out in the April 2012 consultation.

Responsibility for transit payments

Position in the April 2012 consultation

A23.16 We noted that, assuming NGCs were subject to a NEHO mechanism, the TCP would be responsible for all costs beyond the originating switch in the OCP's network. We then considered the model that should apply for transit. In considering an "OCP pays" approach, we said that if the OCP paid for transit it would be in the interests of the TCP not to interconnect directly at the originating switch but instead to receive all traffic via a limited number of points of interconnection to the transit provider, because this would reduce its own costs. On the other hand, we noted that if the TCP paid for transit it would be in its own interests to minimise the costs of transit. We therefore proposed that a "TCP pays" approach to transit appeared preferable because it was more likely to encourage efficient investment and routing decisions.[685]

[684] BT proposed to migrate voice traffic onto an IP network which it calls its 21st Century Network ('21CN'). In discussing the points of interconnection that should be made available on 21CN, BT and interested stakeholders agreed that 27 PoIs should be provided to offer full national coverage, plus 2 further PoIs to provide resilience in Belfast and Aberdeen.

[685] April 2012 consultation, Part B, Annex 18, p.72.

A23.17 We also considered how the interconnection circuits should be taken into account. We were of the view that the OCP's responsibility should include the interconnection from the OCP to the transit provider, because the cost of that interconnection was outside of the control of the TCP.

Stakeholder comments

A23.18 All respondents welcomed the move to standardise the approach towards transit costs across the NGCS regime except Magrathea, who nonetheless noted it had sympathy for this move. For example, [✂] said it welcomed moves by Ofcom to simplify the wholesale regime for NGCS by standardising one party being liable for transit ('TWIX') costs. Similarly ITSPA said it welcomed the move by Ofcom to simplify and standardise the arrangements for transit payments.

A23.19 A number of respondents agreed that the TCP should be responsible for transit payments in line with Ofcom's proposals, including O2[686], Three, Virgin Media, Vodafone, BT and EE. Three noted that this would ensure the most efficient routing of NGCs as well as ensuring symmetrical treatment of transit across the various NGC ranges in question.[687] Virgin Media said that the alternative would have given rise to the issue of TCPs being concerned only to reduce their costs by limiting the number of interconnection points to the transit provider, disincentivising network build out and causing inefficient traffic routing.[688] Vodafone similarly noted that the alternative model advocated by TCPs gave rise to a perverse incentive for TCPs to pick up calls as late as possible rather than as early as possible, which was clearly inefficient in routing terms. [689]

A23.20 BT also agreed that the TCP should pay for transit. It said the TCP owned the number range and therefore made any call routing decisions. As a result, they were able to determine the best commercial arrangement for their company. BT said the OCP should not be obliged to subsidise the routing arrangements made by the number range holder. Consequently, it argued that the conveyance charges associated with delivering the call over the transit operator's network should be paid by the TCP. It said this would help ensure that ACs were set at an appropriate level.[690]

A23.21 Two respondents were concerned about Ofcom's proposals for interconnect capacity ownership. EE said it was concerned at Ofcom's suggestion that the OCP should bear the costs of the interconnection circuits to the transit provider. It said it did not see why it was necessary for Ofcom to interfere in the existing (or future) arrangements between OCPs and transit providers in relation to the payment for interconnection circuits between their networks (which, as Ofcom acknowledged, could cover a range of traffic other than NGCs). It said that in some cases the OCP might pay for those circuits but in other cases OCPs and transit providers could and did strike different commercial arrangements. In either case, it said that would not prevent the AHP for the purposes of the SC being set at the ingress point to the transit providers' network. [691]

[686] O2, April 2012 consultation response, p.18.
[687] Three, April 2012 consultation response, p.13.
[688] Virgin Media, April 2012 consultation response, Q10.10.
[689] Vodafone, April 2012 consultation response, pp.16 & 28.
[690] BT, April 2012 consultation response, p.27.
[691] EE, April 2012 consultation response, p.27.

A23.22 CWW also commented on our proposals for interconnect circuit ownership, which it argued would distort competition between BT and other TCPs. This concern seemed to arise from the fact that some OCPs are unable or unwilling to break out NGC traffic by number range (which CWW argued was reflected in the decision not to alter circuit ownership during the changes to the 0870 number range), and that these OCPs pass all NGC traffic to BT via their own direct interconnects regardless of the identity of the TCP. As a result, CWW considered that in practice OCPs would be likely to use their own interconnection capacity for all NGC traffic (as this is where the capacity currently resides) - i.e. that OCPs will use their own interconnect capacity both for calls where BT is the TCP and for calls that are transited through BT's network for termination by another TCP. CWW argued that any TCP other than BT wishing to implement direct routing would therefore need to incur the costs of providing interconnection capacity, in contrast to BT who would have calls directly routed to its network via the OCP's interconnect capacity. It argued this would give a competitive advantage to BT over other TCPs.[692]

A23.23 A number of respondents challenged Ofcom's proposal that TCPs should pay for transit, including CWW, [✂], ITSPA and Magrathea. These respondents disagreed with our arguments for a TCP pays model for the following broad reasons:

- OCPs control routing and would not be incentivised to route traffic optimally under a TCP pays model (in contrast to OCP pays);
- A TCP pays model may create competitive distortions between TCPs;
- OCPs should pay for transit if the AC is not capped; and
- A movement from OCP pays to TCP pays in certain non-geographic number ranges would be very costly.

A23.24 We now present stakeholder responses on these broad topics in turn.

<u>OCPs control routing</u>

A23.25 A number of respondents including CWW, [✂], ITPSA and Magrathea argued that it is OCPs rather than TCPs who control the routing decision, and that OCPs would not be incentivised to route traffic optimally under a TCP pays model - either directly or through commercial negotiation. These respondents argued this was in contrast to a model in which OCPs faced some or all of the costs of their routing decisions (either through an OCP pays model or through regulatory intervention in a TCP pays regime), where OCPs would be incentivised to route calls efficiently. We now consider individual stakeholders' responses on this point in more detail below.

A23.26 CWW said Ofcom's analysis had missed the impact of who made the routing decision. It said Ofcom appeared to suggest that having an interconnect route was sufficient to determine that it would be used. It said it believed that this misapprehension arose from a failure to distinguish between a case where BT was the OCP and instances where it was a different OCP. It said that:

- where BT was the OCP, the TCP determined the routing plan from the BT network and hence could indeed influence the avoidance of tandem nodes;
- however, where the OCP is not BT, the routing decision was made by the OCP.

[692] CWW, April 2012 consultation response, pp.19-20.

A23.27 CWW said to change that convention would require a disproportionate level of technical changes across industry (every OCP would need to open an interface to allow TCPs to control call routing on their networks).

A23.28 CWW disputed Ofcom's statement that commercial negotiation between the OCP and TCP would be able to resolve any issues related to using the direct routing.[693] It provided a summary of transit dealings which it said was categorical evidence that Ofcom's expectation was incorrect and that commercial negotiation could not, and would not, overcome those difficulties.

A23.29 CWW said that even where it had been able to identify the OCP and have a direct interconnection to them, OCPs (in particular those who were not in the NGCS market themselves) typically refused to route directly, even when offered a fair share of the transit fee that would be avoided. It said this was because these OCPs simply routed by default the whole of the relevant NGCS ranges to BT (it provided quantitative evidence in relation to OCPs where that was the case).

A23.30 CWW argued that evidence demonstrated that the opportunity for significant cost savings by the OCP was not adequate to encourage direct routing by them. CWW speculated this might be because a CP's internal resources were prioritised for customers rather than interconnect efficiencies or, in a number of cases, because a single provider was typically used for all NGCS traffic and they simply refused to break out CWW ranges. CWW argued that, in short, if it did not carry all of the CP's NGCS traffic then irrespective of commercial negotiation the CP would simply not split out CWW codes to route directly to it. It noted it was unable to carry all of a CP's NGCS traffic in this way because BT in its TCP role refused to pay transit charges and insisted calls be routed directly to it. [694]

A23.31 CWW therefore argued that "[g]iven this market failure and the prospect that it favours a single NGCS provider in BT, CWW believes there is a strong case for regulatory intervention in a TCP pays transit regime and urges that:

i) where a TCP connected to the relevant nodes in an OCP's network but the OCP opts to use a transit provider, then the TCP should indeed pay the transit cost but be permitted by regulation to recover the costs caused by the OCP's inefficient routing decisions from the OCP. It noted that this required an interconnect model which was not cascade accounting on a given call, but it argued that conceptually this was no different to the situation which already applied for transit portability; and

ii) to facilitate this regime, BT in its role as transit provider should have a regulatory obligation to provide TCPs with information identifying the relevant OCP."

A23.32 [✂] also opposed the view that the TCP should pay transit ('TWIX') costs and it urged Ofcom to revert back to its original view that the OCP should pay the TWIX in all scenarios.

A23.33 [✂] was concerned that a "TCP pays" model was essentially inviting the OCP to "broadcast its calls any which way but loose" across its network and across transit providers because there was no financial incentive to optimally route. [✂] noted that it had seen this effect itself. It noted Ofcom had a clear statement on the delivery of geographic calls, which were expected to be delivered as close to the

[693] April 2012 consultation, paragraph A18.46.
[694] CWW, April 2012 consultation response, pp.17-19.

receiving node as possible. It said NGCs were no different from geographic calls in the sense that there was also a receiving node, which is the platform upon which the service logic is hosted.[695] [✂] argued that inefficient routing led to call quality issues, especially given the transition from a TDM world to an IP world. It said there was a danger of multiple conversions between TDM and IP which could cause quality degradation. It said the poor call quality was likely to reflect badly on the TCP, which was not fair or reasonable considering they may not have caused the issue, but the intervening transit operators may have.

A23.34 ITPSA also said it was wholly opposed to the "TCP pays transit" model. It said it felt that the network build justifications were no longer applicable to the network models both today, and in the future (with further growth of next generation networks), where the distance element was becoming increasingly insignificant. It said as a result of that, it was seeing potential situations where OCPs, either for commercial reasons or alternate efficiencies of network design, actually caused TCPs to suffer increased network costs due to alternative routing, not based on the shortest distance principles. ITSPA believed that by instead requiring the OCP to pay transit costs, it would encourage OCPs to deliver more calls directly, utilising their right to interconnect with a TCP due to the TCP's SMP in call termination for each number range.

A23.35 Finally Magrathea said that Ofcom's analysis did not reflect the true current economics of network operators. Other than BT, it said that most network operators offered nationwide network resources for fixed prices and had removed the distance element as bandwidth has become less expensive. [✂]. Therefore it said 'tromboning' a call between nodes at different ends of the country did not entail significant costs unless BT was used as a transit provider. Magrathea said that if Ofcom wished to encourage efficient call routing, it should do so by encouraging interconnection between CPs, not by encouraging them to use BT as a transit provider. It said that if the OCP were required to pay the transit charge, it would have the incentive to interconnect directly with as many TCPs as possible so as to avoid the transit charge. It said this would encourage more resilient meshed networks. It said such an incentive would not work equally on TCPs because there were more TCPs than OCPs and an OCP was more likely to be able to secure an agreement to interconnect from a TCP because of the obligations which flowed from the TCP's SMP in call termination.

A TCP pays model may create competitive distortions between TCPs

A23.36 CWW considered that Ofcom's analysis of the proposed transit arrangements was flawed and had failed to recognise some of the incentives underpinning BT's position in relation to transit. It said that whilst uniformity was desirable, by placing the costs of transit upon the TCP, it considered that Ofcom was handing a clear competitive advantage to BT in the TCP market. CWW said that due to its incumbent advantage and network reach, BT was in the position of never having to incur transit fees in its provision of NGCS. It said that the model Ofcom was proposing would result in TCPs being loaded with additional costs which would never be incurred by BT itself. In addition it noted that the additional transit fee on TCPs would be paid to BT in its privileged position of being the default transit network. [696]

[695] [✂]
[696] CWW, April 2012 consultation response, p.15.

A23.37 CWW said it had direct evidence of BT's motivation in this respect in its attempts to identify the relevant OCP for transit traffic. CWW said that any TCP seeking to facilitate avoidance of the use of transit and to engage in the commercial negotiations Ofcom had referred to was prevented by BT's refusal to tell TCPs the identify of the OCP. CWW noted it had asked BT to disclose the name of OCPs in 2006 but it had refused, and BT had continued to refuse, meaning that CWW had only be able to identify [✂] of the [✂] relevant CPs. [697]

A23.38 [✂] said that in an "OCP pays" model, the OCP was in control of the traffic and was financially incentivised to optimally route the traffic. Any gaming by the OCP came with a financial disincentive. However, it argued that was not the case in a "TCP pays" model, contending that a large OCP could severely damage TCP competitors by leveraging its extensive network footprint and deliberately routing the TCP's traffic sub-optimally so that the TCP incurred a financial penalty. It said the OCP could route all of a TCP's NGCS traffic to a BT switch where the TCP had not built out (i.e. one as far as possible from the TCP's location) and let the TCP incur double tandem long transit fees. It said the OCP could monitor that TCP's network footprint and, if the TCP made the rational decision to build somewhere, easily change the switch it routed to. It considered there was therefore no rational argument that could be brought for a "TCP pays" regime, considering these potential consequences.

A23.39 [✂] said that doing nothing was not necessarily a valid option for Ofcom in this debate because it would leave the issue of potential anti-competitive behaviour present in addition to the complexity of two systems.[698]

OCPs should pay for transit if the AC is not capped

A23.40 ITSPA said that if an OCP was allowed to set an AC which included an effectively unlimited amount of commercial profit, it had a moral obligation to pay the transit costs. It said this would ensure that the net receipts of the TCP were the full SC element, otherwise it said it would question what 'access' the AC was covering.[699]

A23.41 Magrathea said that if no cap were imposed on the AC and mobile OCPs were allowed to recover a profit element on that charge, then since the AC was effectively a call origination service provided to the calling customer the OCPs should be obliged to take the call all the way to the tandem layer and be responsible for transiting the call to the TCP. It believed it would be inequitable for the OCP to profit from the AC element of the call and yet require the TCP to pay for transit. It noted that BTs charge for originating traffic to the DLE was significantly under half a penny, so it expected that any OCP charging more than a penny for the AC should be able to cover the transit cost as well. It said that requiring OCPs to be responsible for transit charges would encourage a more resilient network in the UK and lower costs overall as transit charges would be reduced.[700]

Moving from OCP pays to TCP pays would be costly

A23.42 Magrathea said, on a practical note, that it would be hugely costly and inconvenient to reverse the current situation as it applied to 0870, 0871/2/3 and 0844/3 (where the OCP currently paid for transit). Although it had some sympathy for the desire to

[697] CWW, April 2012 consultation response, pp.15-16.
[698] [✂].
[699] ITSPA, April 2012 consultation response, pp.2-3.
[700] Magrathea, April 2012 consultation response, p.1 & Q10.10.

standardise the approach across all non-geographic number ranges, it believed that in view of the large call volumes associated with those ranges, the principle of OCP pays should remain in place. It noted there had been a huge increase in 0844 in particular over recent months and it said it would be a considerable upheaval to reverse the status quo for that range. It said CP networks had been constructed on the basis of "OCP pays" for those ranges and it said they would have to be restructured if the situation was reverse. It did not believe that the benefit of imposing such a change would outweigh the cost to industry.[701]

Ofcom's response

A23.43 In this sub-section we first respond to the comments regarding our proposals for interconnect circuit ownership, and then to comments relating to our proposal for TCPs to pay for transit.

A23.44 Both EE and CWW had concerns about our proposals for interconnection circuits. In response to EE's comments on the location of the AHP as applied when a transit provider is used, our concern is that the TCP is unable to influence the dimensioning or implementation of this route, or the traffic which is carried over it (since the OCP and the transit provider could use the same interconnect route for NGCS traffic to many TCPs as well as for other traffic types, such as geographic traffic), and as such should not bear the costs of the interconnection circuit to the transit provider. While we have determined that, for the purpose of calculating the AC and SC, the OCP will be responsible for the cost of these circuits, originating CPs and transit providers are free to negotiate separate commercial terms for interconnection.

A23.45 CWW argued that our proposals for interconnect circuit ownership could create competitive distortions between TCPs by giving BT an unfair advantage in not having to pay for interconnect circuits to implement direct routing. We recognise that where OCPs route all traffic together (that is, do not break out different TCPs' number ranges in their own routing tables), all NGCs would be routed on the same interconnect circuits. However, the model proposed by Ofcom suggests that different circuits should be used for traffic to BT's own NGCS ranges, compared to other ranges for which BT was providing a transit service i.e. that BT's circuits should be used for its own traffic and the OCP's circuits should be used for all other traffic.

A23.46 CWW argued that in practice this model would lead to all traffic being routed through the OCP's capacity, rather than BT owned capacity, because of the unwillingness of OCPs to break out NGC traffic. We do not agree this will necessarily be the case. We note that OCPs will act to minimise their own costs within the framework we have set out, which may lead to some OCPs changing routing in their own network in order to avoid the costs of interconnect circuits for BT terminated traffic by routing it over BT owned circuits. Where the OCP considers it may be advantageous to route BT terminated NGC traffic over the same routes as those used for transit traffic (for example, in order to save the costs associated with breaking out BT NGC traffic from other traffic), it will be able to negotiate with BT over how to share the costs of this capacity. We consider that our proposals provide a basis for such negotiations by placing the responsibility for interconnect ownership on BT for BT terminated traffic. Similarly, we note that TCPs other than BT wishing to negotiate direct routing with an OCP can draw on the fact that the OCP has responsibility for interconnect circuits for traffic that transits BT when

[701] Magrathea, April 2012 consultation response, Q10.10.

conducting negotiations. As a result, we disagree with CWW's view that our proposals for interconnect ownership will lead to BT having an unfair cost advantage over other TCPs.

A23.47 In relation to our proposal that TCPs should be responsible for transit costs, we first set out the framework we have used to assess the issue of which party should pay for transit and summarise our conclusions under this framework. We then address the specific points raised by stakeholders as set out above in relation to this framework.

A23.48 We begin by noting that neither the TCP nor the OCP has sole control over whether traffic is routed directly via an interconnect or indirectly via a transit provider - rather both the TCP and OCP input to this choice. The TCP chooses whether to build out to directly interconnect with the OCP, and the OCP chooses whether or not to break out NGC traffic for TCPs who have directly interconnected. As there are costs to both parties from implementing direct routing as well as savings in transit costs, whichever party is assigned responsibility for transit costs will need to reach a commercial agreement with the other party to induce them to undertake these costs. Such an agreement is likely to take the form of some share of the cost savings from direct routing.

A23.49 As long as there are no barriers to reaching such an agreement (which we consider below), it should not matter for efficient routing whether we place the responsibility on the OCP or the TCP. This is because if the current routing is inefficient, there are cost savings to be made from implementing direct routing. The parties can reach an agreement on how to split these gains and both will be better off than they would be under the inefficient routing. For example, under an OCP pays model, if the OCP were to identify an opportunity to reduce transit costs by getting the TCP to change its network configuration, it could induce the TCP to do so by offering it a share of the gains from reduced transit costs. Similarly, under a TCP pays model, a TCP which had invested in direct interconnection with a particular OCP could induce that OCP to break out NGC traffic to that TCP by offering it a share in the resulting transit costs.

A23.50 In both models, it may not be possible to secure a direct routing agreement, even if the party with liability for transit offers the entire gains from transit cost savings. However, in such instances, it is likely to be the case that transit cost savings are not sufficient to offset the total costs of implementing direct routing (i.e. the sum of the costs incurred by OCP and TCP). In this case, direct routing would not be efficient.

A23.51 In order for the above to be true, the parties need to be able to reach a commercial agreement on how to split the gains. This will not necessarily be the case, and the factors that may prevent an agreement from being reached may provide a basis for favouring one model over the other. One reason the parties may fail to reach an agreement is if the costs of negotiation are greater than the gains to be made from efficient routing. Negotiations may also fail if the parties do not have a common understanding of the gains to be made, for example because one party has better information about the potential cost savings than the other. In both instances, failure to reach an agreement could arise under either an OCP or a TCP pays model. However, if either party has greater influence on efficient routing then there may be an argument in favour of placing responsibility for transit costs on this party to reduce the risk of failure.

A23.52 Strategic motivations can also prevent agreement from being reached, for example if vertically integrated OCPs were motivated to increase the costs of their rival TCPs by refusing to implement efficient routing. If there were reason to believe these motivations might be stronger for one party than the other, this could also provide grounds for favouring a model which placed responsibility for transit costs on this party.

A23.53 Taking each of these factors in turn, we do not think they provide a clear reason to prefer one model over the other.

A23.54 Although we recognise there are likely to be costs involved in any negotiations, we are not aware of any reason why these would be particularly material given the very large number of commercial agreements we already observe between OCPs and TCPs and the fact that OCPs and TCPs with significant traffic volumes that could justify direct interconnection will be in regular communication anyway. We also have no reason to believe one party would be better informed about potential cost savings than the other. Whichever party is assigned responsibility can inform the other of current transit costs, which the other party could verify if it wished by applying BT's published transit rates to the relevant volume of traffic. In any event, it is not clear that one party would have greater influence over the decision to implement direct routing than the other in an OCP pays or TCP pays approach, so that even if there were a concern over the costs of negotiations, this would not be reason to prefer one model over the other.

A23.55 We recognise the potential for vertically integrated OCPs to behave strategically by refusing to implement efficient routing in order to raise their rivals' costs in the TCP market. However, we think the scope for such strategic behaviour is limited by the fact transit rates are very low[702] and therefore the impact this would have on rivals' costs is unlikely to be sufficient to have any material competitive effect.

A23.56 In light of this, we think arguments can be made for both the "OCP pays" and "TCP pays" approaches.

A23.57 In the absence of any commercial agreement, a "TCP pays" approach is likely to lead to OCPs handing off traffic as quickly as possible to transit providers, without considering the efficiency of end to end routing. In this approach, the TCP would need to make arrangements to collect traffic from the transit provider as efficiently as possible. This means the TCP is more likely to take account of the costs of call delivery when it seeks to compete for customers in the NGCS market. In contrast, an "OCP pays" approach may place incentives on OCPs to route traffic more efficiently. This is because the OCP, in paying for transit, would be liable for the costs of inefficiency. For example, where direct interconnection exists but is not currently used for NGCS traffic, an "OCP pays" approach may result in some re-routing of traffic where direct routing would be more efficient.

A23.58 However, as raised by some stakeholders, an "OCP pays" approach in the absence of commercial agreement (between the OCP and TCP to interconnect at specific points to reduce the costs of transit) could lead to TCPs only accepting traffic at a limited number of points via a transit provider as this would lower its costs, which could lead to inefficient end to end call routing. An "OCP pays" approach could also

[702] For example, the current single transit rate in the daytime is 0.0238 ppm. See section C2 of the BT Carrier Price List: https://www.btwholesale.com/pages/static/Library/Pricing_and_Contractual_Information/carrier_price_list/index.htm.

lead to TCPs not seeking to establish direct interconnection for traffic to their own number ranges. This is because, where they do not pay for transit, receiving traffic via a limited number of routes from a transit provider could reduce their costs and provide a competitive advantage compared to those TCPs that have direct interconnection to the OCP in place. A further disadvantage with an "OCP pays" approach, in the absence of commercial agreement, is that a decision by a service provider or end customer to select one TCP over another could impact the OCP's costs of delivering traffic. For example, if this results in traffic routing via a transit provider rather than via a direct route, the OCP would incur transit charges due to a decision over which it has no control.

A23.59 The problems identified under each model could be overcome by commercial negotiation. Under the OCP pays model, the OCP could incentivise all TCPs, where it was worthwhile doing so, to invest in direct interconnection by offering them a share of the resulting transit savings. Under TCP pays, the TCP could incentivise all OCPs with whom it had a direct interconnection to break out the relevant traffic volumes. As outlined above, we see no reason to believe that commercial negotiation would be more successful if the obligation were placed on one party rather than the other.

A23.60 We recognise that under the TCP pays model, some TCPs have encountered barriers in creating attractive commercial offers for OCPs (as discussed in more detail below in response to stakeholder comments). This is because transit fees are so low that offering to share saved transit costs has not proved to be a sufficient incentive for some OCPs to implement direct routing. However, it is not clear to us that requiring the OCP to pay in these situations would result in a different outcome. This is because the potential transit cost savings may not be sufficient to offset the cost of implementing direct routing by the OCP. As a result, the choice of OCP or TCP pays would affect only the party which bears the cost of transit and not the actual routing decision.

A23.61 We therefore think it is finely balanced between the two approaches. However, we consider that "TCP pays" is more consistent with the NEHO approach to the location of the AHP. On this basis, we conclude that we should adopt the "TCP pays" approach to transit arrangements.

Responses to specific points raised by stakeholders on transit arrangements

A23.62 Several respondents agreed with our arguments in the April 2012 consultation that a regime where the TCP pays for transit was appropriate. They agreed that in an "OCP pays" regime, TCPs could be disincentivised from building out their networks and instead could receive NGCS calls at only a limited number of PoIs. This could lead to inefficient call routing, in particular as for NGCS calls only the TCP can determine the ultimate destination of the call. We note this agreement but also observe that, as outlined above, it is not these reasons alone which lead us to prefer a TCP pays model. Whilst we recognise the potential for such inefficient call routing in the absence of commercial negotiations, we see no reason to believe that OCPs could not secure agreement with TCPs to configure their networks optimally in return for a share in transit cost savings. As a result, our main reason for preferring a TCP pays model is for consistency with the NEHO approach to the location of the AHP.

A23.63 A number of respondents disagreed with our proposal that TCPs should pay for transit. We organise our response to these concerns under the same broad topics listed above.

OCPs control routing and would not route efficiently under TCP pays

A23.64 In relation to our argument that we expected commercial negotiation would overcome any inefficient routing choices by the OCP under a TCP pays model, CWW said that it provided “categoric evidence in Annex 3 with a summary of transit dealings that these expectations are incorrect, and that commercial negotiation cannot and will not overcome these difficulties.”[703] We do not accept that the evidence provided by CWW supports its view that commercial negotiations will not be effective. The report indicates the volume of traffic originating from certain operators and the potential saving (which we take to mean the saving that could be achieved via direct routing). This in itself does not provide evidence of an inability to agree commercial discussions on direct routing, only that some CPs route traffic to CWW’s non-geographic numbers via a transit provider. Contrary to CWW’s argument, the information provided indicates to us that in some cases commercial negotiations have resulted in direct routing being agreed and, in other cases, that these commercial negotiations between the parties have resulted in transit being considered the more efficient approach. [✂].

A23.65 We also note that the data provided includes no details related to the inability of the parties to conclude commercial negotiations, and in particular does not specify the share of potential savings offered to OCPs (beyond that they represented a “fair” share) nor the reasons given by OCPs for not accepting the offer. As a result, it is not clear that requiring the OCP to pay for transit would result in direct routing in these instances. If, as CWW suggest, some OCPs refused to directly route traffic in exchange for a share of the potential transit savings, it suggests the costs they would incur in direct routing were greater than the share of savings they were offered. This would mean that either the share they were offered was not sufficiently large or that the total potential transit savings were not sufficient to cover the costs to the OCP of direct routing. In the former case, it would be open to CWW to offer a larger share of potential savings to secure efficient routing through commercial negotiation. In the latter case, we note that direct routing is only efficient if the potential transit savings exceed the total costs incurred by both OCP and TCP in implementing the direct routing. If this were not the case, we would not expect direct routing to occur under either a TCP or OCP pays model, nor would we consider it efficient if it did.

A23.66 CWW made a number of other points that we do agree with. We accept that the routing decisions made by OCPs can result in transit being used where, at least in theory, a direct routing option could be used. In particular, we accept that CPs may be reluctant to break out individual CPs’ number ranges to route directly and instead choose to route all traffic via BT. This will result in transit charges being incurred even when a direct route is available. CWW noted that the control that a TCP had of call routing was different if BT was the OCP, or another CP was the OCP. In the case that BT is the OCP, the TCP is able to determine the call routing, whereas where the OCP is not BT, then the routing is determined by the OCP. On this basis, CWW contended that we were incorrect to argue that commercial negotiations between the OCP and the TCP could resolve issues related to using direct routing. We would argue that in principle our argument is correct, but do accept that the saving available to TCPs in transit fees may not be sufficient to allow it to structure an agreement that would incentivise the OCP to route traffic directly (given the costs of re-routing only certain number blocks, etc.), particularly given the low rates currently charged by BT for its Single Transit service in

[703] CWW, April 2012 consultation response, pp.18. The transit reports were in Annex 2 of the response.

particular. However, in these cases, we note that direct routing is not efficient at current prices and so it is not clear this is something we would wish to encourage.

A23.67 Under General Condition 1, all CPs are required to negotiate with each other on request "with a view to concluding an agreement (or an amendment to an existing agreement) for Interconnection within a reasonable period". We would expect that the negotiations required under GC1 would include changes to routing that are required in order to facilitate direct routing for NGCS traffic (that is, the routing changes need to make use of an interconnect would be part of the discussion of an interconnect agreement). We would expect commercial incentives could lead to OCPs making the necessary routing changes in their networks to make use of direct interconnection where it is practical and reasonable to do so. Where negotiations fail, it is open to the CP to bring a dispute, which, as a general principle, we will resolve on the basis of what is fair and reasonable as between the parties, having regard to our statutory duties and the Community requirements.

A23.68 Further, CWW argued that, because BT refuses to pay transit fees where it is the TCP, other CPs are unable to provide transit services to those OCPs that want to route all NGC traffic via a single provider, because the transit provider would have to route all BT terminating traffic for free. We note that BT supported our proposals that TCPs should pay for transit. BT, like all other TCPs, will be responsible for transit charges under the unbundled tariff. This suggests that, where an OCP chooses to route traffic via a transit provider to BT, BT will have a responsibility to engage with the transit provider in negotiating a fee for any service provided.

A23.69 CWW argued that due to the issues it had identified, if we adopted a "TCP pays" approach, there was a case for regulatory intervention. In relation to the first point – that a TCP should be able to recover transit costs it incurs from an OCP if a direct route exists and could be used – our view is that this would be a similar scenario to that outlined above in paragraph A23.67. We would expect in the first instance that the TCP would seek to address its concerns via commercial negotiations and where these fail, it is open to the CP to bring a dispute to us.

A23.70 In relation to the second point raised by CWW - that BT should, in its role as transit provider, be required to provide information identifying OCPs – we would expect that where commercial negotiations to obtain such information fail, the TCP could consider bringing a dispute to the extent that it considers the requested information constitutes network access as defined within the Communications Act 2003 (section 151). In addition, we are currently consulting on our proposals for the wholesale narrowband markets, including the market for single transit. Our assessment of market power in single transit in the narrowband market review ('NMR') consultation takes our proposed approach in this review towards liability for transit payments into account. In particular, we recognised in the NMR consultation that our proposal to implement a TCP pays model may, if implemented, mean that calls to non-geographic numbers that switch from an OCP-pays regime to a TCP-pays regime become less sensitive to price changes in single transit. We concluded that any such impact is likely to be limited by the fact that a significant proportion of non-geographic number ranges are already subject to a TCP pays approach and by the potential for commercial negotiation in the other ranges.[704]

A23.71 [✂] made some similar arguments to CWW and, in addition, argued that OCPs had no incentive to route in any way other than to hand traffic off to a transit provider as

[704] NMR consultation, paragraphs 7.41 in particular: http://stakeholders.ofcom.org.uk/consultations/nmr-13/

soon as possible (though we note it also argued that as an OCP it could route traffic non-optimally specifically to increase TCPs' costs). ITSPA made a similar point in arguing that OCPs may cause TCPs to suffer increased network costs due to alternative routing decisions. We accept that where an OCP routes traffic via a transit provider, and in the absence of any commercial agreement otherwise, it will choose the routing that is advantageous to itself, which is likely to be handing the call off as soon as possible, without taking account the impact of this routing on the TCP. However, as noted above, whilst we recognise there would be no direct incentive on OCPs to take into account the impact of their routing decisions on TCPs, it would be open to TCPs to create this incentive via commercial agreement. We do not expect that OCPs will seek to route traffic specifically to increase the costs of TCPs but address this point in relation to distortions to competition below.

A23.72 [✂] also suggested that the inefficient routing it argued would result from implementing a TCP pays model could lead to multiple conversions between TDM and IP due to the presence of both TDM networks and NGNs. Excessive conversion could result in degradation of quality of service, and this would be likely to reflect badly on the TCP. We agree that excessive call conversion could lead to reduced quality. However, based on the arguments put forward by a number of respondents, it appears unlikely that calls would pass through more than two conversions (one between an OCP and a transit provider, and one between a transit provider and TCP) at most, with the majority of calls being translated once or not at all. On this basis, we would not expect there to be significant degradation of call quality. More fundamentally, we note that, for the reasons outlined above, we would expect to see efficient routing implemented via commercial agreement whether it is the TCP or OCP who bears responsibility for paying transit. As a result, we would therefore expect to see a similar incidence of multiple conversions under TCP pays and under OCP pays.

A23.73 Magrathea argued that due to the costs of operators other than BT, if Ofcom wished to encourage efficient call routing it should encourage direct interconnection between CPs rather than encourage them to use BT as a transit provider. It argued that requiring OCPs to pay the transit charge would encourage such behaviour, due in part to the obligations that flowed from the TCP's SMP in call termination. We disagree that requiring OCPs to pay for transit would lead to more efficient routing than our TCP pays proposal for the reasons out. We note that we have not concluded that any TCPs have SMP in call termination to non-geographic numbers. To the extent that Magrathea refers to SMP in other services, we would expect that any direct interconnection provided for that traffic could be used for NGCS traffic as well, subject to the discussion of the points made by CWW and [✂], as set out above.

A TCP pays model may create competitive distortions between TCPs

A23.74 CWW argued that a "TCP pays" model would provide BT with a clear advantage in the TCP market, because it would not be liable for making transit payments. Whilst it may be true that BT would not incur transit payments, it fails to recognise that BT avoids transit payments because it is directly interconnected with all other CPs. As such, the benefit BT obtains from not paying transit fees as a TCP is counter-balanced by the costs of this more extensive interconnection network. In addition, if an "OCP pays" approach to transit was suggested, a similar argument could be made by OCPs, i.e. BT would gain advantage as an OCP in an "OCP pays" model, because it again would not incur transit charges due to the extent of its interconnect network. We therefore do not consider that it is clear that BT secures an undue advantage as a result of the "TCP pays" approach we are taking.

A23.75 [✂] argued that in a "TCP pays" model, a large vertically-integrated OCP could damage its TCP competitors by routing the TCP's traffic sub-optimally so that the TCP incurred a financial penalty. As stated above, we do not expect that vertically-integrated OCPs will seek to route traffic specifically to increase the costs of TCPs. However, we note that were there evidence of this occurring, the affected party would have grounds for referring the matter to us.

OCPs should pay for transit if the AC is not capped

A23.76 Several respondents argued that because there is no cap on the AC the OCP should pay the transit fee. We do not agree with this view. Our assessment of whether the OCP or TCP should pay the transit fee is not based on assessing the level of profit that either could charge within the AC and SC but rather on assessing what we consider would result in the approach that is most consistent with the routing of NGC traffic in general and is likely to lead to efficient call routing.

Moving from OCP pays to TCP pays would be costly

A23.77 Magrathea also said, as a practical note, that there would be costs related to moving to a "TCP pays" model on some traffic types. Our view is that this argument could equally be made in moving to an OCP pays model, since for some number ranges that support significant traffic volumes, transit is currently paid for by the TCP.[705]

Summary of our position on transit arrangements

A23.78 Based on the comments from stakeholders, and our discussion set out above, we accept that there could be advantages and disadvantages in terms of the efficiency of routing to establishing either an OCP or TCP pays regime for transit for NGCS traffic. However, we also consider there is scope for the disadvantages under each regime to be overcome through commercial negotiation as set out in paragraph A23.59. As such, we have no clear reason to prefer one regime over the other on an efficiency basis alone.

A23.79 However, in our view, an "OCP pays" regime would be disadvantageous because it would result in two different regimes being in place for NGC traffic. For calls handed over directly between the OCP and the TCP (for example for calls originating on the BT network), the AHP would be at the originating exchange. On the other hand, for calls routed via a transit provider, the AHP would not be at the originating exchange but, rather, would be at the TCP side of the transit network. Given that the AHP provides the demarcation between the AC and the SC, we consider that a consistent approach across all NGCS traffic is desirable. We have concluded that this is the appropriate location of the AHP.

Interconnection of CPs outside of BT

Position in the April 2012 consultation

A23.80 We noted that where direct routing was implemented between the OCP and TCP, they should be free to commercially agree how to share the potential benefits/savings of the direct interconnection (e.g. the transit cost savings) to make

[705] For example, we would note that there are very large traffic volumes associated with the 0845 number range, which is subject to a "TCP pays" regime. See table 5.4 in the 2010 Flow of Funds study.

the direct interconnect approach beneficial to both parties. In other words, the OCP and TCP having set, respectively, the AC and SC on the basis that the call is handed over at the originating switch, they remain free to enter into separate arrangements to make payments between themselves to reflect the balance of conveyance costs they bear as a result of direct interconnection.

Stakeholder comments

A23.81 O2 noted that Ofcom proposed that commercial discussions might take place with regards to the sharing of cost savings realised by not using a transit provider where two CPs other than BT interconnect directly. O2 said it currently routed all 08X traffic and the large majority of NGC traffic to BT, with some traffic also routed to Cable & Wireless. However, on the basis that it might in the future choose to connect to TCPs directly, it was, in principle, in agreement with Ofcom's proposal.[706]

A23.82 Three agreed that if two CPs other than BT interconnect directly, they should be allowed to decide how to share the cost savings realised by not using a transit provider. [707]

A23.83 EE said that the efficiency considerations in favour of NEHO applied equally to direct and indirect call routing between an OCP and TCP other than BT as they did when BT was the OCP or TCP. Therefore it argued that the same principles should also be applied when the SC was set by a TCP other than BT, i.e. the AHP should remain at the originating switch and the TCP should be given the appropriate infrastructure investment signals to build out to pick-up traffic from that point where it was efficient to do so, just as was the case when a TCP was deciding whether and how far to invest when picking up traffic from BT's local exchanges. EE noted that establishing direct interconnection relationships was costly for both OCPs and TCPs and in addition the option to use transit arrangements provided some degree of competitive constraint on direct interconnect termination rates. EE said it would be undesirable for Ofcom's proposals to distort the current pricing signals given in that regard, which EE believed were efficient. It said that approach was also far more likely to generate disputes between non-BT CPs than a simple and clear rule that the AHP should be the NEHO point in all cases. [708]

A23.84 [✂] said that as a general rule, directly interconnected networks agreed on a bilateral basis the terms upon which they conveyed calls, and in its opinion this did not need substantive intervention from Ofcom as it generally followed the similar process to transit via BT.[709]

Ofcom's response

A23.85 In response to EE's point, we have set out above our view on the location of the AHP in the case where a transit provider is used. We consider that this provides a reference for consideration of commercial negotiations related to direct interconnection. A direct interconnect would mean the OCP would not bear the costs of the circuits to the transit network (though it may not be able to realise these savings, depending on whether it can reduce or remove capacity) whilst the TCP no longer pays the transit fees. On the other hand, there will be the cost of direct

[706] O2, April 2012 consultation response, p.18.
[707] Three, April 2012 consultation response, p.13.
[708] EE, April 2012 consultation response, pp.27-28.
[709] [✂].

interconnection. This cost could be shared by multiple services. Where CPs agree to interconnect directly they would do so because it is commercially beneficial to them to do so, as compared to using transit. As such, we consider that it is sufficient to rely on the reference model for transit and we do not need to explicitly specify the precise mechanism for direct interconnection in relation to NGCs. Our view is that this is essentially the argument being put forward by [✂] with which we agree.

Other issues

A23.86 Stakeholders made several other points related to the discussion of the location of the AHP and the transit regime, which we address below.

Stakeholder comments

A23.87 BT noted that TCPs might require BT to carry calls further (than the AHP) into the network to their Point of Connection ('POC'). It said this would require a conveyance charge to be made to address the extra costs of carrying the call beyond the AHP. It noted that in the current NTS regime, the conveyance charge was included within the NTS POLO calculation. It said that was necessary to support the revenue flow obligations of the NTS Call Origination Condition. It noted that with the introduction of the new scheme the retail revenues and termination charges were decoupled and therefore there was no longer a requirement for the consequent charges to be incorporated in the TCP's outpayment (the SC). It said that an AC which was not affected by consequent changes was more transparent to the TCP, plus the TCP could see clearly the charges it incurred from the OCP for conveyance. BT said that to avoid SC disputes it would be preferable to keep conveyance charges and SCs separate and allow the billing of both to be more transparent.[710]

A23.88 [✂].[711]

A23.89 BT noted that the principle of termination for 03 calls was that they closely aligned with geographic call interconnection arrangements, with the call originator handing over the call at the far end of the network. However, it said that as with other NGCs, it was not possible for the call originator or transit operator to know the final destination of a 03 call. BT said that to ensure efficient call routing it was necessary for the originator to pass the call over to the TCP as early as possible (at the near-end). It argued that near-end handover principles should apply equally to 03 calls as to other NGCs. It said that could be done without affecting 03 consumer pricing arrangements and it asked Ofcom to consider reviewing 03 to bring the interconnection principles in line with other NGCs.[712]

Ofcom's response

A23.90 In response to BT's first point, our view is that where a CP requests BT (or another CP) to carry the call on its network beyond the AHP, then additional charges will apply. We agree that if the OCP clearly distinguishes in its bill to the TCP payments due in respect of the SC, and charges owed in respect of additional transit, this will aid in the transparency of billing for NGCs between CPs. Whilst we would therefore be supportive of these charges being kept separate, we also recognise that this may lead to changes in billing systems/invoices. We would expect that industry

[710] BT, April 2012 consultation response, pp.35-37.
[711] [✂].
[712] BT, April 2012 consultation response, p.16.

could agree how to ensure transparency is provided without the need for systems development or disruptive changes to existing payment regimes.

A23.91 [✂].

A23.92 In relation to 03 calls, we set out in the April 2012 consultation we are not implementing the unbundled tariff on the 03 number range.[713] As such, we have not considered the approach to paying for transit for these calls. In our determination of a dispute between EE and BT, we decided that the OCP should pay for transit for calls to 03 numbers.[714] Because we are not intending to change the retail charging structure of 03 numbers, we would expect that a dispute on a similar issue in relation to 03 calls, and a similar factual matrix, would be resolved in the same way.

Conclusion

A23.93 Based on our proposals in the April 2012 consultation, responses from stakeholders and the discussion above, we have concluded that:

- a NEHO model for non-geographic traffic is likely to provide the appropriate signals for efficient call routing;
- for BT originated calls, the AHP is currently considered to be the DLE;
- for BT terminated calls, the AHP is considered to be the originating switch in the OCP's network; and
- for calls where BT is neither the OCP or the TCP:
  - the AHP is at the ingress to the transit provider so that the OCP pays the costs of the originating switch plus the interconnection circuit to the transit provider whilst the TCP pays for transit; and
  - where direct routing is implemented, the two CPs may agree to vary the termination payments with reference to the SC that applies at the AHP in the model where a transit provider is used. The agreed termination payments would take account of the savings resulting from not using a transit provider and any other benefits that may accrue from having direct interconnection in place.

[713] See Part B, Section 11, pages 166 to 174 of the April 2012 consultation for our conclusions on the 03 range.
[714] http://stakeholders.ofcom.org.uk/enforcement/competition-bulletins/closed-cases/all-closed-cases/cw_01058/

Part B - Annex 24

Price publication requirements

Introduction

A24.1 This Annex sets out a summary of issues raised in responses to our April 2012 consultation in respect of the price transparency requirements we proposed under the unbundled tariff structure and our response to those comments. Where necessary, it refers to Section 10 of the main document where we detail our view on what we consider to be the appropriate price transparency obligations.

A24.2 We have divided the responses into the following areas:

- price publication obligations on OCPs, including;
  - o publication of charges on customer bills; and
  - o other price publication requirements in respect of the Access Charge (‘AC’).
- price publication obligations on SPs in respect of the Service Charge (‘SC’).

Price publication obligations on OCPs

Publication of charges on customer bills

<u>Position in the April 2012 consultation</u>

A24.3 We noted there were significant costs involved with separating out the AC and SC elements of the call on customer bills and that setting out the AC alongside the presentation of total charges for ACs was likely to be a much cheaper approach. We also highlighted that a significant proportion of consumers did not receive a bill, and even those who did, did not necessarily check their bills. Therefore it was questionable how useful it would be to present individual ACs and SCs for each call. We considered the transparency benefits of such an approach could be limited. We noted that consumer information about the unbundled tariff would be delivered through a number of other different sources such as OCP and SP advertising and Ofcom’s communications activities.

A24.4 We therefore proposed not to make it compulsory for OCPs to have to separately present the AC and SC for each non-geographic call they made. We said that our primary requirement was that customers should be able to understand that the price for a NGC was made up to two separate elements, the AC and the SC. We noted that General Condition 12 (‘GC12’) already included a requirement for CPs to ensure that itemised bills provided a sufficient level of detail to allow subscribers to verify and control their call charges, as well as monitoring their usage.

A24.5 We considered that the most proportionate and justifiable approach was to give OCPs flexibility to decide the best way to present NGC charges to their customers on their bills, provided they met the requirements in GC12. We said that, at a minimum, we would require that the AC charged to the customer was set out on their bill, and it was open to CPs to present a greater level of detail if they wished to do so.[715]

Stakeholder comments

A24.6 Action4 said that mandatory presentation of disaggregated ACs and SCs would aid customer clarity.[716] CAB also considered that disaggregation was necessary in order to bring increased competition and help consumers understand the charges. It said that if there was any desire to see increased competition between SPs in terms of the cost to call them, it made no sense to require consumers to perform their own calculations to find out how much they were paying in SCs.[717] THA said that if the AC was allowed to vary by tariff package then providing disaggregation of ACs and SCs on customer bills was necessary to aid transparency, whereas if there was a single AC it would be easier for customers to find that and therefore disaggregation would not be necessary.[718]

A24.7 In addition, TNUK said its preference was for call charges to be disaggregated on a call by call basis in order to allow consumers to see how the price was set and the revenue divided. It considered this would be the most effective way to develop consumer understanding of the unbundled tariff. However, it also recognised that this might be unduly costly and onerous and could adversely impact on Ofcom's cost benefit analysis. It therefore said that presenting the AC on the bill should be an absolute minimum, and OCPs should also be required to provide a short explanation of the AC, the SC and how the unbundled tariff operated.[719] [✂] was also concerned that only presenting the AC could lead to customer confusion, although it also noted the logic of Ofcom's arguments.[720]

A24.8 Most respondents, including most fixed and mobile CPs, agreed that the separation of the AC and SC on customers' bills should not be a regulatory requirement.[721] Sky considered that Ofcom's proposal provided additional flexibility to OCPs and was proportionate.[722] O2 agreed that OCPs should have control over the best way to present their ACs on bills. It noted that each OCP will have its own preferred approach and that enabling them to control the presentation will also allow them to better realise potential cost savings in implementation.[723] FTC also agreed, as long as the AC was presented clearly on the customers' bill.[724] Magrathea noted that GC12 required itemised billing and that it might therefore prove unhelpful since Ofcom was not proposing that call charges had to be separated on customers' bills. It suggested that this might need to be specified as an amendment to GC12.[725]

A24.9 Three emphasised that mandating disaggregation would require costly and complex billing changes to systems.[726] UKCTA and Verizon also said it would be

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[715] April 2012 consultation, Part B, Section 12, paragraphs 12.26 to 12.36.
[716] Action4, April 2012 consultation response, p.5.
[717] CAB, April 2012 consultation response, p.4.
[718] THA, April 2012 consultation response, p.14.
[719] TNUK, April 2012 consultation response, p.40.
[720] [✂]
[721] BT, April 2012 consultation response, p.18. Surgery Line, April 2012 consultation response, p.7. Vodafone, April 2012 consultation response, p.29. Magrathea, April 2012 consultation response, p.7, TalkTalk, April 2012 consultation response, p.2.
[722] Sky, April 2012 consultation response, p.3.
[723] O2, April 2012 consultation response, p.20.
[724] FTC, April 2012 consultation response, p.7.
[725] Magrathea, April 2012 consultation response, Q12.6.
[726] Three, April 2012 consultation response, p.14.

disproportionately costly to have a breakout of the charges and they therefore welcomed Ofcom's revised stance on the disaggregation of charges on customer bills.[727]

A24.10 EE considered Ofcom's approach was much more proportionate and workable than the previous proposal. It argued it should be up to OCPs to decide exactly how to present call charges to consumers on bills, and exactly how and where the AC is presented should be the OCP's domain. It also highlighted that this approach was much more cost effective. Nevertheless, [✂].[728]

A24.11 CWW agreed that a minimum requirement to clearly delineate the level of the AC was necessary and that this was compatible with General Condition 12. It said it welcomed Ofcom's restraint in not trying to engage in micro-regulation and the freedom afforded to OCPs to meet the requirement in a flexible and proportionate manner.[729]

A24.12 However, SSE and Virgin Media disagreed that it was necessary for OCPs to present the AC on bills. SSE noted that changes to billing created significant costs and space on bills was at a premium. It said that provided there was a high level intent for customers to be well informed about changes, it would be more helpful for Ofcom to indicate in non-mandatory guidance various ways to achieve that. It also highlighted that many customers do not receive bills and therefore there would need to be a mechanism for those customers to be informed about their AC.[730] Virgin Media considered that the mandatory inclusion of ACs on customer bills was unlikely to benefit consumers. It argued that it was likely to cause confusion to consumers who did not regularly call these numbers; consumers were only likely to understand the AC if they had been educated on it and it considered that was Ofcom's role. It said that consumers who wanted to find out their AC could go to their CPs website or call customer services.[731]

Ofcom's response

A24.13 We agree that the presentation AC and SC elements of the call separately on customer's bills, is likely to offer the greatest price transparency to consumers. As set out in the April 2012 consultation, however, this option would involve significant costs for OCPs. In that consultation, we considered that these costs were not justified by the additional transparency benefits, particularly given that a significant number of consumers do not receive itemised bills and therefore would not benefit from that increased transparency.[732]

A24.14 There are a number of other ways in which the message about the unbundled tariff will be communicated to consumers:

- In relation to the AC:
  - o there will be a single AC per tariff package, which will make it easier for consumers to remember (see Section 9); and

[727] UKCTA, April 2012 Consultation response, pp.6-7. Verizon, April 2012 consultation response, p.8.
[728] EE, April 2012 consultation response, pp.28-29.
[729] CWW, April 2012 consultation response, p.21.
[730] SSE, April 2012 consultation response, p.3.
[731] Virgin Media, April 2012 consultation response, Q12.1
[732] For example, in 2011 51% of mobile contracts were pre-pay, and these customers normally do not receive itemised bills. Ofcom, 2011 CMR, p.21. See paragraphs 12.27 to 12.35 of the April 2012 consultation.

  - OCP advertising and promotional material will set out the AC with the same prominence as other call charges (see below, paragraphs A24.37).

- In relation to the SC:

  - the SP will be required to publish the SC in their advertising and promotional material (see below, paragraphs A24.67 to A24.68); and

  - the SC caps on the 084, 087 and 09 number ranges will be published to consumers as part of Ofcom's numbering guide and will provide consumers with reassurance about the maximum amount they will pay for each number range.

- In relation to the unbundled tariff structure more broadly:

  - Ofcom will be carrying out a number of communications activities to develop consumer awareness, which may include the development of a consumer website to address any queries; and

  - other stakeholders, such as consumer groups and OCPs are likely to be carrying out their own communications activity to promote the new structure (see Section 5).

A24.15 In addition, we are requiring that, as a minimum, the AC charged to the customer is set out on the customer's bill (see Section 10). We have proposed modifications to GC12 to reflect this requirement, see Section 6. In combination with the other communications activities outlined above, this will ensure consumers are made aware of the structure and understand what they have been charged for a specific call. Going further and requiring OCPs to present separated ACs and SCs on a per call basis in customer bills does not appear to be proportionate.

A24.16 Nevertheless, it is important to emphasise that the requirement to include the AC on customer bills is a minimum requirement. OCPs may opt to present more detail on customers' bills about how the prices to these calls are calculated, if they wish to do so.

A24.17 Some stakeholders argued that even a requirement for the AC to be presented on customer bills is unnecessary. We disagree. We accept that, as highlighted by SSE and referred to already above, a number of consumers do not receive bills. These consumers will be informed about their AC and the structure of the unbundled tariff through the methods outlined above (paragraph A24.14). However, for those consumers that do receive a bill, it remains important for them to be able to verify and understand the charges set out for a particular non-geographic call (as required by GC12). Without any reminder of the AC on the customer bill, it will be more difficult for consumers to verify the charges set out on that bill because they will need to refer back to the OCPs other material to confirm the AC. For these reasons we also similarly disagree with Virgin Media's argument that the presence of the AC on the customer bill could be confusing. We consider it would be more confusing to have no indication to the customer as to how these calls are separated between the OCP and the SP, i.e. confirmation of the AC amount that the OCP is charging for these calls.

A24.18 We recognise that including the AC on the customer bill will result in some additional costs for some OCPs. We have included these costs in our estimates of billing costs as part of our impact assessment (see Section 9 and Annex 10). The information from stakeholders indicate that these costs are significantly lower than those that would have been incurred for presenting separated ACs and SCs on customer bills. We consider that these costs are justified by the transparency benefits offered by having an indication of the AC on customer bills because it will allow consumers who receive a bill to better understand and verify NGC charges.

Other price publication obligations in respect of the AC

Summary of position in the April 2012 consultation

A24.19 In the April 2012 consultation we proposed moving away from a system in which OCPs had to publish a list of all charges to non-geographic numbers, in favour of one in which OCPs provided information about the AC to their customers. We proposed that OCPs would be required to ensure that the AC for a given tariff package was clear and available. We noted that we would expect the AC to appear on customer bills, be provided on enquiry, to be made clear at the point of sale and to be published in OCPs websites, price lists as well as its advertising and promotional materials.

A24.20 We stated that we would review the transparency obligations in the existing General Conditions (i.e. General Conditions 14, 23 and 24) to determine whether they were sufficient to achieve our objective of making the AC clear and available. We considered that the AC should be treated as one of the ‘key charges’ (as described in GC23 and GC24), and it would be identified specifically as a price that must be brought to the attention of customers.[733]

Stakeholder comments

A24.21 Most respondents recognised that it was important that the AC was made transparent to consumers. The Consumer Panel stated that it was essential for consumers to be clearly advised of ACs when purchasing a new phone service. It also noted that information about ACs should be provided to existing customers. It said clarity around such charges would hopefully encourage competition between phone providers.

A24.22 Several stakeholders agreed with Ofcom’s proposal that existing price publication obligations were likely to be sufficient, but that the AC should be a ‘key charge’ as detailed in some of the existing price publication requirements.[734] BT said any price advertising obligation should be kept simple to “avoid clutter” in marketing literature and thus consumer confusion, it nevertheless agreed that the AC should be treated as a ‘key charge’.[735] This view was supported by CWW who stated its support for a requirement to ensure that the AC was presented in a clear and prominent manner which provided the consumer with the requisite level of information. CWW said, however, it was difficult to comment on this issue without seeing the detail of the necessary amendments to the General Conditions.[736] Similarly the FTC noted that the relevant GCs did not appear to specify what a ‘key charge’ was. It said, however, that there was no reason for the AC to be excluded from such specification.[737]

[733] April 2012 consultation, Part B, Section 12, paragraphs 12.129 to 12.132.
[734] For example, [✂], Three, April 2012 consultation response, p.17.
[735] BT, April 2012 consultation response, p.21.
[736] CWW, April 2012 consultation response, pp.25-26.
[737] FTC, April 2012 consultation response, p.8.

A24.23 [✂] noted that where ACs were included in an inclusive bundle, ACs that were charged outside of that bundle should be subject to the same transparency requirements as where no bundle was sold.[738]

A24.24 Vodafone said it generally agreed that existing price publication obligations were sufficient, although it recognised that some modifications might be necessary to dispense with specific requirements in relation to particular NGCs that would become obsolete (in particular the provisions relating to 0870 under General Condition 14). Beyond that it said it was not clear that any substantial revision was required or even that ACs needed to be singled out for special treatment.[739]

A24.25 SSE agreed that no further specific obligations should be necessary to ensure CPs made customers aware of ACs. It said it would like to see a rationalisation of the various requirements relating to price publication and removal of the prescriptive Codes of Practice in favour of revised high level obligations supported by associated non-mandatory guidance.[740]

A24.26 This concern about the Code of Practice approach was also set out in EE's response. EE said it had long been concerned about the overly prescriptive nature of Ofcom's price publication obligations. It said the amount of regulatory information that needed to be provided grew year on year without any assessment of the necessity of effectiveness of that information. It said there was therefore a real risk that too much information was being provided in a manner which was not relevant to customers, thereby resulting in customers ignoring the information altogether. It believed that existing regulation failed to ensure properly informed consumers because the obligations were too detailed and rigid and did not allow them to respond to customer information needs. It therefore was pleased that Ofcom had recognised that there was no need for additional regulation to ensure customers were made aware of their ACs. However, EE remained concerned that Ofcom was not addressing the concerns, which had also been raised by other industry participants, about the efficacy of existing pricing information. It said Ofcom should examine the potential for regulatory roll-back in this areas and refocusing on what was actually important for consumers.[741]

A24.27 EE was unconvinced that the AC should be specified as a 'key charge' at the point of sale. It argued that each customer's needs were different with not all customers regarding ACs as important, which meant an explicit requirement to provide information on ACs might mean that other more individually pertinent information was unavoidably omitted. According to EE, this would not only result in customers being uninformed about ACs (because they just ignore the information provided) but also in customers being uninformed about additional services that they did wish to use (because there was no time in the process to provide the information, the customer has lost interest in the information or because the customer feels so overwhelmed by the quantity of information that has been provided that they absorb no information at all). Notwithstanding this criticism, EE stated that should Ofcom proceed with its proposal to make ACs a key charge, then it must ensure that any requirement focuses on the outcomes to be achieved rather than being overly prescriptive.[742]

[738] [✂]
[739] Vodafone, April 2012 consultation response, p.31.
[740] SSE, April 2012 consultation response, p.5.
[741] EE, April 2012 consultation response, p.33.
[742] EE, April 2012 consultation response, pp.33-34.

A24.28 Sky said the AC was no different to any other tariff which informs a consumer's purchase decision and, therefore, the existing price disclosure obligations which applied to such other tariffs were sufficient to ensure that pricing information was provided for non-geographic numbers where necessary. Sky referenced the Consumer Protection from Unfair Trading Regulations 2008 ("CPRs") and the UK Advertising Codes, as existing mechanisms alongside the General Conditions which ensured accessible pricing information was available to consumers. In particular it argued that the CPRs already sufficiently addressed Ofcom's requirement to ensure charging information was made available to consumers. It reiterated that no additional restrictions above the CPRs could be imposed because it was subject to a maximum harmonisation obligation under the Unfair Commercial Practices Directive. Sky therefore did not consider it was necessary to make any amendments to the General Conditions in this respect.[743]

A24.29 The Citizens Advice Bureau ('CAB') noted that this was not just an issue about the provision of information on ACs when consumers were signing up to a contract or on their bills, but was also about ACs being easily accessible at the point of call. The CAB argued that consumers generally only made NGCs when something had gone wrong or they had a problem or question they needed to resolve. As such, it said for those consumers it would be difficult for them to know how many NGCs they were likely to make and therefore they were unlikely that they would pay much attention to the AC until they actually come to make those phone calls.[744]

A24.30 The Number UK ('TNUK') disagreed that the existing price publication obligations were sufficient. TNUK was concerned that Ofcom appeared to be considering this issue primarily in relation to ensuring that consumers were able to understand their existing charges. It said that this was necessary, but not on its own sufficient. Instead it said the key consideration was whether consumers making purchasing decisions were fully aware of ACs and were able to take it into account as part of their decision making process. It argued that this required much more than the AC being hidden in the small print of bills, price guides or websites and instead it required prominence equivalent to the overall monthly cost of the tariff and the quantity of inclusive minutes, data etc. TNUK acknowledged there were currently multiple price transparency obligations which applied to OCPs but it did not believe any of them adequately addressed the need to publish the AC with equal prominence.

A24.31 TNUK also added that it believed by far the most effective means of ensuring consumers' understanding was first to ensure understanding of OCP staff in contact centres and retail stores. It said it was vital that staff were properly trained to explain the unbundled tariff and answer queries from customers. It said the second most important source of information was OCP websites, but OCPs should not be permitted to hide the information in lengthy pdf guides which few consumers would ever read. It said OCPs must provide details of the AC on their principal online pricing pages and particularly the short summaries of what was included in each tariff. It agreed with Ofcom that the AC should be seen as a 'key charge'.[745]

A24.32 Magrathea argued that any publication of tariffs (as required under GC10) would only be effective if it was 'one click' away from the CPs main homepage; it said it would not be effective if it was buried deep within multiple tariff packages. It also

[743] Sky, April 2012 consultation response, pp.4-5.
[744] CAB, April 2012 consultation response, p.5.
[745] TNUK, April 2012 consultation response, pp.44-45.

noted that GC14 would need to be amended to acknowledge the unbundled tariff structure and that GC23 and GC24 should also refer to the AC and SC.[746]

A24.33 FCS said its TCP members questioned how an obligation on OCPs to publish ACs in their advertising and promotional material would work in practice, noting a view that previous attempts to improve price transparency through amendments to GC14.2 were largely ignored and required Ofcom to conduct two investigations to gain any form of compliance.[747]

A24.34 Verizon said it considered that any requirements to publish ACs should not apply to the provision of business contracts. It said business providers should be able to determine the best way to publish the AC to their customers.[748]

Ofcom's response

A24.35 In Section 10 we set out our view that, in order to ensure that the unbundled tariff structure is understood by consumers, and in particular that consumers develop an awareness of their AC, that AC has to be made transparent to consumers by OCPs, both in general as part of their pricing marketing and promotional material, but also when a customer is signing up to a new contract. The publication of the AC is particularly important for encouraging competition to develop on the AC, as highlighted in some of the stakeholder comments.

A24.36 We have decided that this does not require a new specific General Condition but we are proposing to modify the existing requirements in the General Conditions (specifically GCs 12, 14, 23 and 24) to ensure that the AC is subject to these transparency obligations and that the AC is specified as a key charge. We have made clear in our proposed amendments that these obligations only apply to residential consumers (as opposed to small business customers which are also covered by GC14) because as explained in Section 10 the unbundled tariff requirements will only apply to residential consumers, not businesses.[749] Our proposed modifications to the General Conditions are in Section 6.

A24.37 These proposed modifications mean that the AC will be set out:

i) in OCPs' published price lists and websites where they will be given the same prominence as charges for geographic calls, calls to mobiles and call packages, including bundles (GC14);

ii) in OCPs' advertising and promotional material which refers to call pricing (GC14); and

iii) when a customer signs up to a new contract/package (GC14, GC23 for mobile pre-pay customers, and GC22 for fixed customers).

A24.38 OCPs will not be required to publish SCs for particular numbers under the requirements outlined above. Nevertheless, OCPs will have to maintain access to information about the SCs for a particular number block for billing purposes and to respond to direct customer enquiries about a bill and therefore they may wish to

[746] Magrathea, April 2012 consultation response, Q12.6.
[747] FCS, April 2012 consultation response, p.3.
[748] Verizon, April 2012 consultation response, Q12.6.
[749] We are using the definition of consumer from the Framework Directive. See Section 6 for further details.

provide such information to their customers on the applicable SC for a particular number on request or through a web based application. In addition, in order to comply with their obligations under GC10 and GC14, we would expect them to provide more general information on the structure of SCs for particular number ranges (such as the maximum SCs for different number ranges) and we consider this will be helpful for developing consumer understanding.

A24.39 In response to comments questioning the value of providing the AC as a 'key charge' at the point of sale, while Ofcom accepts that consumers can be subjected to a large amount of information at the point of sale, the AC is information that consumers can use to compare services, enabling them to make more informed, and better, purchasing decisions. The level of the AC will not be indicated to consumers alongside the number when it is advertised (unlike the SC – see the section on SC price publication below) and therefore it is very important that it is easily available to consumers at the point of sale, since this will encourage the development of competition on this element of call packages. Therefore, we are proposing to modify GC23 and GC24 to define the AC as a 'key charge' so that information about the AC is provided clearly at point of sale. We note that the AC structure will reduce the amount of information OCPs have to present to consumers, because rather than a wide range of different prices for individual non-geographic numbers, OCPs only have to provide customers with the AC for the relevant tariff package for which they are signing up. We consider therefore, that specifying the AC as a key charge is an appropriate approach.

A24.40 In response to comments that the Code of Practice approach to price publication obligations (i.e. GC14) is 'overly prescriptive', this is an issue related to the wider approach to price publication requirements. Ofcom does not have any current plans to conduct a wider review of this approach, nevertheless, as set out in Section 6 we recognise there may be scope for further rationalisation of GC14 (given there will be some overlapping requirements as a result of our proposed amendments) and we will be keeping this matter under review. As set out above, our proposed modifications to GC14 will mean that OCPs will be required to publish ACs in their price lists and published tariff materials with equal prominence to other call charges. Modifications to this GC are required, because, for example the current references to 'NTS calls' and '0870' calls are no longer relevant under the unbundled tariff structure. As already indicated, we expect these modifications to actually reduce the amount of information that OCPs are required to provide, because they only need specify the AC for each tariff package rather than list a variety of different prices for different non-geographic number ranges.

A24.41 We note [✂] comment about the transparency of ACs which are not included in call bundles. We agree that, regardless of whether the AC is included in bundles or not, it should be subject to the same transparency requirements and we consider this is made clear our proposed modifications to the relevant GCs.

A24.42 In regard to CAB's concern that the AC needs to also be easily accessible at the point of call, we consider that because the AC will be a single ppm figure it will be much easier for consumers to remember, or at least to have enough of a sense of the relative magnitude of the charge to not being put off from making a call. We therefore do not consider it would be proportionate for the AC to also be specified to customers at the point of call, not least because of the practical difficulties this raises given that the AC will vary by OCP, and by the particular tariff package which a customer is signed up to. Nevertheless, we accept that not all customers will necessarily remember their ACs at the point of call. However, they will be able to look-up that AC, or contact their OCP to find it out. As set out above, the obligations in GC14 will require ACs to be clear on published price lists (with equal prominence to other call types), as well as all promotional material. Therefore it will be easier for customers to look up their AC prior to making a call if they choose to do so. We also expect that the simple and number range-invariant nature of the AC should allow it to be more readily remembered by an interested consumer.

A24.43 Some stakeholders (TNUK and Magrathea) suggested that the prices should be required to be specified in 'principle online pricing pages' or 'one click away' from homepages. This suggestion needs to be balanced with other stakeholder views about our obligations being ‘overly prescriptive’. As noted above, prices will be required to be displayed with ‘the same prominence’ to other call types, including call package. We consider it appropriate to allow OCPs the flexibility to decide how to ensure their obligations in this respect are met.

A24.44 FCS questioned whether our proposals would be effective, suggesting previous non-compliance with GC14. We consider that, because the AC is a single, per-tariff (i.e. per-contract) charge, it is likely to be both easier for OCPs to comply than the existing structure (because of the wide variety of prices for different number ranges), and simpler for Ofcom to enforce. Nevertheless, should we receive evidence of consumer harm or non-compliance as suggested, we will not hesitate to take action as and where appropriate in line with our enforcement guidelines.[750] As noted in Section 5 we intend to review the implementation of the unbundled tariff structure in due course and an examination of how OCPs are publishing their ACs to customers is likely to form a key part of this review.

Price publication obligations on SPs in respect of the SC

Summary of position in the April 2012 consultation

A24.45 We stated that the purpose in requiring publication of the SC was to ensure that it was clear and readily accessible to consumers. We said we considered that the publication of the SC by SPs was a crucial element in the success of the unbundled tariff. We noted that the 0871/2/3, 09 and 118 ranges were already covered by PPP’s Code of Practice which included an obligation to ensure that consumers were fully informed of the cost of the call prior to incurring any charge and we said we expected that would mean that SPs would be required to advertise their SCs in accordance with the requirements of the Code of Practice.

A24.46 We noted, however, that the question remained as to how a similar requirement was enforced on the 0870 and 084 number ranges. In the April 2012 consultation presented two options:

- Option 1: Extension of PPP remit to include all revenue-sharing ranges; or
- Option 2: Regulatory Condition on SPs (enforced through an industry Code of Practice and / or the Advertising Standards Authority (‘ASA’)).

A24.47 We noted that there was a significant level of concern from the industry about the extension of PPP’s remit and we recognised that this option could impose an additional regulatory burden on a large number of SPs. Our preliminary view was that Option 1 remained a viable option for ensuring that SCs were advertised to consumers. We accepted, however, that a more detailed consideration of how the

[750] http://stakeholders.ofcom.org.uk/binaries/consultations/draft-enforcement-guidelines/annexes/Enforcement_guidelines.pdf

PPP regime could operate in this regard was required, given that the services currently on these ranges were for the most part, not primarily designed to generate revenue. We asked for further stakeholder views on this point.

A24.48 We said the alternative option (Option 2) would be a requirement imposed on SPs to advertise their SCs, for example through a condition under section 59(1) of the Act. We noted that our powers to enforce that condition would be limited, but that in order to secure industry-wide compliance a code of practice could be developed (compliance with which could form part of a TCPs contract with an SP). In addition we said that guidance issued by the Committee of Advertising Practice ('CAP') and Broadcast Committee of Advertising Practice ('BCAP')[751] could be updated to reflect that requirement and subsequently enforced by the ASA. We considered that this option would be less burdensome and costly to SPs compared to Option 1.

A24.49 Our primary concern regarding this option focused on the effectiveness of this regime. We noted such a requirement would have to be reasonably flexible so that the obligation to publicise would only apply to suitable types of marketing material/ advertising. Our provisional view was therefore that, in line with our principle of bias against intervention, it would be preferable to pursue Option 2 rather than widening PPP's remit.[752]

Stakeholder comments

A24.50 Several respondents agreed that the publication of the SC by the SP was a crucial element in the success of the unbundled tariff but there was significant opposition to any extension of PPP regulation in order to achieve that purpose. TalkTalk and UKCTA said that PPP involvement would be entirely disproportionate and would add a cost-burden on users of these number ranges.[753] Magrathea said it would impose an unnecessary regulatory burden on the industry.[754]

A24.51 There were also several comments from stakeholders suggesting that the 0871/2/3 number range could be removed from PPP regulation and placed under any new framework developed for the 084 and 0870 number ranges. ITSPA said many of their members strongly supported the removal of PPP's oversight of 0871. CWW and FCS believed that once any new scheme was put in place the logical conclusion would be to move 0871 out of PPP regulation.[755] UKCTA in fact assumed Ofcom's intention was to remove 0871/2/3 from PPP control and it said that would be a sensible outcome as the low price point for these ranges made PPP regulation disproportionate.[756] EE, however, said that from a consumer perspective it would make sense for the same body to regulate all aspects of marketing and promotions, whether it was PPP or the ASA.[757]

A24.52 The vast majority of respondents (including BT, CWW, DWP, ITSPA, Three, UKCTA, TalkTalk and SSE) therefore favoured the option of an industry Code of practice and/or ASA enforcement. These respondents noted that the ASA approach would be less intrusive and more cost effective. Action4 said the industry would welcome a clear code of practice and that it seemed appropriate for the ASA to be

[751] CAP and BCAP are the industry committees responsible for writing and maintaining the Advertising Codes, which are independently administered by the ASA.
[752] April 2012 consultation, Part B, Section 12, paragraphs 12.146 to 12.175.
[753] TalkTalk, April 2012 consultation response, p.4. UKCTA, April 2012 consultation, p.10.
[754] Magrathea, April 2012 consultation response, Q12.2.
[755] CWW, April 2012 consultation response, p.27. FCS, April 2012 consultation response, p.5.
[756] UKCTA, April 2012 consultation, p.10.
[757] EE, April 2012 consultation response, p.34.

involved. It added that SPs had struggled regarding providing pricing information under the existing model.[758] FTC noted that the ASA now had “pseudo-regulatory” powers covering most declarations of price and therefore it was natural to think of it as being the body to undertake ‘light-touch’ enforcement. It said, however, that to achieve acceptance of publishing the SC as standard practice it needed to be adopted as widely as possible and it suggested some specific groups which could help with the enforcement of this requirement, including the Cabinet Office, all sectoral regulators as well as self-regulatory bodies covering specific industry sectors.[759]

A24.53 AIME also said it supported Ofcom’s option of using the ASA approach to regulate the promotion of pricing information and service management for remaining 084 services, rather than including them in the PPP regulatory regime. It highlighted the completely different nature of 084/087 services to 09 services, which were mainly as a support to other non-telephony business rather than profit driving business in their own right and the lower potential for consumer harm due to the lower tariffs made them poor bedfellows.

A24.54 Vodafone said a Code of Practice enforced by the ASA might be capable of meeting the need for SCs to be advertised by SPs, but noted that Ofcom might also need to give thought to its reserve enforcement powers to act directly against SPs not abiding by any agreed Code.[760] UKCTA said it looked to Ofcom to provide clear guidance over what was permissible when notifying 084/0870 tariff information, working with industry to agree a common stance to foster consumer confidence.[761]

A24.55 [✂], whilst noting that any Code of Practice would need sufficient voluntary buy-in, considered it was the most pragmatic way forward. It noted it would await sight of the legal instruments to comment further on the practicality and enforcement of the regime. It said it would also welcome the ASA communicating directly to industry on how it saw such a Code working and how they would handle it.[762] EE similarly noted that it would be interesting to hear proposals from both bodies as to how a Code of Practice might be developed. It did not believe that it was possible to make a clear decision on the best option in the absence of further details on how each body would approach regulation.[763]

A24.56 In respect of its potential role, the ASA noted that if Ofcom introduced a requirement that SPs had to state SCs in advertising, the Committee of Advertising Practice could reflect that requirement in its advice to advertisers and media owners. It said the ASA would be able to adjudicate under existing Code rules, on advertisements that omitted SC information. It said the ASA could consider on a case-by-case basis whether the omission of SC information was likely to mislead consumers and it could take Ofcom guidance into account in this respect. The ASA noted that at present it advised that advertisements that included 0843 and 0844 numbers should state the cost for customers on BT’s Unlimited Weekend Plan.[764]

A24.57 The ASA noted that it administered the CAP and Broadcasting Committee of Advertising Practice (‘BCAP’) Advertising Codes; it did not enforce Codes produced

[758] Action4, April 2012 consultation response, p.6.
[759] FTC, April 2012 consultation response, pp.15-16.
[760] Vodafone, April 2012 consultation response, p.31.
[761] UKCTA, April 2012 consultation, p.10.
[762] [✂]
[763] EE, April 2012 consultation response, p.34.
[764] http://www.cap.org.uk/Advice-Training-on-the-rules/Advice-Online-Database/Chargeable-08-numbers-General.aspx

by other bodies. Therefore, it said if a telecoms or SP industry Code of practice was drawn up, it would operate in parallel to the CAP and BCAP rules for advertising.

A24.58 The ASA noted that it had backstop regulators for enforcement of its adjudications, which were Ofcom (for broadcast advertisements) and the Office of Fair Trading (for all other advertisements). It noted that if Ofcom wanted to have direct powers to enforce rules on pricing information in non-geographic revenue sharing services a formal agreement would need to be negotiated. It believed, however, that the existing Code rules and the existing back-stop enforcement arrangements were sufficient to deliver the proposed changes to advertising practices.

A24.59 BT and CWW noted that an early outline draft of a potential Code of Practice had been established by some members of the NGCS Focus Group. CWW said this was intended as a starting point for discussion and it acknowledged that more work would need to be done with SPs and the ASA to finalise the requirements.[765] It believed that this early draft demonstrated that there was already a clear desire amongst industry to ensure a workable scheme could be put in place.

A24.60 BT noted that Ofcom had suggested the possibility that compliance with any code of practice could become a condition of the SPs contract with the TCP. It noted it could ask SPs to comply with a Code when contracts were renewed but considered it would be disproportionate to request all existing contracts to be opened up to add a specific condition. It suggested that where an SP could show that it had signed up to a Code or abided by it, it did not additionally need to have its existing contract amended.[766]

A24.61 There were some concerns raised about the practicality of enforcement, and whether it would be sufficiently light-touch for the lower rated number ranges. FCS said that Ofcom's proposals for the publication of the SC, particularly for the 084 and 087 ranges would bring a large number of businesses and organisations using these number ranges into a new numbering regulatory framework. Its members questioned whether this was proportionate in principle and cautioned whether such new regulation, however light-touch, would be acceptable to end-user businesses as there was little evidence of consumer harm from calling these number ranges. It noted there was some concern that a backlash against this new regulation might take place leading to a migration away from using non-geographic numbers altogether.[767] In particular its members were concerned about the cost to SPs of having to publish their SCs on all aspects of their advertising, e.g. business cards, letterheads etc. It considered that there should be a simple and proportionate way for Ofcom to implement its proposals and one of its members suggested that a message from SPs along the lines of "our call costs comply with Ofcom's Numbering Plan" would be sufficient.[768]

A24.62 SSE said that it hoped that SC price publication requirements for the lowest cost calls within these ranges could be proportionately minimal if supported by general publicity on the relatively low cost of such calls.[769]

A24.63 THA said it had concerns about how the requirement to advertise SCs would be enforced, in particular the costs to SPs and the timescales involved. It believed it

[765] CWW, April 2012 consultation response, pp.26-27.
[766] BT, April 2012 consultation response, p.22.
[767] FCS, April 2012 consultation response, p.3.
[768] FCS, April 2012 consultation response, p.5.
[769] SSE, April 2012 consultation response, Q11.1, p.6.

would be hard to enforce without a clearly defined Code of Practice and that clear guidance should be available for SPs to ensure consistency across the wider sector. THA said the enforced regulation should give appropriate leeway for SPs to update their advertising in the event that costs changed due to amended price structures or VAT charges.[770]

A24.64 Magrathea was concerned that enforcement of this requirement would not prove practicable or enforceable in many instances on the 084 range. It said there was still widespread non-compliance with the price publication requirements on 0871 and it provided examples of these. It expected similar problems with any requirement on 0844/3 providers, noting that it was particularly difficult to ensure compliance when the number was published in third-party material such as directories, listings or credit card statements. Magrathea said it was therefore concerned that the ASA would not have sufficient resources to monitor compliance.[771]

A24.65 Surgery Line said that it did not consider it appropriate for its callers (patients) to receive information on the SC when they contact their surgery as this would alarm patients and "perpetuate the myth" that all calls were more costly.[772] It also said that the cost of a call must relate specifically to the pricing point which the specific number relates, not the maximum for all revenue sharing numbers.

A24.66 Finally, TNUK noted its assumption that Ofcom was not contemplating any additional advertising obligations in respect of 118 SCs beyond those that would already be contained in an amended PPP Code of Practice.[773]

Ofcom's response

A24.67 We have set out in Section 10 our reasoning for imposing a requirement on SPs to include their SCs wherever they promote their non-geographic number. We remain of the view that such a requirement is a key component in ensuring transparency of prices under the unbundled tariff. We will therefore impose a condition on SPs to this effect under section 59 of the Act. We will similarly impose the same requirement on CPs, in order to ensure that where they are acting as an SP and providing a service via a non-geographic number (for example their customer helplines) they will also be required to publish the SC alongside the number.

A24.68 Under section 59, only SPs which have applied for the allocation of a telephone number or which have been allocated a number are required to comply with conditions set under that provision. In order to ensure the effectiveness of this requirement and that SPs, which are normally outside of regulation by Ofcom, are aware of their obligations, we are proposing to implement a condition on TCPs. This will require them to secure, through their contracts with SPs, that their SP customers comply with the requirement to publish their SCs in their advertising and promotional material. See Section 6 where we have set out the new condition on non-providers and the proposed modification to GC17 in order to implement this requirement.

A24.69 In terms of BT's comment about changes to SP contracts in order to include this requirement, we note that some contractual changes with SPs are likely to be

[770] THA, April 2012 consultation response, p.17.
[771] Magrathea, April 2012 consultation response, Q12.2.
[772] Surgery Line, April 2012 consultation response, p.5.
[773] TNUK, April 2012 consultation response, p.46.

necessary as part of the implementation of the unbundled tariff in any case (for example agreeing an SC price point). We would therefore expect TCPs to secure SP compliance by informing them of this requirement as part of those discussions prior to the implementation of the unbundled tariff. It will, however, be up to TCPs to determine how best to meet their obligations under this condition.

A24.70 In terms of the enforcement mechanism, we consider it is appropriate for the ASA to be responsible for securing compliance with the requirement for SPs to advertise their SCs for the 084 and 0870 ranges. This is in line with the majority of stakeholder responses, where there was a clear preference for this approach.

A24.71 For the other number ranges (0871/2/3, 09 and 118) PPP will continue to enforce the requirement for SPs to advertise call prices.[774] PPP reviewing what changes might be required to its Code of Practice and guidance to reflect the amendments to the advertising message that will be needed under the unbundled tariff structure (i.e. SPs will now have to specify the SC for the particular number, rather than the BT tariff). Therefore, in answer to TNUK's comment above, there will be no additional advertising obligations on 118 but the existing requirements will need to be updated accordingly. Section 5 sets out the proposed timings for PPP reviewing and making any amendments to its Code of Practice and guidance.

A24.72 We note that several respondents (UKCTA, CWW, ITSPA, and FCS) argued that 0871/2/3 should be removed from PPP regulation as well. It would not be appropriate to remove these number ranges from PPP regulation at the current time. As noted in the April 2012 consultation, there is still a case for regulation by PPP given the higher level of revenue on these number ranges and increased potential for scams. We nevertheless recognised that the implementation of the unbundled tariff may address some of the problems which led to the extension of PPP's remit to include 0871/2/3 in the first place.[775] After implementation, we can see how the system operates in practice before we can assess whether there is no longer a need for additional regulation of this particular number range. As noted in Section 5 we will be reviewing implementation of the unbundled tariff and this is a further issue we can consider as part of that review.

A24.73 With respect to the enforcement on the 084 and 0870 number ranges, in the April 2012 consultation we proposed a combination of industry code of practice and regulation by the ASA. In its response the ASA noted it is able to require the inclusion of pricing information under the existing Advertising Codes and in fact it already advises non-broadcast advertisers to include pricing information for the 0844 and 0843 number ranges. Therefore, there is little modification needed to the ASA's role in order to secure compliance with this requirement. The ASA will regard the omission of pricing information (i.e. the SC) in advertising which includes a non-geographic number as a breach of the 'misleading by omission rule' (3.1) in the Advertising Codes and it can administer the Code on that basis once the unbundled tariff has been implemented.

A24.74 The ASA can draw on backstop regulators for enforcement of its adjudications against the advertising Code (Ofcom for broadcast advertising and the OFT for all

[774] Note that advertising for services on these ranges are also covered by the CAP/BCAP Advertising Codes administered by the ASA. CAP guidance cross-references the PPP Code of Practice when advising advertisers on how to ensure compliance with the Advertising Codes.
[775] April 2012 consultation, Part B, Section 12, paragraph 12.163.

other advertising).[776] Magrathea has raised some concerns about the practicality of enforcement, particularly noting a history of non-compliance on the 0871 range. There will always be some advertisers who do not comply. However, the ASA has a well established system for handling complaints and CAP/BCAP carries out compliance activities to ensure advertisers are meeting their obligations under the Codes, as well as providing an advice service for checking non-broadcast advertisements before they are published. The ASA is well-known in the industry and the majority of advertisers will be familiar with the requirements under the Codes. In addition, most TV and radio advertisements are pre-checked before broadcast to confirm their compliance with the BCAP Code (the UK Code of Broadcast Advertising).[777] We will also be working with other SP bodies to promote awareness of the requirements (see Section 5 for further details of our planned engagement activities and communications campaign). On this basis, we consider that the risk of non-compliance under this approach is not so high as to make this approach unworkable or leaving consumers unprotected to an unreasonable extent.

A24.75 FCS has raised particular concerns that these transparency obligations bring a larger number of SPs into a whole new regulatory framework, which might lead to migration away from the 084/0870 ranges. It, and the THA, also noted concern about the additional cost to SPs of including information about SCs in their advertising material. We share these concerns, and we see it as consistent with our duties that we do all that we reasonably can in designing the new tariff rules in minimise the costs incurred by SPs. However, there is already a requirement on advertisers to publish pricing information for 0844/3 under guidance issued by CAP. Therefore, publishing SCs will only be a new requirement for SPs operating on the 0845 and 0870 ranges (because CAP currently advises advertisers that there is no need to include pricing information for these number ranges).[778] There is a lower risk of consumer harm where the SC levels are lower (as we expect on the 0845 and 0870 ranges), however, we remain of the view that it is important for consumers to be informed of the specific SC for calling a particular number (and this is emphasised in our assessment of the unbundled tariff, see Annex 19. Therefore a statement that call costs comply with the Numbering Plan, as suggested by FCS, is not suitable, because it does not provide sufficient information to the consumer.

A24.76 In terms of the additional costs involved for SPs, we consider although a large number of organisations may be affected, each of these faces costs that are relatively limited. In any event, we have taken these costs into account as part of our impact assessment (see Annex 10). As highlighted above, publication of the SC is effectively only a new requirement for SPs on the 0845/0870 ranges, given the existing publication obligations which apply on the other ranges. For all other SPs, the requirement should just entail updating existing material and we expect that much of this can be carried out during the implementation period. In terms of

[776] The UK advertising regulatory system is a mixture of self-regulation (for non-broadcast advertising) and co-regulation (for broadcast advertising). Where an advertiser does not comply with the ASA's adjudications, the ASA can refer them to the OFT (for non-broadcast advertising) or to Ofcom (for broadcast advertising) for further regulatory action. In this way, the OFT and Ofcom act as 'back-stop regulators' to the ASA.

[777] This is carried by Clearcast, http://www.clearcast.co.uk/ for most TV advertising and by the Radio Advertising Clearance Centre ('RACC') for radio advertising (http://www.racc.co.uk/).

[778] http://www.cap.org.uk/Advice-Training-on-the-rules/Advice-Online-Database/Chargeable-0845-numbers.aspx and http://www.cap.org.uk/Advice-Training-on-the-rules/Advice-Online-Database/Chargeable-0870-numbers.aspx. We note, however, that prior to 2009, CAP advised that these ranges did have to include pricing information, therefore the requirement to publish pricing information is not entirely new to SPs operating on these ranges.

what advertising materials the requirement will extend to, the Advertising Codes set out clearly what are within their remit, and this will apply equally to the requirement for the publication of SCs.[779] We expect the ASA will take a practical approach to ensuring compliance with requirement, as it does for other aspects of the Code, in relation to, for example, advertisements with restricted space (e.g. classified ads).[780]

A24.77 In terms of the industry Code of Practice, as highlighted in the response from the ASA, it does not enforce Codes produced by other bodies. We note that CWW and BT included a draft Code of Practice in their response. We welcome this initiative but note that, in accordance with the comments from the ASA, any such Code of Practice will have to operate in parallel with guidance from CAP/BCAP (to be taken into account by the ASA) and therefore we will leave it to the industry to decide whether there is still benefit in having an additional Code of Practice for their own purposes for ensuring compliance.

[779] The remit of the non-broadcast Code is set out in the Introduction (http://www.cap.org.uk/Advertising-Codes/~/media/Files/CAP/Codes%20CAP%20pdf/CAP%20Introduction.ashx). The

[780] For example, CAP guidance notes that for directory owners to include pricing disclaimers in all display, semi-display and classified ads featuring 0844 and 087 numbers would be impracticable. It therefore suggests that pricing information could be included on each page instead. See: http://www.cap.org.uk/Advice-Training-on-the-rules/Advice-Online-Database/Chargeable-08-numbers-General.aspx

Part B - Annex 25

Implementation of the unbundled tariff

Introduction

A25.1 This Annex sets out a summary of the issues raised in response to our April 2012 consultation about the implementation of the unbundled tariff, as well as our comments on those issues. Where appropriate it refers to Section 10 where we set out our overall view on how the unbundled tariff should be implemented.

A25.2 We have divided the responses on implementation into the following topics:

i) SC database;

ii) number range building and tariff change notification;

iii) access to non-geographic numbers;

iv) international calls;

v) payphones;

vi) business contracts;

vii) timing; and

viii) other issues raised, including:

- narrowband Market review;
- contracts and General Condition 9;
- rounding;
- minimum call duration; and
- migration to the new scheme.

A25.3 In the implementation section of the April 2012 consultation (Section 12) we also asked for stakeholders' views on our approach to communicating the unbundled tariff and the price publication requirements.[781] Annex 24 sets out the comments, and our response, in relation to the price publication requirements, and Section 5 (in Part A) covers our approach to communications, including a summary of stakeholder comments on this issue.

Service Charge database

A25.4 Stakeholders made a number of different comments on this issue and we have therefore divided them into the following areas:

- need for a database;

[781] April 2012 consultation, Part B, Section 12, paragraphs 12.80 to 12.105.

- functions, costs and funding of the database;
- role of the database in providing information to consumers; and
- provision of the database and role of Ofcom.

A25.5 First we have set out a summary of what we said on this issue in the April 2012 consultation.

Position in the April 2012 consultation

A25.6 In the April 2012 consultation we discussed a number of issues related to the management of pricing and billing systems under the unbundled tariff. Amongst these was a question about whether a central SC database linking number ranges and SCs would be desirable.

A25.7 We highlighted the potential advantages of a SC database. It could provide TCPs and OCPs with a single reference point for confirming and validating SCs for each number range and could benefit consumers if an interface was added which allowed consumers to check a number to see what SC would be charged. We also highlighted that there had been some support for such a database during discussions at the Commercial Working Group.[782]

A25.8 We noted that a database could be provided either by the public sector (either by Ofcom, or delegated to another party, e.g. PhonepayPlus) or on a commercial basis by a private provider and either approach would be likely to require some operating levy on the users of the database. However, in the light of Ofcom's current costs for performing its record-keeping functions in relation to numbering we estimated that such costs would be relatively low.

A25.9 In terms of the two different options, we noted that although Ofcom had specific duties and functions in relation to numbering, these did not extend to the provision of a database of that nature. We said that such limitations did not apply to commercial provision, and noted that the database was for the benefit of TCPs and OCPs and therefore they had a common commercial interest in securing its effective provision. We said we anticipated significant input from the industry working groups on this issue.[783]

Stakeholder comments

<u>The need for a database</u>

A25.10 Only a couple of respondents disagreed that there was a requirement for some form of database of SCs. [✂] said that if BT maintained the current Carrier Price List ('CPL') then such a system already existed and it therefore believed all operators could handle the management of that data with minimal resource. It said that if the CPL was not maintained then there would still be an obligation on BT to communicate price information (to its interconnect partners at least) and therefore that the "reliance on the CPL as a construct per se was somewhat academic". It noted that the SC would be advertised to consumers by the SP anyway, and it therefore considered that a central database just became an administrative and financial burden on the industry with no benefit. In any event, it considered that any

[782] See Annex 14 of the April 2012 consultation, pp.197-198.
[783] April 2012 consultation, Part B, Section 12 paragraphs 12.42 to 12.63.

investment by industry in establishing a central record of SC information would be better spent on upgrading the BT CPL rather than "creating yet another superfluous repository of information".[784]

A25.11 Magrathea said it was strongly opposed to the idea of a new database of SCs (and it said it was not convinced that there was a majority consensus in favour of one as Ofcom claimed). It said it did not believe that Ofcom had made a case for why a new database would be an improvement on the information currently held in Ofcom's National Numbering Scheme. It believed Ofcom already held all of the requisite information in respect of the numbers, i.e. the name of the rangeholder and the chargeband (or SC) associated with each block.[785]

A25.12 In addition, O2 questioned whether Ofcom should be involved in this issue. It suggested that the market should determine whether a central SC database should be built. It said Ofcom should only intervene if market failures could be shown to exist which would result in a SC database (that would improve efficiency and welfare) not being built.[786]

A25.13 However, all other respondents on this issue (including CWW, BT, TalkTalk, Sky, SSE, all the mobile OCPs, TNUK) agreed that a central SC database would have a number of benefits in ensuring the smooth operation of the unbundled tariff, in particular in providing a 'master list' of all SCs which OCPs could reference. Many respondents suggested that a database was in fact crucial. EE, for example, believed that a central SC database was likely to be critical to the success of the unbundled tariff proposals. It said that without access to a comprehensive and up-to-date database of SCs, it did not believe that Ofcom's proposals would be workable from a consumer transparency perspective and were likely to be much more difficult and risky for CPs to implement from an operational perspective.[787] Three also noted that for accurate billing it was of critical importance that a centralised SC database was maintained accurately and kept up to date.[788] TNUK said that implementation of the unbundled tariff would not be possible unless and until the database was designed and operational.[789]

A25.14 BT noted that as well as benefiting consumers and OCPs, the database would also benefit TCPs, because it would centralise the process for applying for number ranges and new price points, and SPs, because it would make the available SC price points transparent. In addition it noted that it would allow Ofcom to undertake compliance checks and it would centralise the management of price points.[790]

Functions, costs and funding of the database

A25.15 A number of respondents agreed that the cost of the database was unlikely to be significant. TalkTalk cautioned against 'gold-plating' the solution which it said was, in essence, just a spreadsheet with 60-100 price points on it. It said that as long as the process for maintaining and updating the database was clear, simple and robust, there was absolutely no need for it to be expensive or cumbersome to implement.[791] Verizon agreed that costs were unlikely to be particularly great, but it

784 [✂].
785 Magrathea, April 2012 consultation response, Q12.2.
786 O2, April 2012 consultation response, p.20.
787 EE, April 2012 consultation response, p.29.
788 Three, April 2012 consultation response, p.15.
789 TNUK, April 2012 consultation response, pp.41-42.
790 BT, April 2012 consultation response, pp.18-19.
791 TalkTalk, April 2012 consultation response, p.2.

stressed that the database should as far as possible be 'static' in nature, with any changes being notified to industry well in advance. It said this was very important from a cost and resource perspective.[792]

A25.16 In terms of funding the database, EE believed that it should be a levy on SPs. It said that on a cost causation basis, OCPs could not control the number of SCs, the number of changes to the SC, or the accuracy of the SC input information and therefore requiring SPs to bear the costs of the database was likely to ensure that it was established, operated and maintained in the most efficient manner. It suggested that the existing PhonepayPlus SP/number checker database would be a useful starting model.[793] The Fair Telecoms Campaign ('FTC') said that any database should be funded by industry but the specifications should be issued or controlled by Ofcom.[794] CWW noted that industry would face costs for the database whether directly through private provision or indirectly via Ofcom's annual administrative charges.[795]

A25.17 EE noted that there were currently around 400 TCPs in the market, with no upper limit on that number. Therefore it said arrangements for notifying the SC to OCPs which potentially differed in form and timing between TCPs were likely to be unduly burdensome to implement and control for OCPs. EE said that critically what an OCP needed was:

25.17.1 For the SC to be **commercially reliable**, i.e. it had to be accurate so that OCPs could bill their customers correctly. EE said if it was inaccurate then the risk (and any obligation to compensate the customer) had to lie entirely with the SP.

25.17.2 For the notification of all new/and or changed SCs to be notified to the OCP in a **co-ordinated manner**. EE strongly believed that any notification of new or changed SCs to OCPs had to take place on a single day for all SCs – e.g. initially on a specified day and thereafter on the first working day of every month.

25.17.3 For appropriate **advance notification** of all new and/or changed SCs to be given to the OCP in order that they could be implemented in the OCPs retail billing systems and correctly charged to the customer. EE said it required not less than 8 weeks notice. With any lesser period of notice, EE said there was a material risk that the required IT development work would not be possible. It said it would be possible to give that advance notice according to a simple rolling schedule, e.g. all changes to be notified on the first working day of every month and to come into effect 8 weeks later.

25.17.4 To have a simple and cost-effective means of **responding to customer queries**. EE noted that without ready access to a reliable source of information giving details of the service associated with a particular number and the level of the SC, its frontline would not be able to adequately respond to such queries.

A25.18 EE said that a database of SCs seemed the best and most efficient approach for meeting all of the above needs. It also noted that there would need to be clear

[792] Verizon, April 2012 consultation response, p.9.
[793] Available at: http://www.phonepayplus.org.uk/
[794] FTC, April 2012 consultation response, p.7.
[795] CWW, April 2012 consultation response, p.22.

requirements around how the information in the database would be kept up to date, and how accuracy would be ensured. It said that having Ofcom, or a non-geographic numbers compliance body, as the database manager should help encourage good behaviour. In addition it suggested that there needed to be a sanctions process for non-adherence to database management requirements.[796]

Role of the database in providing information to consumers

A25.19 Several respondents also emphasised how the database could be used to provide information on SCs to consumers. DWP said it agreed with the requirement for a central SC database, noting that it would provide a vehicle for recording the zero-rating of the SC for its services on the 0845 range (if it went ahead with that approach).[797] THA said a central SC database would be a good idea if consumers were able to access the database, because it would allow a consumer to lookup the SC either before or after accessing a service.[798]

A25.20 EE considered that from a consumer transparency perspective it was imperative that consumers had some means of quickly, easily and reliably finding out how much they would need to pay for the SC component of the call (given that in a third of cases they might not have access to that information at the point of call). EE believed that, assuming the cost of development and maintenance were kept tightly under control and the accuracy of the information was assured, the SC database was likely to be the most efficient and effective way for the industry to provide access to that information to consumers. It noted that OCPs could simply refer customers to the relevant weblink (or even shortcode/phone number). It also noted this could be used by SPs publishing their phone numbers in forms that were less likely to be updated frequently (for example vehicles).[799]

A25.21 FTC said that a clear and simple online lookup facility was an imperative feature. FTC said the OCP should offer access to that information for its customers, in the same way that they advised of other charges. FTC also suggested that CPs should adopt a ready mechanism for addressing misrepresentation of SCs by SPs, and proposed an informal mechanism by which TCPs could advise their customer of perhaps accidental errors or oversights, in response to reports from OCPs of complaints made by their calling customers. [800]

Provision of the database and role of Ofcom

A25.22 Several respondents indicated a preference for Ofcom to maintain the database. BT considered that this would be the most reliable and lowest cost way to manage the database. It noted that Ofcom already managed the National Numbering Scheme which contained many elements which would populate the SC database. It said that under the current process, CPs applied to Ofcom for a number and Ofcom carried out checks to see whether the CP already had similar numbers and if so, at which tariff when considering whether to approve that application. In the future, it noted that SCs would need to be enforced to ensure that they were not changed post-allocation. BT therefore said that since Ofcom had to do all the underlying work, it thought the simplest and least controversial way of meeting that objective was for Ofcom to continue to own and manage the data. It suggested that the

[796] EE, April 2012 consultation response, pp.30-31.
[797] DWP, April 2012 consultation response, Q12.2.
[798] THA, April 2012 consultation response, p.15.
[799] EE, April 2012 consultation response, p.29.
[800] FTC, April 2012 consultation response, p.7.

database should be given a more prominent position on the Ofcom website, along with consumer-friendly access and an easy to use search facility. It also said that an SC database hosted by Ofcom would be more credible with stakeholders, as was the case for the current numbering database managed by Ofcom.[801]

A25.23 CWW similarly argued that, in practical terms, it was likely to be easier to manage the database through Ofcom rather than attempt to manage and co-ordinate multiple TCP contributors. It said Ofcom had not provided a concrete reason for it not to manage the database and it considered that given Ofcom's key role in consumer protection and the importance of the database in ensuring that consumers were correctly charged, it considered that there was regulatory logic to Ofcom fulfilling the role.[802] It noted that the information held in the National Numbering Scheme on the Ofcom website would, at the most rudimentary level, only need an extra column to be added in order to display the SC. It suggested that this would therefore be the most cost efficient mechanism for presenting the SC information. CWW said that in any case Ofcom would need first hand access, and an 'official' reference version of this information to perform its numbering and consumer duties.

A25.24 CWW also asked whether Ofcom had considered the suitability of existing information portals between Ofcom and industry. It referred to the MID database, which is used to collect (through a secure portal) information from industry on a quarterly basis for Ofcom's report on the communications market and suggested that this could offer the ideal mechanism by which regular updates of SCs could be provided. [803] CWW therefore recommended that Ofcom should in the first instance publish SC information with a scheduled future review of the arrangement in order to determine whether it was the best long-term solution.[804]

A25.25 Verizon said its preference was for the database to be owned and managed by Ofcom, not least given its experience in managing similar numbering databases and its familiarity with what the database was expected to achieve. It said it would be concerned that a private sector-led project and the need for commercial contracts, would simply add another layer of complexity to the new regime.[805]

A25.26 Three also said the database should be maintained by a public sector body (preferably Ofcom). It noted that Ofcom's Numbering Scheme already performed management functionality similar to what would be required for a SC database. It said there was also an existing established process for such work which was funded by Ofcom's administration fees charged to the industry. Three considered it would be possible to adopt the existing Ofcom systems to meet the relevant requirements of the SC database.[806] EE similarly believed the database should be managed by Ofcom (or any self/co-regulatory body designated as the non-geographic number compliance body) in order to encourage SP compliance and to avoid the need for the creation of yet another entity to manage the database.[807]

A25.27 Vodafone noted this was clearly a subject that would require further industry discussion but it considered that both public and private sector provision should remain options. It suggested that given the overlap with Ofcom's existing statutory

[801] BT, April 2012 consultation response, pp.18-19.
[802] CWW, April 2012 consultation response, pp. 22-23.
[803] CWW, April 2012 consultation response, pp. 22-23.
[804] CWW, April 2012 consultation response, p. 23.
[805] Verizon, April 2012 consultation response, p.9.
[806] Three, April 2012 consultation response, p.15.
[807] EE, April 2012 consultation response, pp.30-31.

functions, it might be that hybrid models of provision were appropriate – the public sector providing the core point of reference, but with provision for private sector access to the reference data and possible development of value added services to CPs based on it. It said that various practical questions needed to be considered, including: the content and form of the information needed; roles and responsibilities including notification lead times; whether the information was used purely for wholesale settlement between CPs and accurate retail billing or whether it would also be made available to consumers as a central reference source for SC prices; and the legal underpinning for the database, funding and liabilities.[808]

A25.28 Three noted that, in principle, the database could also be maintained by an independent private organisation. However it said it would be concerned if the SC database was maintained by a telecoms operator (either OCP or TCP), because it could give that operator some advantages over its competitors with regard to the availability of SC information. It also noted concerns that if the database was maintained by a private organisation it could potentially increase the complexity of procuring an industry funded database and establishing industry processes and rules around its governance. It said this task should not be underestimated in the light of the previous experiences with attempting similar objectives in the context of a database for ported numbers.[809]

A25.29 TNUK said it had no fundamental preference between public sector and private sector provision of the database but it believed Ofcom's view that it could be agreed commercially was likely to be unduly optimistic. It said that the problems and delays with the establishment (or lack of establishment) of a centralised database for mobile number portability should serve as a stark warning to Ofcom of the difficulties for industry in undertaking such a task. TNUK said that given the database would be fundamental to the implementation of the unbundled tariff, it meant it would provide the perfect vehicle for any operator opposed to the unbundled tariff to delay, frustrate or complicate the implementation of the regulation. It said Ofcom should stay involved at every stage to ensure progress was made.[810]

A25.30 Magrathea said it would certainly not be in favour of a commercially owned-database, as it said it would inevitably add considerable and unnecessary costs on CPs. It said that any new database would either have to be an extension of the existing Ofcom one or be run by BT as part of the services it provided in relation to conveyance charges, due to its unique position in the industry. Magrathea said Ofcom would have to demonstrate how the benefits of such a new system would outweigh the costs to industry and it would welcome further details of what Ofcom had in mind in terms of the commercial provision potentially being cheaper.[811]

A25.31 SSE, however, said it expected that private sector provision would be most efficient. It said it was important that the database procurement, management and change control was that it should be a transparently governed process, accountable to the relevant part of industry. SSE said it had consistently argued over the years that a co-regulatory body should be established in order to manage the governance of industry processes and data such as those in the numbering area. It said that membership of this body should be compulsory for the relevant market players. It said Ofcom's analysis of the 'strikingly ad hoc' processes around number range

[808] Vodafone, April 2012 consultation response, p.29.
[809] Three, April 2012 consultation response, p.15.
[810] TNUK, April 2012 consultation response, pp.41-42.
[811] Magrathea, April 2012 consultation response, Q12.2.

development demonstrated the need for such governed arrangements to be developed.

A25.32 SSE highlighted that this type of co-regulatory industry body had been established in other industries and it set out how it would expect it to work, in particular noting that it would require a General Condition on all relevant parties to become a member of a body set up to manage establishment and governance of the database. It said that this inclusive, governed arrangement for all parties who had a need to use the database appeared far preferable to the establishment of ad-hoc 'industry working groups which tended to consist of the larger players but did not have any reach towards or legitimacy with smaller players who could not resource attendance at multiple meetings of this type.[812]

A25.33 Action4 suggested that it might be best for an organisation like BT to be responsible for the database.[813] One FCS member suggested that logically the database should be maintained within the BT CPL as this was where the commercial arrangement s would exist under the new unbundled regime. BT, however, said it did not wish to provide the SC database within its existing CPL.[814]

Ofcom response

A25.34 The majority of respondents consider that a database of SCs is needed to implement the unbundled tariff. Some argue that it is likely to be crucial. We agree that a central record of SCs could provide benefits both during the implementation of the unbundled tariff, and in its ongoing operation.

A25.35 As one stakeholder has made clear [✂] information on wholesale prices and BT retail tariffs for most number ranges can currently be accessed by CPs through a number of channels. These include BT's Carrier Price List ('CPL'), Ofcom's Numbering Scheme, and bilateral arrangements. The introduction of the unbundled tariff will mean that these data sources will require significant revision to reflect the new pricing structure. In the light of the comments from stakeholders set out above, there is no guarantee that a single point of reference (whether an updated version of BT's CPL or some other data source) will emerge. If it does not, (and in the absence of regulatory intervention requiring the creation of such a resource, as proposed by SSE) bilateral arrangements between TCPs (or transit intermediaries) and OCPs would be necessary to ensure correct billing. Because of the number of OCPs, TCPs and non-geographic number blocks with a separate SC price point, these arrangements and the supporting processes would be likely to have high transaction costs.

A25.36 As pointed out by stakeholders, Ofcom already publishes information in relation to non-geographic number blocks that it allocates, in carrying out the duty under s.56(3) of the Act to "keep such day to day records as they consider appropriate of the telephone numbers allocated by them".[815] The information consists of a series of downloadable Excel spreadsheets, which are updated weekly and which detail:

- the status of number blocks (whether allocated or not);

[812] SSE, April 2012 consultation response, Q12.2.
[813] Action4, April 2012 consultation response, p.6.
[814] BT, April 2012 consultation response, pp.18-19.
[815] http://stakeholders.ofcom.org.uk/telecoms/numbering/telephone-no-availability/numbers-administered/

- the name of the TCP to whom the block as been allocated;
- the BT tariff that is set against the allocated number block (with the exception of 118 numbers);
- if there is a specific form of service for which the block must be used (e.g. sexual entertainment services for certain 09 blocks); and
- date of any change made to the allocation.

A25.37 In contrast to the high transaction costs likely to be incurred by bilateral commercial arrangements, it will be relatively straightforward and low cost to amend this information to replace the BT tariff information with the SC for each relevant non-geographic number block and 118 allocation.[816] Given this option, the imposition of additional regulation to require the establishment of a co-regulatory body to provide a SC database, as proposed by SSE, also appears unduly intrusive and burdensome. We have therefore decided that it is appropriate for Ofcom to include the applicable SC in the information it publishes about each non-geographic number block allocation, in order to provide industry with the single point of reference for SCs that most respondents favour.

A25.38 It should be noted, however, that Ofcom can take no responsibility for the accuracy of the SC data that it receives and publishes. Number range holders and TCPs will therefore need to ensure that Ofcom is provided, for the purposes of publication, with correct and comprehensive information and that we are kept up to date with any changes to the SC associated with a given number or number block. We would also expect TCPs to verify that SC data they provide is accurately recorded in Ofcom's published records. Where numbers are ported from one TCP to another, we would expect the gaining TCP to take responsibility for verification. CPs which refer to the Ofcom data will also need to consider, if they are proposing to make use of it, whether there are additional measures they should take in order to verify the accuracy of the information in question.

A25.39 While we will continue to work with industry in developing the format of the information that we will provide, we are not presently proposing to provide any additional functionality.

A25.40 In this regard, we disagree with EE's comments about the unbundled tariff not being 'workable' from a consumer transparency perspective without a SC database. This transparency is delivered for the SC principally by the requirement for it to be advertised to consumers alongside the relevant number (see Section 10). The maximum SC caps on each number range (excluding 118) will also give consumers a further indication of the applicable charges. Furthermore, should demand emerge for value-added services in relation to the basic SC data (whether from consumers or industry), we agree with Vodafone that this will be most effectively met by the market.

[816] The question of what information would be important for the SC database was also discussed at an industry working group held on 25 July 2012. The notes of that meeting are available here: http://stakeholders.ofcom.org.uk/binaries/telecoms/groups/nts/NGCS_working_25july2012.pdf

Number range building and tariff notification

Position in the April 2012 consultation

A25.41 We provided a summary of the current process for establishing number ranges, and their tariff points, in the April 2012 consultation.[817] We noted that Ofcom did not regulate this process directly, beyond the requirements of General Condition 20 ('GC20'), which required all CPs to ensure, where technically and economically feasible, that end-users are able to access and use non-geographic numbers.

A25.42 We said that based on our discussions with industry, it was clear that there was support for a reform of the current system, particularly in the context of the overall reform of the regime. We also highlighted a current industry initiative to develop a voluntary code of conduct with respect to the times and process for building number ranges.

A25.43 We considered that these were issues which it was preferable for the industry to sort out itself, although we remained willing to participate in facilitating such discussions and providing a central record of any agreements.[818]

Stakeholder comments

A25.44 BT said it was pleased to see the voluntary industry Code of Practice on number range building but it believed that Ofcom should take it further and implement mandatory regulatory requirements (on fair and reasonable terms) on all CPs, not just BT. It said this would ensure that consumers could call any number from any CP and get through. It said the unbundled tariff provided an opportunity for CPs to recover any costs they incurred and they should not charge SPs to open up access to individual numbers. It suggested that any new rules could tie into the SC database and the associated price point management processes. It said the rules needed to set timescales for all parties to introduce new ranges/price points but should not be so long, that the timeframe limited an SP's ability to respond to competition.[819] Action4 also suggested that the more clarity in the industry the better, as long as any regulation did not stifle market competition.[820]

A25.45 SSE said its experience of the wholesale tariff change notification process accorded with Ofcom's description and it said it would welcome reform of the processes onto a more regulated basis. It said it would welcome Ofcom's involvement in the establishment of such arrangements as it doubted that all relevant parties had the same incentives to make them succeed.[821] FTC said any process would require continual engagement and oversight from Ofcom and should have some form of independent consumer representation, as well as potentially a representative from PPP.[822]

A25.46 TNUK said it had not itself experienced any difficulties as a result of the current process, however, it recognised it was far from ideal and would benefit from reform. It said its main issue of interest was the timescales/notice period for notifying tariff changes (and opening up numbers) and whether or not there might be any

[817] See Part B, Section 12, paragraphs 12.42 to 12.47.
[818] April 2012 consultation, Part B, Section 12, paragraphs 12.64 to 12.71.
[819] BT, April 2012 consultation response, p.19.
[820] Action4, April 2012 consultation response, Q12.3.
[821] SSE, April 2012 consultation response, Q12.3
[822] FTC, April 2012 consultation response, p.8.

restrictions as to when or how often such changes could be made. It said such issues would have a profound commercial impact on the business of SPs, because they needed to be able to control their prices and if there were any limitations on their ability to do so it could have a real and substantial impact on their business. It said that this was not something which Ofcom should allow the OCPs and TCPs to decide themselves and for their own benefit. TNUK believed that Ofcom should establish this parameter. It suggested that one month notice period would be appropriate and that tariff changes could be made once a month, or at least once a quarter. Whilst it said that it might seem to be slight overkill to have to specify that in regulation, it thought Ofcom should not accept any process which did not protect the interests of SPs.[823]

A25.47 Several respondents felt that there was no need for wider Ofcom involvement in the number range building process or any wider reformation of the process, particularly given the industry Code of Practice initiative (including EE, O2, Three, CWW, and one confidential respondent). Three believed that the proposed industry voluntary code of conduct with respect to the times and processes for building number ranges should be sufficient to address any concerns in this area. [824] O2 agreed that the industry should be allowed to resolve any problems in the first instance and that regulatory intervention was desirable only where necessary.[825] FCS also said it supported a voluntary code of practice.[826]

A25.48 [✂] said it did not believe there was a need for reformation, per se, as there was a structure of a process that demonstrably worked, albeit not optimally. It said there was a need for Ofcom to articulate what it considered to be fair and reasonable in terms of timescales and requirement for building number ranges. It noted that the Number Range Building Code of Conduct might provide a suitable benchmark for that. CWW also said that there was scope to extend the existing work on the Code of Conduct with direct reference to any central database requirement and this would be the trigger needed to ensure that all CPs actively participated with, and abided by the Code.[827]

A25.49 In addition, Vodafone said the voluntary code of practice could provide a good starting point in terms of lead times to ensure that new number ranges could be built and available for use across the industry with realistic and predictable lead times. Magrathea said it hoped the new industry Code of Conduct would encourage better communication between the parties with respect to implementing tariff changes. It said that in the event that that code of conduct was not adhered to then Ofcom should impose new regulatory obligations with regard to number range building and tariff changes.

A25.50 Several respondents commented that Ofcom might need to have a role in the process for notification of changes to tariffs. EE, for example, noted that, as set out in its response to the question of the SC database, it foresaw a need for clear and enforceable rules (with sanctions for non-compliance) regarding the accuracy of SC information notified to OCPs and the process for so doing. It said there was no reason why industry could not be tasked with the initial development of those rules. However, it said that in the event of any lack of consensus and in terms of ultimate Ofcom endorsement and enforcement of the rules, Ofcom involvement would be

[823] TNUK, April 2012 consultation response, p.42.
[824] Three, April 2012 consultation response, p.16.
[825] O2, April 2012 consultation response, p.20.
[826] FCS, April 2012 consultation response, p.7.
[827] CWW, April 2012 consultation response, p.23.

required. EE said all of this had to be settled well in advance of any proposed implementation date for the unbundled tariff.[828]

A25.51 Three similarly argued that it was critical to the success of Ofcom's unbundled tariff proposals that the OCPs had access to consistent SC information in order to ensure customers could be billed correctly. It said any changes to tariffs should take place on predetermined dates (e.g. first of each month) and should be communicated at least 30 days in advance by way of predetermined periodic updates to the database.[829] Magrathea also believed that there would be considerable merit in a process whereby tariffs were notified subject to a specific implementation period and it thought that it might make sense for tariff changes to come into force on specific dates, such as once per month or once per quarter. [830]

A25.52 [✂] said SC tariff change notifications, specifically the timescales, needed to be considered alongside two issues. First the appearance of those SCs in advertising and whether consumers could be misled by old advertising (e.g. a customer using an old letter from a business) which could reflect an outdated SC price. And second, the notice period that would be considered reasonable in the wholesale supply chain.[831]

A25.53 Finally, Vodafone noted that agreement would be needed on the process to be followed both for notifying changes and for acting on such notifications. It said there was a clear efficiency case for notification by TCPs to a central reference point which could then be consulted by OCPs given the difficulty and risk of co-ordination failure associated with many to many change notification. Vodafone said the precise mechanism to achieve that would require further industry discussion and agreement on such matters as record format, rights of access, responsibilities and liability, funding and so on.[832] Vodafone said it therefore reserved judgement at this stage as to whether and to what extent formal Ofcom intervention might be necessary, although it said it expected Ofcom to continue to facilitate industry discussion and take an active interest in these matters.[833]

Ofcom response

A25.54 We consider that the recent industry initiative on a code of practice for the building of new number ranges shows the willingness and ability of the industry to establish systems without the need for direct regulatory intervention.

A25.55 The additional industry discussion in the working groups set up as part of this review indicate that there is scope for further development of the code of practice to incorporate the changes made by this review. This could allow rules to be established on timing for building number ranges and modifying number ranges SC price points that will provide a suitable environment for future operations. For example an agreed notification period for SC tariff changes or new number range builds. We consider that such processes would be beneficial for the industry in reducing ongoing maintenance costs and therefore the incentives are there for them to develop a process which meets their needs. For example as part of the working group discussions there appeared to be broad support for a process whereby

828 EE, April 2012 consultation response, p.31.
829 Three, April 2012 consultation response, p.16.
830 Magrathea, April 2012 consultation response, Q12.2 & Q12.3.
831 [✂]
832 Vodafone, April 2012 consultation response, pp.19-20.
833 Vodafone, April 2012 consultation response, p.30.

changes to SC price points took place on a certain day each month and were notified 8-10 weeks in advance (as highlighted in Three's comments).[834] We do not, therefore, consider that regulatory intervention is required at this time.

A25.56 That being said, the industry would be free to incorporate Ofcom's Numbering Scheme, (which as discussed above will in future include a link between the number range and the SC), into any processes for managing changes to tariffs

A25.57 Should new processes not emerge and there is evidence that this is leading to poor consumer outcomes or undermining reasonable expectation of access in terms of GC20 then we may need to consider more direct regulatory involvement.

Access to numbers

Position in the April 2012 consultation

A25.58 We noted in the April 2012 consultation that some CPs had experienced problems with other CPs refusing to open number ranges on their networks. We highlighted that to date, informal action by Ofcom had resolved such complaints. However, we said that, in the context of the NGCS review, we were concerned about the impact of such instances on consumer's ability to access non-geographic numbers.

A25.59 We noted that GC20 required CPs to ensure end-users were able to access non-geographic numbers (in the absence of a justification on technical or economic feasibility grounds) but that in other Member States there were more prescriptive regulations to ensure that end-users were able to call non-geographic numbers.

A25.60 Our preliminary view was that similar regulation in the UK was not required at the current time, taking into account the commercial incentive of CPs to provide end-to-end connectivity to their customers and the requirements of GC20. We said, however, that we would monitor how well market developments matched that hypothesis, and should more evidence emerge that CPs were hindering consumers' access to non-geographic numbers, further intervention might become necessary.[835]

Stakeholder comments

A25.61 BT argued that additional intervention from Ofcom was needed in this area. It believed any number should be accessible from any CP and the current regulation was not working to achieve that. It said that some OCPs were using their power over access to charge unreasonable and unjustifiable costs to SPs for opening up access to their numbers. For example it said that in the case of BT Directories it had to pay [✂] circa [✂] to keep 118500 open and this additional cost was ultimately paid by the consumer.[836]

A25.62 BT said it was concerned that, since the mobile operators would no longer be able to make additional large charges above the SC rate for directory enquiry services following the introduction of the unbundled tariff, they would switch to charging for access to their networks instead. It said this was why the accessibility rules had to be mandatory and GC20 was not enough; it a specific requirement for a CP to open

[834] See for example, the notes of the working group meeting on 25 July 2012, http://stakeholders.ofcom.org.uk/binaries/telecoms/groups/nts/NGCS_working_25july2012.pdf
[835] April 2012 consultation, Part B, Section 12, paragraphs 12.72 to 12.75.
[836] BT, April 2012 consultation response, p.20.

a number range within a defined timeframe within a reasonable, non-discriminatory cost and keep it open without recurring additional charges was needed. It added that if Ofcom decided that regulation was not needed in this area then the current obligation on BT to provide access to all numbers should be removed.[837]

A25.63 SSE said the problems Ofcom had outlined in regards to access to numbers seemed a sufficient basis for regulatory action. It said the whole subject area of wholesale numbering processes should have a greater degree of industry management and control through a governance body, as it had outlined in its comments in the SC database.[838]

A25.64 TNUK also considered that there was a need for additional regulatory intervention in respect of access to non-geographic numbers, although it also said it believed that the problem was not an absence of regulation but rather its enforcement. It highlighted what it considered was a clear breach of GC20 in respect of consumers being unable to access its 118 118 DQ service from BT's Home Hub service. It said that BT only allowed its Home Hub customers to access its own DQ service. It said BT justified the denial of access on the grounds of the exceptions of 'technical and economic feasibility'. TNUK believed that Ofcom needed to set the parameters of 'technical and economic feasibility' and the tests that should be applied. [839]

A25.65 TNUK also highlighted that Ofcom was under a duty pursuant to Article 45 of the Access Directive (2002/19/EC) where appropriate to ensure adequate access and interconnection and the interoperability of services. It therefore said Ofcom should set specific access related conditions concerning DQ pursuant to Section 73 of the Act. It said Ofcom should have little hesitation in using its access related condition setting powers to remedy the problem that currently existed in respect of access to DQ via the home hub operated by BT.[840]

A25.66 In addition, TNUK said it had concerns regarding the implementation of Article 25(3) of the Universal Service Directive. It said the provision in Article 25, which enabled NRAs to impose conditions and obligations on undertakings that controlled access to end-users to the provision of directory enquiry services, had not been implemented anywhere in UK legislation or regulation. It acknowledged that this was a matter for Government rather than Ofcom but noted concern that Ofcom might not have the power which it should have to impose obligations and conditions in respect of access to DQ services.[841]

A25.67 However, the majority of other respondents believed there was no case for further regulatory intervention in this area (including the mobile OCPs, TalkTalk, Verizon and Virgin Media).[842] Vodafone said the unbundled tariff should provide appropriate incentives for all parties to support universal connectivity without any additional prescriptive mandate.[843] Three said any regulation in this area risked creating an end to end connectivity obligation on OCPs which could lead to a raft of additional disputes around termination rates. It said Ofcom should therefore weigh carefully any benefits of additional regulatory intervention with the additional burden of either

[837] BT, April 2012 consultation response, p.20.
[838] SSE, April 2012 consultation response, Q12.4
[839] TNUK, April 2012 consultation response, p.43.
[840] TNUK, April 2012 consultation response, p.43.
[841] TNUK, April 2012 consultation response, p.43.
[842] O2, April 2012 consultation response, p.20, Verizon, April 2012 consultation response, Q12.4.
[843] Vodafone, April 2012 consultation response, p.30.

enforcing 'fair and reasonable' rates across the industry or resolving a greater number of disputes than currently.[844]

A25.68 TalkTalk and Three both argued that refusal to open up new number ranges was typically associated with a high predicted risk of fraud. They argued that Ofcom should do more to ensure that number applicants were vetted before they were allocated non-geographic numbers as well as investigating all fraud complaints. TalkTalk said that at the moment OCPs might have very little option but to block access to numbers to stop consumer harm and to tackle fraudulent activities.[845]

A25.69 Virgin Media noted that in response to issues with the time taken to open up number ranges, industry had created, and a number of participants had already subscribed to, a non-binding code of practice which it believed had the potential to address the concerns. It therefore argued that at this stage, there was no justification for Ofcom intervening.[846] Magrathea also said Ofcom should only consider regulatory intervention in the event that CPs failed to adhere to the new Code of Conduct.[847]

A25.70 CWW said it was of the same opinion as Ofcom that commercial pressures in conjunction with the requirements already in existence under GC20 were adequate to ensure that consumers had access to non-geographic numbers. It said there was obviously scope for improvement in order to remove the need for Ofcom to informally resolve issues but that enforcement in conjunction with the industry led Code of Practice it believed would suffice to ensure that consumer choice was maintained.[848]

A25.71 EE highlighted that it had previously raised concerns with Ofcom (in response to Ofcom's consultation on the amendments to GC20) that the wording of that Condition was far wider than that required to comply with Article 28 of the Universal Service Directive, the primary purpose of which it considered was to secure technically and economically feasibly cross-border access to non-geographic numbers. EE noted that Ofcom had responded to these concerns by assuring CPs that GC20 was not intended to affect the current policy on end to end connectivity in the UK.

A25.72 EE said Ofcom had no conducted any formal analysis regarding whether or not there was any need to expand the current regime for ensuring end to end connectivity within the UK. EE said it remained strongly of the view that there was no such need and were Ofcom to form a contrary view that regulatory intervention was required in this area, then it emphasised that Ofcom would need to establish all of the criteria necessary for imposing such additional obligations under section 73 of the Act. EE said that in the absence of having conducted any such analysis, Ofcom should not, and could not use the current wording of GC20 as a 'back-door' means of imposing such end to end connectivity obligations on CPs regarding non-geographic numbers.[849]

A25.73 On the other hand, a confidential respondent [✂], said it interpreted both Article 28 of the Universal Service Directive and GC20 to mean that an end-to-end

844 Three, April 2012 consultation response, p.17.
845 TalkTalk, April 2012 consultation response, p.3.
846 Virgin Media, April 2012 consultation response, Q12.3.
847 Magrathea, April 2012 consultation response, Q12.4.
848 CWW, April 2012 consultation response, p.24.
849 EE, April 2012 consultation response, pp.31-32.

connectivity obligation already existed in terms of access to NGCs within the European Union. It noted some elements of Ofcom had suggested that was not the case, but its own legal counsel suggested otherwise.[850]

Ofcom's response

A25.74 As noted by many of the respondents there is a commercial incentive for CPs to open number ranges and ensure connectivity. It was this expectation of a strong commercial incentive that underpinned our decision in 2006 to only apply a specific access obligation on BT to provide end-to-end access in its wholesale network.[851] This was done at that time to ensure that there were clear rules in establishing end-to-end connections but as Ofcom noted at that time, we expected all CPs to provide such access and would be prepared to intervene if this did not prove to be the case:

> "In setting this condition, Ofcom considers it is necessary to ensure end-to-end connectivity is available in the UK. As set out in the July consultation, in Ofcom's view it is sufficient and proportionate to do so by imposing an obligation on BT only. Ofcom believes that other PECNs will have a commercial incentive to provide end-to-end connectivity to their customers that should be sufficiently strong to ensure that they seek to purchase call termination and that no additional ex ante regulation is required. However, Ofcom would examine the case for proposing ex ante conditions on other PECNs should they not provide end-to-end connectivity."[852]

A25.75 Following the amendments to the European Framework Directives (specifically Article 28 of the Universal Service Directive, GC20 was amended so that it now requires a CP to ensure that, where technically and economically feasible, end users "in any part of the European Community" are able to access and use non-geographic numbers. In making that modification, we specifically considered whether the revised Article 28.1 in the Universal Service Directive is intended to relate to access to numbers by end users in the Community outside of the UK (that is, purely a cross-border provision) and concluded that the wording does not restrict the obligations specifically to end users in Member States outside of the UK.[853] However, as EE notes, we also said that the obligations in GC20.1 are not intended to affect the current policy set out above on providing 'end to end' connectivity in the UK via the access-related condition on BT or relate to 'any to any' principles without further analysis.

A25.76 This remains our position. CPs must enable end users to access and use non-geographic numbers range which they adopt except under the exemptions specified in GC20. We expect CPs to be incentivised to open up new non-geographic numbers in order to provide such access and agree that the new code of practice developed by industry should facilitate this. In the event that material difficulties of the type identified by BT and TNUK emerge, we would examine the case for further intervention, whether through the exercise of our dispute resolution or competition powers or the imposition of ex ante conditions.

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[850] [✂]

[851] http://stakeholders.ofcom.org.uk/consultations/end_to_end/statement/

[852] End-to-End Connectivity Statement, September 2006 Paragraph 4.3 http://stakeholders.ofcom.org.uk/binaries/consultations/end_to_end/statement/statement.pdf

[853] http://stakeholders.ofcom.org.uk/binaries/consultations/gc-usc/statement/Statement.pdf, paragraphs 11.16 - 11.18.

International calls

Position in the April 2012 consultation

A25.77 In response to stakeholder questions about how the unbundled tariff would be implemented for international calls, we proposed that the OCP should be able to set a different AC for NGCS made outside of the UK (and which might vary country by country). We noted however that our other proposed design features of the AC (i.e. a single AC for the relevant non-geographic number ranges, no time of day variation and a ppm charging structure) should continue to apply.

A25.78 We said that the SC element of the NGC should be the same, regardless of the location of the caller. We invited stakeholders to provide further evidence on this issue.[854]

Stakeholder comments

A25.79 BT said it had serious concerns with Ofcom's proposal to apply the SC to calls which originated outside of the UK. It considered it was unworkable for the following reasons:

- **Time of day**: it noted Ofcom had proposed that SCs could vary by time of day. It said it would not be possible to implement that for international inbound tariff as time-bands were different between, and within countries, and with each operator. It said it currently set a single 24 hour price and if the price was set too low, any change in the profile of the traffic would have an impact on profitability;

- **No pence per call charges**: it noted that international calls were charged on a pence per minute basis only;

- **Billing systems**: it said its billing system and the international carrier customers' invoice validation system was unable to handle the SC design, particularly for pence per call structures;

- **No guarantee**: it said there was no guarantee that the origination charge made by the international call originator would support the SC made by the UK TCP; and

- **Fraud**: it noted that international inbound traffic was vulnerable to Artificial Inflation of Traffic ('AIT') and fraud.

A25.80 BT said that fraud was its key concern and that opening up international traffic to UK NGCS numbers would increase the level of risk. It said it was not always easy to identify the true origin of traffic which limited its ability to take appropriate action against such fraud. In addition, it noted that these calls would invariably be made outside of UK or EU Regulatory jurisdictions and it had seen numerous instances of international revenue share numbers in other parts of the world being used for AIT purposes. It was therefore concerned that the opening of UK NGCS ranges would encourage similar behaviour and it highlighted a number of different types of fraud that could occur. It said that because of the fraud risk on NGCS it currently limited NTS termination charges and barred all international incoming calls to 09 numbers ranges (and it noted that other international operators took a similar approach). It noted there was little international demand for access to such services in any case

[854] April 2012 consultation, Part B, Section 12, paragraphs 12.186 to 12.190.

and it was not aware of any country where international access to PRS services was available.

A25.81 BT highlighted that international calls were not in scope of its end to end obligation and that GC20 allowed a CP to consider if opening calls to international origination was commercially viable. It did not consider that international inbound calls to NGCS numbers should be within the scope of the review and it recommended that the current arrangement of specific termination charges should be allowed to continue.[855]

A25.82 Magrathea similarly argued that the unbundled tariff should not apply to internationally originated calls, since both the AC and the SC would be affected by roaming, transit and other charges levied by overseas operator. It said that not only would the AC have to be higher but SCs did not map directly on to international termination rates.[856]

A25.83 O2 said its initial view was that many revenue sharing call types were barred to international roamers, as a means of eliminating the risk of fraud. Furthermore, it said the cost of implementing disaggregation of call charges for roaming should be additional to the cost of introducing the system for domestic calls, and, it believed, disproportionately so.[857]

A25.84 Most other respondents, however, agreed with Ofcom's proposal that the same SC should apply for internationally originated calls, including CWW, TNUK, Vodafone, Virgin Media, THA, and one confidential respondent. THA believed Ofcom's proposal was a fair approach and noted it would reduce the need for SPs to advertise separate costs for calling from abroad.[858] Virgin Media said it was difficult to see how a different charge could be warranted if the service provided was the same. [859] CWW said the inbound carrier had the commercial freedom to charge its overseas partner as it saw fit. It said it was therefore entirely within their power to set those prices at a level which allowed them to cover their costs, i.e. the level of the SCs which they had to outpay nationally. It said that any attempt to differentiate between inland and overseas originated traffic might be counterproductive, encouraging a degree of trombone routing, with inland traffic diverted overseas in order to reduce the level of the SC paid, thus undermining the integrity of the regime. [860]

A25.85 EE, whilst it agreed that there did not need to be a distinction between domestic and internationally originated calls for SCs, considered it was not necessary for consumer protection purposes for Ofcom to intervene in TCPs' current commercial international interconnection arrangements with overseas OCPs by mandating that the same SC should apply. It noted that such a restriction might assist in fulfilment of Ofcom's obligations under Article 28 of the Universal Service Directive but in that context it needed to be limited to calls which were originated from within the EU only and not from other countries outside of the EU, which might make implementation and enforcement unduly complex relative to the likely benefits.[861]

[855] BT, April 2012 consultation response, pp. 28-30.
[856] Magrathea, April 2012 consultation response, Q12.9.
[857] O2, April 2012 consultation response, p.22.
[858] THA, April 2012 consultation response, p.17.
[859] Virgin Media, April 2012 consultation response, Q12.8.
[860] CWW, April 2012 consultation response, p.27.
[861] EE, April 2012 consultation response, p.35.

A25.86 In terms of how the AC element was charged for international calls, there was a wider range of views on our proposal.

A25.87 CWW, Virgin Media, Vodafone, Three and [✂] were supportive of the need for a separate international remaining AC.[862] [✂] it noted that end-users would have the ability to use alternative networks abroad for roaming and it therefore asked Ofcom to state whether or not a foreign operator was obliged to follow UK regulation for calls to UK hosted NGCS for a UK customer regardless of which EU member state the customer was roaming in.[863]

A25.88 Three and Vodafone noted that roaming call charges were governed by the EU roaming regulation. Three noted that regulation only allowed a minimum charging period of up to 30 seconds, whilst Ofcom was proposing to allow rounding up to the first minute.[864] Vodafone considered that the simplest solution was to carve out ACs whilst roaming from the domestic requirement and clarify that the EU roaming regulation bites only on the AC element of a call to a UK unbundled NGC. Vodafone also noted that in a situation where an inbound roamer in the UK called a UK non-geographic number, the TCP would expect the usual SC outpayment but the OCP would be constrained by the wholesale roaming cap in relation to its charges to the home network. It said that in these circumstances Ofcom should clarify that the EU wholesale cap bites only on the AC and not on the SC that the OCP is obliged to collect and pass through on behalf of a third party SPs. [865]

A25.89 TNUK, however, said the question of whether or not the AC should be allowed to vary in those circumstances was slightly less clear. It acknowledged that the point was likely to be of only marginal importance (because of the small volume of NGC calls which would be originated internationally) but said it would welcome clarification of Ofcom's decision and underlying reasons. It said that if the OCP was a mobile OCP whose customer was roaming abroad when it originated the NGC call it accepted that a higher AC would be charged (than the OCPs domestic AC(to reflect the higher wholesale costs of international roaming. But it was concerned that Ofcom's description did not seem to match this situation and it asked for clarification.[866]

A25.90 EE considered it would impose an entirely disproportionate commercial risk onto UK mobile OCPs to force them to limit their charges to their roaming customers to a rigid format AC that was potentially highly incompatible with their wholesale costs. In particular it noted that currently when a customer of a UK mobile OCP was roaming outside the UK and made a call to a non-geographic number in the UK, the wholesale price that the UK mobile OCP had to pay for the call depended entirely on the wholesale price for the call charged to it by the relevant international CP on whose network the customer was roaming. EE said that subject to a UK mobile OCPs general bargaining power in relation to the parties overall roaming agreements, the level of those wholesale charges were generally entirely outside of their control. It noted that those charges could therefore vary considerably both by number range, and by time of day and with different charging structures.

[862] CWW, April 2012 consultation response, p.27. Virgin Media, April 2012 consultation response, Q12.8. Vodafone, April 2012 consultation response, pp.31-32.
[863] [✂]
[864] Three, April 2012 consultation response, p.18. It refers to Regulation 531/2012 of the European Parliament and of the Council of 13 June 2012 on roaming on public mobile communications networks with the Union, article 8.2.
[865] Vodafone, April 2012 consultation response, pp.31-32.
[866] TNUK, April 2012 consultation response, pp.46-47.

A25.91 EE also considered that customers were already very familiar with the fact that they were likely to face a different charge to call the same UK number when they were roaming overseas compared to when they were in the UK. It therefore could not see any particular consumer protection policy justification for required the UK AC charging structure to also be applied when the calling customer was located outside of the UK. EE noted that GC20 required CPs to ensure access to non-geographic numbers for end-users in any part of the EU but subject to technical and economic feasibility. EE did not consider it would be economically feasible to require OCPs to provide such access in return only for a retail AC, which might not adequately cover the OCPs wholesale costs. It noted that theoretically at least it might be possible to set an AC for remaining calls that was so high that the risk of an OCP being left out of pocket was relating low, however, it felt that forcing OCPs to take that approach was likely to artificially inflate the retail charges for these roaming calls which would be to the detriment of roaming customers.[867]

Ofcom's response

A25.92 As set out in Section 10 we now consider that the unbundled tariff will not be applied to international calls made to non-geographic numbers designated in the Numbering Plan and allocated by Ofcom. By this we mean:

i) an overseas customer calling a UK non-geographic number (regardless of whether they are located in the UK or overseas at the time); and

ii) a domestic customer calling a UK non-geographic number while overseas.

A25.93 Given the arguments put forward by stakeholders, particularly around the proportionality, we have taken the view that it is not proportionate to include international calls within this structure particularly given the additional costs it could generate when weighed against the limited benefits to consumers. We have set out our reasoning in more detail below in our response to stakeholders' individual comments.

A25.94 In terms of the SC element, we are not including these calls within the regulated unbundled tariff structure and we recognise that there could be individual factors in a given case where an SC for an NGC originated overseas to match the SC that would normally be paid for a UK originated call to that particular number) may not be possible or appropriate.[868] Nonetheless, for the most part we would expect it to be the same, regardless of the location of the caller. We note that this is supported by responses from several other stakeholders, including other TCPs. We note BT have outlined particular concerns about fraud, however, our proposal in the April 2012 consultation was not meant to imply that all non-geographic call ranges would have to be opened up to international traffic. The requirements of GC20 will remain in place and they specify that access to these ranges shall be subject to "technical and economic feasibility". We note BT, and other OCPs already take a number of actions to guard against fraud, such as barring the higher rated NGCS numbers, and we were not proposing to prevent such practices continuing, provided they meet the requirements of GC20.

[867] EE, April 2012 consultation response, p.35.
[868] For example, we accept the point made by EE and O2 low call volumes may mean that the benefits to consumers are not sufficient to justify the additional costs that might be associated with making amendments to billing systems for international calls as well.

A25.95 In relation to the AC element, we agree with EE that customers are likely to be familiar with the fact that they were likely to face a different charge to call the same UK number when they were roaming overseas compared to when they were in the UK. Provided those charges are made clear to consumers in OCPs pricing lists in line with the existing transparency requirements on OCPs (under General Condition 10), we consider that imposing the unbundled tariff structure on these charges for the purposes of consumer protection is unlikely to be justified at the current time.

A25.96 In response to Vodafone's comment about the application of the EU Roaming Framework, given that international non-geographic calls (as defined above) are not covered by the proposed General Conditions implementing the unbundled tariff framework, we would expect OCPs to continue with their current practices regarding these calls in terms of ensuring that they are compliant with the EU Roaming Regulation.

Payphones

Position in the April 2012 consultation

A25.97 We noted that there were technical difficulties in implementing the unbundled tariff structure on payphones. Our preliminary view was that we should adopt a proposal put forward by BT, which was that a minimum fee could be applied (linked to coinage denomination) and that numbers with fixed ppc SCs could be blocked, provided that clear consumer information was presented with the payphone.[869]

Stakeholder comments

A25.98 BT welcomed Ofcom's recognition that payphone operators were subject to technical difficulties that did not arise elsewhere. It said Ofcom's proposals would allow them to retain the minimum fee, which would help offset its costs. It noted that payphone usage was continuing to decline and NGCS chargeable calls now made up just [✂] of total payphone call volumes. BT confirmed it would:

- continue to charge a minimum fee, based on the coins available and in-line with all other call types;
- continue to bar access to single drop and fixed fee charge calls;
- continue with the current Payphone Access Charge ('PAC') formula;
- amend the BT Price List and its payphones website to make NGC charges clear; and
- make sure that its call centre staff could provide customers with up to date and accurate call prices free to charge. It noted that this would minimise the cost of replacing payphone notices, which it estimated would cost [✂] initially, and then each time prices changed.

A25.99 BT said that further investigation had shown that it had additional limitations to consider, because payphones had a very limited number of tariffs (with only 20 on some, and on these only 4 spare tariffs). It said it was therefore unable to manage complex or multiple tariffs without significant hardware and software upgrades, which would not be commercially viable due to the costs involved of replacing

[869] April 2012 consultation, Part B, Section 12, paragraphs 12.191 to 12.193.

boxes. It estimated this would cost between [✂]. It therefore proposed that it maintain the current approach of relatively broad price bands based on groups of numbers.[870]

A25.100 DWP said that, assuming the technical obstacles to implementation referenced in Ofcom's consultation were insurmountable, a minimum fee linked to coinage denomination appeared reasonable. It noted, however, that if there was no reduction in that fee then payphone users, who tended to be among the poorest and most vulnerable members of society, would not receive a share of the expected consumer benefits.[871]

A25.101 EE said that to the extent that any of Ofcom's proposals would operate any differently when a call was made from a payphone as compared to when the call is made from a landline or mobile phone, then the differences needed to be very clearly communicated to consumers (especially given the reliance by vulnerable customers on the use of payphones).[872]

A25.102 FTC said there were strong arguments for having special 'payphone only' NGC number ranges with special lower SCs being offered to permit telephone access to services at a reasonable cost, given that a high AC must be levied. It suggested that if individual (or blocks of) 03 numbers could be assigned as 'payphone only' then this could help address some of the problems related to fitting the unbundled tariff to the payphone situation.[873] Surgery Line said the cost of calls from payphones should be the same or less than a local rate call for socially important services.[874]

A25.103 Vodafone said it seemed that any technical limitation in relation to payphones was more likely to result in the requirement for per second billing beyond one minute in cases where payment denominations were limited by coinage. It said it was not clear what Ofcom was proposing in this respect so it reserved its position.[875]

A25.104 [✂] said it believed that payphones should be subject to the same regulation as all other call scenarios for simplicity and consumer transparency. It said that given the lack of a cap on the AC and the likely level of the AC, it should be sufficient for the payphone operator to recover its efficient costs, which it understood to be in the order of 18ppm on the basis of the current 080 Payphone Access Charge ('PAC').[876] Magrathea similarly did not agree that payphones should be allowed to set a minimum fee for non-geographic calls but said it was reasonable that an AC could be set from payphones at the level of the current PAC.[877]

Ofcom's response

A25.105 It is clear that there are significant costs involved with making changes to the tariff structures of payphones. Whilst we agree that it remains important for consumers to be clear about the charges from a payphone when calling a non-geographic number we consider that the level of costs involved with making technical changes to payphones mean that it would not be proportionate to require the implementation of

[870] BT, April 2012 consultation response, pp.22-23.
[871] DWP, April 2012 consultation response, Q12.9.
[872] EE, April 2012 consultation response, p.36.
[873] FTC, April 2012 consultation response, p.9.
[874] Surgery Line, April 2012 consultation response, p.8.
[875] Vodafone, April 2012 consultation response, p.32.
[876] [✂].
[877] Magrathea, April 2012 consultation response, Q12.9.

all the unbundled tariff principles on calls from payphones. We accept DWP's point that payphones are often used by vulnerable consumers, who will therefore end up paying higher charges. We also note Surgery Line's view that the cost of calling socially important services from a payphone should be the same as a local rate call. However, the costs of maintaining payphones are very high and therefore this inevitably will create higher call charges.

A25.106 We consider that BT's proposed approach to implementing the structure on payphones is likely to be appropriate in order to ensure that any socially important services using non-geographic numbers (e.g. 084 numbers) are still available from payphones. However, to apply some of the tariff principles of the unbundled tariff but not others (in particular the 100 SC price point minimum and structure of the AC which create difficulties for payphones) is likely to be unduly complex. Therefore we now consider it is appropriate to exclude payphones from all the requirements of the unbundled tariff. We have set out this exclusion in our proposed modifications to General Condition 17 (see Section 6).

A25.107 Nevertheless, we consider that it would be beneficial for payphone operators to adopt a similar charging structure for those NGCs that are unbundled where possible, in order to ensure that consumers experience a broadly consistent price structure (even if pricing is higher). For example we would expect the SC for a 084 number to be a similar to the allocated SC for that number as possible (within the restrictions on the number of price points available from payphones). We also note that payphone providers are required to specify the minimum call charge for connecting a call in the payphone itself and therefore consumers will be informed of the charge (or the equivalent AC at least) before making a call.[878]

A25.108 In terms of the transparency of pricing, payphone operators will continue to be subject to the requirements of General Condition 10 and we note BT has said it will undertake a number of actions to ensure NGC charges are made clear to payphone users. The additional transparency requirements which are included in General Condition 14 already exclude payphone operators and that exemption will remain in place.

A25.109 We note FTC's suggestion for a payphone only range. However, we note that would require SPs to advertise two numbers, one for calling from a landline or mobile and a separate number for those calling from a payphone. We consider that such an approach is unlikely to be practical and would cause significant additional cost to SPs and confusion for consumers. In any case, if an SP wanted to ensure a customer was not paying more for accessing its service from a payphone, there would be nothing preventing them from using use an alternative number (e.g. a geographic, 080 or 03 numbers) and advising customers to call that number when using a payphone.

Business contracts

Position in the April 2012 consultation

A25.110 We said we were open to considering whether exemptions to some of the constraints on the AC and SC should be allowed for business to business telephone contracts, given the concerns raised by some stakeholders on this issue. We noted that we needed to ensure that any exemptions were not allowed to affect the effectiveness of the proposed regulation in protecting consumers, and we might

[878] General condition 6.2(a)

therefore need to determine the nature/size of companies to which any exemption would apply.[879]

Stakeholder comments

A25.111 There were a number of different views expressed in relation to whether business to business contracts should be excluded from some of the constraints of the unbundled tariff. Some respondents did not believe that a specific exemption was required. BT, for example, said it could not see any reason why business to business contracts should be treated differently.[880] CWW said it was unconvinced that an explicit exemption extending beyond the typical commercial contracts between parties was required.[881] Action4 said it believed clarity was the best solution and the more complex the regime the greater likelihood of error, therefore it said there should be no exemptions.[882] Three similarly argued that any exemptions might make implementation more complex and might also affect consumers' understanding of unbundled tariffs if they faced different price structures in the retail and business context. In any case it considered that the duration of the implementation period would be adequate to allow providers of business telephony to churn onto contracts which foresaw the changes proposed, or for any renegotiation necessary for longer contracts to be concluded.[883]

A25.112 Vodafone said Ofcom would need to ensure that the transparency aspect of the proposals did not compromise the principle currently embodied in GC10 that bespoke or individually negotiated tariffs were not subject to publication requirements (on grounds of commercial confidentiality).[884]

A25.113 A number of other stakeholders, however, argued that an exemption for business to business contracts was necessary for some aspects of the proposals. [✂] said the implementation of the unbundled tariff was a binary decision – as a wholesaler it would be difficult to effectively run two billing systems together, one unbundling the other not. It therefore assumed that the unbundled tariff would apply to all NGCs as a concept regardless of the nature of the calling party. However, it said that as a general principle, business to business transactions should always be subject to a *caveat emptor* and in the enterprise market; the blind application of consumer or residential regulation could inhibit innovation and competition. It also urged caution in relation to the definition of how this applied, because the current construct within the General Conditions used number of employees which it considered was dangerous.[885]

A25.114 Virgin Media said that an obligation to levy a single AC per tariff package would inhibit the development of bespoke contracts and create uncertainty as to what amounted to a 'tariff package' in the context of those concerns. It said that CPs offering bespoke contracts to business customers might be forced to bear the additional burden and wasted resource of ensuring that each business customer was on a different 'tariff package' so that any negotiated differences in the AC did not contravene the regulation obligation. It encouraged Ofcom to consider a carve out for contracts for the provisions of telecoms services to entities failing outside the

[879] April 2012 consultation, Part B, Section 12, paragraphs 12.195 to 12.196.
[880] BT, April 2012 consultation response, p.24.
[881] CWW, April 2012 consultation response, p.28.
[882] Action4, April 2012 consultation response Q12.10.
[883] Three, April 2012 consultation response, p.19.
[884] Vodafone, April 2012 consultation response, p.32.
[885] [✂]

definition of ‘domestic and small business customer’ set out in General Condition 14. It said that carve out would ideally exclude the application of the restrictions associated with the structure of the AC, and any obligations to specifically draw customers’ attention to the AC or to publish the AC on bills.[886]

A25.115 TNUK agreed that it might be sensible to grant certain exemptions for business to business contracts from the strict requirements of the unbundled tariff. [✂].[887] [✂].[888]

A25.116 O2’s view was that larger business users were in a sufficiently well informed position to negotiate with OCPs. It believed that they did not need ‘protecting’ in the same way that consumers might. Therefore restrictions on commercial agreements between OCPs and large business users would be unnecessary.[889]

A25.117 EE said business customers could be expected to be more savvy in their awareness of call costs than residential customers, as well as being better able to negotiate with CPs offerings tailored to their particular business needs. It therefore believed that there was no consumer protection policy justification for applying the unbundled tariff or mandated free to caller principles to the tariff packages offered by OCPs to business customers. EE said it also doubted Ofcom had the legal powers to require this to be implemented for business customers. Its arguments in this respect (and our response) are set out in Annex 13.

A25.118 EE therefore believed that it was legally necessary that any Ofcom regulations on non-geographic numbers had to provide an exception giving OCPs the option to offer different tariffs to customers who wished to make calls to non-geographic numbers predominantly or exclusively for business purposes. It said this should be the case irrespective of the size of the relevant business customers’ business. From a policy perspective, it did not believe that this exemption would undermine the simplicity of Ofcom’s proposals or would confuse consumers. It noted that most OCPs offered published tariffs and plans that were specifically designed for business customers, as well as bespoke pricing packages and these co-existed comfortably with the other published retail offers that OCPs had for their residential customers. It said it could see no reason why the implementation of the unbundled tariff (or zero rated 080 calls) would change that dynamic.[890]

A25.119 Verizon said it would expect the OCP communications activities which Ofcom had outlined in the April 2012 consultation[891] would apply to residential rather than business customers and it asked Ofcom to confirm that. It said business providers tended to have a relatively small number of customers with whom they had a close relationship. It said such providers were therefore well-placed to determine, for each of those customers, the most appropriate way to communicate with them about the changes. Verizon also said it would expect Ofcom to remain willing to consider further exemptions or alternatives for business providers that might arise as further discussions progressed on the detailed implementation of the proposals.[892]

[886] Virgin Media, April 2012 consultation response, Q12.10.
[887] TNUK, April 2012 consultation response, p.47.
[888] [✂].
[889] O2, April 2012 consultation response, p.22.
[890] EE, April 2012 consultation response, p.37.
[891] Part B, Section 12, paragraph 12.98.
[892] Verizon, April 2012 consultation response, p. 7.

Ofcom's response

A25.120 There are two aspects to considering how the unbundled tariff relates to business to business contracts:

i) the transparency requirements relating to the publication of non-geographic call charges; and

ii) the tariff principles relating to the structure of charges for non-geographic calls.

A25.121 In relation to the transparency requirements, General Condition 10 already includes an exemption for bespoke contracts.[893] We are not proposing to amend or remove that requirement, therefore bespoke contracts will remain exempted. The additional transparency obligations set out in General Condition 14 ('GC14') related to non-geographic numbers currently only apply to CPs' domestic and small business customers. Our proposed modifications to both GC14 and General Condition 12 ('GC12' – related to itemised billing) setting out the transparency obligations on OCPs in respect of the AC will only apply to consumer customers (not to businesses of any kind, i.e. even small businesses which are currently captured by the requirements in GC14). As noted in Section 6, this means that where OCPs do offer different charging structures for their small business customers, then the requirements in Annex 2 to GC14 will still need to be met in order to ensure price transparency for those small business customers.[894]

A25.122 In relation to the tariff principles we have decided to implement for NGCs, we note some stakeholders have argued that a specific exemption is not required and we agree with the comments from the confidential respondent that the implementation in billing systems of the unbundled call structure is likely to apply to all calls. Separating out business calls is more likely to generate additional costs. However, this does not in itself provide justification for requiring the AC element to be structured in the same way for business contracts. As we set out in Annex 13, EE is correct that the powers we are using to implement the tariff principles for non-geographic calls are specifically reserved for the purposes of consumer protection. The evidence we have set out in Annex 8 of the consumer harm and the failures in the non-geographic calls market is largely related to residential consumers. The unbundled tariff structure has been designed to address this consumer harm and we do not consider that there is a basis for extending the remedy to businesses. As set out in Section 10 we have therefore decided that the unbundled tariff structure will only be required to be applied to calls made by consumers. Section 6 sets out our proposed modifications to GC17 and the Numbering Plan in this respect.

A25.123 Three have argued that an exemption could affect consumers' understanding of the unbundled tariff if they face different price structures in the retail and business context. However, we note that the fact that business calls are outside the scope of the regulatory changes we are making does not prevent OCPs from structuring calls in the same way if they consider that would benefit their business customers.

[893] General Condition 10.1 states that "The Communications Provider shall ensure that clear and up to date information on its applicable prices and tariffs (which for the avoidance of doubt shall not include bespoke or individual prices and tariffs), and on its standard terms and conditions, in respect of access to and use of Publicly Available Telephone Services by End-Users is published in accordance with paragraphs 10.2 and 10.3".

[894] For these purposes, a "small business customer" is a customer with ten or less employees (or volunteers).

A25.124 In terms of Verizon's comment, the changes to the retail charging of non-geographic calls do not apply to business customers. However, we note that given there will be significant publicity about changes to call charges for non-geographic numbers, business customers may expect some clarification of the impact on their charges – but this is a matter for the CP to determine.

Timescales

Position in the April 2012 consultation

A25.125 We said in the April 2012 consultation that the key to the timing of any changes was the capacity of OCP billing systems to accommodate the AC/SC charging structure. We noted that whilst it was possible for some OCPs to undertake this immediately, we recognised that for some OCPs it could only be accommodated as part of their current proposed billing replacement programmes, which we understood to be broadly expected to complete by the end of 2013. Accordingly we considered that any implementation of the unbundled tariff should be undertaken no earlier than January 2014.[895]

A25.126 We also considered that the contractual renegotiations and communications between wholesale and retail providers should take no longer than 18 months. We said that in the interests of consumers, implementation should be undertaken as soon as technically possible. We therefore proposed that a period of 18 months should ensure that implementation was technically and commercially feasible.[896]

Stakeholder comments

A25.127 The majority of respondents, including SPs (e.g. DWP, Action4[897]), OCPs (e.g. Three, Vodafone, Sky, SSE[898]) and TCPs (e.g. Magrathea, Verizon[899]), agreed that an 18 month timescale for implementation was reasonable and necessary.

A25.128 Some stakeholders, for example Citizens Advice and FTC, commented that, given the identified detriment to consumers, there was a certain urgency to implementation. However, these stakeholders also accepted that given how comprehensive the changes were, and the logistical challenges that implementation would entail, a reasonable time period would be required. Citizens Advice said it would expect 18 months to be the absolute maximum implementation period.[900]

A25.129 BT said it was keen that any changes were implemented as soon as practical, so that it was treated the same as other CPs, thus avoiding any consumer confusion. It considered that there were a number of options Ofcom should explore to ensure that implementation timescales were minimised, in particular it proposed that the Freephone proposal was uncouple from the unbundled tariff proposal. It said there could be some benefit from separating the two, distinct proposals, e.g. if one

[895] Note that there was a typographical error in the April 2012 consultation, instead of January 2014 we stated 2013.
[896] April 2012 consultation, Part B, Section 12, paragraphs 12.201 to 12.220.
[897] DWP, April 2012 consultation response, Q12.11. Action4, April 2012 consultation response, Q12.11.
[898] Three, April 2012 consultation response, p.19. Vodafone, April 2012 consultation response, p.32. Sky, April 2012 consultation response, p.5. SSE, April 2012 consultation response, Q12.11
[899] Magrathea, April 2012 consultation response, Q12.11. Verizon, April 2012 consultation response, Q12.11.
[900] CAB, April 2012 consultation response, p.5.

element was delayed the other was not. It also suggested that the increase in the PRS cap could be implemented as soon as possible to encourage swifter investment in innovative charitable and commercial services. In addition it said Ofcom should continue to work closely with industry to find a practical design that did not complicate implementation or migration. It said that ideally that work should be completed in time for inclusion in Ofcom's final statement.[901]

A25.130 FTC also noted that the proposals were radical and so it was vital that they were correctly implemented. It also said it was imperative that any unintended effects were spotted early and necessary corrective action was taken where possible. It said this required recognition that final determinations on some aspects might require a brief pause for reflection whilst the process was underway, and once the final timetable was set, it had to include appropriate flexibility.[902]

A25.131 A number of other stakeholders said that it was still difficult to provide a view on necessary timescales because some of the details of the proposed changes were not yet agreed. For example, Surgery Line said, whilst in principle it believed that 18 months was an appropriate implementation period, it said that further clarity on the proposed changes would confirm that.[903] BT said it was difficult to comment precisely on the time needed to implement the unbundled tariff as there were practical issues regarding implementation that needed to be resolved. However, it said it believed 12 to 18 months was more than enough time to allow for system process and contractual changes, along with consumer communications. It said this assumed that sensible solutions were found to the migration issues it had highlighted.[904]

A25.132 UKCTA said it was difficult to provide accurate estimations of impact and timescales without a full understanding of the regulatory framework under which CPs were to operate. It still believed that further work was required to consider the implications of the costs of implementation and the impact that might have on the current proposed implementation timescales.[905] [✂].[906]

A25.133 Some stakeholders also noted that there remained some areas where the outcomes were dependent on industry agreement or discussions, which created further uncertainty. CWW said that some of these were unlikely to be resolved without Ofcom intervention. It said that because this represented a fundamental building block for all subsequent activity with customers, Ofcom had to be prepared to act swiftly and intervene where necessary in order to achieve even an 18 month implementation timescale.[907] [✂] said it would reserve judgement on whether 18 months was a sufficient timescale until after detailed discussions on the communications plan, as well as assessing how likely industry was to reach consensus on areas where Ofcom required it to negotiate.[908]

A25.134 THA agreed that 18 months was a reasonable implementation period. However, it said that helplines might need the majority of this time to weigh options, make decisions and raise funds to cover costs. It said that if the timeframe was slowed due to industry disputes, indecision on price points or delays due to other

[901] BT, April 2012 consultation response, p.25.
[902] FTC, April 2012 consultation response, p.9.
[903] Surgery Line, April 2012 consultation response, p.7.
[904] BT, April 2012 consultation response, p.25.
[905] UKCTA, April 2012 consultation response, p.12.
[906] EE, April 2012 consultation response, pp.37-38.
[907] CWW, April 2012 consultation response, p.28.
[908] [✂].

negotiations, the helpline sector would still need time to react. It said that a minimum of 10 months should be given to implement these changes after the industry is in a position to inform on the cost implications for each existing number.[909]

Ofcom's response

A25.135 As set out in Section 10 we are setting an implementation period of 18 months from the date of our final statement on the proposed changes to the legal instruments. We agree that, given the consumer harm in this market there is a certain urgency to ensuring that implementation takes place as soon as possible. However, given the scale of changes that are required, 18 months is necessary to enable all the relevant parties involved in the provision of non-geographic calls to have sufficient time to undertake all the required actions.

A25.136 We note some stakeholders have commented that it is difficult to provide a view on timings given that some details of the unbundled tariff were still to be resolved and others noted concern that some aspects required industry discussions, which might require Ofcom intervention in order to be resolved in a timely manner. We consider that the April 2012 consultation set out a reasonable level of detail about how the unbundled tariff would operate and we are, for the most part, intending to adopt the same proposals that were set out in that consultation. There are a number of more detailed aspects of the structure which is more appropriate for industry to establish its own process for managing, for example the approach to SC price point changes and opening up of number ranges. We intend to be closely involved throughout the implementation process to ensure that where issues do come up, they are dealt with quickly.

A25.137 We have discussed our approach to implementation in more detail in Section 5, including timetables and when we consider certain actions should be undertaken. We agree with THA's comment that it is important for SPs to have sufficient time to make decisions about whether they want to remain on a certain number range. Our timetable therefore indicates an aim for when SC price points will be agreed upon, to ensure that SPs can be informed of the impact of the changes on their particular business models earlier on in the implementation timetable.

A25.138 We have discussed BT's proposal for earlier implementation of the Freephone proposal in Annex 31 and its suggestion to increase the PRS cap earlier in Annex 22.

Other implementation issues

A25.139 We also received comments from stakeholders on a number of other implementation issues which were not covered directly in the April 2012 consultation. We have set out these comments, and our response, on each issue below.

Narrowband Market review

Stakeholder comments

A25.140 CWW and UKCTA called upon Ofcom to take action immediately to assure stakeholders that if there was a gap between the existing call origination condition

[909] THA, April 2012 consultation response, p.18.

(at the end of the current Market Review cycle in September 2013) and the commencement of the new NGCS unbundled tariff regime, steps would be take to ensure continuity with the existing regime remaining in place until such time as the new unbundled regime took over. It noted that continuity was essential for the services operating on NGCS and any gap would undoubtedly result in a series of disputes, distracting both Ofcom and CPs and creating commercial uncertainty which could otherwise be avoided.[910]

A25.141 BT also noted that the NTS Retail Uplift and PRS Bad Debt charge controls were due to expire in September 2013 but that the unbundled tariff was unlikely to come into effect until mid-2014, leaving a gap of around nine months. It said there were various options that could be considered to address that gap which it would like to review with Ofcom.[911]

Ofcom's response

A25.142 We can confirm that we will be taking actions address the gap between the expiration of the charge control in September 2013 and the implementation of the unbundled tariff. On 5 February we published a consultation on our fixed narrowband market review.[912] In that consultation we propose to set an RPI based price ceiling on BT's retail uplift until the unbundled tariff is implemented (in particular we propose to set the price ceiling at current levels plus RPI and to remove the upward glidepath which is currently included). We also propose to maintain the imposition of the current PRS Bad Debt surcharge at its current levels until the unbundled tariff is implemented.[913]

A25.143 The narrowband market review consultation closed on the 2 April and we will take account of stakeholder responses before coming to a decision on the appropriate approach.

Contracts and General Condition 9

Stakeholder comments

A25.144 Sky, TalkTalk, Virgin Media and UKCTA outlined concerned about Ofcom's approach to General Condition 9.6 (which requires OCPs to give customers 30 days notice of any contractual change that is to the customers' material detriment and to allow the customer to leave without penalty if that change is not accepted).

A25.145 These stakeholders said Ofcom's statement that the 18 month implementation period would allow OCPs to notify the majority of their customers of changes prior to the end of their contracts missed the point. Virgin Media, for example, noted that it was likely that the ACs and SCs would not be known until quite close to the deadline by which implementation was required. It therefore did not consider that the 18 months implementation period was relevant to this issue.

A25.146 In particular these stakeholders raise two concerns:

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[910] CWW, April 2012 consultation response, p.28. UKCTA, April 2012 consultation response, pp.10-11.
[911] BT, April 2012 consultation response, p.25.
[912] *Review of the fixed narrowband services markets,* 5 February 2013 http://stakeholders.ofcom.org.uk/consultations/nmr-13/
[913] See in particular paragraphs 5.280 to 5.292 of the Narrowband MR February consultation.

i) that an OCP was being subjected to a regulatory change which might force them to raise their retail prices. For example, a single AC per tariff package might mean OCPs would be forced to raise the price of calls to lower rated numbers (08 in particular) in order to maintain their overall retail margin. They said based on the current wording of GC9.6 this might well constitute a material detriment which would affect a large proportion of a CP's customer base and they argued it was unreasonable to effectively require CPs to release customers from their minimum term contracts simply as a result of a regulatory change.

ii) TalkTalk, Virgin Media and UKCTA also noted that this was not just a transitional issue. The envisaged regime whereby an OCP would be required to pass through the SC to their customers means that the OCP would have to increase their retail price every time a particular SC increased in price. They believed that, technically, under the current wording of GC9.6, such a retail price increase might constitute a material detriment change which would trigger the customers' right to leave without penalty. They said this was unreasonable, and an OCP should not be held responsible under GC9.6 for pricing decisions by third parties over which the OCP had no control whatsoever.

A25.147 TalkTalk and UKCTA believed that Ofcom had to either change the wording of GC9.6 (which it said was preferable because it offered complete legal certainty) or at the very least clearly state that it does not expect OCPs to follow GC9.6 in the above circumstances.[914] Sky said that Ofcom needed to work with industry to ensure that a more appropriate and fair (for both consumers and CPs alike) accommodation of the proposed regulatory changes was provided for.[915] Virgin Media also asked Ofcom to provide some clarity on this issue.[916]

Ofcom's response

A25.148 The application of GC9.6 to modifications to contract terms which a CP may make in implementing the unbundled tariff will depend on a variety of factors. It is not possible at this stage to identify with any certainty those factors nor to provide definitive guidance as to whether or not the interaction of these factors will be likely to give rise to material detriment so as to trigger the subscriber's right of withdrawal under this condition. Therefore our response on the issues raised by respondents on the application of GC9.6 sets out some broad principles which is intended to provide general guidance for CPs. However, it will be for CPs themselves to determine on a case by case basis the extent to which GC9.6 is engaged by changes they make to the contract terms of their subscribers.

A25.149 As a general observation, we expect CPs to consider on publication of this statement to consider how and when they should communicate to existing and new customers the changes to the structure of retail prices for calls to non-geographic numbers which we are making. We encourage CPs to make good use of the 18 month implementation period that we are providing to inform their customers of the changes and not wait until the last minute before doing so. Given that these changes are being made for the protection of consumers, we do not think that the modifications that CPs will have to make to *the structure* of their retail prices for calls to non-geographic numbers will constitute modifications likely to be of material detriment to a subscriber and therefore subject to GC9.6.

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[914] TalkTalk, April 2012 consultation response, p.3. UKCTA, April 2012 consultation response, pp.11-12.
[915] Sky, April 2012 consultation response, p.5.
[916] Virgin Media, April 2012 consultation response, Q12.1.

A25.150 In relation to *the amount* which a subscriber has to pay we have explained why we do not consider that the unbundled tariff should lead to increased retail prices for non-geographic calls overall in Annex 20. We accept, nevertheless, that 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 (albeit that our analysis suggests that these will represent only a small proportion of the overall picture on unbundled tariff charges). 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 since this could offer an opportunity for OCPs to impose unreasonably high ACs on customers that are signed up to long-term contracts. We want to encourage competition and the potential application of GC9.6 should facilitate this.

A25.151 That said, we think there are limitations to the application of GC9.6 in this context which are relevant to the concerns that stakeholders have raised. We set these out below for the purpose of providing general guidance to stakeholders on this issue. Individual modifications potentially subject to GC 9.6 can, however, only be considered on a case by case basis.

A25.152 First, where a price rise is attributable to the level of the SC selected for that number, we do not consider that generally there will be a modification likely to be of material detriment to the consumer, given the requirements that the SC cannot vary by OCP and must be incorporated in full in the retail price payable for calling that number.[917]

A25.153 Second, where the increase is attributable in whole or in part to the level of the AC, the CP will need to assess whether that increase represents 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 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.

A25.154 We are, however, currently consulting on amendments to the wording of GC9.6.[918] Our preferred option is to amend the wording of the condition to require that CPs shall give one month's notice to their subscribers of all 'price modifications' as well as allowing them an opportunity to withdraw from the contract without penalty. We have proposed that a 'price modification' should be defined as follows:

> "an increase in the price payable in exchange for any Electronic Communications Service which the Communications Provider has agreed to provide to the Subscriber under a contract, including any modification which has the effect of increasing the unit price of any

[917] Different considerations may apply if, post-implementation, the CP ceases to include the calls in its bundles but they remain within the bundles of other providers. Another exception may be where the SC in question relates to a service provided by the CP which is directly related to the electronic communications service which the CP is providing under contract (for example, a consumer helpline) and therefore will be primarily incurred by that CP's subscribers.

[918] On 3 January 2013 we published a consultation entitled *Price rises in fixed term contracts*; *options to address consumer harm* ('the GC9 consultation'), which is available here: http://stakeholders.ofcom.org.uk/consultations/price-rises-fixed-contracts/.

such service from the price agreed at the time the contract was entered into, but excluding any increase comprising only an amount equal to any charge imposed directly and specifically by changes in legal or regulatory requirements compliance with which by the Communications Provider is compulsory"[919]

A25.155 This modification is intended to curtail the extent to which CPs have discretion in relation to the application of that condition and to enhance the protection for consumers on fixed term contracts from price increases.

A25.156 If we decide to modify GC9.6 following the current consultation, we will consider for the purposes of the statement that sets out that decision whether additional clarification on how the condition might apply to the introduction of the unbundled tariff should be given.

Rounding

Stakeholder comments

A25.157 EE noted that one point which was not clearly covered in Ofcom's proposals was the need for the advertised SC to match exactly the SC that was billed by the TCP to the OCP (i.e. rounded to the same number of decimal places). It noted that otherwise there was a risk of both consumer confusion and OCP commercial exposure. It stated that the legal instruments should appropriately cover this issue.[920]

A25.158 BT said that clear rules were needed to ensure that the consumer was charge the correct price and the SP was passed the correct level or revenue. It said there were a number of possible ways of setting the rules:

i) **The AC and SC rounded independently** (i.e. the OCP sets it own price rounding for the AC and the TCP will have its own rounding approach for the SC): BT said this was the most flexible option and would allow the SP to advertise the SC correctly as well as allowing the SC to be accurately collected by all OCPs for payment to the TCP;

ii) Industry-wide duration rounding rules: BT said Ofcom would need to set duration rounding rules for each price point under this option and it would apply to the cumulative AC and SC cost, and be applied by all OCPs. It said this would make it simpler for consumers to understand, particular if the charges were not presented separately on the customer's bill. It identified a number of sub-options under this approach:

- The TCP sets a price rounding on the SC, which flowed through the interconnect settlement. However, the SP could not advertise that rounding because it will not necessarily be collected by the OCP, and the OCP may over or under collect the SC due to the effect of the OCPs' cumulative rounding.

[919] See Annex 8 of the GC9 consultation.
[920] EE, April 2012 consultation response, p.25.

- o Ofcom will mandate that there is no price rounding applied to the SC and it will be set to millipence rounded 'mathematically' (up/down to the nearest milli-pence). BT said this would mean the SC would always be over collected due to the OCP rounding but there was no risk of the OCP being out of pocket as with the above option; or

- o The same as the second option above, but the OCP pays the additional SC money collected due to rounding to the TCP. It noted that this would mean the OCPs retail pricing would influence the SC payment, meaning the TCP must know who the OCP was for each call, and in the case of transit calls this was an issue.

BT said that only the second option appeared practical but even that had some drawbacks and if OCPs were to present separate AC and SCs on the customer bill it would be complicated for the customer.

iii) **No rounding at all:** call duration or the AC and SC would be to the nearest 10 milli-seconds (the granularity on call records) and price for both to the nearest milli-pence. BT said this would still create an issue because a consumer's bill would have to be at the granularity of the currency, i.e. the smallest denomination of sterling was one penny. So there would still need to be rounding for the price of the call, which came back to option (ii).[921]

Ofcom's response

A25.159 We consider that the rounding of the AC element of the call should largely be left to the OCP's commercial discretion, so long as it is made transparent to consumers and is in accordance with the requirements of General Condition 11 on metering and billing.[922] We have included an allowance for OCPs to round up the AC to the first minute if required (see Section 9) but it will be up to OCPs to determine what they consider is an appropriate approach to rounding the AC for their customers. However, in relation to the rounding of the AC after the first minute we have proposed in our amendments to GC17 (see Section 6) that the rounding approach should be the same as the OCP applies to other call types. As set out in Section 10 (see paragraph 10.50), some stakeholders have already indicated that they apply the same rounding methodology to all call types (as this reduces ongoing costs of billing) and we consider that a consistent approach is likely to be beneficial to consumers, whilst still maintaining some flexibility and commercial discretion for OCPs.

A25.160 The question of how the SC is rounded is slightly different, however, because the OCP is passing on the SC and therefore there is a requirement for it to be billed precisely and consistently across OCPs, both in terms of the amount of revenue which is passed to the TCP/SP and what the customer expects to be billed. Customer expectation is a particular issue when it comes to some of the higher rated non-geographic numbers, for example if a consumer makes a one and a half minute call to an 09 number that costs £3, they might expect to be charged £4.50, however, if the call is in fact rounded up to the nearest minute, they will be charged £6. The also applies to the revenues that a TCP/SP expects to receive for calls to its number. We consider that the SC payable to the TCP should always be the full

[921] BT, April 2012 consultation response, p.35.

[922] General Condition 11 requires CPs to ensure their bills to consumers are accurate (http://stakeholders.ofcom.org.uk/binaries/telecoms/ga/general-conditions.pdf) and in compliance with the Metering and Billing Direction (http://stakeholders.ofcom.org.uk/telecoms/policy/metering-billing/)

pass-through of the amount paid by the caller. The payment made by the OCP should reflect the full amount charged to the customer on their bill and the OCP should neither be disadvantaged nor able to make additional profit from the SC.

A25.161 The issue of rounding was discussed at the NGCS Focus group on 6 September.[923] Following that discussion we sent a set of questions to the group which asked for information on the potential impact of different approaches to the rounding of the SC. In particular we asked about three different options, which were similar to those outlined by BT in its response to the April 2012 consultation:

a) No rules applied to the rounding of the SC;

b) A standard approach applied to all SC price points, e.g. per second rounding applied to all SCs; and

c) rounding requirements specified as part of individual SC price points, which means that multiple rounding methodologies may be required (e.g. per second, per minute, half minute rounding etc).

A25.162 We received seven replies from both TCPs and OCPs.[924] The responses indicated that options a) and c) were unlikely to be practical. Option a) could raise disputes between OCPs and TCPs/SPs because different SPs might expect different amount of revenues depending on how they expected their SCs to be rounded. The responses on option c) indicated that this could create significant additional costs for OCPs because it would exacerbate billing complexity, for example by increasing the amount of manual configuration required to specify different rounding methodologies to different number ranges.

A25.163 Therefore it appears clear that option b) carries the least impact in terms of additional billing costs and risk of disputes. Most OCPs indicated that this approach would in fact create little or no additional impact. [✂] said that it regarded this approach as “a continuation of current practice and it represents the universally accepted practice under existing wholesale interconnect agreements”.

A25.164 We also note that this approach will also assist with the communication of the SC as the charge will be treated consistently by all CPs for all number ranges and the message to consumers will be clear and unambiguous.

A25.165 Consequently, we consider that this is the most appropriate approach and we have set out proposed modifications to GC17 to achieve this in Section 6. The SC should be billed on a per second basis and rounded up to the nearest second. Where an SP wanted to be able to round its calls up to the nearest minute, it will have the option of different charging structures of the SC as an alternative, for example a pence per call amount charged for the first minute, followed by a pence minute amount thereafter.

A25.166 Some respondents indicated that Ofcom should specify the exact maximum rounding methodology, i.e. the number of decimal places to which the SC is rounded. We consider that, given that existing wholesale interconnect contracts have been able to establish rounding approaches without the need for Ofcom intervention, and given the level of consensus that this represented the most appropriate approach in the responses we received, it is not necessary for Ofcom to

[923] http://stakeholders.ofcom.org.uk/binaries/telecoms/groups/nts/6_September_2012.pdf
[924] [✂].

intervene specifically and set a specific requirement in this area. We consider it is more appropriate, and would enable greater flexibility for CPs in managing changes to their billing systems to consider exactly how the per second rounding approach is applied.

A25.167 In terms of the question about whether the AC and SC elements are rounded independently, or separately, the key issue is that consumers are clear on what they are being charged, and TCPs/SPs receive the SC amount they expect based on the length of the call. Information we have received from industry stakeholders suggest that the majority of OCPs will have the capability to round the AC and SC elements of the call separately. This means that the SC should be rounded in accordance with the principles set out above (i.e. on a per second basis) and the TCP will always be passed the exact SC that has been billed to the customer as per our proposed modifications to GC17 (see Section 6).

A25.168 There were, however, two respondents who indicated that they might not be able to round the AC and SC elements separately in their billing systems.[925] These OCPs might, as a result, round up the two elements once they have been added together. However, this would raise issues if it led to the OCP over-collecting the SC. The OCP will therefore need to consider the most appropriate approach to ensure that it is meeting the requirements set out in GC17. For example it is unlikely to be appropriate for the OCP to round up the sum of the AC and SC for a particular NGC to the first minute, but then only pass on the SC as rounded up to the nearest second.

Minimum Call Duration

Stakeholder comments

A25.169 BT said it was concerned that it was possible for fraudulent SPs to set up a call dialler which made repeated hyper short calls. The call duration was such that the call terminated before the retail charge for the call was triggered but not before a termination charge was recorded. Therefore, it said it paid the TCP for termination whilst receiving no money at the origination point. BT said that setting minimum call durations before termination charges could be triggered removed that risk. It suggested that this should be considered.[926]

Ofcom’s response

A25.170 This issue was discussed at the NGCS Focus group on 6 September 2012.[927] The discussion there indicated that there was a potential issue in relation to these hyper-short calls. However, it appeared from the discussion that it was an issue which was related to all calls, not just non-geographic numbers and therefore we considered that this review was not the appropriate forum for considering options to address the problem. The group agreed that it would be discussed further at an industry level to establish whether there were any industry-wide solutions which could be developed.

925 [✂].
926 BT, April 2012 consultation response, p.37.
927 http://stakeholders.ofcom.org.uk/binaries/telecoms/groups/nts/6_September_2012.pdf

Migration to the new scheme

Stakeholder comments

A25.171 BT noted that currently operator termination rates could only be changed by either party issuing an Operator Charge Change Notice ('OCCN') to which the other party agreed. The new rates did not become binding until that had been done. BT noted that the process led to many disputes. For the unbundled tariff, BT said it was not yet clear whether it would be appropriate for BT to issue OCCNs or for other CPs to do so. It noted that often many smaller CPs failed to acknowledge or return OCCNs, which could impede a smooth transition. It said that for all concerned, it was imperative that it was able to move clearly to the new model with all players signed up and agreed to all rates from the date of implementation. BT also noted that contractual changes would require detailed discussion and negotiation between BT and industry. It noted that none of this should present a barrier to migration but noted it would take time to move to any new regime.[928]

Ofcom's response

A25.172 We note BT's comments and agree that the exact process for managing changes to termination rates will need to be further discussed within the industry. As set out above in relation to the processes for number range building and changes to SC price points, we are encouraging further development of such processes and we will help facilitate those discussions where necessary. We expect such issues to be resolved during the 18 month implementation period.

[928] BT, April 2012 consultation response, p.38.