BT's response to Ofcom's consultation

"Simplifying Non-Geographic Numbers"

27th June 2012

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1. Executive summary

We welcome Ofcom's proposals for non-geographic call services ("NGCS"). The introduction of a new unbundled pricing model will benefit all parties – the calling consumers, network operators and service providers.

Whilst the retail narrowband market is deregulated[1], we understand the need for new regulatory rules that apply to all Communication Providers ("CPs"). The current regulatory restrictions that apply solely to BT are not working. Without change the current market failures will only worsen (see section 2).

The unbundled model breaks the link between retail and termination charges. Coupled with proposals to bar bespoke termination arrangements and cap service charges there should be no need for specific wholesale remedies on BT.

The proposals will improve price transparency and allow consumers to see the cost of the call before it is made. In turn, this should stop consumers being charged excessively and allow them to see who is responsible for each part of the call cost. This is a great advance on the current consumer experience and should improve satisfaction, confidence and subsequently demand for NGCS services (see section 3).

It is essential that the rules governing the unbundled model are clear at the outset and are flexible enough to allow price competition and innovation. The rules will help all of industry comply with a common and practical framework. Any actions that distort price transparency should be avoided as these could undermine the aims of the new scheme and impact the value of NGCS services for all involved.

We support the principle of making 080x calls free to call from mobiles, as it will benefit consumers through reduced prices. However, we believe Ofcom has underestimated the potentially serious impact higher mobile origination charges will have on the Freephone market and payphone usage. We believe mobile origination charges should be based on a lower value of LRIC+ (see Annex 5).

We are keen that any changes are implemented as soon as practical to ensure all CPs are subject to the same rules. We think there are a number of options that Ofcom should explore so that implementation timescales are minimised (see section 6), including:

[1] Ofcom's 15 September 2009 statement on "Fixed Narrowband Retail Services Market" concluded BT no longer had SMP as the market was fully competitive.
http://stakeholders.ofcom.org.uk/binaries/consultations/retail_markets/statement/statement.pdf

- Decoupling the 080x free mobile calls from the unbundled proposals
- Implementing an increase in the PRS cap as soon as possible.

Finally, Ofcom should continue to work closely with industry to find a practical design that does not complicate implementation or migration (see Annexes 1 and 2).

2. Rationale for change

Ofcom's analysis of market conditions shows the existing NGCS regime is failing to deliver either industry stability or consumer satisfaction. As Ofcom notes[2], this is because regulatory changes made in the past have been unsuccessful. We agree that a more wide-ranging review is needed.

We believe that Ofcom's proposals for a new unbundled pricing model will address the problems identified as regulation will be applied to all CPs in a consistent and transparent way. This should ensure that call pricing is clearer, allowing consumers to make an informed purchase decision. This should improve consumer confidence and increase demand, which in turn we hope will reinvigorate the market and allow Service Providers ("SPs") to innovate.

We discuss this in more detail in our answers to Ofcom's questions.

Q4.1 Do you agree that the analysis set out in Section 4 and the supporting annexes which draws on our initial assessment in the December 2010 review, stakeholder comments and the further research undertaken in 2011, appropriately characterises the market, the market failures and the effects on consumers? If not please set out your alternative views.

Retail market concerns

We agree with Ofcom's analysis regarding the source of the market failures. The consequences of these failures impact every stage of the value chain and it is good to see that Ofcom has looked at the concerns of each of the parties involved. Specifically:

- **Reduction in demand** – we agree that a lack of pricing transparency is a key issue and this has led to consumers overestimating the price of an NGCS call. This has suppressed demand as is particularly clear in the mobile market[3].

- **Lack of service diversity and innovation** – we agree SPs have little or no control over how their service is priced as individual Originating Communication Providers ("OCPs") set their own call charges, which may be in excess of the advertised price. For example, a call to 0844 335 number costs 5p per minute from a BT line. However, a mobile operator may charge 25p per minute for the same call from their network. The inability to price accurately impacts consumer demand and subsequently SPs' revenues. As a result, there is no incentive for SPs to invest in innovative new services.

[2] Paragraph 3.122 of Ofcom's consultation
[3] Footnote 257 of Ofcom's consultation: 25% of 08/09 call minutes from a mobile compared to 49% of all call minutes from a mobile

In addition, the restrictions on the number of price points offered by mobile operators constrains a SP's opportunity to price competitively. We agree with Ofcom[4] that it is difficult for SPs to negotiate bilateral deals with OCPs due to the volume of contracts that need to be negotiated.

- **Relative prices of NGCS and geographic calls don't reflect consumer preferences** – the current regulation has affected how calls are priced and this may discourage pricing efficiency. We believe consumers are seeking alternatives. For example, the online campaign, Say No To 0870, shows that consumers do want the service but not at the price their CP is offering.

- **Loss of access to socially important services** – we agree with Ofcom's concerns that call prices are deterring some customers from calling. This is because many vulnerable customers only have a mobile phone and are therefore subject to much higher mobile call prices.

- **Fraud** – fraud can and does happen on a variety of number ranges, but is dealt with more effectively on some ranges[5]. We therefore disagree that it is limited to just 070 and 076 numbers.

- **Trends in consumer confidence and call volumes** – we disagree with Ofcom's statement that things are not worsening. NGCS call minutes[6] have fallen ✂.

<u>Wholesale market concerns</u>

We agree with Ofcom that if the failures at the retail layer can be fixed there will be positive consequences for the entire marketplace[7]; the market failures identified are not a result of wholesale arrangements. The current regime is based on BT's regulatory obligations and is fraught with problems.

The paradox of the current regime is that the NTS Call Origination Condition is a remedy set against BT's wholesale market position, but actually constrains BT's retail market. The retail market was deregulated in 2009, following Ofcom's decision that we no longer have significant market power.

Ofcom's unbundled proposal breaks the explicit link between retail prices and termination charges. Coupled with a bar on bespoke termination arrangements and capped service charges this should ensure that consumer needs are protected without the need for specific wholesale remedies. This means that the NTS Call Origination Condition can be removed. This will allow us to compete on a level playing field.

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[4] Annex 20 of Ofcom's consultation
[5] For example 09 numbers where PhonepayPlus stipulate when monies can be paid to the SP and enforce sanctions for breaches of their code of practice. These remedies have been effective in reducing fraud.
[6] BT Retail Consumer figures
[7] Paragraph 4.79 of Ofcom's consultation

Hosting services

We agree with Ofcom that the market is competitive and that there are no major problems in how it operates.

Q5.1: Do you have any comments on our Equality Impact Assessment? In particular do you agree with our view that our proposals for changes to non-geographic numbers are likely to have an overall positive impact on the equality groups identified in Annex 15?

We agree that the proposals for a new pricing regime will benefit the equality groups identified. The changes should be particularly helpful for vulnerable consumers who only have a mobile phone. The changes should improve access to socially important services run on 08 numbers and introduce a set of prices that reflects consumers' needs.

3. Assessment of the unbundled model

We agree with Ofcom's conclusion that the unbundled pricing model is the most appropriate, see our response to Question 9.1 below.

There are a number of practical issues to be addressed to ensure the final design is workable. For example, the means by which the access and service charges will be set. We cover these in our response to Ofcom's questions. See Annex 1 for full details.

Q9.1: Do you have any comments on our assessment, and in particular the additional evidence (gathered since the December 2010 Consultation) which we have used to support our assessment, on our provisional conclusion that the unbundled tariff should be applied to the revenue-sharing NGC number ranges?

We agree with Ofcom's assessment that the unbundled option is the most effective in addressing the consequences of market failure. Ofcom's evidence clearly demonstrates that a new set of pricing rules, which applies to all CPs, is needed. The unbundled model will break the link between OCPs and Terminating Communication Providers ("TCPs"), splitting the call cost into two parts. This will allow the consumer to see what they are paying their calls provider (the "Access Charge" or "AC") and what they are paying the service provider (the "Service Charge" or "SC").

We agree with Ofcom that "*the risk of regulatory failure is much lower for the unbundled tariff than for the maximum price option*[8]*".* This is because it is less interventionist and allows competition to set retail charges, whilst, at the same time, clearly sets rules for wholesale charges. This lessens the potential for termination rate disputes. In our view, the unbundled model specifically addresses:

- **Consumer price awareness/transparency** – price advertising that is simple to understand and implement will mean consumers can make a more informed decision about whether to call. The SC would be the same regardless of whether the consumer used their fixed or mobile phone to make the call

- **Efficient prices** – clear advertising of the AC will encourage competition and put downward pressure on prices

- **Vulnerable consumers** – many of these customers only have a mobile phone and will benefit from improved pricing transparency and access to socially important services at a more reasonable price

[8] Paragraph 9.147 of Ofcom's consultation

- **Service innovation** – if consumer confidence is improved through greater transparency, demand should incentivise SP innovation and investment

We are pleased to see that Ofcom has included the 0845 and 0870 ranges in the unbundled model with the other NGCS revenue share ranges. This will make the changes consistent and therefore much simpler for consumers to understand.

Q10.1: Do you agree with our proposal that the AC should be allowed to vary between tariff packages but that OCPs should be subject to a tariff principle permitting only one AC for non-geographic calls? If not please explain why.

We agree with the proposal as this will allow OCPs to treat the AC in a similar manner to geographic calls. Treating them in this way will let consumers make a competitive decision based on the main calls package without having to look for specific information on NGCS calls.

The ability to vary the AC across packages will allow OCPs to set an AC that covers their costs for individual customer groups.

We are concerned that some unscrupulous OCPs may change their AC prices too frequently, for example weekly. This will confuse consumers, leading to the disadvantages listed in our response to Question 4.1. We suggest that the AC rules address this possibility.

Q10.2: Do you agree with our proposed structure for the AC, in particular that: (i) that the AC should be a pence per minute charge only, but can be subject to a minimum one minute call charge; (ii) that the AC should not vary by time of day; and (iii) that the AC can be included as part of call bundles/inclusive call minutes provided that inclusion does not differentiate by number range? If not please explain why.

We are keen that the AC rules are simple and that ACs are treated like any other call. This will aid consumer understanding and encourage competition.

(i) AC pence per minute ("ppm") only – we think that a 1 minute minimum call charge is insufficient. Instead, we think there is a case to keep existing Set Up Fees on relevant calls. By retaining these CPs can maintain a simple pricing structure that consumers are familiar with and is standard across all call types. In addition, a pence per call ("ppc") AC is needed to ensure these types of calls (e.g. votes, competition entries) are treated consistently across both the AC and the SC.

(ii) We disagree. We think the AC should vary by time of day and day of week. This is standard industry practice and will allow us to treat the AC charge in the same way as other calls.

(iii) We agree that the AC can be included in packages. However, CPs should have the pricing flexibility to choose which ACs is included, as per the proposal for SCs. This would be in line with how CPs currently price e.g. 0845 and 0870 are included in many call packages but other NGCS numbers are not. In addition, this would mean that CPs could, if they wanted to, match up AC and SC discounts for individual number ranges.

There are also a number of other elements such as price and duration rounding that need to be considered. We discuss these further in Annex 1.

Q10.3: Do you agree with our proposal not to impose a cap on the AC in the first instance? If not please explain why.

We agree AC should not be capped. The retail narrowband market is deregulated[9] as it is fully competitive and competition should act to keep prices in check.

Q10.4: Do you agree with our proposed approach for the structure of the SC? In particular that: (i) bespoke SCs should be prohibited; (ii) that no further restrictions on the SC structure should be required (e.g. allowing ppm and ppc SCs, no restriction of ToD charging subject to ability of billing systems to pass through the charges) If not, please explain why and provide evidence if possible.

Again, we are keen that the rules are as simple as possible, both to benefit the consumer but also TCPs and SPs.

(i) We agree there should be no bespoke SCs. Its key that the SC is set and adhered to by all parties

(ii) We agree that the SC rules should be flexible to allow price innovation. We understand this to mean that the current ability to charge a combination price continues e.g. £1.53 ppc + £1.53 ppm after the first minute.

Our main concern is to do with the time of day gradient. We think prohibiting it will ensure:

- Simpler price advertising, as only one price to mention
- Easier for the consumer to understand
- No confusion about different CPs' time of day clocks
- No need to set an industry wide time of day clock
- Possible fraud issues are avoided e.g. customer is charged the wrong rate
- Will reduce the number of SC price points needed.

[9] Ofcom's 2009 statement of the Review of retail narrowband markets: http://stakeholders.ofcom.org.uk/binaries/consultations/retail_markets/statement/statement.pdf

Q10.5: Do you agree with our proposals to impose maximum SC caps for the purposes of protecting the identity of the number ranges? Do you agree that the caps should apply to the 084, 087 and 09 ranges and that they should be set exclusive of VAT in the Numbering Plan? If not please explain why and provide evidence to support your position if possible.

We agree with imposing SC caps on 084 and 087. This will allow consumers to understand the upper price for each number range. In addition, setting the caps excluding VAT in the National Telephone Numbering Plan makes sense, as this will avoid issues should the level of VAT change.

Care will need to be taken when revising both the Numbering Plan price rules and the associated references in the General Conditions. It is essential that clear price rules are set at the outset. This will allow Ofcom to monitor compliance and take enforcement action when needed.

Separately, we think that some tariffs should be made available in 09 where the price remains the same after VAT changes. This will allow continuity of round price points following VAT changes and also allow VAT free tariffs for charity. In these ranges, SPs would either benefit from or be disadvantaged by VAT changes, but it will allow their price message to remain consistent and easily communicated. VAT inclusive prices would seem the most pragmatic way for these few ranges to be implemented. For practical reasons, it may be worth considering dedicating one 09x range, e.g. 095, for such services.

We believe there is a very good case for the higher rate premium rate (“HRPRS”) restrictions to be removed in advance of the implementation of the unbundled model. In the consultation, Ofcom points to stakeholder views that the substantial discrepancy between the maximum prices for premium rate calls for fixed and mobile services put 09 SPs at a competitive disadvantage.[10] This problem is exacerbated by the wide use, by mobile providers, of very attractive mobile short codes. The cost of calling or texting them is often far in excess of the 09 price ceiling. Any delay to making changes would perpetuate rather than redress this disadvantage – we have already seen fixed operators lose out substantially in the market for charity donations. As Ofcom points out, the premium rate regulator, PhonepayPlus (“PPP”) has also said it would not object to further extensions of the current pricing cap, provided customers are clearly informed and, we would add, adequately protected.

We strongly support Ofcom’s proposal to consult very shortly on HRPRS. The trade body AIME has recently conducted a survey of its members’ views on HRPRS and the results have been shared with Ofcom to inform their forthcoming consultation.

[10] Paragraph 6.38 of Ofcom’s consultation

Q10.6: Do you agree with our proposed cap of 5.833p for the 084 range and 10.83p for the 087 range? If not please explain why.

Yes, we agree as these amounts are set based on the current termination payments for these ranges.

We think further clarity is needed to enable a sensible migration of the 0845 and 0870 number ranges. It is absolutely essential that all existing 0845 numbers migrate to a single tariff, agreed by industry/determined by Ofcom. The same applies to 0870. Permitting CPs to migrate different 0845 (and 0870) 10k ranges to different tariffs would conflict with Ofcom's objective of simplifying NGCS numbers. It would lead to disorganised outcomes for SPs and for consumers calling them. SPs' tariffs would be at the whim of their TCP and there is 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. This cannot be what Ofcom intends so providing clarity on the proposed strategy for migration of 0845 and 0870 numbers to the new scheme should be a priority; how these numbers are treated will be central to how the success of the review is viewed by all stakeholders.

We do not believe Ofcom intended 0870 to be 10.83ppm and therefore re-introduce revenue share on 0870. The single SC for 0870 should therefore be agreed by industry or determined by Ofcom.

Q10.7: Do you agree that the number of SC price points should be restricted? Do you agree that that restriction should be somewhere between 60 and 100, and where within that range do you consider would be optimal? Do you have any comments in relation to how Ofcom should decide where in that 60 to 100 range the maximum number of SC price points available should be set?

We believe there is a need to balance competition and innovation on one hand and ability to administer the scheme, deliver it technically and avoid confusing consumers on the other. We are not fully convinced a limit is needed. However, if a limit on the number of SCs is needed we have the following comments on Ofcom's proposals[11]:

General

- Future proofing – we suggest that just enough price points are set at the outset. This will allow headroom for new price points to be introduced in the future.
- Price point maintenance – a clear process needs to be established for the introduction of price points.

[11] Tables 10.6 to 10.8 of Ofcom's consultation

- Price point exhaustion – a process should be considered to ensure that Ofcom never runs out of price points. This may mean Ofcom has to monitor usage of price points so that individual price points (and number ranges) can be withdrawn if they are not used.
- No time of day variation – if this is prohibited it will reduce the number of price points needed.
- Gap between ranges – there appears to be a gap between the top end of 087x (13p) and the start of 09 (20ppm or 25ppc).
- Rounding rules – rules for both the AC and the SC (duration and price) are important and need to be agreed by industry. Clear rules are needed to ensure that the consumer is charged the correct price and the SP passed the correct level of revenue. There are a number of possible ways of setting the rules and we discuss this in more detail in Annex 1.
- Frequency of SC price point changes – once a number range has been allocated a particular SC, we do not think that it should be allowed to change. This will protect customers and minimise the risk of fraud.
- Service innovation – restricting the number of SC price points may limit SPs' ability to innovate, grow charitable services and encourage investment.

084/7

- There may be the need for at least one 084 pence per call price point.
- We think four price points for 084 and four for 087 may be sufficient. We think there is very little demand for 0844 below 5ppm. ✂
- We are not sure there is demand for a new 0ppm 084x range. We assume this would allow an AC charge to be raised on an otherwise free call.
- Only one price point should be set for all of 0845 and one for all of 0870 to minimise migration issues (see comments above).

09

- More SC price points may be needed for 09 to allow continued innovation and incentive to invest. If restrictions are needed they should be driven by SP demand.
- Some of the popular price points are missing from Ofcom's proposal e.g. 15ppm and 15ppc.
- The upper limit on PRS is £1.53 and this should be reflected in the price points.
- Spare price points should be put aside for HRPRS.
- Some price points should be put aside for VAT inclusive services (see comments above).
- Some price points should be put aside for VAT free services for charitable donations.

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- Directory services currently offer a number of price combination models and these should be accommodated when setting the price points. We believe all pricing combinations should continue so SPs have the ability to price competitively. Specifically:
  - fixed fee only
  - duration charge only
  - fixed fee plus duration charge
  - fixed fee covering the first minute plus duration charge
  - charging by the second, the minute or part-minute
- We agree there is an opportunity to reduce the number of price points, as many of the current ones are not particularly well used[12].
- We are concerned at the suggestions of a cap on Directory Enquiry calls. This market is highly competitive. Price, service quality and service mix are key differentiators. We believe that setting a price cap would achieve nothing useful for consumers and that their interests are best protected by PPP through their current code of practice and enforcement powers.

Q10.8: Do you agree with Ofcom’s proposed approach to agree the relevant SC price points with industry rather than specifying them as part of the Numbering Plan? Do you have a particular preference for which SC price points are necessary within the different number ranges? What criteria would you propose for the selection of price points?

If a limit is needed, we agree that industry is best placed to agree the number and type of SC price points needed. One of the key criteria for setting these should be demand/current usage. For example, pence per minute services by total number of minutes and pence per call services by total number of calls.

[12] There are ✂ BT DQ charge bands available to DQ SPs. Only ✂ are actually in use

4. Numbering proposals

4.1 Ofcom's numbering guide

We support Ofcom's objective of making it as easy as possible for consumers to understand what telephone numbers mean. Ofcom's idea of a simple numbering guide is attractive[13]. In devising the guide, and associated icons, we believe that there should be a set of principles by which such a chart would be judged:

- Helpful
- Accurate
- Comprehensive
- Future-proof

We think Ofcom's proposals improve significantly on the previous draft and are pleased to see the guide can be used voluntarily[14]. In particular, changing the icons for 08 and 09 shows that Ofcom is listening – there is no reason why these ranges should be the only ranges symbolised by monetary symbols. However, "08" and "09" as symbols are not helpful given that they say nothing about their use which is not apparent from the number. In the absence of any other proposals, we would suggest Ofcom reconsider the following:

- For 08 – building on the wide use of these numbers as contact numbers for organisations

- For 09 – building on the wide use of these numbers for entertainment related services

In addition, consumers are more likely to consult the guide to see what unfamiliar ranges mean, rather than those that they recognise. Therefore, we think that 05, 070, 076 and mobile short codes should also be included. This should raise awareness, increase trust and help improve consumer understanding of these numbers.

[13] See Figure 1.1 of Ofcom's consultation
[14] Paragraph 6.17 of Ofcom's consultation

We think most consumers understand that 01 and 02 numbers are generally linked to particular locations. However, including 03 in the same section makes it more difficult for consumers to understand and trust 01 and 02 and, indeed, will cause confusion about 03.

We look forward to working with industry and Ofcom to develop this important piece of communication further.

4.2 03 numbers

We are pleased to see that 03 consumer pricing will remain as it is. The principle of termination for 03[15] calls is that they closely align with geographic call interconnection arrangements, with the call originator handing over the call at the far end of the network. However, as with other NGCS calls, it is not possible for the call originator or transit operator to know the final destination of an 03 call. To ensure efficient call routing it is necessary for the originator to pass the call over to the terminator as early as possible (at the near-end). We think near-end handover principles should apply equally to 03 calls as to other NGCS number ranges. This could be done without affecting 03 consumer pricing arrangements. We ask Ofcom to consider reviewing 03 to bring the interconnection principles in line with other NGCS calls.

4.3 Mobile short codes

Although mobile short codes are not covered by the National Telephone Numbering Plan, the customer experience is similar to using 09 numbers. As a result, they should be should be treated in the same way. For example, price ceilings should be similar to those of the 09 range. Without this parity, we do not believe that Ofcom's aim for simplifying pricing and increasing trust in NGCS services can be delivered. In addition, the numbering guide should cover both - from a consumer's perspective, it would be odd to exclude one of the more expensive call/SMS types from the guide if helping the aim is to protect and educate consumers.

4.4 Other number ranges

Ofcom's plans to simplify NGCS numbers may flounder if it allows the problems to migrate to other number ranges, for example 05. We understand that Ofcom is consulting separately on these ranges and we look forward to responding. Establishing clear rules for 05 and 070/076 is almost as important as getting 08 and 09 right.

[15] Determination to resolve a dispute between Everything Everywhere and BT about BT's termination charges for 03 calls. 27 January 2011

Q11.1: Do you agree with Ofcom's assessment that an unbundled tariff should also apply to the 0845 and 0870 ranges? If not please explain why.

Yes we do. These are both popular services and it makes sense to include them within the unbundled solution. Applying the new scheme consistently across the 08 number range will improve customer confidence in all NGCS ranges.

5. Implementation and migration

Ofcom's work with industry has ensured good progress has been made on the AC and SC design. There is still a lot to be discussed and agreed, but we are confident that pragmatic and practical solutions can be found, making it easier for all involved to complete the contractual, commercial and technical changes needed.

In this section we discuss in more detail our thoughts on:

- Billing
- SC database
- End to end connectivity and number range building
- Price advertising rules
- Payphones

We discuss our thoughts further on migrating to the new scheme in Annex 2.

Q12.1: Do you agree with our proposal not to mandate the presentation of disaggregated AC and SC charges on customers' bills? Do you agree with our view that it should be up to OCPs to decide the best way to present these charges to their customers on bills OCPs but that we require that at a minimum, the OCPs should include the customer's AC on the bill they receive?

Yes we agree that OCPs should be able to decide how they present the information to their customers. This will ensure that each OCP can find a solution that will help rather than confuse their customers.

Q12.2: Do you agree with the requirement for a central SC database. If so what would be your preferred approach – public sector or private sector provision? If you do not agree with the need for the database what approach for the dissemination and verification of SC would you prefer and why. Are there any other issues with respect to the database you would wish to raise?

Yes we agree with the principle of a SC database. We think it would benefit the following groups:

- Consumers – allows prices to be easily looked up (could also be used by customer service advisors)
- OCP – avoids the need to maintain an individual list. Centralised process for notification of price changes or new price points
- TCPs – centralises the process for applying for number ranges and new price points
- SPs – makes the available SC price points transparent
- Ofcom – allows compliance checks to be made and centralises the management of price points

We think that the most reliable and lowest cost way to manage the database is for Ofcom to do it. Ofcom already manages the National Numbering Scheme[16] which contains many of the data management elements which will formulate the SC database.

Today, CPs apply to Ofcom for a number and Ofcom has to consider whether to approve that application. Checks are done to see whether the CP already has similar numbers and if so, at which tariff. In the future, SCs would need to be enforced to ensure that they are not changed post-allocation.

Given that Ofcom has to do all the underlying work, we think the simplest and least controversial way of meeting this objective is for Ofcom to continue to own and manage the data. All that would need to be done is to consider where on its website it should sit – we suggest in a more prominent position. Access to the site would have to be consumer-friendly with an easy-to-use search facility. A SC database, hosted by Ofcom, will be more credible with stakeholders, as is the case for the current numbering database managed by Ofcom.

Finally, we are aware that some CPs have suggested that the BT Carrier Price List ("CPL") should be extended to include the SC database. We wish to make it clear that we do not wish to provide such a database within the CPL.

Q12.3: Do you agree with the need for reformation of the existing processes for number range building and tariff change notification? If so, what do you consider to be the key characteristic of a revised set of processes? Do you consider that there is a need for regulatory intervention in their establishment, if so why and on what basis should Ofcom intervene.

We are pleased to see the voluntary Industry Code of Practice on number building, but believe that Ofcom should take this further and implement mandatory regulatory requirements on all CPs, not just BT. This should be done on fair and reasonable terms. Thus ensuring consumers can call any number from any CP and get through. The unbundled tariff provides an opportunity for CPs to recover any costs they incur and they should not charge SPs to open up access to individual numbers (see our examples below regarding our 118 service).

Any new rules will need to tie into the SC database and the associated price point management processes. The rules need to set timescales for all parties to introduce new ranges/price points, but should not be so long, that the timeframe limits a SP's ability to respond to competition.

[16] http://stakeholders.ofcom.org.uk/telecoms/numbering/telephone-no-availability/numbers-administered/

Q12.4: Do you consider that there is a need for additional regulatory intervention in the area of end-users' access to non-geographic numbers, in addition to General Condition 20? If so why and what form should such an obligation take?

Additional intervention is needed. We believe any number should be accessible from any CP. The current regulation is not working. Unfortunately, some OCPs are using their power over access to charge unreasonable and unjustifiable costs to SPs for opening up access to their numbers. For example, in the case of BT Directories, we have to pay ✂ circa ✂ to keep 118500 open. Other directory SPs will have similar arrangements. This additional cost is ultimately paid by the consumer.

In addition, directory SPs cannot currently determine the prices to be charged on networks other than BT. In particular, mobiles typically charge significantly higher rates than those that apply from a BT line, and keep the extra margin. Under the unbundled model the SC will be set meaning that mobile operators will no longer be able to make such large additional charges. We are concerned that they will switch to charging for access to their networks instead.

This is why the accessibility rules must be mandatory. General Condition 20 is not enough. We need something that is specifically breached if any CP does not open a code within a defined timeframe, within reasonable, non-discriminatory cost and of course, keep it open without recurring additional charges. If Ofcom decides that regulation is not needed in this area, then the current obligation on BT to provide access to all codes should also be removed.

Q12.5: What steps / actions do you consider need to be undertaken to ensure changes to the structure and operations of non-geographic numbers are successfully communicated to consumers?

An Ofcom co-ordinated education campaign is essential. This will make sure that the changes are seen as industry wide and not the result of any single CP's activities. The use of consistent consumer messages across all CPs will also reinforce the change. The type of approach being used to inform consumers in Bournemouth that local dialling is closing may be a model worth looking at.

Q12.6. Do you agree with our proposal that existing price publication obligations (with some modifications) are sufficient to ensure that consumers are made aware of their ACs? Do you agree that we would need to specify the AC as a key charge?

Yes we agree the AC should be treated as a key charge. However, any price advertising obligation should be kept simple to avoid clutter in marketing literature and thus consumer confusion.

Q12.7: Do you agree with our provisional view that the requirement for SPs to advertise their SCs could be implemented through a condition on SPs that is enforced through an industry Code of Practice and the ASA? Are there any other options (beyond the two outlined) which Ofcom should be considering? What do you consider is the best approach for securing industry commitment and developing a Code of Practice?

Taking each of these 3 questions in turn:

12.7(a) Do you agree with our provisional view that the requirement for SPs to advertise their SCs could be implemented through a condition on SPs that is enforced through an industry Code of Practice and the ASA?

Yes. We agree with the consumer protection aims Ofcom is trying to achieve. In addition, we believe they should be achieved in a proportionate and cost effective way.

We support Ofcom's option 2 as it meets Ofcom's tests for self and co-regulation and because it is preferable to extending PPP's remit (see Annex 3 for full details). Our views on what the code might cover are set are set out in Annex 4.

The starting point, in line with Ofcom's regulatory principles, is for Ofcom to act *"with a bias against intervention."*[17] This is also the approach advocated by the consumer body Which? In its "Intelligent Regulation" framework Which? says:

> *"Where there is a need for intervention we will always start by exploring the lighter touch interventions first. We will only recommend statutory regulation as a last resort, as it can be inflexible, burdensome to business and ultimately expensive for consumers."*[18]

Only if Ofcom is satisfied that there is a good case for additional intervention should it act.

We are working with others in industry to develop a code of practice, which can capture the principles of PPP's code, without imposing the cost of formal regulation given it is not clear that there would be a net benefit to consumers from regulating.

Ofcom is proposing to impose a condition on SPs using section 59(1) of the Communications Act. Ofcom floats the possibility that compliance with a code *"could become a condition of the SP's contract with the TCP."*[19] In line with

[17] See paragraph 7.2 of Ofcom's draft Annual Plan 2012/13 at http://stakeholders.ofcom.org.uk/binaries/consultations/936793/summary/condoc.pdf
[18] See Which? "Intelligent Regulation" August 2009 at http://www.which.co.uk/documents/pdf/intelligent-regulation-making-markets-work-for-consumers-and-businesses-which-briefing-182208.pdf
[19] Paragraph 12.168 of Ofcom's consultation

the above principles, this should be as light touch as possible. We can ask SPs to comply with a code when contracts are renewed or when new contracts are signed, but it would be disproportionate to request all existing contracts to be opened up to add a specific condition. We suggest that, where an SP can show that it has signed up to a code or that it abides by the code, it does not additionally need to have its existing contract amended. This would achieve the same result in a more cost effective manner.

12.7 (b) Are there any other options (beyond the two outlined) which Ofcom should be considering?

Ofcom's proposals align well with those we proposed in our January response to PPP's call for inputs. We suggested the following:

- **Build on the current ASA/CAP guidance**: The ASA/CAP already provides guidance on price transparency for 08x number ranges. This guidance could be built upon. If Ofcom were to apply the provisions of the National Telephone Numbering Plan and detailed price points in the National Numbering Scheme to all providers – or, as a lighter touch option, point to this as best practice - this could enable the ASA/CAP to extend its guidance.
- **Develop best practice**: The Communications Working Group (established as part of Ofcom's Review) could develop best practice on pricing transparency, including a code of practice (as proposed here). This could draw on ASA/CAP and PPP guidance. Best practice guidelines could also extend to areas such as information provided to SPs in sales forms etc.

12.7 (c) What do you consider is the best approach for securing industry commitment and developing a Code of Practice?

We have worked with a number of other operators and stakeholders, including C&WW and the trade body FCS, to develop an outline code of practice. The outline was discussed at the industry's NGCS Focus Group forum, which Ofcom also attends, at the end of May. The current draft is included in Annex 4. We plan to continue working with industry on the detail of the code.

Q12.9: We would welcome stakeholder views on our proposed approach for applying the unbundled tariff to payphones. Do you agree that it is appropriate to allow payphones to set a minimum fee for non-geographic calls?

We welcome Ofcom's recognition that payphone operators are subject to technical difficulties that do not arise elsewhere. Payphones are unique as neither a line rental nor a monthly charge is paid by customers. Ofcom's proposals will allow us to retain the minimum fee, helping to offset our costs.

Maintaining the minimum fee across all calls, including NGCS, will make things simpler for our customers.

Payphone usage is continuing to decline and NGCS chargeable calls now make up just ✂[20] (down from ✂ in the prior year) of total payphone call volumes. We believe this trend will continue in a regime where pricing is applied with greater consistency across all networks.

To confirm:

- We will continue to charge a minimum fee, based on the coins available and in-line with all other call types
- We will continue to bar access to single drop and fixed fee charge calls
- We will continue with the current PAC formula
- We will amend the BT Price List and our payphones website to make NGCS call charges clear
- We will make sure that our call centre staff can provide customers with up to date and accurate call prices free of charge. This would minimise the cost of replacing payphone notices, which we estimate would cost ✂[21] initially, and then each time prices changed

Further investigation has shown we have additional limitations to consider. Payphones have a very limited number of tariffs, with only 20 tariffs on our most limited payphone, and of these, only 4 spare tariffs. We are therefore unable to manage complex or multiple tariffs without significant hardware and software upgrades. This would not be commercially viable due to the costs involved of replacing boxes. We estimate this will cost circa between ✂ and ✂. As a result, we believe the charging model should remain relatively unchanged. We propose that we maintain the current approach of relatively broad price bands based on groups of numbers.

Although we support the principle of 080x numbers becoming free to call from mobiles, it does cause problems for our payphones business. We are already seeing a decline in usage of payphones of around ✂ every year. This change will be a significant impact in the decline of our payphone estate, and will immediately make around another ✂ payphones unprofitable, and see top level revenues across the estate decline. Specifically:

- PAC will account for ✂ of payphones revenue this year. Approximately ✂[22] of our customers have mobile phones. We believe that in the vast majority of cases, people are choosing to use a payphone because they know they will not be charged for this call. We are expecting to

[20] May 2011 to June 2012
[21] Excluding printing and management costs
[22] Source: Public Payphone Satisfaction Survey, 2012

see a significant impact of at least ✂ in PAC revenue once the 080x changes are made.

- In our last response, we reported that we have seen a ✂[23] drop in call minutes following the DWP number becoming free from mobiles. Further analysis comparing May 2009 with May 2012 suggests a ✂ decrease in call minutes, and ✂ decrease in calls. This is despite there being very little PR or advertising and it only being a single 0800 number change.

To help us manage this accelerating decline, we would ask Ofcom to review the USO guidelines to enable us to remove very unprofitable and unused payphones more easily. As previously discussed, the current removals guidelines were written before mobile phones were widely used and were designed for single box removals. We agree with Ofcom's statement[24] that *"The evidence from the zero-rating of the DWP helplines clearly suggests that payphones are often used as a substitute for calling 080 numbers instead of mobile phones."* And therefore believe the current USO will become even more outdated once the change is introduced.

Q12.10: Do you consider there is a need to exempt business to business telephony contracts from some of the constraints of the unbundling regime? Is so what exemptions do you consider appropriate and why are they necessary (please give examples of the conflicts you would identify if exemptions are not provided). To which contracts should the exemptions apply and why?

We cannot see any reason why business to business contracts should be treated differently.

[23] Calls to DWP from BT payphones for September to December 2009 (pre-free calls from mobiles) compared to the same period in 2010.
[24] Paragraph 16.208 of Ofcom's consultation

6. Timescales and costs

We are keen that any changes are implemented as soon as practical, so that we are treated the same as other CPs, thus avoiding any consumer confusion. We note that the NTS Retail Uplift and PRS Bad Debt charge controls[25] are due to expire in September 2013 and by our reckoning the unbundled tariff would not come into effect until mid-2014. This leaves a gap of around nine months. There are various options that could be considered to address this which we would like to review with Ofcom.

We think there are a number of options that Ofcom should explore to ensure that implementation timescales are minimised:

- Decouple the 080x free mobile calls from the unbundled proposals – there could be some benefit in separating these two distinct proposals e.g. if one element is delayed, the other is not.

- Implement an increase in the PRS cap as soon as possible – this will encourage swifter investment in innovative charitable and commercial services.

In addition, Ofcom should continue to work closely with industry to find a practical design that does not complicate implementation or migration. Ideally, this work should be completed in time for inclusion in Ofcom's final statement.

Q12.11: Do you agree with our proposal that implementation should take place 18 months from the date of the final statement?

It is difficult to comment precisely on the time needed to implement the unbundled tariff as there are practical issues regarding implementation that need to be resolved. However, we believe that 12 to 18 months is more than enough time to allow for system, process and contractual changes, along with consumer communications. This assumes that sensible solutions are found to the migration issues we have highlighted.

Q13.1: Do you agree with our estimates of the billing costs for implementing the unbundled tariff, taking into account the discussion in Annex 19? If not, please explain why and provide evidence to support your response, particularly of the level of costs you are likely to incur as a result of our proposals.

Again, it is difficult to be specific at this stage. However, Ofcom's range of costs (£10k to £3m for upfront costs and £10-50k per annum running costs) seem reasonable based on past experience. Our costs would be towards the

[25] Ofcom's statement on NTS and PRS charge controls
http://stakeholders.ofcom.org.uk/consultations/nts-retail-uplift/statement

upper end given our involvement both as an OCP, a TCP, an SP and a transit provider.

Q13.2: Do you agree with our estimates of the level of migration and misdialling costs for service providers who may migrate as a result of the unbundled tariff (taking into account the analysis and evidence in Annex 12)? If not please explain why and provide evidence.

We agree with Ofcom's analysis. SPs tend to use an announcement to let their customers know their number has changed. However, as Ofcom has observed consumers may continue to dial the old numbers for a while after the number has changed. Generally SPs do not like to change their number, however some SPs may review their numbering strategy in light of the proposals.

Q13.3: Do you agree with our estimates of the communication costs of implementing the unbundled tariff? In particular: (i) the costs of OCP communication with their customers; and (ii) the costs of TCP communication with their SP customers. If not, please explain why and provide evidence to support your response, particularly of the level of costs you are likely to incur as a result of our proposals.

Yes. The estimates seem reasonable, assuming one price point for 0845 and one for 0870.

Q13.4: Do you have any comments on our impact assessment for the unbundled tariff? Please provide evidence to support your response.

It is difficult to fully quantify the impacts as the design has not been finalised. We hope that the changes will result in a greater degree of price awareness by consumers and give them the protection that BT customers currently enjoy. The proof of success will be an increased inclination to call.

7. Wholesale

Ofcom discovered in its analysis that the identified market failures are not a result of wholesale arrangements[26]. However, the current regulatory regime results from BT's wholesale narrowband market position. The current remedy, the NTS Call Origination Condition, has no impact on the wholesale layer of NTS origination. Instead, it sets regulatory rules which impact the retail call origination market – a market where BT does not have SMP.

The wholesale call origination market is about to be reviewed within the Wholesale Narrowband Market Review[27]. As part of that assessment, Ofcom will consider whether a NGCS specific wholesale remedy is needed.

We believe there is no requirement for specific wholesale regulatory intervention. Ofcom's NGCS proposal to bar bespoke SCs, coupled with BT's current obligations for the provision of wholesale call origination and end to end connectivity will provide sufficient constraint to ensure that consumers are protected.

In Annex 6 we discuss in more detail our thoughts on Ofcom's review of "wholesale concerns".

In this section we discuss our thoughts on:

- Assumed Handover Point ("AHP")
- Who should pay transit
- Internationally originated calls

Q10.9: Do you agree with our assessment on the location of the AHP on BT's and other CPs' networks? If not, please explain why you disagree.

Yes, we agree that the AHP should be at the near-end. This is because the call originator is unable to identify the final destination of a NGCS call; only the terminator of the call can translate the NGCS number to a geographic number and onward route the call to its final destination. Consequently, it is more efficient for the OCP to pass the call over from their network to the TCP's network as soon as possible.

Near-end handover principles will drive the appropriate behaviours and efficiencies for NGCS calls. It will also allow CPs to maximise on any network build investment and reduce the cost of delivering the call.

[26] Paragraph 4.79 of Ofcom's consultation
[27] http://stakeholders.ofcom.org.uk/consultations/narrowband-market-review-call/

Q10.10: Do you agree that for calls that route via a transit network, the TCP should pay for transit? If not, please explain why you disagree. In particular please explain your views on how incentives can be included within an "OCP pays" approach to ensure the TCP seeks to interconnect directly (where this is efficient) and not to reduce its points of interconnection at the expense of the OCP and efficient end to end call routing.

We agree that the TCP should pay for transit. The terminator owns the number range and therefore makes any call routing decisions. As a result, they are able to determine the best commercial arrangement for their company – either building their network to provide direct interconnect arrangements or by buying transit.

The OCP should not be obliged to subsidise the routing arrangements made by the number range holder. Consequently the conveyance charges associated with delivering the call over the transit operator's network should be paid by the TCP. This will help ensure that ACs are set at an appropriate level.

Q10.11: Do you agree with our proposed approach for calls between two non-BT CPs, both for the case when a transit network is used and for when direct interconnection is implemented? If not, please explain why you disagree.

We do not have a view on the commercial arrangements between two CPs who choose to interconnect directly. This is a matter between the parties concerned.

Q12.8: Do you agree internationally originated calls should be charged at the same SC as an equivalent domestic call? If not, please set out your reasons. Do you agree that originators should be able to set a separate AC level for roaming calls in a given country, though the other characteristics of the AC should still apply?

We have serious concerns with Ofcom's proposal to apply the SC to calls which originate outside of the UK. We think it is unworkable for the following reasons:

- Time of day – Ofcom is proposing that SCs can vary by time of day. It would not be possible to implement this for international inbound traffic as the time-bands are different between and within countries and with each operator. We currently set a single 24 hour price. If the price is set too low any change in the profile of traffic will have an impact on profitability.
- No pence per call charges – international calls are charged on a pence per minute basis (there are no pence per call services).
- Billing systems – our billing system and the international carrier customers' invoice validation system are unable to handle the SC design, particularly pence per call.

- No guarantee – There is no guarantee that the origination charge made by the international call originator will support the SC made by the UK terminator.
- Fraud – International inbound traffic is vulnerable to Artificial Inflation of Traffic ("AIT") and fraud.

Fraud is a key concern and the opening up international traffic to UK NGCS numbers will increase the level of risk. It is not always easy to identify the true origin of traffic and this limits our ability to take appropriate action. For example, calls may appear to come into the UK from the European Union, in reality they could coming from other parts of the world as the calls are routed through a European carrier to the UK.

In addition, NGCS international inbound calls will invariably be made outside of UK or EU Regulatory jurisdictions. We have seen numerous instances of international revenue share numbers in other parts of the world being used for AIT purposes. There is no reason to believe that the opening of UK NGCS ranges would not encourage the same behaviour with an increase in traffic to the UK for fraudulent reasons.

There are lots of different types of fraud and these can be caused by all sorts of factors:

- Any conversion of a pence per call cost into a pence per minute price carries a risk of AIT. AIT can result from TCPs collecting pence per call rates, while international partners originate high volumes of short duration calls which are billed on a per second basis.
- Simple tromboning[28] of calls from overseas back into the UK from an international third party is arbitrage. This could have a significant profitability impact on BT. We address this risk by not opening some services to international access.
- International 0845 fraud involves the claiming of a £0.02 drop charge[29]. To claim the drop fee the A-numbers are spoofed or manipulated to look like UK originating.

International revenue share services carry all the same risks as UK based services, with the additional risk from exchange rate variations, and the added remoteness of the originating customer. Given the fraud risk we have outlined, we would always bar international access if we think our commercial position was under threat. We currently limit NTS termination charges and bar all international incoming calls to 09 number ranges. There is limited international demand for access to such services. Other international

[28] Tromboning is where a call is sent to a network which then sends it back again, e.g. a call sent by BT to a CP which then ports back to BT can be said to have tromboned in the CP network.
[29] A payment to the terminating operator for the setup fee for the call.

operators take the same approach as we do on 09 ranges. As a result, we are not aware of any country where international access to PRS services is available.

International calls do not trigger BT’s end to end obligation. Further, General Condition 20 allows a CP to consider if opening calls to international origination is commercially viable. We do not consider that international inbound calls to NGCS numbers should be within the scope of this review and would recommend that the current arrangement of specific termination charges should be allowed to continue.

8. Freephone

All CPs, fixed and mobile, should adhere to the same pricing rules including price caps where they are in place. This is the only way to improve pricing clarity. We discuss this in more detail below.

Q16.1: Do you agree with our assessment of the options for the 080 range? In particular, do you agree with our preferred option of making 080 genuinely free to caller? If not, please explain why.

Yes, we believe that making 080x calls free from mobiles is good for consumers. We believe that 0500 should also be included in this proposal, as these calls already attract the same mobile charges as 080x.

008000 calls are originated outside of the UK and we therefore assume they are outside of the scope of this review.

Q16.2: Do you have any comments on the analysis used to develop the Impact Assessment Range for the mobile origination charge and the Mobile Maximum Price range for 080 calls as set out in Annexes 21 to 25? Please provide evidence to support your comments.

There will be impacts on OCPs and payphone operators in terms of fixed to mobile substitution. We have major concerns on the impact of a higher mobile origination payment. Even at 2.5ppm, we believe there will be far more migration from the service than Ofcom's survey suggests (see our response to Question 16.3). This will have consequential negative impacts for fixed and mobile callers. We comment on Ofcom's economic annexes in Annex 5. Our summary position is that a payment of LRIC+ is the absolute upper limit of what is reasonable for any CP to charge and a LRIC differential is more appropriate.

Beyond the issues of principle and of estimation in setting an origination payment there are some practical issues including:

- Billing – it is helpful that Ofcom are proposing to set one mobile origination rate that applies to mobile CPs[30]. To ensure we bill correctly for these calls, we will identify the origin of the call based on the CLI. However, not all OCPs currently pass on the network CLI. Without this information we cannot bill accurately and so this will have to be a mandatory obligation.
- Arbitrage – with different payments from fixed and mobile, there is the potential for fixed operators to transit some or all of their 080x traffic via mobile networks, thus ensuring they receive the higher payment. Measures will be needed to prevent this happening.

[30] Paragraph 17.80 of Ofcom's consultation

Q16.3: Do you agree with our estimates of the level of migration and misdialling costs for service providers who may migrate as a result of our proposal to make the 080 range free to caller (taking into account the evidence and analysis in Annex 12)? If not please explain why and provide evidence.

We think migration levels could be very high due to the unpredictability of call origination costs. Currently, origination charges are a single rate regardless of where the call originates. Introducing a much higher mobile origination charge would increase the level of uncertainty for SPs – firstly regarding their costs (due issues in forecasting where traffic originates) and secondly put up the overall costs significantly. We've included some examples to illustrate this point.

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In summary, Ofcom's proposals have a more adverse effect on SPs the larger they get. If mobile origination costs are set too high this could force the larger SPs out of the NGCS market and this could have a significant detrimental effect on the market overall.

Q16.4: Do you agree with our proposal to treat the 116 ranges in the same way as the 080 range (i.e. designate all as free to caller) as set out in detail in Annex 27? If not please explain why.

Yes, it would make sense to treat 116 numbers in the same way as 080x.

Q17.1: Do you agree with our provisional view that it is appropriate for an access condition to be imposed on all TCPs hosting designated Free to caller numbers requiring them to:
(i) purchase wholesale origination services for calls terminating on designated free to caller ranges from any requesting OCP;
(ii) to do so on fair and reasonable terms and conditions (including charges); and
(iii) notify their SP customers of any initial revision to the charges for wholesale origination services within two months of Ofcom imposing the requirement for zero maximum prices.

If not do you consider any ex ante intervention is required? Please give your reasons for or against such intervention and your preferred approach.

Yes we agree an access condition is needed. This is the only way of making sure that a customer can phone from either a fixed or mobile and be assured of getting through. We recommend that this initiative is extended to all NGCS number ranges.

Q17.2: Do you agree that the access condition does not need to be extended to OCPs, but is effectively binding on both parties? If not please give your reasons.

Please see our response to question 12.4. We believe that all OCPs should have similar obligations to ensure that number ranges are built in a reasonable time and that fair charges are raised for doing so.

Q17.3: Do you have any other comments on our proposed implementation approach for making Freephone free to caller? For example, do you consider it necessary for Ofcom to impose a requirement on SPs to publicise that 080 calls are free and do you have any other suggestions for how SPs could be encourage to publish that at the point of call? Are there any other implementation issues which need to be taken into account?

SPs and mobile operators should make it clear that these calls are free. We are working with industry on a possible Code of Practice, which will cover price advertising best practice for 084x and 0870 ranges (see our response to question 12.7). We suggest that SPs look to this as best practice for 080x calls as well.

Annex 1 – The unbundled model rules

There are still a number of implementation principles that need to be considered and agreed. We suggest these are reviewed by Ofcom and if necessary the Industry Working Group:

- AC and SC rounding
- Claw back
- Interconnect considerations
- Porting differential
- Maximum SCs
- Minimum call durations

1. Rounding rules (duration and price)

Clear rules are needed to ensure that the consumer is charged the correct price and the SP is passed the correct level of revenue. There are a number of possible ways of setting the rules:

a) AC and SC rounded independently

The AC and SC elements of the call will be priced independently. This will allow the AC to have both duration and price rounding set by the OCP, and the SC have both duration and price rounding set by the TCP. This is the most flexible option, allowing the TCPs advertising to be precise, and the SC accurately collected by all OCPs and paid to the TCP.

b) Industry-wide duration rounding rules

Ofcom would need to set duration rounding rules for each price point. This duration rounding will apply to both the AC and the SC, and be applied by all CPs. The duration rounding applied to the SC will flow through to the TCP, and the TCP advertising will be correct for the duration rounding.

Price rounding would be applied to the cumulative AC and SC charge, and set by the OCP. This will make it simpler for the consumer to understand, and simpler to check the bill if the price for the call is not unbundled on the bill.

i. The TCP may set price rounding for the SC, which will flow through the interconnect settlement. This cannot however be advertised as 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 OCP’s cumulative rounding.

ii. Ofcom will mandate that there is no price rounding applied to the SC, and it will be set to milli-pence rounded “mathematically” (up/down to the nearest milli-pence). The SC will always be over-collected due to the OCP rounding so we are back to (i), but this time there is no risk that the OCP may be out of pocket.

iii. The same as (ii) but the OCP pays the additional SC money collected due to rounding to the TCP. But what proportion, and (ii) this will not be practical – the OCP’s retail pricing will influence the SC payment, meaning the TCP must know the OCP and in the case of transit calls this is an issue.

Of the above only (ii) seems practical but this has drawbacks. Even then, if the price for the call is unbundled on the bill (by some OCPs) this will make it more complicated for the caller to reconcile the bill.

c) No rounding at all

Call duration for 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). However, this will still create an issue – a consumer’s bill has to be at the granularity of the currency i.e. the smallest denomination of sterling is one penny. So there will still need to be rounding for the price of the call – and we are back to option (b) above.

2. Claw back

Where the service charge is pence per call it is up to the TCP to ensure that the call is terminated within 60 seconds. Should a call exceed this, the OCP must be able to charge the TCP on a pence per minute basis in order to recover any costs to carry the call beyond the Assumed Handover Point (“AHP”), as these are not recovered via the AC.

3. Interconnect considerations

3.1 Conveyance of calls beyond the Assumed Handover Point

Ofcom propose that the AHP will be at the network DLE. However TCPs may require us to carry the call further into the network to their Point of Connection (“POC”). This will require a conveyance charge to be made to address the extra costs of carrying the call beyond the AHP.

In the current, regulated, NTS regime, the conveyance charge is included within the NTS POLO calculation. This arrangement was necessary to support the revenue flow obligations of the NTS Call Origination Condition.

With the introduction of the new scheme the retail revenues and termination charges are de-coupled. There is no longer a requirement for the conveyance charges to be incorporated in the TCPs out payment (the SC).

A SC which is not affected by conveyance charges is more transparent to the TCP plus the TCP can see clearly the charges they incur from the call originator for conveyance.

Factors which can affect the level of conveyance charges which may be paid by the TCP are:

- The TCP interconnects with the OCP's network at a POC which is not the DLE
- Overflow (1) - The TCP connects at the DLE AHP but does not have sufficient capacity to carry the call at this point and the call has to be carried by the OCP to a POC deeper in the OCP's network.
- Overflow (2) - The TCP's agreed POC is not the AHP. However, this agreed POC has no capacity and the call has to be carried by the OCP to a further POC for onward transmission.

All of these scenarios can cause billing queries. 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.

3.2 OCP to BT calls

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4. Porting differential

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5. Maximum SCs

Ofcom is proposing to set maximum SC charges. However, it is not clear if the cap would cover the total price of the call i.e. a ppm/ppc cap plus a total call cap. An example of this would be 0900001 which is designated within the National Telephone Numbering Plan as a "*Special Services, time charged calls up to and including 60ppm and total call cost not greater than £5*".

The TCP is obligated to stop the call once the maximum call charge has been reached ("force release"). Should the TCP fail to activate a force release, the call originator should be able (as BT is able currently) to recover any additional costs incurred as a result directly from the TCP.

Clarity is needed regarding this scenario.

6. Minimum Call Duration

We are concerned that it is possible for fraudulent SPs to set up a call dialler which makes repeated hyper short calls. The call duration is such that the call terminates before the retail charge for the call is triggered but not before a termination charge is recorded. Therefore, we pay the TCP for termination whilst receiving no money at the origination point. Setting minimum call duration before termination charges can be triggered removes the risk. We suggest that the length of the minimum call duration could be considered.

Annex 2 – Migration to the new scheme

In this section we discuss our thoughts on migrating to the new scheme. Ofcom has already carried out a detailed impact assessment. However, there are a number of areas that need further consideration. For completeness we have included all of the stakeholder groups below:

1. Consumers – main focus will need to be on building awareness of the changes and what it means to them
2. OCPs – will have system, process and billing changes to make. OCPs will also need to consider what AC price to set and how to handle this in their calling plans
3. TCPs – will also have system, process and billing changes to make. They may also need to renegotiate contracts with their customers
4. SPs – will need to make a decision about the SC price point they want and as a result whether they need to move to a different number. We discuss the impacts on SC price points earlier in our response
5. Ofcom – changes to General Conditions, the Numbering Plan and establishment of the SC database (if that is what is agreed)

The last point is key - currently, operator termination rates can only be changed by either party issuing an Operator Charge Change Notice (OCCN) to which the other party agree. The new rates do not become binding until this has been done. This process leads to many disputes.

For the unbundled tariff, it is not yet clear whether it would be appropriate for BT to issue OCCNs or for other CPs to do so. It should be noted that often many smaller CPs fail to acknowledge or return OCCNs, which could impede a smooth transition. For all concerned, it is imperative that we are able to move cleanly to the new model with all players signed up and agreed to all rates from the date of implementation.

Contractual changes will require detailed discussion and negotiation between BT and industry. None of this should present a barrier to migration but it will take time to move to any new regime. We agree with Ofcom that we need to ensure that the new arrangements minimise the scope for disputes between CPs over payments for NGCS calls.

Annex 3 – SP code of practice for price advertising

This section expands on our answer to question 12.7.

We support Ofcom's second option as it meets Ofcom's tests for self and co-regulation and because it is superior to extending PhonepayPlus's (PPP) remit. Specifically:

Option 2 meets Ofcom's own tests

In paragraph 12.157 of the consultation Ofcom sets out its tests for self and co-regulation. Option 2 meets these. That is:

i) Do the industry participants have a collective interest in solving the problem?

- Yes. The view from industry is against formal regulation, as this would be disproportionate and not align with Ofcom's own regulatory principles. This shows there is a collective interest in solving the problem.

ii) Would the likely industry solution correspond to the best interests of citizens and consumers?

- Yes. Industry is developing a proportionate solution that is cost effective.
- By contrast imposing formal regulation would increase overall costs for industry and SPs, bringing many into the regulatory net for the first time. This comprises direct costs of contributing to PPP's costs as well compliance costs. Ultimately, consumers may bear some of these additional costs.

iii) Would individual companies have an incentive not to participate in any agreed scheme?

- This is a possibility. However, there is a risk of non-compliance with any form of regulation, not simply self or co-regulation. Ofcom has explicitly threatened a "stick" of formal regulation if industry does not establish a robust code.
- In our view, if regulation is seen as proportionate by industry players, there is a higher chance of compliance.
- Provided the code is adopted by the larger players and ultimately becomes best practice, this potential problem should be minimal as the vast majority of consumer and business customers would be covered. Our aim would be for this to become business as usual by publicising it via trade bodies.

iv) Are individual companies likely to 'free-ride' on an industry agreed solution?

- We want the code to be adopted as widely as possible. Hence free riding would be a benefit, not a drawback, in this instance.

v) Can clear and straightforward objectives be established by industry?

- Yes. Ofcom's objective is clear: to ensure there is clear and readily accessible information to consumers about the SC.[31] We are working with industry and other stakeholders to establish a robust code of practice.

Extending PPP regulation to these ranges would be an inferior solution

We agree with Ofcom at paragraph 12.164: *"In terms of the 084X and 0870 ranges, we consider that there is a risk that inclusion of the 084 and 0870 number ranges in the PPP regime would impose an unnecessary additional regulation on a very large number of organisations who might, in any case, voluntarily meet the requirements for price publication."*

We support well targeted and proportionate policies to enhance price transparency and reduce the scope for consumer harm. However, in this case, the low cost of calls to these ranges – they often have no incremental cost to consumers where they form part of a bundle – means the potential for consumer harm is minimal. We are aware of no systematic evidence of harm that would justify formal regulation.

Furthermore, the proposals in this consultation are aimed at improving price transparency. They should be given a chance to work before further regulation is considered.

We set out the case and evidence against extending PPP regulation in our response to PPP's Call for inputs in January 2012.[32] In summary, whilst we appreciate that other CPs and mobile operators sometimes charge substantially more than we do for calls to these ranges, the case for further PPP regulation is weak:

- The purpose of these remaining ranges differs from PRS as they tend to contribute to SP's costs rather than be a profit driver themselves. This is fundamental to considering whether PPP regulation is appropriate as the business models and incentives of SPs differ from those providing PRS.
- Imposing regulation does not meet Ofcom's own tests for regulation within the analytical framework Ofcom has itself developed for PRS.[33]

[31] Paragraph 12.146 of Ofcom's consultation
[32] See http://www.phonepayplus.org.uk/PhonepayPlus/News-And-Events/News/2011/12/~/media/Files/PhonepayPlus/Consultation%20PDFs/PhonepayPlus_Call_for_Inputs_08xx_Numbers.pdf
[33] The detail of this is set out in our January 2012 response to PPP's Call for Inputs

- These proposals would not target the areas of greatest concern and they have an opportunity cost in terms of diverting PPP's management time in dealing with lower value cases.
- To brand these calls as similar to PRS could cause unnecessary concern in consumers' minds.
- It risks shrinkage in call volumes if the experience of regulatory change with 087x calls of a few years' ago is repeated.

Extending regulation to all remaining revenue sharing ranges runs counter to the Government's stated policy to *"reduce the overall burden of regulation by introducing it only as a last resort."*[34] As Ofcom recognises in this consultation, it also does not fit its key regulatory principles, in particular with its principle to *"operate with a bias against intervention."*[35]

[34] The Coalition's Strategy for regulation is set out by the department for Business, Innovation & Skills (BIS) http://www.bis.gov.uk/policies/bre
[35] Ofcom draft Annual Plan 2012/13 http://stakeholders.ofcom.org.uk/binaries/consultations/936793/summary/condoc.pdf

Annex 4 – straw man code of practice for transparent SCs June 2012

Overall aim: for the SC element to be transparent as is reasonably possible to end users.

1. The [parties] wish to establish a framework of best practice for making transparent the Service Charge (SC) element of unbundled Non-Geographic Call Services (NGCS) which are not already covered by PhonepayPlus's Code of Practice. [36] Therefore this Code currently applies to services operating on the 084X and 0870 number ranges.

2. The Code complies with Ofcom's Non-Geographic Calls Services policy issued [*date of publication of the statement and implementation date*] and is fully informed by Ofcom's consumer protection duties under Section 59 (1) of the Communications Act 2003.

3. This Code is a self-regulatory document based on the voluntary will and commitment of signatories to implement the spirit, not the letter, of the code.

4. Service Providers are to be upfront and transparent about the cost of the service they offer ensuring that callers are clearly informed of the Service Charge (SC) element of a call to their services.

- As far as is reasonably practical, Service Providers are to include the current SC element of calling their number in their primary marketing material.

- The stated level of the SC must be:
  - Easily accessible
  - Clearly legible
  - Proximate to the number and prominent in the marketing material
  - And presented in a way that does not make understanding difficult.

- The SC element may be written as "up to Xp" per minute to ensure it does not easily become out of date and therefore inadvertently mislead consumers [*potentially refer to consumer access to central database – if mandated. Note some CPs maintain pricing for SC should always be actual amount*].

- Examples of primary marketing material include

[36] Available at http://www.code.phonepayplus.org.uk/pdf/PhonepayPlusCOP2011.pdf

- Websites
- Posters
- Large print ads
- TV advertising

An example would be "calls cost Xp per minute plus your supplier's access charge."

5. Interpretation of "as far as is reasonably practical": This Code is to be interpreted in a flexible and common sense manner to recognise that:

   (a) It is not always possible to include up to date pricing information in the primary marketing material e.g. where a number is displayed permanently on the side of a van, or in a very small classified advertisement.

   (b) There are a very wide range of Service Providers, many of whom will have limited resources and for whom advertising via a 0870 and 08x number is only a small part of their business.

   (c) This code works in harmony with, and is not a replacement for, the CAP guidance issued by the Advertising Standards Agency.

6. All [parties] will use reasonable endeavours to comply with the spirit and the purpose of the Code. [*Expectation compliance with the Code will become a condition of the SP's contract with the TCP as per Ofcom guidance.* NB BT's position on this point is that this should only be a condition when SP contracts are renewed and that existing contracts should not be opened up.] Signatories agree that post the earlier date of the publication of, or relevant entity signing up to, the code all subsequent contracts between Network Operators and Service Providers will contain direct reference to this code and the requirements therein.

7. Ofcom will monitor consumer experience with matters covered by the Code and may intervene with formal regulation at any stage if this self-regulatory form does not appear, in Ofcom's opinion, to satisfactorily transparent service charges for customers.

8. The Code will be subject to review by [*recommend that the code is owned by a legal entity with proper governance*] from time to time in consultation with signatories, Ofcom, [ASA] and others, so that we can ensure that it continues to meet the objective of providing clear pricing information to consumers and remains reflective of the current status of the consumer market place.

9. The undersigned are signatories to the code.

Annex 5 – mobile origination

We are concerned that Ofcom intends to allow the MNOs to set an origination payment which is not justified by costs, as it will have a material impact on the viability of SPs to use Freephone services.

As context to our position, we note that the MNOs did not disguise the fact that they have treated NGCS calls as a revenue source in an "aftermarket" or a soft source of revenue[37]. Their ability to do so has been possible because these calls are not part of the competitive bundle. Indeed, the MNOs have not priced transparently and, as Ofcom has discovered[38], it can take considerable effort on the part of the consumer to find out how much a call will cost.

Whilst the current NGCS value chain is complex as a result of the various regulations and commercial relationships, this should not detract from the fact that the SP sees the OCP as the "gatekeeper" to the consumer. The consumer will be unlikely to shift between OCPs as a result of the NGCS pricing strategy of any one OCP. From the perspective of the OCP, the TCP becomes the gatekeeper to the SP. However, the SP can easily shift between TCPs if the terms and conditions – including the relationship with the OCP – are not satisfactory. The likelihood of the OCP having market power would point in the direction of a payment no more than a LRIC+ standard and anything above this would require justification.

Freephone numbers are not propriety to the MNOs, instead they are part of the "collective brand" of the industry with a unique industry-wide price that is understood by all callers. In other words, the value to consumers and SPs is inherent in the understanding of what the dialled digits represent. Within the NGCS space, they occupy a special place insomuch as the absolute price to the end-user is imposed. In our view, this means that the treatment of payment for origination can also be considered to be different from the norm.

Specifically, we make the following points regarding the principles underpinning payment for Freephone origination:

- The promotion and promulgation of the service is not with any one player and no marketing or customer care associated with this particular service is needed by any OCP. This contrasts with the potential for some costs to be causally linked to NGCS services. For example, where a positive AC is levied, the consumer may need some explanation provided by the OCP and where a real amount of money is levied, there could be a billing query.

[37] Draft Determination 080 dispute, paragraphs 6.24-6.31, December 2009.
[38] Paragraph 4.38 of Ofcom's consultation

- That MNOs "*should not be denied the opportunity to recover their efficient costs of originating calls*[39]" should not mean that such calls should become a revenue source for the promotion of other services which are of no value to SPs.
- A "pure LRIC" basis exceeds the true costs of call origination in any case for the traffic related aspects of the network[40].

With respect to the three principles which Ofcom uses, our views follow.

Principle 1: recovery of efficient costs of origination

We can see no justification for including any CARS[41] costs for the reasons given above[42]. Specifically, efficient costs should not include any excess marketing costs which: (a) are in any case mainly directed at handsets and data services and not in any way associated with Freephone numbers and (b) potentially act as a barrier to entry to smaller MNOs/MVNOs without the range of services the large MNOs have to offer their customers.

For the reasons outlined above, even pricing at pure LRIC would not imply any incremental loss to MNOs and call blocking would be unlikely at this price.

Principle 2: benefits consumers and avoid material distortions of competition

It is not always the case that, even absent externalities, Ramsey pricing is the most efficient way to recover fixed and common costs[43]. This will not be the case for two-way interconnection and multiple networks and the origination of Freephone numbers bears a closer relationship to termination than origination of a competitive bundle of services.

We endorse Ofcom's conclusions[44] on the impact of high origination charges on SPs and we consider that their interests be given higher weight where a trade-off is concerned relative to OCPs for Freephone numbers, noting our position above on LRIC+. In other words, any uncertainty should result in the outcome being more favourable towards the interests of SPs than OCPs.

[39] Paragraph A23.28 of Ofcom's consultation
[40] See the BT witness statements in the MTR Appeal on this matter. Note the issue that wireless costs of origination appear high relative to fixed costs because of the treatment of the access line. However, this is a *regulatory construct*. It does not have a direct commercial counterpart – lines are customarily bundled with calls so the tariff structures in the fixed networks are closer to those in the wireless sector even though the underlying cost structure may differ somewhat.
[41] CARS = customer acquisition, retention and service costs.
[42] Specifically with respect to Freephone numbers only; for other NGCS services some CARS costs are likely reasonable.
[43] Paragraph A23.43 of Ofcom's consultation
[44] Paragraphs A23.44-A23.46 of Ofcom's consultation

Specifically, it is apparent[45] that there is no objective basis for A&R[46] costs for the mobile OCPs and no confidence can be attributed to any of the numbers provided as the basis for an origination payment[47].

We are concerned that Ofcom's survey on the impact of higher origination payments will understate the SPs' reaction to paying the MNOs up to 3ppm[48]. It is often assumed in surveys that customers may overstate their intentions and do not act when they say they will; in this case the opposite appears more likely. In our experience, SPs are especially price sensitive and can react very sharply, such as when Ofcom removed revenue sharing on 0870.

A likely source of the underestimation is that two important factors were not included – the degree of fluctuation over time and uncertainty in the level of origination payment. Ofcom's interpretation of the survey[49] looks at the impact of a steady state "mean level" between mobile and fixed and the subsequent analysis then tracks that through to the availability of Freephone services and waterbed effects[50].

Our experience is that the degree of fluctuation over time and uncertainty in outpayments will be a source of considerable instability and entice SPs to move off the number range[51]. Whilst it may be a reasonable forecast[52] that over, the medium term, roughly 40% to 50% of all NGCS minutes might gravitate to mobiles, for Freephone numbers this percentage could be a lot higher. It is the case that nobody knows what the proportions will be, but SPs might face a serious "bill shock" and move off the number range thus destroying the benefits to users across the fixed network as well.

Whilst we endorse Ofcom's approach of not regulating ACs in the unbundled model and allowing competition to set the level, in this instance we suggest that it is reasonable to adopt an element of the precautionary principle and err on the low side for origination payments[53].

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[45] Paragraph A22.28 of Ofcom's consultation
[46] A&R = acquisition and retention
[47] We note with particular concern the size of the "Other CARS" costs which are not even identified and which contribute [Table A22.6] to a difference of 0.4ppm in cost compared with fixed costs. In the absence of any appreciation of what these constitute they cannot go into any cost stack for origination.
[48] We note the words of caution Ofcom itself [A23.82] ascribes to the survey.
[49] Paragraphs A23.49-A23.57 of Ofcom's consultation
[50] On which point we note Ofcom [A23.76] accepts that the Competition Commission did not agree with the likely impact of waterbed effects being targeted to particular customer groups. This issue was also raised in the MTR Appeal and again we draw attention to the witness statement of Dr Dan Maldoom on this matter and the Determination of that Appeal.
[51] We are endeavouring to acquire more market intelligence on this matter.
[52] Paragraph [A23.56] of Ofcom's consultation
[53] In the debate as framed by Ofcom [A23.85], we are in a position much closer to that of Talk Talk than Vodafone.

Our position on trade-off between service availability and the tariff package effect is therefore one of emphasising the importance of the former. If there is any tariff package effect, it is likely to be both partial and reasonably dissipated across different customer cohorts. Specific observations on the text are provided below.

- We agree with Ofcom[54] that A&R costs are of no benefit to SPs and that mobile penetration will not be affected by any level of origination payment. In the light of the variety of minute call packages which are frequently not fully used – and which are effectively replicated for pre-pay as well as post-pay customers – usage will not be likely affected either by any waterbed effects.

- Our view is that the LRIC+ estimate for the MNOs of 1.5ppm is more than generous and no expenditure of A&R costs are warranted – these have nothing to do with any NGCS calls. The A&R costs are likely to be inflated by the MNOs and are part of an entry barrier so cannot be deemed to be economically efficient. Therefore the standard of LRIC+ should be assumed to apply absent compelling reasons for anything more.

- We are opposed to including non-network costs of 1.0ppm for the same reasons as A&R costs, namely that Freephone has unique characteristics. Such an uplift might well be justified for other NGCS services but not for Freephone. If Ofcom was minded to include any costs then it should be set on an equal basis across all OCPs and these costs should be scrutinised. To do otherwise would allow higher payments to the MNOs.

We have expressed concern to Ofcom that the MNOs are being given favourable treatment by being permitted to argue for a mobile waterbed effect but not an equivalent fixed effect. In the 080 Dispute, Ofcom argued that it could not see any incentive to justify a fixed tariff package effect[55]. We agree with Ofcom that the new regime should ensure that all players are treated fairly and that subsidies should not flow from one sector to another.

In this context, we agree with Ofcom that even a formal designation of separate economic markets does not preclude competitive interaction between the providers of services in those markets. We plan to submit evidence to Ofcom in the context of the Call for Inputs in the Narrowband Market Review that two MNOs are active in the provision of bundled services

[54] Paragraph A23.96-A23.98 of Ofcom's consultation
[55] Arguably this is because BT was perceived as being regulated in the provision of NGCS services whilst the MNOs were not and their NGCS services were an "aftermarket" from subscription.

across both the fixed and mobile markets[56]. Additionally, fixed operators through MVNO agreements are also active in offering mobile services which shows that the degree of interrelationship is high and likely to increase in the future with the growth of data services.

Consequently, we do not accept Ofcom's assertion[57] that the fixed and mobile OCPs operate in different retail markets. They are not identical but there is sufficient degree of overlap now and likely even more in the future that this factor should be given reasonable weight in the overall assessment. For that reason, although we can support a LRIC+ standard for Freephone payment, there are – as Ofcom notes – good arguments for a lesser payment of a LRIC differential.

To summarise our position, a LRIC differential payment is the most appropriate payment on economic grounds but taking all factors into account, a LRIC+ value represents a fair compromise between the pure LRIC as advocated by Talk Talk and the very high and unwarranted position taken by Vodafone demanding much higher costs to be included which have no cost link to the provision of the Freephone service on the part of OCPs.

Principle 3: practicality

Whilst our preferred position is for a single origination payment for all OCPs, if there is to be a distinction between fixed and mobile OCPs, we support the proposal for a single origination payment for all mobile OCPs. However, we are not provided with CLI information by all OCPs and this will have to be given in future to enable accurate billing.

If there is to be a difference between fixed and mobile origination payments, there will be a strong incentive to arbitrage between the rates by routing traffic and we therefore urge Ofcom to adopt measures which will prevent this.

Our overall assessment is that even the lower figure of 2.5ppm is too high. It will have a negative impact on the sector as a whole; suppressing demand for Freephone services across both fixed and mobile networks.

[56] It seems highly likely that mobile OCPs do enjoy competitive advantage over fixed OCPs as Ofcom indicates may be the case. Paragraph A23.142.
[57] Paragraph A23.137 of Ofcom's consultation

Annex 6 – Wholesale concerns

In our last response[58] we commented on Ofcom's analytical framework and assessment of market power in which: (a) we challenged the usefulness of the "modified Greenfield site" approach and (b) the assessment that with vertical integration, we held a position of market power as we are also a large OCP.

In this consultation, Ofcom[59] rejects our argument that under bilateral bargaining, WOCPs and TCPs will reach a solution, and that our argument "somewhat misses the point" such that the "fall-back position" remains an important part of assessing the underlying strength of the parties involved.

Likewise, Ofcom[60] rejects the assertions and evidence we provided. Specifically that:

- Vertical integration is not an important feature of this marketplace.
- We would not behave in an opportunistic fashion toward smaller TCPs or OCPs absent SMP-type regulation.
- Current statistics on shares do not support BT being in an underlying strong position in any case.

In the light of Ofcom's response, we invited Dotecon[61] to review the Ofcom analytic framework. The report by Dotecon is attached. They suggest that Ofcom's framework wrongly focusses on the relative position of different players at both ends of the value chain. This issue is of far lesser relevance than the absolute power of the OCPs – large and small – and their role as the access gatekeeper. Viewed in this light, vertical integration is largely an irrelevancy and provides no intrinsic benefit to BT even if other players were unable to react with countervailing strategies themselves to address a market failure arising from market power.

In our opinion, the difference is more about the relevance of the framework to the current situation. Rather than appreciation of the underlying economic theory in bilateral bargaining and the role of trade-offs, which is, as Ofcom says, is well established[62].

A further difficulty with the Ofcom analytic framework on the potential to exercise market power absent regulation is that it is effectively impossible for us – or indeed any other CP – to disprove. Ofcom states that we did not evidence the reputation effects and that our observed behaviour cannot be

[58] Annex 4 of our March 2011 response to Ofcom's first consultation on this subject
[59] Paragraph A10.64 of Ofcom's consultation
[60] Paragraphs A10.82, A10.87, A10.91 of Ofcom's consultation
[61] Dotecon is an economic consultancy firm
[62] Footnote 388 of Ofcom's consultation

carried over into the analytic framework which is absent SMP conditions. This may be technically correct, but in effect it amounts to an insurmountable barrier for us to prove that our policies depend on working with a very large number of parties; done in a fair and reasonable manner across the board.

Regarding the position of mobiles and fixed access[63], our position was perhaps not well explained. What we meant was at the point of call mobile users may well not have access to a fixed line as they are outside the home, not that they do not have access at any point in time.

[63] Paragraph A10.68 fifth bullet of Ofcom's consultation