

Telefonica UK Ltd's ("Telefónica's) response to Simplifying Non-geographic Numbers - Detailed proposals on the unbundled tariff and Freephone¹

¹ Ofcom 4 April 2012

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.

No. Telefónica believes that Ofcom should have greater faith in the market mechanism to provide Pareto optimum outcomes. The process for achieving this may take a little time, but there are signs that the market mechanism is responding. The outcome is likely to be more efficient than a centrally planned solution, like disaggregation, which Ofcom is proposing.

As regards wholesale concerns, we agree with Ofcom that BT certainly wields significant market power. That much is evident from the way in which BT effectively introduced enormous increases in termination charges (so called “ladder pricing”). However, we disagree with Ofcom’s characterisation of the way in which smaller terminating communication providers and originating communication providers interact. In our experience, smaller terminating communication providers do not negotiate with originating communication providers at all. They simply notify BT (acting as a transit provider) of price increases. BT accepts these price increases uncritically, and then imposes them on originating communication providers. In this way, smaller terminating communication providers have been able to give effect to significant termination charge increases in the same way that BT has².

HARM IDENTIFIED IN THE DECEMBER 2010 CONSULTATION

In Telefónica’s view, the market is in the process of creating a response to the failures that Ofcom has identified (to the extent that they’re material). This is in the form of a more complete mobile voice shortcode offering, which allows service providers to select common and simple retail price points to offer their services to both mobile and fixed customers.

In Annex 8 of the consultation document, Ofcom considers the role that mobile shortcodes have played in the market, and concludes that “while the evidence on mobile voice shortcodes is not conclusive, we are not convinced that they are a universally effective solution to the vertical externality problem.”³

² Telefónica acknowledges that the issue is presently before the Court of Appeal

³ Para A8.184 refers.

Telefónica believes that the lack of ubiquitous retail price points in the past has restricted the attractiveness (to service providers) of mobile voice shortcodes. This led to a relatively low take up. However, recently, more common retail price points (i.e. retail price points available on all of the mobile networks) have become available and service providers have begun to appreciate the merits of the mobile voice shortcode offering. This has resulted in a sharp increase in interest and demand for mobile voice shortcodes. For example, mobile voice shortcodes have been used in peak-time terrestrial television shows recently, and banks and utilities are expressing considerable interest in the proposition.

In our view, one of the principal benefits of the mobile voice shortcode proposition is that it allows service providers to offer a single, simple price point to consumers, regardless of whether they call from a BT landline or from a mobile. The mobile providers have (independently) created retail price points that align with BT's retail charges and service providers are therefore able to select common prices for their services. The evidence suggests that service providers' demand for and interest in mobile voice shortcodes has risen dramatically, recently, rendering Ofcom's provisional conclusion (repeated above), unsound.

In addition, the development of mobile voice shortcodes has been a function of the market, i.e., it is a competitive response to fulfil the need amongst service providers to be able to offer their services at a single, simple price. As Ofcom notes (in Annex 13), the mobile voice shortcode allocation process, which voice shortcode aggregators utilise, is itself a self-regulatory mechanism. It has worked effectively for a number of years, fulfilling stakeholders' needs.

Ofcom's proposal to introduce disaggregation would completely undermine the benefits that mobile voice shortcodes have generated, because it would remove the focal point of a simple, single BT retail price and, accordingly, the capability for service providers to offer a simple, single price message to consumers. Ofcom appears to accept that a single, simple price message is intrinsically more understandable to consumers than disaggregation:

“We recognise that the unbundled tariff is inherently more complex than the maximum prices model in terms of the message it conveys to consumers. In addition, because this [disaggregation] is not a pricing structure which has been widely used before, there is an element of uncertainty about how consumers will react...”⁴

⁴ Paragraph 9.246 refers.

Telefónica agrees. In our view, the provision of mobile voice shortcodes in the context of the current commercial environment is an effective mechanism, generated by the market, which provides this benefit.

Consequently, Telefónica believes that the mandatory introduction of disaggregation would act against consumers' interests, in the sense that it would result in the elimination of a consumer benefit that the competitive market has delivered. This would be contrary to Ofcom's principal duty, "to further the interests of consumers in relevant markets, where appropriate by promoting competition".⁵

Telefónica considers that the development of mobile voice shortcodes in the way outlined above demonstrates how the market is evolving self-regulation to generate benefits for consumers. In considering the role that mobile voice shortcodes have, we consider that Ofcom has overlooked its duty to have regard to the development and use of effective forms of self-regulation⁶, and accordingly is proposing measures which would stifle innovation⁷ in the development of effective and less intrusive competitive responses to address the issues identified by Ofcom in this consultation document.

We consider that in light of the benefits that mobile shortcodes are generating and the potential of such measures adequately to address the issues identified by Ofcom in this consultation document, Ofcom is proposing measures that involve the imposition of burdens which are unnecessary and this is contrary to its duties as set out in section 6(1) of the Communications Act 2003.⁸

Furthermore, it appears to us that that an attempt to amend the general conditions of entitlement to change the NTNP in order to mandate disaggregation would fall foul of section 47(2)(a), because it would not be objectively justifiable. The reason stated by Ofcom for the introduction of the access charge/service charge regime is that it would benefit consumers. However, by removing the benefits that consumer derive from the common, simple pricing generated by mobile voice shortcodes (with price points that align with BT's retail prices under the current commercial framework that would be dismantled under Ofcom's proposals), disaggregation would be detrimental to consumers' interests.

⁵ Section 3(1)(b) of the Communications Act 2003 refers.

⁶ Section 3(4)(c) of the Communications Act 2003 refers.

⁷ Section 3(4)(d) of the Communications Act 2003 refers.

⁸ Furthermore, the Authorisation Directive notes that general conditions should be limited to what is strictly necessary to ensure compliance with requirements and obligations under Community law and national law in accordance with Community law (recital 15).

In the remaining part of this section, we provide evidence of the increased demand amongst service providers of mobile voice shortcodes. We also explain how the focal point of BT's retail prices under the current commercial framework has been used by mobile providers to structure their own prices, and how the resulting commercial offering provides benefits to consumers.

Demand for mobile voice shortcodes

Although mobile voice shortcodes have been available for a number of years, take up has until recently been rather limited. A substantial part of the attraction of mobile voice shortcodes lies in the notion that all operators are able to offer common pricing. This allows service providers to enter into a series of bilateral commercial arrangements with mobile providers to provide access to their service on a common shortcode⁹ and at a common price.

In April 2012, Telefónica made available a wider selection of retail price points associated with mobile voice shortcodes, which matched those provided by other mobile operators. Importantly, many of these retail price points also correspond with those of BT, allowing service providers the opportunity to offer services at a common price to UK mobile customers which corresponds to retail prices offered by BT to its fixed line customers. In this way, service providers are now able to provide a common and simple pricing message in a way that they have not been able to before.

Mobile voice shortcodes address market failures

Telefónica believes that mobile voice shortcodes, as constituted now, allow service providers easily to make services available to consumers at common prices. Aggregators act as intermediaries between service providers and mobile communication providers, reducing transactions costs.

In this way, mobile voice shortcodes are an effective means to “internalise” the vertical externality (to the extent that it is material). Further, we believe that the capability is sufficiently broadly available to be regarded as ubiquitous. Accordingly, we consider that Ofcom has been too quick to dismiss the potential benefits of mobile voice shortcodes and is consequentially, targeting action where action is not required contrary to its general duty under section 3(1)(a) of the Communications Act 2003.

Mobile voice shortcodes also address the customer information problem: service providers can advertise a single and simple to understand price. In our view, the “horizontal externality” issue is rendered obsolete. This is because with the improved information provision properties inherent in mobile voice shortcodes (that

⁹ By virtue of the Shortcodes Management Group arrangements.

align to BT fixed prices), there is significantly less need for traditional non geographic numbers to convey pricing information.

Recent increase in demand

In response to the new price points, both the BBC and ITV used mobile voice shortcodes in their recent main Saturday evening television broadcasts (“The Voice” and “Britain’s Got Talent”). Both have gone on record to emphasise that the attraction of mobile voice shortcodes is that they allow the broadcasters to promote a common price point for both fixed (BT) customers and mobile customers (and not just amongst mobile customers):

“But, what are MSDCs? Well, also known as Voice Short Codes, MSDCs are short numbers, typically 5-7 digits, which can only be called from a mobile phone, but which also ensures that the caller is charged a guaranteed fixed price when casting their vote. The voting experience is exactly the same as if the caller was dialling an 090... long number, from the message they hear to the way in which their vote is counted, but by using MSDCs we are able to detail the exact price the consumer will be charged (which for The Voice will be 25p).

A growing percentage of our audience are choosing to interact with voting shows via a mobile and with a belief that this growth will continue, Mobile Short Dial Codes will help us ensure the cost to the viewer is transparent and consistent, whatever their preferred route of contact is” (emphasis added).¹⁰

and

“2. Why is ITV using MSDCs [mobile voice shortcodes]?”

We are introducing MSDCs into our voting shows to help our viewers better understand the costs involved with voting.

When calling premium rate ‘09’ numbers from mobiles, calls usually cost considerably more than if calling from a BT landline and the cost can vary significantly from mobile network to network. The use of MSDCs for voting has the advantage that callers from UK mobile phone networks should pay the same charge to vote as callers from a BT landline

This means that viewers who vote from their UK mobile by MSDC will know what they are paying before they vote and will not get a shock when they receive their mobile bill.” (emphasis added).¹¹

¹⁰ See: <http://www.bbc.co.uk/blogs/aboutthebbc/2012/04/voting-with-msdc.shtml>

¹¹ See: <http://talent.itv.com/2012/vote/Short-Codes>

Viewers have responded well to the use by the broadcasters of mobile voice shortcodes. Telefónica originated [X] calls from its customers to the Britain's Got Talent mobile voice short codes, whilst [X] calls were made to The Voice mobile voice shortcodes. We understand that the proportion of calls made from mobiles to vote on The Voice was about double the percentage for similar, previous shows (which did not use mobile voice shortcodes), at [X]. The vast majority of these mobile calls were made using the mobile voice shortcode.

Following the success of the use of mobile voice shortcodes by the BBC and ITV, Telefónica understands that commercial discussions are underway between broadcasters and service providers to use the facility in other television programmes.

Furthermore, we believe that other service providers, such as banks and utility companies are also in discussions with aggregators with a view to using mobile voice shortcodes so that their customers are better able to contact them. Again, we understand that a key feature of the proposition is that the service provider would be able to promote access at a single and simple price, regardless of whether customers use a fixed (BT) line via a traditional non geographic number, or a mobile voice shortcode.

Conclusion

In summary, Telefónica believes that the market has provided a mechanism to address the market failures which Ofcom has identified in the consultation document.

Mobile voice shortcodes with a broad range of ubiquitous retail prices points are a relatively new phenomena, but the early indications are that they are effective in providing a capability for service providers to offer services at common simple price points, and that consumers have responded positively to this development.

In our view, Ofcom's proposal to mandate disaggregation is, therefore, unnecessary and may not be implemented by virtue of an amendment to the General Conditions. Further, we believe that disaggregation would be detrimental to consumers, because it would remove the possibility of BT charging a single, simple price for revenue share arrangements, which service providers use to anchor mobile voice shortcode pricing.

WHOLESALE CONCERNS

Telefónica agrees with Ofcom that BT enjoys a position of market power as a terminator of non-geographic calls. Indeed, we would argue that the more appropriate approach to determining the extent of market power is the traditional one of, firstly, establishing the relevant market and then, the position of firms within that market.

The approach adopted by the European Commission in its Notice on the Definition of the Relevant Market for the Purpose of [EU] Competition Law¹² is the so-called “hypothetical monopolist” test or “SSNIP test”. The OFT has adopted a similar approach. Ofcom will be familiar with the test: one seeks to define a relatively narrow market, and then establishes whether a hypothetical monopolist would be able to introduce a small, significant but non transitory price increase profitably. If the answer is: “yes”, the market definition hypothesis is correct. If not, the definition is widened and the test applied again.

In this case, there is evidence that the market is narrow (i.e., the market for terminating non geographic calls on BT’s network). This is because BT has, in fact, introduced what amounted to significant wholesale interconnection charges via its “ladder pricing” schemes. As Ofcom notes, these have been subject of disputes, the determination of which are themselves subject to appeal.

Nevertheless, the mere fact of BT introducing these schemes, without any negotiation, profitably is, in Telefónica’s view, very strong evidence that the relevant market is one for terminating non geographic calls on BT’s network. Telefónica also believes that that BT enjoys a position of strength in that market. Again, the imposition of charge increases is very strong evidence of this.

On a similar basis, we would argue that every terminating communication provider, regardless of their size, enjoys a position of strength in the market for the termination of non-geographic calls on their respective markets.

We concede that there are circumstances in which originating communication providers wield sufficient countervailing buyer power. For example, in the case of directory enquiry calls, originating communication providers may not provide access to all 118 numbers. In our view, this is due to the peculiar circumstances of that market: the fact that it is dominated by two or three providers that advertise their service extensively, such that a very small amount of traffic goes to competitors. In

¹² OJ [1997] C 372/5

these circumstances, the originating communication provider's customers are unlikely to want to use the service of alternative DQ providers and this strengthens the bargaining position of the originating communication provider.

But this is very much the exception. In our experience, for non-geographic number, generally, originating communication providers do not wield countervailing buyer power; their customers expect to be able to dial any non-geographic number, the originating communication provider must therefore provide access to these and must accept the termination charges set by terminating communication providers.

Once again, we consider that the introduction by other terminating communication providers of their ladder pricing schemes, is strong evidence of both the existence of narrow termination markets and the market power exerted by the relevant communication providers. In practice, generally, other terminating communication providers do not seek to negotiate with Telefónica at all. They simply notify BT (acting as a transit provider) of price increases. BT accepts these price increases uncritically, and then imposes them on originating communication providers. In this way, smaller terminating communication providers have been able to give effect to significant termination charge increases in the same way that BT has.

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?

Ofcom says that its focus on this issue is the extent to which vulnerable customers lose access to socially valuable services, rather than the prices customers pay for accessing those services.¹³ However, there is little analysis on the extent to which customers are denied access. Accordingly, it is difficult to draw any positive conclusions about the extent to which Ofcom's proposals are likely to have a positive impact on vulnerable consumers, and we cannot therefore agree with Ofcom that they would.

That aside, Ofcom says that the number ranges that are of primary importance to its distributional analysis are the 080 and 0845 ranges.¹⁴ However, it does not appear to evaluate its different proposals for these number ranges (i.e. zero-rating and disaggregation), separately. In Telefónica's view, this is a pity, since it is entirely possible that one or other of its policy prescriptions could have a larger impact on the issue.

For example, in Telefónica's view, providers using the 0845 range are easily able to migrate their services to 0345 numbers, which are charged to customers at geographic rates (including from mobile handsets). We are not persuaded that migration costs are significant; the removal of the regulatory support for revenue share under the 0870 range and the consequential substantial reduction in traffic that followed is evidence that service providers are able to migrate services between number ranges, over time, with little difficulty. We note that major energy suppliers have, in fact, already done this.¹⁵

Further, the development of the mobile voice short code proposition to include lower charged price points (including 10ppm and 15ppm), is capable of being used by providers of "socially important" services that wish to continue earning a small revenue share on received calls.

¹³ See paragraph 5.105.

¹⁴ See paragraph 5.106.

¹⁵ See: <http://www.eonenergy.com/At-Home/Reset/Latest+News/> for example.

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?

See our response to question 4.1. We do not think that Ofcom has taken sufficient account of recent market developments relating to mobile voice shortcodes which we believe have the capability to address the problems identified by Ofcom. We also believe that forced disaggregation would undermine mobile voice shortcodes, since it would prevent service providers from anchoring mobile retail prices to a single, simple BT price.

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.

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.

Ofcom argues that a principal tariff permitting only one Access Charge for NGCs is “for the purpose of consumer protection”. We are of the view that Ofcom’s analysis of the market is not sufficiently robust to draw a conclusion that such a tariff principle is in the interest of consumers, particularly in relation to our fixed line customers.

In its 2012 Consultation, Ofcom said in relation to varying the Access Charge within a tariff package that it considers that “there will be material benefits in terms of enhancing consumer price awareness” in restricting the number of Access Charges within a tariff package and that these outweigh “the potential for limited disadvantages in terms of efficient prices”.¹⁶ Telefonica disagrees. As previously noted, all major home phone providers (i.e. BT, Sky, TalkTalk) include specific non-geographic numbers within call bundles, particularly 0845 and 0870, which are the most common non-geographic numbers. Call bundles vary by package and are generally time specific. For out of bundle non-geographic calls, typically a customer will pay a call set up charge and then a ppm rate. With this in mind, we consider that the changes that Ofcom are proposing are quite fundamental and likely to be to the consumer’s detriment by driving up the costs for these types of calls. We consider that this will be for one, or a combination, of the following reasons:

originating communication providers would lose the ability to provide discounts on certain specific non geographic number ranges, as Telefonica does currently;

originating communication providers would lose the ability to bundle specific non-geographic numbers to offer customers greater value for the most commonly used number ranges; and

¹⁶ Paragraph 10.42 refers.

originating communication providers would lose the ability to bundle at specific times of day to match the current proposition structures.

We consider that what Ofcom is proposing is an entirely new call type that does not follow established retail pricing structures for fixed line services, limits the originating communication provider's ability to provide customers with value for money and which adds complexity to pricing and billing systems.

As a comment relevant to both fixed and mobile, we consider that restrictions placed on OCPs' flexibility to structure its call bundles as they would want to are a material concern in relation to the proposals Ofcom puts forward in the consultation document. Telefónica appreciates that consumer detriment through increased prices needs to be balanced against the objective of achieving better consumer price awareness and transparency. Nevertheless, we consider that achieving this through an overly complex regime that may result in widespread consumer detriment is contradictory to the purpose of these proposals and, more broadly, Ofcom's regulatory objectives.

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.

Telefónica agrees with Ofcom's proposal to not cap the AC. We consider that this will be effectively constrained by competition amongst OCPs.

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.*

We agree with Ofcom that allowing bespoke Service Charges would make the unbundled tariff system more complex for consumers. Furthermore, we also agree with Ofcom's conclusion that bespoke Service Charges would reduce how informative the Access Charge is and would distort how effective market forces are in the setting of such charges.

Ofcom has recognised that, generally, ToD charging variations is a matter for industry. Whilst Telefónica appreciates the competitive drivers in support of not implementing ToD restrictions, we would note that this is inconsistent with Ofcom's guiding principle in its consultation of consumer price transparency as ToD variations would necessitate an additional level of research to be undertaken by consumers in order to make an informed calling decision.

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.

Telefónica is, in principle, in agreement with Ofcom's proposals to impose maximum Service Charge caps and believes that this approach is in line with consumer protection principles outlined in the consultation document. We consider that capping of the Service Credits will better guide both industry and consumers, and will provide pricing consistency to consumers enabling them to better gauge the cost of an NGC whether or not they have direct access to actual price messages.

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.

Telefónica agrees with Ofcom's basic calculation of the proposed caps for the 084 and 087 ranges and that a starting point of current termination rates is the correct approach to take. However, we would note that Ofcom's proposal to require that Service Providers advertise the exact Service Charge seems to contradict the basic principle of this consultation document; simplification of NGCs for the benefit of consumers. We disagree that advertising the exact rate will encourage consumer awareness of Service Charge prices, and consider that it would in fact make calculations of aggregated call charges more difficult for the consumer.

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?

Telefónica supports any measures taken to improve pricing granularity by reducing the number of SP price points and we consider that a restriction of between 60 and 100 SC price points is a sensible limitation. As proposed by Ofcom, we believe that the approach with regards to setting the relevant SC price points is a matter for industry.

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?

As proposed by Ofcom, we believe that the approach with regards to setting the relevant SC price points is a matter for industry.

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.

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.

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.

Telefónica and (we understand) other mobile operators do not have fixed DLR switches and do not connect to BT at a DLE level and the issues relating to AHP in this context are therefore particularly pertinent to fixed operators. Additionally, Telefónica is not a TCP – we don't ourselves provide 08X-type services – and therefore we are of the view that the TCP should pay for transit of calls that route via a transit network.

We note that Ofcom proposes that commercial discussions may take place with regards to the sharing of cost savings realised by not using a transit provider where two CPs other than BT interconnect directly. Telefónica currently routes all 08X traffic and the large majority of NGN traffic to BT, with some traffic also routed to Cable & Wireless. However, on the basis that Telefónica may in the future to connect to TCPs directly, we are, in principle, in agreement with Ofcom's proposal.

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.

No. We believe that the market is capable of addressing the problems identified by Ofcom and, indeed, mobile voice shortcodes, as now constituted, are a competitive response to the three market failures that Ofcom has identified (to the extent that they are material). Ofcom has a statutory duty to intervene only when necessary and, in the case, should refrain from imposing ex ante regulation while it considers the effectiveness of this new offering.

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?

Telefónica agrees that originating communication providers should have control over the best way to present the disaggregated AC and SC charges to customers. It is likely that each OCP will have a preferred approach in line with the way in which it bills customers and enabling individual OCPs to control the presentation of the unbundled tariff would allow them better to realise potential cost savings in implementation.

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?

Telefónica believes that the market should determine whether a central SC database should be built. Ofcom should intervene only if market failures can be shown to exist, which would result in a SC database (that would improve efficiency and welfare) not being built.

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 agree that industry should be allowed to resolve any problems in the first instance, and that regulatory intervention is desirable only where necessary.

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?

No. We see no case for intervention.

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 are considering this issue at greater length. Our initial view is that many revenue sharing call types are barred to international roamers, as a means of eliminating the risk of fraud. Furthermore, the cost of implement disaggregation for roaming would be additional to the cost of introducing the system for domestic calls and, we believe, disproportionately so. We will furnish more evidence at a later stage.

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?

Ofcom's proposals are made on the basis that they would address detriment caused to consumers resulting from three market failures. In our view, large business users are in a sufficiently well informed position to negotiate with originating communication providers. We believe that they do not need "protecting" in the same way that consumers may. Therefore, restrictions on commercial agreements between originating communication providers and large business users (that would arise if these proposals were extended to such agreements) would be unnecessary.

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

See our response to question 13.1.

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.

No. Following an internal high-level assessment of our anticipated billing costs for implementing the unbundled tariff, we believe that we will be facing costs of between [X] and [X] (estimated costs). This figure reflects the costs we believe we will incur across all of our affected systems. These costs will be subject to some fluctuation depending on how Telefónica decides to implement Ofcom's proposals, i.e. whether the Access Charge will be included in bundle, but we anticipate that even in the most cost efficient scenario, our billing costs for implementing the unbundled tariff will exceed Ofcom's own estimates. We would welcome the opportunity to meet with Ofcom to discuss in detail how we reached our billing costs estimates.

[X]

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

Ofcom has failed to recognise that the mandatory introduction of disaggregation would result in the removal of a single, simple BT price, which service providers use to benchmark mobile voice shortcode prices. There is considerable value in being able to provide consumers with a single, simple price for services, regardless of whether they originate a call from a mobile handset (using a mobile handset) or a BT fixed line.

The dismantling of the current regime would remove this benefit. Ofcom needs to reflect this "cost" in its cost benefit analysis.

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.

In Annex 22, Ofcom sets out its assessment on network and non network costs associated with the origination of mobile calls to 080 numbers.

There are a number of non network cost categories. “A&R costs” includes (but is not limited to) net handset costs and Ofcom records this as £1,057m for the average operator, based on figures submitted for the 2009 Competition Commission enquiry on mobile voice call termination.¹⁷

Telefónica’s net handset costs have increased markedly over the last few years, following the introduction of popular, but more costly, smartphones. Using the cost definitions set out in Annex 22, Telefónica’s “A&R” costs for 2011 were [redacted] (in 2011 prices). This is a material difference to Ofcom’s cost assessment.

The increased A&R costs equate to [redacted] if 100% of such costs are allocated to 080 calls (and not Ofcom’s 1.579ppm)

Further, Telefónica believes that there is no reason why 100% of A&R costs should not be included in the estimate of the cost of originating calls to 080 numbers; to do otherwise would be an arbitrary reallocation of costs from the origination of one call type to another. The cross subsidy by one call type to another, in this way, would result in higher prices for non 080 calls and other services (eg subscriptions), which is likely to be less efficient and, therefore, harmful to consumers.

¹⁷ See paragraphs A22.28 – 22.30

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.

We do not object to Ofcom's proposed method of implementation.

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.

Yes, we agree with Ofcom's approach.

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?

We think that it would be prudent for Ofcom to wait and see whether any publicity is necessary. In our experience, consumers are very adept at understanding that calls are zero rated and they respond quickly. In addition, there is likely to be a significant amount of media interest in any decision to zero rate 080 calls