



# Extending Premium Rate Services Regulation to 087 Numbers

Statement

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## Section 1

# Summary

### **NTS calls combine the call routing features of non-geographic numbers with a payment mechanism**

- 1.1 Number Translation Services ('NTS') calls are calls to 08 numbers ('NTS numbers'), though as explained later in the document, there are a few exceptions.
- 1.2 NTS numbers are examples of non-geographic numbers in that the number dialled does not relate to a specific geographic location, but instead relates to a particular service. At a technical level, the NTS number dialled by a caller is 'translated' by the network to a geographic number to deliver the call to its destination. Often, the translation is provided in conjunction with other call routing services that help businesses answer calls more efficiently. These include distribution of calls between multiple sites, routing calls according to the caller's location, recorded announcements and emergency call routing to an alternative location in event of a fire or flood etc.
- 1.3 Another important aspect of NTS calls is that they are generally charged at higher rates than ordinary calls and (with the exception of Freephone calls) the service provider who uses the number may receive a share of the call charge to help pay for the service supplied. Alternatively a share of the call charge may be used to pay for the call routing services mentioned above.

### **After a major review we decided to commence the process of extending PRS regulation to calls to the most expensive 08 numbers**

- 1.4 In April 2006 we concluded a major review of our policy about NTS<sup>1</sup> and announced a package of measures designed to improve consumer protection, pricing transparency and to address some industry problems that led to disputes that Ofcom was often called upon to resolve.
- 1.5 To improve consumer protection and pricing transparency for calls to the most expensive 08 numbers we proposed to extend Premium Rate Services ('PRS') regulation to all the 08 number ranges that are charged above 5p per minute for BT customers (excluding the 0870 range which was the subject of another proposal) thereby bringing those ranges within the remit of the PRS regulator PhonepayPlus<sup>2</sup>. The relevant ranges are the 0871, 0872 and 0873 ranges. For ease, we have used the term '087 Numbers' in this document to refer to the 087 number ranges excluding 0870.

### **PhonepayPlus decided to adapt its Code of Practice to make it more suitable for the types of services that are typically provided on 087 Numbers**

- 1.6 PhonepayPlus subsequently conducted its own consultation on the code of practice it should apply to the regulation of 087 Numbers. PhonepayPlus concluded that the current PhonepayPlus Code of Practice (11<sup>th</sup> Edition) for Premium Rate Services ('the Code') would be suitable for 087 Numbers if it interpreted certain provisions of

<sup>1</sup> See paragraph 2.9 for details.

<sup>2</sup> Until October 2007 PhonepayPlus was called ICSTIS (independent Committee for the Supervision of Standards of the Telephone Information Services).

the Code in a different way for 087 Numbers and if it used the flexibility provided within the Code to exempt some types of services from specific requirements when provided on 087 Numbers. PhonepayPlus set out its interpretation of the Code for 087 Numbers in a document called the Statement of Application<sup>3</sup>.

## **In May 2008 we published a second consultation on our proposal to extend Premium Rate Services regulation**

- 1.7 After PhonepayPlus had concluded its consultation, we published a further consultation in May 2008 (the 'Consultation'<sup>4</sup>) setting out detailed proposals and the legal notification required to extend PRS regulation to 087 Numbers. For consistency we also proposed to reduce the price threshold for PRS regulation on 09 numbers to the same level (i.e. 09 number ranges that are charged above 5p per minute (for BT customers) would be subject to PRS regulation rather than those ranges charged above 10p per minute (for BT customers) as at present).

## **We received 27 responses to our consultation**

- 1.8 We received 27 responses to our consultation, 12 from consumers, 11 from communications providers and related organisations, and 4 from businesses and related organisations.
- 1.9 Stakeholder views on our proposals were polarised. Consumers thought the proposals did not go far enough to address their concerns and those involved in the provision of services on 087 Numbers regarded them as too intrusive.
- 1.10 Most consumer respondents argued that Ofcom should implement additional measures to reduce the price of calls to 087 Numbers such as retail price regulation or a requirement for users of 087 Numbers to publish a geographic number. Others were critical of the rules proposed by PhonepayPlus for 087 Numbers which were regarded as weaker than those applied to 09 numbers. Several consumer respondents also criticised Ofcom for taking insufficient notice of consumer concerns about 08 numbers.
- 1.11 There was some support for our proposals amongst Communications Providers ('CPs'), businesses and related organisations, however, most did not support the proposals. Most of these respondents thought that the consumer protection and pricing transparency problems did not warrant the proposed extension of PRS Regulation. Most also thought the Code was not fully suitable for the types of service that use 087 Numbers. Nevertheless, most respondents conceded that PhonepayPlus interpretation of the Code for 087 Numbers (as set out in the Statement of Application) had addressed some of their concerns about certain aspects of the Code, improving its suitability for services operating on 087 Numbers.

## **We have revised parts of our impact assessment in response to stakeholder comments**

- 1.12 In response to stakeholder comments we have made several changes to our impact assessment. These changes include new estimates for some of the setup costs that we did not quantify in the Consultation and a revision to our estimates of the potential benefits of improved pricing transparency.

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<sup>3</sup> [http://www.phonepayplus.org.uk/pdfs\\_news/0871\\_Services\\_StatementOfApplication.pdf](http://www.phonepayplus.org.uk/pdfs_news/0871_Services_StatementOfApplication.pdf)

<sup>4</sup> Extending Premium Rate Services Regulation to 087 Numbers, published 2 May 2008, <http://www.ofcom.org.uk/consult/condocs/087prs/prscondoc.pdf>

- 1.13 It was not practicable to quantify all of the setup costs that stakeholders would incur as a result of our proposals, however our new cost estimates address the previously un-quantified impacts that we consider would be significant.
- 1.14 Our revised estimate for the one-off setup costs that we could quantify is £66m to £121m is higher than we estimated in the Consultation, mainly due to the addition of the new cost estimates for impacts that we had previously taken into account qualitatively.
- 1.15 Following these revisions, we remain of the view that the benefits associated with our proposals would exceed the costs and that the proposals would deliver a substantial net benefit.

### **Following consideration of the consultation responses we have decided to proceed with these proposals**

- 1.16 Following consideration of the responses and the revisions to our impact assessment we have decided to confirm our proposals. We think they provide a reasonable balance between the overriding goal of furthering consumer interests and our duty to consider avoiding unduly burdensome regulation.
- 1.17 We acknowledge that some respondents would prefer Ofcom to take additional steps to limit or bring an end to revenue sharing on 08 numbers. These views echo the responses to our 2005 consultation<sup>5</sup> on 08 numbers. After considering these views in our April 2006 statement, we concluded that ending revenue-sharing on all 08 numbers would be highly disruptive and would be likely to have a negative effect on service availability. On this basis we concluded it would not be in the best interests of consumers, businesses or communications providers. We still think this was the right conclusion and that we should extend PRS regulation in order to improve pricing transparency and consumer protection.
- 1.18 In the light of stakeholder comments we have redrafted the modification to the PRS Condition to ensure that the modification has the intended effect and also to provide further clarity. The changes:
  - limit the scope of the extension of PRS regulation to 087 Numbers and 09 numbers as intended (as originally drafted other types of PRS such as premium mobile SMS could also have been made subject to this change in PRS regulation); and
  - provide greater clarity about the meaning of the pricing references in the PRS Condition.
- 1.19 This document contains a legal notification of the modification to the PRS Condition and:
  - a summary of the consultation responses and our comments;
  - a summary of the Impact Assessment that we published in the Consultation and details of changes we have made to it in response to stakeholders comments; and
  - a review of the modification in light of the relevant legal tests.

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<sup>5</sup> See paragraph 2.9 for details.

**PhonepayPlus will start regulating these ranges in 1 August 2009**

- 1.20 In view of stakeholder representations about the implementation period prior to the commencement of PhonepayPlus regulation we have decided to extend the implementation period from 3 months to 6 months.
- 1.21 The modification to the PRS Condition will take effect on 1 August 2009.
- 1.22 Organisations offering PRS services on 0871, 0872, 0873 numbers and 09 numbers that are charged at more than 5p per minute and up to 10p (for BT customers) will therefore be subject to the PRS regulation from 1 August 2009.
- 1.23 Calls to 0870 numbers are subject to separate proposals and will not be subject to PRS regulation (see paragraph 2.25 for details).

## Section 2

# Introduction

- 2.1 This section provides a brief summary explaining the background to this statement. For a more detailed description please see section 2 of the Consultation and the documents from the 2006 policy review (see paragraph 2.9 below for details).
- 2.2 Annex 3 of this document gives an overview of the regulatory framework for NTS and PRS.

## Number Translation Services

- 2.3 NTS calls are calls to numbers identified in the National Telephone Numbering Plan ('the Plan') as Special Services numbers (broadly, numbers that start with 08 or 09). In addition, NTS includes calls to the legacy 0500 Freephone numbers, which whilst still in use, are not listed in the Plan as they are no longer available for new allocations. Calls to 0844 04 numbers for Surftime internet access services and calls to 0808 99 numbers for Flat Rate Internet Access Call Origination ('FRIACO') are not included in the definition of NTS numbers.
- 2.4 NTS numbers are examples of non-geographic numbers in that the number dialled does not relate to a specific geographic location, but instead relates to a particular service. At a technical level, the NTS number dialled by a caller is 'translated' by the network to a geographic number to deliver the call to its destination.
- 2.5 For a given NTS call, there can be several different CPs involved in conveying the call from the caller to the organisation or individual receiving the call. This includes an Originating Communications Provider ('OCP'), on whose network the call commences, and a Terminating Communications Provider ('TCP'), on whose network the NTS number resides. The OCP and the TCP may be the same for some calls. There may also be a CP carrying the call between the OCP and the TCP (this is known as a 'transit' service).
- 2.6 A key feature of NTS is that the regulatory framework makes revenue sharing possible between the TCP and the organisation or individual receiving the call. In this way, the regulatory regime supports the use of NTS as a micro-payment mechanism for the various services which can be accessed via 08 and 09 numbers. The caller pays the OCP for the call. The OCP passes on a terminating payment to the TCP, who is then able (subject to commercial viability) to share some of this revenue with the Service Provider ('SP').
- 2.7 Services offered using 087 Numbers are similar to those using the '09' number range except that prices range from free to caller up to a maximum of 10ppm (for BT customers). Types of services offered on 087 Numbers include information services, technical help-lines, access to telephone banking, sales and customer service lines, customer data capture, multi-party business conferencing services and dial-up pay-as-you-go internet services.
- 2.8 Because of the lower prices charged for calling 087 Numbers compared to 09 numbers, the scope for consumer detriment from making long calls and from fraudulent activity generally is considered to be lower than for 09 calls. However, there is still potential for consumers to accrue high phone bills over a billing cycle where there may be frequent or long-duration use of lower priced services.



## Ofcom's NTS Policy Review

2.9 On 18 April 2006 Ofcom published a regulatory statement concluding a major review of the regulatory framework for NTS calls ('the NTS Policy Review'). During the course of the review, Ofcom published two consultations and a final policy statement:

- a) NTS: Options for the Future, first consultation published October 2004 ('the 2004 NTS Consultation')<sup>6</sup>
- b) NTS: A Way Forward, second consultation published September 2005 ('the 2005 NTS Consultation')<sup>7</sup>
- c) NTS: A Way Forward, final policy statement published April 2006 ('the 2006 NTS Statement')<sup>8</sup>

## Our review looked at a range of problems with NTS against a background of declining consumer confidence

2.10 We think that NTS enables organisations to supply consumers with many useful services, some of which would not otherwise be available. However, we decided to carry out a review because there was a range of concerns about NTS, including consumer concerns, in relation to the following issues:

- Consumer protection - There were concerns about a rise in scams previously seen on 09 numbers that were beginning to affect 08 numbers and more general concerns that a lack of consumer protection measures might mean that businesses were using 08 numbers to overcharge consumers;
- Pricing transparency – Our research showed that consumers have a very low awareness of the price of 08 calls to 08 numbers. Thus, consumers often make inefficient purchasing decisions, such as avoiding calling 08 numbers because they over-estimate call charges or conversely making more calls because they under-estimate call charges;
- Adult services – Concerns were expressed that the Sexual Entertainment Services operating on 08 numbers are barred less easily than those operating on 09 numbers. Unlike Sexual Entertainment Services operating on 09 numbers, those operating on 08 numbers were not regulated by the premium rate services regulator PhonepayPlus (at that time<sup>9</sup>);
- Call centre waiting times – Many consumers are annoyed by long call centre waiting times and some people are worried that when 08 numbers are used, waiting times may be deliberately extended to make extra money from callers;
- Provision of public services – There has been growing concern about the use of 08 numbers for the provision of public services. This problem has been exacerbated by the fact that NTS numbers cannot be accessed from all foreign networks, making it difficult for those overseas to access UK public services.

<sup>6</sup> <http://www.ofcom.org.uk/consult/condocs/ntsoptions/>

<sup>7</sup> [http://www.ofcom.org.uk/consult/condocs/nts\\_forward/](http://www.ofcom.org.uk/consult/condocs/nts_forward/)

<sup>8</sup> [http://www.ofcom.org.uk/consult/condocs/nts\\_forward/statement/](http://www.ofcom.org.uk/consult/condocs/nts_forward/statement/)

<sup>9</sup> On 8 March 2007, Ofcom published a policy statement, announcing its decision to extend PRS regulation to these services.

[http://www.ofcom.org.uk/consult/condocs/entertainment\\_services/statement/statement.pdf](http://www.ofcom.org.uk/consult/condocs/entertainment_services/statement/statement.pdf)

- 2.11 These concerns have contributed to a decline in consumer confidence in NTS.
- 2.12 There were also industry concerns about several aspects of the regulatory regime for NTS. Most notably, the residual linkage between 0845 and 0870 call charges and BT's local and national call charges means that the revenue that CPs receive for calls from BT customers is effectively beyond their control and subject to changes in BT's prices. This creates considerable uncertainty for CPs and businesses that use 0870 numbers who rely on a share of the call revenue to fund their services.
- 2.13 For a full description of the policy issues considered in the review, see section 4 of the 2005 NTS consultation.

**We decided to take steps to improve consumer protection and pricing transparency**

- 2.14 We decided that it was important to address the problems that are undermining consumer confidence in NTS. We also thought that consumers benefit from many useful services provided on NTS. So in the 2006 NTS Statement we decided to implement a package of measures designed to address the issues listed in paragraph 2.10 for which we found evidence whilst ensuring the availability of a wide range of services.
- 2.15 One of these measures was a proposal to bring the most expensive 08 numbers (those charged above 5p per minute for BT customers) within the current regulatory framework for PRS and therefore within the remit of the PRS regulator PhonepayPlus. The aim of this proposal was to improve consumer protection and pricing transparency.

**We asked PhonepayPlus to develop a Code of Practice suitable for the types of services that use 087 Numbers**

- 2.16 PhonepayPlus administers a Code of Practice for PRS Regulation which specifies rules which those involved in the provision of PRS must comply with. Under the Code of Practice, PhonepayPlus also has a range of sanctions it can impose in respect of breaches of the Code of Practice. Ofcom approved the current version of the PhonepayPlus Code of Practice (11th Edition) for Premium Rate Services<sup>10</sup> (the Code) in November 2006 and amendments to the Code in March 2008 which came into force on 28 April 2008.
- 2.17 The services that PhonepayPlus currently regulates are typically services such as information, advice and entertainment services that operate on numbers that are charged at rates above 10p per minute for BT customers. By contrast customer service applications predominate on 087 Numbers. The scope for consumer detriment may also be lower as call charges are lower (rates for BT customers are up to 10p per minute).
- 2.18 Because of these differences we asked PhonepayPlus to develop a Code of Practice for 087 Numbers that would be suitable for the services using 087 Numbers and commensurate with the scope for consumer detriment.

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<sup>10</sup> [http://www.phonepayplus.org.uk/pdfs\\_code/11th\\_edition.pdf](http://www.phonepayplus.org.uk/pdfs_code/11th_edition.pdf)

## **PhonepayPlus decided to adopt a Statement of Application describing how it would interpret the Code to suit the services being provided on 087 Numbers**

- 2.19 PhonepayPlus undertook research and consulted with stakeholders on the scope and type of regulation that should be applied to 087 Numbers. Amongst other options, PhonepayPlus considered the suitability of the Code for 087 Numbers. The Code has evolved over several years and provides a high level of consumer protection for the types of services that PhonepayPlus currently regulates, which are typically services such as information, advice and entertainment services charged at rates above 10p per minute and which operate on 09 numbers and increasingly on mobile short codes.
- 2.20 PhonepayPlus recognised that the types of service operating on 087 Numbers can be in part different from those it currently regulates. The predominant services on 087 Numbers are customer services applications such as sales and customer support services. PhonepayPlus also recognised that the potential for consumer harm may be lower partly because retail prices are generally lower. In addition, some of its service-specific rules would not apply to many 087 Numbers because those types of service are not normally provided on 087 Numbers.
- 2.21 PhonepayPlus therefore concluded that the current interpretation of the Code may not be fully suitable for the types of services being provided on 087 Numbers or proportionate to the consumer protection requirements of 087 Numbers. However, PhonepayPlus concluded that the Code could be suitable for services operating on 087 Numbers, if it:
- interpreted certain provisions of the Code in a different way for 087 Numbers to reflect their different characteristics and usage; and
  - if it used the flexibility provided within the Code to exempt some types of service from specific requirements when provided on 087 Numbers.
- 2.22 On 13 November 2007, PhonepayPlus published its policy statement entitled “0871, 0872 and 0873 Services: A Statement of Application” (‘the PhonepayPlus 087 Statement’). The PhonepayPlus 087 Statement reviewed stakeholder comments and contained the Statement of Application (‘SoA’) which sets out how PhonepayPlus will interpret its Code in relation to 087 Numbers.

## **In May 2008 we published a second consultation on our proposal to extend PRS Regulation**

- 2.23 After PhonepayPlus had concluded its consultation we published a further consultation in May 2008 (the Consultation) setting out a detailed proposals and the legal notification required to implement this change. Our consultation included:
- a legal notification of our proposal to modify the PRS Condition in order to extend PRS regulation;
  - our impact assessment for the proposals;
  - our review of the legal tests specified in the Communications Act 2003 (‘the Act’) for modifications to the PRS Condition; and
  - a discussion of stakeholder comments on concerns raised with Ofcom prior to our consultation.

- 2.24 For consistency we also proposed to extend PRS regulation to 09 numbers charged above 5p per minute and up to 10p per minute for BT customers.

## Related Work

- 2.25 In conjunction with the Consultation, in May 2008 we also published a consultation setting out our proposals for the final steps to implement changes to the way in which 0870 calls are charged<sup>11</sup>. At the time, we aimed to announce our conclusions on this by autumn 2008.
- 2.26 However, it has since become clear that our work needs to take place alongside an ongoing dispute about wholesale termination rates, the rates that operators charge each other to end 0870 calls on each others' networks. Until recently, Ofcom's work on the dispute was suspended in light of stakeholder concerns about its linkage with an appeal being heard by the Competition Appeals Tribunal ('CAT'). The CAT published its judgement on 20 May 2008<sup>12</sup> and on 15 August 2008 the CAT published its judgement on the rates in dispute<sup>13</sup>. Work on the 0870 termination rates dispute has since restarted.
- 2.27 We are continuing to assess our May 2008 proposals for 0870 calls and the responses to that consultation in light of these developments. We aim to publish a final statement setting out our conclusions shortly.

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<sup>11</sup> Changes to 0870, published 2 May 2008. <http://www.ofcom.org.uk/consult/condocs/0870calls/>

<sup>12</sup> [http://www.catribunal.org.uk/documents/Judgment\\_TRDs\\_200508.pdf](http://www.catribunal.org.uk/documents/Judgment_TRDs_200508.pdf)

<sup>13</sup> [http://www.catribunal.org.uk/documents/Jdg\\_TRD\\_1089\\_1090\\_1091\\_1092\\_150808.pdf](http://www.catribunal.org.uk/documents/Jdg_TRD_1089_1090_1091_1092_150808.pdf)

## Section 3

# Summary of responses and Ofcom's comments

## Overview of responses

3.1 We received 27 responses to the consultation:

- 12 from consumers;
- 11 from communications providers ('CPs') and related organisations; and
- 4 from businesses and related organisations.

Of the respondents, 21 gave permission for their responses to be published. Three of the published respondents asked for their names to be withheld. The responses are available on our website at:

- <http://www.ofcom.org.uk/consult/condocs/087prs/responses/>

3.2 Stakeholder views on our proposals were polarised. Consumers thought the proposals did not go far enough to address their concerns and those involved in the provision of services on 087 Numbers regarded it as too intrusive.

3.3 Most consumer respondents argued that Ofcom should implement additional measures to reduce the price of calls to 087 Numbers such as retail price regulation or a requirement for users of 087 Numbers to publish a geographic number. Others were critical of the rules proposed by PhonepayPlus for 087 Numbers which were regarded as weaker than those applied to 09 numbers. Several consumer respondents also criticised Ofcom for taking insufficient notice of consumer concerns about 08 numbers.

3.4 There was some support for our proposals amongst CPs, businesses and related organisations, however, most did not support the proposals. Most of these respondents thought that the consumer protection and pricing transparency problems did not warrant the proposed extension of PRS Regulation. Most also thought the Code of Practice proposed by PhonepayPlus was not fully suitable for the types of service that use 087 Numbers. Nevertheless, most respondents conceded that PhonepayPlus interpretation of the Code of Practice for 087 Numbers (as set out in the Statement of Application) has addressed some of their concerns about certain aspects of the Code, improving its suitability for services operating on 0871 numbers.

3.5 The main points raised by respondents are discussed below.

## Concerns that the PhonepayPlus Statement of Application would reduce the effectiveness of PRS regulation for 087 Numbers

3.6 Several consumer respondents were critical of the PhonepayPlus SoA on the grounds that it weakened PRS regulation for 087 Numbers by dis-applying some aspects of the Code and reinterpreting others. One consumer respondent argued

these differences were contrary to Ofcom's earlier commitment to subject 087 Numbers to the full PhonepayPlus Code.

- 3.7 In particular, some consumer respondents voiced concerns that under the SoA, call queuing would not be prohibited or at least strictly limited.

### **Ofcom's Comments**

- 3.8 When we initially proposed to extend PRS regulation to 087 Numbers (in the 2006 NTS Statement) we recognised that the Code is designed to suit the services typically provided on 09 numbers such as adult and live chat services that are charged at much higher rates than 087 calls. We therefore asked PhonepayPlus to review its Code and to adapt it as necessary to suit the services using 087 Numbers and the consumer protection concerns associated with those numbers. Our view is that the SoA tailors PRS regulation to suit the services provided on 087 Numbers rather than reduce its effectiveness.
- 3.9 PhonepayPlus has decided that the undue delay (call queuing) provisions of the Code should be applied to 087 Numbers. However, PhonepayPlus would expect SPs to handle complaints directly in the first instance, as complaints of poor service. In cases where the SP and complainant are unable to reach agreement PhonepayPlus would then consider complaints.
- 3.10 We acknowledge that some consumers are concerned about call queuing and that some would like PhonepayPlus to effectively ban call queuing on 087 Numbers. However, we think that a balance needs to be struck between ensuring consumers do not suffer financial detriment from call queuing and the practicalities of call centre operation, where it needs to be recognised that consumer calling patterns are not always even and accurately predicted. As discussed in the Consultation, we think the PhonepayPlus approach to call queuing for 087 Numbers strikes an appropriate balance between consumer and industry interests and provides additional protection for consumers. It also provides a mechanism for consumers to seek redress in cases where unreasonable delay occurs.
- 3.11 Given the consumer concerns, PhonepayPlus will be monitoring the undue delay obligations in operation and if appropriate it will consider revising its approach to improve the effectiveness of the undue delay obligations.

### **Some believe Ofcom should take firmer measures to limit retail prices for calls to 08 Numbers**

- 3.12 Several consumer respondents suggested that Ofcom should take steps to limit retail prices for calls to 08 Numbers or limit revenue sharing such as:
- requiring SPs to publish an alternative geographic number for callers who do not wish to call their 087 number;
  - limiting revenue sharing to 09 numbers;
  - forcing services to migrate to 03 numbers (where revenue sharing is not permitted); or
  - limiting the maximum call charge for 08 numbers to 25p.



## **Ofcom's comments**

- 3.13 In the 2004 NTS Consultation and the 2005 NTS Consultation we considered a wide range of options for 08 numbers including ending revenue sharing on 08 numbers thereby limiting revenue sharing to 09 numbers. We rejected these measures in favour of a package of measures (which included our proposal to extend PRS regulation to 087 Numbers) to address consumer and industry concerns about 08 numbers. We concluded that ending revenue sharing on all 08 numbers would be highly disruptive and would have a negative effect on service availability. We remain of the view that such an approach would not be in the best interests of consumers, SPs or CPs.

## **Some believe Ofcom should extend PRS regulation to 084 numbers**

- 3.14 One respondent supported the proposed extension of PRS regulation to 087 Numbers but felt that Ofcom should also bring 084 numbers (e.g. 0844 and 0845) within the scope of PRS regulation.

## **Ofcom's comments**

- 3.15 We considered extending PRS regulation to 084 numbers in the 2005 NTS Consultation (see paragraph 2.9). We also acknowledged the risk that problematic services might migrate from 087 Numbers to 084 numbers. We concluded that this extension of PRS regulation was not justified by the evidence of consumer harm. We also concluded that the potential for consumer harm is much smaller because the highest charge for 084 numbers for BT customers is half that for 087 Numbers (5p per minute for 084 Numbers compared with 10p per minute 087 Numbers). In practice the scope for revenue sharing and therefore the potential profits from scams is determined by BT's call charges and industry-wide interconnection arrangements, rather than the retail price charged by other CPs.
- 3.16 In the 2006 NTS Statement Ofcom decided to monitor the 084 ranges to see if problems arise. We still believe this is the best approach. Therefore we do not currently have any plans to extend PRS regulation to 084 numbers. However we will continue to monitor complaints and other indicators for signs of a rise in consumer harm.

## **Ofcom's duties under section 3 of the Act**

- 3.17 Two consumer respondents argued that Ofcom had failed to address consumer concerns about 087 Numbers and this amounted to a breach of Ofcom's duty under section 3 of the Act to protect the interests of consumers.

## **Ofcom's comments**

- 3.18 We disagree with the respondents that we have failed to address consumer concerns. Following the 2004 NTS Consultations and the 2005 NTS Consultation and detailed consideration of responses, Ofcom decided in the 2006 NTS Statement to implement a package of measures to improve consumer protection and pricing transparency and also to address industry concerns. When setting policy, Ofcom has to balance the needs of all stakeholders. Whilst we acknowledge that some consumers would prefer that we take steps to restrict the availability of revenue sharing on 08 numbers, we believe our approach will deliver the best overall outcome for consumers and is in accordance with our statutory duties under the Act.

## **PhonepayPlus should introduce additional consumer protection measures for calls to 087 Numbers**

3.19 A consumer respondent suggested that PhonepayPlus should introduce other measures to improve consumer protection for calls to 087 Numbers. The measures proposed were:

- improving international access to 087 Numbers from abroad;
- setting or limiting charges for calls to 08 numbers, particularly calls originated on mobile networks where calls are sometimes much more expensive than the price ranges specified in the Plan;
- introducing mandatory pricing announcements before calls to 087 Numbers are connected; and
- requiring SPs to state in advertising material that their 087 Numbers are PRS numbers and that they receive a revenue share;

### **Ofcom's Comments**

3.20 The first three measures fall outside the scope of PRS regulation mainly because action to address them would have to be taken by OCPs rather than TCPs and SPs. PhonepayPlus would not therefore be able to implement these measures. However, Ofcom considered the first three measures in the NTS Policy Review. We have not commented on them further here because they are outside the scope of this statement which focuses on the extension of PRS regulation rather than the wider issues considered in the NTS Policy Review.

3.21 Regarding the final suggestion, we think that some consumers may find this information useful. However, it is necessary to keep information messages in advertising material short in order to maintain their impact. On balance, our view is that the information should be limited to pricing information and company contact details as currently required by the Code/SoA.

### **The proposed modification to the PRS Condition**

3.22 The Mobile Broadband Group and Cable and Wireless thought that the proposed modification to the PRS Condition would reduce the price threshold for all PRS services from 10p to 5p. It would therefore encompass services charged at up to 10p per minute other than those on 087 and 09 numbers such as those using mobile short codes, contrary to Ofcom's intention.

3.23 Several stakeholders suggested that Ofcom should revise the PRS Condition to clarify the meaning of the references to call prices. They suggested that Ofcom should make clear that in the case of 08 and 09 numbers, the reference to call prices apply to prices paid by BT customers (thereby describing specific number ranges and number blocks). The concern was that if the text in the proposed modification (and also the current version) was interpreted literally, some calls to number blocks below the intended price threshold for PRS regulation would fall within the scope of PRS regulation if retail prices were higher than from BT lines.



## Ofcom's comments

3.24 On the basis of the wording proposed in the Consultation, we agree that the proposed modification to the PRS Condition could have a wider scope than intended. We have therefore revised the text to ensure the scope of the modification is 087 Numbers and 09 numbers as originally intended.

3.25 We also agree that it would be appropriate to modify the PRS Condition to clarify that in the case of 08 and 09 numbers the PRS Condition specifies the number ranges and number blocks that are subject to PRS regulation by reference to the 'price point' selected by TCPs when they are allocated number blocks by Ofcom. This price point is the retail price for BT customers.

3.26 We have therefore amended section 2. (e) of the PRS Condition as shown below (amendments are underlined and highlighted):

(e) "Controlled Premium Rate Service" means a Premium Rate Service (other than a service which is only accessed via an International Call) in respect of which:

(i) the service is obtained through a Special Services Number (except an 0870 number), and the charge for the call by means of which the service is obtained or the rate according to which such call is charged is a charge or rate which exceeds 5 pence per minute for BT customers inclusive of value added tax; or

(ii) the service is obtained other than through a Special Services Number, and the charge for the call by means of which the service is obtained or the rate according to which such call is charged is a charge or rate which exceeds 10 pence per minute inclusive of value added tax; or

(iii) (ii) the service is a Chatline Service; or

(iv) (iii) is Internet Dialler Software operated; or

(v) (iv) the service is a Sexual Entertainment Service;

3.27 The amendment introduces two new terms so we have also added definitions to section 2 of the PRS Condition for these terms. The definitions are:

(f) "BT" means British Telecommunications plc, whose registered company number is 1800000, and any of its subsidiaries or holding companies, or an subsidiary of such holding companies, all as defined by section 736 of the Companies Act 1985, as amended by the Companies Act 1989 and the Companies Act 2006;

(q) "Special Services Number" means a telephone number designated by Ofcom in the National Telephone Numbering Plan as Special Services basic rate, Special Services higher rate or Special Services at a Premium Rate;

- 3.28 Clause (q) defines a Special Services Number as one designated by Ofcom as a Special Services number (either basic rate, higher rate or at a premium rate) in the National Telephone Numbering Plan. As all 08 and 09 numbers are defined as Special Services Numbers in the National Telephone Numbering Plan, in effect, references to Special Services Numbers in the PRS Condition therefore refer to 08 and 09 numbers.
- 3.29 Clause (e) (i) is the main change to the PRS Condition. It specifies that 08 and 09 number ranges (other than 0870 numbers) with price points above 5p per minute and up to and including 10p per minute are Controlled Premium Rate Services. 08 and 09 numbers are defined by reference to Special Services numbers and the pricing references follow the terminology used in the National Telephone Numbering Plan and are therefore references to prices paid by BT customers.
- 3.30 Clause (e) (ii) is largely unchanged from the current version and specifies that all premium rate services other than those provided on 08 and 09 numbers are Controlled Premium Rate Services if the retail price exceeds 10p per minute including VAT.
- 3.31 Clauses (e) (iii) to (iv) are also unchanged from the current version and specify that Chatline Services, Internet Dialler Services and Sexual Entertainment Services are Controlled Premium Rate Services irrespective of the number or other means used to access them.

### Complaints handling requirements of the PhonepayPlus Code

- 3.32 Most of the industry respondents argued that the requirement in section 3.3.5 of the Code for SPs to provide a non PRS number<sup>14</sup> for customer services (meaning queries/complaints about the service) or alternatively to refund call charges was not fully suitable for customer service applications and some argued it is completely unworkable and would effectively bar customer service applications from using 0871 numbers. The main points made were:
- given that customer service applications predominate on 087 Numbers, it would not be easy to distinguish between complaints about the service provided on the 087 number and the service itself, particularly when the service involves reporting problems (e.g. fault reporting, warranty repairs or billing queries);
  - some customers would call the complaints number instead of the 087 number for customer service or service complaints because the call charges would be lower; and
  - there is a lack of clarity on how potential refund mechanisms would work, in particular how SPs would determine the amount of the call charge to be refunded since they would not know what network the caller used.
- 3.33 Cable and Wireless thought SPs would require Network Operators ('NOs') to supply call records to validate refund requests, straining NO resources. Cable and Wireless also queried whether under the Data Protection Act it was permissible for them to share customer call records with SPs.
- 3.34 Some stakeholders also requested an alternative approach be taken so that refunds were only initiated after a PhonepayPlus investigation.

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<sup>14</sup> Meaning a number not regulated by PhonepayPlus in this context.

## Ofcom's Comments

- 3.35 These comments echo those discussed in the Consultation. Whilst we acknowledge the concerns, we are not persuaded that the requirements of section 3.3.5 of the Code are inconsistent with good customer service practice or that the difficulties cited could not be overcome by SPs. For the reasons discussed below, our view is that the requirements of section 3.3.5 of the Code will not be overly intrusive for most SPs.
- 3.36 Section 3.3.5 simply requires SPs to provide a mechanism by which consumers can complain without being charged a premium and does not otherwise restrict the use of 087 Numbers for customer service purposes. We note that some SPs already provide a separate number for complaints and that many would compensate their customers in some way in the event of a complaint.
- 3.37 We do not think it would be unduly difficult for SPs to distinguish customer complaints from other enquiries. SPs would only be expected to regard a call as a complaint if a customer identified it as such and requested a refund of call charges. We believe that with effective customer handling, perhaps supported by clear question scripts, SPs would be able to distinguish between complaints about the service provided on 087 Numbers (which would be eligible for a call charge refund under section 3.3.5 of the Code) from complaints about downstream services such as faults or billing errors (which would not be eligible for a refund under section 3.3.5 of the Code). We also note that SPs would presumably wish to handle all complaints to the satisfaction of their customers regardless of whether they fall within the scope of section 3.3.5 of the Code so this distinction may not be particularly important in practice for many SPs.
- 3.38 We acknowledge that if SPs provide a non-PRS number for complaints, some callers may use it for other types of calls in order to avoid paying higher charges on the main number. We do not believe this would be a major problem for SPs as it would be relatively simple for them to take steps to ensure that non-PRS complaints numbers are used for their intended purpose and to take steps to reduce the impact of calls which do not concern complaints. These would include effective customer handling perhaps supported by clear scripts and direct questions at the start of a call to reduce time spent dealing with non-complaint issues. As noted above some SPs already publish separate numbers for complaints or would publish a geographic number for international access to their services, SPs would therefore be used to handling such problems.
- 3.39 Regarding the practicalities of refunds, some respondents seem to have misunderstood the refund option and to have assumed a wider scope than specified. For example, some respondents seem to have assumed that SPs would be obliged to retrospectively refund charges for earlier calls when consumers subsequently call to complain. As the refund option is intended as an alternative to a non-PRS number for complaints, the requirement under section 3.3.5 of the Code to refund call charges is limited to charges for calls identified by callers during the call as complaints and there is no obligation to refund call charges retrospectively. SPs that provide a non-PRS number also have no obligation to refund call charges under section 3.3.5 of the Code. However they would have an obligation under section 5.8 of the Code to specify their customer service number in promotional material.
- 3.40 We also note that PhonepayPlus has published detailed guidance on the payment of refunds<sup>15</sup> and is happy to assist with individual queries.

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<sup>15</sup> [http://www.phonepayplus.org.uk/pdfs\\_helpnotes\\_code11/refunds.pdf](http://www.phonepayplus.org.uk/pdfs_helpnotes_code11/refunds.pdf)

- 3.41 Regarding provision of call records by NOs to SPs, our view is that it would not be necessary for NOs to supply SPs with call records in order to process refunds. As noted above, there is no requirement under section 3.3.5 of the Code for SPs to provide retrospective refunds. We would also expect that for simplicity SPs would normally process refunds during or immediately after a complaint call and would therefore know the call duration without reference to call records.
- 3.42 As noted in the Consultation, the use by SPs of 087 Numbers for complaints is a recurrent theme in consumer complaints to Ofcom, many of whom feel it is unjust that they should be charged a premium to complain about poor service provided by SPs. We remain of the view that section 3.3.5 of the Code strikes a reasonable balance between the interests of consumers and SPs. Given the level of consumer concern we feel it is appropriate that section 3.3.5 of the Code should be applied to calls to 087 Numbers to provide consumers with additional protection by providing a mechanism for them to raise complaints without being charged a premium rate.
- 3.43 In view of the concerns PhonepayPlus will monitor this issue closely during the approach to and following the extension of PRS regulation. PhonepayPlus is also happy to assist with individual queries.

### **Due diligence requirements of the PhonepayPlus Code**

- 3.44 Several industry stakeholders were concerned that PhonepayPlus had decided to retain section 2.3.1 (e) and (f) of the NO due diligence requirements which they regarded as burdensome. There was also some concern that under clause 2.3.4 NOs might be required to undertake full retrospective due diligence (as specified in sections 2.3.1 (a) to (f) ) for their existing customers within 10 months of the April 2008 amendment to the 11<sup>th</sup> edition of the Code.

### **Ofcom's Comments**

- 3.45 To recap, PhonepayPlus has waived clauses 2.3.1 (a) to (c) for 087 Numbers, which required Network Operators to collect information about the identity and financial standing of SPs. The remaining parts of section 2.3 of the Code will apply to 087 Numbers, namely 2.3.1 (d) (e) & (f) and 2.3.2 to 2.3.4.
- 3.46 Our view is that sections 2.3.1 (e) & (f) are straightforward and not unduly burdensome.
- 3.46.1 Section 2.3.1 (d) simply requires CPs to retain any information collected and to make it available to PhonepayPlus on request. Section 2.3.1 (e) requires NOs to bring the PhonepayPlus Code of Practice to the attention of SPs and to retain a copy of the registration form lodged by each SP with PhonepayPlus and PhonepayPlus receipt of that form. This requirement can be discharged through a simple exchange of emails. Indeed, the registration form and receipt are completed online and so it should not be time-consuming or costly for SPs to copy this information to NOs.
- 3.46.2 Section 2.3.1 (f) requires NOs to take reasonable measures to ascertain that their SPs have in place adequate customer service and refund mechanisms (including a non-premium rate UK customer service phone number). PhonepayPlus' view is that reasonable measures can include, at its simplest level, asking SPs directly about this and recording their response, for example, by including a question on an order form.

- 3.47 Finally, PhonepayPlus has confirmed that section 2.3.4 relates to the first version of the 11<sup>th</sup> edition of the Code and has now time expired so there is no requirement for NOs to undertake retrospective due diligence when existing services become subject to PhonepayPlus regulation following publication of this statement.

### **Service Provider (SP) Definition**

- 3.48 The Federation of Communications Services ('FCS') queried Ofcom's interpretation of the SP definition in the Consultation arguing that Ofcom had applied a different interpretation to that specified in the Code and applied by PhonepayPlus in practice.
- 3.49 In the Consultation, we described an SP as the organisation providing the PRS service (generally the organisation receiving the call when the PRS number is dialled). However in the Code an SP is defined as the first party that contracts with the organisation defined by PhonepayPlus as the NO, regardless of whether that party is the provider of the PRS. In some cases where more than one CP is involved in the provision of the communications service for a PRS, the effect of this definition is that a CP may be regarded by PhonepayPlus as a SP. For example, this situation might arise when a reseller provides communications services for a PRS service. In such situations the CP would be responsible for compliance with the SP sections of the Code and would also be subject to sanctions by PhonepayPlus in case of breaches.
- 3.50 The FCS also argued this arrangement placed an unfair burden on some CPs by effectively making them responsible for their customers' compliance with SP sections of the Code.

### **Ofcom's Comments**

- 3.51 The PhonepayPlus definitions for NO and SP are designed to accommodate a range of business models in the delivery of PRS services and associated communications services. In most cases the organisation regarded by PhonepayPlus as the SP is the provider of the PRS but in a minority of cases a CP would be regarded by PhonepayPlus as the SP. This arrangement prevents unscrupulous CPs or SPs using cascade resale arrangements to evade PhonepayPlus sanctions by ensuring that PhonepayPlus can always identify the entity responsible for compliance with the SP provisions of the Code.
- 3.52 In cases where a CP is defined by PhonepayPlus as an SP, the CP would be expected to effectively pass on the SP obligations in the Code by inserting additional clauses in their contracts to require their customer (the provider of the PRS) to comply with the PhonepayPlus Code and also to be responsible for any financial sanctions levied by PhonepayPlus.
- 3.53 Whilst we acknowledge that from a CPs point of view it would be simpler if in all cases the SP obligations were directly applied to the organisation providing the PRS, we consider that these arrangements are necessary to ensure that PhonepayPlus can effectively enforce the Code. These arrangements have been in place for some time and have been proved to operate satisfactorily. We do not consider that these arrangements place an undue burden on CPs defined as SPs.
- 3.54 In the Consultation and the Impact Assessment we described only the most common case (when the SP is the organisation providing the PRS) and did not include that in some circumstances CPs are defined by PhonepayPlus as SPs. We have now modified our Impact Assessment to reflect this. Whilst this clarification is useful we do

not consider that it has a material impact on the outputs of our Impact Assessment (see paragraph A2.69 for further details).

### **Impact on 09 numbers ranges charged at 10p per minute and below**

- 3.55 Cable and Wireless and another CP thought that Ofcom has not made it clear enough within the Consultation that its proposals for the extension of PRS regulation included 09 numbers at price points above 5p per minute and up to and including 10p per minute. Cable and Wireless argued that Ofcom had not properly consulted on this aspect of its proposals and should therefore exclude this group of 09 numbers from its proposals pending further consultation.

#### **Ofcom's Comments**

- 3.56 We consider that we have properly consulted on this aspect of our proposals. In the Consultation we clearly stated that we proposed to extend PRS regulation to 09 number ranges charged at these price points<sup>16</sup>. We also assessed the impact of our proposals on services operating on these number ranges in our Impact Assessment<sup>17</sup>.

### **Implementation Timescale**

- 3.57 Several stakeholders including BT, COLT and the UK Competitive Telecoms Association ('UKCTA') stated that NOs and SPs need longer than three months to prepare for the extension of PRS. A six to twelve month timescale was suggested.

#### **Ofcom's Comments**

- 3.58 Ofcom first announced its decision to extend PRS regulation to 087 Numbers in April 2006 and PhonepayPlus concluded its consultation on the Code of Practice to be applied to these numbers in November 2007. Ofcom provided a lengthy notice period in order to give industry stakeholders time to prepare for implementation and even extended the notice period following consultation in response to industry requests for more time to prepare. We acknowledge that until this statement was published there was some uncertainty about the extension of PRS regulation, and the final details of the Code to be applied, however, we consider that at a minimum NOs and SPs could have considered the likely impact of the extension of PRS regulation on their businesses and have drawn up plans to prepare for compliance.
- 3.59 In the light of stakeholder comments we think a three month notice period may be challenging for some NOs and SPs. We have therefore decided to extend the notice period to six months.
- 3.60 We also note that PhonepayPlus will be taking steps to assist NOs and SPs by:
- permitting SPs to provide pricing announcement at the start of calls if they are unable to update their advertising/promotional materials within the six month implementation period; and
  - providing support to those who need advice about compliance or who are having difficulty complying.

<sup>16</sup> Paragraph 5.8 of the Consultation.

<sup>17</sup> Paragraphs 6.118 – 6.119 of the Consultation.



## The PhonepayPlus Statement of Application

- 3.61 Two CPs suggested that the SoA should be incorporated into the Code as soon as possible. They believe the SoA does not provide sufficient clarity for stakeholders that will be subject to PRS regulation because it must be read in conjunction with the Code, various PhonepayPlus orders specifying exemptions and help-notes.
- 3.62 The Association for Interactive Media and Entertainment ('AIME') asked Ofcom to ensure that PhonepayPlus abides by its commitment to consult with stakeholders prior to changes to the SoA.

## Ofcom's Comments

- 3.63 We acknowledge that stakeholders might find it easier to interpret their obligations under the Code if the SoA is incorporated into the Code. We note that PhonepayPlus has already committed to incorporate the SoA into the Code when it next revises the Code. Given this commitment, we believe it is unlikely that PhonepayPlus would need to modify the SoA. However, as discussed in the Consultation, PhonepayPlus has already confirmed that it will not modify the SoA without stakeholder consultation.

## The Impact Assessment

- 3.64 AIME, BT, COLT, Cable and Wireless, The FCS, the Premium Rate Association ('PRA'), Thus, the UKCTA and two other CPs raised concerns about the Impact Assessment. The main points raised were that:
- Ofcom had not quantified all of the costs associated with PRS regulation, in particular the costs that SPs would incur to update advertising and promotional materials and signage, which some believed would be SPs' largest cost;
  - in the light of stakeholder comments Ofcom should re-evaluate the impact on SPs of complying with the complaints handling requirements in section 3.3.5 of the Code;
  - Ofcom had underestimated the degree to which services would migrate away from 087 Numbers in response to the extension of PRS regulation; and
  - Ofcom had not demonstrated that the setup cost associated with its proposals is proportionate to the benefits.

## Ofcom's Comments on quantification of costs

### Cost of updating advertising/promotional materials and signage

- 3.65 In the Consultation we reported that we were not able to quantify the costs to SPs of updating their advertising and promotional material and signage to comply with the price publication requirements of the PhonepayPlus Code. This was because we had insufficient information about a number of relevant factors; such as the amount of advertising/promotional material and signage in use that contains 087 Numbers, the regular replacement/reordering cycles for those materials and the methods that SPs would use to comply with these PhonepayPlus requirements. We acknowledged in the Consultation that in some cases the costs incurred by SPs to update advertising/promotional material and signage might be high.

- 3.66 In the light of the stakeholder concerns, we have undertaken additional analysis and have estimated these costs using a set of assumptions that we consider to be reasonable substitutes for more specific information. We have described our additional analysis in Annex 4. Using this approach we estimate the cost to SPs of updating or replacing advertising and promotional material for PhonepayPlus regulation would be approximately £7 million to £14 million and that the cost of updating vehicle signage would be approximately £1 million to £5 million. These estimates should be treated with caution as some of our assumptions are based on limited information. However, we believe that these estimates give an indication of the likely size of SPs' costs.
- 3.67 On the basis of our observations that 087 Numbers are not commonly displayed on building signage we believe that building signage costs are unlikely to be amongst the significant costs associated with our proposals. We remain of the view that we have insufficient information about how SPs would react to the requirements of section 5.7 of the Code, to produce a detailed estimate of the costs.

### Preparations for PRS regulation

- 3.68 In the Consultation, we noted there would be a management overhead associated with preparing for the implementation of PRS regulation in addition to the specific activities for which we produced estimates. This activity involves, reviewing the PhonepayPlus Code and SoA, drawing up implementation plans and then coordinating the necessary implementation activities.
- 3.69 We did not estimate the cost of this management activity in the Consultation because we felt it would be difficult to gather representative information from stakeholders before they had actually undertaken the activities or at least drawn up detailed plans. We still think this is the case. However in light of the concerns raised by stakeholders about un-quantified costs we have estimated these costs using a set of assumptions that we consider reasonable in the absence of more specific information. We have described our additional analysis in Annex 4. Using this approach we estimate these costs to be approximately £0.5 million to £2 million for CPs and approximately £3 million to £24 million for SPs. These estimates should be treated with caution as we have limited information to base some of the assumptions used. However, we believe an approximate indication of the likely size of the costs involved.

### **Ofcom's comments on the complaints handling requirements**

- 3.70 We have discussed stakeholders' comments about the complaints handling requirements of the Code in more detail from paragraph 3.35 onwards. Having considered stakeholders' comments we think that some views about the impact of section 3.3.5 of the Code differ from ours because stakeholders have misinterpreted the requirements of section 3.3.5 of the Code. Our view is that our assessment of the impact of section 3.3.5 of the Code on SPs is broadly correct, and therefore there is no need to revise our impact assessment.

### **Ofcom's comments on potential migration from 087 Numbers**

- 3.71 In paragraphs 6.23 to 6.30 and 6.115 to 6.117 of the Consultation we discussed the potential migration of services both to and from 087 Numbers as a result of our proposals to extend PRS regulation to 087 Numbers and also our proposals for 0870 numbers. We noted there was some anecdotal evidence of limited migration from 087 Numbers to other number ranges but little evidence that the extension of PRS regulation would lead a large number of SPs to move their services away from 087



Numbers. We therefore provisionally concluded there would be limited migration and modelled the costs associated with migration of 2% of the services that use 0871 numbers.

- 3.72 Responses to the consultation indicate that some stakeholders have outstanding concerns about the suitability of some aspects of the PhonepayPlus Code (as interpreted by the SoA) for services that currently use 087 numbers, most notably the complaints handling requirements in section 3.3.5 of the Code. Arguably these concerns imply a higher level of migration than estimated by Ofcom.
- 3.73 Having reviewed the stakeholder concerns, our view is that our assessment of the impact of extending PRS regulation is broadly correct. We therefore think our proposals should not lead to widespread migration from 087 Numbers. In our view, the stakeholder concerns relate in part to misinterpretations of the requirements, for example in respect of the complaints handling requirements. We think that PhonepayPlus should be able to work with SPs to address their concerns during the implementation period before PhonepayPlus starts regulating 087 Numbers. The extended implementation period of 6 months will give additional time for this.
- 3.74 Furthermore, given that there is little evidence of any significant movement away from 087 Numbers since the 2006 NTS Statement, this would seem to support the view that most SPs intend to retain their 087 Numbers<sup>18</sup>.
- 3.75 Taking the above into account, we maintain the view that there will only be a limited migration of services away from 087 Numbers as a result of applying PRS regulation. However, we concede there is a degree of uncertainty. Given the stakeholder concerns we believe it would be appropriate to revise our estimate of this migration to between 2% and 10% of services with the most likely level being towards the lower end of this range.
- 3.76 We estimate the one-off costs to SPs associated with this level of migration to be between £2 million and £9 million including the cost of updating advertising/promotional material and vehicle signage (estimated on the basis described in Annex 4). Migration away from 087 Numbers would reduce the number of SPs that would need to prepare for PRS regulation, reducing the one-off costs. For an increase in migration from 2% to 10% we estimate that SPs setup costs would be reduced by approximately £4 million.

### **Ofcom's comments on the proportionality of proposals**

- 3.77 There are two aspects to stakeholders' concerns about the proportionality of the proposals:
- whether Ofcom has identified all the costs associated with the proposals and quantified them correctly; and
  - the value of the benefits and whether they exceed the costs.
- 3.78 We have commented above on the three main concerns raised by stakeholders about our cost estimates. We also undertook further work to estimate the advertising/promotional material and vehicle signage costs and have updated our estimate of outward migration from 087 Numbers in response to stakeholders concerns. There is necessarily some uncertainty associated with estimates of this

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<sup>18</sup> See paragraphs 6.23 to 6.30 for a discussion of migration trends.

nature. However, we consider that we have identified the impacts on stakeholders and have taken reasonable steps to estimate the costs.

- 3.79 In light of stakeholders comments about the potential benefits of the proposals and the overall evaluation of the cost and benefits we have undertaken further analysis, the results of which are described below.

### Value of the pricing transparency benefits

- 3.80 Pricing misperceptions have a negative impact on welfare because some potential callers will overestimate call prices, and will therefore either be deterred from making calls or feel pressurised to keep calls as short as possible. Given the extent of the disparity between caller perceptions and actual call charges for 087 Numbers, the detriment associated with this inefficiency may be very significant.
- 3.81 In the Consultation we noted that there are a number of difficulties associated with quantifying this type of detriment; in particular it requires an estimate of the sensitivity of callers to changes in perceived call prices – that is, the *price elasticity of demand*<sup>19</sup>.
- 3.82 In the Consultation we estimated that for elasticity values ranging from -0.2 to -0.4, the *total* consumer detriment from pricing misperceptions could range from £32 million to £71 million per annum. We also noted that an elasticity of -0.3 is likely to be a conservative estimate (i.e. one that would tend to underestimate the detriment associated with pricing misperceptions)<sup>20</sup>. This view is supported by, for example, the following quote from Rappoport, P. N. and Taylor, L. D. (1997)<sup>21</sup>; “The conventional view in the literature is that the price elasticity is of the order of -0.3 to -0.4 for intralata calls and -0.7 for long-haul interstate calls”<sup>22</sup>.
- 3.83 In the consultation we also noted that the proposed extension of PRS regulation to 087 numbers would not eliminate pricing misperceptions entirely. In other words, our proposal is unlikely to recover the full consumer detriment referred to above, but only some portion of this detriment on a recurring (i.e. year-on-year) basis. Therefore the size of the consumer will benefit depend on the degree of improvement in price perceptions.
- 3.84 Unfortunately however, we cannot be certain about the extent to which PRS regulation will improve consumers’ perceptions of call prices. Therefore to illustrate the potential benefits we have estimated the consumer benefits for a range of possible improvements in price perceptions – varying from an upper value of 30p per minute to a lower value of 15p per minute. Figure 1 below illustrates our estimates of the benefits to consumers under these scenarios.

<sup>19</sup> The *price elasticity of demand* measures the sensitivity of call volumes to changes in call prices. For example, a price elasticity of -0.3 can be read as “a 1% fall in price will generate a 0.3% increase in demand”. In this context, consumers are sensitive to *perceived* as opposed to actual prices – therefore the elasticity is measured relative to perceived prices.

<sup>20</sup> See paragraphs 6.44 to 6.48 of the Consultation for a more detailed discussion of our methodology.

<sup>21</sup> “Toll Price Elasticities Estimated from a Sample of U.S. Residential Telephone Bills” Information Economics and Policy, Vol 9, No. 1, pp51-70

<sup>22</sup> Intralata calls are calls originating and terminating within specified regions of the U.S. (originally the service areas in which the Regional Bell Operating Companies were permitted to operate following the divestiture of the Bell operating companies from AT&T). Long-distance interstate calls mean long distance calls within the U.S, i.e. those originating and terminating in different lata areas, typically non adjacent lata areas.

- 3.85 The benefits are likely to be recurring (i.e. the measures are likely to lead to an enduring improvement in consumer price perceptions). We consider they would be likely to continue beyond 5 years, perhaps considerably so. We have therefore presented the benefits on a Net Present Value ('NPV') basis over 5 and 10 years for a range of price elasticities which we consider to be reasonable for calls to 087 Numbers.

**Figure 1: Potential consumer benefit of better pricing transparency**

Improvement in consumers pricing perceptions of 087 calls from fixed lines over 5 years (Average price estimated by consumers for calls from fixed lines)	Benefit to consumers over 5 years on a Net Present Value ('NPV') basis <sup>23 24</sup> (£ millions)			
	Price elasticity			
	-0.2	-0.3	-0.4	-0.6
From 36p to 30p per minute	27	41	55	83
From 36p to 25p per minute	46	70	95	145
From 36p to 20p per minute	62	95	128	198
From 36p to 15p per minute	75	114	155	241

Improvement in consumers pricing perceptions of 087 calls from fixed lines over 10 years (Average price estimated by consumers for calls from fixed lines)	Benefit to consumers over 10 years on a Net Present Value ('NPV') basis <sup>25</sup> (£ millions)			
	Price elasticity			
	-0.2	-0.3	-0.4	-0.6
From 36p to 30p per minute	65	98	131	200
From 36p to 25p per minute	109	165	223	343
From 36p to 20p per minute	143	218	295	459
From 36p to 15p per minute	167	255	347	543

- 3.86 As is evident from Figure 1, the estimated consumer benefits are sensitive to our assumptions about the improvements in pricing perceptions and the price elasticity.
- 3.87 As noted above, we believe that even an elasticity of -0.3 is likely to be a conservative estimate of consumers' responsiveness to price changes. In other words, elasticities of -0.2 or -0.3 are likely to underestimate the consumer benefit from the extension of PRS to 087 numbers.
- 3.88 The distinction between intralata and interstate calls in the US is somewhat analogous to that between local and national calls in the UK. An assumption that the

<sup>23</sup> Future values discounted using the Social Time Preference Rate (3.5 %)

(<http://greenbook.treasury.gov.uk/annex06.htm>)

<sup>24</sup> Assuming that pricing perceptions progress from the initial to final figures in 5 equal increments over the period.

<sup>25</sup> Assuming that pricing perceptions progress from the initial to final figures in 5 equal increments over the first five years and are stable thereafter.

elasticities of demand for 087 calls is similar to that for local calls is likely to be conservative therefore, since in terms of price and probably, purpose of the call, they are likely to be more similar to national calls. However, such estimates of call price elasticities from UK data as are available suggest that national call price elasticities do tend to be somewhat lower than those of long-distance calls in the US. We believe that an elasticity of -0.4 is likely to be reasonable for the UK therefore and indeed could still be seen as conservative, relative to the estimate of -0.7 for interstate calls. Therefore on balance we would tend to place more weight on the welfare estimates associated with the elasticities of -0.4 or above (in magnitude), compared to those assuming elasticities of -0.3 or less (in magnitude).

- 3.89 The methodology used to derive the estimates in Figure 1 is essentially the same as that used in the Consultation (see paragraphs 6.44 to 6.48 of the Consultation for more details). As noted in the Consultation, there is some degree of uncertainty in these estimates due to the need to make a number of assumptions in the absence of detailed information about certain aspects of consumer behaviour.
- 3.90 For example, we have assumed a standard non-linear demand curve in order to characterise the demand for 087 calls away from the current point of consumption. This assumption should be perfectly reasonable for relatively small movements away from the initial consumption point. However, the estimates of consumer benefit become more sensitive to the choice of demand curve the further we move away from the initial point. In other words, the larger the expected improvement in price perceptions, the more sensitive are our estimates of the consumer benefit to the choice of demand curve. Therefore, we would encourage some caution in interpreting the results for the largest improvements in price transparency.
- 3.91 Furthermore, although we have presented the results of a 10 year NPV, we acknowledge that a 10 year horizon would involve a considerable amount of uncertainty (for example with respect to demand for 087 calls, the evolution of call prices from fixed and mobile, and the type of services that might be offered over 087 numbers) which can not be reliably incorporated into these estimates. Therefore we emphasise that the 10 year results should be interpreted as the benefits that would be expected to arise in a 'no change' scenario (i.e. one which assumes that demand etc. remains constant over the period).

### **Impact of mobile call pricing on pricing transparency benefits**

- 3.92 A separate point raised by stakeholders is whether variations between fixed and mobile call charges would have a significant impact on pricing transparency benefits. Charges for calls to 087 Numbers from mobile phones are typically higher than from fixed lines, potentially reducing the benefit associated with better pricing perceptions for calls originated from mobile phones. We do not have any information about consumers' perceptions of the price of calls from mobile phones so for these calculations we assumed perceptions to be the same as for calls from fixed lines. We also assumed that all calls were charged at 10p per minute. We viewed these approximations as reasonable for our illustration given the uncertainty associated with other aspects of our estimates such as price elasticity.
- 3.93 A further factor is that since we produced our estimates for the Consultation, there has been a significant rise in charges for calls to 087 Numbers from mobile phones. Rates for popular packages offered by the largest mobile operators have risen from around 15-25p per minute to 15-40p per minute. We estimate that in December 2008 the traffic weighted average charge for calls to 087 Numbers to be about 30p per minute. This figure is close the average consumer perception of the price of calls to

087 Numbers from fixed lines at 36p per minute. Assuming consumers' perceptions of the price of calls to 087 Numbers from mobile phones and fixed lines are broadly aligned (as discussed above) this suggests the benefit associated with improved pricing perceptions would be relatively small for mobile originated calls, particularly as better pricing transparency would be unlikely to completely correct consumer misperceptions.

- 3.94 Ofcom's research shows that the proportion of telephone calls originating from mobile phones has been steadily increasing during recent years. This trend is being driven by the availability of calling packages with large call allowances which encourages consumers to make more calls from mobile phones to numbers that are included in calling packages (principally fixed and mobile numbers). It also encourages consumers to use their mobile phones at home in preference to fixed lines. As mobile operators do not generally include calls to 087 Numbers in calling packages, calls to 087 Numbers do not appear to be subject to a similar trend. Ofcom's analysis of traffic information for the years 2002/3 to 2004/5 (the latest in Ofcom's possession that has sufficient detail to perform this analysis) shows that the proportion of mobile originated calls to 087 Numbers declining by 5% during this period to 30%. Given this trend, we think it reasonable to assume for the purposes of this estimate that the proportion of calls to 087 Numbers originating from mobile phones will remain approximately constant at 30% throughout the period under consideration.
- 3.95 In light of these points we have revised our estimates to take account of the variation in charges between fixed lines and mobile phones. To give a conservative estimate we have excluded mobile originated calls from our revised estimate of the benefits of better pricing perceptions presented in Figure 1 above. This revision reduces our estimate of the overall welfare loss associated with consumer price misperceptions for 087 Numbers.

### Value of consumer protection benefits

- 3.96 Industry stakeholder concerns about the benefit of PRS regulation in part stem from the view that there are relatively few scams on 087 Numbers and that call charges (which are much lower than 09 numbers) limit the detriment. This has led stakeholders to suggest that Ofcom should use other means to improve pricing transparency for calls to 087 Numbers. We comment on one of these suggestions in paragraph 3.113.
- 3.97 We consider that the available evidence indicates that there is a small but rising number of scams on 087 Numbers. Complaints received by Ofcom from consumers support our view that there is a rising level of consumer concern about 08 numbers. In the 2005 NTS Consultation we reported that Ofcom had received 126 complaints relating to 08 numbers during the previous year. In the year ending 31 October 2008, Ofcom received 2354 complaints about 08 numbers. These included 1128 complaints about call queuing times, 323 about internet dialler scams<sup>26</sup> and 117 about other misuses of 087 Numbers.
- 3.98 Extending PRS regulation is intended to perform two other functions as well as addressing scams that are already present. These are:

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<sup>26</sup> Internet diallers are already subject to PRS regulation so these complaints relate to scams that have occurred despite PRS regulation.

- 3.98.1 To prevent a future rise in consumer harm from scamming activity which we consider would be likely to occur in the absence of PRS regulation. This is because the persistent occurrence of scams (such as call-back scams<sup>27</sup>) on 087 Numbers indicates that the revenue shares available are sufficiently high to make 087 Numbers attractive to persons that operate scams. Also, the application of PRS regulation to other revenue-sharing ranges would be likely to cause persons that operate scams to use 087 Numbers if they remain outside the scope of PRS regulation. Past experience has also shown that the level of scamming activity can rise very rapidly. A major advantage of PRS regulation is that PhonepayPlus can act quickly to address new scams when they arise, reducing the consumer harm caused.
- 3.98.2 To bolster consumer confidence in 087 Numbers by providing additional protection to address other consumer concerns such as excessive call waiting times and having to pay a premium rate to complain about poor customer service.
- 3.99 There are no reliable means of quantifying the benefits associated with preventing scamming partly because of the difficulty of assessing the future level of scamming activity that PRS regulation will prevent. We were also unable to assign a value to the distress to consumers associated with scams and excessive waiting times. However, we note that scams cause consumers considerable distress, suggesting that the benefit associated with reducing consumer distress would be much higher than the associated call charges.
- 3.100 In our view, failing to address these problems would be likely to lead to a decline in consumer confidence in 087 Numbers, making consumers more wary of calling them and SPs more wary of using them for their services. We believe it is clear that there is a cost to consumers arising from this loss of confidence but it is difficult to be precise about the way in which it affects the value which callers derive from calls to 087 Numbers. For our purposes, we assume that its effect is to reduce customers' willingness to pay for calls to 087 Numbers and hence, we assume, to lead to a uniform percentage reduction in the volume of calls to 087 Numbers at any given price. We quantify the resultant reduction in consumer welfare in a way which is consistent with our estimate of the benefits of improving price perceptions, which is based on a calculation of the resulting increase in consumers' surplus. Consumers' surplus is the difference between customers' willingness to pay and the price they actually pay.
- 3.101 However, for a number of reasons, it is difficult to quantify these benefits using this method. Firstly, it is inherently difficult to estimate the potential decline in consumer confidence and the resultant impact on call volumes that would arise without a change in regulation with any precision. Secondly, the estimated reduction in consumer surplus that would arise from a fall in confidence is much more sensitive to the shape and position of the demand curve than the price transparency benefits presented above. This sensitivity arises because estimates of the consumer detriment associated with a decline in consumer confidence rely on information about consumers' demand at all prices at which demand is positive, including prices which are very much higher even than the current perceived level (see the discussion in paragraph 3.87). Of course there is no actual information on demand at such prices.

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<sup>27</sup> Where consumers are induced to call 087 Numbers on false-pretences for example by recorded messages or by brief unanswered calls to their numbers.

3.102 For the purposes of our calculations we have assumed that the demand curve takes the same standard non-linear form used to calculate the estimates of the price transparency benefits in Figure 2. Figure 3 below shows how the resulting estimates of the costs of reduced confidence vary depending on the assumed price elasticity of demand and the extent of the assumed reduction in call volumes. The estimates in Figure 1 and Figure 2 both use the current level of demand as their starting points and have been calculated independently of each other. In practice the pricing transparency and consumer protection benefits would occur simultaneously. Because our estimates of the benefits of our proposals do not take account of this interaction, our view is that they are likely to be conservative.

**Figure 2: Potential costs to consumers of reducing confidence**

Reduction in demand due to loss of confidence in 087 Numbers	Cost to consumers over 5 years on a Net Present Value (NPV) basis <sup>28</sup> (£ millions)			
	Price elasticity			
	-0.2	-0.3	-0.4	-0.6
1%	61	41	30	20
5%	306	204	153	102
10%	616	410	308	205

3.103 It can be seen that the potential benefits from avoiding even quite small reductions in demand are significant when estimated in this way. However, it should be noted that the above estimates do not take account of the fact that any shift in the demand curve for 087 calls (from a loss of confidence) would prompt migration of services to other ranges and lead to increases in demand for other goods and services - with partially offsetting welfare effects. In addition, they may be dependent on the assumption that loss of confidence can be represented by a uniform reduction in willingness to pay. If for example, it were assumed that consumers suffered a loss only from the calls no longer made as a result of reduced confidence, with no change in the value to them of calls which they continue to make, the calculated cost would be very much smaller (a few million pounds for a 5% volume reduction and less than £25m even for a 10% reduction with an elasticity of -0.2). However, this would take no account of the distress and other costs arising from scamming and so we believe it is likely to underestimate the true costs of loss of confidence in 087 Numbers, perhaps considerably so.

3.104 Faced with declining consumer confidence, SPs would have to decide whether to retain their 087 Numbers, accepting declining call volumes or ultimately to move their services to other number ranges, such as the 09 range that are already subject to PRS regulation. In the extreme, a large increase in scams on 087 Numbers could effectively discredit these ranges, forcing the majority of SPs to move their services to other ranges. Moving to new numbers would cause SPs to incur costs. As discussed in paragraph 3.76 we estimate the cost of a 10% migration of services to be £9 million, implying an upper limit of £90 million if all services were to move elsewhere. In practice, a decline in consumer confidence would be likely to lead to both a reduction in traffic volumes and service migration. If serious problems arose,

<sup>28</sup> Future values discounted using the Social Time Preference Rate (3.5%) (<http://greenbook.treasury.gov.uk/annex06.htm>)

Ofcom could consider action to address the problems such as extending PRS regulation to some or all services using 087 Numbers. However, it would take time for these trends to become apparent and for Ofcom to consult stakeholders on detailed proposals during which time, significant damage to consumer confidence could occur.

### Overall assessment of costs and benefits

- 3.105 With impact assessments it is often the case that not all of the costs and benefits can be quantified and typically costs are easier to quantify than benefits. The evaluation of policy proposals must therefore be partly qualitative. In this case we were able to estimate most of the identified costs, however there were no reliable means to quantify some of the costs and benefits. However, we have described each of the costs and benefits we were not able to quantify reliably and have taken them into account in reaching our decision. Our statutory duties also require that in reaching our decision we take account of a number of factors in ensuring that we meet our duties under section 3 of the Act. In accordance with our duties we have considered the opinions of consumers and members of the public generally, as well as the costs that may be incurred.
  
- 3.106 Our analysis indicates that the potential value of the benefits of PRS Regulation would be significant. However we were only able to quantify the potential benefits associated with an improvement in pricing transparency and were unable to fully quantify the other benefits associated with better consumer protection.
  
- 3.107 PRS Regulation will add to the regulatory burden on CPs and SPs and will cause them to incur setup and ongoing costs. Given the large number of stakeholders involved, the overall costs are inevitably significant. We estimate the one-off costs to be between £66 million and £121 million and the recurring cost to be £400 thousand to £500 thousand. CPs and SPs would also incur costs on an ad-hoc basis to assist PhonepayPlus with its investigations.
  
- 3.108 Considering the overall balance between the costs and benefits, it seems highly likely that the price perception benefits alone would suffice to provide a positive net benefit over several years. Figure 3 illustrates this, showing the potential net benefit of various improvements in pricing transparency after deducting the costs summarised above.



**Figure 3: Net benefits excluding the benefits associated with better consumer protection**

Improvement in consumers pricing perceptions of 087 calls from fixed lines over 5 years (Average price estimated by consumers for calls from fixed lines)	Net benefit to consumers over 5 years on a Net Present Value ('NPV') basis – excluding the benefits associated with better consumer protection <sup>29 30</sup> (£ millions)			
	Price elasticity			
	-0.2	-0.3	-0.4	-0.6
From 36p to 30p per minute	-92 to -38	-78 to -25	-64 to -11	-35 to 18
From 36p to 25p per minute	-72 to -19	-48 to 5	-24 to 29	26 to 79
From 36p to 20p per minute	-56 to -3	-24 to 29	10 to 63	79 to 132
From 36p to 15p per minute	-44 to 9	-4 to 49	36 to 90	122 to 175

3.109 We also believe that the proposals would generate a net benefit because:

- i) price publication should significantly lower perceived prices towards actual levels;
- ii) the price elasticity of calls to 087 Numbers is likely to be above -0.3 and perhaps significantly above -0.3 (in magnitude);
- iii) the benefits are likely to extend beyond 5 years and perhaps even beyond 10 years; and
- iv) the un-quantified benefits associated with better consumer protection (such as a reduction in scamming activity and improved consumer confidence) are likely to be significant.

3.110 In reaching this conclusion we are mindful that:

- the incidence of scams on 087 Numbers indicates that the revenue-shares available to SPs are sufficiently high to make 087 Numbers attractive to persons that operate scams. We consider that the application of PRS regulation to other number ranges (such as the 09 range) would be likely to cause persons that operate scams to use number ranges that are not subject to PRS regulation such as 087 Numbers. We therefore consider it likely that the incidence of scams would increase in future. We are also mindful that previous experience has shown that scamming activity can grow very rapidly.
- there is a rising level of consumer concern about 08 numbers which includes concerns about call centre waiting times and PRS regulation provides a mechanism for consumers to seek redress when unacceptable call waiting times occur for calls to 087 Numbers;
- a further loss of confidence in 087 Numbers would be likely to:

<sup>29</sup> Future values discounted using the Social Time Preference Rate (3.5 %)

(<http://greenbook.treasury.gov.uk/annex06.htm>)

<sup>30</sup> Assuming that pricing perceptions progress from the initial to final figures in 5 equal increments over the period.

- make consumers more wary of calling them and SPs more wary of using them for their services, harming both consumers, CPs and SPs;
- cause some SPs to migrate their services to other number ranges, incurring significant migration costs as a result.

## **Risk Assessment**

3.111 The Federation of Communication Services asked OFCOM to publish its risk assessment under the Health and Safety work Act 1984.

## **Ofcom's Comments**

3.112 Our preliminary assessment did not identify any safety implications of the proposals. Therefore a separate risk assessment under the Health and Safety at Work Act 1984 was not undertaken.

## **The FCS believes PRS regulation is a disproportionate way of improving pricing transparency**

3.113 The FCS argued that a lack of pricing transparency was the main problem with 087 Numbers. The FCS argued that extending PRS regulation is a complex, costly and disproportionate way of improving pricing transparency for 087 numbers.

3.114 The FCS thought that Ofcom should address this problem as part of a wider programme to improve pricing transparency for all types of call.

3.115 In particular, the FCS suggested that Ofcom should take steps to encourage SPs to comply with the Consumer Protection from Unfair Trading Regulations.

## **Ofcom Comments**

3.116 We agree with the FCS that there is a need to improve pricing transparency. We also think there is a need to improve consumer protection for calls to 087 Numbers. Extending PRS regulation addresses both these objectives.

3.117 In the NTS Policy Review we considered a range of options to improve pricing transparency and consumer protection before concluding that extending PRS regulation would be the most suitable and proportionate way of addressing the policy issues identified. Having now considered the impact of extending PRS regulation in more detail and after having considered respondents comments to the Consultation we still consider that PRS regulation is a proportionate way to achieve these two objectives.

3.118 We considered measures to improve pricing transparency for all telephone numbers in our strategic review of numbering policy that concluded in July 2006. More generally, as part of our ongoing programme of work on numbering we are also considering long term pricing transparency across all number ranges. Our view is that none of the options currently under consideration would provide a short term solution that would be effective as the pricing information requirements of the Code.

- 3.119 The Consumer Protection from Unfair Trading Regulations 2008 ('CPRs') came into force on 26 May 2008<sup>31</sup>. These regulations provide wide ranging protection for consumers by placing traders under a general obligation to trade honestly and fairly<sup>32</sup>, certain aspects of which are dealt with in more detail. It is for traders to ensure that the requirements of the Regulations are met.
- 3.120 The CPRs provide that 'established means' of regulation (including self-regulation) should be used to discourage unfair trading. In the case of PRS, the Office of Fair Trading has recognised PhonepayPlus as an established means of enforcement in their area, and in appropriate cases any complaints will be referred to them to be dealt with.
- 3.121 The Code is tailored to the means by which PRS are provided and in our view the price publication obligations in the Code provide additional necessary protection for consumers over and above that provided in the CPRs. Section 5.7 of the PhonepayPlus Code places SPs under specific obligations in relation to pricing information. Section 5.7.1 of the Code places an over-arching obligation on SPs to ensure that callers are fully informed about the price of a PRS service in a clear and straightforward manner before they make a call. Other provisions in section 5.7 set out specific requirements about prominence and legibility of pricing information, which are tailored to the services covered by the Code. There is also an obligation in section 5.7.3 of the Code for SPs to include a pricing message at the start of the call in cases where the caller is unlikely to have seen pricing information in promotional material.
- 3.122 As PhonepayPlus is recognised as an established means of addressing matters in the PRS sphere, we consider that our proposals represent a focussed means of addressing the specific issues of price transparency raised by PRS.
- 3.123 Taking the above into account we remain of the view that in this regard, extending PRS regulation will be the most effective and proportionate way to improve pricing transparency and consumer protection for 087 numbers.

### **The PhonepayPlus Levy**

- 3.124 Cable and Wireless, Thus and the UKCTA felt that PhonepayPlus had not given sufficient detail about the basis of the 'notional out-payment' on which the PhonepayPlus levy would be based. Cable and Wireless recommended that PhonepayPlus should review the basis for the levy when the levy is next amended.
- 3.125 COLT asked for further guidance on how the levy would be assessed and collected in practice.
- 3.126 The FCS argued that PhonepayPlus should collect its funds on a 'polluter pays' basis (i.e. so that the burden of PhonepayPlus regulation falls on those stakeholders that breach the Code).

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<sup>31</sup> For further details see information on the BERR website:  
<http://www.berr.gov.uk/whatwedo/consumers/buying-selling/ucp/index.html>

<sup>32</sup> Local Trading Standards Services, the Department of Enterprise, Trade and Investment in Northern Ireland and the Office of Fair Trading have a duty to enforce the CPRs. This does not mean that (civil or criminal) enforcement action must be taken in respect of every infringement. Instead, enforcers will promote compliance by the most appropriate means in line with their enforcement guidelines and consistent with available resources.

## Ofcom's comments

- 3.127 As discussed in the Consultation<sup>33</sup>, Ofcom's view is that notional out-payment mechanism proposed by PhonepayPlus for 087 Numbers is a reasonable approach. This approach will ensure that PhonepayPlus costs are distributed fairly amongst stakeholders regardless of whether they receive a revenue share or other benefits from call charges.
- 3.128 We note that as part of PhonepayPlus' review of their Code of Practice planned for 2009, PhonepayPlus will be reviewing their current funding model. In the meantime, we believe it best that PhonepayPlus should apply the existing and well proven levy mechanism to 087 Numbers with the notional out-payment modification.
- 3.129 We understand that PhonepayPlus' assessment of the benefit received by SPs from calls to 087 Numbers is based on financial information supplied by TCPs to PhonepayPlus on a confidential basis and therefore PhonepayPlus is not able to release more details of its calculations. We reported in the Consultation<sup>34</sup> that our own research supports the view that PhonepayPlus assessment of the benefit received by SPs from calls to 087 numbers is correct.
- 3.130 Our view is that specific requests for further guidance on the detailed arrangements for collection of the levy should be addressed to PhonepayPlus directly.

## The Numbering Application Forms

- 3.131 Two stakeholders noted that Ofcom's numbering application form for 09 numbers (Form S9) contains information for applicants about PRS regulation. They suggested that as 087 Numbers will also be subject to PRS regulation, that similar text should be added to the application form for 08 numbers (Form S8).

## Ofcom's comments

- 3.132 We agree this would be appropriate. Under section 49 of the Act, Ofcom is required to publish a notification and give interested parties an opportunity to comment on any proposal to modify the numbering applications forms. Rather than consult immediately on this minor modification to Form S8, we intend to propose this modification when we next consult on changes to the numbering application forms.

<sup>33</sup> See paragraphs 4.36 to 4.42 of the Consultation.

<sup>34</sup> See paragraphs 4.41 and 4.42 of the Consultation.

## Section 4

# Ofcom's decision

- 4.1 After considering stakeholders responses to the consultation we have decided to proceed with the proposal to extend PRS regulation to 087 Numbers and 09 numbers charged above 5p per minute and up to 10p per minute for BT customers. In light of stakeholder responses we have altered our proposals as discussed below.
- 4.2 The notification and the modification to the PRS Condition are contained in Annex 1. The modification to the PRS Condition will take effect six months from the date of publication.
- 4.3 In making this decision we have taken into account the following factors.

## Communications Act Tests

- 4.4 Ofcom regulates the communications sector under the framework established by the Act. The Act grants OFCOM the power, for the purpose of regulating the provision, content, promotion and marketing of PRS, to set conditions that bind the persons to whom they are applied (section 120).
- 4.5 Under section 120(5) of the Act, the tests that apply to the setting, modification and revocation of a PRS condition are those set out in section 47(2) of the Act and the procedure for modifying PRS conditions is that set out in section 48 of the Act.
- 4.6 In this section, we describe the legal tests that apply to modifications to the PRS Condition. We then describe how we think this modification to the PRS Condition satisfies those tests.

## Requirement to publish a notification

- 4.7 Under section 48 of the Act, Ofcom is required to publish a notification:
  - a) stating that OFCOM is proposing to set, modify or revoke the conditions that are specified in the notification;
  - b) setting out the effects of those conditions, modifications or revocations;
  - c) giving out the reasons for making this proposal; and
  - d) specifying the period within which interested parties will have an opportunity to comment on its proposals. The consultation period must be not less than one month after the day of publication of the notifications.
- 4.8 The Consultation which includes our Impact Assessment sets out in detail the effects of the modification and the reasons for proposing to extend the PRS Condition.
- 4.9 Annex 6 of the Consultation contained the notification of the proposed modification of the PRS Condition.

## Consideration of Responses

- 4.10 Ofcom gave careful consideration to all the comments received during the consultation period. Section 3 contains a discussion of the main points raised by respondents and Ofcom's comments.
- 4.11 In the light of the comments received, Ofcom has redrafted the modification to the PRS Condition to:
- limit the scope of the extension of PRS regulation to 087 and 09 numbers as intended (as originally drafted other types of PRS such as premium mobile SMS could also have been made subject to this change in PRS regulation); and
  - provide greater clarity about the meaning of the pricing references in the PRS Condition.
- 4.12 Please see paragraph 3.24 for a more detailed discussion about the revision to the PRS Condition.

## Impact Assessment

- 4.13 Under section 7 of the Act, Ofcom has a duty to undertake impact assessments when it proposes to do anything in connection with carrying out its functions and it considers that its proposals are important.
- 4.14 Ofcom's impact assessment for the proposed modification to the PRS Condition was contained in Section 6 of the Consultation. The main points of that IA are summarised in Annex 2 which also includes details of the changes that Ofcom made to its assessment in the light of the responses to the Consultation. The main points raised by respondents about the impact assessment and Ofcom's comments are summarised in Section 3.

## Section 3 – Ofcom's general duties

- 4.15 Section 3(1) of the Act sets out the principal duty of Ofcom. That duty is to:
- a) further the interests of citizens in relation to communications matters; and
  - b) further the interests of consumers in relevant markets, where appropriate by promoting competition.
- 4.16 Ofcom is required by section 3 (1) to carry out its functions in accordance with this duty.
- 4.17 Section 3 (2) of the Act further states that in fulfilling the principal duty specified in section 3 (1) Ofcom is required to secure the availability throughout the UK of a wide range of electronic communications services.
- 4.18 Section 3(3) of the Act requires Ofcom, when performing its duties, to have regard to the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed and any other principles appearing to Ofcom to represent the best regulatory practice.
- 4.19 Ofcom considers that the proposed extension of PRS regulation will be in accordance with these duties and principles because:

- it will improve consumer protection and pricing transparency for calls to 087 Numbers and 09 numbers;
- better pricing transparency would encourage competition between SPs;
- it would improve consumer confidence in 087 Numbers and 09 numbers which should in turn encourage the provision of a wide range of services on 087 Numbers by SPs;
- it is proportionate in that the proposed extension of PRS regulation to 087 Numbers and 09 numbers would deliver the minimum necessary additional regulation to achieve the policy objectives of improving consumer protection and pricing transparency; and
- it is proportionate in that Ofcom's impact assessment demonstrates that the proposed extension of PRS regulation to 087 Numbers and 09 numbers should deliver a significant net benefit to stakeholders over and above the associated costs.

4.20 Section 3 (4) of the Act lists further factors that Ofcom must take into account, to the extent they are relevant, in each particular case when fulfilling its functions. Ofcom considers that the following are relevant to this proposal:

- the desirability of promoting competition in relevant markets;
- the desirability of encouraging investment and innovation in relevant markets;
- the needs of persons with disabilities, of the elderly and of those on low incomes; and
- the opinions of consumers in relevant markets and of members of the public generally.

4.21 Ofcom has taken these factors into account in developing its proposals and considers it is consistent with these considerations. Taking each in turn:

- **Promoting competition:** By making all services operating on 087 Numbers and the specified 09 number ranges subject to the Pricing Information requirements of the Code, Ofcom considers that the proposals should further this objective as consumers will be better able to choose between services according to their price;
- **Encouraging investment and innovation in markets:** Ofcom considers that the proposals further this objective by improving consumer confidence in 087 Numbers and 09 numbers which should in turn make SPs more confident about providing services on 087 Numbers and 09 numbers;
- **Need of persons with disabilities, of the elderly and those on low incomes:** Ofcom considers that in this context the needs of persons with disabilities and the elderly are not discernibly different from the generality of consumers. As discussed above, Ofcom considers that improved pricing transparency should help improve price competition for services. This should benefit particularly those with low incomes who may spend a proportionately greater proportion of their incomes on call charges than consumers in general;



- **Opinions of consumers and members of the public:** The proposals have been designed to address consumer concerns about pricing transparency and consumer protection in a proportionate manner. PhonepayPlus has also taken consumer concerns into account when developing the SoA which sets out PhonepayPlus interpretation of the Code in relation to the regulation of 087 services. Elements of its proposals were designed to address particular concerns, such as call centre waiting times.

## Section 4 – European Community requirements for regulation

- 4.22 Section 4 of the Act requires Ofcom to act in accordance with the six European Community requirements for regulation, including the requirement to promote the interests of all persons who are citizens of the European Union. In summary, these requirements are to:
- a) promote competition in the provision of electronic communications networks and services, associated facilities and the supply of directories;
  - b) contribute to the development of the European internal market;
  - c) promote the interests of all persons who are citizens of the European Union;
  - d) not favour one form of or means of providing electronic communications networks or services, i.e. to be technologically neutral;
  - e) encourage the provision of network access and service interoperability for the purpose of securing:
  - v) efficient and sustainable competition; and
  - vi) the maximum benefit for customers of CPs; and
  - f) encourage compliance with certain standards in order to facilitate service interoperability and secure freedom of choice for the customers of CPs.
- 4.23 In doing so, Ofcom has to read these requirements in accordance with the requirements of article 8 of the Framework Directive (Directive 2002/21/EC). These include, in particular, the obligation to
- a) ensure that users, including disabled users, derive maximum benefit in terms of choice, price and quality (Article 8(2)(a));
  - b) ensure a high level of protection for consumers in their dealings with suppliers (Article 8(4)(b)); and
  - c) promote the provision of clear information, in particular requiring transparency on tariffs and conditions for using publicly available electronic communications services (Article 8(4)(d)).
- 4.24 Ofcom considers that the measures described in this document promote the interests of all persons who are citizens of the European Union by promoting better pricing transparency, improving consumer confidence, promoting competition and encouraging innovation and investment as discussed in more detail above.



## Section 47 – Test for setting or modifying conditions

4.25 As set out under section 47(1) of the Act, when modifying a condition, Ofcom must be satisfied that the test set out in section 47(2) has been met. The test is that the modification of the condition is:

- a) objectively justifiable in relation to the networks, services, facilities, apparatus or directories to which it relates;
- b) not unduly discriminatory against particular persons or against a particular description of persons;
- c) proportionate to what it is intended to achieve; and
- d) transparent in relation to what it is intended to achieve.

4.26 Ofcom considers that the proposed modification meets the test set out in section 47 being:

4.26.1 **Objectively justifiable:** Ofcom considers that the proposed modification to the PRS Condition is objectively justifiable in relation networks and services affected in that it brings 087 Numbers and the specified 09 number ranges ( those charged above 5p per minute and up to 10p per minute for BT customers) into the regulatory scope of PhonepayPlus to further Ofcom's policy objectives as summarised in paragraph A2.7, especially the objectives of increasing pricing transparency and consumer protection for calls to those numbers. Ofcom considers this to be an appropriate way of addressing the consumer concerns and rebuilding consumer confidence;

4.26.2 **Not unduly discriminatory** in that the proposed modification does not benefit particular undertakings and the resulting regulatory framework will be applied to all CPs and SPs using 087 Numbers and 09 numbers charged above 5p per minute for BT customers;

4.26.3 **Proportionate** in that :

- a) the proposed extension of PRS regulation would introduce the minimum necessary additional regulation in order to achieve the desired objectives as summarised in paragraph A2.7, especially the objectives of increasing pricing transparency and consumer protection for calls to those numbers; and
- b) Ofcom's impact assessment demonstrates that the proposed extension of PRS regulation would deliver a significant net benefit to stakeholders over and above the associated costs.

4.26.4 **Transparent** insofar as the nature and obligations of proposed modification to the PRS Condition as well as the reason and effects of the proposals are clearly set out in this statement.

## Annex 1

# List of respondents

A1.1 We received 27 responses to the consultation:

- 12 from consumers;
- 11 from CPs and related organisations; and
- 4 from businesses and related organisations.

A1.2 Of the respondents, 21 gave permission for their responses to be published. Three of the published respondents asked for their names to be withheld. The responses are available on our website at:

- <http://www.ofcom.org.uk/consult/condocs/087prs/responses/>

## Consumers

A1.3 The respondents that gave permission for their names to be disclosed are listed below.

- Mr M Attlesey;
- Mr M Brown;
- D Hickson;
- Mr M Reeves;
- Mr J Shersby;
- M Ward.

## Communications providers and related organisations

A1.4 The respondents that gave permission for their names to be disclosed are listed below.

- BT;
- Cable and Wireless;
- COLT;
- Federation of Communications Services (FCS);
- The Mobile Broadband Group;
- Thus;
- UK Competitive Telecoms Association (UKCTA).

## **Businesses and business organisations**

A1.5 The respondents that gave permission for their names to be disclosed are listed below.

- Association for Interactive Media and Entertainment (AIME);
- Faxtastic APM.
- Infomedia GB.
- Global Radio.
- The Premium Rate Association (PRA).

## Annex 2

# Summary of Ofcom's impact assessment and discussion of modifications made in light of stakeholder comments

## Introduction

- A2.1 Impact assessments provide a valuable way of assessing different options for regulation and showing why the preferred option was chosen. They form part of best practice policy-making. This is reflected in section 7 of the Act, which means that generally we have to carry out impact assessments where our proposals would be likely to have a significant effect on businesses or the general public, or when there is a major change in Ofcom's activities. However, as a matter of policy Ofcom is committed to carrying out and publishing impact assessments in relation to the great majority of our policy decisions. For further information about our approach to impact assessments, see the guidelines, Better policy-making: Ofcom's approach to impact assessment, which are on our website:  
[http://www.ofcom.org.uk/consult/policy\\_making/guidelines.pdf](http://www.ofcom.org.uk/consult/policy_making/guidelines.pdf)
- A2.2 This section contains a summary of Ofcom's impact assessment followed by a description of the amendments Ofcom has made in light of stakeholder responses to the Consultation. The summary takes account of these modifications where appropriate.
- A2.3 Please see Section 6 of the Consultation for the full impact assessment.

## The citizen and/or consumer interest

- A2.4 We think that NTS enables organisations to supply consumers with many useful services, some of which would not otherwise be available. However there are a range of concerns about NTS, including consumer concerns, in relation to the following issues:
- Consumer protection: There are concerns about a rise in scams previously seen on 09 numbers that were beginning to affect 08 numbers and more general concerns that a lack of consumer protection measures might mean that businesses were using 08 numbers to overcharge consumers;
  - Pricing transparency – Our research shows that consumers have a very low awareness of how much 08 calls are likely to cost them. Thus, consumers often make inefficient purchasing decisions, such as avoiding calling 08 numbers because they over-estimate call charges or conversely making more calls because they under-estimate call charges;
  - Call centre waiting times – Many consumers are annoyed by long call centre waiting times and some people are worried that when 08 numbers are used, waiting times may be deliberately extended to make extra money from callers;
  - Adult services – Concerns were expressed that the Sexual Entertainment Services operating on 08 numbers are barred less easily than those operating on

09 numbers. Unlike Sexual Entertainment Services operating on 09 numbers, those operating on 08 numbers were not regulated by the premium rate services regulator PhonepayPlus; and

- Provision of public services – There has been growing concern about the use of 08 numbers for the provision of public services. This problem has been exacerbated by the fact that NTS numbers cannot be accessed from all foreign networks, making it difficult for those overseas to access UK public services.

A2.5 These concerns have contributed to a decline in consumer confidence in NTS.

A2.6 We considered these concerns in the NTS Policy Review and in the 2006 NTS Statement, proposed to implement a package of measures to address the concerns. Extending PRS regulation to 087 Numbers is one of those measures and aims to address the first three of the concerns listed above. PRS regulation will address these issues as follows:

- PRS regulation will improve consumer protection by making SPs that offer services provided on 087 Numbers and CPs that provide electronic communications services for those services subject to the Code (as interpreted in the SoA). The Code contains a range of provisions designed to reduce the incidence of scams and also to quickly address scams that do occur.
- PRS regulation will improve pricing transparency by placing SPs under an obligation to ensure that callers are informed about the price of calls to their numbers. Most are expected to discharge this obligation by stating call prices in stationery, advertising and promotional material etc. Some may place pricing announcements at the start of calls.
- PRS regulation will address concerns about call waiting times via the Undue Delay provisions of the Code which places SPs under an obligation to consider consumer complaints about excessive waiting times. In cases where consumers have been unable to resolve complaints about excessive call waiting times satisfactorily with SPs, PhonepayPlus will consider their complaints.

## Ofcom's Policy Objectives

A2.7 Ofcom initially set out its policy objectives for NTS in the 2005 NTS Consultation as part of the NTS Policy Review. In the Consultation we reviewed these objectives and concluded there were still relevant for the proposals to extend PRS regulation. The objectives are:

- Price transparency – consumers should know what they are paying for calls;
- Range and choice of services – consumers should have access to a wide range of services and a choice of suppliers;
- Consumer protection – the use of 08 numbers as a micro-payment system should be accompanied by measures which provide an adequate level of consumer protection, particularly for vulnerable consumers;
- Viability of pay-as-you-go dial-up internet access – given its continued importance in providing internet access to consumers throughout the UK, the viability of the market for dial-up internet services should not be undermined;

- Promotion of competition – regulation should promote competition between CPs and SPs, consistent with reasonable levels of cost recovery and revenue certainty.
- Reduced regulatory intervention – Ofcom should operate with a bias against regulatory intervention and should avoid imposing any unnecessary burden on consumers, suppliers or other stakeholders.

A2.8 These objectives are rooted in Ofcom's statutory obligations under the Act, in particular, Ofcom's general duties in section 3 of the Communications Act 2003 ('the Act') and Ofcom's duties for the purposes of fulfilling the six European Community requirements as set out in section 4 of the Act.

A2.9 The objectives may be broadly characterised as furthering the interests of citizens and consumers, promoting competition and encouraging the provision of network access and service interoperability.

## Policy Options

A2.10 Section 6 of the September 2005 NTS Consultation, when read in conjunction with the rest of the document, formed an impact assessment. Ofcom considered a range of policy options to address each of the policy issues described in section 4 of the 2005 NTS Consultation. These are summarised in the table below.

Policy Issue	Options considered
A. Revenue sharing on 08 numbers	<p>A1: Maintain revenue sharing – revenue sharing would continue on 08 numbers.</p> <p>A2. Ending revenue sharing on 08 numbers – Revenue sharing would be restricted to 09 numbers.</p>
B. The retail pricing of 0845 and 0870 calls	<p>B1. The status quo - retaining the current pricing and interconnection arrangements for 084 and 087 Numbers.</p> <p>B2. Extended retail price competition – amend the Plan to enable TCPs to select the price points to be applied to number blocks, from within a specified range (i.e. the same arrangements as applied to the 0844 and 0871 ranges). This option was Option 2, Ofcom's preferred option in the 2004 NTS Consultation.</p> <p>B3. Retail prices set by Ofcom – This option has been proposed by some CPs and would involve Ofcom setting the retail prices for 0845 and 0870 calls for BT customers though retail price regulation</p> <p>B4. Restore the geographic linkage for 0845 and/or 0870 calls after an interim period– This option would involve Ofcom amending the Plan and the General Conditions of Entitlement to restore the linkage between 0845/0870 calls and the prices that consumers actually pay for geographic calls after an interim period. The designations would apply to all providers (including mobiles and payphones) not just BT.</p> <p>B5. Restore the geographic linkage for 0845 and/or 0870 calls and withdraw regulatory support for revenue sharing after an interim</p>

Policy Issue	Options considered
	<p>period – This option is a variation on Option B4 and would involve Ofcom removing the regulatory support for revenue sharing in conjunction with the re-establishment of the geographic linkage for 0845/0870 calls.</p>
<p>C. Price transparency on 084 and 087 numbers</p>	<p>C1. Status quo – This option would involve maintaining the current pricing transparency measures such as the ASA/CAP guidance for the advertising of 084 and 087 numbers.</p> <p>C2. Restore link to geographic tariffs for 0845/0870 – Evaluation of Option B4 to gauge its effectiveness as a measure to improve pricing transparency.</p> <p>C3. Extend pricing designations in the Plan – This option would consist of amending the General Conditions of Entitlement to extend the pricing designations of the Plan to all fixed providers (excluding public payphones) on the 0844 and 0871 number ranges.</p> <p>C4. Bringing some 08 numbers within the regulatory regime for PRS – This option would involve extending Ofcom's and PhonepayPlus remit to cover some of the 08 number range so that SPs were subject to the provision of the Code relating to price publication.</p> <p>C5. More stringent obligations on OCPs – This option would involve amending General Condition 14 which deals with consumer codes of practice and is the subject of a separate consultation document that will be published in the near future.</p> <p>C6. Call pre-announcements – This option would involve providing pre-announcements for calls on the 084 and 087 number ranges indicating to the caller the likely price of the call.</p> <p>C7. Signal price through number range – This option would consist of using the numbering range to signal the price of the call e.g. 0801 would cost 1ppm and 0802 would cost 2ppm etc.</p>
<p>D. Consumer protection on 084 and 087 numbers</p>	<p>D1. Status quo – No additional consumer protection measures.</p> <p>D2. Extending PRS regulation to 0871 numbers – This option would consist of extending the PRS regulatory regime to 0871 numbers to bring these numbers within PhonepayPlus remit thereby requiring SPs to operate under the Code provisions.</p> <p>D3. Extending PRS regulation to adult services currently provided on 08 numbers – This option would involve amending the Plan to clarify that adult services must only use the 0908 and 0909 ranges and secondly to extend the definition of Controlled PRS regulation to all adult services regardless of price.</p> <p>D4. No revenue sharing for locked-in calls to 084 and 087 numbers – This option would involve preventing calls to services classified</p>

Policy Issue	Options considered
	as locked-in from revenue sharing on 08 number ranges to eliminate any potential for consumer detriment
E. Waiting times for call centre services provided on 084 and 087 numbers	<p>E1. Status quo – This option would consist of maintaining the current regime, that is, call centres could continue to revenue share and there would be no requirements relating to call waiting times.</p> <p>E2. Stop call centres using 084/087 numbers – This option would involve preventing call centres from using the 084 or 087 number ranges which permit revenue sharing.</p> <p>E3. Regulate service levels for call centres using revenue sharing 08 numbers – This option would involve Ofcom regulating service levels for call centres using revenue sharing numbers.</p>
F. Public services provided on 084 and 087 numbers	<p>F1. Status quo – This option would involve retaining the current regulatory regime and providing the COI with best practice guidance on the use of 084 and 087 numbers for public services.</p> <p>F2. Stop public sector organisations using revenue-sharing 08 numbers – This option would involve the banning of public sector organisations from operating on revenue sharing 08 numbers.</p>

A2.11 The options were also reviewed in the April 2006 NTS Statement in the light of stakeholder responses to the consultation.

### Preferred policy option

- A2.12 In the April 2006 NTS Statement, Ofcom concluded its analysis of the policy options and proposed to implement a package of measures to address the policy issues. The package included the extension of the regulatory framework for PRS to include to 087 Numbers (Option C4/Option D2) to improve pricing transparency (policy issue C) and consumer protection (policy issue D).
- A2.13 When the April 2006 NTS Statement was published, Ofcom was not able to make a complete assessment of the impact of extending PRS regulation because at that time, PhonepayPlus had not specified the Code it would apply to 087 Numbers. As previously discussed, PhonepayPlus has since undertaken its own consultation and has published the SoA specifying how it will interpret the Code for calls to 087 Numbers.
- A2.14 Most of the potential costs for stakeholders would stem from the rules that PhonepayPlus requires CPs, and SPs to comply with. Ofcom therefore reviewed the rules that PhonepayPlus proposes to apply to 087 Numbers and assessed the likely impact of those rules on stakeholders.
- A2.15 The analysis in section 6 of the Consultation constituted an addition to the impact assessment provided in the September 2005 NTS Consultation as modified in the April 2006 NTS Statement. The additional analysis considered the incremental impact associated with the extension of PhonepayPlus regulation to 087 numbers in addition to those assessed in the 2005 NTS Consultation.



- A2.16 Having reviewed the policy options in the light of the addition to the impact assessment, Ofcom has reconfirmed its view that it is reasonable to proceed with the extension of PRS regulation.

### **Relationship with impact assessment for 0870 proposals**

- A2.17 In the September 2005 NTS Consultation Ofcom assessed the impact on stakeholders of its proposals for 0870 numbers, including the costs that SPs might incur if they decided to move their services from 0870 numbers to alternative number ranges as a result of Ofcom's proposals for the 0870 range. When moving their services to new numbers SPs would need to update or replace stationery, advertising/promotional material, advertising and signage to show their new telephone numbers. Ofcom assumed that in most cases SPs that move their services to new numbers could also update their advertising/promotional materials to comply with the pricing information requirements of the Code at the same time (see paragraph 6.103). Ofcom therefore assumed that SPs that move their services from 0870 numbers to 087 Numbers would not incur additional costs in relation to these items in addition to those associated with Ofcom's proposals for 0870 numbers.

### **Benefits**

- A2.18 Ofcom considers that the extension of PRS regulation would deliver substantial recurring benefits, namely:
- an improvement in pricing transparency for calls to 087 Numbers which will reduce the consumer detriment associated with pricing misperceptions;
  - better consumer protection which will reduce the level of consumer harm associated with scams and other abusive practices on 087 Numbers and will also effectively address future scamming activity;
  - improved consumer confidence stemming from a reduction in the incidence of scams and the extension of PRS regulation to 087 Numbers;
  - PRS regulation will provide a new mechanism to address consumer complaints about poor customer service including complaints about excessively long call waiting times; and
  - improved consumer confidence in 087 Numbers should reduce the consumer detriment associated with calls that consumers avoid making because of concerns about scams etc. It should also encourage more SPs to offer services on 087 Numbers.
- A2.19 The extension of PRS regulation would be unlikely to completely eliminate consumer harm from scams or completely eliminate pricing misperceptions; however, Ofcom expects it to bring about a substantial improvement in each of these areas on an ongoing basis (i.e. year on year).

### **Better pricing transparency**

- A2.20 In the Sept 2005 Consultation, Ofcom found that consumers have a very low awareness of the price of NTS calls and tend to overestimate prices by a considerable margin. Ofcom also found that a significant proportion of consumers are wary of calling NTS numbers mainly because of concerns about prices. These

factors cause consumers to make inefficient purchasing decisions, typically to avoid making calls because they overestimate charges.

- A2.21 The extension of PRS regulation will make those SPs brought within the scope of PRS regulation (those providing on 087 Numbers and 09 numbers charged at more than 5p and up to 10p for BT customers) subject to the Pricing Information Requirements in section 5.7 of the Code. This will require them to ensure their customers are informed about the price of calls. We would expect SPs to discharge this obligation by placing pricing information in advertising and promotional materials displaying telephone numbers for their services. Ofcom considers this would provide consumers with better and timelier information about the likely charges for calls to those numbers, thereby reducing the instances of consumers avoiding making calls because they overestimate prices.
- A2.22 Ofcom considers the extension of PRS regulation along with the other measures proposed in the April 2006 NTS Statement (some of which have been implemented and some of which Ofcom intends to implement) will contribute to a significant improvement in pricing transparency. Ofcom considers it likely that the extension of PRS regulation would make a stronger contribution than the other measures proposed because the pricing publication requirements in the Code should significantly increase the likelihood that consumers would see pricing information immediately before deciding whether to make calls.

#### Quantification of the benefits of better pricing transparency

- A2.23 Pricing misperceptions have a negative impact on welfare because some potential callers will place a value on making calls that is higher than is actually charged but lower than the price which the caller believes it would be charged if it made the call (the “perceived price”). As a result, some callers will be deterred from making (welfare-enhancing) calls. Given the extent of the disparity between caller perceptions and actual call charges for 087 Numbers, the detriment associated with this inefficiency may be very significant.
- A2.24 In the Consultation we noted that there are a number of difficulties associated with quantifying this type of detriment, in particular the sensitivity of callers to changes in perceived call prices. In the Consultation we estimated that this detriment might range from £32 million to £71 million per annum for values of price elasticity ranging from -0.2 to -0.4. We also noted that we viewed an elasticity of -0.3 as a conservative estimate (i.e. one that would tend to underestimate the detriment associated with pricing misperceptions).
- A2.25 It is unlikely that PRS regulation would completely eliminate pricing misperceptions, so the benefit to consumers would be less than the above figures, which are based on the elimination of all misperceptions. This benefit would not however be a one-off but would recur in all future years for as long as the measures continued to improve price perceptions.
- A2.26 We cannot of course be certain about the extent to which PRS regulation will improve consumers’ perceptions of call prices. Therefore to illustrate the potential benefits we have estimated the consumer benefits for a range of possible improvements in price perceptions. The assumed range of perceived prices varies from an upper value of 30p per minute to a lower value of 15p per minute, all of which are above actual average prices. Figure 4 below illustrates our estimates of the benefits to consumers under these scenarios. The benefits are presented on a Net Present Value (‘NPV’) basis over 5 and 10 years for a range of price elasticities

which we consider to be reasonable for calls to 087 Numbers. Please see paragraphs 3.80 to 3.95 for a more detailed discussion about the basis of these estimates. Figure 4 excludes mobile originated calls as discussed in paragraphs 3.92 to 3.95.

**Figure 4: Potential consumer benefit of better pricing transparency<sup>35</sup>**

Improvement in consumers pricing perceptions of 087 calls from fixed lines over 5 years  (Average price estimated by consumers for calls from fixed lines)	Benefit to consumers over 5 years on a Net Present Value ('NPV') basis <sup>36 37</sup>  (£ millions)			
	Price elasticity			
	-0.2	-0.3	-0.4	-0.6
From 36p to 30p per minute	27	41	55	83
From 36p to 25p per minute	46	70	95	145
From 36p to 20p per minute	62	95	128	198
From 36p to 15p per minute	75	114	155	241

Improvement in consumers pricing perceptions of 087 calls from fixed lines over 5 years  (Average price estimated by consumers for calls from fixed lines)	Benefit to consumers over 10 years on a Net Present Value ('NPV') basis <sup>36 38</sup>  (£ millions)			
	Price elasticity			
	-0.2	-0.3	-0.4	-0.6
From 36p to 30p per minute	65	98	131	200
From 36p to 25p per minute	109	165	223	343
From 36p to 20p per minute	143	218	295	459
From 36p to 15p per minute	167	255	347	543

## Better consumer protection

A2.27 In the September 2005 NTS Consultation Ofcom reviewed a range of concerns about services operating on 087 Numbers including:

- a small but rising number of scams affecting 087 Numbers;
- consumer concerns about excessively long call waiting times associated with call centre services; and

<sup>35</sup> Copy of Figure 1 on page 24.

<sup>36</sup> Future values discounted using the Social Time Preference Rate (3.5) %

(<http://greenbook.treasury.gov.uk/annex06.htm>)

<sup>37</sup> Assuming that pricing perceptions progress from the initial to final figures in 5 equal increments over the period.

<sup>38</sup> Assuming that pricing perceptions progress from the initial to final figures in 5 equal increments over the first five years and are stable thereafter.

- a low level of pricing transparency (as discussed above).
- A2.28 Extending PRS regulation is intended to address these concerns and also as a preventative measure to prevent a future rise in consumer harm from scamming activity which we consider would be likely to occur in the absence of PRS regulation. This is because the persistent occurrence of scams (such as call-back scams<sup>39</sup>) on 087 Numbers indicates that the revenue shares available are sufficiently high to make 087 Numbers attractive to persons that operate scams. Also, the application of PRS regulation to other revenue-sharing ranges would be likely to cause persons that operate scams to use 087 Numbers if they were not subject to PRS regulation.
- A2.29 Past experience for example with internet diallers has also shown that the level of scamming activity can rise very rapidly. A major advantage of PRS regulation is that PhonepayPlus can act quickly to address new scams when they arise, reducing the consumer harm caused.
- A2.30 The benefit of better consumer protection will depend in part on the level of future scamming activity that is prevented and the impact on consumer confidence. In our view, failing to address the problems discussed above would be likely to lead to a continuing decline in consumer confidence in 087 Numbers, making consumers more wary of calling them and SPs more wary of using them for their services. A resultant reduction in call volumes would reduce the benefit to consumers from calls to 087 Numbers.
- A2.31 PRS regulation provides a high level of consumer protection for a subset of PRS services that Ofcom considers warrant the additional protection afforded by the Code. Ofcom considers PRS regulation to be an effective and proportionate response to the risks associated with the services that are subject to PRS regulation.
- A2.32 Given the above, Ofcom considers that services operating on 087 Numbers warrant the additional protection provided by the Code as interpreted for 087 Numbers by PhonepayPlus in the SoA and that services operating on 09 numbers charged above 5p and up to 10p per minute for BT customers warrant the additional protection provided by the Code. Under the Code, PhonepayPlus has a range of sanctions it can impose on SPs in respect of breaches of the Code. These include requiring the remedy of the breach, the imposition of financial penalties, barring access to some or all service and/or numbers and prohibiting named individuals from operating services for a set period. The Code also contains a range of provisions that are designed to prevent harm to consumers or to enable harmful conduct to be speedily curtailed by PhonepayPlus. These include:
- a requirement for SPs to register with PhonepayPlus before providing services;
  - a requirement for SPs to obtain permission before operating specific categories of service;
  - requirements designed to minimise the risk of harm from certain types of service judged to propose particular risks to consumers e.g. chat services; and

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<sup>39</sup> Where consumers are induced to call 087 Numbers on false-pretences for example by recorded messages or by brief unanswered calls to their numbers.

- an obligation for CPs to assist PhonepayPlus with investigations into suspected breaches of the Code by SPs;
- a requirement for CPs to delay payments to SPs so that PhonepayPlus can instruct CPs to withhold payments when breaches of the Code are suspected.

A2.33 Ofcom considers that extending PRS regulation will lead to a substantial reduction in the level of consumer harm associated with 087 Numbers and would provide a high level of protection to address future scamming activity. PRS regulation will also provide a new mechanism to address consumer complaints about poor customer service including complaints about excessively long call waiting times.

### Quantification of the benefits of better consumer protection

A2.34 There are no reliable means of quantifying the benefits associated with preventing scamming partly because of the difficulty of assessing the future level of scamming activity that PRS regulation will prevent. We were also unable to assign a value to the distress to consumers associated with scams and excessive waiting times. However, we note that scams in particular cause consumers considerable distress, suggesting that the benefit associated with reducing consumer distress would be much higher than the associated call charges.

A2.35 In our view, failing to address these problems would be likely to lead to a decline in consumer confidence in 087 Numbers, making consumers more wary of calling them and SPs more wary of using them for their services. We believe it is clear that there is a cost to consumers arising from this loss of confidence but it is difficult to be precise about the way in which it affects the value which callers derive from calls to 087 Numbers. For our purposes, we assume that its effect is to reduce customers' willingness to pay for calls to 087 Numbers and hence, we assume, to lead to a uniform percentage reduction in the volume of calls to 087 Numbers at any given price. We quantify the resultant reduction in consumer welfare in a way which is consistent with our estimate of the benefits of improving price perceptions, which is based on a calculation of the resulting increase in consumers' surplus. Consumers' surplus is the difference between customers' willingness to pay and the price they actually pay.

A2.36 However, for a number of reasons, it is difficult to quantify these benefits using this method. Firstly, it is inherently difficult to estimate the potential decline in consumer confidence and the resultant impact on call volumes that would arise without a change in regulation with any precision. Secondly, the estimated reduction in consumer surplus that would arise from a fall in confidence is much more sensitive to the shape and position of the demand curve than the price transparency benefits presented above. This sensitivity arises because estimates of the consumer detriment associated with a decline in consumer confidence rely on information about consumers' demand at all prices at which demand is positive, including prices which are very much higher even than the current perceived level (see the discussion in paragraph 3.87). Of course there is no actual information on demand at such prices.

A2.37 For the purposes of our calculations we have assumed that the demand curve takes the same standard non-linear form used to calculate the estimates of the price transparency benefits in Figure 4. Figure 5 below shows how the resulting estimates of the costs of reduced confidence vary depending on the assumed price elasticity of demand and the extent of the assumed reduction in call volumes. The estimates in Figure 4 and Figure 5 both use the current level of demand as their

starting points and have been calculated independently of each other. In practice the pricing transparency and consumer protection benefits would occur simultaneously. Because our estimates of the benefits of our proposals do not take account of this interaction, our view is that they are likely to be conservative.

**Figure 5: Potential costs to consumers of reduced confidence<sup>40</sup>**

Reduction in demand due to loss of confidence in 087 Numbers	Cost to consumers over 5 years on a Net Present Value (NPV) basis <sup>41</sup> (£ millions)			
	Price elasticity			
	-0.2	-0.3	-0.4	-0.6
1%	61	41	30	20
5%	306	204	153	102
10%	616	410	308	205

A2.38 It can be seen that the potential benefits from avoiding even quite small reductions in demand are significant when estimated in this way. However, it should be noted that the above estimates do not take account of the fact that any shift in the demand curve for 087 calls (from a loss of confidence) would prompt migration of services to other ranges and lead to increases in demand for other goods and services - with partially offsetting welfare effects. In addition, they may be dependent on the assumption that loss of confidence can be represented by a uniform reduction in willingness to pay. If for example, it were assumed that consumers suffered a loss only from the calls no longer made as a result of reduced confidence, with no change in the value to them of calls which they continue to make, the calculated cost would be very much smaller (a few million pounds for a 5% volume reduction and less than £25m even for a 10% reduction with an elasticity of -0.2). However, this would be to take no account of the distress and other costs arising from scamming and so we believe it is likely to underestimate the true costs of loss of confidence in 087 Numbers, perhaps considerably so.

A2.39 Faced with declining consumer confidence, SPs would have to decide whether to retain their 087 Numbers, accepting declining call volumes or ultimately to move their services to other number ranges, such as the 09 range that are already subject to PRS regulation. In the extreme, a large increase in scams on 087 Numbers could effectively discredit these ranges, forcing the majority of SPs to move their services to other ranges. Moving to new numbers would cause SPs to incur costs. As discussed in paragraph 3.76 we estimate the cost of a 10% migration of services to be £9 million, implying an upper limit of £90 million if all services were to move elsewhere. In practice, a decline in consumer confidence would be likely to lead to both a reduction in traffic volumes and service migration. If serious problems arose, Ofcom could consider action to address the problems such as extending PRS regulation to some or all services using 087 Numbers. However, this would take several months at a minimum during which time, significant damage to consumer confidence could occur.

<sup>40</sup> Copy of Figure 2 on page 28.

<sup>41</sup> Future values discounted using the Social Time Preference Rate (3.5%) (<http://greenbook.treasury.gov.uk/annex06.htm>)

## **Impact on Communications Providers**

- A2.40 The extension of PRS regulation will make CPs offering those numbers brought within the scope of PRS regulation subject to the PhonepayPlus Code (as interpreted in the PhonepayPlus SoA).
- A2.41 Most of the rules applicable to CPs are the Network Operator obligations in section 2 of the Code. The most significant of these being:
- the obligation to assist PhonepayPlus and to provide information to it on an ad-hoc basis in connection with its investigations and other activities;
  - the obligation to include provisions specified by PhonepayPlus in contracts with SPs;
  - the obligation to make payments to SPs in arrears (the 30 day rule); and
  - the obligation to pay the PhonepayPlus Levy.
- A2.42 To fulfil these obligations CPs will need to undertake certain preparatory activities prior to the extension of PRS regulation, most notably to update their contracts with SPs to comply with Code requirements. There would also be a small ongoing administrative burden for CPs.
- A2.43 Ofcom estimates that approximately 300 TCPs and resellers would be subject to the Network Operator obligations and that they would collectively incur one-off preparatory costs of up to £4 million and ongoing cost of approximately £30 thousand per annum. The cost of providing ad-hoc assistance to PhonepayPlus in connection with its investigations would be in addition to these figures.

### **Impact on individual CPs**

- A2.44 Ofcom considers that preparations for the extension of PRS regulation will place a modest additional burden on individual CPs. Once PRS regulation has been extended there will be a small ongoing administrative burden associated with calculating the PhonepayPlus Levy and providing assistance to PhonepayPlus as required.

## **Impact on Service Providers**

- A2.45 The extension of PRS regulation will make SPs offering those numbers brought within the scope of PRS regulation subject to the Service Provider obligations in the PhonepayPlus Code (as interpreted in the PhonepayPlus SoA).
- A2.46 Prior to the extension of PRS regulation SPs will need to undertake certain preparatory activities, most notably:
- understanding and complying with the Code and the SoA;
  - updating stationery, advertising/promotional material and signage to comply with the pricing information requirements of the Code which require SPs to ensure that consumers are provided with information about call prices;
  - reviewing and possibly amending their procedures for handling consumer complaints about undue delay (i.e. excessive waiting times); and

- providing a non-PRS number for consumer complaints (meaning a number not subject to PRS regulation in this context) or alternatively making arrangements to offer consumers refunds for such complaints calls.
- A2.47 A small minority of SPs will also need to obtain prior permission from PhonepayPlus to operate their service and a small minority will need to comply with service specific requirements of the PhonepayPlus Code.
- A2.48 Although CPs are responsible for paying the PhonepayPlus funding levy, we would expect that CPs will pass on levy costs to SPs in the form of lower revenue share payments.
- A2.49 SPs will also be required to assist PhonepayPlus on an ad-hoc basis in connection with its investigations and other activities.
- A2.50 We estimate that approximately 33,000 to 36,000 SPs would be subject to the Service Provider obligations of the Code (as interpreted by the SoA) and that they would collectively incur one-off preparatory costs of between £46 million and £98 million and ongoing costs of approximately £400 thousand per annum. The costs of integrating non-PRS numbers for complaints into SPs call centre systems would be in addition to these figures. For some SPs these costs may be significant. The cost of providing ad-hoc assistance to PhonepayPlus in connection with its investigations would also be in addition to these figures.
- A2.51 We estimate that SPs may move between 2% and 10% of SPs of their services to other number ranges as a result of the extension of PRS regulation. The costs associated with this migration (estimated at £2 million to £9 million) are included in the figures quoted above.

### Impact on individual SPs

- A2.52 Ofcom considers that the setup costs associated with the extension of PRS regulation will be small for most SPs. However, Ofcom recognises that a small number of SPs receive a high volume of 087 calls and may spend much more preparing for PRS regulation than the average amounts used in our analysis particularly to update stationery, advertising/promotional material and signage.
- A2.53 Once implemented, our view is that PRS regulation will place only a small additional burden on individual SPs.

### **Impact on services on other number ranges**

#### Sub 10p per minute 09 Numbers

- A2.54 The extension of PRS Regulation will also make 09 numbers charged at the same rates as 087 Numbers (for BT customers) subject to the PhonepayPlus Code (i.e. those charged above 5p per minute and up to 10p per minute for BT customers).
- A2.55 We think there are very few services charged at these rates operating on 09 numbers that are not already Controlled PRS (for example because they are Sexual Entertainment Services). Therefore the inclusion of these services will not have a significant impact.



### Requirement to provide a non-PRS complaints number

- A2.56 Section 3.3.5 of the Code requires SPs to provide a non-PRS number for customer services. In this context, customer services means queries/complaints about the service and PRS are those numbers regulated by PhonepayPlus (i.e. Controlled PRS). PhonepayPlus has decided to retain this requirement with the extension of PRS regulation to 087 Numbers. SPs will therefore no longer be allowed to use 087 Numbers for complaints for services provided on existing PRS numbers such as 09 numbers unless they refund call charges in full for consumer complaints<sup>42</sup>.
- A2.57 We believe that most services operating on 09 numbers currently use 087 Numbers for complaints and SPs would therefore either have to provide a new number or make arrangements to refund charges for complaints calls. We estimate that 1300 SPs will be affected by this requirement and that providing a new complaints number will cause them to incur a one-off cost of approximately £19 million.

### **PhonepayPlus setup and operational costs**

- A2.58 Preparing for the extension of PRS regulation to 087 Numbers has caused PhonepayPlus to incur incremental costs relating to preparatory research, stakeholder engagement, consultation and preparing PhonepayPlus to regulate 087 Numbers. PhonepayPlus has met these costs from within existing budgets. These preparatory costs will be recovered over time from the levy on 087 numbers.
- A2.59 PhonepayPlus believes that Levy revenues from 087 Numbers will be sufficient to cover the incremental operational cost of regulating 087 Numbers as well as the recovery of preparatory costs.

### **Summary of Costs**

- A2.60 We estimate the one-off costs to be between £66 million and £121 million and the recurring cost to be between £400 thousand and £500 thousand. In addition CPs and SPs would also incur costs on an ad-hoc basis to assist PhonepayPlus with its investigations.
- A2.61 A more detailed breakdown of these costs is shown in Figure 6 below.

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<sup>42</sup> See paragraph 3.18 of the Consultation for further details

**Figure 6: Summary of Costs**

<b>Communications Providers (TCPs and Resellers)</b>		<b>Costs</b>	
<i>(all figures £ millions )</i>		<b>From</b>	<b>To</b>
<b>One-Off Costs</b>			
Preparations for PRS Regulation		£0.5	£2.0
Notifications to SPs		£0.1	£0.8
SP contract modifications		£0.1	£1.1
<b>Total</b>		<b>£0.8</b>	<b>£3.9</b>
<b>Recurring Costs</b> <i>per annum</i>			
PhonepayPlus Levy Administration		£0.03	£0.03
Assisting PhonepayPlus			Not quantified
<b>Total</b>		<b>£0.03</b>	<b>£0.03</b>

<b>Service Providers</b>		<b>Costs</b>	
<i>(all figures £ millions )</i>		<b>From</b>	<b>To</b>
<b>One-Off Costs</b>			
Preparations for PRS Regulation		£3	£24
Providing non-PRS complaints numbers		£8	£9
Associated call centre integration			Not quantified
Pricing Information Requirements		£25	£41
Advertising/promotional material and vehicle signage		£8	£19
Building signage			Not quantified
2-10% Service migration away from 087 Numbers		£2	£9
less reduction in other setup costs due to service migration		£0	-£4
<b>Total</b>		<b>£46</b>	<b>£98</b>
<b>Recurring Costs</b> <i>per annum</i>			
Assisting PhonepayPlus			Not quantified
PhonepayPlus Levy		£0.4	£0.4
<b>Total</b>		<b>£0.4</b>	<b>£0.4</b>

**Secondary Effects on 09 Numbers**

<i>(all figures £ millions )</i>		<b>Costs</b>
<b>One-Off Costs</b>		
Providing non-PRS complaints numbers		£19
Associated call centre integration		Not quantified
<b>Total</b>		<b>£19</b>

**Total All Stakeholders**

<i>(all figures £ millions )</i>	<b>From</b>	<b>To</b>
One-Off Costs	<b>£66</b>	<b>£121</b>
Recurring Costs	<b>£0.4</b>	<b>£0.5</b>

## Comparison of Benefits and Costs

A2.62 Considering the overall balance between the costs and benefits, it seems highly likely that the price perception benefits alone would suffice to provide a positive net benefit over several years. Figure 7 illustrates this, showing the potential net benefit of various improvements in pricing transparency after deducting the costs summarised above.

**Figure 7: Net benefits excluding the benefits associated with better consumer protection**

Improvement in consumers pricing perceptions of 087 calls from fixed lines over 5 years (Average price estimated by consumers for calls from fixed lines)	Net benefit to consumers over 5 years on a Net Present Value ('NPV') basis – excluding the benefits associated with better consumer protection <sup>43 44</sup> (£ millions)			
	Price elasticity			
	-0.2	-0.3	-0.4	-0.6
From 36p to 30p per minute	-92 to -38	-78 to -25	-64 to -11	-35 to 18
From 36p to 25p per minute	-72 to -19	-48 to 5	-24 to 29	26 to 79
From 36p to 20p per minute	-56 to -3	-24 to 29	10 to 63	79 to 132
From 36p to 15p per minute	-44 to 9	-4 to 49	36 to 90	122 to 175

A2.63 We also believe that the proposals would generate a net benefit because:

- i) Price publication should significantly lower perceived prices towards actual levels
- ii) the price elasticity of calls to 087 Numbers is likely to be above -0.3 and perhaps significantly above -0.3 (in magnitude);
- iii) The benefits are likely to extend beyond 5 years and perhaps even beyond 10 years;
- iv) The un-quantified benefits associated with better consumer protection (such as a reduction in scamming activity and improved consumer confidence) are likely to be significant.

A2.64 In reaching this conclusion we are mindful that:

- the incidence of scams on 087 Numbers indicates that the revenue-shares available to SPs are sufficiently high to make 087 Numbers attractive to persons that operate scam. We consider that the application of PRS regulation to other number ranges (such as the 09 range) would be likely to cause persons that operate scams to use number ranges that are not subject to PRS regulation such as 087 Numbers. We therefore consider it likely that the incidence of scams

<sup>43</sup> Future values discounted using the Social Time Preference Rate (3.5 %)

(<http://greenbook.treasury.gov.uk/annex06.htm>)

<sup>44</sup> Assuming that pricing perceptions progress from the initial to final figures in 5 equal increments over the period.

would increase in future. We are also mindful that previous experience has shown that scamming activity can grow very rapidly.

- there is a rising level of consumer concern about 08 numbers which includes concerns about call centre waiting times and PRS regulation provides a mechanism for consumers to seek redress when unacceptable call waiting times occur for calls to 087 Numbers;
- a further loss of confidence in 087 Numbers would be likely to:
  - make consumers more wary of calling them and SPs more wary of using them for their services, harming both consumers, CPs and SPs; and
  - cause some SPs to migrate their services to other number ranges, incurring significant migration costs as a result.

### **Performance against policy objectives**

A2.65 We have reviewed the proposed extension of PRS regulation against the policy objectives identified in the September 2005 NTS Consultation in the light of:

- the addition to the 2005 NTS Consultation Impact Assessment presented in the Consultation;
- our amendments to the Impact Assessment discussed in this document; and
- our consideration of stakeholders' responses to the consultation.

A2.66 Our view is that the extension of PRS regulation performs well against the majority of these objectives:

- **Consumer Protection:** extending PhonepayPlus' remit to 087 Numbers will mean that services operating on 087 Numbers will become subject to the Code, increasing the level of consumer protection and reducing the potential for detriment. We therefore consider that the proposed extension of PRS regulation performs well against the consumer protection objective.
- **Viability of Pay-as-you-go Internet Services:** As pay-as-you-go internet services are not generally provided on 087 Numbers, we consider the proposals will have little impact on this objective.
- **Range and Choice of Services:** by improving consumer protection for services operating on 087 Numbers the proposed extension of PRS regulation should encourage SPs to offer services on it. We therefore consider that the proposed extension of PRS regulation performs well against this objective.
- **Promotion of Competition:** By making services operating on 087 Numbers subject to the Pricing Information requirements, the proposed extension of PRS regulation should help to further promote competition between in service provision as consumers would be better able to choose between services according to their price. We therefore consider the proposed extension of PRS regulation performs well against this policy objective.

- **Reduced Regulatory Intervention:** The proposals involve the extension of PRS regulation to a large group of stakeholders (CPs and SPs) and therefore do not perform well against this objective.

## **Revisions to the Impact Assessment in light of stakeholder comments and new information**

A2.67 In the light of stakeholder comments we have made the following modifications to our impact assessment. The preceding summary takes account of these modifications.

### **Communications Providers defined as Service Providers**

A2.68 As previously discussed in paragraph 3.51 onwards, a small proportion of CPs providing communications services for PRS would be defined by PhonepayPlus as SPs and would therefore be responsible for ensuring that their customers (i.e. providers of PRS) comply with the SP provisions of the PhonepayPlus Code. As we did not consider this situation in the Impact Assessment we have reviewed our Impact Assessment.

A2.69 In cases where a CP is defined by PhonepayPlus as an SP, the CP would be expected to effectively pass on the SP obligations of the Code by inserting additional clauses in their contracts requiring their customers (PRS providers) to comply with the PhonepayPlus Code and also to be responsible for any financial sanctions levied by PhonepayPlus. Our view is that these contractual obligations would be very similar if not identical to those inserted into contracts by CPs defined by PhonepayPlus as NOs). CPs defined as SPs by PhonepayPlus would be expected to assist PhonepayPlus on request in much the same way as NOs. Our view is that these are differences of detail and do not materially affect our impact assessment.

### **Revisions to cost estimates to reflect revised implementation timescale**

A2.70 As discussed in paragraph 3.59, we have decided to extend the notice period following publication of this statement before PRS regulation is extended, from three months to six months. This change will give NOs and SPs more time to prepare and should reduce some of their one-off implementation costs, most notably by allowing SPs longer to use existing stocks of stationery, advertising and promotional materials, thereby reducing the volume of those materials that will need to be updated or replaced to comply with the pricing information requirements in section 3.3.5 of the Code. We have adjusted our estimates for stationery costs to account for the longer notice period.

### **Revised estimate of Advertising/promotional material and signage costs**

A2.71 As discussed in Annex 4 we have estimated SPs costs for updating/replacing advertising/promotional material and vehicle signage. We estimate SPs one-off costs to update advertising/promotional material to be approximately £7 million to £14 million and £1 million to £5 million for vehicle signage. As discussed in Annex 4, these estimates should be treated with caution.

### **Revised estimate of migration from 087 Numbers**

A2.72 As discussed in paragraph 3.71, we have revised our estimate of the level of migration of services away from 087 Numbers as a result of our proposals. We now

estimate this to range from 2% to 10% with the most likely level being towards the lower end of this estimate. We estimate the one-off cost to SPs to range from £2 million to £9 million. Migration away from 087 Numbers would reduce the number of SPs that would need to prepare for PRS regulation, reducing the one-off costs. For an increase in migration from 2% to 10% we estimate that SPs setup costs (stationery and website costs) would be reduced by approximately £4 million.

### **Revised estimate of stationery and website costs**

- A2.73 We have revised our presentation of the stationery and website costs. These now include the sensitivity of these costs, estimated at £28m to our assumptions about SPs preparations for PRS Regulation which were discussed separately in the Consultation. The lower estimate assumes that since April 2006, half the SPs would have reordered stationery and would have added pricing information in preparation for the extension of PRS regulation. The higher estimates assume that none would have acted ahead of this statement and therefore all but 12.5% who would routinely reorder stationery during the six notice period would incur additional costs. We have also revised our estimate of SPs stationery and website costs to correct an error in our calculations which led us to overestimate the administrative overhead associated with updating stationery in the Consultation. Our revised estimate incorporating these changes is £25 million to £41 million compared with £35 million in the Consultation.

### **Revised estimate of pricing transparency benefits**

- A2.74 As discussed in paragraphs 3.92 to 3.95 we have excluded mobile originated calls to 087 Numbers from our estimate of the potential benefit of improved consumer pricing perceptions.
- A2.75 To illustrate better the potential benefits of improved transparency we have revised our estimates to include potential benefits for a range of improvements in pricing perceptions and price elasticities. As this benefit would be recurring (i.e. year on year) we have presented the results on a net-present-value basis over 5 and 10 years (see paragraphs 3.80 to 3.90).

### **Revised estimate of consumer protection benefits**

- A2.76 In light of stakeholder comments, we have discussed the potential benefits of improved consumer protection in more detail and have estimated the potential welfare loss to consumers (i.e. the disbenefit) associated with a decline in calls to 087 Numbers stemming from a decline in consumer confidence (see paragraphs 3.96 to 3.104).

### **Revision to summary of CP costs**

- A2.77 We have revised our summary of costs (Figure 6) to correct an error that resulted in the one-off and recurring costs for CPs being reported incorrectly in the summary in the Consultation (Figure 5 of the Consultation).
- A2.78 In section 3 of the Consultation, we estimated that the cost to CPs of notifying SPs about PRS regulation would be between £140 thousand and £750 thousand and to update their contracts with SPs would be between £100 thousand and £750 thousand. In our summary of costs in Figure 5 of the Consultation both estimates were reported incorrectly as being between £340 thousand and £2.5 million. In section 3 of the Consultation, we estimated the cost to CPs of administering the

PhonepayPlus Levy to be £30 thousand. In our summary of costs in Figure 5 of the Consultation, this figure was incorrectly stated as £200 thousand.

A2.79 Although the figures in Figure 5 of the Consultation differ significantly from our estimates described elsewhere in section 3 of the Consultation, the amounts are relatively small in this context and did not affect our overall assessment of the proposals.

## Revised estimate of costs

A2.80 We have revised our estimate of the costs associated with our proposals in the light of the points discussed above. Our revised estimate in Figure 3 is similar to Figure 6 in the Consultation. For greater clarity we have added two cost estimates that were discussed separately and were not included in Figure 6 of the Consultation. These are:

- Our estimates of SPs migration costs for services that move to other number ranges as a result of our proposals (£2 to £9 million); and
- The sensitivities of SPs pricing information costs to our assumptions about their preparations for the extension of PRS regulation (£28 million).

A2.81 We have also included the new estimates discussed in Annex 4. These are:

- advertising/promotional material and vehicle signage (£8 million to £19 million);
- CP management costs of preparations for PRS regulation (£0.5 million to £2 million); and
- SP management costs of preparations for PRS regulation (£3 million to £24 million).

A2.82 Our revised estimate of the one-off costs associated with our proposals (as shown in Figure 3) is higher than our Consultation estimate (£62 million to £121 million compared with £66 million to £98 million<sup>45</sup>). This increase is mainly due to the inclusion of the new cost estimates discussed above, though these newly quantified impacts have been partially offset by the revision to our estimate of the stationery/website costs (as discussed in paragraph A2.73).

A2.83 In our view, these revisions do not significantly alter our view of the overall impact of our proposals since the increases reflect the addition of the formerly un-quantified impacts that were previously evaluated qualitatively. Although as discussed in Annex 4, the new estimates need to be treated with caution, in our view they reduce the level of uncertainty associated with the evaluation of our proposals.

## Conclusion

A2.84 Ofcom has reviewed the proposals to extend PRS regulation in the light of the revisions to the Impact Assessment (as summarised above) and has considered stakeholders comments about the proposals and the impact assessment.

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<sup>45</sup> Overall one-off costs from Figure 6 of the Consultation plus the migration costs and pricing information sensitivities as discussed in paragraph A2.74.

- A2.85 Ofcom considers that extending PRS regulation will deliver significant ongoing benefits to consumers, CPs and SPs by improving pricing transparency and consumer protection. Although some of these benefits can not be quantified because of their forward looking nature, Ofcom considers that overall the benefits will be substantial and have a wide reaching a long lasting effect on consumers. On the other hand, extending PRS regulation will add to the regulatory burden on CPs and SPs and will cause them to incur setup and ongoing costs. Given the large number of stakeholders involved, the overall costs are inevitably significant.
- A2.86 Ofcom's overall assessment is that extending PRS regulation will deliver a substantial net benefit taking into account the benefits and costs identified in the impact assessment. Thus Ofcom considers that this extension of regulation is proportionate. On this basis, Ofcom's conclusion is that the proposals:
- are a proportionate response to the policy issues; and
  - are consistent with its legal duties (as discussed in more detail in section 4).
- A2.87 Ofcom has therefore decided to extend PRS regulation as proposed.



## Annex 3

# The regulatory framework for NTS and PRS

A3.1 For the convenience of readers, this annex reproduces part of section 2 of the Consultation, giving an overview of the regulatory framework for NTS and PRS.

## The regulatory framework for NTS

- A3.2 Current regulatory policy for NTS calls was established in 1996 with the aim of encouraging the growth in the provision of access to new and cheaper, value added services via the telephone. This was achieved by transferring the retail profit from retail call charges from the OCP to the TCP, who in turn could choose to share some of this profit with their SP customers. The SPs could then use that revenue share in order to fund innovative services.
- A3.3 The key elements of this policy were retained following the introduction of a new regulatory regime for electronic communications networks and services on 25 July 2003, based on five new EU Communications Directives. Under the new regime, Oftel (Ofcom's predecessor) carried out a series of market reviews. Among the markets and technical areas reviewed was that relating to wholesale services provided over fixed public narrowband networks. These services consist of wholesale exchange line services, call origination, local-tandem conveyance and transit, inter-tandem conveyance and transit, single transit and interconnection circuits. The review took the form of two consultations, in March and August 2003 and a Final Statement and Notification entitled "Review of the fixed narrowband wholesale exchange line, call origination, conveyance and transit markets", published in November 2003 ('the 2003 Narrowband Market Review').
- A3.4 As a result of this review the Director General of Telecommunications concluded that BT has Significant Market Power ('SMP') in the market for 'call origination on public fixed narrowband networks' and imposed a range of SMP services conditions on BT, including the requirement to provide NTS Call Origination ('the NTS Condition').
- A3.5 A key feature of the NTS Condition is an obligation on BT both to originate and, crucially, to retail calls to NTS numbers on behalf of TCPs. This creates a mechanism for TCPs to collect micro payments from consumers and to share these payments with SPs (who use NTS numbers to provide content or other services) without TCPs or SPs having to bill consumers directly. BT is only permitted to make cost-related charges for originating and retailing NTS calls and must pass the remaining revenues over to the TCP.
- A3.6 Another relevant feature of the NTS regulatory regime is the Plan. As mentioned above, the various NTS number ranges have different designations for use. For example, the 080 range is designated as a range where no charges are made to customers unless those charges are notified to the customer at the beginning of the call. In selecting a particular NTS number block, a TCP takes on an obligation to use the numbers in accordance with the designations given in the Plan. In this sense, the TCP is restricted in its use of NTS numbers.

- A3.7 The current designation for 0871, 0872 and 0873 calls specifies that they should be charged at up to 10p per minute (before discounts and call packages) for BT customers inclusive of value added tax. The price charged by other OCPs may vary.

### **The regulatory framework for Premium Rate Services**

- A3.8 Premium Rate Services ('PRS') offer some form of content, product or service that is provided via fixed and mobile telecoms services and paid for via call or other telephony charges. These may be accessed as conventional voice services or by using SMS text, telephone line, PC (e-mail, internet, and bulletin board), mobile phone or interactive digital TV. Services include TV voting lines, competitions, scratch-cards, sexual entertainment, chat-lines, business information services, technical help-lines, customer service lines, mobile phone ring-tones, game downloads, horoscopes and interactive TV games.
- A3.9 PRS are defined in section 120(7) of the Act which provides that a service is a premium rate service, if:
- a) it is a service falling within section 120 (8) ;
  - b) there is a charge for the provision of the service;
  - c) the charge is required to be paid to a person providing an electronic communications service by means of which the service in question is provided; and
  - d) that charge is imposed in the form of a charge made by that person for the use of the electronic communications service.
- A3.10 A service falls within section 120 (8) if its provision consists in:
- a) The provision of the contents of communications transmitted by means of an electronic communications network; or
  - b) Allowing the user of an electronic communications service to make use, by the making of a transmission by means of that service, or a facility made available to the users of the electronic communications service.
- A3.11 This definition encompasses all services where payment is made via an electronic communications service such as a fixed or mobile phone service. Calls to services using 08 and 09 numbers fall within this definition as do directory enquiry services (on 118xxx numbers) and certain other services, such as mobile SMS and mobile short codes charged at a premium.
- A3.12 The regulatory regime for PRS allows Ofcom to provide additional protection for consumers. At present, these measures are applied to:
- 09 numbers where calls (for BT customers) generally cost 10p per minute or more; and
  - certain types of services considered to present a higher risk to consumers even though they may be charged at rates below 10p per minute (such as internet diallers).

## The role of PhonepayPlus and Ofcom in the regulation of PRS

- A3.13 The regulatory arrangements for PRS are such that Ofcom has the primary responsibility and accountability for the regulation of PRS under the terms of the Act. The primary role of consumer protection falls to PhonepayPlus. PhonepayPlus is the regulatory agency for all premium rate charged telecoms services and has responsibility for day to day regulation of content and promotion of services.
- A3.14 The relevant statutory provisions governing the regulation of PRS are set out under sections 120 to 124 of the Act. Under the Act, Ofcom has the power to set conditions that bind the persons to whom they are applied, for the purpose of regulating the provision, content, promotion and marketing of PRS. *Conditions Regulating Premium Rate Services* (the 'PRS Condition') specifies the conditions that are currently applied by Ofcom to certain PRS ([http://www.ofcom.org.uk/telecoms/ioi/nwbnd/prsindex/PRSCondition\\_2\\_.pdf](http://www.ofcom.org.uk/telecoms/ioi/nwbnd/prsindex/PRSCondition_2_.pdf)).
- A3.15 Ofcom may also approve a Code of Practice for the regulation of PRS subject to certain criteria being met, which is then administered by an "enforcement authority". PhonepayPlus has regulated PRS in the UK since their inception in 1986.
- A3.16 Ofcom approved the current version of the PhonepayPlus Code of Practice (11th Edition) for Premium Rate Services (the 'Code') in November 2006 and amendments to the Code in March 2008 which came into force on 28 April 2008.
- A3.17 On 28 March 2008 Ofcom published a statement approving certain amendments to the Code to reflect the revised governance arrangement for PhonepayPlus.

## PhonepayPlus' Code of Practice

- A3.18 Under the Code, PhonepayPlus has a range of sanctions it can impose on SPs in respect of breaches of the Code. These include requiring the remedy of the breach, the imposition of financial penalties, barring access to some or all services and/or numbers and prohibiting named individuals from operating services for a set period.
- A3.19 The obligations imposed on CPs who provide services to SPs (described as Network Operators by PhonepayPlus) are more limited. Broadly speaking, those obligations require CPs to assist PhonepayPlus, for example by complying with its directions to provide information about particular services or SPs, withholding revenues from particular SPs, or suspending the provision of particular services.
- A3.20 As noted above, Ofcom has the power under section 120 of the Act to set conditions for the purpose of regulating the provision, content, promotion and marketing of PRS that bind the persons to whom they are applied. Section 1 of the current PRS Condition, which was published on 17 October 2006, obliges every person falling within the definition of 'Communications Provider' in the PRS Condition, to comply with:
- “(a) directions given in accordance with an Approved Code by the Enforcement Authority and for the purposes of enforcing the provisions of the Approved Code; and
- (b) if there is no Approved Code, the provisions of the order for the time being in force under section 122 of the Act.”

- A3.21 The definition of 'Communications Provider' in the PRS Condition is confined to persons involved in the provision of a subset of PRS nominated within the Condition as 'Controlled Premium Rate Services' ('CPRS') (section 2(c) of the PRS Condition). Currently, CPRS are defined in section 2(e) of the PRS Condition to include a PRS only where:
- the charge or rate for the call is more than 10 pence per minute; or
  - the service is a Chatline Service; or
  - is Internet Dialler Software operated; or
  - the service is a Sexual Entertainment Service.
- A3.22 On the basis of the above definition, unless a service falls within the definition of PRS under section 120 of the Act, it will not constitute a CPRS, irrespective of the cost of calling the service.
- A3.23 A failure by a CP to comply with a PhonepayPlus direction will normally amount to a contravention of the PRS Condition and may lead to PhonepayPlus referring the matter to Ofcom. Ofcom may then take enforcement action under the relevant procedures set out in sections 123 and 124 of the Act. The PRS Condition is sometimes referred to as Ofcom's 'backstop power' because that power performs the function of supporting the enforcement of PhonepayPlus' directions in circumstances where a CP fails to comply with directions that PhonepayPlus has given.

## Annex 4

# Further analysis of costs

## Introduction

- A4.1 In response to concerns raised by stakeholder that Ofcom had not estimated the costs associated with all of the identified impacts of its proposals we have reviewed our assessment of those impacts.

## Pricing Information Requirements of the Code

- A4.2 Section 5.7 of the Code requires SPs to ensure that all their consumer customers are fully informed about the price of the call before they call. In practice, most SPs are likely to discharge this obligation by specifying call charges in advertising and promotional material where their 087 number is displayed.
- A4.3 In the Consultation, we reported that we had not been able to estimate the costs that SPs would incur to update their advertising/promotional material and signage because we had insufficient information about various factors such as the amount of advertising/promotional material and signage in use that contains 087 Numbers, the regular replacement/reordering cycles for these materials and the methods that SPs would use to comply with these PhonepayPlus requirements.
- A4.4 As discussed in paragraph 3.64 several stakeholders were concerned that we had not quantified these costs. In the light of the stakeholder concerns, we have estimated costs based on a set of assumptions that we consider reasonable in order to assess the likely level of the costs involved.

## Advertising/promotional material

- A4.5 There is a wide variety of advertising and promotional material in use ranging from corporate brochures to promotional flyers. The costs of these materials also vary according the size and finish of the material. For example we obtained the following quotations:
- £1600 for 400 copies of a 24 page glossy colour brochure with a thick cover (i.e. £4 per copy) ; and
  - £414 for 5000 copies of a glossy colour folded A4 flyer (i.e. 8p per copy).
- A4.6 In order to accurately estimate the cost incurred by SPs to bring their advertising/promotional material into compliance with Section 5.7 of the Code, it would be necessary to know:
- the types of material used by SPs;
  - the proportion of SPs that publish their 0871 numbers in promotional material;
  - the replacement cycle of the material (for example, items such as corporate brochures might be printed infrequently and used over an extended period whereas promotional material for mail shots would be more likely to be printed and used over a short period);

- whether SPs would replace the material or use inserts, stickers or covering letters to update existing stocks.
- A4.7 In the absence of reliable information about these factors, we have based our estimates on a set of assumptions we consider to be reasonable. Our starting assumption is that SPs would take a pragmatic approach that would minimise their overall compliance cost.
- A4.8 We estimate that it would cost SPs 8p<sup>46</sup> including labour to add a compliment slip sized colour insert to advertising/promotional material and 5p<sup>47</sup> including labour to add a sticky label (Assuming an effective labour rate of £9.80 per hour<sup>48</sup> and assuming each label/insert takes 15 seconds to add). We have assumed that SPs would choose the most cost effective option and would therefore:
- replace unused stocks of promotional materials if they are cheaper than inserts; and
  - use inserts/stickers for more expensive materials such as brochures.
- A4.9 On this basis, we assume that SPs costs for advertising/promotional material would not exceed the cost of adding inserts to advertising/promotional materials.
- A4.10 In the absence of any detailed information about the incidence of 0871 numbers in promotional material and the amount of material that each SP would need to update, we have used a traffic profile for 087 numbers as the basis for our estimates. This profile was derived from information supplied by CPs in 2005 in response to a formal information request from Ofcom under section 135 of the Act.
- A4.11 We also assumed that:
- SPs would reorder advertising/promotional material at least on an annual basis and therefore only half of SPs would potentially incur incremental costs due to the six months notice period prior to the extension of PRS regulation; and
  - Only a small proportion of 087 Numbers generating low traffic volumes (less than 100 minutes per month) would appear in advertising/promotional material;
  - the volume of material to be updated/replaced would on average be related to the traffic volumes (i.e. an 087 Number generating a small volume of traffic would be likely to appear on a smaller volume of advertising/promotional material than an 087 Number generating a large volume of traffic).
- A4.12 Applying these high level assumptions to the traffic profile, we assumed that:
- 087 Numbers with very low volumes of traffic (less than 10 minutes per month) would not appear in advertising/promotional material;
  - a small proportion of 087 Numbers with low volumes of traffic (less than 100 minutes per month) would appear in advertising/promotional materials and volumes of advertising/promotional material would be relatively small. We

<sup>46</sup> Based on a quotation of £210 for 5000 colour compliment slips

<sup>47</sup> Assuming a sheet of 14 labels costs 20p plus 2p to print on a laser printer

<sup>48</sup> Measuring Administrative Costs <http://www.berr.gov.uk/bre/policy/simplifying-existing-regulation/administrative-burdens/page44061.html>

assumed that updated/replacement advertising/promotional material would be required for only 5% to 10% of 087 Numbers with these traffic volumes and on average SPs would need to update/replace 5000 items;

- a larger proportion of 087 Numbers with higher traffic volumes (greater than 100 minutes per month) would appear in advertising/promotional material. We assumed that updated/replacement advertising/promotional material would be required for between 25% and 50% of 087 Numbers with these traffic volumes. For those with traffic volumes of between 100 and 999 minutes per month, we assumed that 5000 items would need to be updated/replaced and for those generating traffic volumes over 1000 minutes per month we assumed that 15,000 items would need to be updated.

A4.13 Using these assumptions, we estimate the cost of updating advertising/promotional materials to be approximately £7 million to £14 million for existing 0871 services. In practice, incremental costs may be lower if SPs have already begun to prepare for PRS regulation since Ofcom's April 2006 policy statement.

A4.14 These estimates should be treated with caution as we have limited information to base some of the assumptions used, particularly the volume of material that SPs would have to update on average. We have also based our estimates on averages for each of the traffic bands discussed above. Clearly some businesses would not align with these averages and in some case may have much higher or lower expenditure. However, we believe these estimates give an approximate indication of the likely size of the overall costs involved.

## Vehicle Signage

A4.15 In paragraph A5.23 of the Consultation we noted that we had some SPs would need to update vehicle signage displaying 0871 numbers to bring it into compliance with section 5.7 of the Code. We also reported that we had not estimated the costs due to uncertainty about how many vehicles might need to be updated and the associated costs. We also noted that anecdotal evidence indicated the overall incidence of 087 numbers displayed on vehicles was low.

A4.16 In the absence of reliable information about these factors, we have based our estimates on a set of assumptions we consider to be reasonable.

A4.17 As with advertising/promotional material, our starting assumption is that SPs would take a pragmatic approach that would minimise their overall compliance costs. We have therefore assumed that SPs would use stickers to update existing vehicles with the necessary pricing information or would use pricing announcements at the start of calls (at least as an interim measure) if vehicle signage costs would be high.

A4.18 In paragraph A5.25 of the Consultation we reported our own research into the cost of vehicle signage, noting that additional stickers could be purchased for as little as £80. However we acknowledged that some SPs might prefer more elaborate solutions.

A4.19 In the absence of any detailed information about the number of vehicles displaying 087 Numbers, we have used the traffic profile for 087 Numbers discussed in paragraph A4.9 as a basis for our estimates. We assumed that:

- the overall incidence of 087 Numbers on vehicles is low (on the basis of the anecdotal evidence noted above);

- the traffic profile provides an indication of the size of the vehicle fleet advertising each 087 Number (i.e. 087 Numbers generating low traffic volumes would be likely to be displayed on only a small fleet of vehicles).

A4.20 Applying these high level assumptions to the traffic profile, we assumed that

- 087 Numbers with very low volumes of traffic (less than 10 minutes per month) would not appear on vehicle signage;
- 2% to 10% of 087 Numbers with traffic volumes between 11 and 999 minutes per month would appear on vehicle signage and would be likely to be associated with small vehicle fleets (such as those of small/medium business). We assumed that on average 3 vehicles would need to be updated at a cost of £100 per vehicle plus £11 labour<sup>49</sup>; and
- 2% to 10% of 087 Numbers with traffic volumes of 1000 minutes per month or more would appear on vehicle signage and would likely to be associated with larger vehicle fleets. We assumed that on average 10 vehicles would need to be updated at a cost of £250 per vehicle plus £11 labour<sup>49</sup>.

A4.21 We have also assumed that vehicles would be updated during routine maintenance and would not therefore incur additional downtime.

A4.22 Using these assumptions we estimate the cost of updating vehicle signage to be between £1 million to £5 million for existing 0871 services.

A4.23 These estimates should be treated with caution as we have limited information to base some of the assumptions used. We have also based our estimates on averages for each of the traffic bands discussed above. Clearly some businesses would not align with these averages and in some case may have much higher or lower expenditure. However, we believe these estimates give an approximate indication of the likely size of the overall costs involved.

## Building Signage

A4.24 In paragraph A5.23 of the Consultation we noted that some SPs would need to update building signage displaying 0871 numbers to bring it into compliance with section 5.7 of the Code. We also reported that we had not estimated the costs due to uncertainty about how many buildings might need to be updated and the associated costs. We also noted that anecdotal evidence indicated the overall incidence of 087 Numbers displayed on buildings is low.

A4.25 On the basis of our observations that 087 Numbers are not commonly displayed on building signage, we believe that building signage costs are unlikely to be amongst the significant costs associated with our proposals.

A4.26 We remain of the view that we have insufficient information about how SPs would react to the requirements of section 5.7 of the Code, to produce a detailed estimate of the costs. In particular, we do not have sufficient information about the proportion that would use low costs means such as stickers to update existing signage rather

<sup>49</sup> 1 hour at mechanic rates listed in Measuring Administrative Burdens

<http://www.berr.gov.uk/bre/policy/simplifying-existing-regulation/administrative-burdens/page44061.html>



than incur higher replacement costs. As with other types of signage, our assumption is that SPs would adopt a pragmatic approach that would minimise costs.

- A4.27 We also note that SPs could use pricing announcements at the start of calls (at least as an interim measure) as an alternative to modifying building signage in order to avoid costly updates to building signage.

### **Stationery/Website Updates**

- A4.28 In annex 5 of the Consultation we described our methodology for estimating the costs that SPs would incur to update stationery/websites to comply with the pricing information requirements. One element of those costs was the administrative overhead associated with re-ordering. After reviewing our estimates of these costs, we have corrected an error that caused these to be overstated. We now estimate that stationery and website costs for existing 0871 services would range between £25 million and £41 million (rather than £63 million to £68 million previously estimated) depending on the extent to which SPs have taken steps to update their stationery/websites since Ofcom announced its intention to extend PRS regulation in April 2006. Stationery/website costs incurred by SPs moving their services from 0870 numbers to 087 Numbers are considered to constitute part of the impact of Ofcom's proposals for 0870 numbers (should they be confirmed) rather than part of the impact of the extension of PRS regulation.

### **Preparations for PRS regulation**

- A4.29 In the Consultation, we noted there would be a management overhead associated with preparing for the implementation of PRS regulation in addition to the specific activities for which we produced estimates. This activity involves, reviewing the PhonepayPlus Code and SoA, drawing up implementation plans and then coordinating the necessary implementation activities.
- A4.30 We did not estimate the cost of this management activity in the Consultation because we felt it would be difficult to gather representative information from stakeholders before they had actually undertaken the activities or at least drawn up detailed plans. We still think this is the case. However in light of the concerns raised by stakeholders about un-quantified costs we have estimated these costs using a set of assumptions that we consider reasonable in the absence of more specific information.
- A4.31 We consider it likely that for most CPs and SPs, these activities would be undertaken by existing staff and therefore these costs would be an opportunity costs rather than an incremental cost.
- A4.32 We consider it likely that some CPs and SPs may have already undertaken some of these preparatory activities since the PhonepayPlus 087 Statement was published in November 2007. Any costs already incurred would not be relevant to this Impact Assessment. However, as we do not have any information about the activities already undertaken, we have not adjusted our estimates to take this into account.

### **Communications providers**

- A4.33 In the Consultation, we noted that preparation for the implementation of PRS regulation would cause CPs to incur some management and administrative effort and that this would be likely to vary according to the size of the CP. In the absence of more specific information we have estimated that the management overhead

associated with implementation planning and coordination would average 5 to 20 days per CP depending on the size of CP. As we do not have a definitive size profile for CPs, we have used these figures to estimate the range of costs. Assuming an effective labour rate for managers and senior officials of £20.23<sup>50</sup> we estimate SPs costs would be approximately £0.5 million to £2 million. This estimate should be treated with caution as we have limited information to base some of the assumptions used. However, we believe an approximate indication of the likely size of the costs involved.

- A4.34 As noted in the Consultation, some CPs may take a commercial decision to provide their SP customers with further advice/assistance.

## Service providers

- A4.35 In the absence of more specific information we have estimated that the management overhead associated with implementation planning and coordination would average 0.5 to 5 days per SP. Assuming an effective labour rate for managers and senior officials of £20.23<sup>51</sup> we estimate SPs costs would be approximately £3 million to £24 million. This estimate should be treated with caution as we have limited information to base some of the assumptions used. However, we believe an approximate indication of the likely size of the costs involved.

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<sup>50</sup> <http://www.berr.gov.uk/bre/policy/simplifying-existing-regulation/administrative-burdens/page44061.html>

<sup>51</sup> <http://www.berr.gov.uk/bre/policy/simplifying-existing-regulation/administrative-burdens/page44061.html>

## Annex 5

# Notification of a modification to the PRS Condition under section 48(1) of the Act

**Modification of a condition under section 120 of the Act which is set out in the Notification under section 48(2) of the Act published by OFCOM on 2 May 2008**

### Whereas

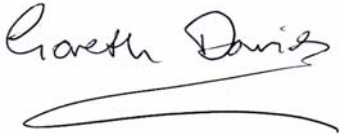
- A) OFCOM issued a notification proposing a modification the PRS Condition pursuant to section 48 (2) and section 120 (5) of the Act on 2 May 2008 ('the Notification');
- B) in the Notification and accompanying consultation document, OFCOM invited representations on the proposals set out therein by 16 June 2008;
- C) By virtue of section 48 (5) of the Act, OFCOM may give effect to any proposals to modify the PRS Condition as set out in the Notification, with or without modification only if-
  - (i) it has considered every representation about the proposal that is made to it within the period specified in the Notification; and
  - (ii) it has had regard to every international obligation of the United Kingdom (if any) which has been notified to them for this purpose by the Secretary of State;
- D) OFCOM received responses to the Notification and has considered every such representation made to them in respect of the proposals set out in the Notification and accompanying consultation document;

### Therefore Ofcom gives the following modification

- 1. OFCOM, in accordance with section 48 (1) of the Act hereby makes the following modifications of the PRS Condition as set out in the Schedule to this Notification.
- 2. OFCOM considers that the modification referred to in paragraph 1 above complies with the requirements of section 120(5) of the Act, as appropriate and relevant to each of the proposals.
- 3. In taking the measures as set out in this Notification, OFCOM has considered and acted in accordance with its general duties in section 3 of the Act and the six Community requirements in section 4 of the Act.
- 4. The effect of, and OFCOM's reasons for making, the modification referred to in paragraph 1 above is set out at sections 2, 3 and 4 of the accompanying explanatory statement.
- 5. Copies of this Notification and the accompanying statement have been sent to the Secretary of State in accordance with section 50(1)(a) and section 120 (6) of the Act and to the European Commission in accordance with section 50(6) of the Act.
- 6. In this Notification:

- (i) "the Act" means the Communications Act 2003;
  - (ii) "the Director General" means the Director General of Telecommunications;
  - (iii) "OFCOM" means the Office of Communications;
  - (iv) "the PRS Condition" means a condition under section 120 of the Act which is set out in the Notification under Section 48(1) and 120(5) of the Act published by the Director General on 23 December 2003"
7. Except insofar as the context otherwise requires, words or expressions shall have the meaning assigned to them in this Notification and otherwise any word or expression shall have the same meaning as it has in the Act.
8. For the purpose of interpreting this Notification:
- (i) headings and titles shall be disregarded; and
  - (ii) the Interpretation Act 1978 shall apply as if this Notification were an Act of Parliament.
9. The Schedule to this Notification shall form part of this Notification.
10. The modification set out in the Schedule to this Notification shall take effect on 1 August 2009.

Signed by

A handwritten signature in dark ink, appearing to read 'Gareth Davies', with a long horizontal flourish underneath.

Gareth Davies

A person authorised by Ofcom under paragraph 18 of the Schedule to the Office of Communications Act 2003

5 February 2009

## Schedule

### **The modification of a condition under section 120 of the Act which is set out in the Notification under Section 48(2) of the Act published by OFCOM on 2 May 2008**

The PRS Condition shall be modified as set out below (the deleted text has been struck through and added text underlined, both highlighted in yellow for ease of reference):

1. The Communications Provider shall comply with:

- (a) directions given in accordance with an Approved Code by the Enforcement Authority and for the purposes of enforcing the provisions of the Approved Code; and
- (b) if there is no Approved Code, the provisions of the order for the time being in force under section 122 of the Act.

2. In this Condition,

- (a) "Act" means the Communications Act 2003;
- (b) "Approved Code" means a code approved for the time being under section 121 of the Act;
- (c) "Communications Provider" means either:
  - (i) a person who:
    - (A) is the provider of an Electronic Communications Service or an Electronic Communications Network used for the provision of a Controlled Premium Rate Service; and
    - (B) is a Controlled Premium Rate Service Provider in respect of that Controlled Premium Rate Service;
  - (ii) a person who:
    - (A) is the provider of an Electronic Communications Service used for the provision of a Controlled Premium Rate Service; and
    - (B) under arrangements made with a Controlled Premium Rate Service Provider, is entitled to retain some or all of the charges received by him in respect of the provision of the Controlled Premium Rate Service or of the use of his Electronic Communications Service for the purposes of the Controlled Premium Rate Service;
  - or
  - (iii) a person who:
    - (A) is the provider of an Electronic Communications Network used for the provision of a Controlled Premium Rate Service; and
    - (B) has concluded an agreement relating to the use of the Electronic Communications Network for the provision of that Controlled Premium Rate Service with a Controlled Premium Rate Service Provider;

(d) “Chatline Service” means a service which consists of or includes the enabling of more than two persons (the participants) to simultaneously conduct a telephone conversation with one another without either:

(i) each of them having agreed with each other; or

(ii) one or more of them having agreed with the person enabling such a telephone conversation to be conducted, in advance of making the call enabling them to engage in the conversation, the respective identities of the other intended participants or the telephone numbers on which they can be called. For the avoidance of any doubt, a service by which one or more additional persons who are known (by name or telephone number) to one or more of the parties conducting an established telephone conversation can be added to that conversation by means of being called by one or more of such parties is not on that account a Chatline Service, if it would not otherwise be regarded as such a service;

(e) “Controlled Premium Rate Service” means a Premium Rate Service (other than a service which is only accessed via an International Call) in respect of which:

(i) the service is obtained through a Special Services Number (except an 0870 number), and the charge for the call by means of which the service is obtained or the rate according to which such call is charged is a charge or rate which exceeds 5 pence per minute for BT customers inclusive of value added tax; or

(ii) ) the service is obtained other than through a Special Services Number, and the charge for the call by means of which the service is obtained or the rate according to which such call is charged is a charge or rate which exceeds 10 pence per minute inclusive of value added tax; or

(iii) (ii) the service is a Chatline Service; or

(iv) (iii) is Internet Dialler Software operated; or

(v) (iv) the service is a Sexual Entertainment Service;

(f) “BT” means British Telecommunications plc, whose registered company number is 1800000, and any of its subsidiaries or holding companies, or an subsidiary of such holding companies, all as defined by section 736 of the Companies Act 1985, as amended by the Companies Act 1989 and the Companies Act 2006;

(g) (f) “Controlled Premium Rate Service Provider” means a person who:

(i) provides the contents of a Controlled Premium Rate Service;

(ii) exercises editorial control over the contents of a Controlled Premium Rate Service;

(iii) packages together the contents of a Controlled Premium Rate Service for the purpose of facilitating its provision; or

(iv) makes available a facility comprised in a Controlled Premium Rate Service;

(h) (g) “Dial-up Telephone Number” means the telephone number used by an end user’s computer that connects it to the Internet

~~(i) (h)~~ "Enforcement Authority" means, in relation to an Approved Code, the person who under the code has the function of enforcing it;

~~(j) (i)~~ "Facility" includes reference to those things set out in section 120(14) of the Act;

~~(k) (j)~~ "International Call" means a call which terminates on an Electronic Communications Network outside the United Kingdom;

~~(l) (k)~~ "Internet Dialler Software" is software that replaces a Dial-up Telephone Number with a different Dial-up Telephone Number; other than where it is used so that:

a) an end-user's existing Internet Service Provider replaces the Dial-up Telephone Number;

b) an end-user moves from his existing Internet Service Provider to another Internet Service Provider or is so moved with his consent.

~~(m) (l)~~ "Internet Service Provider" means a person who provides end-users, by means of a Dial-up Telephone Number, with connection to the Internet in the ordinary course of its business.

~~(n) (m)~~ "National Telephone Numbering Plan" means a document published by Ofcom from time to time pursuant to sections 56 and 60 of the Act;

~~(o) (n)~~ "Premium Rate Service" shall have the meaning ascribed to it by section 120(7) of the Act;

~~(p) (o)~~ "Sexual Entertainment Service" means an entertainment service of a clearly sexual nature, or any service for which the associated promotional material is of a clearly sexual nature, or indicates directly, or implies, that the service is of a sexual nature;

~~(q) "Special Services Number" means a telephone number designated by Ofcom in the National Telephone Numbering Plan as Special Services basic rate, Special Services higher rate or Special Services at a Premium Rate;~~

3. For the purposes of interpreting this Condition, except in so far as the context otherwise requires, words or expressions shall have the same meaning as ascribed to them in paragraph 2 above and otherwise any word or expression shall have the same meaning as it has been ascribed in the Act.